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Sitz/Redaktion:

Elisabethstrasse 50b, A-8010 Graz

Tel.: +43/(0)316/380 1535, Fax +43/(0)316/380 9797

E-Mail: matthias.kettemann@uni-graz.at; markus.moestl@uni-graz.at

Website: <http://www.hs-perspectives.etc-graz.at>

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Table of Contents

Editors' Preface	iii
List of Abbreviations	vii

I Keynote

Belachew Gebrewold

The Ethiopian dilemma between State Security and Human Security	1
--	----------

II The Arab Spring and Europe

Vanda Amaro Dias

A critical analysis of the EU's response to the Arab Spring and its implications for EU security	26
---	-----------

Susana de Sousa Ferreira

Migrations and the Arab Spring – a new security nexus?	62
---	-----------

Sarah da Mota

The Libyan Spring and NATO: An opportune responsibility	91
--	-----------

III Enforcing African Peace through International Law?

Irene Etzersdorfer

Africa as the Birthplace of R2P – a twisted “African Spring” 122

Ralph Janik

Putting Security Council Resolution 2098 on the Democratic Republic of Congo in Context: The Long Way of Peacekeeping 142

Laura M. Herța

Intra-State Violence in DR Congo and Human Security – Perspectives from International Relations 186

IV Security and Conflict Resolution in Africa

Thomas Spielbüchler

Good Governance – A Viable Solution? 219

V Normative African Answers to Security Challenges

Kalkidan N. Obse

The 'African Spring' and the Question of Legitimacy of Democratic Revolution in Theory and Practice 232

Closing Remarks

xi

Editors' preface

The Workshop on the Future of Security was the sixth of its kind, dealing this year with recent security and human rights challenges on the African continent. In the course of this particularly interdisciplinary workshop participants elaborated on the consequences of tremendous political shifts, such as the Arab Spring in the north of the continent and similar events in Sub-Saharan Africa.

Started in 2008, the Graz Workshops on the Future of Security have been successful in identifying some of the most burning issues of the international debate on the future of security and human rights.

This year's workshop was organized by the Institute of International Law and International Relations of the University of Graz and the European Training Centre for Human Rights and Democracy, in cooperation with the Austrian National Defense Academy, the Marie Curie Action "Sustainable Peace Building" funded under the EU's 7th Framework Program and the Human Security Focus Group.

The workshop's approach brought together different perspectives on the discussed topics, including various academic disciplines from several European universities and practitioners. The interdisciplinary deliberations resulted in gaining new and diverse, though complementary, insights.

The workshop started with a keynote lecture from Belachew Gebrewold on the system of complex insecurities and conflicts in the Horn of Africa. The first Panel was devoted to the topic of the Arab Spring and Europe. The contributions analyzed the Responsibility to Protect drawing on a conceptual normative approach that highlighted the mismatch between words and deeds in

international interventions, as well as the new challenges posed by the Arab Spring to the Mediterranean region. The first day finished with a second Panel, focusing on the enforcement of regional peace and security from an international law lens. The speakers discussed the impact of humanitarian intervention on state sovereignty and the future of peacekeeping against the background of the recently adopted Security Council Res 2098.

The second day was opened by the keynote speech of Ambassador Georg Lennkh on the evolving relationship between Africa and the EU. He made the bridge between historical developments shaping the two continents and how they influenced the current framework of relations.

The third Panel of the workshop was devoted to security and conflict resolution in Africa. The first speaker drew on the African legal framework and its capacity to deal with pro-democratic popular uprisings. Subsequently, the second speaker provided a critical analysis of the EU's response to the Arab Spring focusing on security issues. The last speaker analyzed intra-state violence in the Democratic Republic of Congo from an international relations perspective.

The Closing Panel summed up the workshop discussions and drew some critical conclusions on the existing gap between normative standards and governmental practices.

Concluding, we would like to note with gratitude the contributions by all the speakers, in particular the keynote speakers Belachew Gebrewold and Ambassador Georg Lennkh. They contributed to an international academic exchange that succeeded in connecting emerging and established researchers active in the field human rights and security studies.

Graz, January 2014

*Wolfgang Benedek, Vanda A. Dias,
Lisa M. Heschl, Matthias C.
Kettemann, Reinmar Nindler,
Kalkidan N. Obse, Stefan Salomon*

ACP	African, Caribbean, and Pacific
ADF	Allied Democratic Forces
AFDL	Alliance des Forces Démocratiques pour la Libération du Congo/Alliance of Democratic Forces for the Liberation of Congo-Zaire
AIDS	Acquired Immunodeficiency Syndrome
AMANI AFRICA	Peace in Africa
AMISOM	African Union Mission in Somalia
APCLS	Alliance des patriotes pour un Congo libre et souverain
APRM	African Peer Review Mechanism
APSA	African Peace and Security Architecture
AQIM	Al-Qaeda in the Islamic Maghreb
AU	African Union
BTI	Bertelsmann Transformation Index
CARIM	Consortium for Applied Research on International Migration
CDA	Critical Discourse Analysis
CEPESE-UP	Centro de Estudos da População, Economia e Sociedade da Universidade do Porto/Research Centre for the Study of Population, Economy and Society, University of Oporto
CIAS	Conference of Independent African States
CMCA	Commission of Mediation, Conciliation, and Arbitration (OAU)
CRGE	Climate-Resilient Green Economy
CS	Comprehensive Security
CSDP	Common Security and Defense Policy
DBE	Development Bank of Ethiopia
Doc.	Document
DR Congo	Democratic Republic of the Congo
DRC	Democratic Republic of Congo
e.g.	exempli grātia
EBRD	European Bank for Reconstruction and Development
EC	European Community
ECo	European Commission
EEAS	European External Action Service
EIB	European Investment Bank
EIDHR	European Instrument for Democracy and Human Rights

EMP	Euro-Mediterranean Partnership
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood and Partnership Instrument
EPAs	Economic Partnership Agreements
EPRDF	Ethiopian People's Revolutionary Democratic Front
ERM	Early Response Mechanism
ESS	European Security Strategy
EU	European Union
EURO-RECAMP	Reinforcement of African Peace-keeping Capacities
EUTM	EU Military Training Mission
FAR	Forces Armées Rwandaises/Rwandan Armed Forces
FARDC	Armed forces of the Democratic Republic of Congo
FAZ	Forces Armées Zairoises/Zairean Armed Forces
FCT	Fundação para a Ciência e a Tecnologia/Portuguese Foundation for Science and Technology
FDI	Foreign Direct Investment
FDLR	Forces for the Liberation of Rwanda
FNL	Forces nationales de libération
FNLA	National Front for the Liberation of Angola
FRPI	Forces de résistance patriotiques en Ituri
GCCA	Global Climate Change Alliance
GTP	Growth and Transformation Plan
HDI	Human Development Index
HIK	Heidelberger Institut für Internationale Konfliktforschung/Heidelberg Institute for International Conflict Research
HoSG	Heads of State and Government
Ibid.	Ibidem
ICC	International Criminal Court
ICG	International Crisis Group
IDP	internally displaced person
IFS	Instrument for Stability
IOM	International Organization for Migration
IPRI-UNL	Instituto Português de Relações Internacionais da Universidade Nova de Lisboa (Portuguese Institute of International Relations of the New

	University of Lisbon)
IR	International Relations
IRC	International Rescue Committee
ISAF	International Security Assistance Force
ISS	International Security Studies
LAS	League of Arab States
LRA	Lord's Resistance Army
M23	23 March Movement
MDG	Millennium Development Goals
MEDA	Mesures D'Accompagnement
MENA	Middle East and North Africa
MLC	Movement for the Liberation of the Congo
MONUC	Mission de l'Organisation des Nations Unies en République Democratique du Congo/United Nations Mission in the Congo/ United Nations Organization Mission in the Democratic Republic of the Congo
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
MPR	Mouvement Populaire de la Révolution/Popular Movement of the Revolution
MW	Megawatt
NATO	North Atlantic Treaty Organization
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organization
OAU	Organization of African Unity
OECD	Organization for Economic Co-operation and Development
OFDP	Oromo Federalist Democratic Movement
OIC	Organization of the Islamic Conference
ONUC	United Nations Force in Congo
Para	Paragraph
Paras.	Paragraphs
PASDEP	Plan for Accelerated and Sustained Development to End Poverty
PESTEL	Political, Economic, Social, Technological, Environmental and Legal Issues
PRIO	Peace Research Institute Oslo
PSO	Peace Support Operations
R2P	Responsibility to Protect
RECs	Regional Economic Communities
RPF	Rwandan Patriotic Front

SADC	Southern African Development Community
SC	UN Security Council
SPMU	Strategic Planning and Management Unit
SPRING	Support for Partnership and Inclusive Growth
UAV	Unmanned Aerial Vehicles
UCDP	Uppsala Conflict Data Program
UfM	Union for the Mediterranean
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNECA	United Nations African Economic Commission
UNEF I	United Nations Emergency Force I
UNHCR	United Nations High Commissioner for Refugees
UNITA	Union for the Total Independence of Angola
UNSC	United Nations Security Council
US	United States
USA	United States of America
USD	United States Dollars

I Keynote

Belachew Gebrewold*

The Ethiopian Dilemma between State Security and Human Security

Abstract

There is a contradiction between state security and human security in the Ethiopian government policy. Ethiopia's national security strategy, its cooperation in the global war on terror, and its role in the regional security structure often contradict the different components of human security. This is at least partly due to Ethiopia's role as an ally in the global war on terror. Paradoxically, some of Ethiopia's economic strategies have the potential to cause more food insecurity and displacement of local communities. This is most probably going to initiate more political conflicts between the government and the local communities and undermine human security. Departing from sectoral complex insecurity and geopolitical complex insecurity the paper demonstrates the conflict between human security and state security in Ethiopia.

Keywords: Ethiopia, State Security, Human Security, Complex Insecurities

*

Belachew Gebrewold is Lecturer of International Relations at the University of Innsbruck/Austria; lecturer at the UNESCO Chair for Peace Studies, Innsbruck/Austria, and visiting professor for Global Governance at Management Center Innsbruck/University of Applied Sciences, Department of International Health Care and Social Management. His main research areas are conflicts in Africa, Africa in the international security system and Global Governance. His most recent publications include: *Anatomy of Violence*, Ashgate, 2009; *Global Security Triangle*, Routledge 2010 (ed.); *Africa and Fortress Europe*, Ashgate, 2007 (ed.).

Table of contents

A	Introduction	2
B	Geopolitical Complex Insecurity	3
C	Sectoral Complex Insecurity	16
D	Conclusion	24

A Introduction

The Ethiopian GTP of 2010 states that Ethiopia's vision is to prepare the transition to a modern and productive agricultural sector with enhanced technology and a strong industrial sector that plays a leading role in the economy. The GTP touches upon the various aspects of human security including food, environmental, health, political, personal, community and economic security.

The Ethiopian food security strategy places a significant focus on enhancing agricultural productivity to address the chronic food shortage. Ethiopia's government envisages implementing a trade-oriented policy to utilize foreign exchange earnings from agricultural exports¹ to finance technological imports. In doing so, the government seeks to accelerate industrialization and, thus, achieve food security. From the environmental point of view, the country aims to generate a high amount of electricity by effectively harnessing its hydropower, wind and

¹ Though the GTP envisages expanding industrial economy, agricultural expansion for local consumption and export of agricultural products is still a central component of the government strategy. The GTP stresses that while industrial growth will be given particular focus, the agricultural sector continues to be the major source of economic growth (Cf. GTP 2010:8; particularly Chapter of the GTP).

geothermal potential. According to the Ethiopian government, not only would this help Ethiopia to contribute its part to the mitigation of climate change, but also export clean electricity to neighboring countries to help them in their shares of climate change mitigation. Furthermore, according to the plan, Ethiopia is supposed to increase production of ethanol and biodiesel without competing with food crops for agricultural land.

Through its “Environmental Management Program of the Plan for Accelerated Sustainable Development” and the “Climate-Resilient Green Economy” initiative, the government plans to eradicate poverty and to achieve higher food security. As a result, any environmental, political or economic criticism of its economic strategies such as hydropower investments or its cooperation with large scale agribusiness corporations is often interpreted by the government and its supporters as subversive to Ethiopia’s national development and security strategy.

The main research questions to be examined in this article include: why are policies in Ethiopia implemented in ways that undermine human security, whereas the policies themselves appear to focus on human security more than state security? The paper addresses this question in the analytical framework of geopolitical complex insecurity and sectoral complex insecurity. At the end it gives some conclusions on the contradiction between state security and human security.

B Geopolitical Complex Insecurity

The main point which I would like to make in this section is that security understanding and policy implementations of the GTP in Ethiopia are highly affected by national, regional and international system of insecurities. From the

geopolitical point of view the complex insecurity suggests that different political and security tensions in Ethiopia such as in the Ogaden region, in the Afar region, in the Ormiya region and in the Gambella region constitute the intrastate component of the complex insecurity. However, this intrastate component is systemically interconnected to regional (i.e. the Horn of Africa) component of complex insecurity. The war and continuous tension with Eritrea, the Islamic fundamentalism in Somalia and Eritrean-Ethiopian proxy-war in Somalia determine the security policy of the Ethiopian government. This means, this regionally complex insecurity underpins Ethiopia's state security policy in the face of regional "security threats". Again this regional insecurity factory, i.e. Islamic fundamentalism and Al-Shabab has attracted global players into the region such as the EU and the US. Ethiopia is an important ally of these global players. Often the government has been justifying its harsh policies against opposition groups in the name of anti-terrorism.

In my earlier publications on conflict systems in the Horn of Africa I have explored the state security understanding that has highly influenced Ethiopia's security concept within international and regional security structure.² Studies of Davis *et al.*,³ Bereketeab,⁴

² Gebrewold, Belachew and Dustin Dehez, When Things Fall Apart – Conflict Dynamics and an Order Beside the State in Post-collapse Somalia, *African Security*, 3 (2010) 1, 1-20. Gebrewold, Belachew, Ethiopian Nationalism: An ideology to transcend all odds, *Africa Spectrum*, (2009a) 1, 79-97. Gebrewold, Belachew, *Anatomy of Violence: Understanding the systems of conflict and violence in Africa*, Aldershot/UK, Ashgate, 2009b.

³ Davis, John, *Terrorism in Africa: The Evolving Front in the War on Terror*, Lexington Books, 2010.

⁴ Bereketeab, Redie, *The Horn of Africa: Intra-State and Inter-State Conflicts and Security*, Pluto Press, 2013.

Woodward,⁵ and Rotberg,⁶ show that Ethiopia is an important and indispensable ally in the global war on terror in general and in the Horn of Africa in particular. This factor has substantially determined Ethiopia's security concept.

The Federal Democratic Republic of Ethiopia Foreign Affairs and National Security Policy and Strategy of 2002 explain in detail the regional and international context of Ethiopia's security concept. The document further underlines that unless there is a speedy economic development, Ethiopia's survival as nation is in danger.⁷ Article 3 of the Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia of 2009⁸ emphasizes that Ethiopia's survival is at stake if it is not successful in fighting terrorism. Furthermore, the government's Rural Development Policy and Strategies⁹ and the GTP¹⁰ reinforce the significance of economic growth for national security.

If closely observed, one can figure out that there is a tension between state security and human security in the Ethiopian politics. Conflicts in the Horn of Africa consist of different levels and dimensions.¹¹ Conflict

⁵ Woodward, Peter, *Crisis in the Horn of Africa: Politics, Piracy and the Threat of Terror*, I.B.Tauris, 2012.

⁶ Rotberg, Robert (ed.), *Battling Terrorism in the Horn of Africa*, Brookings Institution Press, 2005.

⁷ Ethiopian Ministry of Information, *Federal Democratic Republic of Ethiopia Foreign Affairs and National Security Policy and Strategy*, 2002.

⁸ Federal Negarit Gazeta: A Proclamation on Anti-Terrorism, Proclamation, No. 652/2009, 2009, Art. 3.

⁹ Ministry of Finance and Economic Development, *Rural Development Policy and Strategies*, Addis Ababa, April 2003.

¹⁰ Ministry of Finance and Economic Development, *Growth and Transformation Plan (GTP) 2010/11-2014/15*, Addis Ababa, September 2010.

¹¹ Gebrewold, Belachew, 2009b.

system in Ethiopia has political, socio-cultural and economic dimensions. The mutual impacts of these dimensions depend on the intensity of conflicts on regional (Horn of Africa) and international levels that will have spill-over effects on the national level. The instability on the national level creates further instability on the regional and international levels, and vice versa. Such conflict dynamic has considerable implications for human security. The higher the negative interaction of the three levels, the weaker the human security, and the stronger the state security understanding will be.

In its national security strategy, the Ethiopian government highlights that security policy has the absolute priority as it is a matter of ensuring national survival. Only when this national survival is secured other policy areas such as economic prosperity, sustainable peace, and human rights would follow. Other policy areas are not only subordinate to it but also instrumental to its materialization. In his unpublished MA-Thesis Meles Zenawi emphasized the primacy of national survival and the developmental state even at the cost of democracy.¹² According to the Ethiopian government policy, national security strategy, foreign policy, and rapid economic development plans are inseparably entangled, and they condition each other; ultimately ensuring peace.¹³ In order to show the geopolitical complex insecurity, hereafter I discuss in detail the EU-Ethiopian relations in particular and the EU-African relations in general.

¹² Zenawi, Meles, 2012, African Development: Dead Ends and New Beginnings. Available at http://cgt.columbia.edu/files/conferences/Zenawi_Dead_Ends_and_New_Beginnings.pdf, accessed 21 July 2013.

¹³ MOFA Ethiopia, The Foundations of Foreign Affairs and National Security Policy, 2012. Available at <http://www.ethiopia.gov.et/English/MOFA/Information/Pages/Security%20Strategy.aspx> (21 December 2012).

The EU Human Security Doctrine of 2004 underlines the importance of human security in its external relations. However, although the EU claims to promote human security within the framework of its development cooperation policies, the state security appears to loom large in its relations with Ethiopia. The intention is to highlight the EU-Ethiopian relations and its role in the Ethiopia's dilemma between state security and human security. The reason why I am going to discuss in detail the EU-Africa relations hereafter is that on the one hand the EU is the main actor in Africa as regards with development aid, crisis management or humanitarian assistance; on the other hand, however, if it is about fighting terrorism, for instance, the EU turns a blind eye on African states that are allies of the West in the global war on terror but violate human rights. Many national and international non-governmental organizations severely criticised the position of the EU towards Ethiopia after the rigged elections of 2005 and 2010.

The human security doctrine of the EU underscores the importance of comprehensive security. To what extent does the EU's Africa policy pursue comprehensive security? Are there any systemic constraints on it? The EU stresses the need to develop a comprehensive approach to conflict prevention, which seeks to integrate policies and actions in the fields of security, development and democratic governance.¹⁴ Comprehensive security emphasizes a holistic approach to security exemplified by conflict prevention and civil-military crisis management.¹⁵ Accordingly, there is an increasing transition from state

¹⁴ ECo, Strategy for Africa: An EU Regional Political Partnership for Peace, Security and Development in the Horn of Africa, 2006, 4.

¹⁵ Rieker, Pernille, From Common Defense to Comprehensive Security: Towards the Europeanization of French Foreign and Security Policy?, Security Dialogue, (2006) 37, 509, at 510.

security to human security, which can be achieved only through a comprehensive security approach.

However, as Olsen argues the different forms of EU interventions are guided by European and member states' realist interests rather than concerns for Africa.¹⁶ Though the EU claims to be an ethical power, its ambitions are often self-regarding motivation to enjoy global prestige.¹⁷ States steer clear of conflicts where they do not see clear strategic, economic or prestige interests. The Darfur conflict or the decades-long conflict of Somalia, are just two examples.¹⁸

The EU needs Ethiopia as an ally in the international war on terror. This self-interest has adverse effects on Ethiopia's implementation of human security. In the face of concurring interests of other major global powers those normative principles do not seem to be of a major significance. Hyde-Price argues that the EU should craft "its foreign and security policies on the basis of the common interests of its member states rather than pursuing normative or 'ethical crusades'".¹⁹ For Hyde-Price the normative agenda is feasible only where vital interests are not at stake in a structural-realist (anarchic) world in which states are concerned with their security and survival, since states do not pursue a normative agenda at

¹⁶ Olsen, Gorm Rye, The EU and Military Conflict Management in Africa: For the Good of Africa or Europe?, *International Peacekeeping*, 16 (2009) 2, at 246.

¹⁷ Gegou, Catherine, The West, Realism and Intervention in the Democratic Republic of Congo (1996-2006), *International Peacekeeping*, 16 (2009) 2, at 231. Manners, Ian, The Normative Ethics of the European Union, *International Affairs*, 84 (2009) 1, at 46.

¹⁸ Gegou, Catherine, 2009, 234.

¹⁹ Hyde-Price, Adrian, A 'Tragic Actor'? A Realist Perspective on 'Ethical Power Europe', *International Affairs*, 84 (2008) 1, at 29.

the expense of their vital national interests.²⁰ Hyde-Price further argues that “ethical power Europe” is, firstly, hypocrisy since the EU pursues strategies that favor European economic, strategic or political interests. Secondly, it will reduce the EU to a weak and ineffective actor in an international system of competition, self-help and anarchy. Thirdly, “ethical power Europe” leads the EU crusading moralism.²¹ Is this realist politics compatible with normative values which Europe claims to put at the center of its Africa policy agenda? How does it affect EU’s human security principles?

Peace and security, governance and human rights, trade and regional integration, and development constitute the priority areas of the EU’s Africa policy. Peace and security are predicated upon the political economy of environmental sustainability and development. The EU-Africa strategic partnership underlines that comprehensive security presupposes sustainable development, intercontinental, regional and sub-regional cooperation, and integration into the world economy and international trade. As a result, the EU would support (sub-)regional integration and development strategies and programs of different African regional economic communities. In 2005, besides asymmetric and flexible implementation of EPAs with Africa’s regional groupings, the EU expressed its commitment to increase aid for trade to € 1 billion per year by 2010.²² The EU is already Africa’s biggest trading partner with 45 % of African’s foreign trade, accounting for

²⁰ Hyde-Price, Adrian, 2008, 30.

²¹ Hyde-Price, Adrian, 2008, 43-44.

²² Consilium, The EU and Africa: Towards a Strategic Partnership, 15961/05 (Press 367), Brussels, 19 December 2005a.

€ 144 billion, which is five times bigger than intra-African trade which is about € 29 billion a year.²³

Whereas the EU's development aid to Africa in 1985 was € 5 billion, in 2003 it reached € 15 billion. From the 10th European Development Fund budget of € 22,7 billion for the period 2008-2013 90 % is planned to be allocated to Africa.²⁴ Based on programs signed (€ 1,5 billion) between African regions and the EC for the period 2008-2013, following allocations are planned: for Eastern and Southern Africa (€ 645 m), West Africa (€ 598 m), SADC (€ 116 m), and Central Africa (€ 165 m). Until 2010 € 1 billion was mobilized through the European Commission Food Facility, of which approximately € 560 m is destined for Africa. Moreover, the EC has mobilized over € 45 m for Agricultural Research in Africa and African sub-regional research organizations.²⁵

In different African states such as DRC, Chad/Central African Republic, Sudan, Guinea Bissau and Somalia the EU's comprehensive security includes also military aspects. The EU has strengthened the human security policy in Africa since the *Operation Artemis* of 2003 in the DRC. In the EU-AU joint strategy the security dimension of the comprehensive security consists of: rapid, coherent and decisive actions of crisis management; combat in crisis management operations; humanitarian and rescue missions; peacekeeping; peace-enforcement; disarmament operations; support for fighting terrorism; tackling conflict resources; sustaining peace in post-conflict situations; linking relief, rehabilitation and development; security sector reform; disarmament,

²³ Gebrewold, Belachew, 2010, The cynicism of African solutions to African problems, *African Security*, 3 (2), 87.

²⁴ Consilium, EU Support for Peace and Security in Africa, Brussels, February 2005b.

²⁵ Consilium, EU Support for Peace and Security in Africa, Brussels, February 2005.

demobilization; reintegration; addressing the proliferation of small arms and light weapons; supporting African peace-support operations; and cooperation in non-proliferation of weapons of mass destruction. The lead principle of the joint strategy is “African solution for African problems”.²⁶

In order to support “African solutions for African problems” the EU created in 2004 the African Peace Facility to provide African peace making and peacekeeping operations with the resources which AU or regional economic communities are short of. The EU and AU launched in 2008 the EURO-RECAMP or AMANI AFRICA (Peace in Africa). This is a CSDP instrument for Africa as a Partnership for Peace and Security to ensure coherent support for the functioning of the APSA and for African-led efforts to address conflicts. Three major areas of cooperation are political dialogue, operationalization of the APSA, and predictable funding for PSO. Through APF this priority area has been allocated so far about € 100 million for capacity building, i.e. operationalization of APSA. The AU and African sub-regional organisations’ PSO have been provided with € 600 million. Similarly, for the ERM an amount of € 15 million has been earmarked to finance preparatory stages of PSO or initial steps of mediation processes, and around € 40 million for contingencies (i.e. unforeseen needs).²⁷

Since its deployment in 2007, AMISOM has been supported by the EU with allocation of € 35,5 million from APF. A contribution of € 4,75 million coming from the IFS supports the SPMU. The EU has adopted a support program for Somalia worth € 215,4 million. Between 2005

²⁶ See Gebrewold, Belachew, 2010, The cynicism of African solutions to African problems, *African Security*, 3 (2).

²⁷ Consilium, The EU and Africa: Towards a Strategic Partnership, 15961/05 (Press 367), Brussels, 19 December 2005.

and 2009 the EU assisted the Somalis with € 3,025,440 for humanitarian aid projects, and allocated € 278 million of Development Aid between 2003 and 2008 for sectors including governance, security, education, health care etc. It has also allocated € 215,4 million for those sectors for the period 2008-2013 including € 35,5 million for the African Union Peacekeeping Mission AMISOM.²⁸ In April 2010 the EU further established the EUTM Somalia to train the Somali Security Forces.

The comprehensive security concept goes beyond the traditional distinction between external and internal security, and between civilian and military instruments.²⁹ The political dimension of comprehensive security, however controversial it is, consists of normative principles considered to be universally applicable: democracy, human rights and rule of law. On the basis of the Cotonou Agreement (2000) between the EU and ACP-countries states abusing human rights, violating democracy and the rule of law or commit serious corruption will be denied development aid. The Joint Strategy of 2007 EU and AU has reinforced these objectives. For the period 2008-2013 the EU has earmarked € 2,7 billion for ACP-states from the 10th European Development Fund for the so-called the “governance incentive tranche”. Within the framework of the APRM and the African Charter on Democracy, Elections and Governance Democratic Governance and Human Rights, the EU has supported Africa in the area of electoral observation through Electoral Assistance Fund and through the UNDP-managed Trust Fund to support the APRM Secretariat.

According to the EU Strategy for Africa of 2005, the EU pledged to assist Africa to protect its environment:

²⁸ Sicurelli, Daniela, *The European Unions’s Africa Policies: Norms, Interests and Impact*, Farnham, Ashgate, 2010, 126.

²⁹ Rieker, Pernille, 2006, 510.

manage environmental diversity, stop desertification and improve sustainable land management, conserve biodiversity and counter the effects of climate change. EU also fears that desertification and regional instability could cause migration northwards especially to Europe.³⁰ Based on the Copenhagen priority context and the GCCA, the EU pledged capacity development for Africa both in the mitigation and adaptation strategic dimensions. Under the initiative Mali, Mauritius, Mozambique, Rwanda, Senegal, Seychelles and Tanzania were identified for enhanced cooperation (2009-2010). Five other African countries were selected for 2010. It has provided with support of € 8 million for Climate Development Africa and AU Commission Climate change and desertification coordination. These projects are taking place not only on the individual African states level, but also on regional levels as discussed below.

The Sahel and Sahara region has become a strategic region for the EU and the US since 2002. The US, UK, Germany, France and Spain have been conducting anti-al-Qaeda military exercise in the Sahara in a joint military exercise with Algeria, Mauritania, Mali, Senegal, Burkina Faso, Niger, Nigeria and Chad. Supported by the USA and the EU, in April 2010 Algeria, Mali, Mauritania and Niger launched a joint military command headquarters in the south of Algeria to coordinate their efforts while AQIM has been expanding into Chad, Mali and Libya.

Based on the UN Security Council resolution 1907 (2009), the EU has sanctioned Eritrea due to its supporting of Islamic terrorism in Somalia. On the other hand, Kenya and Ethiopia are anchor states of the EU in the Horn of Africa. Under the 10th European Development

³⁰ Sicurelli, Daniela, *The European Union's Africa Policies: Norms, Interests and Impact*, Ashgate, Farnham, 2010, 126.

Fund the EU and Kenya signed a Country Strategy Paper in December 2007 for the period 2008-2013 with a budget of € 399 million, and with Ethiopia a total budget of € 644 million. Though democratic records in Kenya and Ethiopia are considerably unsatisfying, piracy, Islamic fundamentalism and terrorism coming from and through Somalia have underlined the security significance of Ethiopia and Kenya. In spite of post-2005 and 2007 elections violence in Ethiopia and Kenya, respectively, the stance of the EU is to cherish the relationship with these strategically important anchor states by compromising its own principles of democracy and rule of law.

The figures and policies above show that the EU's involvement in the human security sectors in Africa has been enormous. The EU considers itself as an ethical power in Africa and beyond. It is the major development aid provider. As the EU itself admits in its Human Security Doctrine of 2004, its human security policies are also caused by "enlightened self-interest". But the problem is only when its "enlightened self-interest" (for instance, global war on terror) undermines human security in Africa.

As regards with Ethiopia, after the elections of 2005 and 2010 I was expecting that the stance of the EU towards would change as a result of the post-election violence caused by rigged elections. On the basis of the Cotonou Agreement (2000) between the EU and ACP-countries states abusing human rights, violating democracy and the rule of law or commit serious corruption will be denied development aid. Article 9 of the Agreement stipulates that respect for human rights, democratic principles and the rule of law, which underpins the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement. Moreover, even if Article 96 of the Cotonou Agreement lays down that in case of flagrant violation of one of the essential elements

referred to Article 9 an immediate reaction should follow the EU did not invoke Article 96.

During the local elections of April 2008 former Prime Minister Meles Zenawi's EPRDF coalition won, with its candidates unopposed in many places, whereas opposition parties had complained of harassment, intimidation, attack and arrests during campaigning. Bulcha Demeksa, leader of the opposition OFDP, said his party had only been able to put forward 2 % of the 6,000 candidates it wanted to because they had been threatened by government supporters. Similarly, the United Ethiopian Democratic Forces opposition party said that of its 20,000 candidates who attempted to register, only 10,000 succeeded, and only 6,000 of those actually had their names placed on the lists at polling stations. As a result, EPRDF won all but a handful of local council and parliamentary seats following an opposition boycott of the poll, and it regained control of the capital Addis Ababa and won all but one of the 39 parliamentary by-elections.³¹ The internal political insecurity is being exacerbated by regional factors such as the tension with Eritrea and Al-Shabab fighters.

Meles Zenawi who enjoyed the support of major global players including the EU won a fourth term in elections held in May 2010 which most opposition groups claim as rigged like the elections of 2005. EU's critique of Ethiopia was very low in spite of human rights violations and elections-related violence. The EU was either silent or it took the EU six months to report that there were negative developments in the practical application of the legal and electoral framework, and that the electoral

³¹ Gebrewold, Belachew, The Cynicism of "African Solutions for African Problems", *African Security*, 3 (2010) 2, 80-103.

process fell short of international commitments for elections and transparency (EUEOM 2010).³²

As the EU and Ethiopia are strategic allies it seems that the Cotonou principles were ignored by the EU in order not to offend the Ethiopian leadership. For the Ethiopian government state security in the face of armed rebellion, terror threats and challenging opposition groups is much more pressing issue than human security. The EU needs Ethiopia in its war on terror in the Horn of Africa. Therefore, neglect of human rights and human security is not purely an internally caused political deficit instead it is also systemically sustained constraint to the Cotonou principles.

C Sectoral Complex Insecurity

Besides this geopolitical complex insecurity sectoral complex insecurity is another determining factor in the state security-human security dilemma. Regarding political security such as democratization in Ethiopia Jon Abbink³³ has done thorough research on how the Ethiopian government has become increasingly authoritarian. Abbink's publications show how the government pursues highly centralized and repressive policies in the name of development and security.

³² EUEOM, Ethiopia: Final Report, House Of People's Representatives and State Council Elections, European Union Election Observation Mission, May 2010. Available at http://www.eueom.eu/files/pressreleases/english/final-report-eueom-ethiopia-08112010_en.pdf (16 November 2010).

³³ Abbink, Jon, The Ethiopian Second Republic and the Fragile "Social Contract", *Africa Spectrum*, 44 (2009) 2, 3-28.

When we examine closely the different policy sectors the in the GTP it becomes clear that there is some tension between state security and human security. Export-oriented free market ideology has been attracting investors from different parts of the world. These investors are major players involved in production of roses, rice, and ethanol and bio-diesel as energy sources. The government argues that if Ethiopia gets enough revenue from foreign exchange through investment it can buy food anywhere.³⁴

The concept *sectoral complex insecurity* addresses questions regarding such as how insecurity in environmental policy results in food insecurity; how food insecurity results in environmental insecurity; how securitization of economic growth affects food and environmental security and, ultimately economic security itself. Economic securitization means here that economic growth is not only an economic issue, but it can also become a national security issue. Based on this conceptualization, the government argues in the GTP that Ethiopia's national security is dependent on its economic growth. In this context complex insecurities emerge mainly due to the contradiction between the policies of the GTP on one hand, and their implementation on the other. This means, the policies are human security oriented, whereas their implementation is state security oriented. As a result, all human security components will be subordinate to economic security as it is the one that guarantees state security. In other words, implementation of (some) GTP components tends to result in negative externalities on other components. This complexity can have crucial impacts on food and environmental securities.

³⁴ Lavers, T., 'Land grab' as development strategy? The political economy of agricultural investment, in: Ethiopia, *Journal of Peasant Studies*, 39 (2012) 1, 105-132, at 122.

As studies by different researchers such as Bishop and Hilhorst,³⁵ Lavers,³⁶ Fouad,³⁷ Cotula,³⁸ Mousseau and Sosnoff,³⁹ Deininger and Byerlee,⁴⁰ Deininger,⁴¹ and Rahmato⁴² on food security show the risky strategy of the government in utilizing foreign exchange earnings from agricultural exports to achieve food security through trade and industrialization can lead to collisions of different policy sectors. The collision is between economic growth on the one hand, and food insecurity, displacement, political conflicts, inter-ethnic tensions, and environmental repercussions. Commercial investment and land-grabbing (which the government denies) have impacts on food insecurity. Different researchers and organizations have been warning that dam construction and displacement could have impacts on food and environmental security. Studies by Graham *et al.*,⁴³ Engels and Dietz,⁴⁴ Corson

³⁵ Bishop C. and D. Hilhorst, From food aid to food security: The Case of the Safety Net Policy, *Ethiopia Journal of Modern African Studies*, 48 (2010) 2, 181-202.

³⁶ Lavers, T., 2012.

³⁷ Fouad, Makki, Power and property: commercialization, enclosures, and the transformation of agrarian relations in Ethiopia, *Journal of Peasant Studies*, 39 (2012) 1, 81-104.

³⁸ Cotula, Lorenzo, Land grab or development opportunity? Agricultural investment and international land deals in Africa, FAO, IIED and IFAD 2009.

³⁹ Mousseau, F. and G. Sosnoff, Understanding Land Investment Deals in Africa Country Report, The Oakland Institute, Ethiopia, 2011.

⁴⁰ Deininger, K. and D. Byerlee, Rising global interest in farmland: Can it yield sustainable and equitable benefits?, World Bank Publications, Washington DC., 2010.

⁴¹ Deininger, K., Challenges posed by the new wave of farmland investment, *Journal of Peasant Studies*, 38 (2011) 2, 217-247.

⁴² Rahmato, D., Land to Investors: Large-Scale Land Transfers in Ethiopia, Forum for Social Studies, Addis Ababa, 2011.

⁴³ Graham, A. *et al.*, Land Grab study: CSO Monitoring 2009-2010 "Advancing African Agriculture": The Impact of Europe's Policies and Practices on African Agriculture and Food

and MacDonald,⁴⁵ “International Rivers”⁴⁶ show that potential damages to the environment in Ethiopia will be inevitable as the government has allocated large areas of fertile land to national and foreign investors and has developed a very investor-friendly environment over the last 15 years through strong changes to its national policy framework.

After having dealt with the complex insecurities above let us discuss briefly the increasing tendency to expand the security concept, and the resistance to do so. There is a significant controversy among scholars of International Relations as to the scope of the concept of security. Stephen Walt in his article “The renaissance of security studies” warned of the disciplinary chaos in case of broadening the concept of security to include non-military issues like poverty, AIDS, environmental hazards, drug abuse, pollution, disease, child abuse, or economic recessions lest security studies becomes academically irrelevant.⁴⁷ According to Walt such an approach would destroy the intellectual coherence of security studies and make it more difficult to devise solutions to any of these important problems. Hence he suggests limiting security

Security, 2010, www.europafrika.info, accessed 21 March 2013.

⁴⁴ Engels, B. and K. Dietz, Land Grabbing analysieren: Ansatzpunkte für eine politisch-ökologische, Perspektive am Beispiel Äthiopiens Peripherie, 124 (2011) 31, 399-420.

⁴⁵ Corson C. and K. I. MacDonald, Enclosing the global commons: The convention on biological diversity and green grabbing, *Journal of Peasant Studies*, 39 (2012) 2, 263-283.

⁴⁶ International Rivers, Fact Sheet: Gibe III Dam, International Rivers, Ethiopia, 2009.

⁴⁷ Walt, Stephen, The Renaissance of Security Studies, *International Studies Quarterly*, 35 (1991) 2, 211-240, at 213.

studies to strategic studies or state security, i.e. military relations between states.⁴⁸

Nevertheless, there has increasingly been a discussion going on to shift the focus from merely state/military centric approaches to more holistic perspectives. Instead of security for governments, greater focus has been devoted to security for the peoples of the world which consists of sustainable environment, health, education, employment, freedom of expression, equality of opportunities.⁴⁹ Booth suggests that security may not be limited to mere survival nor is state-centric approach; instead it should deal with the most basic questions of people, and include freedom from life-determining threats such as hunger, disease and environmental destruction.⁵⁰ The creation of the Human Security Commission in 2003 was the outcome of this trend to broaden the concept of security. In contrast to the traditional security concept, which is centred on states and traditional military capabilities, the Human Security concept puts focus on economic, food, health, environmental, personal, and political security of individuals and communities.

Though the Ethiopian foreign policy and strategy does not clearly define state security nor human security, the objectives and pillars of the GTP determine Ethiopia's security concept. In general, various GTP policies indicate

⁴⁸ Cf. Smith, S., The increasing insecurity of security studies: Conceptualizing security in the last twenty years, *Contemporary Security Policy*, 20 (1999) 3, 72-101, at 72.

⁴⁹ Butfoy, Andrew, Themes within the collective security idea, *Journal of Strategic Studies*, 16 (1993) 4, 490-510, at 502. Biscop, S., *The European security strategy*, Ashgate, Aldershot, 2005, 7. Falk, R., *The Promise of World Order. Essays in Normative International Relations*, Weathsheaf, Brighton, 1987, 222.

⁵⁰ Booth, Ken, *Theory of World Security*, Cambridge University Press, Cambridge, 2007, 102.

human security; however their implementation tends towards state security.

The major objectives of the GTP are to extricate Ethiopians from poverty; to maintain at least an average real GDP growth rate of 11 % and meet the MDGs; expand and ensure the qualities of education and health services; establish favorable conditions for sustainable state building through the creation of developmental state; and ensure growth sustainability. Some of the pillars for these objectives are sustaining faster and equitable economic growth; maintaining agriculture as a major source of economic growth; creating favorable conditions for the industry; and infrastructure development.

The national development plan is based on the PASDEP and aims at building an economy, which has a modern and productive agricultural sector with enhanced technology and an industrial sector that plays a leading role in the economy. The target of the policy is to make Ethiopia a middle-income country by 2025.⁵¹ Ethiopia has laid out plans to invest more than USD 12 billion in harnessing its rivers to generate more than 40,000 MW of hydro-power by 2035, making it Africa's leading power exporter. Ethiopia has already started to export power to Djibouti, Kenya and Sudan. Furthermore, the government plans to extend the exports of electricity to Somaliland and South Sudan. Meles Zenawi had been pursuing economic modernization and growth based on an interventionist export-oriented free-market ideology.

The Ethiopian government states that rapid population growth, land shortages and increasing dependency on food aid are reaching a point at which continuation of past policies seems socially and politically

⁵¹ MOFED, National Development Plan, 2012. Available at <http://www.mofed.gov.et/English/Information/Pages/NationalDevelopmentPlan.aspx> (20 March 2012).

unsustainable. Many donors such as the World Bank are also in favor of agricultural commercialization. Agricultural investments such as in horticultural projects in Kenya prior to their adoption in Ethiopia are seen as exemplary.⁵² The state-owned DBE provides concessional lending of up to 70 % of an investment. Floricultures and export crops (and bio-fuel in the future) constitute the greatest number of projects.

Investments in the agricultural sector have increased from USD 135 million in 2000 to USD 3,500 million in 2008.⁵³ According to the Ethiopian ministry of agriculture, when a land used for pasture would be given to foreign investors, the pastoralists who used this land would not be compensated, as 'they should go somewhere else'.⁵⁴ Ethiopian government argues that agricultural land investment is critical for Ethiopia's development because of the importance of FDI, technology transfer, and the potential for transitioning farmers to modern techniques. According to the Ethiopian Ministry of Finance and Economic Development, Ethiopia has scored a double digit economic growth within the last six years consecutively mainly due its own economic road-map: agriculture-lead industrialization policy (GTP 2010).

⁵² Teshome, A., Agriculture, growth and poverty reduction in Ethiopia: Policy processes around the new PRSP (PASDEP), Future Agricultures Research Paper, 2006, 4.

⁵³ Graham, A. *et al.*, Land Grab study: CSO Monitoring 2009-2010 "Advancing African Agriculture": The Impact of Europe's Policies and Practices on African Agriculture and Food Security, 2010, www.europafrika.info, accessed 21 March 2013.

⁵⁴ Graham, A. *et al.*, Land Grab study: CSO Monitoring 2009-2010 "Advancing African Agriculture": The Impact of Europe's Policies and Practices on African Agriculture and Food Security, 2010, www.europafrika.info, accessed 21 March 2013.

In 2010 the Ethiopian government created an “Environmental Management Program of the Plan for Accelerated Sustainable Development to Eradicate Poverty”. In 2011 it initiated the so-called CRGE to protect the country from the adverse effects of climate change and to build a green economy that will help realize its ambition of reaching middle income status before 2025. The green economy plan is based on four pillars: improving crop and livestock production practices for higher food security and farmer income; protecting and re-establishing forests for their economic and ecosystem services; expanding electricity generation from renewable sources of energy for domestic and regional markets; and leapfrogging to modern and energy-efficient technologies in transport, industrial sectors, and buildings.

Though the policies sound reasonable and understandable, the question remains: was the population consulted before and during the various economic development projects by the government? For example, during personal conversations some people affected by the power-line project complain that they were not consulted by the government before the project started. Chinese engineers came and put signs on houses and trees to be destroyed and cut. It was not possible for the local people to ask questions because they do not speak English. Even for those few who do speak English it was not possible to ask questions about the project, since the Chinese engineers told them to ask the Ethiopian government officials. The local people were just told by the authority when the displacement was going to take place.

D Conclusion

In this paper I tried to show the dilemma between state security and human security in Ethiopia. This dilemma is mainly caused by complex insecurities: geopolitical complex insecurities and sectoral complex insecurities. These complex insecurities can be observed in Ethiopia's national security strategy. Its Growth and Transformation Plan, its role in the regional security structure, its cooperation in the global war on terror often contradict the different components of human security concept. Some of its economic strategies, such as its cooperation with agro-investment giants like Karuturi Global or the expanding flower industry are causing more food insecurity and displacing local communities. This is most probably going to initiate political conflicts between the government and the local communities. This contradicts the substance of the GTP.

In the name of national security within the regional context of the Horn of Africa Ethiopia's leadership tends to prioritize state security to human security. The EU hails Ethiopia's role in the global war on terror, but looks away from its poor democratic records. The EU is the most important provider of development aid to Ethiopia based on the human security concept. However, the implementation of the policies tends to undermine the very human security itself. This is especially true in the case of Ethiopian-EU relations. It is decisive that global players like the EU genuinely support the materialization of human security. Crises in Ethiopia will be exacerbated as long as global actors like the EU pursue contradicting interests. Therefore, Ethiopia's problems to achieve human security are not purely internally caused phenomena. The international security system, the global war on terror, as well as geopolitical and geostrategic factors have significant contributions to the dilemma between human

security and state security in Ethiopia. As long as the geopolitical and sectoral complex insecurities persist, the dilemma between state security and human security will persist as well.

II The Arab Spring and Europe

Vanda Amaro Dias*

A Critical Analysis of the EU's Response to the Arab Spring and its Implications for EU Security

Abstract

This paper aims at critically analyzing the European Union (EU)'s response to the so-called Arab Spring, focusing on the security dimension. The tumultuous events that have been taken place in the Southern Mediterranean since late 2010 were perceived in the EU as a serious security challenge to its foreign and neighbourhood policies. Recognizing the shortcomings of both the European Neighbouring Policy and the Union for the Mediterranean in contributing to peace and security in the region, the EU has adopted several measures – including a review of the European Neighbourhood Policy – acknowledging the need to offer more benefits to the EU's southern neighbours, and support the processes of political, economic and social transformation in the region. However, the EU's response to the events is often portrait in a seemingly erratic fashion, suggesting that the Union has to adopt a more coherent and pragmatic approach towards the region in order to assure peace and stability at its borders: the ultimate goal of its foreign and neighbourhood policies. In

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Vanda Amaro Dias is a Ph.D. candidate in International Politics and Conflict Resolution at the School of Economics, University of Coimbra, and a Marie Curie Fellow at the Institute of International Law and International Relations, University of Graz. She received her M.A. in Political Science and International Relations from the Nova University of Lisbon and her B.A from the same institution. Her research interests include EU Foreign and Neighbouring Policies, European Security, Russia and the former Soviet Space. She has participated as a speaker in several international conferences and her research has been published in peer-review journals such as *European Security* and *Perspectives on European Society and Politics*. E-mail: vandadias@ces.uc.pt.

order to tackle these issues the paper uses a critical constructivist framework of analysis, focusing on discourses and practices, that enables a broader mapping and understanding of the EU's response to the Arab Spring. To do so, the paper starts by presenting the critical constructivist approach that frames the research. Secondly, it provides an overview of the EU's frameworks for relations with countries in the region prior to the Arab Spring. Thirdly, it explores the (perceived) impact of these events on EU security and critically analyses the EU's overall response to the events and its contribution to assure peace and stability at its borders. The paper finishes with some conclusions regarding the discussed topic.

Keywords: Arab Spring, Critical Constructivism, European Union, Security.

Table of Contents

A	Introduction	28
B	Critical Constructivism: Framing the EU's Security Approach towards the Mediterranean	30
C	Contextualizing EU Relations with the Southern Neighbourhood	36
D	The Arab Spring as a Challenge to EU Security and Neighbourhood Policies	46
E	Conclusion	59

A Introduction

Since the end of the Cold War, the importance of the Southern Mediterranean for the EU's security has grown in scope and depth, especially in the political, economic and energetic fields. This was due to a number of factors, including Portugal's and Spain's membership in the Union in the mid-1980s and the rise of political and socio-economic crises in several countries in the south of the Mediterranean.² Notwithstanding, relations with the neighbourhood were always of pivotal importance to the EU's foreign and security policies. This follows from the belief that its security starts outside its borders and, thus, it is interested in promoting new frameworks for these countries to come into a gradual integration with the EU. The Union perceives "situations of poverty and under-development as security relevant because they potentially le[a]d to conflict"³ and create insecurities that can easily affect its internal stability and the main (liberal) principles of the EU's identity. As a consequence, there is a widespread perception that the EU's most visible security challenges – from terrorism to irregular immigration – cannot be properly addressed without external action. Accordingly, the EU has externalized its internal security goals through various forms of foreign and neighbouring initiatives towards the southern vicinity, namely the EMP, the ENP and, more recently, the UfM. The goal is to bring the countries in this region into a gradual integration with the EU economy and boost political reforms to reduce

² Pace, Michelle, *The Ugly Duckling of Europe: The Mediterranean in the Foreign Policy of the European Union*, *Journal of European Area Studies*, 10 (2002) 2, 189-210, at 197.

³ Barnutz, Sebastian, *The EU's logic of security: Politics through institutionalised discourses*, *European Security*, 19 (2010) 3, 377-394, at 378.

socio-economic imbalances as a mean to reinforce European security.

However, the Arab Spring posed several challenges to the EU's approach southwards and its overall security. The poor economic development and social antagonisms that led to the uprisings in the MENA have soon transcended national systems and are affecting the political order and stability of the region as a whole. Within this broader framework this paper envisages to provide a critical reading of the EU's response to the so-called Arab Spring, focusing on the security dimension. The tumultuous events that have been taken place in the Southern Mediterranean since late 2010 were perceived in the EU as a serious security challenge to its foreign and neighbourhood policies. Recognizing the shortcomings of both the ENP and the UfM in contributing to regional peace and security, the EU has adopted several initiatives – including a review of the ENP – acknowledging the need to offer more benefits to its southern neighbours, and support the processes of political, economic and social transformation in the region. Nonetheless, the EU's responses to the events are often portrait in a seemingly erratic fashion, suggesting that the EU has to adopt a more coherent and pragmatic approach towards the region in order to assure peace and stability at its borders: the ultimate goal of its foreign and neighbourhood policies.

In order to tackle these issues the paper uses a critical constructivist framework of analysis, focusing on discourses and practices, that enables a broader mapping and understanding of the EU's responses to the Arab Spring. To do so the paper starts by presenting the critical constructivist approach that frames the research. Secondly, it provides an overview of the EU's frameworks for relations with countries in the region prior to the Arab Spring. Thirdly, it explores the (perceived) impact of these events on EU security and critically analyses the EU's

overall response to the events and its contribution to assure regional peace and stability. Although several players were involved in this process, for the sake of clarity and explanatory purposes, the paper will focus on initiatives and responses emanating essentially from inter-governmental and supranational levels. The paper finishes with some conclusions regarding the discussed topic.

B Critical Constructivism: Framing the EU's Security Approach towards the Mediterranean

Critical Constructivism is a strand of Social Constructivism⁴ inspired by post-modern authors such as Foucault, Derrida and Lyotard.⁵ Although it shares with other variants of Social Constructivism the core assumption that the human world is an artifice, i.e. a social construction, it differs from them in what it assumed itself as an interpretative post-positivist approach. This is expressed by the fact that Critical Constructivism embarked on a double – sociological and linguistic – turn, whereas Conventional Social Constructivism often limited itself to a sociological turn embedded in a positivist

⁴ Social Constructivism is a social theory applied to IR since the late 1980s. Inspired by the works of Berger and Luckman and Giddens, it advocates the world to be a social construction, while criticizing the material assumptions of traditional IR theory.

⁵ Fierke, Karin and Erik Jørgensen, Introduction, in: Fierke, Karin and Knut Erik Jørgensen (eds.), *Constructing International Relations: the next generation*, M. E. Sharpe, New York, 2001, 3-10, at 5.

epistemology.⁶ Besides the sociological and linguistic turns, Critical Constructivism, one may argue, has also assumed a practical turn, in the sense that it understands the world as the result of “praxis”. This focus on practice is helpful for it broadens the scope of analysis beyond text and meaning, interweaving the material and discursive worlds. As practices are understood to be both material and meaningful, it provides important avenues into the analysis of structure-agent interactions and the processes of change and transformation that underpin the social (constructed) realm.⁷ Assuming its post-positivist ontology and epistemology, Critical Constructivism makes it possible to look at discourses and actions as social constructions, mirroring agents’ power, understandings and interests,⁸ therefore enabling a critical analysis of their practical outcomes.

This is deeply related to the fact that Critical Constructivism assumes relations to be time-evolving and mutually constitutive.⁹ In this process, discourses perform a key role for it is the ability to communicate that makes it possible to socialise and imprint actions with meaning: diffusing perceptions of the “self” and the “other”,

⁶ Laffey, Mark and Jutta Weldes, *Beyond Belief: Ideas and Symbolic Technologies in the Study of International Relations*, *European Journal of International Relations*, 3 (1997) 2, 193-237, at 199-201.

⁷ Adler, Emanuel and Vincent Pouliot, *International Practices*, *International Theory*, 3 (2011) 1, 1-36, at 4-5.

⁸ Kratochwil, Friedrich, *Constructivism as an Approach to Interdisciplinary Study*, in: Fierke, Karin and Knud Erik Jørgensen (eds.), *Constructing International Relations: the next generation*, M. E. Sharpe, New York, 2001, 13-35, at 16-20.

⁹ Fierke, Karin, *Critical Approaches to International Security*, Polity Press, Cambridge, 2007, at 171.

establishing relations of power and redefining interests.¹⁰ Accordingly, the idea of discursive practices comes as central to Critical Constructivism for it perceives discourses and practices to be intricately linked. On the other hand, discourses are themselves structures reflecting a hegemonic understanding of social reality and they have a constitutive effect, disciplining and making interaction and decision-making possible.¹¹ Therefore, while not underestimating the role of structures in defining agents' behaviour, Critical Constructivism allows the possibility of transformation to be included into the analysis of social reality by arguing that agents are capable of changing structures.¹²

Overall, Critical Constructivism underlines the endogenous and exogenous factors that inform the process of decision-making and influence agent-structure interactions.¹³ Despite recognising the impact of (discursive) structures on decision-making, structures are not reified by this approach, but instead interpreted as social, historical and discursive (and then changeable)

¹⁰ Adler, Emanuel, *Seizing the Middle Ground: Constructivism in World Politics*, *European Journal of International Relations*, 3 (1997) 3, 319-363, at 332.

¹¹ Simmerl, Georg, *A Critical Constructivist Perspective on Global Multi-Level Governance, Discursive Struggles Among Multiple Actors in a Globalized Political Space*, Unpublished Manuscript, Freie Universität Berlin, Berlin, 2011. Available at http://www.academia.edu/499659/A_Critical_Constructivist_Perspective_on_Global_Multi-Level_Governance (6 December 2012).

¹² Fierke, Karin, *Critical Methodology and Constructivism*, in: Fierke, Karin and Knud Erik Jørgensen (eds.), *Constructing International Relations: the next generation*, M. E. Sharpe, New York, 2001, 115-135, at 123.

¹³ Andreatta, Filippo, *Theory and the European Union's International Relations*, in: Hill, Christopher and Michael Smith (eds.), *International Relations and the European Union*, Oxford University Press, Oxford, 2001, 18-38, at 31.

constructions.¹⁴ From the agent-structure interaction results in a process of social learning whose effects are felt not only in actors' identity formation but also on the perception of their interests.¹⁵ What follows from this line of argument is the understanding of interests themselves as dynamic social constructions that evolve according to actors' perceptions.¹⁶

Following this logic, power and (in-)security are also seen as dynamic social constructions defined by and changing according to discourses, perceptions and interactions.¹⁷ As a result, threats arise as the output of discursive practices and not as natural or pre-social elements.¹⁸ Changes in (auto-)perceptions allow to track changes in actors' (in-)securities, as well as different dynamics in relations with other actors.¹⁹ For what is more, Critical Constructivism conceives power as having a dimension of productiveness and possibility based on ideas and norms, that becomes meaningful through discursive practices and, thus, is to be found everywhere

¹⁴ Copeland, Dale C., The constructivism challenge to structural realism: A review essay, in: Guzzini, Stefano and Anna Leander (eds.), *Constructivism and International Relations: Alexander Wendt and his critics*, Routledge, London, 2006, 1-20, at 7.

¹⁵ Checkel, Jeffrey T., Social Construction and Integration, *Journal of European Public Policy*, 6 (1999) 4, Special Issue, 545-560, at 548.

¹⁶ Guzzini, Stefano, Reconstruction of Constructivism in International Relations, *European Journal of International Relations*, 6 (2000) 2, 147-182, at 161-162.

¹⁷ Fierke, 2007, 6-7.

¹⁸ Zehfuss, Maja, Constructivism and identity: a dangerous liaison, in: Guzzini, Stefano and Anna Leander (eds.), *Constructivism and International Relations: Wendt, Alexander, and his critics*, Routledge, London, 2006, 93-117, at 97.

¹⁹ Bilgin, Pinar, Identity/Security, in: Burgess, John P. (ed.), *The Routledge Handbook of New Security Studies*, Routledge, London, 2010, 81-89, at 84-85.

else.²⁰ In this sense, one may argue, power becomes the imposition of one vision of the world, determining shared meanings that contribute to build actors' interests and discursive practices. The outcome is the ability to establish the rules of the game and persuade others to accept them, resulting in a hegemonic and asymmetrical social order.²¹

Methodologically, Critical Constructivism leans towards CDA. CDA sees discourse as social practices that imply a dialectical relationship between a specific discursive event and the social structures that frame that very same episode.²² For CDA is mainly interested in the discursive aspects of power and asymmetrical relations it is vital to identify the broader social scenario within which these relationships take place, "who is interacting with whom or who is a source of concern for whom, and begin to piece together a map of identities and practices".²³ Once a detailed and systematic map of context has been provided, CDA enables a critical interpretation of the identified trends and patterns of behaviour. Here it is important to take into account that discourses are structures of signification, which construct social realities and binary oppositional relations of power where one member tends to be – or aims at being – privileged or hegemonic, thus creating asymmetrical relationships. In identifying and explaining these discourses we will be able to critically question and expose the practices they sustain, tackling dynamics that would otherwise remain

²⁰ Burke, Anthony, Postmodernism, in: Reus-Smit, Christian and Duncan Snidal (eds.), *The Oxford Handbook of International Relations*, Oxford University Press, Oxford, 2008, 359-377, at 363.

²¹ Adler, 1997, 336.

²² Fairclough, Norman and Ruth Wodak, Critical discourse analysis, in: Van Dijk, Teun (ed.), *Discourse Studies: A Multidisciplinary Introduction*, Vol. 2, Sage, London, 1997, 258-84, at 258.

²³ Fierke, 2001, 129.

invisible. The use of CDA under a Critical Constructivist reading of social events will allow us to analyse how the EU brings meaning to its identity, practices and interactions, therefore recognising the larger intersubjective context within which it acts, and to draw conclusions based on the analysis of the relationship between European discursive practices and their outcome.

This theoretical and methodological framework, when applied to the analysis of the EU's responses to the Arab Spring and the consequences for EU security, gives us the necessary tools to contextualize EU relations with the Southern Mediterranean. This mapping process further helps to shed light on the evolutionary patterns of this relationship and how it has been constituted since its inception. Furthermore, it opens important avenues into the analysis of how discourses have been (re-)defined throughout the years and the way they have influenced socialization between the two shores of the Mediterranean by projecting identity images, redefining interests and establishing (asymmetrical) relations of power. For discourses are indissolubly linked to power and practices, the paper will also be able to identify the endogenous and exogenous factors inherent to social interactions and the process of decision-making, while tracking changes in perceptions of (in-)security and the changes in words and deeds related to these very same perceptions. The result will be a critical analysis of the EU's approaches towards its southern vicinity and its responses to the Arab Spring, as well as their practical implications on security in the region and in the EU as a whole.

Bearing this in mind, the next section will track the development and evolution of EU policies towards its southern neighbourhood, focusing on the security dimension, whilst the final section will shed light on how the so-called Arab Spring was perceived by the EU by

analysing its response to the events and its overall implications for European security.

C Contextualizing EU Relations with the Southern Neighbourhood

Relations with the neighbourhood were always of pivotal importance to the EU's foreign and security policies. This follows from the belief that the EU's security starts outside its borders and, thus, it is interested in promoting new frameworks for these countries to come into a gradual integration with its economic and political systems.²⁴ In the specific case of the southern vicinity, the EU's predecessor, the EC, started to design frameworks for relations with countries in the region in the 1960s. At that time the EC signed bilateral trade agreements with several countries in the MENA, which were followed by the adoption of a Global Mediterranean Policy and the signature of cooperation and association agreements with its southern neighbours in the mid-1970s.²⁵

However, at this stage relations with the Southern Mediterranean were essentially bilateral and focusing on technical issues. It was only after the end of the Cold War when the EU developed a foreign policy dimension to deal with international and regional security challenges, which allowed the Union to broaden and deepen its neighbourhood policies and initiatives. Accordingly, the EU's interest in its vicinity was reinvigorated by the

²⁴ Dias, Vanda Amaro, *The EU and Russia: Competing Discourses, Practices and Interests in the Shared Neighbourhood*, *Perspectives on European Politics and Society*, 14 (2013) 2, 256-271, at 257.

²⁵ Pace, 2002, 196-197.

development of several frameworks for relations with its southern and eastern neighbourhoods. Since then, EU relations with the Southern Mediterranean have become mainly security-driven. In fact, the EMP – institutionalized in 1995 – , the ENP and, more recently, the UfM allowed the EU to develop a wide-range of security-oriented regional policies and tools.²⁶ The agenda under these frameworks has often been dominated by issues concerning migration control, energy security and the fight against organized crime and terrorism. To achieve its security goals, the EU exports its model of liberal economics, democracy and human rights to its neighbours.²⁷ In practical terms this means that the EU uses a strategy based on positive conditionality and socialization, by which it offers a stance in its internal market and financial support to stimulate economic, political and social modernization.²⁸ In exchange, the Union expects the countries in its vicinity to come into a gradual harmonization with its political and economic models, and to take the reforms that best suit the EU's security interests.²⁹ Closely related to this security dimension is the identity projection of the Southern Mediterranean as the EU's dangerous and threatening

²⁶ Barrinha, André, Pressing the Reset Button in Euro-Mediterranean Security Relations?, *Journal of Contemporary European Research*, 9 (2013) 1, 203-214, at 204.

²⁷ Hollis, Rosemary, No friend of democratization: Europe's role in the genesis of the 'Arab Spring', *International Affairs*, 88 (2012) 1, 81-94, at 81.

²⁸ Communication from the Commission to the Council and the European Parliament, *Wider Europe — Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, COM (2003) 104 final, at 10-15.

²⁹ Warwick, Armstrong, Introduction: Borders in an unequal world, in: Armstrong, Warwick and James Anderson (eds.), *Geopolitics of European Union Enlargement: the fortress empire*, Routledge, London, 2007, 1-8, at 5.

“other”, a source of insecurity and instability that poses a challenge to European peace and prosperity. Although this identity construction is something that happens rather subtly, it is possible to identify discourses of “otherness” in several EU documents relating to its neighbourhood. In this regard, the ESS clearly states that “[n]eighbours who are engaged in violent conflict, weak states where organized crime flourishes, dysfunctional societies or exploding population growth on its borders all pose problems for Europe”, thus it is the EU's task and responsibility “to promote a ring of well governed countries [...] on the borders of the Mediterranean with whom we can enjoy close and cooperative relations”.³⁰ This, of course, carries important power notions as it portrays the southern neighbourhood as a lesser and frantic region that ought to be civilized by the EU, namely through the adoption and acceptance of the liberal values and norms it represents and exports.³¹

In this context, the EMP envisaged to depart from the traditional pattern of bilateral relations with countries in the region in order to promote stability, security and prosperity at the EU's southern vicinity. For that purpose, it institutionalized relations between the two shores of the Mediterranean, which were supposed to evolve along three key complementary dimensions: 1) political and security; 2) economy and finances; and 3) social and cultural. Furthermore, these relations were based on a joint commitment to human rights and democracy enshrined in the 1995 Barcelona Declaration³² and the

³⁰ European Council, European Security Strategy: A Secure Europe in a Better World, Brussels, 12 December 2003.

³¹ Pace, 2002, 203-204.

³² Council of the European Union, Barcelona Declaration, adopted at the Euro-Mediterranean Conference of 27-28 November 1995. Available at

bilateral Euro-Mediterranean Association Agreements. Through them, the EU developed a set of “partnership-based” instruments to foster political dialogue and provide democracy assistance based on conditionality and institutional socialization. Among these initiatives, the EU developed an assistance initiative for the region – MEDA – that was complemented by various programmes under the EIDHR.³³ From its inception, this partnership reflected the neo-liberal belief that economic growth and prosperity is the panacea to security related concerns. However, when analyzing its deliverables, the partnership fell short on expectations. Soon the EU adopted a securitized approach to the South, in which the reduction of irregular migration took top priority in the security agenda. This approach was embraced by political leaderships in the South that saw it as an opportunity to reinforce their authoritarian regimes with Brussels’ support.³⁴ In order to pursue its security interests in the region, the EU has often turned a blind-eye on authoritarian regimes that systematically violated the very political freedoms and human rights that lay at the core of the European project.³⁵

http://www.eeas.europa.eu/euromed/docs/bd_en.pdf (16 August 2013).

³³ Van Hüllen, Vera, Europeanisation through Cooperation? EU Democracy Promotion in Morocco and Tunisia, *West European Politics*, 35 (2012) 1, 117-134, at 119.

³⁴ Barrinha, 2013, 205.

³⁵ The Libyan case is illustrative in demonstrating the development of close, security-oriented, relations between the EU member states and authoritarian regimes in the region. During the 2000s the Gaddafi regime became a kind of Europe’s border guard through several agreements creating joint maritime patrols and providing surveillance apparatus for monitoring Libya’s borders. These agreements were signed in total disregard of the political, socio-economic and human rights situation in the country, leading the United Nations High Commissioner for Refugees to condemn this policy for it undermined access to asylum in the EU for those trying to

This was due to the fact that authoritarianism in the region was perceived by European policy-makers as a bulwark against terrorism, fundamentalism and even as a means to contain migration.³⁶ Accordingly, democracy and human rights remained largely a rhetorical commitment without practical implementation, whilst the *status quo* in autocratic regimes was being preserved with the political connivance and economic support from Brussels.³⁷ As a result, not only did the EU contribute to the reproduction of the *status quo* in the region, but it ended up enabling further insecurity and instability in its southern vicinity.³⁸

Nonetheless, the EMP contributed to establish a stability partnership that was fairly beneficial to both the EU and Southern Mediterranean regimes. Moreover, it stressed the strategic relevance of the region for stability and security in Europe, something that was reinforced in 2000 by the Common Strategy for the Mediterranean. This document stresses that a “prosperous, democratic, stable and secure region, with an open perspective towards Europe, is in the best interest of the EU and Europe as a whole”.³⁹ It identifies the political, economic and social challenges faced by the region and promotes a political and security partnership between both margins of the

escape from brutal repression in Libya. Bialasiewicz, Luiza, Borders, above all?, *Political Geography*, 30 (2011), 299-300, at 299.

³⁶ Balfour, Rose, The Arab Spring, the changing Mediterranean and the EU: tools as a substitute for strategy?, *European Policy Centre Policy Brief*, June 2011, 1-4, at 2.

³⁷ Dadush, Uri and Michelle Dunne, American and European Responses to the Arab Spring: What's the Big Idea? *The Washington Quarterly*, 34 (2011) 4, 131-145, at 131. Hollis, 2012, 81.

³⁸ Barrinha, 2013, 207.

³⁹ European Council, Common Strategy of the European Council of 19 June 2000 on the Mediterranean region, 2000/458/CFSP, OJL 183, 5-10, at 5.

Mediterranean to contribute to the creation of a common area of peace and stability.⁴⁰

This trend was strengthened by the new western security discourse towards the region after 9/11,⁴¹ as reflected in both the ESS and the ENP. The ESS, developed in 2003 and further reinforced in 2008,⁴² recognized that the enlargement brought “the EU closer to troubled areas”⁴³ and the need to promote stability and good governance in the immediate EU neighbourhood.⁴⁴ The document also clearly acknowledges that “the internal and external aspects of security are indissolubly linked”.⁴⁵ As a consequence, EU security interests cannot be untied from its overall approach to the neighbourhood.⁴⁶ Following this rationale, the ENP comes as a new framework for relations with the neighbourhood in the context of the EU's Eastern Enlargement. All in all, it aims at creating a “ring of friends” around the EU, “avoid[ing] new dividing lines in Europe”, and “promot[ing] stability and prosperity” across the continent.⁴⁷ However, the ENP Strategy Paper strictly recognized that this policy “offers a means to reinforce relations between the EU and partner countries, which is distinct from the possibilities available

⁴⁰ European Council, 2000/458/CFSP, 5-6.

⁴¹ Barrinha, 2013, 205.

⁴² European Council, Report on the Implementation of the European Security Strategy – Providing Security in a Changing World, S407/08, Brussels, 11 December 2008.

⁴³ European Council, 2003, 8.

⁴⁴ Joenniemi, Pertti, Towards a European Union of Post-Security?, *Cooperation and Conflict*, 42 (2007) 1, 127-148, at 145.

⁴⁵ European Council, 2003, 2.

⁴⁶ Browning, Christopher S. and Pertti Joenniemi, Geostrategies of the European Neighbourhood Policy, *European Journal of International Relations*, 14 (2008) 3, 519-51, at 520.

⁴⁷ COM (2003) 104 final, 44.

to European countries under Article 49 of the Treaty on European Union",⁴⁸ i.e., the membership process.

In this regard, both the ESS and the ENP represent a shift from passive to active engagement in the EU's neighbourhood⁴⁹ with clear security purposes, consolidating a trend that the EU had been developing since the end of the Cold War. To accomplish its socio-economic and political objectives the ENP has provided new policy mechanisms such as the ENPI and the Governance Facility Neighbourhood Investment Fund.⁵⁰

The main political novelty of the ENP are, however, the Action Plans, which are based on (positive) conditionality and intended to frame the EU's relations with each one of its neighbouring partners.⁵¹ In fact, conditionality performs a leading role in this process. While the EU offers a stance in its internal market and financial support to stimulate economic, political and social reforms, as well as security cooperation in the neighbourhood,⁵² it also establishes a series of bilateral channels between the EU and each neighbour, where the latter is expected to accept European political and economic values.⁵³ This comes as a *sine qua non* condition for these countries to be acknowledged as part

⁴⁸ Communication from the Commission, European Neighbourhood Policy Strategy Paper, COM (2004) 373 final, at 3.

⁴⁹ Joenniemi, 2007, 145.

⁵⁰ Andreev, Svetlozar A., The future of European neighbourhood policy and the role of regional cooperation in the Black Sea area, *Southeast European and Black Sea Studies*, 8 (2008) 2, 93-108, at 93.

⁵¹ COM (2003) 104 final, 16.

⁵² COM (2003) 104 final, 10-15.

⁵³ Headley, James, Is Russia Out of Step with European Norms? Assessing Russia's Relationship to European Identity, Values and Norms Through the Issue of Self-Determination, *Europe-Asia Studies*, 64 (2012) 3, 427-47, at 428.

of the EU's "ring of friends", though it does not guarantee accession to the Union at any moment.⁵⁴ The overall security-oriented goal is to address the root causes of instability, crisis and conflict at the EU's borders, while creating a *cordon sanitaire* to keep perceived security threats – e.g. irregular migration, poverty and terrorism – from reaching the borders of the Union. Conditionality is, however, often combined with a socialization axis relying on social learning processes resulting from institutional and people-to-people contacts and aiming at creating a collective shared understanding of proper behaviour. The result is a structural foreign policy seeking to influence and transform the political, economic and social systems of the EU's neighbours,⁵⁵ a *sine qua non* condition to preserve EU's internal security. Nonetheless, in practice, socialization has not been extensively applied or has been restricted by domestic constraints,⁵⁶ lessening the EU's security achievements in the neighbourhood. Furthermore, the political and financial offers on the table are much less appealing when compared to the Enlargement process and the costs of reforms promoted by the EU are too high, which, together with the lack of a membership perspective, diminishes the EU's transformative potential and decreases the likelihood of a successful strategy based on

⁵⁴ Joffé, George, Europe and Islam: Partnership or peripheral dependence?, in: Armstrong, Warwick and James Anderson (eds.), *Geopolitics of European Union Enlargement: the fortress empire*, Routledge, London, 2007, 90-106, at 97-98.

⁵⁵ Emerson, Michael, Just Good Friends? The European Union's Multiple Neighbourhood Policies, *The International Spectator: Italian Journal of International Affairs*, 46 (2011a) 4, 45-62, at 56-57.

⁵⁶ Boonstra, Jos and Natalia Shapovalova, *The EU's Eastern Partnership: One year backwards*, FRIDE, Working Paper 99, May 2010, 1-22, at 2.

socialization and conditionality.⁵⁷ As a result, the ENP failed to deliver real progress in forging a genuine partnership between the EU and its southern neighbourhood. Instead, it emerged as an instrument developed by Brussels to introduce tailored-made reforms to respond to its perceived security interests,⁵⁸ while preserving the *status quo* in the region. This failure propelled the EU to develop regional initiatives aimed at reinforcing its approach southwards.

To respond to this situation, the UfM was created in 2008, based on a French proposal⁵⁹ to revive relations with countries in the region. The two major goals of this new framework were to create enhanced institutions and a stronger focus on projects involving the EU and the Southern Mediterranean. This would be particularly relevant in the four priorities identified by the UfM: immigration control and management, environment protection, co-development promotion, and the fight against corruption, organized crime and terrorism. The ultimate purpose, thus, was to create a zone of peace security and prosperity shared by both banks of the Mediterranean. In that regard, the UfM established a bi-annual meeting of the heads of state and government intended to provide political guidance to this process. One important novelty was the introduction of a co-presidency system, by which the UfM is presided by both an EU and a

⁵⁷ Ágh, Attila, 'Regionalisation as a Driving Force of EU Widening: Recovering from the EU 'Carrot Crisis' in the 'East'', *Europe-Asia Studies*, 62 (2010) 8, 1239-1266, at 1241.

⁵⁸ Hollis, 2012, 87.

⁵⁹ Relations with the Mediterranean have always been a diplomatic concern in French foreign policy. For more on France relations with countries in the region and its reactions to the events of the Arab Spring see e. g. Sarkozy, Jean-Robert Henry, 'The Mediterranean and the Arab Spring', *Contemporary French and Francophone Studies*, 16 (2012) 3, 405-415.

Southern Mediterranean state. This was aimed at changing the nature of relations between the two shores of the Mediterranean and introducing a more egalitarian tone to them. In order to overcome the weakness of the partnership dimension established by the Barcelona Process, the EU has also introduced the notion of co-ownership. However, this pretended equality is more nominal than substantial since it depends heavily on the distribution of political and economic power among the involved players, a balance that is highly favourable to the EU. Countries in the Southern Mediterranean have little bargaining chips to deal with the EU and the little leverage they can exercise is limited to the energy exporting countries in the region. The conditionality mechanisms associated with the UfM have been unilaterally decided by the EU, which along with a weak co-ownership sheds light on the asymmetrical nature of this relationship. Moreover, differences in world views and political options often turn the co-presidency system into an ineffective option to deal with relations between the EU and the Southern Mediterranean,⁶⁰ thus revealing the EU's inability to make use of its transformative power in the region.

Likewise, in practice and despite the intended Europeanization, this project was closely related to national security objectives. Together with lack of coherence and deficient implementation, the UfM has quickly lost credit, emerging as a security-driven project whose intention was never to turn the Mediterranean into a shared space along European values, but to secure the EU's borders. This is also related to the fact that the UfM did not imply a deeper reassessment of the EU's strategy towards the region. More than providing answers to the

⁶⁰ Balfour, Rosa, *The Transformation of the Union for the Mediterranean*, *Mediterranean Politics*, 14 (2009) 1, 99-105, at 100-104.

problems in the Mediterranean, it just added a further layer of goals and activities, or tried to reinforce the ones established by the EMP and the ENP.⁶¹ That these frameworks delivered some progresses in EU-Southern Mediterranean relations had more to do with calculations of the political rulers in the region than the attractiveness of these initiatives or the EU's transformative capabilities.⁶² The events of the Arab Spring intensified the crisis in Euro-Mediterranean relations and have dealt the UfM a final blow.⁶³ The next section analyses the EU's response to the events and how the review of existing frameworks for relations with its southern neighbourhood have been translated into practical terms.

D The Arab Spring as a Challenge to EU Security and Neighbourhood Policies

The Arab Spring is commonly perceived in the West as a set of domestic developments in the MENA intended at bringing authoritarian regimes to an end and implementing democracies throughout the region. In this sense – and despite popular claims for freedom, dignity and justice, which are very much in line with the values the EU propagates in its foreign and neighbouring policies –,⁶⁴ the events were perceived by the EU as a security challenge, albeit an external one. However, this view does not take into consideration the strong anti-western feelings in the

⁶¹ Balfour, 2009, 105.

⁶² Hollis, 2012, 86.

⁶³ Henry, 2012, 409-410.

⁶⁴ Hollis, 2012, 81.

region (revived by Western policies after 9/11),⁶⁵ nor the fact that the EU has failed to promote democracy and human rights in its southern neighbourhood. As a consequence, one may argue that not only has the Arab Spring a clear international dimension,⁶⁶ but that it also revealed the contradictions in EU policies and the lack of a coherent geopolitical approach towards the southern neighbourhood.

During the initial stage of the Arab Spring little has changed in the EU's security approach towards the region. In fact, reactions to the initial events in Tunisia and Egypt were strikingly slow,⁶⁷ divided and incoherent.⁶⁸ The Arab Spring made the stark contradictions of the EU's approach towards the southern vicinity and the lack of a coherent geopolitical vision for the neighbourhood visible.⁶⁹ Some of the early European responses to the events revealed the EU's connivance of authoritarian regimes in its southern neighbourhood. For instance, European governments offered Tunisia their expertise on crowd control, sold

⁶⁵ Aliboni, Roberto, *The International Dimension of the Arab Spring*, *The International Spectator*, Italian Journal of International Affairs, 46 (2011) 4, 5-9, at 6.

⁶⁶ In fact, there are several international and regional players in the region that influenced the rise and development of the events commonly known as the Arab Spring. These include the United States and western powers, among which the EU is included, that have been pursuing their interests in the region since the Cold War. However, more recently regional powers such as Turkey and Russia have also been trying to play a meaningful role in the MENA and changed the course of events on the ground. Cf. Aliboni (2011), 5-9.

⁶⁷ Echagüe, Ana and Hélène Michou/Barah Mikail, *Europe and the Arab Uprisings: EU Vision versus Member State Action*, *Mediterranean Politics*, 16 (2011) 2, 329-335, at 329.

⁶⁸ Koenig, Nicole, *The EU and the Libyan Crisis – In Quest of Coherence?*, *The International Spectator*, Italian Journal of International Affairs, 46 (2011) 4, 11-30, at 12-13.

⁶⁹ Bialasiewicz, 2011, 299.

weaponry to regimes that were violently repressing their own people and continued to work closely on security-related matters.⁷⁰ Moreover, as the events were unfolding, the first efforts of European member states focused on getting their people out of the region, while the fate of the populations and problems related to (South-South and South-North) irregular migration remained largely invisible from the EU's responses to the events.⁷¹

Nonetheless, the EU recognized the shortcomings of both the ENP and the UfM in bringing peace and security to the region and the double standards the EU has maintained with many of its neighbouring countries. Gradually, the EEAS became quicker and stricter on its condemnations of the acts perpetrated by the authoritarian regimes in the MENA, while the EU as a whole started to increasingly display a wide range of different tools to respond to the events. After several statements issuing the EU's concerns about the events of the so-called Arab Spring and its support for the transition processes,⁷² it has shown flexibility in strengthening and adapting existing policies and using multilateral formats to support its engagement in the region.⁷³ Statements regarding the situation in Tunisia,⁷⁴ Egypt⁷⁵ and Libya⁷⁶ in 2011 were

⁷⁰ Barrinha, 2013, 208.

⁷¹ Bialasiewicz, 2011, 300.

⁷² Echagüe, Michou and Mikhail, 2011, 329-330.

⁷³ Balfour, 2011, 1.

⁷⁴ European Union, Joint statement by EU High Representative Catherine Ashton and Commissioner Štefan Füle on the events on Tunisia, Brussels (14 January 2011), A 016/11. European Union, Joint statement by EU High Representative Catherine Ashton and Commissioner Štefan Füle on the situation in Tunisia, Brussels (17 January 2011), A 018/11.

⁷⁵ European Union, Statement by the EU High Representative Catherine Ashton on the events in Egypt, Brussels (27 January 2011), A 032/11. European Union, Remarks by the EU High Representative Catherine Ashton on the situation in

very similar in the regard that they expressed the EU's concern with the events on the ground and the use of violence against demonstrators, as well as its support to popular aspirations to democracy and freedom. In January 2011, the EEAS deployed a mission at the level of senior officials to Tunisia, in order to provide "political, legal, technical and material support to the democratic transition" in the country.⁷⁷ This included preparation of elections, investigation on corruption and support to the "legitimate aspirations of the Tunisian people".⁷⁸ This message was further reinforced by the President of the European Council, Herman Van Rompuy, in March 2011, expressing the EU's condemnation against the use of force against citizens, particularly in Libya. He also acknowledged the irreversible change taking place in the EU's southern vicinity and the strategic imperative of turning the events into a new beginning in EU-Southern Mediterranean relations.⁷⁹

Of foremost importance, though, is the production of two communications by the EEAS and the Commission: "A partnership for democracy and shared prosperity with the Southern Mediterranean"⁸⁰ in March 2011 and "A new

Egypt ahead of the Foreign Affairs Council, Brussels (31 January 2011), A 037/11. President of the European Council, Statement by Herman Van Rompuy on the situation in Egypt, Brussels (29 January 2011), PCE 020/11.

⁷⁶ European Union, Declaration by the High Representative Catherine Ashton on behalf of the European Union on Libya, Brussels (23 February 2011), 6966/1/11 REV 1, PRESSE 36.

⁷⁷ Afterwards, additional missions were deployed in Egypt and Jordan.

⁷⁸ European Union, EEAS senior officials' mission to Tunisia, Brussels (26 January 2011), A 029/11.

⁷⁹ President of the European Council, We want to turn this Arab Spring into a true new beginning, Brussels (10 March 2011), PCE 062/11.

⁸⁰ European Commission/High Representative of the Union for Foreign Affairs and Security Policy, Joint Communication to

response to a changing neighbourhood”⁸¹ in May 2011. In both documents a stronger commitment to supporting political reforms leading to “deep democracies” is noticeable. They also represent a clear *mea culpa* on behalf of the EU, recognizing the double standards that imprinted its relations with its southern neighbours and its connivance with political repression and violation of human and civil rights in the region. In the same line of argument, the European Commissioner Stefan Füle clearly stated that the EU “has often focused too much on stability at the expense of other objectives and, more problematically, at the expense of our values”. Accordingly, “the time to bring our interests in line with our values”⁸² has come.

The Partnership for Democracy and Shared Prosperity reinforces the fact that “the EU must not be a passive spectator” of the events in the region. Instead, it ought to support popular aspirations by sharing its own experience and expertise on democratic transitions. For there is a “shared interest in a democratic, stable, prosperous and peaceful Southern Mediterranean”, this represents the time for a “qualitative step forward” in the

the European Council, the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean, COM (2011) 200 final.

⁸¹ European Commission/High Representative of the Union for Foreign Affairs and Security Policy, Joint Communication to the European Council, the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new response to a changing Neighbourhood, COM (2011) 303 final.

⁸² Füle, Štefan, Revolutionising the European Neighbourhood Policy in response to tougher Mediterranean revolutions, Round table discussion organised by Members of the European Parliament, 14 June 2011, SPEECH/11/436, Brussels.

relations between the EU and its southern neighbours.⁸³ This step forward comes as a response to the changing political landscape of the region and should be built on the basis of three key elements: democratic transformation, support to civil society and economic development. The document pinpoints the EU's immediate responses to the events, which included humanitarian aid, facilitation of consular cooperation and evacuation, FRONTEX joint operations, high-level visits by EU representatives to the region and support for democratic transitions and border management.⁸⁴ Furthermore, it identifies the fields where the EU is willing to adapt its approach towards the Mediterranean. Among those, particular attention is devoted to the need to review the ENP, move towards advanced status in Association Agreements with countries in the region and enhance political dialogue between both shores of the Mediterranean.⁸⁵

The review of the ENP replicated the discourses on the need to “strengthen the partnership between the EU and the countries and societies of the neighbourhood: to build and consolidate healthy democracies, pursue sustainable economic growth and manage cross-border links”.⁸⁶ Throughout the document an emphasis on the mutually beneficial nature of the EU's partnership with its neighbours is noticeable. The new approach promoted by the EU is supposed to be founded on the principles of differentiation, joint ownership, mutual accountability and shared commitment to the universal values of human rights, democracy and the rule of law.⁸⁷ It was meant to be based on “shared values” to bring democratic reforms and

⁸³ COM (2011) 200 final, 2.

⁸⁴ COM (2011) 200 final, 3.

⁸⁵ COM (2011) 200 final, 4.

⁸⁶ COM (2011) 303 final, 1.

⁸⁷ COM (2011) 303 final, 2.

strengthen cooperation with countries in the region.⁸⁸ Moreover, the EU seems willing to become more involved in the internal political systems of its southern neighbours by providing a stronger support to governmental and non-governmental actors. In this regard, the EU has promised to shift away from business as usual to ensure that support for human rights and democracy will be central to its policy towards the southern neighbourhood. For this purpose, the EU has created two new tools: a Civil Society Facility and an Endowment for Democracy.⁸⁹ On aid and investment, more money has been made available to support reforms in the Southern Mediterranean and the mandates of both the EIB and the EBRD were extended to include projects in the region.⁹⁰

Supplemented by a set of new policies directed at the Mediterranean – such as the Dialogue for Migration, Mobility and Security with the Southern Mediterranean Countries, and the SPRING programme –, this renewed approach towards the region offers new incentives to those countries taking most progress. These include money, market access and mobility partnerships: the “3 Ms”. In practice, this means that the EU is willing to provide more financial support to the countries undertaking political reforms in line with European values. Accordingly, the EU provided 4 billion EUR for the period between 2011 and 2013 to support the southern neighbourhood under the ENPI, which was to be complemented by extra support from the EIB, the EBRD and private sector investment.⁹¹ On the market side, the EU is negotiating Deep and Comprehensive Free Trade Areas as a step to associate the southern neighbourhood to the EU single market. Finally, the EU is taking a more

⁸⁸ Henry, 2012, 411.

⁸⁹ Balfour, 2011, 2.

⁹⁰ Emerson, 2011, 2.

⁹¹ COM (2011) 200 final, 12.

flexible approach to migration aimed at promoting a greater movement of skills and labour between both sides of the Mediterranean. However, concerns in European member states about the likely impact of migratory inflows have been hindering the evolution of negotiations on mobility partnerships between the EU and the MENA.⁹² These incentives were seconded by a Task Force for the Southern Mediterranean established in June 2011 aimed at reinforcing the EU's response to the Arab Spring, promoting a clear view of the strategy defined for the region and improving the coherence of the EU's assistance to civil society, democracy-building and economic reconstruction.⁹³

On an assessment of the deliverables of the renewed ENP made in 2013, the EU admits that many of the recommendations and challenges identified two years earlier are as valid today. Nevertheless, it is very optimistic in portraying EU financial aid and political support as closely related to the positive developments in the region, such as the successful holding of elections in Egypt, Algeria and Libya, the electoral reforms in preparation in Jordan and Lebanon, and the formation of new governments in most countries.⁹⁴ On the other hand, the most striking challenges and sources of concern are

⁹² Dennison, Sun, *The EU and North Africa after the Revolutions: A New Start or 'plus ça change'?*, *Mediterranean Politics*, 18 (2013) 1, 123-128, at 123-125.

⁹³ European Union, HR Catherine Ashton sets up Task Force for the Southern Mediterranean, Brussels (7 June 2011), A 226/11.

⁹⁴ European Commission/High Representative of the European Union for Foreign Affairs and Security Policy, *Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Neighbourhood Policy: Working towards a Stronger Partnership*, JOIN (2013) 4 final, at 16.

projected of being its neighbours' fault. The emphasis of the lack of structural reforms in the region, the rise of fiscal deficits and the growth of unemployment rates is illustrative of this trend.

However, when critically analyzing discourses of and by the EU it becomes clear that the initiatives and incentives offered under this renewed approach are once again more about EU security interests than a vibrant partnership between both shores of the Mediterranean. For instance, the mobility partnerships are about combating irregular migration and implement effective readmission and return policy, rather than "maximising the positive impact of migration on development".⁹⁵ Although the need to promote further democratization in the region is hardly contested among EU decision-makers, the initiatives and projects related to democracy assistance in the Southern Mediterranean reflect a "business-as-usual" and "more-of-the-same" rationale⁹⁶ for it represents little more than a repackaging of the existing frameworks for relations with the southern neighbourhood. Furthermore, these incentives might prove hard to deliver due to the current financial and economic crisis – that revealed the fragility of the liberal model the EU has sought to export to its neighbourhood⁹⁷ –, the EU member states' traditional protectionism of agricultural products and their reluctance towards migration from the South.⁹⁸ All in all, the EU's conditionality policy has still to provide credible and deliverable incentives and establish benchmarks in

⁹⁵ Emerson, Michael, Review of the Review – of the European Neighbourhood Policy, CEPS Commentary, June 2011 (b), 1-4, at 3.

⁹⁶ Boserup, Rasmus Alenius and Fabrizio Tassinari, The Return of Arab Politics and Europe's Chance to Engage Anew, *Mediterranean Politics*, 17 (2012) 1, 97-103, at 101.

⁹⁷ Hollis, 2012, 81.

⁹⁸ Balfour, 2011, 3.

concrete measures aimed at supporting a bottom-up process of democratization that are attractive to receiving countries.

In addition, this renewed, albeit vague and unspecified in many regards, approach was severely damaged by the EU's failure in managing the migration flows from the Southern Mediterranean. This was clearly reflected on the suspension of the Schengen agreement by a number of Member States (including Italy, France and Denmark) as a mean to prevent instability on the southern shore of the Mediterranean from spilling into the Union. This comes as a striking contradiction with the identity projection of the EU as a "normative power" and a "force for good" relying on a set of common norms and values that are presumably valid internally and externally alike.⁹⁹ In this sense, the EU can be better understood as a "civilizing power"¹⁰⁰ imposing its vision of the world and establishing the rules of an asymmetrical relationship aimed at satisfying its security interests and reinforcing its foreign and regional power. As a consequence, not only did this attitude undermined the EU's attempt to put forward a common and coherent response to the events in the region, but it also turned the progresses made on migration and "mobility partnerships" onto shallow labels devoid of any real content or meaning.

Despite the seemingly rhetorical turn in the EU's political discourse, Brussels is still to change its neighbourhood paradigm. In fact, while the EU's proposals are more detailed than in the past and reflect a renewed concern with democracy promotion in the region, neither

⁹⁹ Manners, Ian, Normative Power Europe: A contradiction in terms?, *Journal of Common Market Studies*, 40 (2002) 2, 235-258.

¹⁰⁰ Bicchi, Federica, 'Our size fits all': Normative power Europe and the Mediterranean, *Journal of European Public Policy*, 13 (2006) 2, 286-303, at 287.

their language nor their substance seems to differ fundamentally from the EU's approach towards the region prior to the Arab Spring.¹⁰¹ Overall, fears of uncontrolled migration, terrorism and fundamentalism remain at the core of the EU's concerns when dealing with the Mediterranean. Furthermore, it remains based on an one-sided definition and understanding of the challenges both sides faces,¹⁰² therefore not satisfactorily accommodating the perceptions and interests by the EU's southern neighbours. So far, conditions under the framework of EU relations with its southern neighbourhood reflect mostly the EU's interest and its vision on how the region should evolve. The new approach promoted by the EU not only uses the same jargon, but it also maintains the weaknesses of previous frameworks.¹⁰³ If the EU wants to be successful in its approach it should realize that conditions should be mutually agreed by Brussels, governments and civil-society in the region. All in all, conditionality must be a matter of dialogue and not of imposition from abroad.¹⁰⁴

Another challenge relates to the fact that the EU has more to answer than its member states are willing to recognize. In that regard, the Arab Spring has revealed the shortcomings of the EU's foreign policies and the lack of a strong, coherent and consistent response to the events that take place at its borders.¹⁰⁵ The predominance of national interests and (in-)security perceptions, and the

¹⁰¹ Boserup and Tassinari, 2012, 101.

¹⁰² Barrinha, 2013, 210.

¹⁰³ Schumacher, Tobias, *The EU and the Arab Spring: Between Spectatorship and Actorness*, *Insight Turkey*, 13 (2011) 3, 107-119, at 109.

¹⁰⁴ Oxfam, *Power to the People? Reactions to the EU's response to the Arab Spring*, Oxfam Briefing Note, November 2011, 1-19, 4.

¹⁰⁵ Hollis, 2012, 81. Hüllen, 2011, 117.

preference for national solutions to the challenges arising from the Arab Spring, further undermine the EU's leverage and transformative potential in the region.¹⁰⁶ Despite appeals for a paradigm shift in the EU's relations with the Mediterranean voiced by European institutions, in practice national interests and perceptions continue to determine the terms of this relationship. In this context, migration issues figure among European governments' top concerns. The result is an "old wine in new bottles" approach that reproduces and perpetrates the widespread dissatisfaction towards the deliverables of the existing frameworks for relations with the southern vicinity and the deterioration of the political and socio-economic situation on the ground.¹⁰⁷

One further factor the EU needs to bear in mind when defining its approach towards the region is that the Arab Spring means a shift away from the region's passive alliance with the West towards new regimes with their own agenda and regional interests. New governments in the region are increasingly resistant to comply with terms defined by external powers and are only willing to forge relationships that accommodate their own interests and visions of what these relations should encompass.¹⁰⁸ If the EU fails to realize this and engage in a more egalitarian mutually constituted approach towards the region, it may not only lose an opportunity to foster relations with its southern neighbours, but also may be in itself a source of

¹⁰⁶ Bialasiewicz, 2011, 299.

¹⁰⁷ Balfour, 2009, 104.

¹⁰⁸ Dennison, Susi and Anthony Dworkin, Europe and the Arab Revolutions: A new vision for democracy and human rights, European Council on Foreign Relations, Policy Brief 41 (2011). Available at http://www.ecfr.eu/page/-/ECFR41_HUMAN_RIGHTS_BRIEF_AW.pdf (21 August 2013).

new tensions with the potential to widen anti-western feelings at its borders.¹⁰⁹

For what is more, the EU had been promoting and justifying its neighbouring policies on the grounds, that they create “shared prosperity”, thereby improving the political and socio-economic situation in its vicinity. However, the lack of political freedom, gross disparities in wealth distribution and high unemployment were among the factors that triggered the uprisings in the MENA, therefore revealing the EU’s inability to deliver stability and prosperity in its neighbourhood.¹¹⁰ This has broader implications for the EU’s security and its neighbourhood policies. By relying on an approach that (re-)produces asymmetrical relations in which the EU strives to impose its own world view and rules and persuade its partners to accept them, Brussels fails to acknowledge the changing nature of social relationships and the need to accommodate perceptions, interests and discourses of the “other”. The projection of the EU as a superior part in this relationship and the Southern Mediterranean as its dangerous and threatening “other”, together with a long tradition of self-interested security-oriented policies in the region, further undermines its transformative potential and ability to secure its borders and act as a security provider in the neighbourhood. In addition, the mismatch between words and deeds that lies at the core of the unease with which countries in the region perceive the EU’s neighbouring policies diminish its leverage southwards. The outcome is that not only does the EU fail to achieve the ultimate goal of its security-driven foreign policies – assure peace and prosperity at its borders –, but it also risks being the one enabling further insecurity and instability in its vicinity.

¹⁰⁹ Aliboni, 2011, 9.

¹¹⁰ Hollis, 2012, 82.

E Conclusion

Following the belief that security starts outside its borders, relations with the neighbourhood were always of pivotal importance to the EU's foreign and security policies. However, since the end of the Cold War, relations with the Southern Mediterranean gained a new strategic dimension and have grown in scope and depth, especially in the political, economic and energetic fields. In this context, the EU has become interested in promoting new frameworks for the countries in the region to come into a gradual integration with the EU economic and political systems, in order to reinforce European security.

Nonetheless, the Arab Spring posed several challenges to the EU's approach to its southern neighbourhood and its overall security. Following a theoretical framework based on Critical Constructivism and CDA, focusing on discourses and practices, this paper aimed at critically analysing the EU's response to the Arab Spring by providing a broad mapping and understanding of these responses and its implications to EU security. The analysis revealed that the EU's renewed approach southwards does not seem to differ significantly from the previous ones. Despite an apparent discursive turn acknowledging the EU's past mistakes and its double standards in relations with autocratic regimes in the region, a paradigmatic shift has still to take place. When read carefully the discourses and texts framing EU relations with the Southern Mediterranean since the Arab Spring, one realizes that the EU is reproducing the same jargon and perpetrating the weaknesses of previous frameworks. Security concerns, including migration issues, remain at the top of the EU's agenda towards its southern neighbourhood, therefore reflecting the EU's interests and its vision on how the region should evolve. The paper also demonstrated that this is due to a number of reasons,

including internal dynamics of the EU and the interplay among its member states and the institutions that shape its foreign and neighbouring policies, which contribute to the EU's incoherence, inconsistency and lack of effectiveness in responding to a changing environment at its borders.

Moreover, the EU's approach towards its southern vicinity still relies heavily on positive conditionality and socialization, because the EU wants to promote its norms and values beyond its borders and persuade them to take the reforms that best suit the EU's security interests. In practice, this projects the EU's superiority within this (asymmetrical) relationship, its attempt to establish the rules of the game and impose its vision of the world over the neighbourhood. The consequence is a structural foreign policy seeking to influence and transform the environment at its borders, which comes as a *sine qua non* condition for the EU's extension of power over the shared neighbourhood, in order to preserve its own peace and security.

Nonetheless, the EU's self-interested approach to the region is embedded in contradictions and lacks strategic vision. Before the Arab Spring it overlooked the values that lie at the core of the European project in order to benefit from security arrangements with the autocratic regimes in the Southern Mediterranean. As a consequence, it contributed to reproduce the *status quo* in the region by turning a blind-eye on blunt violations of political freedoms and human rights of the peoples of the MENA. In this regard, the EU not only failed to promote security in the region, but it ended up enabling further instability. The lack of a paradigmatic shift in EU-Southern Mediterranean relations has, nonetheless, broader implications for the EU's neighbouring policies and security. By reproducing asymmetrical relations of power favourable to the EU and projecting the MENA as its

threatening “other”, Brussels fails to acknowledge the dynamic and changeable nature of social relationships. Together with the lacking accommodations of the EU's partners' interests and perceptions, this diminished its leverage and transformative potential in the region. As a result, the EU fails to achieve the central rationale of its foreign policies – assure peace and security at its borders –, and risks becoming itself a source of tension, insecurity and instability in the region and in the EU as a whole.

Ultimately, if the EU wants to be successful in influencing the events in its southern vicinity and assuring regional security, it will have to present more than “old wine in new wineskins” and engage in a strategic definition of its neighbouring policies, while recognizing that relations are a two-way process in which interests and perceptions of its partners have to be taken into consideration.

*Susana de Sousa Ferreira**

Migrations and the Arab Spring – a new security nexus?

Abstract

The Mediterranean is a unique geopolitical region long known for its instability and conflicts. The Arab democratic wave that since 2011 has swept the Middle Eastern and North African (MENA) countries places new challenges to the region's security. Transitions are far from complete and the outcomes of the Arab Spring are still uncertain, as the political scene remains volatile. The political and social instability in the southern shore increased human mobility within the region and pressure in the South-North axis of the Mediterranean. It has triggered two major refugee crises in the EU's southern neighborhood and increased fear of massive flows to Europe. The EU responded by increasing control in its external borders and by adopting other restrictive measures. In this context, the EU's role in

* Susana de Sousa Ferreira holds a PhD scholarship from Foundation for Science and Technology (Portugal) and is a researcher from CEPESE-UP (Research Centre for the Study of Population, Economy and Society, University of Oporto) and IPRI-UNL (Portuguese Institute of International Relations Relations, Universidade Nova de Lisboa). Is currently a Visiting Fellow at Instituto Universitario Gutierrez Mellado (Madrid, Spain). Her fields of interest include: security, migrations, European Union, Mediterranean, and demography. She holds a master in Political Science and International Relations, by the Faculty of Social and Human Sciences from Universidade Nova de Lisboa (Portugal). Currently, she is attending the PhD course in International Relations, specializing in Security Studies and Strategy, at the same University. Susana de Sousa Ferreira has published several articles and has held several conferences nationally and internationally. E-mail: srsferreira@gmail.com

the creation of a true area of peace and stability around the Mediterranean Sea is fundamental. The security interdependence between both shores of the Mediterranean is undeniable. Therefore, the EU must adopt an active position and rethink its cooperation model towards the region. It is the aim of this paper to (a) get an integrated perspective of the main security challenges in the Mediterranean; (b) explore the Mediterranean migratory patterns after the upheavals and assess whether they represent a challenge to European security; (c) analyze the Arab Spring's impact in the Euro-Mediterranean relations; and (d) assess the Mediterranean as a security complex, while identifying the challenges that the EU's foreign policy faces in the region.

Keywords: Arab Spring, Security, Migration, Euro-Mediterranean Relations

Table of Contents

A	Overview	64
B	Security Challenges in the Mediterranean.....	70
C	Migratory dynamics before and after the Arab Spring	73
D	Managing the crisis – Euro-Mediterranean dialogue and partnership	82
E	Migration in the Mediterranean – opportunities and challenges	86

A Overview

The year of 2011 represents a turning point for the Arab societies. After decades of oppression, the social uprisings in the Arab world challenged the old system and aim to move towards a state funded on the values of freedom, justice, and human dignity. Thus, the so-called Arab Spring represents an historical moment for the region.

Countries in the Southern Mediterranean shore face different levels of development. Furthermore, the region has been marked by decades of corruption and mismanagement, which has affected its economic, political and social development.

Although there is an increasing convergence of the medium levels of the Human Development Index within the Mediterranean (**Table 1**), internal inequalities are still a reality. Demography is an important variable in the development of the region and there are great discrepancies between both shores. Demographic development patterns are the result of the interaction between different variables – socio-economic, political, religious, educational, and others. Courbage considers education to be the socioeconomic factor that mostly influences fertility.² This along with feminine emancipation and access to education are catalysts of the modern demographic development standards in the Arab world.

² Youssef Courbage, *New Demographic Scenarios in the Mediterranean Region*, National Institute of Demographic Studies, Paris, n.d. http://cahier_youssef_coubage.site.ined.fr/fr/ (15 May 2013).

Countries	Human Development Index
Algeria	0.7
Egypt	0.64
Libya	0.76
Morocco	0.58
Tunisia	0.7
Israel	0.89
Lebanon	0.74
Cyprus	0.84
Syria	0.63
Turkey	0.7
Greece	0.86
Albania	0.74
Montenegro	0.77
Bosnia & Herzegovina	0.73
Croatia	0.8
Slovenia	0.88
Italy	0.87
Malta	0.83
Monaco	-
France	0.88
Spain	0.88

Table 1: Human Development Index

Source: UNDP, Arab Development Challenges Report 2011 – Towards the Developmental State in the Arab Region, Cairo, 2011.

In the North, child mortality rates are decreasing along with fertility rates, while life expectancy age has increased. The population is progressively older, which questions these countries' demographic evolution, economic development and life quality maintenance, among others. In fact, European countries are facing a demographic challenge due to its aging population, lack of active work force and declining fertility rates. With an aging population, Europe will face a shortage of labour force, jeopardizing the countries' wealth production. Furthermore, the drastic

population aging will shake the current social systems, which might destroy the welfare state.³

Without migrations Europe will start shrinking (projections indicate that by the year 2050 there will be 448 million inhabitants against the 506 million in 2010). Therefore migrations are a key to demographic growth in the Northern shore.⁴ In fact, migratory dynamics have already contributed to maintain positive levels in the North, by increasing fertility rates and working age population.⁵

In the South, the urbanization of population is a positive demographic trend. One should remember that the decrease in child mortality and fertility rates is connected with the urban phenomenon. The urban exodus contributes to the economic and social development of states, as citizens have greater access to health care, education, sanitation and even to local power. Nonetheless, the asymmetries in the distribution of population, that prefer the urban centers, are a potential source of instability. The creation of ghettos and the consequent social exclusion, along with the lack of infrastructures and adequate means to accommodate large volumes of people can, *in extremis*, lead to ethnic and religious conflicts. Thus, the association between urban growth and conflicts comes from the incapacity of governments and local authorities to create mechanisms

³ P. Fargues, Demography, Migration, and Revolt in the Southern Mediterranean, in: C. Merlini/O. Roy (eds.), Arab Society in Revolt – The West's Mediterranean Challenge, The Brookings Institution, Washington, D.C., 2012, at 18.

⁴ P. Fargues (2012), 18.

⁵ T. F. Rodrigues/S. S. Ferreira, A Face Humana da Globalização: Cenários Prospetivos para o Mediterrâneo (1950-2050), IPRI Working Paper, 51, 2013, at 11-12.

that favors the integration of these communities in society and labor market.⁶

In addition, the population is increasingly more educated. The growing access of young people to education and the new role of women in the Arab society are slowly changing the patriarchal systems of these societies. We now have a generation with different goals and ideals that challenges the patriarchal system in charge. However, education is not a synonym for guaranteed job. The labour market in these countries has not been able to absorb all the human resources available.⁷ The increasing unemployment among young people in the Southern Mediterranean proves exactly that (Table 2).

	2000	2007	2008	2009	2010	2011	2012p	2013p	2014p	2015p	2016p
WORLD	12.7	11.6	11.7	12.6	12.7	12.6	12.7	12.7	12.7	12.7	12.7
Developed Economies & European Union	13.5	12.5	13.3	17.3	18.1	18.0	18.0	17.7	17.2	16.5	16.0
Central & South-Eastern Europe (non-EU) & CIS	20.0	17.5	17.0	20.5	19.4	17.6	17.5	17.6	17.5	17.5	17.5
East Asia	9.3	8.0	9.1	9.3	8.9	9.0	9.3	9.4	9.6	9.7	9.8
South-East Asia & the Pacific	13.2	14.9	14.2	13.9	13.6	13.5	13.7	14.0	14.2	14.2	14.3
South Asia	10.1	9.0	8.6	9.1	10.2	9.8	9.8	9.7	9.7	9.8	9.8
Latin America & the Caribbean	15.8	14.1	13.7	15.6	14.5	14.3	14.3	14.4	14.5	14.5	14.6
Middle East	24.0	24.8	25.7	25.2	25.4	26.5	26.9	27.5	28.0	28.6	29.0
North Africa	28.7	23.8	23.0	23.6	23.1	27.9	27.8	27.6	27.3	26.9	26.7
Sub-Saharan Africa	12.9	11.5	11.5	11.5	11.4	11.5	11.5	11.5	11.4	11.4	11.4

Table 2: Youth unemployment rates, by region (2000-2016)

⁶ S. S. Ferreira, O binómio demografia e segurança no contexto do Mediterrâneo, X Congreso de la Asociación de Demografía Histórica, Albacete, 2013, at 12-13.

⁷ S. S. Ferreira, Re-thinking the Euro-Mediterranean Relations after the Arab Spring, Thinking Out of the Box: Devising New European Policies to Face the Arab Spring (NEPAS), Braga, 2014 (in press).

Source: International Labour Office, Global Employment Trends for Youth 2012, Geneva, May 2012, at 43, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_180976.pdf (9 August 2013).

Southern countries face a youth bulge, as more than 40 % of the adults are young people between the ages of 15-29. These are countries with a very young population, due to decades of fast population growth.⁸ Thus, in the South the demographic dynamic is very positive, despite a slowdown in the medium growth rhythms (**Table 3**).

Population in thousands (1950-2040)						
Countries	1950	1970	1990	2010	2020	2040
Europe						
Albania	1215	2136	3289	3204	3294	3179
B-H	2661	3564	4308	3760	3647	3237
Croatia	3850	4169	4517	4403	4311	4024
Spain	28070	33792	38889	46077	48661	50938
Slovenia	1473	1670	1927	2030	2066	2029
France	41832	50763	56708	62787	65874	70681
Greece	7566	8793	10161	11359	11569	11661
Italy	46367	53325	56832	60551	61290	60182
Malta	312	304	368	417	428	424
Monaco	20	24	31	35	35	36
Montenegro	399	519	609	631	636	621

⁸ L. Mastny/R. P. Cincotta, *Analisando Ligações entre População e Segurança, Estado do Mundo 2005*, 2005, at 27.

East Asia						
Cyprus	494	614	767	1104	1218	1344
Israel	1258	2850	4500	7418	8666	10955
Lebanon	1443	2464	2948	4228	4516	4749
Syria	3413	6368	12324	20411	24079	30921
Turkey	21238	35464	54130	72752	80753	90302
Africa						
Algeria	8753	13746	25299	35468	40180	45490
Egypt	21514	35923	56843	81121	94810	116232
Libya	1029	1994	4334	6355	7083	8360
Morocco	8953	15310	24781	31951	35078	38806
Tunisia	3530	5127	8215	10481	11518	12533

Table 3: Population in thousands (1950-2040)

Source: United Nations, Department of Economic and Social Affairs, Population Division, World Population Prospects: The 2010 Revision, CD ROM Edition, 2011.

The fact that these states neither have the capacity to absorb all the labor force in their labor market available nor they have the necessary resources (economic and logistic) to create more jobs, is source of discontentment among the youth and fuse to social and political tension. Moreover, salaries are very low and there is a lack of opportunities for qualified young people. Fargues considers that this situation “sets the stage for widespread frustration among the young, which in turn may lead to resignation, rebellion or emigration”.⁹

⁹ P. Fargues (2012), 28.

Both shores have different life standards which deepens the gap between them. The Arab world is facing a turning point focusing more on the individual's freedoms, which sets the stage for a paradigm shift.

The instability created by the Arab Spring has accentuated these cleavages and created new challenges. It is the purpose of this paper to (a) get an integrated perspective of the main security challenges in the Mediterranean; (b) explore the Mediterranean migratory patterns after the upheavals and assess whether they represent a challenge to European security; (c) analyze the Arab Spring's impact in the Euro-Mediterranean relations; and (d) assess the Mediterranean as a security complex, while identifying the challenges that the EU's foreign policy faces in the region. In addressing these topics, this article aims to assess if migration in the Mediterranean, following the Arab Spring, placed a new security challenge to the region, especially to the EU.

B Security Challenges in the Mediterranean

Uprisings in Tunisia, Egypt and Libya in 2011 have focused the international community's attention in the MENA region and brought new light to the importance of the Euro-Mediterranean relations.

The movement for change that started in the streets aimed to overthrow the authoritarian regimes established and make way for a new era based upon the values of "democratic governance, social justice and decent employment".¹⁰ Discontentment among people (due to

¹⁰ UNDP, Arab Development Challenges Report 2011 – Towards the Developmental State in the Arab Region, Cairo, 2011, at 1.

unemployment, precarious social situations, lack of opportunities and others) and the constant violation of human rights by the regimes triggered the Arab Spring, a new time of high expectations.

Countries in the MENA region are at different stages. In some countries there has been an effective overthrow of the regimes (as in Tunisia and Egypt), in others the regimes established have tried to avoid uprisings by making swift constitutional changes (take Morocco and Jordan for example), others are still facing contestation (e.g. Syria).

The outcomes of the Arab Spring are still uncertain and rely on the choices of the people. History shows that “revolutions tend to be followed by years, and sometimes decades, of instability”.¹¹ Moreover, the possibility of an “Arab Winter” is still open. If the new established regimes fail to achieve the demands requested by the people or if fundamentalist Islamist regimes are established a new dark moment may fall upon the region (take Egypt for example). Most of the new leaders are inexperienced and they will have to deal with a myriad of problems and demands in order to implement democratic states based on the values of justice, social cohesion and respect for human rights.

High expectations surround the Arab Spring but steps must be taken carefully thought. The UNDP suggests that it should “start with pragmatic measures to reach the minimum acceptable level of employment and growth that will provide a stable economic environment to enable democratic transition and sustainable long-term development”.¹²

¹¹ P. Fargues/C. Fandrich, Migration after the Arab Spring, MPC Research Report 2012/09, 2012, <http://cadmus.eui.eu/bitstream/handle/1814/23504/MPC-RR-2012-09.pdf?sequence=1> (9 May 2013).

¹² UNDP (2011), 8.

The political and social upheavals of the Arab Spring and its aftermath challenge regional and international security. The political instability of the region affects its neighboring countries as well as its (economic and political) partners. Yet, it created a unique political opportunity namely for the EU, which can play an important role in the promotion of democracy and in the demand for freedom and dignity.

The political instability has also had a negative impact on the economies of the region, as many economic sectors have disintegrated. The region, which already had high unemployment rates, now faces a huge unemployment challenge in terms of job creation, vulnerable employment and low salaries. The UNDP indicates that “to address the employment challenge Arab countries would need to adopt more accommodating macroeconomic and sectorial policies”.¹³ Furthermore, a sustainable management of environmental resources is essential, as it is one of the most serious challenges in terms of development these countries face. Water scarcity is a huge problem in the region and climate change has a severe impact with episodes of drought, which jeopardize agriculture and food production, thus contributing to poverty and international migration. The Southern Mediterranean is one of the most vulnerable regions to climate change. The intensification of environmental phenomena, such as scarcity of natural resources, soil erosion and desertification (among others), has “severe effects on key sectors of the economy (e.g. agriculture, tourism, food prices)”¹⁴ and raises environmental security challenges.

¹³ UNDP (2011), 6.

¹⁴ European Commission, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Supporting closer

Despite the democratic and socio-economic reforms, there are also global and transnational threats challenging the region, as highlighted by the EU.¹⁵ Terrorism and international crime are one of the main concerns in the region for they increase instability. International networks operating in North Africa place risks and threats to the Mediterranean region as a whole.

The upheavals have highlighted challenges concerning migration.¹⁶ The instability caused by the Arab Spring has triggered two major refugee crises and has also increased irregular migrations in the Mediterranean. The factors that set off the conflicts (unemployment and social inequalities) are also at the core of migratory movements. Migration, namely South-North migration, is thus often the main focus in Mediterranean relations in terms of security.¹⁷

C Migratory dynamics before and after the Arab Spring

The Mediterranean is a unique geopolitical region and plays an essential role in international migration as it is the

cooperation and regional integration in the Maghreb: Algeria, Libya, Mauritania, Morocco and Tunisia, JOIN (2012) 36 final, at 5.

¹⁵ JOIN (2012) 36 final, 3-5.

¹⁶ IOM, The Middle East and North Africa Annual Report 2011, Geneva, 2012, at 8.

¹⁷ For more on the migration-security nexus see: S. S. Ferreira, Imigração. Uma ameaça securitária para a Europa?, *Jornal de Defesa e Relações Internacionais*, 2013, <http://database.jornaldefesa.pt/geopolitica/JDRI%20022%20210113%20imigra%C3%A7%C3%A3o.pdf> (7 July 2013).

crossroad between one of the regions with greater mobility (Africa) and one of the most sought host regions (Europe). The region has a complex migratory network with South-North mobility (Maghreb-Europe), South-South mobility (from Libya to Tunisia and Egypt and from the Maghreb countries to the Persian Gulf) and East-West mobility (from the Balkans and Turkey to Western Europe).¹⁸

The Arab Spring has increased fear of large-scale migrations to Europe and exacerbated the feeling of insecurity among Europeans, due to its geographical proximity. Immigration as a threat to the Mediterranean results from the feeling of insecurity regarding migratory flows from North Africa, particularly from the Maghreb, and often challenges human security, as migrants risk their own lives in the search for a better one. However, a recent study from Fargues and Fandrich has concluded that “migration to Europe has not been accelerated by the Arab Spring, apart from a short-lived movement from Tunisia, but has simply continued along previous trends”.¹⁹

Immigration from southern Mediterranean countries to Europe has been a reality for several decades now (**Figure 1** and **Table 4**). In 2010 almost 8 million migrants came from Mediterranean Arab countries, from which 62% were living in EU member states.²⁰

¹⁸ T. F. Rodrigues/S. S. Ferreira, *Realidades Demográficas no Mediterrâneo. II – Dinâmicas migratórias e análise a longo prazo das tendências demográficas (1950-2050)*, GEEMA Working Paper, 2011, at 10-15, <http://www.geema.org/documentos/1310552980P7qDV7xc2MI97AS0.pdf> (6 August 2013).

¹⁹ P. Fargues/C. Fandrich (2012).

²⁰ P. Fargues/C. Fandrich (2012), 1.

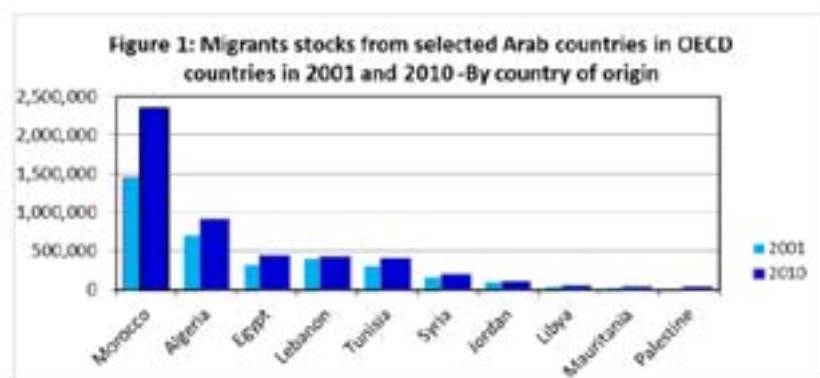


Figure 1: Migrants stocks from selected Arab countries in OECD countries in 2001 and 2010 - By countries of origin

Source: P. Fargues/C. Fandrich, Migration after the Arab Spring, MPC Research Report 2012/09, 2012, at 19, <http://cadmus.eui.eu/bitstream/handle/1814/23504/MPC-RR-2012-09.pdf?sequence=1> (17 April 2013).

	Algeria	Bahrain	Tunisia	Spain	France	Libya	Lebanon	Israel	Turkey	Total EU27	Total EU28
Belgium (2007)	8.111	19.828	1.307	1.003	1.891		1.176	1.401	39.111	108.848	471.000
Belgium (2011)	86	56	46	142	1.840		402		1.528	4.886	24.000
Canada (2007)	196	134	461	361	638		261	742	1.100	4.384	148.000
Canada (2011)	204	1.743	449	371	410		741	1.104	411	28.410	104.000
Denmark (2007)	1	1		1			1	14	4	18	128.000
Denmark (2011)	848	114	111	740	140		111	117	766	1.463	114.000
Egypt (2007)	100	110	271	8.241	1.747		461	714	146	147	168.000
Egypt (2011)	11.046	427.814	1.261	1.747	461		714	117	447	1.747	1.242.000
France (2007)	462.411	461.747	117.414	14.411			11.177		104.417	1.041.111	1.474.000
France (2011)	14.147	461.141	146.111	14.146	1.741		1.461	1.776	1.141	14.111	1.411.000
Greece (2007)	8	11	11	111	1.114		111	111	11	1.111	111.000
Greece (2011)	8	11	11	11	11		11	11	11	11	111.000
Germany (2007)	8	1	8	11	11		11	11	11	11	11.000
Germany (2011)	114	411	111	11	11		11	11	11	111	111.000
Hungary (2007)	114	11	44	111	111		111	111	111	111	111.000
Hungary (2011)	11	114	111	111	111		11	11	111	111	11.000
Italy (2007)	741	14.114	1.111	1.111	1.111		1.111	1.111	1.111	1.111	1.111.000
Italy (2011)	441	411	1.111	1.111	1.111		1.111	1.111	1.111	1.111	1.111.000
Japan (2007)		111	111	111	111						11.000
Japan (2011)	111	111	111	111	111		111	111	111	111	11.000
Korea (2007)	1	1	1	1	1.111		1.111	1.111	1.111	1.111	1.111.000
Korea (2011)	1	1	1	1	1		1	1	1	1	1.000
Latvia (2007)	1	1	1	1	1		1	1	1	1	1.000
Latvia (2011)	1	1	1	1	1		1	1	1	1	1.000
Lithuania (2007)	1	1	1	1	1		1	1	1	1	1.000
Lithuania (2011)	1	1	1	1	1		1	1	1	1	1.000
Netherlands (2007)	111	111	111	111	111		111	111	111	111	111.000
Netherlands (2011)	111	111	111	111	111		111	111	111	111	111.000
Poland (2007)	111	111	111	111	111		111	111	111	111	111.000
Poland (2011)	111	111	111	111	111		111	111	111	111	111.000
Portugal (2007)	111	111	111	111	111		111	111	111	111	111.000
Portugal (2011)	111	111	111	111	111		111	111	111	111	111.000
Romania (2007)	111	111	111	111	111		111	111	111	111	111.000
Romania (2011)	111	111	111	111	111		111	111	111	111	111.000
Slovakia (2007)	111	111	111	111	111		111	111	111	111	111.000
Slovakia (2011)	111	111	111	111	111		111	111	111	111	111.000
Slovenia (2007)	111	111	111	111	111		111	111	111	111	111.000
Slovenia (2011)	111	111	111	111	111		111	111	111	111	111.000
Sweden (2007)	111	111	111	111	111		111	111	111	111	111.000
Sweden (2011)	111	111	111	111	111		111	111	111	111	111.000
Switzerland (2007)	111	111	111	111	111		111	111	111	111	111.000
Switzerland (2011)	111	111	111	111	111		111	111	111	111	111.000
Total	741.111	1.111.111	1.111.111	1.111.111	1.111.111		1.111.111	1.111.111	1.111.111	1.111.111	1.111.111.000

Table 4: Foreigner from Mediterranean countries in the EU
 Source: MED.2010, 2011, at 401,
http://www.iemed.org/anuari/2010/earticles/Mediterraneo_cifr as.pdf (1 July 2013).

According to official data from CARIM, since the year 2000 there has been an increase in the number of migrants from North Africa to Europe. Morocco has been the largest contributor, and in Spain between 2006 and 2007 there has been an increase of 13,2 % Moroccans (71.397 individuals). Still, the greatest migrant group from the Mediterranean in Europe are Turks.²¹

²¹ T. F. Rodrigues/S. S. Ferreira (2011), 13.

Migration from the South has been triggered by feelings of frustration between young people, due to lack of opportunities (unemployment, low payments, and authoritarian regimes, among others). Such scenarios accentuate South-North migratory pressure. Nevertheless, one should regard migration “as the strongest bridge between the two contrasted shores of the Mediterranean”.²² But does the EU perceive migration as a regional bridge? We will further develop this question in the next section, when analyzing the Euro-Mediterranean relations and dialogue.

Countries at the Mediterranean coast are often simultaneously countries of origin, transit and destination, which can change depending on the different fluxes and the routes taken. South-South mobility is mainly triggered by economic motivations and political conflicts.²³ By the end of 2010 around 4.5 million immigrants were living in Arab Mediterranean countries, both in regular and irregular situations.²⁴

South-South mobility has occurred mostly between migrant workers (mainly to the countries which are oil producers). Countries in the MENA region are an important destination for millions of workers. Libya has, until recently, been the largest migrant-receiver in the region, although this migrants situation has never been stable.²⁵ Take Egypt for instance with a recent migratory history and that has always had Libya as its main country of destination.

The political and social tensions of the Arab Spring have shaken these states economies and have changed migratory patterns and challenged regional security. The

²² T. F. Rodrigues/S. S. Ferreira (2011), 13.

²³ T. F. Rodrigues/S. S. Ferreira (2011), 13.

²⁴ P. Fargues/C. Fandrich (2012), 3.

²⁵ P. Fargues/C. Fandrich (2012), 3.

increased volatility of the region has accentuated the migratory pressure. According to Fargues and Fandrich's report, South-South mobility has increased as people fled their countries to find shelter in neighbor countries.²⁶ Thus, more than an increase in South-North migration, as exacerbated by the media, the Arab Spring had a deep impact in migrations within the Southern Mediterranean (**Figure 2**).



Figure 2: Sea and Land irregular border crossing.

Source: Frontex, FRAN Quarterly. Issue 4, October-December 2011,

http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/Fran_Q4_2011.pdf (20 April 2013).

Frontex' report from the last quarter of 2011 indicates that there has been an increase in irregular migration (irregular sea and land border crossing), mainly during the second and third quarter of the year.²⁷ However, this increase is not so relevant when compared with previous data. With the beginning of the revolution there was a boost in boat-smuggling from Tunisia and Libya. Between January and September 2011, 42.807 irregular entries by sea were registered in Italy, mainly on the island of Lampedusa.

²⁶ P. Fargues/C. Fandrich (2012).

²⁷ Frontex, FRAN Quarterly, Issue 4, October-December 2011, http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/Fran_Q4_2011.pdf (20 April 2013).

Fargues and Fandrich consider this to be the result of a window of opportunity created by a deficit in border control in the area, not only for those escaping the revolution but also for other migrants who saw an opportunity to take this route instead of another.²⁸

The political and social unrest in Tunisia and Libya was responsible for fluctuations in the size and composition of the migratory movements in the Central Mediterranean route (**Figure 3**). Nevertheless, according to Frontex “[t]he increase was almost entirely due to more detections of migrants from Somalia (1.094) combined with a steady stream of migrants still arriving from Tunisia”.²⁹

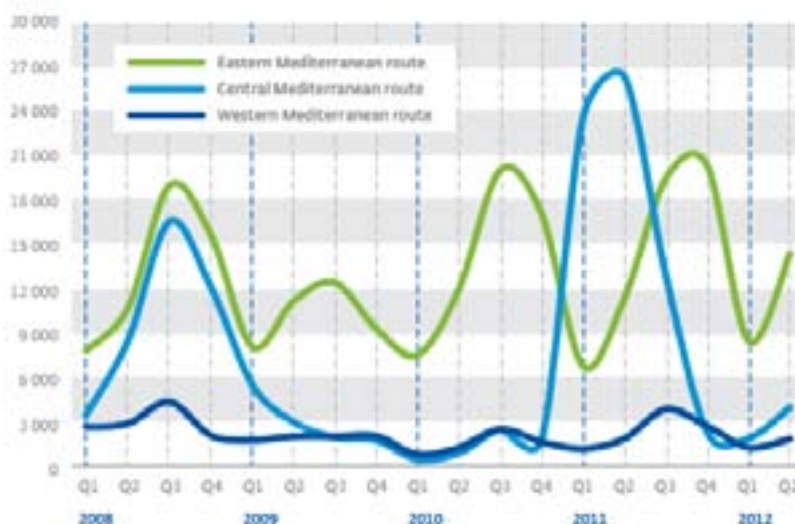


Figure 3: Detection of irregular border crossing by main irregular routes

²⁸ P. Fargues/C. Fandrich (2012), 4.

²⁹ Frontex, FRAN Quarterly, Issue 2, April-June 2012, at 25, http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q2_2012_.pdf (20 April 2013).

Source: Frontex, FRAN Quarterly, Issue 2, April-June 2012, at 17, http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/Fran_Q2_2012_.pdf (20 April 2013).

Most detections were from Tunisians, Afghans and Algerians, followed by migrants from other nationalities (presumably Sub-Saharan Africans) (**Figure 4**). A great share of Southern Mediterranean countries are the corridors for regular and irregular routes from Sub-Saharan population and East-Asians. Frequently some of these countries are the final destination for those migrants.

	2011				2012		2012 Q2		per cent of total
	Q1	Q2	Q3	Q4	Q1	Q2	% change on year ago	prev. qtr	
All Borders									
Afghanistan	1 754	4 806	9 323	7 301	2 153	4 529	-1.7	138	20
Bangladesh	562	1 799	1 370	1 192	1 407	2 435	35	73	11
Syria	126	274	602	614	715	2 004	639	181	8.8
Algeria	908	1 066	1 613	2 570	1 275	2 000	88	57	8.7
Albania	1 017	1 156	1 403	1 554	1 177	1 797	55	53	7.8
Somalia	573	1 035	884	799	1 017	1 673	62	65	7.2
Pakistan	1 051	2 821	5 629	5 874	1 045	1 850	+42	58	7.1
Tunisia	20 476	4 489	3 573	291	493	832	-81	69	3.6
Morocco	747	847	1 031	1 155	612	823	+2.8	34	3.6
Egypt	990	727	482	624	248	826	+24	154	2.7
Others	5 309	22 853	12 892	6 351	5 695	8 705	+79	35	20
Total All Borders	33 923	41 273	38 530	38 325	13 635	23 082	-44	89	

Figure 4: Top ten nationalities detected at external borders (2011-2012)

Source: Frontex, FRAN Quarterly, Issue 2, April-June 2012, at 60, http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/Fran_Q2_2012_.pdf (20 April 2013).

Irregular migration in the Mediterranean is often a risk to human security as most migrants fall into organized crime networks. In the attempt to cross the Mediterranean by boat over 8 thousand people have lost their lives in the last decade, although real numbers are difficult to estimate and are probably higher.³⁰

The population fleeing the revolution sought shelter mostly in neighbouring countries, most of them seeking

³⁰ T. F. Rodrigues/S. S. Ferreira (2011), 23.

asylum. The events of the Arab Spring triggered two massive refugee crises in the Southern Mediterranean, Libya and Syria (**Figure 5**). According to recent data, at least more than one million have fled Libya and Syria. IOM considers that “the 2011 crisis in Libya represented one of the largest migration crises in modern history (...)”.³¹



Figure 5: Migratory fluxes from Libya (2011)

Source: European Council Resource Centre – Southern Neighborhood, <http://www.eucouncilfiles.eu/free-movement-and-migration/folder/southern-neighbourhood/> (20 May 2012).

The revolts in Libya and Syria have displaced a considerable part of the population. Both situations have created major humanitarian crises, with unbearable violence, which have concerned the international community. People from Libya fled to Tunisia, Egypt, Niger, Algeria, Chad and Sudan and a smaller percentage to Italy and Malta. Refugees from Syria were accepted in Jordan, Turkey, Lebanon and also Iraq.³² UNHCR along with local NGOs and the receiving states has played an

³¹ IOM (2012), 19.

³² P. Fargues/C. Fandrich (2012), 4-11.

important role in managing this crisis. Still, the outcome of the situation in Syria is unpredictable and remains volatile.

The upheavals in Europe's neighborhood challenge European security and question Europe's capacity to find its voice in times of crisis. At the same time it points out the need to rethink the EU's approach to the Mediterranean region. Thus, how has the EU managed the crisis?

D Managing the crisis – Euro-Mediterranean dialogue and partnership

So far, Euro-Mediterranean relations have been marked by ups and downs, due to internal and external factors that conditioned the relations between Mediterranean countries. Moreover, there are priority divergences between both shores of the Mediterranean; while southern countries focus on issues of co-development and common dialogue, the northern ones focus on migratory fluxes control and managing irregular migration.³³ Thus, migration and security have always been at the top of the EU's Mediterranean agenda.

The Arab Spring, however, created a unique political opportunity to the Mediterranean region and to Euro-Mediterranean relations. With the break of the upheavals in the Southern Mediterranean, the EU and most of its member states focused their attention in the development of the region.³⁴ In March 2011 the European

³³ S. S. Ferreira (2013), 9.

³⁴ The Development-Security nexus "(...) can be understood as a dispositif or 'constellation of institutions, practices, and beliefs that create conditions of possibility within a particularfield' [...].

Commission launched a communication entitled “A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean countries”, which calls for a new approach to the region, based on more differentiation (*more-for-more*). Thus, “those that go further and faster with reforms will be able to count on greater support from the EU”.³⁵

According to this communication, the EU’s immediate responses to the uprisings were in terms of financial support for humanitarian aid; increase in border control, with Frontex joint operations; support for democratic transition; facilitation of consular cooperation and evacuation and visits to the field (Tunisia and Egypt) by the High Representative of the Union for Foreign Affairs and Security Policy.³⁶

In order to support the democratic reform the EU made its expertise available and called upon a greater role from civil society organizations and NGOs. Moreover, the EU started “supporting public administration reform aimed at streamlining and strengthening of basic policy processes, budget formulation and the capacity to raise domestic funding through efficient, fair and sustainable tax systems and administrations”.³⁷

The nexus constitutes a field of development and security actors, aid agencies and professional networks, complete with their own forms of subjectivity, that call forth the conditions of need and insecurity to which collectively, and in competition, they seek to provide solutions”. M. Duffield, *The Liberal Way of Development and the Development – Security Impasse: Exploring the Global Life-Chance Divide*, *Security Dialogue*, 41 (2010) 1, at 56.

³⁵ European Commission, *A partnership for democracy and shared prosperity with the southern Mediterranean*, COM (2011) 200 final, at 5.

³⁶ COM(2011) 200 final, 3.

³⁷ COM(2011) 200 final, 6.

The Commission also called for a review of the European Neighbourhood Policy in order to face the challenges of the changing political landscape in the Mediterranean. With “A New Response to a Changing Neighbourhood: A Review of a European Neighbourhood Policy”³⁸ the EU aims to “strengthen the partnership between the EU and the countries and societies of the neighbourhood: to build and consolidate healthy democracies, pursue sustainable economic growth and manage cross-border links”. It establishes the link between democracy-building and migration. With new stable democratic countries migration will decrease and will be better managed, at least that is the expectation.³⁹

Despite the dedication to democracy-building, and the fact that development and migration remain at the top of the agenda in the region, in terms of migration management the EU did not come up with new approaches, instead it “reaffirmed old positions regarding Mediterranean migration”.⁴⁰ The increased fear of massive flows of irregular immigrants led member states to further strengthen border control. In this regard, Frontex Joint Operation Hermes was set up in February 2011 to monitor the Mediterranean Sea.⁴¹ In terms of regular migration, Mobility Partnerships were launched with partner countries (Tunisia, Morocco, Jordan and Egypt) and the EU committed to support mobility of students and researchers through university scholarships and Erasmus Mundus.⁴²

Even though the refugee flows from Libya did not pose a true challenge to Europe, rather to its neighboring

³⁸ COM(2011) 200 final, 1.

³⁹ P. Fargues/C. Fandrich (2012), 5.

⁴⁰ P. Fargues/C. Fandrich (2012), 5.

⁴¹ Frontex, FRAN Quarterly, Issue 4, October-December 2011. http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q4_2011.pdf (20 April 2013).

⁴² COM(2011) 200 final, 7.

countries, member states were encouraged to facilitate humanitarian aid and asylum.⁴³

In December 2012 the European Commission released a *Joint Communication* entitled “Supporting closer cooperation and regional integration in the Maghreb: Algeria, Libya, Mauritania, Morocco and Tunisia”,⁴⁴ aiming to enhance cooperation between the countries of the Maghreb and the EU. It addresses different issues that may support this cooperation, including migration and mobility. Considering that “[m]igration and mobility play a key role in the EU’s relations with the countries of the Maghreb”,⁴⁵ the document enunciates a number of proposals, such as: (1) support legal migration schemes with the Maghreb countries; (2) promote regional cooperation in the field of border control and surveillance and fight against irregular immigration; (3) promote readmission cooperation with countries of origin; and (4), assist the countries of origin in matters of asylum and international protection.

Although the new global context does not favour migration, South-North migration is essential as it contributes to Europe’s demographic dynamic. The demographic cleavages will continue to pressure South-North mobility, along with political instability and the quest for a better life.⁴⁶ Thus, the EU should perceive this situation of complementarity between both shores and focus on managing and promoting circular migration, developing mechanisms to regulate migration that does not jeopardize human security, and focus on the positive effects of migration. Nevertheless, this should be the result of multilateral decisions and not unilateral ones.

⁴³ P. Fargues/C. Fandrich (2012), 10.

⁴⁴ JOIN (2012) 36 final, 3-5.

⁴⁵ JOIN (2012) 36 final, 16.

⁴⁶ T. F. Rodrigues/S. S. Ferreira (2011), 33.

E Migration in the Mediterranean – opportunities and challenges

In the aftermath of the Arab Spring the future is still unforeseeable as the outcomes are unpredictable. The instability of the region and the gap between both shores of the Mediterranean have always posed challenges to regional security and contribute to South-North human mobility.

A successful transformation of Southern Mediterranean countries depends on the new development models adopted. Despite the last decade's improvements, human development in the region is still very low, and people should be at the core of the development process. The creation of an integrated system, that co-relates the political, economic, social and environmental circles, is thus essential.

What are the main security challenges the Mediterranean region now faces? What is the importance and weight of migration in the Euro-Mediterranean security nexus? For a better understanding of the main challenges in the Mediterranean region we created a PESTEL matrix⁴⁷ that allows us to evaluate the external environment through a combination of factors (political, economic, social, technological and environmental) and to characterize the internal environment (**Figure 6**).

⁴⁷ More information on PESTEL Analysis, at <http://pestel-analysis.com/>.



Figure 6: PESTEL exercise
Source: Author's elaboration.

First of all, I would like to underline the importance of all five factors analyzed; they all have a different impact on the future of the migratory-security nexus in the Mediterranean. The political and social insecurity, along with economic instability in the South, motivates migration and increases fears of large-scale migration to Europe.

Moreover, the Arab Spring has exacerbated the feeling of insecurity among Europeans. The increased volatility of the region has accentuated the migratory pressure and triggered two massive refugee crises in the southern Mediterranean, Libya and Syria. Furthermore, the political and social tensions of the Arab Spring have shaken these states' economies, have changed migration patterns and challenged regional security.⁴⁸

Climate change is a global phenomenon, which has great impact in the Mediterranean region. Scarcity of natural resources or even natural catastrophes motivate migration. Environmental migration is already a reality in this region and also challenges regional security, as migrants and/or refugees seek shelter in neighboring countries. Furthermore, it may also be a potential source of political conflict over resources.

The EU is currently facing a demographic downturn and migration is the key to this problem. With an aging population and an increasing lack of labor force, migration will contribute to an increase in population, and to maintain the economic system with active labor force. In this regard, we should not forget the South's youth bulge. As a result, there is a situation of complementarity between both shores, from which both could benefit.

Against common perceptions, the Arab Spring did not cause a massive influx of migration to Europe, the population rather looked for shelter mostly in neighboring countries (South-South migrations). There was a light increase in terms of irregular migration in the first semester of 2011, but nothing significant when compared with previous data. We can therefore conclude that Mediterranean South-North migration is and always will be a reality, due to the existing differences between both shores. Still, not all the north is attractive to those migrants

⁴⁸ S. S. Ferreira (2013).

and not all Mediterranean migration has the northern shore as final destination.⁴⁹

Immigration as a threat to the Mediterranean results from the feeling of insecurity regarding migratory flows from North Africa, particularly from the Maghreb. The fast demographic growth in North Africa, the slow economic development and the high unemployment rates along with the Arab regimes instability challenge European security. The growing economic and demographic gap between both shores of the Mediterranean results in large migratory pressure from North Africa to Europe. The constant instability and political conflicts in the region affect Europe's security but cannot be considered a threat.

The definitions of viable cooperation policies that take migrants' rights into consideration, and cooperative dialogue are essential to an excellent migration management. This should not just involve countries of destination, but also countries of origin and transit. An effective migration policy, focusing on values of governance, cooperation and human security, will contribute to bring stability to the region.

Investment in the people is essential for the Southern Mediterranean to achieve its new goals and regain a central place in the international system. Also its capacity to deal with the environmental challenges and to make good use of natural resources will define the way forward in terms of development and future of the region.

The EU stepped up to face the challenges posed by the Arab Spring by adopting a series of instruments. Although it may be considered that no significant steps forward were taken and that the measures adopted may be seen as "more of the same", the new vision adopted aims to overcome the existing divergences. However,

⁴⁹ T. F. Rodrigues/S. S. Ferreira (2011), 33.

whether it will work or not is something that is still to be seen.

Sarah da Mota^{*}

The Libyan Spring and NATO: An Opportune Responsibility

Abstract

In the context of popular demonstrations and political upheavals of the Arab Spring, this article addresses the 2011 intervention in Libya as a case for deepening the understanding of individual-centred security policies and how they have evolved within international interventionism. Drawing on a conceptual and normative approach of “Responsibility to Protect” (R2P) and NATO, it seeks to denaturalize the idea that *Operation Unified Protector* is a general success, in order to uncover the underlying implications of “efficiency” in running an intervention based on R2P. It argues that there is a dissonance between the normative evolution towards ethics and military deeds, which blurs the significance of responsibility. This results in a twisted sense of cosmopolitanism, which primarily affects the referent object of security that has been dominant in contemporary interventionism, i.e., the unsecured civilian.

Keywords: Libyan spring; NATO; R2P; Humanitarianism.

* PhD Student in International Politics and Conflict Resolution at the University of Coimbra. Her main interests of investigation have revolved around critical security studies, critical studies on terrorism, human security, civilization, US foreign policy and the Middle East. The record of her publications is available at http://www.ces.uc.pt/doutoramentos/polint/estudantes.php?action=info&id_investigador=577. The author can be contacted by email at: sarah.damota@gmail.com.

Table of contents

A	Introduction.....	92
B	Reinforcing the Idea of Responsibility through a Growing Sense of Cosmopolitanism	100
1	Background: Affirming “Security as Ethics” and the Individualisation of Security	101
2	Expanding Consensus: Regional Embedding and co- Responsibility	105
C	Do Concerned Security Actors make Military Operations more Efficient?	110
1	NATO and the Protection of Individuals: An Opportunity for Reinforcement.....	110
2	Distancing Methods Reinforcing Ethicality.....	115
D	Conclusion.....	119

A Introduction

“I do not have illusions about NATO’s role in providing security in the region: NATO cannot solve all the problems and it never intended to do so. After all, Mediterranean partners never expected such a thing from NATO. But we can still provide a substantial added value in the region. [...]

There is a new dynamic in the region. We must seize the opportunity to build on it. The foundations of regional cooperation have to be set today, in order to address the challenges of tomorrow.”¹

¹ NATO, Speech by NATO Secretary General Anders Fogh Rasmussen at the 11th Herzliya Conference in Herzliya, Israel, 9 February 2011. Available at http://www.nato.int/cps/en/natolive/opinions_70537.htm (22 March 2012).

On 9 February 2011, at the time of this speech, fifteen days were left before SC Resolution 1970 (2011) was adopted by the SC regarding the Libyan regime's violence towards civilians. This excerpt of Anders Fogh Rasmussen's speech in Israel makes the self-projected role of NATO as a regional actor of security quite clear: It is not one of problem-solving, rather one of "substantial added value" service. Who knew then that NATO would soon have its first opportunity to demonstrate its "added value" in protecting civilians in the region?

In the broader context of the political and popular upheavals spreading from Tunisia to Egypt during the early months of 2011, known as the Arab Spring protests, Libya's crisis emerged in February 2011, when the forty year-old regime of Colonel Qadhafi was confronted to vigorous popular demonstrations and the formation of an armed opposition group, to which it launched a crackdown.² At a certain point, violence was to escalate as Qadhafi told the world that any Libyan taking arms against Libya would be executed. To the UN Commissioner for Human Rights, Navi Pillay, the use of violence against demonstrators amounted to a crime against humanity. Other senior UN officials classified the situation as a problem of human protection and Qadhafi's regime as an imminent threat.³

As a response, the SC adopted Resolutions 1970 on 26 February 2011, and 1973 on 17 March 2011. First, SC Resolution 1970 set the political expression of grave international concern towards the situation of the Libyan

² Daalder, Ivo and James Stavridis, NATO's victory in Libya. The right way to run an intervention, *Foreign Affairs*, 91 (2012) 2, 2-7.

³ Bellamy, Alex and Paul Williams, The new politics of protection? Côte d'Ivoire, Libya and the responsibility to protect, *International Affairs*, 87 (2011) 4, 825-850, at 838-839.

people, as it recalled Libyan authorities' responsibility to protect its population, and undertook several political concrete measures such as an arms embargo and travel bans on the members of the regime, among others.⁴ This only encountered the intransigence of Qadhafi's regime, which rejected the demands, and refused humanitarian aid convoys into Misratah and Ajdabiya, two of the most affected areas at the time.⁵

Therefore, SC Resolution 1973 was determinant in its ultimate decision to call for action under Chapter VII of the UN Charter, authorizing

[M]ember States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya [...].⁶

On 31 March 2011, NATO took the military command and control of *Operation Unified Protector*, specifically mandated under Chapter VII of the UN Charter, in relation with resolutions 1970, 1973 and 2009,⁷

⁴ SC Resolution 1970 (2011), UN Doc. S/RES/1970 (2011) of 26 February 2011.

⁵ Bellamy and Williams, 2011, at 840.

⁶ SC Resolution 1973 (2011), UN Doc. S/RES/1973 (2011) of 17 March 2011, at 4.

⁷ SC Resolution 2009 (2011), UN Doc. S/RES/2009 (2011) of 16 September 2011 basically stands for the establishment of a Libyan transitional government promoting democracy. To that end, it also establishes the UNSMIL – United Nations Support Mission in Libya – to ensure public security, national

aiming at protecting civilians and civilian-populated areas from attack or threat of attack in Libya.⁸ This mission may be framed in the continuity of NATO's self-proclaimed concern towards humanitarian causes and the protection of civilian lives, as demonstrated namely in Kosovo in 1999 and Afghanistan in 2003. In Kosovo, NATO's intervention introduced the importance of individual security, human security and human rights into the Alliance's discourse, as opposed to the dominant idea of security in the strategic conception of NATO's interventions during Cold War.⁹ Still in Afghanistan, NATO insistently focuses on the "Afghan people", determined to

reconciliation, functioning state institutions, and respect for human rights.

⁸ NATO, Operation UNIFIED PROTECTOR Protection of Civilians and Civilian-Populated Areas & Enforcement of the No-Fly Zone, Fact Sheet October 2011(a), Public Diplomacy Division (October 2011).

⁹ Falk, Richard, The first normative global revolution? The uncertain political future of globalization, in: Mozzafari, Mehdi (ed.), Globalization and Civilizations, London and New York 2002, 51-76. International Commission on Intervention and State Sovereignty, The responsibility to protect. Report of the ICISS, Ottawa 2001. NATO, Statement by the Secretary General of NATO, Lord Robertson on the OSCE Report on Kosovo, 6 December 1999. Available at http://www.nato.int/cps/en/natolive/opinions_27467.htm (15 January 2012). NATO, Kosovo: The Real Story, 6 April 2000(a), http://www.nato.int/cps/en/natolive/opinions_18301.htm (15 January 2012). NATO, Kosovo: One Year on, 30 June 2000(b). Available at http://www.nato.int/cps/en/natolive/opinions_18364.htm (15 January 2012). Whitman, Jim, The Kosovo Refugee Crisis: NATO's humanitarianism versus human rights, The International Journal of Human Rights, 4 (2000) 3-4, 164-183.

promote their freedom from the terrorist threat, through a peace enforcement mandate.¹⁰

Hence, *Operation Unified Protector* might be seen *a priori* as the affirmation of NATO's post-Cold War trend towards humanitarian interventions, guided by ethical and moral objectives, with numerous references to the protection of "civilians" and the "Libyan people",¹¹ provided with a specific mandate to that end. It seems that in the case of Libya NATO's search for relevance went mostly by the geographical expansion of its partnerships with non-NATO members (Jordan, Morocco, UAE, Qatar) so as to increase its importance beyond its borders,¹² along with the defence of values and principles, and the affirmation of a code of conduct oriented by decisions and choices seemingly ethical. With time, despite the critiques and scepticisms,¹³ it appears that NATO has managed to turn its out-of-area presence into general consensus and naturality.

¹⁰ NATO, Remarks by NATO Secretary General, Jaap de Hoop Scheffer at the Afghanistan Conference in Berlin, Germany, 31 March 2004. Available at http://www.nato.int/cps/en/natolive/opinions_21294.htm (26 January 2012).

¹¹ NATO, Statement on Libya following the working lunch of NATO Ministers of Foreign Affairs with non-NATO contributors to Operation Unified Protector, London, 14 April 2011(b). Available at http://www.nato.int/cps/en/natolive/official_texts_72544.htm (8 December 2011). NATO, Statement on Libya following the working lunch of NATO Ministers of Defence with non-NATO contributors to Operation Unified Protector, London, 8 June 2011(c), http://www.nato.int/cps/en/natolive/news_75177.htm (8 December 2011). NATO (2011a).

¹² Daalder and Stavridis, 2012, at 6.

¹³ Weisbord, Noah, The 1990's and the use of force: Anxiety, Realignment and New Justifications, *Global Change, Peace & Security*, 22 (2010) 1, 129-140.

The existing literature on the intervention in Libya brings two main topics into debate, namely:

1. *NATO's performance* – depicted by enthusiasts as a remarkable success and victory of freedom; a model of functional efficiency regarding the low casualty rates and operational improvement comparatively to Kosovo, the rapidity of the response, and the fulfilment of Resolution 1973's primary objective in saving civilians in Benghazi and Misratah and destroying Qadhafi's tanks and artillery; as the right way to run an intervention based on the R2P doctrine.¹⁴ The organizational aspect is also enhanced by the fact that it energized the European side of NATO, as the European allies demonstrated their assertiveness in taking the political lead and performing the majority of bombing raids, when faced to the US policy of "taking the back seat".¹⁵
2. *Assessing the actual state and the future of R2P as the leading principle of humanitarian interventions in terms of:*

¹⁴ Barry, Ben, Libya's Lessons, *Survival*, 53 (2011) 5, October-November, 5-14. Daalder and Stavridis, 2012. NATO, Press conference by NATO Secretary General on the latest developments in Libya and Operation Unified Protector, 21 October 2011(d). Available at www.nato.int/cps/en/natolive/opinions_79807.htm (22 March 2013). Western, Jon and Joshua Goldstein, Humanitarian intervention comes of age. *Lessons from Somalia to Libya*, *Foreign Affairs*, 90 (2011) 6, 48-59. Whitman, 2000.

¹⁵ Valasek, Tomas, What Libya says about the future of the transatlantic alliance, *Centre for European Reform Essays*, London, 2011, www.cer.org.uk (4 March 2013).

- a. Its improvement. Some authors frame Libya within a “getting better all the time” argument, in that it represents a consecration of a successful humanitarian intervention, which has been gradually improved over the last twenty years, and stands in contrast with past failures in Somalia, Rwanda, and Bosnia.¹⁶
- b. Its evolving dynamic, around the increasing role of regional actors in reinforcing consensus and legitimacy of decision-making.¹⁷
- c. Its decisiveness to the future of protection politics, as it brings back the SC’s authority, thus introducing a “new politics of protection” in the decision-making that produced Resolution 1973, which is marked by coerciveness since the host state did not consent it, for the first time in the UN record.¹⁸
- d. Its disruption of the clarity of the liberal model of security and intervention, representing a paradigmatic change in how

¹⁶ Western and Goldstein, 2011.

¹⁷ Piiparinen, Touko, Norm compliance by proximity: Explaining the surge of regional actors in responsibility to protect, *Conflict, Security and Development*, 12 (2012) 4, 387-415.

¹⁸ Bellamy and Williams, 2011. Welsh, Jennifer, Civilian protection in Libya: putting coercion and controversy back into RtoP, *Ethics & International Affairs*, 2011, 1-8.

humanitarian discourses and war operated.¹⁹

This paper is no exception in that it intends to reflect on the later topic with the support of the first, i.e., it focuses on NATO's performance in Libya, analysing its discourses and evolving narrative as an organization, in order to reflect on R2P, what it currently entails, represents and implies. The particular features of the intervention will be analysed, in order to find to which extent we might still think of it within the R2P framework as it has been known so far. It is worth looking into the state of responsibility, not embodied in the R2P doctrine, but into what the deeds tell us about what it means to be responsible for other human lives. Ultimately, what does *Operation Unified Protector* in Libya tell about the current state of R2P as a doctrine for interventionism and about present days' NATO as well?

My argument is that there is a paradox between the narrative performed by the political actors involved and military deeds, which blurs the significance of responsibility. In fact, there is a dissonance between the conceptual and normative dimension on the one hand, which is characterized by an approach of closeness regarding civilian needs, what enthusiasts see as a comeback of 1990's humanitarianism.²⁰ On the other hand, on the practical side of it, there is a distancing move away from the Libyan people in the management of the operation, marked by the use of UAVs and a post-regime disengagement.

In the end, the consequences of that conceptual and praxeological confusion – intended or unintended –

¹⁹ Chandler, David, *Freedom versus necessity in International Relations: human-centred approaches to security and development*, London and New York, 2013, at 130-131.

²⁰ Chandler, 2013, at 130.

might be negative for the same referent object the intervention was initially supposed to relieve, i.e., the innocent and unsecured civilian. This means responsibility is currently being practised as a label for political approval, and its content is not properly directed at the continuum of civilian protection. The security of those individuals remains entangled within a twisted cosmopolitanism, as the following section reveals.

B Reinforcing the Idea of Responsibility through a Growing Sense of Cosmopolitanism

Operation Unified Protector in Libya has been commonly seen as the consecration of an evolving politics of protection developing since the end of the Cold War, and as the consecration of international consensus around it, since the UN resolution concerning Libya passed without a single dissenting vote.²¹ As such, this first section highlights how the idea of responsibility came to evolve and establish itself to ultimately influence security policies. The underlying idea of evolution and improvement behind the military intervention in Libya is approached under three perspectives, namely: its normative and conceptual background; its regional framework; and its functional agency.

Drawing on a resumed analysis of the conceptual and normative evolution since the end of the Cold War, this section first sets the normative and conceptual background which allows understanding the intervention in Libya in a more contextualized manner. It will be seen, namely, that there has been a growing cosmopolitan concern towards civilian needs, which denotes a humanizing and individualizing approach of security by the interveners. Secondly, the regional framework of the

²¹ Western and Goldstein, 2011, at 55.

intervention demonstrates how the making of an expanded consensus serves to reinforce the legitimacy and neutrality of the decision-maker, which ultimately ends up transmitting the inherent efficiency of the functional agent in command and control of the military operation. Taken together, these dimensions help reflecting on the enthusiasm regarding the operation as a success and regarding the adoption of R2P as a ground-breaking step in the moral evolution of interventionism.

1 Background: Affirming “Security as Ethics” and the Individualisation of Security

In the broader context of post-Cold War humanitarianism arising in the 1990s, international security policies have shifted from state-centred approaches to an “individualisation of security”, i.e., a move focusing on individuals as primary referents of security policies. This individualisation of security is a post-Cold War trend of international security depicting the new visibility of a referent object of security other than the state, namely the individual or the civilian. Thus in 1994 the UNDP report on human development introduced for the first time in the UN system the notion of “human security”.²² A decade later, through its High Representative Javier Solana, the EU requested a special working group a report on a human security doctrine for Europe.²³ Since then, “humanitarianism”, “ethical foreign policy”, “human development” and “human security” have been at the top

²² United Nations Development Program, Human Development Report, New York, 1994.

²³ Kaldor, Mary and U. Albrecht *et al.*, A Human Security Doctrine for Europe: The Barcelona Report of the Study Group on Europe’s Security Capabilities, Report presented to EU High Commissioner Javier Solana, Barcelona, 15 September 2004.

of international security agendas and policies. The semantic and normative load associated to these notions demonstrates an unprecedented ethical move in International Relations. Those expressions and concepts were indeed very well received and adopted in the codes of conduct of many international organizations, NGOs, and foreign policies of states like Canada, Japan and Norway – concerning human security in particular – for they are rooted in moral values,²⁴ with an undeniable ability to generate important financial support for institutional multiplication, with the creation of new functional entities working for the “human”.²⁵

In fact, from the 1990s onwards, there is an evolution approaching Ken Booth’s idea that the state is not the end of security *per se*, but rather just a means to attain it.²⁶ State becomes limited to being an agent of security, not a subject. Seemingly, as the moral consciousness of the individual value is not captured in the bipolar logic of physical survival and ideological divide anymore, it might have led, after the Cold War, to the pressure over states in undertaking military interventions to protect citizens other than their own from humanitarian disasters.²⁷ Consequently, what was to be protected from

²⁴ Ramel, Frédéric, La sécurité humaine: une valeur de rupture dans les cultures stratégiques du Nord?, *Etudes Internationales*, 34 (2003) 1, 79-104. Suhrke, Astri, Human security and the interests of States, *Security Dialogue*, 30 (1999) 3, 265-276.

²⁵ Shusterman, Jeremy; An Interview with the Human Security Unit, *Human Security Journal*, 2 (2006) June, 97-103.

²⁶ Booth, Ken; *Theory of World Security*, Cambridge 2007, at 228.

²⁷ Finnemore, Martha; Constructing Norms of Humanitarian Intervention, in: Katzenstein, Peter J.; *The Culture of National Security: Norms and Identity in World Politics*, New York 1996, at 153.

then on were the human values,²⁸ personified by individuals.

As a matter of fact, the scale, scope and meaning of humanitarian action significantly expanded during the 1990s, with an increasing political and financial intromission of some states into the work of humanitarian actors. Michael Barnett considers this to be a politicization of humanitarianism and of the civilian object,²⁹ which may be explained by geopolitical, social, economic and also normative factors of a multipolar world, in opposition with an apolitical humanitarianism, considered initially to respond only to situations of widespread famine and war.³⁰

Regardless of the politicization, we are to assume that the normative environment of this evolution is prevailing over other factors, for norms are actually the primary game-changer of international politics.³¹ As such, the underlying *zeitgeist* transpires an intensified cosmopolitan thinking. For a more precise insight of what cosmopolitanism implies, Kwame Anthony Appiah defines it as the equivalent of ethics in a globalized world, enclosing two ideas which often clash at each other. The first is that we, as human subjects, have obligations towards persons other than our family and acquaintances; the second is that we value particular human lives, in respect of their legitimate difference.³² Cosmopolitanism then arises from a universal concern towards those who are at distance, whom we do not necessarily know or

²⁸ Booth, 2007.

²⁹ Barnett, Michael, Humanitarianism transformed, *Perspectives on Politics*, 3 (2005) 4, 723-740.

³⁰ Chandler, David, *From Kosovo to Kabul (and beyond): Human Rights and International Intervention*, London, 2002.

³¹ Finnemore, Martha and Kathryn Sikkink, *International Norm Dynamics and Political Change*, *International Organization*, 52 (1998) 4, 887-917.

³² Appiah, Kwame A., *Cosmopolitanism. Ethics in a world of strangers*, London, New Delhi, Johannesburg, 2007, at xiii.

resemble, but with whom we share the same essential and valuable nature.

In political arenas, this new moral commitment towards the protection of individuals is embodied by the R2P principle. R2P was endorsed as a doctrine at the UN World Summit in 2005, unanimously adopted by UN member states thus agreeing with their responsibility to protect their populations from the four most inhumane crimes, namely genocide, war crimes, ethnic cleansing, and crimes against humanity. In case of manifest failure in doing so, international society would act through various provisions set out in the UN Charter.³³

Now, considering how norms and concepts had been evolving since the 1990s, as exposed above, and how humanitarian interventions had already been taking place prior to this “indoctrination”,³⁴ R2P appears to be more of the same, since its normative content basically provided circumstances that had already been authorized for more than a decade, but rather a political and rhetorical one.³⁵

If we were to locate and define this type of normative evolution within Martha Finnemore and Kathryn Sikkink’s three-stage “norm life cycle” – 1. norm emergence; 2. norm cascade or acceptance; 3. internalization – as a model depicting the implantation and influence of a norm,³⁶ we would say responsibility has been definitely internalized when R2P was formally

³³ Bellamy and Williams, 2011, 827. Evans, Gareth and Mohamed Sahnoun, *The Responsibility to Protect*, *Foreign Affairs*, 81 (2002) 6, 99-110. Piiparinen, 2012.

³⁴ See for example Bosnia, Kosovo, Rwanda or Somalia.

³⁵ Chesterman, Simon, ‘Leading from Behind’: *The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya*, *New York University Public Law and Legal Theory Working Papers*, 2011, 282.

³⁶ Finnemore and Sikkink, 1998.

adopted by international community. It has been so as a norm of exceptionality in the sense it overcomes illegality for supposedly higher moral purposes such as protecting the life of individuals. As such, R2P reinforced the idea and the narrative of a cosmopolitan responsibility of the states towards their own citizens as well as the citizens of other states. It also internalized the presupposition that in any future occasion in which the R2P principle would be invoked, the UN decision favouring it would be automatically legitimate, neutral, and ethical. The adoption of R2P as a “doctrine” protects UN decisions from the critique of the eventual coerciveness against *de facto* states. This is why some authors find that Libya and Cote d’Ivoire constitute ground-breaking precedents of R2P, for they represent the first application of R2P in coercive campaigns against the consent of functioning states.³⁷

Therefore, although legality is a vital criterion for international order, an ethical assessment based on a selfless cosmopolitanism seems to have taken the toll on it and to be sufficient to determine whether international action might be undertaken or not. Security has been constructed as ethics, appearing now as inherently legitimate and necessary, because it refers to organic living persons, and not to states defined by action-constraining laws.

2 Expanding Consensus: Regional Embedding and co-Responsibility

Another feature of the intervention in Libya strongly contributing to the reinforcement of the idea of responsibility consists of its regional embedding. Although

³⁷ Bellamy and Williams, 2011, at 828. Piiparinen, 2012, at 388.

the role played by regional actors in the implementation of R2P is not new, and has been on the rise,³⁸ it is still of significant importance in the case of Libya, because of the actors involved and how they influenced the SC's decision-making and by the same way reinforced its legitimacy by representing an expanded consensus.

Very soon in the Libyan turmoil the AU, the LAS and the OIC took a side and joined the critiques towards the threatening position assumed by Qadhafi's regime at Libyan citizens. Specific actions were undertaken when, on 22 February 2011, the LAS suspended Libya's participation until the cessation of violence. On 23 February, the AU's Peace and Security Council issued a communication condemning the indiscriminate and excessive use of force against peaceful demonstrators.³⁹

On 26 February 2011, when Resolution 1970 was adopted, it was explicit in

Welcoming the condemnation by the Arab League, the African Union, and the Secretary General of the Organization of the Islamic Conference of the serious violations of human rights and international humanitarian law that are being committed in the Libyan Arab Jamahiriya [...].⁴⁰

This acknowledgement is important for it implicitly recognizes the weight of the "condemnation" by those organizations in the UN deliberation regarding the measures referred in the resolution. It also strengthens the legitimacy of the decision, as it is sustained by an inherently intercultural and interregional consensus. Alex Bellamy and Paul Williams find namely the LAS' close

³⁸ Bellamy and Williams, 2011. Daalder and Stavridis, 2012.

Piiparinen, 2012, at 388.

³⁹ Bellamy and Williams, 2011, at 839.

⁴⁰ UNSC Resolution 1970, 2011.

inclusion and decision – traditionally opposed to humanitarian interventions – in calling for a no-fly zone and the establishment of safe areas to protect civilians absolutely decisive,⁴¹ and even consider that without it, the SC's decision of using force in Libya would have been unlikely:

Whatever the reasons behind the LAS decision, it changed the Council's dynamics: it made opposition to enforcement more difficult; it brought the US on board, adding to the feasibility of the military option; it helped persuade the African Council members; and ultimately it pushed the remaining sceptical members towards abstention.⁴²

As a matter of fact, the LAS is a clear example of how the idea of responsibility has been internalized and at the same time instrumentalized by international organizations. We find two different angles from which one may look at the relationship between the SC and the LAS. On the one hand, it is worth taking a small step back to look into the power effect present in the underlying conditionality of adopting R2P. Interestingly, through a Foucauldian reading of the International Commission on Intervention and State Sovereignty (ICISS) reports, Patricia Weber demonstrates that the Commission erected its doctrine in conformity with the way power is operated in the contemporary western society. Namely, the author stresses among other things, the method of control and supervision envisaged by the Commission in case the state fails at fulfilling its commitments towards

⁴¹ Bellamy and Williams, 2011, at 841.

⁴² Bellamy and Williams, 2011, at 846.

development.⁴³ The Commission thus constructs a notion of sovereignty centered on the right of the population to life, establishing a biopolitical system over the duty to prevent, monitor, control and regulate non-western human lives. Sovereignty is substituted by the idea of responsibility, instituting biopower.⁴⁴ Biopower is a Foucauldian concept designating the power practiced over man as a living being, as a species, intended to control “[a] global mass that is affected by overall processes characteristic of birth, death, production, illness, and so on”.⁴⁵

On the other hand, Touko Piiparinen makes a very interesting contribution through an extensive analysis of the increasing role played by regional and sub-regional organizations in implementing R2P, explaining norm compliance through geographical proximity, among other factors. This perspective is useful, for it demonstrates how eventual power effects of conditionality may be also internalized and instrumentalized by regional organizations in order to promote their strategic interests. The author namely argues that in the case of Libya, the LAS managed to wield a compliance pull on the permanent members of the SC by calling directly on their responsibilities towards the deteriorating situation in Libya, and the protection of civilians, inducing them to authorise a timely and decisive action to protect civilians as required by the formal definition of R2P. Piiparinen sees the viewpoint of regional actors as having a decisive influence because of their geopolitical proximity to the conflict zone, functioning as an argumentative leverage in promoting

⁴³ Weber, Patricia, Too political or not political enough? A Foucauldian reading of the Responsibility to Protect, *The International Journal of Human Rights*, 13 (2009) 4, at 583.

⁴⁴ Weber, 2009, at 586-587.

⁴⁵ Foucault, Michel, *Society must be defended*, New York, 2003 (1997), at 242-243.

their cause within the negotiations with international actors. He further illustrates his point resorting to the theory of “epistemic communities”, as forums of experts who can exert productive power in international politics, by disseminating new meanings, managing information on conflicts, outlining solutions, which ultimately affects the decisions of official actors on managing those conflicts. In the end, the LAS demonstrated its know-how by framing the Libyan crisis as a matter of protecting civilians, instead of “rebellion” or “civil war”, which would have confined the definition of the situation as an exclusive matter of Libyan internal affairs: “[O]ne in which Gaddafi’s central government was still entitled to the full legal rights of a state sovereign, including the Weberian monopoly of the use of force”.⁴⁶ The carefulness towards certain specific words influenced the measures the SC would take.

To sum up, the initial inherent power of conditionality in internalizing R2P from the outside was transformed into knowledge from the inside. It is interesting how the regional dynamic of the process proved that the idea of responsibility has been very well internalized, having been transformed into the main argument of regional actors’ rhetoric. As a result, diverse fields of action such as geopolitics, strategic interest, and power are all linked by the same unifying rhetoric of responsibility. Besides, the regional consensus and involvement might have at the same time empowered UN’s decision and mandate, whilst establishing an extra care in the sense that its action would occur under the close attention of surrounding political actors in the region.

Hence, the normative evolution and affirmation of the idea of responsibility as exposed in this first section showed that every success has its recipe. Highlighting its antecedents and underlying dynamics allowed

⁴⁶ Piiparinen, 2012, at 396-398.

understanding why the UN mandate aiming at human protection in Libya has been usually considered as a political success and as consecrating the legitimacy of R2P.

C Do Concerned Security Actors make Military Operations more Efficient?

The title of this section is a provocation, as it seeks to understand whether the idea of responsibility as approached so far is necessarily translated into efficiency when it comes to putting it in practice by functional organizations. To which extent does the success and construction of legitimacy in political resolutions necessarily imply a practical success? In fact, while the first section was about the causes and possible effects of the internalization of responsibility as a norm, this second section is about how the internalized norm has worked within the organization in charge of applying it to a practical case. In other words, it is about observing how NATO – in command and control of *Operation Unified Protector* – relates to responsibility.

1 NATO and the Protection of Individuals: An Opportunity for Reinforcement

In the context of the evolution of responsibility, NATO has been central as a security actor putting in practice the normative guidelines associated to it. In its effort of

institutional reinvention,⁴⁷ post-Cold War NATO has effectively evolved around the normative commitment towards the protection of civilians. Presently, that search goes mostly by defending principles and values, by affirming a code of conduct guided by seemingly ethical decisions and choices. This reconfiguration of the Alliance around ethics and morality is probably the most decisive in the construction of its narrative as an organization, for it carries the concepts, discourses and ideas decisive to the change it strives to achieve.⁴⁸

The decisive shift has namely occurred with NATO's intervention in Kosovo in 1999,⁴⁹ which introduced in the Alliance's discourse the importance of individual security, human security and human rights,⁵⁰ as opposed to the predominant idea of security in the Cold War strategy. As it has generally been recognized that the

⁴⁷ Barany, Zoltan and Robert Rauchhaus, Explaining NATO's Resilience: Is International Relations Theory Useful?, *Contemporary Security Policy*, 32 (2011) 2, 286-307. Flockhart, Trine, Towards a strong NATO narrative: From a 'practice of talking' to a 'practice of doing', *International Politics*, 49 (2012) 1, 78-97. Gärtner, Heinz, European Security: The end of territorial defense, *The Brown Journal of World Affairs*, 9 (2003) 2, 135-147. Rasmussen, Mikkel V., Reflexive Security: NATO and International Risk Society, *Millennium: Journal of International Studies*, 30 (2001) 2, 285-309. Sjørusen, Helene, On the identity of NATO, *International Affairs*, 80 (2004) 4, 687-703. Zorgbibe, Charles, *Histoire de l'OTAN*, Bruxelles, 2002.

⁴⁸ According to Trine Flockhart narratives describe the history, the purpose and the deeds of a collective entity such as NATO, thus contributing to its unity and facilitating its continuous transformation. The narrative plays also a decisive role in the permanent constitution of identity as well as in the management of knowledge, because it sets a perfect connection between the doing (action and practice) and the being (knowledge and identity). Flockhart, 2012, at 80-81.

⁴⁹ Falk, 2002. ICISS, 2001. Whitman, 2000.

⁵⁰ NATO, 1999; 2000a; 2000b.

Kosovo bombing campaign was illegal in the light of the UN Charter,⁵¹ NATO members at the time preferred to justify their intervention in moral terms, referring the exceptionality of the situation and the fact that no precedent was intended to be created.⁵² Thanks to that kind of argumentation, NATO was able to take the toll when it comes to action. As a matter of fact, although the Yugoslavian wars were particularly shocking, the UN deplored the abuses being committed without considering them due motives for military action. UN peacekeeping missions became more recurrent, but were mostly aiming at protecting civil operations – food transport, for example – instead of protecting civilians directly.⁵³

Later in 2003, alongside the operational and geographical expansion for a more “global” NATO,⁵⁴ the Alliance’s command of the ISAF in Afghanistan was also to protect the Afghan people from the terrorist threat under a peace enforcement mandate under chapter VII of the UN charter, originally supposed to support a UN force.⁵⁵ Globally, NATO’s transformations after the Cold War converge into the maximization and expansion of its fields of action – at the geographical and operational level. In fact, all these transformations arise from an incessant search for relevance, new tasks and new competences, as they are part of an evolving narrative, which is imperative

⁵¹ Article 2(4) of the UN Charter prohibits the threat or use of force against member states. There are only two exceptions to this: Self-defense and action authorized by the UNSC. Neither applied to Kosovo. Chesterman, 2011.

⁵² Chesterman, 2011. Whitman, 2000.

⁵³ Shaw, Martin, *The New Western Way of War*, Cambridge and Malden 2005, at 8.

⁵⁴ Gärtner, 2003.

⁵⁵ NATO, 2004. NATO, *ISAF’s Mission in Afghanistan*, 2012. Available at http://www.nato.int/cps/en/natolive/topics_69366.htm (25 January 2012).

to the continuity of the Alliance, towards a viable *raison d'être*.⁵⁶ Mikkel Vedby Rasmussen has accurately described NATO's evolution as the affirmation of a constructivist policy through which the Alliance has imagined itself as an agent of change in the post-Cold War world.⁵⁷

Now, regarding Libya, NATO could not have been clearer since the beginning about the nature of its commitment. NATO's operational action would last until the following objectives would be achieved: the ending of all attacks and threats against civilians and civilian-populated areas; the withdrawal of all military forces by the regime; the permission by the regime of full and immediate humanitarian access to all people in Libya.⁵⁸ The will of a speedy solution to the crisis was reaffirmed all along, so Libyan people could live free of violence and thus determine their own future.⁵⁹

Besides, as the Libyan people were explicitly asking for the removal of the Qadhafi regime, NATO had an extra responsibility towards a local emancipatory project. This means NATO was not only expected to enable local opposition in technical and practical terms, but mostly to play a specific role in making a revolutionary experience possible.⁶⁰ Arendtian notions related to the revolution, such as the importance of "experiencing" and "freedom" of a new beginning, appear really pertinent here:

Crucial, then, to any understanding of revolutions in the modern age is that the idea of freedom and experience of a new beginning should coincide. And since the

⁵⁶ Flockhart, 2012, at 79. Sjursen, 2004.

⁵⁷ Rasmussen, 2001.

⁵⁸ NATO, 2011b.

⁵⁹ NATO, 2011c; 2011d.

⁶⁰ Daalder and Stavridis, 2012.

current notion of the Free World is that freedom [...] is the highest criterion for judging the constitutions of political bodies, it is not only our understanding of revolution but our conception of freedom, clearly revolutionary in origin, on which may hinge the extent to which we are prepared to accept or reject this coincidence.⁶¹

Looking into NATO's contribution from this particular angle, we need to question whether a revolution can be helped from the outside and supplied with the freedom element to protect the revolutionary people. From NATO Secretary General Anders Fogh Rasmussen's standing point, it seems it can:

I am very proud of what we have achieved together with our partners [...]. Our military forces prevented a massacre and saved countless lives. We created the conditions for the people of Libya to determine their own future. Their courage and determination in the cause of freedom is an inspiration to the world. [...]

This is a special moment in history, not only for the people of Libya and the wider region, but also for the NATO Alliance. It shows that freedom is the strongest force in the world.⁶²

So, it is clear in this statement how NATO represents its achievements in protecting the lives of citizens: as enabling the critical condition for the Libyan

⁶¹ Arendt, Hannah, *On Revolution*, 4th edition, London 2006, at 19.

⁶² NATO, 2011d.

people to be able to have their own revolution, by providing them the freedom to do so. Therefore, when it secures the space for Libyan democratic politics to happen, NATO is strengthening its narrative as a normative power.⁶³

2 Distancing Methods Reinforcing Ethicality

NATO's involvement in Libya thus appears as an apotheosis of both its normative re-orientation and out-of-area expansion, punctuated by surgical efficiency in its functional role at strictly accomplishing the UN mandate for civilian protection. This sub-section reflects on the operational aspects of NATO's action in Libya, more precisely on how they contribute to the narrative depicted above.

We are fulfilling our mandate. We have made significant and steady progress and saved countless lives as a result. By maintaining a high operational tempo and carrying out precision strikes against legitimate military targets, we have seriously degraded the ability of the Qadhafi regime to attack civilians and relieved the pressure on civilian populated areas such as Misratah. Our operations are being conducted with the utmost care to avoid civilian casualties.⁶⁴

⁶³ Within international organizations, normative power may be understood as the exercise of an influence over the international scene that is inseparable of its cultural and moral content: "It is a power that empowers a certain set of values [...], giving them validity, strength and influence, and giving those who adopt them access to a certain civilizational substance." Burgess, Peter J., *The Ethical Subject of Security*, London and New York 2011, at 11-12.

⁶⁴ NATO, 2011c.

This excerpt is striking for its discursive efficiency in making the best summary possible of a *responsible* operation. It describes a perfectly clean action, respectful of its political mandate, rapid in progress, efficient in saving lives that would otherwise have been lost, through precision strikes against legitimate military targets, remaining cautious and careful in avoiding civilian casualties – the so-called “unintended consequences”. When it presents itself as responsible, NATO internalizes at the same time the idea of functional efficiency.

It is interesting how this efficiency may be framed within Martin Shaw’s analysis of “risk-transfer wars”, as life-risk minimisers for the Western militaries. This kind of war is dominated by precision armament, control and command technology, informatization and robotization, and defines a set of fifteen rules characterizing the risk-transfer war. In the sole above quoted excerpt, three of these rules are explicitly contained, namely:

1. “Wars must be strictly time-limited: These are quick fix wars”;
2. “Wars rely on ‘precision’ weaponry to sustain their legitimacy”;
3. “Risks of ‘accidental’ civilian casualties must be minimized, but small massacres must be regarded as inevitable.”⁶⁵

Now, other of Martin Shaw’s rules for “risk-transfer wars” may be added to that account, as the most evident regarding NATO’s performance in Libya:

4. “Wars must, above all, minimize casualties to Western troops”:

⁶⁵

Shaw, 2005.

Libya is effectively characterized by very low casualty rates. With an estimated civilian death toll of 5-10 %, i.e. 25 rebel fighters and no casualty among NATO personnel,⁶⁶ one of the evident reasons why the operation is portrayed as an unprecedented success.

5. *“Western forces should rely heavily on air power and look to others – as far as possible – to take risks on the ground.”* One distinguishing aspect of modern warfare, and *Operation Unified Protector* is no exception to it, is the use of UAV and precision-guided bombs and missiles, as fighter aircraft, surveillance and reconnaissance aircraft, air-to-air refuellers and attack helicopters constitute the gross of the military capabilities used in Libya.⁶⁷ However, NATO has already a background concerning the “boots off the ground” strategy, namely its air campaign in Kosovo and Afghanistan. Besides, Libyan rebels made it clear that they did not want foreign boots on the ground, so as to mitigate the perceived threat to their sovereignty.⁶⁸

It is worth referring to Maja Zehfuss’ insight on how precision weaponry ultimately produces the idea of ethicality. Zehfuss namely refers that developments in weapon technology have been fortunate in making possible for war to reduce collateral damage, in the sense that the precision-guided munitions seem to enable to hit smaller targets. The relatively low number of civilian

⁶⁶ Barry, 2011, at 7-8.

⁶⁷ Barry, 2011. NATO, 2011a. Zehfuss, Maja, Targeting: Precision and the Production of Ethics, *European Journal of International Relations*, 17 (2011) 3, 543-566.

⁶⁸ Etzioni, Amitai, The Lessons of Libya, *Military Review*, January-February 2012, at 46-47.

casualties in UAV operations conducts to the assertion that precision weapons have in some way improved the ethicality or humaneness of warfare. To Zehfuss, it is the focus on precision weapons that is crucial to the representation of Western warfare as ethical and superior.⁶⁹

6. *“Longer-term post-war risks must be spread as widely as possible through an international division of labour”*: Even before the termination of the Operation, post-conflict efforts were remitted in the hands of organizations such as the UN, EU, OIC, AU, LAS: “[W]e encourage these organizations’ efforts in the immediate and longer term post-conflict period”.⁷⁰ Later, when asked about a continued military presence during the transition, starting 1 November 2011, Rasmussen stated that NATO had “no intention to keep armed forces in the neighbourhood of Libya”. So once the operation was closed, it was definitely closed, in a “clear-cut termination” of the operation.⁷¹

So as to underpin this idea, when questioned about further prosecution of pro-Qadhafi individuals in the post-regime phase, Rasmussen is also clear: after 31st October 2011 “it is the responsibility of the Libyan authorities to deal with the internal Libyan affairs”.⁷² This is a clear distancing move from a “we are responsible to protect citizens” to a “they” are responsible for the management of the consequences of our protective intervention. This post-operation disengagement testifies a distancing practical management in the sense of David Chandler’s argument

⁶⁹ Zehfuss, 2011, at 555; at 559.

⁷⁰ NATO, 2011c.

⁷¹ NATO, 2011d.

⁷² NATO, 2011d.

of a “NATO [that] is not responsible towards independent local actors” narrative.⁷³ Consequently, clear-cut finales blur the original idea of responsibility, in that it gets diffused by a distancing representation of agency, sustained by the regional embedding of co-responsibility, on the one hand, and by the capable agency of liberated Libyans, on the other hand. It tells in a way that ultimately there is no one to blame for the long-term outcome of the intervention, but the local agency which may be successful or not in dealing with the post-becoming of their country.

To sum up, this section showed how the intervention in Libya was useful in strengthening NATO’s narrative concerning out-of-area interventions, by associating its functional action to an ethic of liberation and local emancipation. The technology inherent to the military capabilities used in Libya also served to reinforce the idea of ethicality as a military deontology respectful of innocent civilians. In fact, the western way of war, characterized by the transfer of risk into the distant enemies⁷⁴ implies a distancing of the same human bodies the interveners claim to protect in their political discourses.

D Conclusion

As one of the most recent patterns of interventionism, characterized by the protection of civilians, NATO’s intervention in Libya is an important case for deepening our comprehension of how individual-centred military interventions have come to evolve. This paper addressed namely the need to denaturalize the ideas of normalization

⁷³ Chandler, 2013.

⁷⁴ Shaw, 2005.

and success inherent to the intervention in Libya, in order to better understand the substance and the implications of responsibility in adopting individual-centred security policies.

The first section approached the conceptual and normative evolution underlying the affirmation of responsibility as a leading norm in contemporary interventionism. It showed there is actually a precise background anchored in the affirmation of security as ethics and focused on the individualisation of security policies, denoting a wider sense of cosmopolitanism arising since the end of the Cold War. Regarding the intervention in Libya, it also demonstrated how the increasing role of the regional embedding expanded political consensus, thus reinforcing the idea of co-responsibility and legitimacy behind the SC resolution to allow the use of force in Libya.

The second section focused on NATO as the actor executing the military issuance of a “responsible mandate”. Although *Operation Unified Protector* is consistent with the organizational evolution of NATO as being committed to morally justified missions aiming at protecting individuals, the opportunistic factor cannot be dismissed in the interpretation of its performance. In fact, the intervention in Libya proved to be an important opportunity for the reinforcement of NATO’s out-of-area narrative and global representation as a normative power. The specific operational features of this intervention enabled a political distance as well as physical *détachement*, facilitating the clear-cut ending of NATO’s involvement and transferring different kinds of risks into the local setting, which ends up by confusing the original significance of responsibility. In spite of that, NATO managed to deepen its narrative, feed its continuous evolution, and maintain its self-identity.

At last, it has been difficult to find consensus around a concept such as “responsibility”, namely concerning its formal definition, ontological implications, and practical applicability. “Responsibility” lacks objectivity, because it refers to values and as such it is hardly measurable through tangible indicators. Despite the ethical move at protecting *persons*, one cannot actually dismiss the manifest opportunity for reinvention and reinforcement it presents to international organizations such as the UN and NATO. Finally, this sort of amorality⁷⁵ is pointing at the apparent humanization of the leading patterns in international security as a paradox, which may be misleading in making an accurate balance of the “Springs” of the world.

⁷⁵ Durodié, Bill, Human Security – A Retrospective, *Global Change, Peace & Security*, 22 (2010) 3, 385-390. Weber, Cynthia, After Liberalism, *Millennium – Journal of International Studies*, 38 (2010) 3, 553-560.

III Enforcing African Peace through International Law?

Irene Etzersdorfer¹

Africa as the Birthplace of R2P – A Twisted “African Spring”

Abstract

This paper argues that despite some considerable success in sovereign capacity building and conflict resolution in Africa, African violent conflicts continued to be the source for implementing more and more robust peace enforcement UN mandates on behalf of R2P (Responsibility to Protect) principles. Res. 2098/2013, enabling an offensive combat force to neutralize and disarm Congolese Rebels and foreign armed groups, is an example of this trend. However, it is also due to concerted actions of African governments and UN cooperation with regional African institutions, such as the African Union and the Economic Community of West African States, that UN force deployment could be effective. After 1945 and especially in the course of the de-colonization process the principle of sovereignty – mainly ‘external’ sovereignty – was put forward by the de-colonized states themselves, many of which were “quasi-states” without the will and/or capacity to exercise the monopoly of violence in order to protect their citizens. Thus, the R2P, comprising the Responsibility to “rebuild” has to entail “state building”, since it is due to the lack of state functions that warlordism and other quasi stateless conditions

¹ Prof. Dr. Irene Etzersdorfer works at the University of Vienna/Institute of Political Science (in co-operation with Danube University Krems). She holds a PhD in History and has done her habilitation in Political Science at the University of Vienna. She was a visiting professor at several institutions, including: Franklin/Marshall College Lanc./Penns.; Harvard University/Kennedy School/Center for Public Leadership; Leopold-Franzens University of Innsbruck; Babes-Bolyai Univ. in Cluj-Napoca and Danube University Krems. Her related fields of specialization include: Political Theory/Political Philosophy and International Relations; Ethnicity and (ethnic) armed conflicts; (new) wars, humanitarian intervention and conflict resolution. E-mail: irene.etzersdorfer@univie.ac.at.

could emerge. To put my argument forward, I will analyse the most crucial resolutions/mandates which contributed to the expanded peace concept and subsequently to the R2P concept. For example: Res. 794/Somalia was (after Res. 688/1991 on Iraq) a first breakthrough in New Humanitarianism, determining the magnitude of the humanitarian catastrophe inside the sovereign but collapsed state of Somalia (followed by massive refugee flows to neighbouring countries) as a threat to international peace and security. On these grounds, the situation legitimized a Chapter VII enforcement mission, while still emphasizing the “exceptional” case of a failing state. For the first time in UN history, humanitarian claims explicitly legitimized the use of force to “safe strangers”. But despite the conceptual milestone, the Unified Task Force in a debacle and the United Nations Operation in Somalia II left the field too early without any responsibility to rebuild the state. Subsequent missions led to even more disastrous United Nations failures, as was the case in Ruanda in 1994, Srebrenica in 1995 and Darfur in 2003. It was again in an African state – Libya – that the R2P doctrine was explicitly applied in 2011, followed by a comprehensive intervention mandate in Mali.

Keywords: R2P, Humanitarian Intervention, Armed Conflicts, New War Scenarios, Peace Concepts in UNSC, Principle of Sovereignty, Just War, UN Missions

Table of Contents

A	R2P, Sovereignty and Humanitarian Interventions in the Post-Cold War Era	124
B	‘New Approach’ an Old (‘Power’) Perceptions – the Concept of (‘Absolute’) Sovereignty on the Test Bench	127
C	Attempts and Circumventions to Implement R2P in Africa: An Analysis of the UN Missions Contribution to Peace and Security	129
D	Conclusion.....	140

A R2P, Sovereignty and Humanitarian Interventions in the Post-Cold War Era

As much as the end of the Cold War led to a temporary political euphoria regarding the possibility of a “new world order”, which would finally allow for the UN to perform its designated duties for the maintenance of world peace and security, it also reduced coercive state capacities in otherwise “quasi states”.² The discontinuation of super power support for authoritarian regimes contributed to the disintegration of weak states and the uprooting of entire regions and populations (as in Somalia, for instance), thus, propelling a new type of civil war characterized mainly by continuous humanitarian crises for the civilian population.³ These anarchic, “neo-Hobbesian” war scenes in disintegrating states and state of nature like environments rendered traditional UN Charter Chapter VI peacekeeping missions impossible and called for more robust peace enforcement missions under Chapter VII. In addition, they allowed for a specified use of force in order to protect the “internationals”, as well as the civilians in hostile environments. Moreover, these internal conflicts exhibited new features in comparison to previous small warfare, guerilla or low intensity warfare, namely: an increasing privatization of warfare by sub-state militias and their particularistic interests; and untrained and undisciplined warriors with little or no respect for the *ius in bello* norms, including disrespect for UN personnel coming under attack, as well as the civilian population. Thus, non-combatants became the explicit target of violence with the consequence of massive refugee flows to neighbouring

² Jackson, Robert, *Quasi-States: Sovereignty, International Relations and the Third World*, Cambridge (1991).

³ Jackson, Robert, *Quasi-States: Sovereignty, International Relations and the Third World*, Cambridge 1991.

countries, be it under the spell of ethnic fervor or other ideological passions.⁴

The rescue of unprotected citizens who are victims either of their own state's force and/or (trans-)national guerrilla groups their own state cannot or does not want to defeat, calls for a distinction between victims and aggressors by the international community, whenever humanitarian intervention, in a former domain *reservé*, is at stake.⁵ However, the international rescue and protection of victims from state aggressors or state failure in protecting its citizens implies taking sides for a “just cause” and against perpetrators. As much as the R2P emphasizes that regime change cannot be the legitimate objective of humanitarian intervention, it correctly draws the conclusion that it may well be a consequence in cases where the government itself instrumentalizes the state army to kill its own citizens, thus de-legitimising itself.

Of course, such a distinction is neither to be found in the *ius in bello* norms nor in the otherwise meagre provisions regarding “civil war” since it would contradict *ius cogens* provision on the prohibition on the use of force and the tenet of international law based on the juridical equality and sovereignty of states. Thus, also the principles of peacekeeping are based on consent, impartiality and neutrality.

But these new types of smoldering long wars within societies, which spread after the end of the Cold War, showed different characteristics than previous civil wars: guerilla strategies do still prevail but the distinction between combatants and non-combatants is blurred,

⁴ For the differentiation between different types of war and their underlying political principles see also Irene Etzersdorfer, *Krieg. Eine Einführung in die Theorien bewaffneter Konflikte*, [add press], Wien, 2007.

⁵ Lauterpacht, Hersch, *The Grotian Tradition in International Law* [add press], New York, 1946.

various irregular militias fight for often unclear - also non-political - purposes, links with international organized crime are strong and as a consequence, new war scenarios tend to foster the destruction of social structures and social cohesion – something already anticipated by C. Schmitt in his partisan theory in 1963 –, contributing to the disintegration of otherwise fallible states.⁶ A number of African weak states, never properly built in the heads and minds of their citizens, let alone their political elites, though *de iure* sovereign and equals in the international community, never matched with the concept of modern statehood on which international sovereignty and equality is based. According to H. Münkler, a further scholar analyzing the “new war” phenomenon after Kaldor, there can be no doubt that “the many processes of state formation in the Third World, or in the periphery of the First and the Second World, have been a failure”.⁷ Even though for different reasons, namely the legacy of colonialism, the de-colonized young African states insisted to invigorate the principle of sovereignty and non-intervention within the UN system, a legal concept which already put aside much of the comprehensive content of the concept of sovereignty entailed in state theory.⁸ Referring to the conceptual framework of S. Krasner, who distinguished between 4 different types of sovereignty, international law mainly concentrated on the functions of external sovereignty and left the issues of domestic sovereignty – including the fulfilment of basic human rights standards –

⁶ Schmitt, Carl, *Theorie des Partisanen. Zwischenbemerkungen zum Begriff des Politischen*, Berlin, 1963.

⁷ Münkler, Herfried, 2005, 15.

⁸ GV/Res. 2625 of 24 October 1970, Declaration on Principles of International Law Friendly Relations and Co-Operation among States in Accordance with the Charter of the United Nations.

to the “domain réservé” of despotic regimes.⁹ Along with the emergence of mainly intra-state wars after 1945 causing massive human rights violations and – not independent of these armed conflicts - the intensification of a binding human rights architecture, the interpretation of an impenetrable ‘absolute’ state sovereignty, as much as it was mainly politically instrumentalized, lost credibility. In 1999, also the then Secretary-General of the UN, Kofi Annan distinguished between “Two Concepts of Sovereignty”, reminding the fact that sovereignty has always been limited and was never “absolute”, in the sense that it was limited by natural law principles and later by the evolving constitutionalization of international law entailing the duty to align sovereign decisions along the duty to keep the peace, and lately along binding international human rights standards, which also anchored “individual sovereignty” on the international level.¹⁰

B ‘New Approach’ an Old (‘Power’) Perceptions – the Concept of (‘Absolute’) Sovereignty on the Test Bench

The R2P concept, as it grew out of the ICISS initiative in 2001, is closely interwoven with a new approach to Humanitarian Interventions on the basis of a reconceptualization of the sovereignty principle and an extended concept of human security. Contrary to previous withdrawals to a legally non-existent “absolute sovereignty” within the international system, the R2P based its understanding of sovereignty on one of the

⁹ Krasner, Stephen, *Sovereignty: Organized Hypocrisy* [add press], Princeton, 1999.

¹⁰ Annan, Kofi, *Two Concepts of Sovereignty*, in: *The Economist*, 16 September 1999.

oldest principles of state theory, namely that the duty to protect its own citizens lies first and foremost with the state and constitutes its legitimacy. Therefore the “duty” (which was later weakened into the “responsibility”) to protect its own citizens is a constitutive function of sovereignty itself. Why this protection principle was labelled a “novelty” in 2001, albeit it has always been one of the most primary state functions already present in the first modern state concept of Thomas Hobbes, who even described an absolute monarchy with almost no citizen rights, remains a miracle to the author.

R2P states that only when a state is not able or willing to exercise its protection duties, and only in cases of massive human rights violations, the responsibility to protect should be taken over by the international community. In these cases, the international community has the responsibility to react – if necessary with military coercive means –, overruling the principle of sovereignty on behalf of human rights principles, in order to save lives at risk. The criteria catalogue for appropriate military action is modelled along the just war criteria – and it has to be taken into account that the just war strategy is based on an (moral) asymmetry since the old days of the church fathers. The “just cause” can only be on one side, so there are those who breach the peace, the perpetrators and those who act along legal principles to restore peace. The “right authority” is the legally established authority to determine such a breach of peace, it only lies with the SC today, which may decide for a chapter VII mandate to act against the peace breachers. The “right intention” is lifesaving and restoration of peace and not a particularistic political war goal of the intervening forces. The duty to consider the “chances for success” should prevent a higher death toll in the course of the rescue intervention than the expected number of those who could be saved. The proportionality principle should secure a proper

reaction and refers to the general principle that the application of violence can only be the last resort after all other attempts to restore peace have failed. It was no coincidence that the just war principles vanished with the Westphalian order and were replaced by a mutual *ius ad bellum* of sovereign states providing states with the right to wage war against each other. This right had already been limited by the League of Nations, the Briand-Kellogg Pact of 1928 and finally by the general prohibition on the use of violence in international relations anchored in Article 2.4. of the UN Charter. Following the UN’s very ideas, the SC became the only authority responsible for war and peace, be it interstate or intrastate violence.

C Attempts and Circumventions to Implement R2P in Africa: An Analysis of the UN Missions Contribution to Peace and Security

Besides the theoretical debate, this paper set out to demonstrate the problem resting within the UNSC in slowly grounding its decisions on an extended security concept, acknowledging binding human rights standards. To put my argument forward, I will analyse some of the most crucial resolutions/mandates for Africa, which contributed to the expanded understanding of peace, subsequently to the R2P concept and finally to the implementation of R2P principles in UNSC mandates. SC res.688 from 1991 on Iraq is regarded as the precedent case for the concept of new humanitarianism, operation “Provide Comfort” is presumed to be the door opener for determining a threat to international peace inside a country, caused by regime “repression” of the civilian population and its impact, namely the refugee flows across international borders – which served as a bridge to

emphasize the transnational dimension. But the resolution remained silent with respect to a concrete UN mission operating on sovereign Iraqi territory. It cautiously demanded access by international humanitarian organizations in all parts of Iraq. The following operations by a UN mandated coalition must be considered a POLITICAL victory since there was almost no political protest against UN troops operating on sovereign Iraq territory for which there was no mandate in the resolution.

It was a year later in Somalia that the SC treaded carefully the introduction of a wider understanding of security for an armed UN intervention into an internal conflict.¹¹ The new war scenario in Somalia rendered the already installed UNOSOM I (from April 1992 until March 1993, created by SC Res. 733 and 746) Chapter VI mission a failure, since most of the humanitarian aid could not be delivered to the people in need. The UN was not respected in its capacity as a neutral humanitarian assistance and an observer for the maintenance of an armistice brokered between the two main warlords Ali Mahdi Mohammed, a business man, and General Mohammed Farah Aideed. Both claimed presidency and jointly invited the UN in a short moment of armistice in March 1992, acting and being accepted as a sort of transitory authority. Strictly speaking, the responsibility to protect fell temporarily upon them as custodians; in terms of state theory a *contradictio in adjecto*, since they represented competing groups who determined the friend-enemy distinction in different ways.¹² In fact, due to the lack of a legitimate government, the UN collaborated with perpetrators mainly responsible for the internal war. After the traditional peacekeeping mission UNOSOM I failed,

¹¹ Weiss, Thomas G., *Humanitarian Intervention. Ideas in Action*, Polity Press, Cambridge, United Kingdom, 2007, 59ff.

¹² Deng, Francis *et al.*, *Sovereignty as Responsibility*. Brookings Institution, Washington D. C., 1996.

the SC authorized Res. 794, which determined for the first time the “magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance” as a threat to international peace. In addition, it recognized the “extraordinary nature” of the situation in Somalia, namely the failed state without any government (which made China and Russia finally agree to Res. 794). For the first time the SC grounded the threat to peace only in the humanitarian catastrophe caused by the armed conflict inside the country (followed by massive refugee flows to neighbouring countries) and hence expressed a wider understanding of peace and (human) security. By installing a coalition of UN troops led by the US, the UNITAF, under Chapter VII and mandated to “use all necessary means” to secure the delivery of humanitarian aid with 30.000 troops, “the urgent calls from Somalia for the international community to take measures to ensure the delivery of humanitarian assistance in Somalia”, counted for a consent.¹³ UNITAF was authorized to use and create a “secure environment” in order to provide humanitarian assistance for the civilian population. Disarming and security issues were not included in the UNITAF mandate and were left to the successor mission UNOSOM II. According to DiPrinzio, since both SC Res. 794 and SC Res. 814 for UNOSOM II in May 1993 were mainly drafted by the Pentagon, it was the explicitly wish of the US to endow UNITAF – which is commonly regarded as a success – with a limited mandate and leave the wider and more complicated tasks to UNOSOM II. The latter managed to alleviate the humanitarian situation but finally ended in an obnoxious debacle and left too early without

¹³ DiPrinzio, Robert C., *Armed Humanitarians. U.S. Interventions from Northern Iraq to Kosovo*, The Johns Hopkins University Press, Baltimore, 2002, 44-61.

any responsibility to rebuild the state as the R2P later demanded.¹⁴ For the first time in UN history, humanitarian claims explicitly legitimized the use of force to “safe strangers”. To a certain extent, Rwanda paid the price for the Somalia debacle. The US was reluctant due to the traumatic experience in Somalia based mainly on wrong assessments of new war scenarios. In Ruanda, UNAMIR was established in October 1993 to facilitate the implementation of the Arusha Peace Agreements, thus it was mainly a defensive operation under Chapter VI but endowed with rules of engagement allowing for the use of force in case of crimes against humanity. But upon the commencement of the genocide, the DPKO (Department of Peacekeeping Operations) prohibited the use of force apart from self-defence; in addition, contingents were withdrawn after the assassination of ten Belgian blue-helmets.¹⁵

SC Res. 929 from June 1994 again determined the “magnitude of the humanitarian crisis” as a threat to peace and security in the region, but did not link the cause to the deliberate, planned and well-orchestrated ethnic cleansing. It just expressed “deep concern for the continuation of systematic and widespread killings of the civilian population in Rwanda” without naming any perpetrators. Moreover, it drew again on a “unique case” situation to demand an urgent response by the international community. However, the resolution was strictly limited by the then Chapter VII mandate to a humanitarian character, which should be conducted in an impartial and neutral fashion, without even constituting an inter-position force between the parties. The lack of

¹⁴ DiPrizio, Robert C., *Armed Humanitarians. U.S. Interventions from Northern Iraq to Kosovo*, The Johns Hopkins University Press, Baltimore, 2002, 48.

¹⁵ Dallaire, Roméo, *Shake Hands with the Devil. The Failure of Humanity in Ruanda*, Arrow Books, London, 2004.

political will to stop the genocide in Rwanda – followed by Srebrenica – completely undermined the remaining credibility of UN Peace operations, let alone the new human security concept.

Already, in “An Agenda for Peace” (1992), Boutros Boutros-Ghali emphasized to “recommend that the Council consider the utilisation of peace-enforcement units in clearly defined circumstances and with their terms of reference specified in advance”.¹⁶ Nevertheless, the SC did not endorse the failure of peace operations in Somalia and Rwanda, which led to a retraction of policy in “The Supplement to an Agenda for Peace” in 1995.¹⁷ The failure to implement “peace enforcement units”, as already outlined in “An Agenda for Peace” in 1992, became manifest.

“The Supplement to the Agenda for Peace” in 1995 encouraged Chapter VIII cooperation with regional arrangements or agencies, calling for a change of which the UNAMSIL in Sierra Leone is an example. For the first time the OAU, represented itself by a number of war mongers, openly condemned human suffering and defended democracy against an illegal coup and seizure of power. In 1999 after two years of fierce attacks on the civilian population, a more robust mandate was given to UNAMSIL (taking over UNOMSIL’s mandate) in order to “afford protection to civilians under imminent threat of physical violence”. Alongside, ECOMOG battalions were rehatted as blue-helmets under Chapter VII of the UN Charter.¹⁸ A more critical reflexion was expressed in the

¹⁶ Boutros-Ghali, Boutros, *An Agenda for Peace*, 1992, para. 44.

¹⁷ Johnstone, Ian, Ben Tortolani and Richard Gowan, *The Evolution of UN Peacekeeping: Unfinished Business*, New York, 2005, 60 [add press].

¹⁸ *The Responsibility to Protect*, Vol. 2, Supplementary volume to the ICISS, International Development Research Center. Ottawa, 2001, 108.

2000 “Report of the Panel on UN Peace Operations” of March 2000 (the so-called Brahimi Report). It offered an in-depth analysis of peace operations and made a number of recommendations aimed at changing and promoting more proactive uses of force. In short, it provided the operational tools needed for a change in doctrine on the ground. Evolutionary was the fact that UN operations must be “able to pose a credible deterrent threat, in contrast to the symbolic and non-threatening presence that characterises traditional peace keeping”.¹⁹ A subsequent important step forward was the “High Level Panel Report on Threats, Challenges and Change” in 2004 which supported the idea of a new collective security and anchored the concept of peace enforcement – after it had already been selectively practised for a couple of years. Important was the fact that impartiality should no longer constitute neutrality and the UN had to be prepared to take on “spoilers” who attempted to break such mandates. “In Larger Freedom” already stipulates that sovereign states are the basic and indispensable building blocks of the international system but it is “their job to guarantee the rights of their citizens, to protect them from crime, violence and aggression”. Furthermore they should provide the framework of freedom under law in which individuals can prosper and society develops. If states are fragile, the peoples of the world will not enjoy the security, development and justice that are their right. With special regard to Africa it continues:

Today, more African States have democratically elected Governments than ever before and the number of military coups on the continent has declined significantly.

¹⁹ Brahimi Report (Report of the Panel on United Nations Peace Operations), para. 51, 2000.

Some long-standing conflicts, such as those in Angola and Sierra Leone, have been resolved. From Uganda to Mozambique, many individual countries are experiencing rapid and sustained economic and social recovery. And throughout the continent, ordinary people are organizing themselves and making their voices heard. And yet much of Africa – especially South of the Sahara – continues to suffer the tragic effects of persistent violent conflict, extreme poverty and disease.²⁰

Heads of state and government agreed to the following text on the R2P in the Outcome Document of the High-Level Plenary Meeting of the General Assembly in September 2005, incorporating the four criminal offences persecuted by the ICC in Art. 138 and 139. Most of the ICISS commissions’ recommendations vaporized on its way into the UN system. Art. 138 stipulates that:

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the

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Annan, Kofi, In *Larger Freedom: Towards development, security and human rights for all*, 2000, 19, 73.

United Nations in establishing an early warning capability.

This is followed by Art. 139 claims that:

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting

those which are under stress before crises and conflicts break out.

Even though the documents up from 1999 clearly expressed the will of the international community to intervene and thus, may be considered a political basis to introduce collective norms on human rights violators and spoilers of the peace, members of the SC acted against these emerging norms established on also their behalf but obviously with little intention to be fulfilled. The Darfur crisis, labelled the “world’s greatest humanitarian crisis” in March 2004 may serve as an example. Only the US Secretary of State, Colin Powell declared a “genocide” after a long resistance, but no other permanent member of the UNSC followed suit. To the very contrary: the International Commission of Inquiry on Darfur, authorized by the UNSC Res. 1564 of 2004, issued a report in January 2005 to the Secretary-General stating that “the Government of the Sudan has not pursued a policy of genocide”.²¹ Nevertheless, the Commission cautioned that:

The conclusion that no genocidal policy has been pursued and implemented in Darfur by the Government authorities, directly or through the militias under their control, should not be taken in any way as detracting from the gravity of the crimes perpetrated in that region. International offences such as the crimes against humanity and war crimes that have been committed in Darfur may be no less serious and heinous than genocide.²²

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²²

See http://www.un.org/news/dh/sudan/com_inq_darfur.pdf.
Ibid.

It was again in an African state – Libya – where the R2P doctrine was finally explicitly applied in SC Res. 1973 of 2011, followed by comprehensive intervention mandates in Mali and in DRC as the latest examples. Reiterating the responsibility of the Libyan authorities to protect the Libyan population and reaffirming that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians, SC Res. 1973 condemned:

The gross and systematic violation of human rights, including arbitrary detentions, enforced disappearances, torture and summary executions, further condemning acts of violence and intimidation committed by the Libyan authorities against journalists, media professionals and associated personnel.

The Res. 1973 laid down its consideration whether the widespread and systematic attacks against the civilian population may amount to crimes against humanity and expressed its determination to ensure the protection of civilians and civilian populated areas. It further highlighted the need to guarantee the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel in order to help protect civilians, for which purpose the SC decided to establish a ban on all flights in the airspace of the Libyan Arab Jamahiriya. It is obvious that the resolution clearly distinguished between perpetrators and victims, as it is in fact based on this distinction. In a different context SC Res. 2085 on Mali from December 2012, establishing the AFISMA to support the government of ECOWAS member nation Mali against Islamist rebels in the North of Mali, enlist the aggressors and demanded

that Malian rebel groups cut off all ties to terrorist organizations, notably Al-Qaida in Islamic Maghreb (AQIM) and associated groups, and take concrete and visible steps to this effect, takes note of the listing of Movement of Unity and Jihad in Western Africa (MUJWA) on the Al-Qaida sanctions list established and maintained by the Committee pursuant to resolutions 1267 (1999) and 1989 (2011) and further reiterates its readiness to continue to adopt further targeted sanctions, under the above-mentioned regime, against those rebel groups and individuals who do not cut off all ties to al-Qaida and associated groups, including AQIM and MUJWA.

Acting under Chapter VII, AFISMA was authorized to support the Malian authorities in recovering the areas in the north of its territory under the control of terrorist, extremist and armed groups. It should also contribute to reduce the threat posed by terrorist organizations, including AQIM, MUJWA and associated extremist groups, while taking appropriate measures to reduce the impact of military action upon the civilian population to support the Malian authorities in their primary responsibility to protect the population and to support the Malian authorities to create a secure environment for the civilian-led delivery of humanitarian assistance and the voluntary return of internally displaced persons and refugees within its capabilities and in close coordination with humanitarian actors and to protect its personnel, facilities, premises, equipment and mission and to ensure the security and movement of its personnel – tasks which – under the then given circumstances – amounted to offensive operations as well.

With regard to the DRC in 2013, SC Res. 2098 enabled for the first time an “offensive” combat force to “neutralize and disarm” Congolese rebels and foreign armed groups. Incorporated into peacekeeping and protection duties of MONUSCO, the UNSC not only distinguished between aggressors and victims but named the perpetrators and stated that the intervention/combat brigade would not set a precedent case: The resolution strongly condemned M23, the Democratic Forces for the Liberation of Rwanda (FDLR), the Lord’s Resistance Army (LRA) *“and all other armed groups and their continuing violence and abuses of human rights”*. It empowered the new combat brigade with carrying out offensive operations, either unilaterally or jointly with the Congolese armed forces, “in a robust, highly mobile and versatile manner” to disrupt the activities of those groups. Echoing the warning that MONUSCO now risked indirect conversion into a peace-enforcement mission, Argentina’s representative expressed concern that although the idea of “enforcing peace rather than keeping it” still required deep reflection.²³

D Conclusion

For the time being, we may conclude that the final farewell to UN mission’s neutrality and impartiality on behalf of R2P principles, allowing even for offensive operations of the UN forces against irregular groups terrorizing the civilian population and de-stabilizing the entire state for a longer time, was again carried out on African ground. It proves – against arguments of

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See
<http://www.un.org/News/Press/docs/2013/sc10964.doc.htm>.

pessimists from various scholarly fields involved in the Humanitarian Intervention discourse – that R2P has emerged as a norm when political consensus allows for a SC resolution.

Ralph Janik^{*}

Putting Security Council Resolution 2098 on the Democratic Republic of Congo in Context: The Long Way of Peacekeeping

Abstract

This paper deals with the establishment of the so-called “Intervention Brigade” in the Democratic Republic of the Congo by Security Council Resolution 2098. In doing so, it outlines the history of Peacekeeping and how its fundamental principles – consent, impartiality and the restricted authorization to use force in self-defence only – have been re-interpreted along with the expansion of Peacekeeping mandates in order to show that the establishment of the Intervention Brigade is not as revolutionary as it seems at first. A closer inspection of how the Peacekeeping mission in the DRC evolved further supports this characterization since MONUSCO has operated on the basis of a “robust” mandate for long and thus has been involved in various military operations ever since. The specifically novelty of the Intervention Brigade is its explicitly “offensive” character, which

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Ralph R. A. Janik is research assistant and lecturer at the University of Vienna Faculty of Law. After obtaining his master's degrees in law and political science at the University of Vienna and the Universidad Alcala de Henares (Madrid), he has worked inter alia as a research assistant at the former's Section for International Law and International Relations as well as at the University of Amsterdam, where he also obtained his postgraduate LL.M. degree in international law. His PhD outlines a moral, political, and legal perspective on a primary right to secede in domestic and international law. His research focuses on the History and Theory of International Law, the use of force, and International Humanitarian Law. E-mail: ralph.janik@univie.ac.at.

challenges the traditional notions of Peacekeeping to a wide extent. The ultimate question, however, is whether this resolution is a mere exception or whether it constitutes a precedent for future Peacekeeping operations. Arguments in favour of both assumptions are presented, while it is clear that much will depend upon the success or failure of the Intervention Brigade in neutralizing the armed groups as envisaged by its mandate.

Keywords: Peacekeeping, Democratic Republic of the Congo, Impartiality, Neutrality, Use of Force, Civil Wars

Table of contents

A	Introduction	143
B	The Long Route of Peacekeeping until Resolution 2098	145
C	The Establishment and Evolution of MONUSCO	154
D	Assessing the Impact of Resolution 2098.....	161
1	Resolution 2098 as an Exception to the Rule.....	162
2	Resolution 2098 as a Precedent.....	170
E	Conclusion	180

A Introduction

On 28 March 2013, the SC, by passing resolution 2098, established an “Intervention Brigade”, “its first-ever ‘offensive’ combat force, intended to carry out targeted operations to ‘neutralize and disarm’ the notorious 23 March Movement (M23), as well as other Congolese rebels and foreign armed groups in strife-riven eastern Democratic Republic of Congo”.¹

This resolution marks the latest crucial step in the steady development of Peacekeeping and shows how far this concept has deviated from its original notion. The shift in focus away from inter-state towards intra-state armed conflicts some 20 years ago implied a process of constant overhaul which is far from being completed. To a

¹ SC Press Release, 2013, SC/10964 of 28 March 2013.

remarkable extent, its key features – consent, a restrictive authorization to use force in self-defence only, and impartiality – have been re-interpreted and detached from their original meaning over the years. The Brigade's explicitly offensive character and the wide-ranging authorization to use force make the distinction between Peacemaking, Peace-Enforcement and Peacekeeping increasingly fuzzier and calls their continuing applicability in explaining and putting in order the various sorts of action into question. Enough reasons to warrant special consideration and try to put this resolution in a broader context.

The ultimate question here is whether the establishment of the Intervention Brigade constitutes a mere exception owing to the special circumstances and without any implications for the concept of Peacekeeping and other UN operations or whether it might indeed have precedential value for future similar situations. Although the SC has firmly and explicitly rejected the latter, its very own case-by-case practice shows that words stated in one context have no meaning in another. Proceeding from this necessity not to take the resolution's text at face-value, numerous arguments can be put forward in support of both of these assessments.

This paper is divided into three parts. The first of these tries to put the resolution in the larger context of Peacekeeping in general and briefly outline the long route of Peacekeeping from a concept essentially related to inter-state conflicts into the primary measure applied by the UN in the various non-international armed conflicts taking place since the end of the Cold War. Here, due consideration is given to the Congo crisis and the 1960s as this lone exception of Cold War practice indicated the various challenges to Peacekeeping ever since the early 1990s.

The second part then shows that the Intervention Brigade did not come out of the blue but is the result of a long and steady process by giving a short overview on the recent history of the conflict in the DRC and how the SC continuously adapted the mandate of the Peacekeeping mission there.

The third part, then, gives an assessment of resolution 2098 and its impact on the future of Peacekeeping by presenting various arguments that speak for the characterization as an exceptional measure not likely to be repeated anytime soon, if at all, and equally some reasons why the establishment of the Intervention Brigade may ultimately and decisively change the face of Peacekeeping and the role of the UN in non-international armed conflicts of similar nature.

B The Long Route of Peacekeeping until Resolution 2098

In order to grasp the full extent of the significance of Resolution 2098, some pertinent historic, legal and political aspects of Peacekeeping shall be briefly outlined at this point. After all, it has gone a long and bumpy road that corresponds to the far-reaching changes in the structure of the international plane ever since its establishment during the Cold War. Here, it is said to have evolved partly

as a device to reduce the likelihood of war between Council members that were locked in a global struggle for political and ideological influence but were nonetheless anxious to avoid direct confrontation. As such, while Peacekeeping forces were themselves directly engaged in the mitigation

of local violence, their deployment also served as a great power instrument for managing relations and preventing war of a far more catastrophic kind.²

The very first UN Peacekeeping force as such³ which went beyond the early post-World War II practice of mere observation such as in the Balkan conflict 1946 to 1951 or Indonesia from 1947 to 1950 was UNEF I, established by the General Assembly during the Suez crisis.⁴ In the words of then Secretary General Dag Hammarskjöld, the situation there had shown “that a new approach and a new type of operation were required in order to facilitate compliance with the recommendations of the General Assembly relating to the armed interventions in Egypt”.⁵ UNEF I thus served as a means to secure and supervise the end of hostilities and the withdrawal of French, British and Israeli troops from Egyptian territory as well as to create a buffer zone between Israel and Egypt.⁶ In describing what was later often classified as a Chapter 6 ½ mission⁷ standing somewhat between a mere pacific settlement of disputes short of the use of force and enforcement action under Chapter VII, the Secretary

² Berdal, Mats, *The Security Council and Peacekeeping*, in: Lowe, Vaughan, Adam Roberts, Jennifer Welsh and Dominik Zaum (eds.), *The United Nations Security Council and War. The Evolution of Thought and Practice since 1945*, New York, 2008, 175-204, 176.

³ Bailey, Sydney and Sam Daws, *The Procedure of the Security Council*, 3rd ed., Oxford, 2003, 356.

⁴ General Assembly Resolution 1000 (ES-I)/RES/1000 (ES-I), of 5 December 1956.

⁵ Summary study of the experience derived from the establishment and operation of the force: Report of the Secretary-General, 9 October 1958, UN Doc. A/3943, at 9.

⁶ GA Resolution 1001 (ES-I) of 7 November 1956.

⁷ Berdal, 2008, 180.

General characterized UNEF I as “paramilitary in character” and

much more than an observer corps, but [...] in no sense a military force exercising, through force of arms, even temporary control over the territory in which it is stationed; nor does it have military objectives, or military functions exceeding those necessary to secure peaceful conditions on the assumption that the parties to the conflict will take all the necessary steps for compliance with the recommendations of the General Assembly.⁸

In the following decades, Peacekeeping remained within the realms of this original conception as a tool to be employed only in inter-state conflicts.⁹ Hammarskjöld himself had made it clear that UN presence on ground was restricted to intra-state conflicts because of the principle stipulated in the domestic jurisdiction clause of Article 2(7) UN Charter. Of particular interest for the present study is his explicit wording that UN personnel must not become involved as a party in non-international conflicts and its role had to be confined to the cross-border aspects of a given situation.¹⁰

The notable exception to this vigorous statement and the Peacekeeping practice of the Cold War period was the Congo crisis of the 1960s. As a reminder, the granting of Congolese independence was followed by a mutiny and the declaration of independence by the

⁸ Summary study, at 15.

⁹ Weller, Marc, *The Relativity of Humanitarian Neutrality and Impartiality*, *Proceedings of the American Society of International Law*, 91 (1997), 441-449, 446.

¹⁰ Summary Study, at 166.

province of Katanga, which in turn triggered the deployment of Belgian soldiers on Congolese territory, a clear violation of the Congo's newly-achieved sovereignty. One day later, the Congolese government appealed to the Secretary General requesting the "urgent dispatch by the United Nations of military assistance" as it refused "to accept a *fait accompli* resulting from a conspiracy between Belgian imperialists and a small group of Katanga leaders".¹¹ SC Resolution 143 (1960) then called upon Belgium to remove its troops and authorized the Secretary General to meet the request, leading to the creation of ONUC.¹² From today's perspective, especially with regard to Peacekeeping in the DRC, the case is particularly interesting for three reasons.¹³ Firstly, because it took place in a newly-independent country that was on the verge of becoming a "failed State". Secondly, the tasks of ONUC included substantial and hitherto unknown civilian elements, namely assisting the Congolese authorities in their efforts to maintain law and order and in providing basic public services.¹⁴ And lastly due to the fact that, when it became clear that the initial Peacekeeping operation¹⁵ – which was explicitly based on the UN troops impartiality – could not fulfil its tasks, the SC expressed its support for the central government, explicitly condemned

¹¹ Cable dated 12 July 1960 from the President of the Republic of the Congo and Supreme Commander of the National Army and the prime Minister and Minister of National Defence addressed to the Secretary-General of the United Nations, 13 July 1960, UN Doc. S/4382.

¹² SC Resolution 143, The Congo Question, UN Doc. S/4387 of 14 July 1960.

¹³ Goulding, Marrack, *The Evolution of United Nations Peacekeeping*, *International Affairs*, 69 (1993) 3, 451-464, 452-453.

¹⁴ SC Resolution 143.

¹⁵ SC Resolution 146, The Congo Question, UN Doc. S/4426 (1960) of 9 August 1960.

the secessionist and further authorized the Secretary General to take decisive action which may even amount to the use of force as necessary in order to apprehend, detain and expel foreign armed forces, be they mercenaries, military, or paramilitary in character as well as political advisers outside the realm of the UN and to furthermore ensure that these would not return.¹⁶ This constituted the first time that the SC was entangled in an internal conflict and could not escape the necessity to take sides and authorize the far-reaching use of force that went beyond self-defence.

This experience foreshadowed the challenges to the traditional notion of Peacekeeping posed during the missions in civil wars that took place from the early 1990s onwards. Freed from the constraints of the Cold War, the UN quickly began to shift its attention and resources towards non-international armed conflicts, the prevalent type of warfare. In 1993 for instance, 22 intra-state and only one inter-state armed conflict occurred,¹⁷ while the year 1994 saw 13 internal and not a single international armed conflict.¹⁸ In his *An Agenda for Peace Report*, then-Secretary General Boutros Boutros-Ghali thus firmly observed that “fierce new assertions of nationalism and sovereignty spring up, and the cohesion of States is

¹⁶ SC Resolution 169, The Congo Question, UN Doc. S/5002 (1961) of 24 November 1961. See also the earlier SC Resolution 161, The Congo Question, UN Doc. S/4741, of 21 February 1961, which already authorized the use of force as a last resort to prevent a civil war.

¹⁷ Heidelberg Institut für Konfliktforschung, *Konflikt Barometer 1993*. Available at http://www.hiik.de/de/konfliktbarometer/pdf/Konfliktbarometer_1993.pdf, 2 (30 May 2013).

¹⁸ Heidelberg Institut für Konfliktforschung, *Konflikt Barometer 1994*. Available at http://www.hiik.de/de/konfliktbarometer/pdf/Konfliktbarometer_1994.pdf 2 (30 May 2013).

threatened by brutal ethnic, religious, social, cultural or linguistic strife”.¹⁹ Nowhere was this more visible than in the widely-televised²⁰ conflict that broke out in Somalia after the violent overthrow of the government of Siad Barre.²¹

Embroiled in a chaotic situation marked by a deep and seemingly unbridgeable divide between the warring factions with no peace to keep, Somalia rendered the limits of traditional Peacekeeping more than obvious: first of all, nothing hampered the successful implementation of the mandate and to such an extent as the restrictive authorization to use force, i.e. in self-defence only.²² Hence, the SC decided, for the first time since the Congo crisis of the 1960s,²³ to apply the “all necessary means” formula in a non-international armed conflict. The reason behind this step was the necessity to protect relief organizations from attacks as well as ensure the safety of UN personnel and the delivery of humanitarian goods.²⁴

¹⁹ Boutros-Ghali, Boutros, *An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping*, UN Doc. A/47/277 - S/24111, 17 June 1992, at 11.

²⁰ Obviously, the civil war in Somalia was not the sole and probably not even the most violent internal conflict of the early 1990s; it was, however, the one that received the most attention by the media. See, e.g. Kennedy, Paul, *The Parliament of Man, The Past, Present, and Future of the United Nations*, New York, 2006, 233.

²¹ As will be shown below, the experiences from this conflict also contributed significantly to the SC’s behaviour in the DRC.

²² Philipp, Christiane E., *Somalia – A Very Special Case*, *Max Planck Yearbook of United Nations Law*, 9 (2005), 517-554, 530.

²³ Ahmed, Kawser, *The Domestic Jurisdiction Clause in the United Nations Charter: A Historical Overview*, *Singapore Year Book of International Law*, 10 (2006), 175-197, 190-191; see also Berdal, 2008, 182-184.

²⁴ SC Resolution 794, *Somalia*, A/RES/794 of 3 December 1992 and SC Resolution 814, *Somalia*, S/RES/814 of 26 March

This had serious ramifications since, given that this assignment included establishing and maintaining law and order, strict impartiality became impossible to uphold.²⁵ In the words of one commentator at that time, the notion of impartiality as understood until then was “a destructive misconception when carried over to the messier realm of ‘peace enforcement’, where the belligerents have yet to decide that they have nothing more to gain by fighting”. Here, impartiality had to be replaced by taking action in favour of one of the parties involved, the rationale being that a “[l]imited intervention may end a war if the intervenor takes sides, tilts the local balance of power, and helps one of the rivals to win – that is, if it is not impartial”.²⁶

Also, the absence of any invitation by a central authority²⁷ questioned the notion of consent at its very core – after all, who was to agree upon the employment or changes in the mandate amidst the dynamic changes of a non-international armed conflict among various actors out of which none could be seen as speaking for the state? And would arbitrarily selecting one or several groups as authorized to grant its/their consent not in turn put the notion of strict impartiality under duress?

It took the UN until the turn of the century to finally address the challenges posed by Somalia and other failed Peacekeeping operations such as in Rwanda and in

1993; SC Resolution 837, Somalia, S/RES/837 of 6 June 1993.

²⁵ Thakur, Ramesh, From Peacekeeping to Peace Enforcement: The UN Operation in Somalia, *The Journal of Modern African Studies*, 32 (1994) 387-410, at 398-399.

²⁶ Betts, Richard K., The Delusion of Impartial Intervention, *Foreign Affairs*, 73 (1994) 6, 20-33, 20-21.

²⁷ Roberts, A., Humanitarian War: Military Intervention and Human Rights, (1993) 69, *International Affairs*, 429-449, 440.

particular the former Yugoslavia²⁸ in a comprehensive and persuasive manner in the famous Brahimi Report. First of all, strict impartiality (or neutrality) in Peacekeeping as mentioned above was declared dead at the UN level,²⁹ while impartiality was (re-)interpreted as:

[The] adherence to the principles of the Charter and to the objectives of a mandate that is rooted in those Charter principles. Such impartiality is not the same as neutrality or equal treatment of all parties in all cases for all time, which can amount to a policy of appeasement. In some cases, local parties consist not of moral equals but of obvious aggressors and victims, and peacekeepers may not only be operationally justified in using force but morally compelled to do so.³⁰

In 2004, the equally famous High-Level Panel Report on Threats, Challenges and Change further elaborated on these findings and criticised the commonly upheld distinction between Peacekeeping missions – and Peace-enforcement (characterized by coercion and

²⁸ Bothe, 2012, 1178-1179; see also Gray, Christine, Peacekeeping after the Brahimi Report: Is there a Crisis of Credibility for the UN?, *Journal of Conflict and Security Law*, 6 (2001) 2, 267-288, 271-273.

²⁹ Wrangé, Pål, Neutrality, Impartiality and Our Responsibility to Uphold International Law, in: Engdahl, Ola and Pål Wrangé (eds.), *Law at War – The Law as it was and the Law as it Should Be*, Liber Amicorum Ove Bring, Leiden, 2008, 273-292, at 279 and the sources quoted therein; see also Tsagourias, Nicholas, Consent, Neutrality/Impartiality and the Use of Force in Peacekeeping: Their Constitutional Dimension, *Conflict and Security Law*, 11 (2006) 3, 465-482, 478-481.

³⁰ Brahimi Report, 2000, 50.

providing for a far-reaching use of force) for being somewhat “misleading”.³¹ This report argues that rather, one had to distinguish

between operations in which the robust use of force is integral to the mission from the outset (e.g., responses to cross-border invasions or an explosion of violence, in which the recent practice has been to mandate multinational forces) and operations in which there is a reasonable expectation that force may not be needed at all (e.g., traditional peacekeeping missions monitoring and verifying a ceasefire or those assisting in implementing peace agreements, where blue helmets are still the norm).³²

At the same time, the report further stressed that nowadays both of these operations usually operate on the basis of a Chapter VII so as to eliminate any doubts regarding the permissibility to use force as may be necessary to deal with recalcitrant warring parties.³³

On this basis, the Panel identified the necessity for “(a) an appropriate, clear and well understood mandate, applicable to all the changing circumstances that might reasonably be envisaged, and (b) all the necessary resources to implement that mandate fully”,³⁴ as the real challenges to any UN mission.

As it will be shown in the next Section, the SC adhered to the re-conceptualization of impartiality as

³¹ A more secure world: our shared responsibility, Report of the High-level Panel on Threats, Challenges and Change, 2 December 2004, UN Doc. A/59/565, at 211-212.

³² *Ibid.*, at 212.

³³ *Ibid.*, at 213.

³⁴ *Ibid.*, at 214.

outlined in the Brahimi and the High Level Panel Reports' findings on the requirement to formulate a robust mandate ever since the establishment of MONUSCO/MONUC. In essence, and as will be discussed, it might well be for this very adherence to the principles prescribed by these two milestone UN reports that the UN was ready to go as far as it did in resolution 2098.

C The Establishment and Evolution of MONUSCO

In July 1999, the DRC and the six states involved in the Republic of Congo Civil War that had started in the middle of 1997, signed the Lusaka ceasefire agreement.³⁵ MONUSCO was then established by the SC in November 1999 as MONUC because the agreement failed to bring an end to the war as the main rebel group, the RCD, abstained from signing as it had split into two fractions, both claiming the exclusive right to give its signature, thereby delaying the agreements successful implementation.³⁶

MONUC's mandate initially included mere observatory and assistance-related tasks short of the use of force and the SC initially refrained from mentioning any Chapter or the notion of a threat to international peace and security.³⁷

³⁵ SC Resolution 1279 (1999), Democratic Republic of the Congo, UN Doc. S/RES/1279 (1999) of 30 November 1999.

³⁶ International Crisis Group, *The Agreement on a Cease-Fire in the Democratic Republic of Congo: An Analysis of the Agreement and Prospects for Peace*, Democratic Republic of Congo Report No. 5, 20 August 1999, i.

³⁷ SC Resolution 1279 (1999), The Democratic Republic of the Congo, UN Doc. S/RES/1279 (1999) of 30 November 1999, at 5.

Starting with Resolution 1291, passed in February 2000,³⁸ the SC then constantly qualified the situation in Congo as a threat to international peace and security. In addition, it also maintained the usage of the magic *all necessary means/action/measures* formula – which had, as shown above, been usually rather associated with SC mandates given to states in peace-enforcement missions for a considerable amount of time (at least until the High Level Panel Report)³⁹ – by authorizing MONUC to use force as necessary to protect UN and JMC [the Joint Military Commission which is composed by the warring parties and established by Lukasa Ceasefire Agreement with the task to investigate ceasefire violations, to work out mechanisms to disarm the identified militias, and monitor the withdrawal of warring groups]⁴⁰ personnel [...] and as well as civilians from imminent threats of attacks.⁴¹ Putting words into deeds, this Resolution also expanded MONUC's military strength.

The situation in the DRC nevertheless remained troublesome. A December 2000 Report of the ICG emphasized that Zimbabwe had been drawn into the war as a result of the DRC's president refusal to accept the deployment of MONUC and described the overall situation in fierce terms. In particular, it also viewed the Lukasa Ceasefire Agreement as "hollow" as the fighting continued while the parties were locked in their positions and not having led to an end of the hostilities. Instead, it had merely produced a standstill among the warring factions.

³⁸ SC Resolution 1291, Democratic Republic of the Congo, UN Doc. S/RES/1291 (2000) of 24 February 2000.

³⁹ Bothe, 2012, 1179.

⁴⁰ Congo Democratic Republic Foreign Policy and Government Guide 20 August 1999 (International Business Publications, 2011), 93. See also the Lukasa Ceasefire Agreement, UN Doc. S/1999/815, at 11 (b).

⁴¹ SC Resolution 1291 (2000), at 7 and 8.

The ongoing conduct of hostilities thus prevented the UN observers from their Peacekeeping tasks, i.e. monitoring the disengagement of the outside forces. In addition, peace talks between the Congolese armed groups, emphatically expected at first, were described as appearing “stillborn”. On this basis, the ICG observed the beginning fragmentation of the DRC and a threat to its territorial integrity, with possible substantial ramifications for the stability of its nine neighbouring states. At the same time, a humanitarian catastrophe had begun to spread all over the country. In this situation, the numbers of victims was estimated to be hundreds of thousands, while about two million people had been displaced. As a result of the violence, ‘ethnic militarism’ was thriving; Eastern Congo in particular was described as having “already been transformed into a patchwork of warlords” fiefdoms.⁴²

Two years later, in May 2003, the SC authorized a timely-restricted French-led intervention to encounter the genocidal violence in the north eastern Ituri district.⁴³ Afterwards, however, the entire eastern Congo region, aside from Ituri first and foremost the northern and southern Kivu provinces, continued to be haunted by hostilities even after the progress in the formation of the Transitional Government.⁴⁴ The SC reacted with general provisions on the protection of civilians and humanitarian and UN personnel and the establishment of a security as already known from Somalia by additionally authorizing

⁴² International Crisis Group, Scramble for the Congo. Anatomy of an Ugly War, 20 December 2000, ICG Africa Report No. 26, iii-iv.

⁴³ SC Resolution 1484 (2003), Democratic Republic of the Congo, UN DOC. S/RES/1484 (2003) of 30 May 2003.

⁴⁴ Fourteenth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of Congo, 17 November 2003, UN Doc. S/2003/1098, at 2 et seq.

MONUC to assist the government in its disarmament and demobilization efforts and requesting the Secretary General to deploy 'the tactical brigade-size force' in Ituri with the task of assisting in establishing and maintaining a secure and stable environment, enhancing the humanitarian situation, defending airfields as well as refugee camps and, "if the circumstances warrant it", assisting in the protection of civilians and the staff of the UN and other humanitarian agencies.⁴⁵

These tasks and the mandate to actively participate in the disarmament efforts were subsequently extended to assisting in the preparation of elections. It was also further specified by references to the threat caused by particular groups and/or the situation in certain regions, while the limiting "if the circumstances warrant it" clause was no longer applied.⁴⁶ In essence, these resolutions, which started with Resolution 1565 (2004), set up a "comprehensive and multi-dimensional peace enforcement mission including both peace enforcement and peacebuilding",⁴⁷ just like the Brahimi Report prescribed.

In 2008, the line between Peacekeeping and peace-enforcement became even more blurred when the resurgence of hostilities between government forces and Rwandan Hutu militias, as well as loyalists to dissident

⁴⁵ Resolution 1493 (2003), Democratic Republic of the Congo, UN Doc. S/RES/1493 (2003) of 28 July 2003, at 17 [own emphasis].

⁴⁶ See SC Resolution 1565 (2004) Democratic Republic of the Congo, UN Doc. S/RES/1565 (29949 of 1 October 2004; SC Resolution 1592 (2005), Democratic Republic of the Congo, UN Doc. S/RES/1592 (2005) of 30 March 2005.

⁴⁷ Breau, Susan C., *The Impact of the Responsibility to Protect on Peacekeeping*, *Journal of Conflict & Security Law*, 11 (2006) 3, 429-464, at 448.

general Laurent Nkunda,⁴⁸ triggered resolution 1856, which went as far as authorizing MONUC:

To deter any attempt at the use of force to threaten the [peace process] from any armed group [...] including by using cordon and search tactics and undertaking all necessary operations to prevent attacks on civilians and disrupt the military capability of illegal armed groups that continue to use violence in that area.⁴⁹

In January 2009, then, Nkunda was arrested and Bosco Ntaganda took his place in the FARDC, notwithstanding the fact that an ICC arrest warrant for him existed since 2006. However, it might well be that this latest expansion of the mandate had gone too far in asserting an active role for international forces and thus questioning the capabilities of the government of the DRC since, later that year, president Kabila was eager to remove any signs of international tutelage and publicly announced his intent to see the withdrawal of MONUC by summer 2011.⁵⁰

Resolution 1925 from May 2010 then renamed the UN mission in DRC to MONUSCO in order to emphasize that the peace process had taken a significant step forward.⁵¹ Its mandate was also more confined, namely upholding the importance to protect civilians and

⁴⁸ BBC News Africa, Democratic Republic of Congo profile. Available at <http://www.bbc.co.uk/news/world-africa-13286306> (30 May 2013).

⁴⁹ SC Resolution 1856 (2008), Democratic Republic of the Congo, UN Doc. S/RES/1856 (2008) of 22 December 2008, at 3(f).

⁵⁰ International Crisis Group, Congo: A Stalled Democratic Agenda, Africa Briefing No. 738, April 2010, 17.

⁵¹ SC Resolution 1925 (2010), Democratic Republic of the Congo, UN Doc. S/RES/1925 (2010) of 28 May 2010, at 1.

contribute to the consolidation of the situation by *inter alia* supporting the police-reform or the organization of elections.⁵²

However, Kivu remained the centre of gross human rights violations, above all the intensely discussed occurrence of mass rape,⁵³ during clashes between the Congolese army and Rwandan armed bands,⁵⁴ above all the FDLR.

At the same time Rwandan, Ugandan, and Burundi interference increased due to the involvement of fighters from these countries. The ICG noted that the quick incorporation of former rebels, some of them suspected war criminals, into the forces of the DRC and their part in the military operations that followed contributed only little in resolving the conflict in eastern Congo. Furthermore, the SC's decision to cancel any support given to brigades of the Congolese armed forces that had acted in violation of international human rights, humanitarian, and refugee law⁵⁵ had no effect. Finally, the credibility of MONUSCO suffered from the failures to protect the civilians affected by the hostilities.⁵⁶

⁵² Ibid., at 12.

⁵³ Final Report of the Fact-Finding Missions of the United Nations Joint Human Rights Office into the mass Rapes and other Human Rights Violations Committed by a Coalition of Armed Groups along the Kibua-Mpofi Axis in Walikale Territory, North Kivu from 30 July to 2 August 2010. Available at http://www.ohchr.org/Documents/Countries/ZR/BCNUDHRReportViolsMassifsKibuaMpofi_en.pdf (30 May 2013).

⁵⁴ International Crisis Group, Congo: No Stability in Kivu despite Rapprochement with Rwanda, Africa Report No. 16516, November 2010.

⁵⁵ SC Resolution 1906 (2009); Democratic Republic of the Congo, UN DOC. S/RES/1906 (2009) of 23 December 2009.

⁵⁶ Africa Report No. 16516 (2010), ii.

Due to the increasing international pressure, the government, after having refused to do so for three consecutive years, finally ordered Ntaganda to be arrested. This led to his attempted mutiny in April 2012 and the formation of the M 23 rebel movement, as well as the re-inflammation of the conflict in the Kivus, with Rwanda remaining heavily involved, in particular by supporting M23.⁵⁷ The fighting in the Kivu region escalated in the following months and by September 2012, M 23 established control over the east.⁵⁸ After having defeated the FLDR and MONUSCO, the movement even took the regional capital Goma, from where they eventually withdrew by December 2012 upon international condemnation and the prospect of peace talks.⁵⁹ Other armed groups also stepped up their military efforts all over the province, thereby additionally contributing to the overall volatile situation.⁶⁰

Amid this deteriorating situation, the international community, after having dealt with the conflict for more than a decade, constantly became ever more ready to take significant steps.

At the end of March 2013, the SC thus noted that:

Eastern DRC has continued to suffer from recurring cycles of conflict and persistent violence [...] when it passed Resolution 2098. This resolution established the

⁵⁷ International Crisis Group, Eastern Congo: Why Stabilisation Failed, Africa Briefing No. 9, 14 October 2012, 9-10.

⁵⁸ See http://www.hrw.org/sites/default/files/related_material/DRC-AreaControlRebels-7Sept2012ENfinal_0.pdf (28 August 2013).

⁵⁹ Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, 15 February 2013, UN Doc. S/2013/96, at 7-11.

⁶⁰ *Ibid.*, at 14-19.

'Intervention Brigade', charged with the task to neutralize 'armed groups' [...] and the objective of contributing to reducing the threat posed by armed groups state authority and civilian security in eastern DRC and to make space for stabilization activities.⁶¹

This represented a remarkable step not only in connection with the situation in the DRC but for the concept of Peacekeeping as whole as it constitutes the "first-ever 'offensive' combat force"⁶² in the history of Peacekeeping and signifies the remarkable development this concept has undergone ever since its inception. Far from being confined to a specific mandate related to humanitarian tasks, Peacekeeping forces are tasked to act in a manner hitherto only known from states or military alignments in peace-enforcement missions. The next section will thus try to bring the significant step taken in resolution 2098 into a broader context.

D Assessing the Impact of Resolution 2098

One may ask whether resolution 2098 and the establishment of the Intervention Brigade constitutes yet another step in the evolution of Peacekeeping in contemporary armed conflicts or whether, due to the specific characteristics of the conflict in the DRC, it constitutes an exceptional measure that is unlikely to be repeated in different situations. While the SC itself has tried to make matters clear by explicitly referring to the special circumstances in the DRC, this formulation might very well be a mere result from the diplomatic bickering

⁶¹ SC Resolution 2098 (2013), at 9.

⁶² SC Press Release, 28 March 2013, SC/10964.

over the choice of words that takes place whenever the SC takes a controversial measure that departs from well-established practice. Thus, an inquiry into the nature and precedential value must certainly start, but definitely not stop at the SC's very own words and intents.

1 Resolution 2098 as an Exception to the Rule

The SC resolution itself speaks of “an exceptional basis” and emphasizes the clear intent to abstain from “creating a precedent or any prejudice to the agreed principles of peacekeeping”.⁶³ Several members used their statements to highlight the importance of these passages as affirming that the resolution would not touch upon the fundamental principles of neutrality and impartiality and/or the fact that the resolution constitutes a response to the request issued by the DRC.⁶⁴

The reasons for this keen interest in rejecting any precedential value are manifold. Although the resolution was passed unanimously, not all SC member states were free of doubts and anxiety regarding its implications. In a way, the concerns advanced in connection with the vote upon the resolution are similar to many issues that are present ever since Peacekeeping has been mixed with Peace-Enforcement.

First of all, several SC member states, among these those that are also troop-contributors in the DRC (Guatemala, Morocco and Pakistan), worried about the

⁶³ SC Resolution 2098 (2013), Democratic Republic of the Congo, UN Doc. S/RES/2098 (2013) of 28 March 2013, at 9.

⁶⁴ SC Meeting 6943 (2013), UN Doc. S/PV.6943 of 28 March 2013, statements by Mr. Rosenthal (Guatemala), 4; Mrs. Perceval (Argentina), 5-6; Mr. Masood Khan (Pakistan), 7; Mr. Loulichki (Morocco), 7-8; Mr. Li Baodong (China), 8; Mr. Churkin (Russian Federation), 10.

Intervention Brigade's possible negative impact on the already endangered security of both the military as well as the military components of MONUSCO.⁶⁵

Such concerns are obviously reasonable and further supported by the recent history of Peacekeeping. The repercussions of outside actors resorting to a substantial use of force upon the safety of other foreign/international elements and their image among the population had already been clear in Somalia⁶⁶ and were addressed by Boutros Boutros-Ghali in his Supplement to an Agenda for Peace-Report.⁶⁷

With regard to the situation in the DRC in particular, the lives of Peacekeepers there had already been in great danger well before the instalment of the Intervention Brigade.⁶⁸ As the discussion on the establishment and evolution of MONUSCO has shown, MONUSCO has been conducting military operations on the side of FARDC for

⁶⁵ SC Meeting 6943 (2013), UN Doc. S/PV.6943 of 28 March 2013, statements by Mr. Rosenthal (Guatemala), at 4; Mr. Masood Khan (Pakistan), at 7; see also the statements by Mr. Gasana (Rwanda), 3 Mr. Churkin (Russia), 10.

⁶⁶ See Thakur, 1994, 399.

⁶⁷ Supplement to an Agenda for Peace: Position Paper of the Secretary General on the Occasion of the Fiftieth Anniversary of the United Nations, UN Docs. A/50/60 and S/1995/1, 25 January 1995, at 35. See also Morphet, Sally, UN Peacekeeping and Election-Monitoring, in: Roberts, Adam and Benedict Kingsbury (eds.), *United Nations, Divided World*, Oxford, 1996, 183-239, 235.

⁶⁸ See, e.g., the statement by Mr. Rosenthal (Guatemala), SC Meeting 6943 (2013), 4, who refers to eight Guatemalan Peacekeepers killed in the DRC in 2005. See also the Fourteenth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic Of the Congo, UN Doc. S/2003/1098 of 17 November 2003, at 5; Fifteenth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, UN Doc. S/2004/251, 25 March 2004, at 37.

long, an alliance that may be described as a sword that cuts both ways since it has not only negative effects upon its perception among the various rebel groups but also the civilian population. One must not forget that, as indicated e.g. by the ultimate failure of the international community's focus on holding elections, seemingly hailed by the UN as the panacea for lasting peace,⁶⁹ the government itself enjoys only questionable legitimacy.⁷⁰ In this regard, one must also not get forget that it is far from exercising its authority throughout the country.⁷¹ Furthermore, the extensive human rights abuses committed by FARDC units, above all the killings of civilians,⁷² certainly do not improve the government's standing. Lastly, MONUSCO has not only failed to protect the civilian population from gross human rights abuses⁷³ but committed serious errors itself, as operations conducted by FARDC along with MONUSCO often led to large numbers of civilian

⁶⁹ Autesserre, Séverine, *Hobbes and the Congo: Frames, Local Violence, and International Intervention*, *International Organization*, 63 (2009) 2, 249-280.

⁷⁰ On the lack of legitimacy of the government and the generally low level of identification with the DRC but also the causes for the conflict in the DRC in general, see e.g. Atzili, Boaz, *When Good Fences Make Bad Neighbours: Fixed Borders, State Weakness, and International Conflict*, *International Security*, 31 (2007), 139-173, 156-171.

⁷¹ For an excellent assessment of the relationship between legitimacy and the exercise of effective control throughout the country see Jackson, Robert H., *Juridical Statehood in Sub-Saharan Africa*, *Journal of International Affairs*, 46 (1992) 1-16.

⁷² See, e.g., the Thirtieth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of Congo, UN Doc. S/2009/623, 4 December 2009, at 2.

⁷³ See already note 41 and the accompanying text above.

casualties.⁷⁴ All things considered, it is thus safe to say that MONUSCO is far from enjoying the full support of the civil population is also questionable.

Secondly, the very same states (joined by Argentina) voiced their concerns over the consequences of peace-enforcement elements within a Peacekeeping mission on the notion of impartiality in general and with regard to the situation in the DRC in particular, thus emphasizing the pressing need to distinguish between the MONUSCO's task in protecting the civilian population and the offensive mandate of the Intervention Brigade.⁷⁵ Most precisely, the representative of Guatemala referred to the impacts on the perception of the UN's role as a mediator in internal conflicts.⁷⁶

Again, these valid concerns have also existed ever since the fuzziness between the concepts of Peacekeeping and Peace-enforcement during the 1990s has put the image of the UN under severe duress.⁷⁷

It goes without saying that they obviously not only apply to 'regular' peace-enforcement operations undertaken by the UN member states themselves,⁷⁸ but even more to the disintegration of impartiality caused by far-reaching authorizations to use force within Peacekeeping missions.

⁷⁴ See, e.g., the Thirtieth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of Congo, at 2.

⁷⁵ SC Meeting 6943 (2013), see the statements by Mr. Gasana (Rwanda), 3, Mr. Rosenthal (Guatemala), 4, Mrs. Perceval (Argentina), 5, Mr. Masood Khan (Pakistan), 7 and Mr. Churkin (Russian Federation), 10.

⁷⁶ SC Meeting 6943 (2013), see the statements by Mr. Rosenthal (Guatemala), 4.

⁷⁷ Morphet, Sally, UN Peacekeeping and Election-Monitoring, in: Roberts, Adam and Benedict Kingsbury (eds.) *United Nations, Divided World*, Oxford, 1996, 183-239, 235.

⁷⁸ Bothe, 2012, 1179.

As Ramesh Thakur's rightfully observed with regard to the effects of 'robust' Peacekeeping mandates

[i]mpartiality becomes progressively harder to sustain with increasing use of force, for then the UN becomes a stake in the power struggle concerned. Perceptions of partial use of force erode the UN's authority and diminish the organisation's capacity to play a distinctive role in world affairs. The use of force at the behest of a UN majority is risky because majorities re-form as interests shift, and the number of minorities whose support has been lost could add up to constitute a majority. Besides, today's majority may be tomorrow's minority.⁷⁹

Peacekeeping, it must be repeated once more, has evolved exactly as a middle way between doing nothing and enforcement under Chapter VII, which usually proved impossible due to the deadlock in the SC.⁸⁰ Even although cooperation in the SC has indeed reached new heights, there are often still serious difficulties in reaching consensus – accounting for the concept's relevance until this very day.⁸¹ Weakening the 'bedrock principles' and shifting the balance towards enforcement could, at least those that are under dire pressure to defend their

⁷⁹ Thakur, Ramesh, *The United Nations, Peace and Security* (CUP, 2006), 36-37.

⁸⁰ Bothe, 2012, 1175.

⁸¹ The war in Syria is a recent example; notwithstanding the conflicting interests of the permanent members and three double vetoes by Russia and China, the SC was nevertheless able to agree upon a Supervision Mission (UNSMIS), albeit one with highly restricted tasks. See SC Resolution 2043 (2012), S/RES/2043 (2012), Middle East of 21 April 2012.

decisions in front of their respective populations, prevent governments from contributing soldiers.⁸² And, at least in theory, troops from countries having a government that is responsible to its population are of invaluable importance for successful Peacekeeping missions in light of the well-documented problem of Peacekeepers turning into human rights-violators themselves (at the same time, the country of origin does certainly not give a guarantee for good behaviour!).⁸³

In sum, there are more than enough grounds to be worried, not only about the Peacekeeping mission in the DRC but about the future of Peacekeeping as such. A failure of the Intervention Brigade, and/or a significant increase in attacks on the “regular” Peacekeeping forces or other UN personnel, could definitely prevent similar mandates in the immediate future. And even if the Brigade ultimately succeeds, for instance by managing to assist in establishing a sufficient degree of stability and peace within a reasonable period, the dangers inherent in such an undertaking will always require extremely exceptional circumstances in the case at hand and a rare combination of political factors to induce other states, especially those contributing troops, to take such risks.

Apart from the factors contributing to the interest to highlight the non-precedential character of the resolution,

⁸² See the statement by Mr. Rosenthal (Guatemala), SC Meeting 6943 (2013), 4.

⁸³ See, e.g. Mendelson, Sarah E., Barracks and Brothels. Peacekeepers and Human Trafficking in the Balkans, Center for Strategic and International Studies Report, 2005. Available at http://csis.org/files/media/csis/pubs/0502_barracksbrothels.pdf (10 September 2013), or Shore, Justin, The UN’s Struggle to Protect Human Rights during Peacekeeping Operations, 22 January 2010. Available at <http://hrbrief.org/2010/01/the-un%E2%80%99s-struggle-to-protect-human-rights-during-peacekeeping-operations/> (15 September 2013).

it needs to be asked whether the situation itself was of extraordinary character. For, if the situation is indeed one of a kind, it may well be expected that future operations similar to the instalment of the Intervention Brigade are highly unlikely to occur. Interestingly, while some SC delegates referred to the catastrophic humanitarian situation, the mass atrocities against civilians, the DRC's territorial integrity or the need to establish peace, none of the statements during the debate in the SC refer to such a special character.

Be as it may, it might still be argued that the situation in the DRC is sufficiently distinct to prevent measures taken in this context from being copied elsewhere. From an institutional perspective, the DRC enjoys a unique status in the eyes of Western diplomats in the broader framework of current Peacekeeping missions. For example, the Brahimi Report explicitly had the mission in the DRC in mind when it stated that:

[T]he key conditions for the success of future complex operations are political support, rapid deployment with a robust force posture and a sound peace-building strategy. Every recommendation in the present report is meant, in one way or another, to help ensure that these three conditions are met. The need for change has been rendered even more urgent [...] by the daunting prospect of expanded United Nations operations in the Democratic Republic of the Congo.⁸⁴

This explains why MONUSC/MONUSCO constitutes the largest and also most expensive

⁸⁴ Brahimi Report, 2000, 4.

Peacekeeping mission.⁸⁵ Apart from the availability of sufficient funding, the second requirement set out in the 2004 High-Level Panel Report, a robust mandate, has also been present long before the establishment of the Intervention Brigade.⁸⁶ Against this background, one may go as far as qualifying MONUC/MONUSCO as a 'test case' for Peacekeeping, with no excuses in case of a failure to lead to a successful end of hostilities. It follows that such an outcome would strike Peacekeeping at its very core,⁸⁷ at least in its newer multidimensional form, i.e. Peacekeeping combined with comparatively far-reaching peace-enforcement mandates.⁸⁸

Another reason for the exceptionality of the situation and the low probability of similar resolutions may be psychological. As the theory of sunken costs has shown, individuals may often hopelessly cling on an economic undertaking which no outsider would invest in. This so because when calculating possible losses, we do not only possible future but also past losses into account, despite the fact that these can no longer be recovered.⁸⁹ States may be just as prone to loss aversion as individuals and thus willing to keep investing heavily in order to

⁸⁵ Peacekeeping Fact Sheet. Available at <http://www.un.org/en/peacekeeping/resources/statistics/factsheet.shtml> (30 May 2013); while the African Union-United Nations Hybrid Operation in Darfur (UNAMID) is larger, it is not run by the UN alone but jointly with the African Union.

⁸⁶ Breau, 2006, 448.

⁸⁷ Autesserre, 2009, 257 and 266.

⁸⁸ For a description of this type of Peacekeeping, see Conforti, Benedetto and Carlo Focarelli, *The Law and Practice of the United Nations*, Leiden, 2010, 265-266; Urquhart, Brian, *The UN and International Security after the Cold War*, in: Roberts, Adam and Benedict Kingsbury (eds.), *United Nations, Divided World*, New York, 1996, 81-103, 93-94.

⁸⁹ On this point, see e.g. Arkes, Hal R. and Catherine Blumer, *The Psychology of Sunk Cost, Organizational Behaviour and Human Decision Processes*, 35 (1985), 124-140.

prevent their past efforts from having been useless. In this sense, the longer the situation in the DRC keeps on dragging, the more willing states may become to take steps they would otherwise not even think of.

Closely connected to the DRC's importance for the Peacekeeping is the last factor contributing to the specialty of the situation, the DRC's regional significance. Located in Central Africa and the continent's largest country, it neighbours nine countries which are, to varying degrees, troubled by regional, ethnic, and religious conflicts themselves. Already the Second Congo War has made it clear that as destabilized DRC affects the entire region. As one observer has put it bluntly: "Peace on the African continent cannot become a reality until there is peace in the DRC."⁹⁰

Be as it may, the clear wording of the SC Res, the concerns of the SC member states as well as the peculiarities of the situation in the DRC do not tell the whole story. The DRC shares significant characteristics with other contemporary and conflicts and could thus indeed set a precedent, at least as long as the Intervention Brigade does not end in a disaster. The factors contributing to this assessment will be discussed in the next section.

2 Resolution 2098 as a Precedent

Regardless of the clear wording of SC Res 2098 and the statements of its member states, the history of SC

⁹⁰ Huéhenno, Jean-Marie, On the Challenges and Achievements of Reforming UN Peace Operations, *International Peacekeeping*, 9 (2002) 2, 69-80, 78. See also Dowden, Richard, *Africa. Altered States, Ordinary Miracles*, London, 2009, 364.

resolutions emphasizing the “exceptional” circumstances of a given situation and the preclusion of any precedential character may be seen as indicating that such formulations are rather chosen to calm particular concerns and fears in a case at hand than as an effective tool intended to prevent similar measures in the future. From a strictly legal perspective, the SC is more or less free in determining whether a situation constitutes a threat to peace and taking the measures it deems necessary⁹¹ and certainly not prevented from acting contrary to previous resolutions or past intentions. Its initial reluctance to characterise internal armed conflicts or domestic human rights abuses committed by a government against its own people as falling under Chapter VII is a case in point.

As a reminder, the starting point for this practice was resolution 688 from 1991 which dealt with the situation of the civilian population in Iraq, in particular that of the Kurds. Yet, the SC refrained from expressly and directly qualifying the repression of the Kurds as such as a threat to international peace and security. Instead, it referred to the consequences of these acts, namely the cross-border impacts caused by the massive influx of refugees to other countries. Also, the SC mentioned the importance of the domestic jurisdiction clause contained in Article 2(7) UN-Charter.⁹² This cautious approach was chosen to mitigate Russian and Chinese fears that a direct qualification of the human rights abuses against the Kurds could compose a precedence according to which humanitarian catastrophes, in particular during civil wars,

⁹¹ Of the vast literature on this point, see e.g. Gill, Terry D., Legal and some political limitations on the power of the UN Security Council to exercise its enforcement powers under Chapter VII of the Charter, *Netherlands Yearbook of International Law*, 26 (1995), 33-138.

⁹² SC Resolution 688 (1991), Iraq, UN Doc. S/RES/688 (1991) of 5 April 1991.

would automatically have to be qualified as threats to peace.⁹³ Initially at least, the French claim to re-evaluate the principle of non-intervention so as to accurately respond to crisis like the one at hand in similar future situations thus had to take a step back.⁹⁴ In this sense, and similar to the situation in the DRC, the manner in which the international community dealt with the Kurdish crisis could be viewed as an exception caused by the Iraq situation as a whole, in particular when considering the fact that Western leaders had called upon the civilian population to overthrow Saddam Hussein's regime, and not as having resulted from a duty to deal with all situations of human rights abuses under the realm of threats to international peace and security.⁹⁵

These ambitions and early assessments notwithstanding, the resolution had a tremendous impact as it showed that "principles relating to state sovereignty and domestic jurisdiction [had] lost their privileged status, particularly when they conflict with the protection of fundamental human rights", thereby "evidencing a dramatic departure from the view that severe human rights violations are matters of internal concern, shielded from Security Council jurisdiction".⁹⁶ In the same vein, then-UN Secretary-General Pérez de Cuéllar stated that the case for sovereignty:

⁹³ Zangl, Bernhard and Michael Zürn, *Frieden und Krieg*, Frankfurt am Main, 2003, 225-226.

⁹⁴ Semb, Anne J., *The New Practice of UN-Authorized Interventions: A Slippery Slope of Forcible Interference?*, *Journal of Peace Research*, 37 (2000), 469-488, 473.

⁹⁵ Mayall, James, *Non-Intervention, Self-Determination and the 'New World Order'*, *International Affairs*, 67 (1991) 3, 421-429, 427-428.

⁹⁶ Gallant, Judy A., *Humanitarian Intervention and Security Council Resolution 688: A Reappraisal in Light of a Changing World Order*, *American University International Law Review*, 7 (1992), 881-920, 883-884 and 919.

Would only be weakened if it were to carry the implication that sovereignty, even in this day and age, includes the right of mass slaughter or of launching systematic campaigns of decimation or forced exodus of civilian populations in the name of controlling civil strife or insurrection.⁹⁷

In accordance with these findings, subsequent SC practice showed the limited importance of earlier attempts to reduce any precedential value. After resolution 688, the SC dropped the references to the consequences of human rights violations on third states and found no hurdle to *explicitly* and *directly* qualifying e.g. the civil wars in Liberia⁹⁸ and Somalia,⁹⁹ as well as the situations in Rwanda¹⁰⁰ or Haiti¹⁰¹ as threats to international peace without mentioning the domestic jurisdiction clause at all. This continuous practice that has been confirmed *inter alia* by the Brahimi Report as outlined above and also in connection with the situation in the DRC.

Hence, it might be argued that those SC members, above all the three of the Permanent Five (France, UK, and the US), which abstained from highlighting the exceptional and non-precedential character of resolution 2098 in their statements, were fully aware of the solely

⁹⁷ Report of the Secretary-General on the work of the Organization, 13 September 1991, UN Doc. A/46/1, at 5.

⁹⁸ SC Resolution 788 (1992), Liberia, UN Doc. S/RES/788 (1992) of 19 November 1992.

⁹⁹ SC Resolution 794 (1992), Somalia, UN Doc. S/RES/794 (1992) of 3 December 1992.

¹⁰⁰ Security Council Resolution 929 (1994), UN Assistance Mission for Rwanda, UN Doc. S/RES/929 (1994) of 22 June 1994.

¹⁰¹ Security Council Resolution 940 (1994), UN Mission in Haiti, UN Doc. S/RES/940 (1994) of 31 July 1994.

declarative and situational mitigating meaning of references to the exceptional character of a given situation and the ambition not to create any precedence for future Peacekeeping mandates. Again: The sole inclusion of such provisions does not alter the fact that subsequent mandates could – particularly if the Intervention Brigade should prove to be successful – follow the lead of the manner in which the situation in the DRC was dealt with.

Having dealt with the meaning of diplomatic battles over words, we may now view the Intervention Brigade in the broader context of recent trends in Peacekeeping and the evolvement of MONUC/MONUSCO. Here, we find that, as ground-breaking as the resolution may seem from the departure point of classic Peacekeeping, its character is somewhat less revolutionary when looking at the history of UN involvement in the DRC and the general trend to combine Peacekeeping with peace-enforcement by establishing robust mandates. Most importantly, MONUSCO was far from strictly adhering to the notions of limited use of force and impartiality in the classical sense long before resolution 2098, with serious implications for its reputation and security of both its military and civilian components.¹⁰² As stated above, resolution 1493 (2003) and 1565 (2004) already included robust mandates to protect civilians, and MONUC/MONUSCO has been involved in intense clashes along with FARDC long before March 2013.¹⁰³ Taking these earlier developments into account, the novelty of the establishment of the Intervention Brigade is severely diminished as it lies in its explicitly “offensive” tasks and not in the extent to which it

¹⁰² See the references at note 68 above.

¹⁰³ See e.g. MONUC’s actions in the Bukavu crisis, Third special report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, UN Doc. S/2004/650, 16 August 2004, at 37-45; SG Report (2013), at 36-37.

may use force and become involved in the actual fighting. This also means that the anxiety voiced by the SC members over the safety of “regular” Peacekeepers and humanitarian personnel and the perception of the UN as a mediator, reasonable as it may be, concerns the impacts of robust and far-reaching mandates in general more than the establishment of the Intervention Brigade in particular.

As a preliminary conclusion, one needs to abstain from interpreting SC resolutions in an overly formalistic manner from a quasi-*stare decisis et non quieta movere*-point of view, while the Intervention Brigade does not constitute an entirely new and ground-breaking measure from a *de facto* perspective.

Now the war in the DRC shall be put in the broader context of contemporary armed conflicts, since, notwithstanding the peculiarity of the situation in the DRC, it is a poster child for conflicts in failed states. Its history shows a well-known and all too common pattern of internal war as the result of collapsing and never fully functioning state institutions which never acted on behalf of the entire people but only for the benefit of a small elite. A similar sequence of events took place in many other Sub-Saharan African states during the last twenty years,¹⁰⁴ the most prominent being Somalia, Chad, Liberia or Sierra Leone. Many of its key features have been present in other conflicts taking place under similar circumstances, often described under the heading of “New Wars”.¹⁰⁵ These distinguishing characteristics are the absence of an effective state monopoly on the use of force a high level of civilian suffering, dragging low-intensity warfare instead of

¹⁰⁴ See Acemoglu, Daron and James A. Robinson, *Why Nations Fail. The Origins of Power, Prosperity and Poverty*, New York, 2012, 376.

¹⁰⁵ See, above all, Kaldor, Mary, *New & Old Wars. Organized Violence in a Global Era*, 2nd edition, Stanford, 2007 and Münkler, Herfried, *Die Neuen Kriege*, Reinbek, 2002.

large and decisive clashes, the significance of the global economy and the general progress of globalization, in particular the involvement of humanitarian agencies providing basic goods while, conversely, vast natural resources are funnelled out of the country via illegal and conflict-related channels.

To begin with, the conflict regions in the DRC are characterized by the participation of a variety of non-state armed groups. Besides the M23, the main groups currently are the LRA – led by the infamous Joseph Kony¹⁰⁶ –, the APCLS, the ADF, the FLDR, the FRPI, or the Burundian armed group FNL, as well as various Mayi-Mayi splinter groups, such as the Mayi-Mayi Nyatura, the Mayi-Mayi Raia Mutomboki, or the Kata Katanga.¹⁰⁷

This explosive mixture results from the general erosion of the state's monopoly on force and the accompanying privatization of violence made possible by the fact that taking part in the hostilities has become immensely cheap due to the mass influx of weapons, which are furthermore easy to handle.¹⁰⁸ Under these circumstances, it is often almost impossible to distinguish between large criminal organizations, the remnants of

¹⁰⁶ Joseph Kony raised to questionable fame after a video called "Kony 2012" went viral in various social networks. Available at <http://www.youtube.com/watch?v=Y4MnpzG5Sqc> (18 September 2013); if you have not taken notice of this hysteria, congratulations for managing to abstain from the omnipresence of Facebook, Youtube and other similar rather useless distractions.

¹⁰⁷ SG Report (2013), at 7-22, 62.

¹⁰⁸ See Amnesty International, "If you resist, we'll shoot you", The Democratic Republic of the Congo and the Case for an Effective Arms Trade Treaty. Available at http://www.amnestyusa.org/sites/default/files/12-06-08_arms_to_drc_-_final.pdf (2 June 2013).

former armies or armed loyalists to warlords profiting from trading illegal goods and resources.¹⁰⁹

These resources are one of the main reasons why sustainable peace is nowhere in sight. Leopold II of Belgium is still the most representative example for colonial exploitation as he treated the resources-rich Congo like his personal property in his quest to amass a fortune as large as possible.¹¹⁰ Today, the numbers of illegal artisanal miners of minerals is said to be in the thousands, while mediation efforts have so far proven to be unsatisfying.¹¹¹ Likewise, the possibility of oil reserves in the east further endangers the prospect for successful conciliation efforts in North Kivu and would further draw external forces and states into the conflict.¹¹²

Another key factor the DRC shares with many other past and current non-international armed conflicts of this kind is the high level of involvement of humanitarian relief agencies, which often become targets of attack themselves¹¹³ since humanitarian aid constitutes a significant additional external resource from which combatants may gain strength by forcibly bringing it under their control.¹¹⁴

Corresponding to the general trend in contemporary armed conflicts, the civilian population bears the majority

¹⁰⁹ Münkler, 2007, 10-12, 33-35.

¹¹⁰ Meredith, Martin, *The State of Africa. A History of Fifty Years of Independence*, London, 2005, 95-96. See also Dowden, 2009, 365.

¹¹¹ SG Report (2013), at 57-58.

¹¹² International Crisis Group, *Black Gold in the Congo: Threat to Stability or Development Opportunity?*, Africa Report, No. 188, 11 July 2012.

¹¹³ SG Report (2013), at 23-27.

¹¹⁴ Münkler, 2007, 154; see also Jean, François, *Humanitäre Hilfe und Kriegsökonomie*, in: Jean, François and Jean-Christophe Rufin (eds.), *Ökonomie der Bürgerkriege* (HIS Verlagsgesellschaft, 1999) 440-476, 456-462.

of the brunt. North Kivu has seen killings, wounding, forced displacements and mass rapes of civilians, including minors, a disturbing number of violations of children's rights, along with extensive lootings conducted by M23, while the Mayi-Mayi Raia Mutomboki, the FDLR, the Mayi-Mayi Simba/Lumumba, and the Mayi-Mayi Gédéon reportedly committed similar gross human rights abuses.¹¹⁵

These disastrous effects stem from the new meaning of warfare. Many contemporary armed conflicts, have become a "way of life" and an environment somewhat resembling that of the Thirty Years' War with combatants securing their existence via resorting to protracted force. Such "war economies" are characterized by plunder on the short, various forms of slavery on the middle, and the emergence of a black economy on the long run, while barter and resorting to violence go hand in hand. Accordingly, the main actors of these conflicts are interested in their continuation and, in conflict to classic inter-state wars from the past, avoid decisive battles and instead resort to massacres perpetrated against the civilian population in order to have it succumb to their will. This atmosphere of attacking defenceless civilians leads to a lack of discipline and a re-sexualisation of violence,¹¹⁶ a decay of ethics and morality in modern conflicts described succinctly by Michael Ignatieff¹¹⁷ as follows:

¹¹⁵ SG Report (2013), at 45-46, 50-55; see also Sexual violence in conflict, Report of the Secretary-General, 14 March 2013, UN Doc. A/67/792-S/2013/149, at 39-49. On the recruitment of child soldiers in the DRC and other conflicts, see Singer, P. W., *Children at War*, Berkeley and Los Angeles, California, 2006, 58 et seq.

¹¹⁶ Münkler, 2007, 29-30.

¹¹⁷ Münkler, 2007, 39, quoting the German translation of the following original passage.

In most traditional societies, honour is associated with restraint, and virility with discipline. [...] The particular savagery of war in the 1990s taps into another vision of male identity – the wild sexuality of the adolescent male. Adolescents are supplying armies with a different kind of soldier – one for whom a weapon is not a thing to be respected or treated with ritual correctness but instead has an explicit phallic dimension. [...] War has always had its sexual dimension – a soldier's uniform is no guarantee of good conduct – but when a war is conducted by adolescent irregulars, sexual savagery becomes one of its regular weapons.¹¹⁸

For these main components of the situation on the ground and its similarities with other past and contemporary armed conflicts in Sub-Saharan Africa, outside interference more often than not seems doomed to fail. After all, the international community's struggle to find the proper recipe for conflicts taking place in failed states like the DRC dates back to the dreadful and still continuing Somalia experience. Seen from this perspective, MONUSCO serves as a yardstick for the UN's capabilities in such contexts and its ultimate outcome will not only be relevant for the situation at hand but for every similar conflict. This underlines the importance of the Peacekeeping mission in the DRC and the possibility of similar measures in other (future) cases.

¹¹⁸ Ignatieff, Michael, *The Warrior's Honor*, New York, 1997, 127-128.

E Conclusion

Peacekeeping has gone a long way. Originally conceptualized as a tool to contain inter-state conflicts and prevent them from spreading to entire regions and possibly drawing the two major powers into direct conflict, its exceptional application in the more or less essentially domestic Congo crisis from the 1960s would later become the rule. From the Somalia experience onwards, it was clear that its fundamental principles had to be fundamentally re-interpreted or abandoned altogether. The UN chose the first option and thus, many current Peacekeeping operations, among these MONUSCO, are fundamentally different from their Cold War-predecessors since it proved impossible to simply transplant the principles and their application as hammered out in inter-state days into the entirely different scenarios of civil strife.

In situation where the authority and legitimacy of a government is fundamentally challenged and has often never been effectively in place, consent can not only be manipulated and abused but also essentially requires an assessment as to who is competent to agree upon the establishment of a mission and thereby implies the necessity to take sides. Furthermore, and equally profoundly, the notion of neutrality/strict impartiality understood as treating all sides as moral equal and abstaining from identifying victims and aggressors may cause a mission's ineffectiveness or possibly even unintentional "complicity with evil".¹¹⁹ In addressing these concerns, the notion of impartiality has been redefined as "adherence to the principles of the Charter and to the objectives of a mandate that is rooted in those Charter principles".¹²⁰ Due to the complexity of internal armed

¹¹⁹ Brahimi Report, at 50.

¹²⁰ Ibid.

conflicts, these mandates are going way beyond the limited observation tasks of the past. In the DRC, the “strategic partnership” between MONUSCO and the Congolese government has seen the former being involved in protecting and providing humanitarian goods, giving assistance in disarmament efforts, organizing elections, or establishing a security apparatus. Most significantly in the recent turn of events, MONUSCO was endowed with supporting the government of the DRC in restoring order after the coup of Bosco Ntaganda.¹²¹ It goes without saying that an all-too restrictive permission to use force in a chaotic situations marked by a variety of armed groups carrying out attacks on humanitarian personnel and Peacekeepers as well as the civilian population, would make the effective implementation of these assignments impossible.¹²²

The bold step to establish an explicitly offensive Intervention Brigade to “neutralize” armed groups, in particular M23 thus did not come out of nowhere. Regardless of its purported exceptional and non-precedential character, it is, until now, merely the last step in the long development of Peacekeeping in general. Taking its main re-conceptualizations as a benchmark, it is also a less drastic step than from the viewpoint of “classic” Peacekeeping. In a sense, the historic break with the original key features took place more than 50 and at least 20 years ago (depending on how one assesses the Congo experience from the 1960s).

The Intervention Brigade’s special character is also somewhat diminished when looking at the recent history of the UN deployment of troops in the DRC in particular.

¹²¹ See SC Resolution 2053 (2012), Democratic Republic of the Congo, UN Doc. S/RES/2053 (2012) of 27 June 2012.

¹²² See already the discussion on the use of force to restore order and bring perpetrators to justice in Somalia, text to notes 36-40.

After all, MONUC/MONUSCO has been involved in extensive military operations on the basis of a “robust mandate” for quite some time. Even the explicitly “offensive” character is diminished by the fact that, the more broad a mandate, the more difficult upholding the distinction between “offensive” and “defensive” operations becomes.

This leaves us with the final and key question: does resolution 2098 nevertheless constitute an exception to the rule? In other words, are we witnessing the limits of what may still be brought under the realm of Peacekeeping without compromising the entire concept? Is blurring the line between Peacekeeping, Peacemaking and Peace-Enforcement to such an extent as it is currently being done in the DRC the straw that breaks the camel’s back?

Various arguments can be put forward both in support of the low probability of similar steps in other situations and in favour of the precedential character of resolution 2098. The former finding is first of all supported by the very wording of the Resolution, which establishes the Brigade “on an exceptional basis and without creating a precedent or any prejudice on the agreed principles of peacekeeping”.¹²³ In addition, although the resolution was passed unanimously, numerous members of the SC further emphasized the importance of this wording, along with concerns regarding the impact of the Brigade on the role of the UN as a mediator and the safety of “regular” Peacekeeping troops and humanitarian personnel. Apart from these situational comments, the broader context of the Peacekeeping mission in the DRC may also speak against any precedential value. The DRC’s sheer size, its location in the heart of Africa next to various equally troubled states render its stability important for the entire

¹²³ Res. 2098 (2013), at 9.

region. Accordingly, the MONUC/MONUSCO is the currently largest and most expensive Peacekeeping mission. In combination with the robust mandates, it may thus indeed constitute a “test case” for Peacekeeping and whether the UN has learned from past failures that have equally been attributed to a lack of resources and clear mandates. If a Peacekeeping mission does not “succeed” despite the presence of both of these requirements, the concept would be struck at its very core. Another, closely related reason may be psychological. States may be just as irrational when it comes to loss aversion as individuals and thus willing to keep investing heavily in order to prevent their past efforts from having been useless. In this sense, the DRC is sufficiently special to cause states to take unusual steps that are unlikely to be repeated in different situations.

These arguments notwithstanding, a case can also be made for the precedential character of the Intervention Brigade. First of all, the value of the resolution’s wording may be disputed as being close to zero. The SC acts in arbitrary and non-coherent fashion and on a case-by-case basis. Highlighting the exceptional character and the intention not to create any precedent may e.g. be necessary to calm specific fears in a given situation but does certainly not constitute an obstacle to pass similar resolutions in the future. The SC’s initial reluctance to determine that a hitherto “essentially domestic” matter constituted a threat to international peace and security, an assessment has long become accepted practice, is a case in point.

Notwithstanding the particularities of the situation in the DRC, it nevertheless shares some key characteristics with many other contemporary armed conflicts: a collapsing state struggling to establish its monopoly on force against various armed bands, civilians as the main targets, low-intensity warfare instead of open, decisive

battles, the ambition to establish control over natural resources, or the presence of outside actors providing food and other forms of humanitarian relief.

If the Intervention Brigade is successful in helping the government of the DRC in establishing its control and curbing the fragmentation of the country, it might thus well be that Intervention Brigades become a new tool in the SC's repertoire to deal with similar conflicts in failed states or states on the brink of collapse.

Hence, much will depend on the ultimate outcome of the establishment of the Intervention Brigade. Dead members of the Intervention Brigade, attacks upon Peacekeepers, a never-ending mission, or hastily retreats because of domestic pressures in troop-contributing countries would obviously have serious detrimental effects.

Even if the Intervention Brigade succeeds – whatever “success” means in a country the size of Western Europe and lacking a single adequate road and other decent infrastructure¹²⁴ – and regardless how one assesses the character of its establishment, the SC will continue to act in an inconsistent manner. Sometimes, it will take surprisingly decisive and rapid steps as it did in connection with the conflict in Libya in 2011. Other times, it will not take any significant measures at all, as it happened in Syria. SC action always requires a combination of factors, with the occurrence of mass atrocities only being one of them. Hence, neither are we entering an age of offensive combat forces similar to the Intervention Brigade, nor is Peacekeeping frozen in time. As unsatisfying as this may be for anyone expecting a clear prediction and assessment, the very nature of the

¹²⁴ See Shawcross, William, *Deliver us from Evil. Warlords and Peacekeepers in a World of Endless Conflict*, London, 2001, 381.

SC and its past track record does not allow for more than a presentation of arguments that can be made in favour and against the precedential value of resolution 2098.

Laura M. Herța*

Intra-State Violence in DR Congo and Human Security – Perspectives from International Relations

Abstract

The aftermath of the Cold War was marked by the shift from inter-state wars to intra-state ones and brought along new issues for international security studies, and for international relations in general. The 1990s were marked by an increase in intra-state armed conflicts and ethno-political strife, but it also witnessed innovations and developments on the field of humanitarian action. Africa represents the illustrative region for the salience of intra-state violence, humanitarian emergencies, proliferation of insurgent armed groups and civilian insecurity. This article presents the complexities of large-scale violence in DR Congo. Also, it shows that the wars in DRC were new types of warfare and explores the intrinsic relation between violent civil wars and human security.

Keywords: Intra-state Violence, New War, Human Security, Societal Security, DR Congo, International Relations, Security Studies

* Laura M. Herța holds a PhD in History and is currently Lecturer in International Relations within the Department of International Relations and American Studies, Faculty of European Studies (Babes-Bolyai University, Romania). Latest publications: *Jus in Bello and the Solidarist Case for Humanitarian Intervention. From Theory to Practice; From Romanian-Serbian Relations to Romanian-Yugoslav Relations. Constructivist Interpretations; Peacekeeping and (Mis-)Management of Ethnic Disputes. The Cyprus Case.* Contact: laura.herta@euro.ubbcluj.ro.

Table of contents

A	Introduction and Structure of the Article	187
B	Intra-state Violence in DR Congo and Human Insecurity: Between Humanitarian Disaster and New War Scenario	188
1	Contextualization and Prelude to Congo's Civil Wars	189
2	The First Congo War.....	190
3	The Second Congo War	195
4	The Third Congo War	199
5	Intra-State Violence and "New War" Features in DR Congo	200
C	Non-Traditional Security Studies and Human Security	202
D	Problematizing in/Security in DR Congo.....	211
E	Conclusion	218

A Introduction and Structure of the Article

The intra-state violence in the Democratic Republic of Congo displayed enormous human suffering, displacement, and death caused by widespread disease. The Congo wars represented one of the most dramatic humanitarian disasters. The main objectives of this paper are: 1) to analyze characteristics of new forms of civil wars and intra-state violence (and their threats to human security), by correlating them to the DR Congo case-study; 2) to explain the sources of insecurity in the Democratic Republic of Congo during the three Congo wars and the need to shift the understanding of in/security from national to societal and human security. The article is structured in three sections. The first section will explore the dynamics and complexities of the Congo wars during the period 1994-2005. Also, it will stress features of internal violence in DR Congo that pertain to what scholars call "new wars". The second section will briefly present the "widening and deepening debate" on security after the Cold War and will select key tenets of constructivist and critical security studies, as well as the conceptual core of human security,

which can best be correlated to the Congo case study. Finally, the last part will problematize in/security in DR Congo and will explore the potential of certain non-traditional security studies in explaining intra-state violence in DRC.

B Intra-State Violence in DR Congo and Human Insecurity: Between Humanitarian Disaster and New War Scenario

The violent conflict in former Zaire/Democratic Republic of the Congo¹ was one of the most protracted in the post Second World War history. It produced huge displacement and refugee crises and was one of the most tragic humanitarian disasters. The intra-state violence in DR Congo actually comprised three different civil wars, which we will briefly and chronologically present in this section. The huge refugee crises (especially what has become known as the Great Lakes crisis) inflicted suffering on large number of individuals, who were not only living in every-day-life fear and terror, but were also decimated by widespread disease. According to the EU Security and Defence core documents, the violence in DR Congo “reached nearly continental dimensions” and “millions of people died, the whole Great Lakes region was set aflame, decades of development were destroyed and

¹ In this article we will refer to Zaire when we discuss the First Congo War, namely until the removal of Mobutu Sese Seko, and to the Democratic Republic of the Congo (henceforth DR Congo or DRC) when we present the events after 1997.

unaccounted suffering, misery and turmoil was brought upon entire populations”.²

1 Contextualization and Prelude to Congo’s Civil Wars

Zaire had been ruled by Mobutu Sese Seko ever since 1965. From 1965 to 1997, the regime of Mobutu introduced a one-party system, by concentrating state power in Mobutu’s MPR (Mouvement Populaire de la Révolution/Popular Movement of the Revolution), and was characterized by gross human rights abuses and state “kleptocracy” scandals which turned “Zaire into a byword for corruption”.³ According to a 1992 World Bank Report, “64.7 percent of Zaire’s budget was reserved for Mobutu’s discretionary spending”.⁴ Mobutu managed to maintain control over the entire population, by weakening any attempt of separatism and by employing a divide and rule strategy, which implied *inter alia* the transformation of military organizations into his own “private armies”.⁵ During the Cold War period Mobutu sheltered insurgent movements fighting against their government (like FNLA/National Front for the Liberation of Angola or UNITA/Union for the Total Independence of Angola) and allowed Zaire to be used as training ground. He was also

² EU Security and Defence. Core documents, Vol. VII (compiled by Catherine Glière), Institute for Security Studies, European Union, Paris, 2006, 115.

³ Guy Arnold, Historical Dictionary of Civil Wars in Africa, The Scarecrow Press, 2008, 236.

⁴ 1992 World Development Report, quoted in: William Reno, Warlord Politics and African States, Boulder, London, Lynne Rienner Publishers, 1998, 153.

⁵ William Reno, Warlord Politics and African States, Boulder, London, Lynne Rienner Publishers, 1998, 160-161.

in good relations with the Hutu-dominated regime from Rwanda and insurrections movements have operated for years out of the Congolese territory against the Museveni-led Uganda.⁶ It is against this background that during the First Congo War “Angola, Uganda and Rwanda coalesced around a common goal – to cripple the insurgency movements challenging their governments from bases in the Congo”.⁷ Due to his anti-communist stand, Mobutu received support from the United States and France⁸ and the widespread Congolese conflict in the post-Cold War period can also “be seen as a direct casualty of the demise of protection provided by the superpowers”.⁹ By the early 1990s the impoverished Congolese society was characterized by mounting animosity against Mobutu and internationally the latter was running out of supporters.

2 The First Congo War

One major cause of the First Congo War¹⁰ was represented by the spill-over effects of the conflict and genocide in Rwanda. When the Tutsi-led Rwandan

⁶ Tatiana Carayannis/Herbert F. Weiss, *The Democratic Republic of the Congo, 1996-2002*, in: Jane Boulden (ed.), *Dealing with Conflict in Africa: The United Nations and Regional Organizations*, Palgrave Macmillan, 2003, 259-260. See also Nir Kalron, *The Great Lakes of Confusion*, *African Security Review*, 19:2, 2010, 27.

⁷ Carayannis/Weiss, 2003, 260.

⁸ Arnold, 2008, 235.

⁹ Phoebe N. Okowa, *Congo's War: the Legal Dimension of a Protracted Conflict*, *British Yearbook of International Law*, 77, 2007, 207.

¹⁰ Even though the name of the country is still Zaire, most of the authors refer retrospectively to the First Congo War, lasting from 1996 to 1997, or to the first phase of the First African Continental War. See inter alia Carayannis/Weiss, 2003.

Patriotic Front (RPF) defeated the Hutu government in July 1994, a huge refugee flow comprising approximately one million Hutu streamed into eastern Zaire (especially into the two Kivu provinces). Amongst the refugee camps were also the *génocidaires*, members of FAR (Forces Armées Rwandaises/Rwandan Armed Forces) and Interahamwe (Hutu extremists). The United Nations High Commissioner for Refugees (UNHCR) set up refugee camps in eastern Zaire, but could not prevent or dissuade “the reestablishment [...] of the political and military structures and leadership that were responsible for the genocide in Rwanda”, leading to a situation wherein

“The camps soon replicated the highly organized, hierarchical, and disciplined Rwandan Hutu political and military systems under the *génocidaires*, so that camp residents were led by the same communal authorities they had lived under when in Rwanda. These camps were subsequently used as staging grounds from which these Interahamwe/ex-FAR regrouped and launched offensives against the new Tutsi-dominated government in Rwanda.”¹¹

The huge exodus was soon followed by a cholera epidemic which received ample media coverage and produced major human losses (between 20,000 and 50,000) among the camp residents.¹² The events immediately led to the destabilization of eastern Zaire and the crisis had two major dimensions.

On the one hand, it indicated how refugees become “resources of war” and how the Rwandan “genocide

¹¹ Carayannis/Weiss, 2003, 257.

¹² Ibid.

organizers and killers blended into the refugee camps” and exploited the crisis in order to attract humanitarian aid.¹³ Also, it showed how in this case the refugee crisis was intertwined with refugee manipulation and “refugee militarization”. According to the UNHCR reports, this episode was illustrative for “the changing nature of conflict, with internal and regional wars generating cross-border movements of mixed groups, including military elements” and for how militarized camps raised a huge threat to refugee insecurity.¹⁴

On the other hand, the crisis had negative repercussions on the human insecurity of ethnic-Tutsis (Banyamulenge) living in eastern Zaire. The Banyamulenge had been living in the eastern part of Congo for a long time,¹⁵ but they had become dissatisfied with Mobutu’s policy of divide and rule and with the government’s decision in 1981 to deprive them of Zairean citizenship.¹⁶ The result was their rebellion in 1996. Since the post-genocide Rwandan leaders perceived the refugee camps as major threat, there was soon a coalescence of interests between them and the Banyamulenge.

The First Congo War broke out and displayed the following belligerents and phases. Zaire accused Rwanda of arming and backing up the rebels in the Kivus, while Rwanda accused Mobutu of sheltering the Hutu

¹³ Stephen John Stedman/Fred Tanner, *Refugees as Resources in War*, in: Stephen John Stedman/Fred Tanner (eds.), *Refugee Manipulation. War, Politics, and the Abuse of Human Suffering*, Brookings Institution Press, 2003, 2-3.

¹⁴ UNHCR, *The Security, Civilian and Humanitarian Character of Refugee Camps and Settlements: Operationalizing the “Ladder of Options”*, Doc. EC/50/SC/INF.4, 27 June 2000. Available at <http://www.refworld.org/docid/4a54bc040.html>.

¹⁵ According to the estimations the Banyamulenge had been inhabiting the area for 200 years and their number ranges 25,000 to 400,000. See Carayannis/Weiss, 2003, 258.

¹⁶ Arnold, 2008, 414.

extremists. Local authorities in north Kivu have been resorting to a “quasi-ethnic cleansing campaign”¹⁷ ever since 1993 and in 1996 the Banyamulenge were told they had to leave Zaire or be “exterminated and expelled”.¹⁸ This led to another exodus of people, but one armed group among them (trained and armed by the RPF) started to fight the FAZ (Forces Armées Zairoises/Zairean Armed Forces) and the Hutu militia. Uganda invoked reasons similar to Rwanda’s and joined the latter in the military effort.

Both parties to the conflict invoked security reasons. On the one hand, Zaire accused its neighbours, Rwanda, Uganda and Burundi, of destabilizing its eastern territory (over which it actually had no control) and received military help from the Interahamwe/ex-FAR operating out of the refugee camps. On the other hand, Rwanda and Uganda accused Zaire of protecting the génocidaires and of backing up insurrection movements operating against their governments from eastern Zaire. It never turned into an inter-state war, though it was on the verge to become one. Mobutu accused its neighbours of foreign invasion, while his opposing party tried to show that it was a Congolese action against its government (even though there were many outside troops operating). An indicator to the growing antipathy towards Mobutu was the international reaction, since the United Nations (UN) and the Organization of African Unity (OAU) did not “condemn the invading forces” and “Western press [...] from the start of the war referred to it as a civil war or rebellion”.¹⁹

¹⁷ Carayannis/Weiss, 2003, 258.

¹⁸ Arnold, 2008, 414.

¹⁹ Carayannis/Weiss, 2003, 261.

The FAZ soldiers started to act in disarray and flee the area²⁰ while the anti-Zairean government rebellion gradually seized control and started moving towards Kinshasa. The locally ignited rebellion turned into an extended anti-Mobutu revolution. Laurent-Désiré Kabila, a long-time opponent of Mobutu, emerged as the leader of the rebels and four dissident groups galvanized into the AFDL (Alliance des Forces Démocratiques pour la Libération du Congo/Alliance of Democratic Forces for the Liberation of Congo-Zaire). The rebels gained control over Shaba (the mineral-rich province in south-eastern DRC) and later moved closer and closer to the capital Kinshasa. The last phase occurred in May 1997 when Mobutu's regime collapsed.²¹

The First Congo War displayed enormous human suffering, rampage, massacre, and retaliation against the opponent's civilians. We will show how these are features pertaining to dynamics of the new wars later and we will try to exemplify them in all three Congo wars. During the First Congo War, the providers of insecurity were both regular military troops and the irregulars. Mobutu's army retreated, but resorted to looting, raping and massacre. Atrocities were committed by local militias, be it the Hutu extremists (ex-FAR/Interahamwe) against the Congolese Tutsi, or the rebels against Hutu and other "alleged" opponents, military or civilian. Acts of violence were also committed by Serbian mercenaries and UNITA rebel troops, both supporting Mobutu's army.²² The referents of insecurity were individuals, many times civilians. Many of them died of widespread disease in the camps, others because of looting and killing, many people were internally

²⁰ Arnold, 2008, 414.

²¹ Ibid.

²² Carayannis/Weiss, 2003, 261.

displaced. All in all, mounting violence and systematic attacks became the indicator for endemic insecurity.

3 The Second Congo War

Kabila assumed power and emerged as the new leader of DRC responsible for ousting Mobutu. In order to stress the departure from the latter's era, he renamed the country the Democratic Republic of Congo. For a brief period of time he produced satisfaction among the Congolese. Very soon, though, his authoritarian rule became conspicuous: he "rejected all power-sharing arrangements with the numerous political parties that had been established during the last few years of the Mobutu regime, prohibited all party activity, and refused to cooperate with NGOs".²³

Kabila's takeover of power was in fact due to the Banyamulenge/Congolese Tutsis' support and to the assistance of Rwandan and Ugandan armies.²⁴ It also benefited from tacit approval of the international community, since it was the anti-Mobutu struggle that prevailed in international perception, and not Laurent-Désiré Kabila legitimacy per se. Very soon, though, he managed to antagonize all.

According to Human Rights Watch, Kabila's AFDL "carried out massive killings of civilian refugees and other violations of basic principles of international humanitarian law during attacks on refugee camps in the former Zaire".²⁵ The UN and the Western donors tried to set out a full investigation of massacres, but Kabila "repeatedly denied them access to suspected massacre sites in Goma

²³ Ibid.

²⁴ Arnold, 2008, 98.

²⁵ Human Rights Watch Report, What Kabila is Hiding. Civilian Killings and Impunity in Congo, 1997. Available at <http://www.hrw.org/en/reports/1997/10/01/>.

and elsewhere”.²⁶ Therefore, Kabila’s relations with the UN became strenuous. At the same time, he faced domestic dissatisfaction, as well as former supporters’ (foreign and internal) discontent. Since his rebellion was dependent on the Banyamulenge and the armies of Rwanda and Uganda, “there was a reaction against these allies in Kinshasa and, in particular, resentment at the Tutsi”²⁷ and consequently things escalated. Kabila removed Tutsis “from top positions in the military” and the Banyamulenge started to retreat to South Kivu.²⁸ Rwanda understood the misachievements of Kabila, perceiving his fostering of anti-Tutsi feelings and his inability to end “the problem of border insecurity by neutralizing the insurgency groups threatening Uganda, Rwanda, and Angola from the Congo”.²⁹ A mutiny within ADFL ensued and the break-away RCD forces (Rassemblement Congolaise pour la Démocratie/Rally for Congolese Democracy) started fighting against the Kabila government. It was the beginning of the Second Congo War, also called Africa’s Great War or the second phase of the First African Continental War.

The Second Congo War was characterized by a fragmentation of military troops, emergence of other groups, and shifts in alliances. Some former Mobutists and some former FAZ troops joined the rebels while Angola changed sides and joined Namibia and Zimbabwe in their support for Kabila. Another rebel group (MLC/Movement for the Liberation of the Congo) emerged while the Mai Mai resistance fighters³⁰ received the support of Kabila’s government. By 1999 there was intense fighting in eastern

²⁶ Carayannis/Weiss, 2003, 268.

²⁷ Arnold, 2008, 98.

²⁸ Ibid.

²⁹ Carayannis/Weiss, 2003, 270.

³⁰ The Mai Mai were armed Congolese groups fighting against the RCD and against Rwandan and Ugandan troops.

Congo³¹ and “anti-Kabila rebels who were caught were massacred [...] and a real pogrom against all Tutsi took hold”.³² The dynamic of the civil war showed further complexities. The RCD split into two factions due to divergent views: the RCD-ML (Mouvement de Libération) was backed by Uganda and the RCD-Goma was supported by Rwanda.³³ By 2000 the Rwandan and Ugandan forces were fighting among themselves and Kabila’s government had no control over Congolese territory (with the exception of the western part).³⁴

Urged by the international community and backed by UN resolutions, the Lusaka process was undertaken by the Southern African Development Community (SADC). The Lusaka process “involved the three major Congolese groups in the conflict, namely the government, the RCD and the [...] MLC, as well as their respective supporters, namely Namibia, Zimbabwe and Angola (governments) and Rwanda and Uganda (rebel groups)”³⁵ and resulted in the Lusaka Ceasefire Agreement. Also, it “called for the deployment of a Chapter VII UN peacekeeping operation in the DRC”.³⁶ The latter was materialized in MONUC (United Nations Mission in the Congo) which arrived in DRC in late 1999.

In January 2001 Laurent Kabila was assassinated by a member of his presidential guard and his son, Joseph Kabila, took over. The latter showed much more flexibility than his father³⁷ and immediately received recognition

³¹ Arnold, 2008, 98.

³² Carayannis/Weiss, 2003, 271.

³³ Ibid.

³⁴ Arnold, 2008, 100.

³⁵ Sadiki Koko, MONUC and the quest for peace in the Democratic Republic of Congo: assessment of a peacekeeping mission, *African Security Review*, 20:2, 32.

³⁶ Ibid.

³⁷ Arnold, 2008, 102.

because of firm actions undertaken to end the violence. Joseph Kabila opened the dialogue with leaders of major Western states and with UN Secretary-General. He was visited by World Bank and International Monetary Fund delegations (thus facilitating aid), replaced military tribunals with commercial courts, and assured Rwanda that “he would disown the Interahamwe on DRC soil”.³⁸ Notwithstanding the positive developments, fighting continued in the eastern part and in April 2001 “six workers with the International Committee of the Red Cross were killed by armed groups near Bunia”³⁹ signalling another tragic phase of the war.

A report released by the International Rescue Committee (IRC) in 2001 estimated that “2.5 million excess deaths have occurred during the 32-month period beginning in August 1998 and ending in March 2001” and showed that the overwhelming majority of deaths were caused by disease and malnutrition.⁴⁰ The report further indicated that

“The ongoing fighting has driven hundreds of thousands of people into forests, jungles and other remote areas, where they have no food, medicine or shelter. Health care systems in the region have been decimated. War-affected areas have been largely inaccessible to aid organizations because of the insecurity.”⁴¹

The Second Congo War displayed similar features to the first one in terms of violence, massacres and

³⁸

Ibid.

³⁹

Carayannis/Weiss, 2003, 282.

⁴⁰

International Rescue Committee Report, Mortality in Eastern Democratic Republic of Congo, 2001, 3.

⁴¹

Ibid.

looting, and suffering of civilians. The conflict's dynamic pertained to an internal and internationalized war wherein societal and human insecurity prevailed.

4 The Third Congo War

Large-scale violence continued and the Third Congo War was complicated by the eruption of fighting between tribal groups in the northeast area. The Ugandans supported the local Lundu agriculturalists and backed their militias while Rwanda provided support for the cattle-herding Hema.⁴² Clashes between the local militias led to immense human losses. According to Human Rights Watch reports the massacres in Ituri caused 50,000 deaths and 500,000 refugees in 2003, and according to IRC most of the deaths were a result of generalized violence, lack of medical facilities, food insecurity, due to "the disruption of the country's health services and food supplies".⁴³ The prevailing and tragic characteristic is that "the vast majority of deaths have been among civilians and have been due to easily preventable and treatable illnesses".⁴⁴

UN troops found it difficult to maintain order in DRC, because "groups of fighters, some consisting of pre-teen child soldiers, had become accustomed to a lawless life and exacting taxes from the local population".⁴⁵ In 2005, the UN force turned from peacekeeping seekers to providers of insecurity, when "a number of them were accused of rape and sexual abuse of children" and when

⁴² Arnold, 2008, 106.

⁴³ International Rescue Committee Report, Mortality in Eastern Democratic Republic of Congo, 2004, iii-iv.

⁴⁴ Ibid.

⁴⁵ Arnold, 2008, 108.

“some 60 cases of abuse involving rape, paedophilia, and prostitution had been raised”.⁴⁶

5 Intra-State Violence and “New War” Features in DR Congo

Over the last twenty years, the scholarly field has witnessed a vivid and refined debate regarding the transformation of warfare.⁴⁷ The underlying observation of such research indicates that in the post-Second World War period the conventional, Clausewitzian model of *inter-state war*⁴⁸ has been gradually replaced by various scenarios pertaining to *intra-state wars (violence)*. Despite regional peculiarities, the recent armed conflicts share traits which amount to certain structural characteristics. Such traits point to: asymmetry of warring forces/belligerents, the gradual privatization of (armed) violence, deviation from the codified rules of war, namely for the *jus in bello* (as accurately described within the Geneva Conventions), and the use of force, in its utmost brutal manner, against civilians, rather than against the

⁴⁶ Ibid.

⁴⁷ Mary Kaldor, *New and Old Wars*, Stanford: Stanford University Press, 2001; Herfried Münkler, *The New Wars*, Cambridge: Cambridge University Press, 2005; Michael Ignatieff, *The Warrior's Honor. Ethnic War and the Modern Conscience*, New York, 1997; Martin van Creveld, *The Transformation of War*, New York, 1991; Dietrich/Schlichte, *From Inter-State War to Warlordism: Changing Forms of Collective Violence in the International System*, in: Håkan Wiberg/Christian P. Scherrer (eds.), *Ethnicity and Intra-State Conflict*, Brookfield USA: Ashgate, 1999, 35-51; Mark Duffield, *Global Governance and the New Wars. The Merging of Development and Security*, London and New York: Zed Books, 2001.

⁴⁸ Carl von Clausewitz, *On War*, Princeton University Press, 1989.

enemy's military troops. Mary Kaldor's thesis on the new wars is that the new type of warfare emerging at the end of the 1980s and beginning of the 1990s was interlinked with globalization. Kaldor uses the term war to emphasize its political nature but explains that new wars scenarios make it difficult to distinguish between organized crime, gross human rights violations and war.⁴⁹ Herfried Münkler's thesis on the new wars is centred on the observation that some states seem to lose their *de facto* monopoly on the use of organized violence. Münkler examined several developments: the "de-statization" or privatization of military force, the asymmetry of military force, the autonomization of forms of violence, and the increasing brutality of the new wars.⁵⁰

The wars in DRC displayed most features of the new wars. Former Zaire/RDC was a weak state, completely unable to retain monopoly on the use of organized violence or to control its entire territory. Many armed groups and local militias had free rein in the east part and at some point they also controlled the northeast and south east areas. Moreover, they gained autonomy and resorted to atrocities. The distinction between combatants and civilians was blurred (indicating another feature of Münkler's new type of warfare). The locus of belligerence moved from the military sector to the societal one, thus also pinpointing to the need to reconceptualise security. Most attacks were carried out systematically and deliberately against groups of individuals, without discrimination between civilians and members of the militias. Child-soldiering was present and violence against women was prevailing systematically. Looting, raping, and killing was the bulk of the fighting and on several occasions civilians were used as human shields.

⁴⁹ Kaldor, 2001.

⁵⁰ Münkler, 2005, 1-4.

C Non-Traditional Security Studies and Human Security

The discipline of International Relations (IR) has, ever since its inception, been centred on opposing understandings of security. Basically, different IR theories offer a wide array of answers to salient questions such as: who is the key actor of security? (or who should provide security?); which are the objects (namely the referents) of security?; how is security best attained? The realm of security studies could be roughly subdivided into traditional, military and state-centric views, on the one hand, and non-traditional approaches, on the other hand.

Gunhild Hoogensen Gjørsv identified some leading conceptions of security within the field of International Relations (IR) and distinguished between 1) “those stating that the concept can only be employed by the state with regard to immediate, existential threats”, and 2) “those that see security as the foundation of social life or as a human good”.⁵¹ Barry Buzan and Lene Hansen focused on the disciplinary boundaries of International Security Studies to see “where ISS ends and other academic disciplines, particularly IR, begin” and underlined that “[t]he boundary between ISS and IR is difficult to draw”.⁵²

In their master work *The Evolution of International Security Studies*, Buzan and Hansen formulated four pivotal questions that constitute the pillars of ISS: 1)

⁵¹ See Gunhild Hoogensen Gjørsv, *Security by any other name: negative security, positive security, and a multi-actor security approach*, *Review of International Studies*, October 2012, 38:4, 835-839.

⁵² Barry Buzan/Lene Hansen, *The Evolution of International Security Studies*, Cambridge: Cambridge University Press, 2009, 16.

“Whose security should be protected and studied?” or “whether to privilege the state as the referent object”; 2) “Should the military be considered the primary sector of security?” or, in other words, “whether to expand security beyond the military sector and the use of force”; 3) “Should security be concerned exclusively with external threats or also with domestic ones?”; and 4) “Is the only form of security politics one of threats, dangers and emergency?”⁵³ These questions helped to structure debates within ISS since the late 1940s⁵⁴ and were framed departing from four key elements: the referent object of security, the location of threats, the security sector, and the view of security politics.

Traditional Security Studies are often equated with Strategic Studies developed during the Cold War. The latter have strong connections with Realism and Neo-realism in IR. The traditionalist perspective is based on state-centrism, materialism, and the use of force which refers to the use of military force by states and implies the prevalence of military threats that states are confronted with.⁵⁵ Therefore, in Realist Strategic Studies the concept of security defines the “state as the referent object, the use of force as the central concern, external threats as the primary ones, the politics of security as engagement with radical dangers and the adoption of emergency measures”.⁵⁶ Realist Strategic Studies employ a positivist and rationalist epistemology.

The Realist postulates have been dominating the field of Security Studies throughout time and especially during the Cold War, when national security became the centrepiece of concern. The realist account on national security entailed the materialist-loaded conception of

⁵³ Ibid., 10-13, 21.

⁵⁴ Ibid., 10.

⁵⁵ Ibid., 16.

⁵⁶ Ibid., 21.

states' ability to maximize the military capabilities in order to address security issues.

The Neorealist understanding of an international system governed by anarchy implied an international order wherein security from outside threats (due to the ubiquity of conflict/violence/attack) was the essence of rational thinking. The international anarchical condition turned statism and self-help into overriding principles. Such thinking cum decision-making was designed to protect the state and maximize its power. Herein power was exclusively and overwhelmingly centred on military capacity.

It has often been argued that the poverty of Realism does not capture a complex dynamic of violence (as is the case with most African new wars) wherein weak states are confronted with internal fragmentation and proliferation of militias, civil war, the spill-over effects of conflicts in neighbouring states, and the incapacity to protect citizens who become tragic victims of humanitarian disasters. The reductionist worldview of Neo-realism includes, firstly, the isomorphism and the unitary state-centric approach, which solely aims at state's defence. Here, security is understood as freedom from threat and rules out the freedom to (meaning the enabling attribute of freedom). The groups' and the individuals' security is not primarily addressed since the state is the political unit of concern and the provider of internal security. Secondly, there has been an extensive focus on the reductionist materialist dimension built on a security-weaponry-military strength dimension which rules out other types of threats (and consequently neglects ontological security), and thirdly on the understanding of negative security with its primary concern for use of force in order to attain desecuritization.

Many attempts have been made to counterweigh the realist ontology and there is a valuable "literature in security studies that moves away from neorealist

formulations in directions that could be called ‘critical’ or ‘constructivist’.⁵⁷ Such alternative theorizing includes a diverse range of sub-views, but overall they all focus on certain key ideas. Barry Buzan and Lene Hansen traced the growth and evolution of the “widening-deepening side of ISS” and explored the non-traditional branches of Security Studies, categorized as follows: Constructivist Security Studies (further sub-divided into Conventional and Critical), The Copenhagen School of Security Studies, Critical Security Studies, Feminist Security Studies, Post-colonial Security Studies, Poststructuralist Security Studies, and Human Security.⁵⁸

There are several basic claims that Constructivist Security Studies, Critical Security Studies and the Copenhagen School of Security Studies share. Firstly, “that ‘security’ is not an objective condition”, secondly, “that threats to it are not simply a matter of correctly perceiving a constellation of material forces”, and thirdly, “that the object of security is not stable or unchanging”.⁵⁹ Therefore, central to these approaches are questions such as “how the object to be secured (nation, state, or other group) is constituted, - and how particular issues (economic well-being, the risk of violence, environmental degradation) are placed under the ‘sign of security’”.⁶⁰

The Copenhagen School scholars theorized the binary concepts securitization and desecuritization and analyzed security as a speech act. Securitization is the process of making an issue a ‘security’ issue. The securitization process transfers issues from ‘normal’

⁵⁷ Keith Krause/Michael C. Williams, *Broadening the Agenda of Security Studies: Politics and Methods*, in: Barry Buzan; Lene Hansen (eds.), *International Security* (Vol. III, *Widening Security*), London: Sage Publications, 2007, 150.

⁵⁸ Buzan/Hansen, 2009, 35-38, 187-225.

⁵⁹ Krause/Williams, 2007, 151.

⁶⁰ *Ibid.*

(accountable/democratic) politics to 'emergency' politics. Therefore, securitization refers to the following core feature of security: "The way in which threats are discursively tackled and presented".⁶¹ The concept entails the construction of threats following a "grammar of security" (in Barry Buzan's terms) which indicates "an existential threat, a point of no return, and a possible way out".⁶² The essence of the securitization idea is that no issue is a threat per se, but that "anything could be constructed as one".⁶³ The twin concept desecuritization focuses on "moving out of security"⁶⁴ or "the shifting of issues out of emergency mode and into the normal bargaining process of the political sphere"; Barry Buzan argues that this is the "optimal long-range solution".⁶⁵ As Huysmans observed, "the speech act of security draws upon a historically constituted and socially institutionalized set of meanings".⁶⁶

Many constructivist approaches on security are essentially preoccupied with human security.⁶⁷ Also, critical security studies, feminist security studies and human security share certain concerns and both challenged the narrow neorealist scholarship, and most

⁶¹ Jonathan Bright, Securitization, terror, and control: towards a theory of the breaking point, *Review of International Studies*, October 2012, 38:4, 863.

⁶² Barry Buzan/Ole Waever/Jaap de Wilde, *Security: A New Framework for Analysis*, Boulder: Lynne Rienner, 1998, 33.

⁶³ Bright, 2012, 866.

⁶⁴ Lene Hansen, Reconstructing desecuritization: the normative-political in the Copenhagen School and directions for how to apply it, *Review of International Studies*, July 2012, 38:3, 526.

⁶⁵ Buzan/Waever/de Wilde, 1998, 4, 29.

⁶⁶ Jef Huysmans, *The Politics of Insecurity. Fear, Migration and Asylum in the EU*, London and New York: Routledge, 2006, 25.

⁶⁷ See details in Edward Newman, *Human Security and Constructivism*, *International Studies Perspectives*, United Nations University, 2, 2001.

specifically “the state-centric orthodoxy of conventional international security, based upon military defence of territory against ‘external’ threats”.⁶⁸ One constructivist approach on security shall be explored since it provides a useful understanding of the complexities in DRC. Jennifer Mitzen showed that the realist survival (understood in terms of physical survival) led to people’s tendency to think “about security monolithically, as physical security, or security of the body” but she emphasized that “there is another fundamental form of security, ontological security, or security of one’s identity”.⁶⁹ For Mitzen, then,

Ontological insecurity is the deep, incapacitating fear of not being able to get by in the world, not knowing which dangers actively to ward off [...]. When you are ontologically insecure, all your energy gets bound up in immediate need-meeting, because you cannot organize your threat environment.⁷⁰

At individual level, traumatic daily experiences in an armed conflict environment or in war-torn society lead to the individuals’ perpetual anxiety and their inability to go back to who they were before the dreadful events that marked their selves, be it their physical well-being, be it their knowledge about who they are. African humanitarian disasters such as DR Congo showed that a large number of individuals lived in a paralyzing fear and were not only

⁶⁸ Edward Newman, *Critical human security studies*, *Review of International Studies*, 36, 2010.

⁶⁹ Jennifer Mitzen, *Ontological Security in World Politics and Implications for the Study of European Security*, paper prepared for the CIDEL Workshop, Oslo, 22-23 October 2004, 2.

⁷⁰ *Ibid.*, 3.

unable to protect themselves physically, but also incapacitated to control the threat environment and to acknowledge whether they were targets, victims, security referents, or waves of refugees creating a security issue.

According to Mitzen, the opposite of ontological insecurity (and inability to control the threat environment) is ontological security which

is the condition that obtains when an actor feels he has reliable knowledge, even if probabilistic, about the means-ends relations that govern his social life. Armed with ontological security, the actor knows how to act and therefore how to be himself. Ontological security is the platform of agency.⁷¹

The concept of human security emerged in the mid 1990s. In 1994, The United Nations Development Program, through its Human Development Report, established as chief theme the shift “from nuclear security to human security”, or to “the basic concept of human security”, defined as safety from “such chronic threats as hunger, disease and repression” and “protection from sudden and hurtful disruptions”,⁷² A year later, the International Commission on Global Governance was the exponent of vertically extended security⁷³ and stated that “global security must be broadened from its traditional

⁷¹ Jennifer Mitzen, *Ontological Security in World Politics: State Identity and the Security Dilemma*, *European Journal of International Relations*, September 2006:12, 341-370.

⁷² *Human Development Report 1994*, United Nations Development Programme (UNDP), New York, Oxford: Oxford University Press, 1994, 3, 22-23.

⁷³ Emma Rothschild, *What is security?*, in: Buzan; Hansen (eds.), *International Security (Vol. III, Widening Security)*, 3.

focus on the security of states to the security of people and the planet”.⁷⁴ In 1995 the United Nations Secretary-General called for a “conceptual breakthrough”, going “beyond armed territorial security” (as in the institutions of 1945) towards enhancing or protecting “the security of people in their homes, jobs and communities”.⁷⁵ In 2001, the Commission on Human Security was set up and in 2003 it released its report wherein it stated that “the demands of human security involve a broad range of interconnected issues”; consequently, the Commission has concentrated on

distinct but interrelated areas concerned with conflict and poverty, protecting people during violent conflict and in post-conflict situations, defending people who are forced to move, overcoming economic insecurities, guaranteeing the availability and affordability of essential health care, and ensuring the elimination of illiteracy and educational deprivation and of schools that promote intolerance.⁷⁶

The United Nations Development Programme (UNDP) has associated human security to several salient issues: economic, food, health, environmental, personal, community, and political. Ramesh Thakur defined human security as follows:

⁷⁴ The Commission on Global Governance, *Our Global Neighbourhood*, Oxford: Oxford University Press, 1995, 78.

⁷⁵ Boutros Boutros-Ghali, “Let’s get together to halt the unravelling of society”, quoted in Rothschild, 2007, 3.

⁷⁶ Commission on Human Security, *Human Security Now*, Commission on Human Security, New York, 2003, iv.

Human security is concerned with the protection of people from critical and life-threatening dangers, [...] whether they lie within or outside states, and whether they are direct or structural. It is 'human-centred' in that its principal focus is on people both as individuals and as communal groups. It is 'security oriented' in that the focus is on freedom from fear, danger and threat.⁷⁷

Edward Newman captures four different approaches on human security. The first one, wherein "scholars of human security argue that for many people in the world [...] the greatest threats to 'security' come from internal conflicts, disease, hunger, environmental contamination or criminal violence"; in this approach, the focus is on the individuals' confrontation with the threats which from their own state and not from an 'external' adversary. A second "approach to human security is narrower, and focuses on the human consequences of armed conflict and the dangers posed to civilians by repressive governments and situations of state failure"; in this understanding, the "increasing brutality" (if we borrow Herfried Münkler's phrase) of the modern armed conflicts indicates that civilians are deliberate targets and conflict is associated with refugees flows, humanitarian disasters, child-soldiering, and human displacement. It follows then, that "conventional security analysis is woefully inadequate for describing and explaining the realities of armed conflict and its impact upon humanity".⁷⁸ The third approach is

⁷⁷ Ramesh Thakur/Edward Newman, Introduction: Non-traditional security in Asia, in: Ramesh Thakur/Edward Newman (eds.), *Broadening Asia's Security Discourse and Agenda: Political, Social, and Environmental Perspectives*, Tokyo: UN University Press, 2004, 4.

⁷⁸ Newman, 2010, 80-81.

lacking theoretical insight, but is widespread in policy circles and “uses human security as an umbrella concept for approaching a range of ‘non-traditional’ security issues – such as HIV/AIDS, drugs, terrorism, small arms, inhumane weapons such as anti-personnel landmines, and trafficking in human beings – with the simple objective of attracting greater attention and resources for tackling them.” Finally, a theoretical approach on human security is concerned with “the nature of security threats, referents, and responses to insecurity” and problematizes sources of insecurity and criticizes the nature of the institutions which provide security. Within this final approach, the gendered aspects of security and insecurity are tackled.⁷⁹

D Problematizing In/Security in DR Congo

Following the genocide in Rwanda (in 1994), the Democratic Republic of Congo was plunged into three violent conflicts (in 1996, in 1998 and 2002) which exhibited all dramatic features of the new wars. In what follows, violence in DRC will be explained through international security studies’ conceptual lenses. Firstly, the realist reductionist view shall be examined and its shortcomings in capturing complex and fragmented dynamics of intra-state war. Secondly, the potential of certain non-traditional approaches on security for explaining the selected case study shall be explored.

One first argument seeks to underline the poverty of realism in understanding intra-state violence and the complex dynamic in DR Congo. The contention is that Congo is simply not a “like-unit”, in the terminology of

⁷⁹

Ibid.

neorealist Kenneth Waltz.⁸⁰ The Congolese state had no control over the territory (except for the western one third of the country); Congo was a state with non-functioning administrative structure; it was a weak state with absolutely no monopoly over the de facto use of organized violence (parts of the Congolese army defecting and joining rebel groups), and several overlapping security concerns (defence) and economic interests (looting) were involved. The wars in DRC were regional (or internal and internationalized), but the neighbours' reaction was spurred by DR Congo's state weakness and unwillingness/incapacity to suppress the insurrection movements operating out of its eastern part.

One could argue that the war and violence in DR Congo is not solely intra-state, since beginning with 1996 since the armies of five neighbouring countries (Uganda, Rwanda, Burundi, Zimbabwe and Namibia) were directly involved. Besides, the probability of an inter-state war between DR Congo and Rwanda was imminent. And yet, the complex dynamic of the violence was not echoing a classical inter-state armed conflict (over a territorial dispute for instance). Rather, former Zaire became a victim of intra-state conflicts occurring in neighbouring states and the locus of their spill-over effects (especially the 1994 genocide in Rwanda, the one million refugees who fled to eastern Congo, the attacks organized by the Hutu génocidaires against the new government in Kigali etc.) Phoebe Okowa is accurately synthesizing the complexity of the armed conflict: "It has involved rebel groups of varying degrees and levels of organization, either acting independently or as surrogates of the participating states [and] the presence of several foreign armies, internal Congolese rebels, as well as foreign

⁸⁰ Kenneth Waltz, *Theory of International Politics*, Reading: Addison Wesley, 1979.

insurgents [...] resulted in a conflict which has aspects of a civil war, a rebellion and an interstate conflict at the same time.”⁸¹

Besides, it was highly difficult to determine exactly how many battlefield-related deaths were direct consequences of the armed conflict. In fact, the violence in Congo is illustrative for a “new war” scenario, and not for a conventional war.

At some point, the crisis escalated because a cholera epidemic broke out in the refugee camps of eastern Congo, prompting the largest intervention in Médecins sans Frontières’s history.⁸² Other sources indicate that at the end of the chaotic year 2004, another humanitarian organization, International Rescue Committee, reported that the instability in DR Congo was the “deadliest crisis” in the world and estimated that the widespread conflict was responsible for 1.000 deaths a day, of which 98 % were caused by malnutrition and disease.⁸³

One major merit of the Copenhagen School is the revisiting of the realist mindset by distinguishing between state and society. Barry Buzan and Ole Waever argued that security studies required the incorporation of a “‘duality’ of security: that it [should] combine state security, which is concerned with sovereignty, and societal security, which is concerned with identity”.⁸⁴ It follows then that “at its most basic, social identity is what enables the word ‘we’ to be used as a means by which to identify collectively the ‘thing’ to be secured”.⁸⁵

⁸¹ See Okowa, 2007, 209.

⁸² Chris Stout, *The New Humanitarians*, London: Praeger, 2009, 15.

⁸³ Arnold, 2008, 109.

⁸⁴ Ole Waever et al. quoted in: Krause/Williams, 2007, 152.

⁸⁵ *Ibid.*

With respect to the Copenhagen School's approach on security (as illustrative for the case of Congo), it has been already argued that it is best applied on the Western states, and not on weak-states or "quasi-states" (in Robert Jackson's phrase).⁸⁶ Buzan focused on state managed domestic order, which was a defining characteristic of his "strong state"; in his framework, the concept of a strong state rested on the subordination of society to the state and this is not applicable to the fragmented and weak state of DR Congo. The process of securitization implies an issue that needs to be securitized, a speech acts that point to it, a political elite that explains the securitization issue to an audience, and the "optimal solution". In this theorizing the audience represents the society, but this pinpoints to a cohesive body of the population; in the case of Congo this was hardly the case since part of the population was suffering from disease and hunger, another part was forming local warring parties whose daily routine represented looting, and other groups had volatile loyalties to outsiders. According to the Copenhagen School securitization studies aim to gain an increasingly precise understanding of who securitizes, on what issues (threats), for whom (referent objects), why, with what results, and, not least, under what conditions (that is, what explains when securitization is successful).⁸⁷ According to such an approach, securitising the issue of refugees does not lead to positive outcomes for the human rights of such people. Huysmans stresses that "the securitization of immigration or refugees depends on instituting credible claims that they are an important factor endangering the survival of political units".⁸⁸ The counter-effect is that many

⁸⁶ Robert Jackson, *Quasi States: Sovereignty, International Relations and the Third World*, Cambridge: Cambridge University Press, 1993.

⁸⁷ Barry Buzan/Ole Waever/Jaap de Wilde, 1998, 32.

⁸⁸ Huysmans, 2006, 47.

times “society is not just mobilised through security; it can be mobilised against a particular group, which in a way aids the construction of a unified identity”.⁸⁹ When attempting to correlate this to the problem of Tutsi refugees located in eastern Congo, the following observation is conspicuous: they became the provider of threats since the Congolese government declared them object of the securitisation process. The result is that when their mere existence is turned into a securitising issue, their own human security is neglected, if not completely annulled as concern.

Post-colonial security studies are preoccupied with wars in the Third World and are centred on domestic conflict. The latter was closely linked to concerns about weak or failed states or with the rise of humanitarian interventions and peace-keeping operations. These approaches “thus reinforc[ed] the long-standing interest within Peace Research about the relationship between development and (in)security”.⁹⁰ Buzan and Hansen showed that “one body of Post-colonial ISS overlapped with social theory and historical sociology, and hence with Critical Constructivism, in pointing to the need for conceptualisations of security that acknowledged the specificity of the Third World”. Also, the scholars stressed that Post-colonial theories “point to the Western-centrism of ISS” and argued “that the study of the non-Western world requires security theories that incorporate colonial history as well as the attention to the specific state formations in the Third World”.⁹¹ A post-colonial study on Congo would employ a different account of state building and would show the institutional weakness, coupled with

⁸⁹ Ibid. and Bright, 2012, 865.

⁹⁰ Buzan/Hansen, 2009, 176-177.

⁹¹ Ibid., 37, 176-179, 200-202.

Cold War geopolitics, and the long and corrupt rule of Mobutu.

In this article the contention is that human-centred approaches are more relevant for complex dynamic of intra-state violence. As already argued, physical security of Congolese is threatened on a daily basis, but ontological insecurity completes the tragic picture; the plight leads to the individuals' perpetual anxiety and their inability to go back to who they were before the dreadful events that marked their selves, be it their physical well-being or be it their knowledge about who they are; the perpetuating, paralyzing, intractable fear makes them unable to protect themselves physically, but also incapacitated to control the threat environment and to acknowledge whether they were targets, victims, security referents, Banyamulenge attached to Rwandan-Tutsi or Congolese citizens, refugees who needed protection or waves of refugees creating a security issue. Therefore, I believe that constructivist approaches and the concept of ontological security offer a more accurate and larger perspective on how threats are constructed and on how enemies are depicted. Thus, violence against civilians (though sometimes random) is based on the identification of threat (belonging to opposing group).

Also, what needs to be stressed are the merits of societal security approaches and the gendered approaches on security and insecurity, since in the case of DR Congo the referents of insecurity were groups, individuals, and mostly female: the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) was supposed to provide desecuritization and to protect civilians, but to a certain extent in 2005 the Bangladeshi troops became the source of gendered insecurity. As Guy Arnold indicated that "the first months of 2005 proved a damaging time for the

reputation of the United Nations forces in DRC”,⁹² when the UN Office of Internal Oversight Services (OIOS) reported that MONUC troops had sexually abused women and girls.⁹³ Arnold showed that “a report by Human Rights Watch on 7 March claimed that tens of thousands of young girls and women had been raped or subjected to other sexual violence during the 1998-2003 civil wars” and that “Médecins sans Frontières (MSF) had treated over 2,500 rape victims at its hospital in Bunia since June 2003”.⁹⁴ A gendered security approach is highly relevant in showing how women and girls are deliberate targets during violent civil wars and that their torturing and raping is systematic. In the case of Congo, the providers of security turned into malice threats.

The civilian suffering in DR Congo does not only pertain to physical violence (even though a high percentage of Congolese are affected by it), but also to psychological distress. Traditional Security Studies do not refer to the latter type of insecurity, but the concept of ontological security is meant to capture this dimension of DR Congo’s new war scenario. Within this highly volatile security framework, individuals’ needs are both material/physical and psychological, and women are deliberately and systematically targeted. As a result, the ICRC “supplied and supported 44 counselling centres providing psychological support to victims of sexual violence in the Kivus” in 2011 and “helped 496,577 longer-term IDPs, returnees and residents recover/preserve their food/economic security through livelihood-support

⁹² Arnold, 2008, 109.

⁹³ A/59/661, 5 January 2005, Report on investigation into allegations of sexual exploitation/abuse in MONUC, The website of the Office of Internal Oversight Services http://www.un.org/depts/oios/pages/other_oios_reports.html.

⁹⁴ Arnold, 2008, 110.

initiatives, while improving access to water/sanitation for 335,531 such people”⁹⁵.

E Conclusion

The intra-state violence in DRC comprised three brutal armed conflicts and exhibited scenarios of new wars. The traditional conception of security is attached to statism and does not capture complex dynamics of internal wars. The widening-deepening debate on security provided impetus for the re-conceptualisation of security and shifted the concern from state security to societal and human security. This was illustrated by the case of DR Congo and the article tried to explore the potential of certain non-traditional security studies in explaining intra-state violence in DRC.

During the Cold War, Third World security issues were addressed only to the extent they had a relevance for the proxies of superpowers. After the Cold War, certain constructivist security studies, critical security studies, and especially human security gained ground, since they were human-centred and tried to target the plight of the individuals due to armed conflicts. The analytic framework of non-traditional approaches to security provides a complex understanding of the nature and traits of the Congo wars.

⁹⁵ ICRC Annual Report 2011, The Democratic Republic of the Congo, 109. Available at <http://www.icrc.org/>.

IV Security and Conflict Resolution in Africa

Thomas Spielbüchler*

Good Governance – A Viable Solution?

Abstract

The conflict situation in Africa is a major obstacle for human security on the continent. To address this problem, good governance has been discussed in Africa even before independence. However, political, economic as well as social structures in Africa affected by history, external influences, and the personality of certain leaders, corrupted this principle. Nonetheless, good governance is an indispensable factor for Human Rights and security in Africa.

Keywords: Africa; AU; Conflict, Good Governance; OAU; Security

Table of contents

A	Introduction	220
B	Noble Ideas	221
C	The Scourge of Conflicts	223
D	A Possible Resort?	226
E	Conclusion	230

*
Dr. Thomas Spielbüchler is Senior Researcher at the Department of Modern and Contemporary History at the Johannes Kepler University in Linz, Austria, his research focus is on African integration and African conflict management. E-mail: thomas.spielbuechler@jku.at.

A Introduction

When the popular uprising against the authoritarian regime in Tunisia started in December 2010, the revolutionary spark quickly spread over North Africa and the Middle East and developed into a conflagration that was optimistically called the “Arab Spring”. Meanwhile, this optimism gave way to a realism underscoring the fact that persons can be changed easily – but not the deeply rooted structures underneath. Hopes (and fears) arose in Sub Saharan Africa, too, whether the Arab Spring would fuel revolutions and boost human rights and security by a new *wind of change*.¹

This paper focuses on the conflict situation in Africa as a major obstacle for human security and reflects some thoughts on good governance as a possible (and viable?) solution.

Ideas relating to conflict management and good governance were already visible in the African continent even before the OAU, which eventually became the AU, was founded. However, political, economic as well as social structures in Africa affected by history, external influences, and the personality of certain leaders, have corrupted these concepts (Section B). Bad governance became the sad reality for an entire continent culminating in countless conflicts. By analysing these conflicts, the contribution of bad governance becomes evident. In other words, good governance would address most of the

¹ Former British Prime Minister Harold Macmillan coined this expression in a speech addressing the South African Parliament on 2 February 1960 in Cape Town. Harold Macmillan, *Pointing the Way 1959-1961*, London, 1972, 475.

factors fuelling a conflict (Section C). In Africa the Assembly of the HoSG represented the highest decision-making body of the OAU – the same body presides over today's AU. So it was (and is) the responsibility of this body to enforce good governance. Unfortunately, many of the African HoSG did not show real interest. The principle would have interfered with their understanding of leadership. The situation changed with the end of the Cold War and a decade later with the inauguration of the AU. Good governance experienced fresh tailwinds – but the structures did not really change (Section D).

B Noble Ideas

In 2000, the African HoSG agreed on the Constitutive Act of the African Union to transform the intergovernmental OAU into a more supranational body, the AU. In the preamble of the document the HoSG admitted that:

The scourge of conflicts in Africa constitutes a major impediment to the socio-economic development of the continent and of the need to promote peace, security and stability as a prerequisite for the implementation of our development and integration agenda.²

In the next paragraph they emphasized their determination “to promote and protect human and peoples’ rights,

² OAU, Constitutive Act of the African Union, adopted by the 36th Ordinary Session of the Assembly of Heads of State and Government, adopted 11 July 2000, at Lomé, Togo, entered into force 26 May 2001.

consolidate democratic institutions and culture, and to ensure good governance and the rule of law”.³

The commitment to good and responsible governance dates back to the 1st Conference of Independent African States that gathered the HoSG, or their representatives, of eight independent nations in Accra, Ghana, in April 1958. This document also contained the nucleus of a common conflict management approach.⁴ When the founding fathers adopted the OAU-Charta in 1963, these commitments were repeated, even expanded, including the intention to establish a CMCA as an effective tool for conflict management.⁵

The term *good governance* was not explicitly used in these documents. It entered the political vocabulary as a (desirable) principle in Africa only in the 1990s. In the early years after decolonization the African HoSG had clear priorities: infrastructural and economic development was seen as far more important than individual rights; collective welfare was more important than human rights.⁶ The same applies to the term *security*. In most of the post-colonial states the notion of security did not refer to the

³ OAU, 2000.

⁴ CIAS, Declaration of the First Conference of Independent African States, adopted 22 April in Accra, Ghana, in: King, Gillian (ed.), Documents on International Affairs 1958, London/New York/Toronto, 1962, 579-581.

⁵ OAU, Charta of the OAU, adopted 25 May 1963 in Addis Ababa, Ethiopia, entered into force 13 September 1963, at Article XIX Commission of Mediation, Conciliation and Arbitration.

⁶ Akokpari, John, The OAU, AU, NEPAD and the Promotion of Good Governance in Africa, EISA Occasional Paper 14, Auckland Park, 2003, 2.

individual human being but to the state – and consequently to the security of the head of state.⁷

Therefore the HoSG of the young African states developed their own understandings of *good governance* and *security*, which were not congruent with the actual interpretations of these terms (there are no universal definitions of *good governance* and *security*, but in general the former is connected to a democratic and responsible system of administration while the latter expresses individual security and the validity of human rights). This has to be considered with regard to the context of the colonial past, the social structure and the political situation in most of the post-colonial states: ethnic and religious diversity provoked clientelism and nepotism. Together with external influences like neo-colonialist tendencies, the Cold War ideologies or economic interests, the road to *bad governance* was virtually mapped. The principle of non-intervention, enshrined in the OAU-Charta, made it even easier for some of the African leaders to neglect democratic values.⁸ One consequence of these struggles for power was a series of conflicts annihilating human security or human rights in virtually all parts of the continent.

C The Scourge of Conflicts

To get a vague idea of the conflict-situation in Africa over the last fifty years one can approach the topic by means of

⁷ Makinda, Samuel and F. Walufa Okumu, *The African Union. Challenges of Globalization, Security, and Governance*, London/New York, 2008, 12.

⁸ Spielbüchler, Thomas, *Afrikanischer Teufelskreislauf? Ein roter Faden durch die postkoloniale Geschichte des Kontinents*, in: *zeitgeschichte*, 36 (2009) 1, 4-18.

numbers. Experts of the UCDP and the PRIO created an *Armed Conflict Dataset* for the period from 1946 to 2012.⁹ By accumulating different types of conflicts, as defined in the dataset, the following picture emerges: people in Africa had to endure almost 500 violent conflicts since 1946, followed by Asia with less than 200 (to complete the picture: the Middle East experienced almost 70 conflicts, slightly more than the Americas; Europe figures on this list with less than 60 conflicts since 1946. When comparing the estimated battle-related deaths in all these conflicts since 1989, the UDCP/PRIO-data show a similar pattern: 1.1 Mio. victims on African soil, followed by 300,000 Asians killed in combat and 125,000 fatalities in the Middle East. Since 1992 the HIIK provides an annual *Conflict Barometer*.¹⁰ These data also prove how heavily Africa is struck by the scourge of conflicts.

Besides using figures, the situation in Africa can also be displayed on the basis of different indices. *Afro-optimists* might criticize the significance of such statistical data – often with good reason. Nonetheless, the *Failed States Index* reflects an alarming situation of African nations leading the negative list¹¹ – as does the UNDP's

⁹ UCDP/PRIO, *Armed Conflict Dataset*. Available at http://www.pcr.uu.se/research/ucdp/datasets/ucdp_prio_armed_conflict_dataset/ (23 August 2013). The conflicts in the list are defined as violent conflicts (at least one party is a government), one-sided violence (violence by a group or a state against civilians; period covered: 1989-2012), and non-state conflicts (none of the conflict-parties is a government, 1989-2012). The detailed lists produce absolute figures but the three conflict-types stretch over different investigation periods.

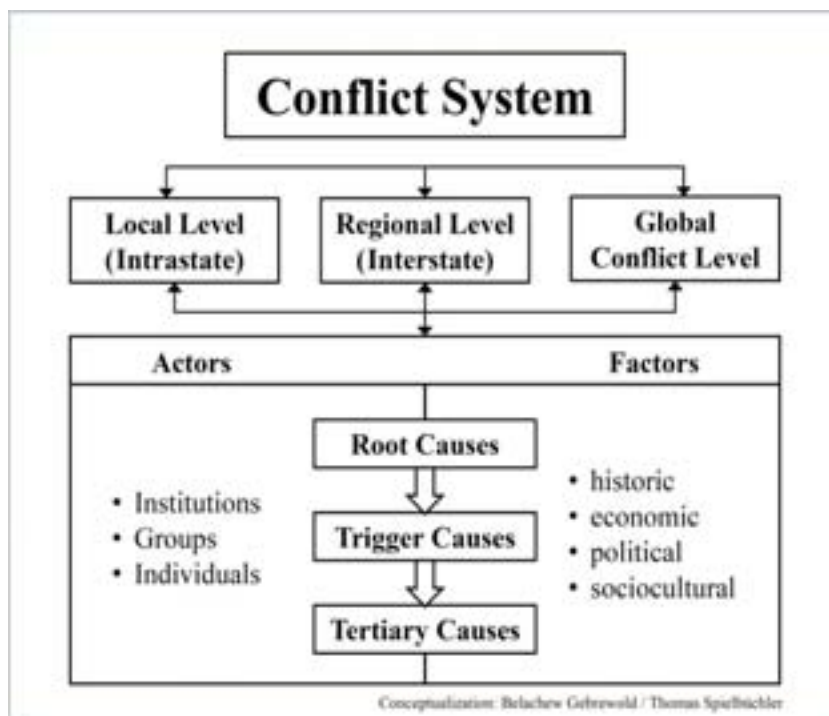
¹⁰ Heidelberg Institute for International Conflict Research, *Conflict Barometer*. Available at <http://hiik.de/en/konfliktbarometer/index.html> (23 August 2013).

¹¹ The Fund for Peace, *Failed States Index 2013*. Available at <http://ffp.statesindex.org/> (23 August 2013).

HDI.¹² The BTI, assessing transformation, paints a more differentiated picture that expresses the good performance of some states.¹³ But since African nations start from a very low level, a positive transformation index does not necessarily give reason for euphoria.

The correlation between the poor performance in diverse indices and the conflicts is evident: *bad governance* and conflicts mutually blow each other up. By analyzing a conflict it becomes clear that there is no plausible mono-causal explanation for the sudden eruption of violence. It is rather a complex bundle of different elements that forms a conflict. In the analytical scheme (**Figure 1**), the central axis of a conflict is formed by *Root-, Trigger-, and Tertiary Causes*. Along this axis the actors and factors of a conflict have to be identified: institutions, groups or individuals, on the one hand, and historical, political, economic as well as socio-cultural factors, on the other hand. On top of that, conflicts have to be analyzed with regard to their geographic dimension: is it a single local event or are there any regional or even global implications, which bring about the conflict as a part of a conflict system? Given this very simple scheme, it becomes evident that every approach aiming at transforming conflicts cannot focus on one single isolated element of this bundle of factors.

Figure 1: Scheme of a Conflict System



Most of the economic, political and socio-cultural issues of a conflict could be tackled by *good governance* – a commitment indirectly fixed up in the Charta of the OAU and explicitly named in the Constitutive Act of the AU.

D A Possible Resort?

The Assembly of the African HoSG served as a supreme decision making body of the OAU from 1963 to 2002 – a period when the commitment to responsible governance as adopted in the Charta 1963 did not play a prominent role at all. The focus on personal security of the HoSG combined with the principle of non-intervention crippled all means of control, therefore the OAU turned out to be a weak institution to deal with conflicts. *Non-intervention* is also responsible for the complete failure of the sophisticated idea of conflict management. When the CMCA for conflict management was finally appointed after several years of debate, no case was referred to it – the HoSG preferred ad-hoc committees without any legal obligations.

The insignificance of *good governance* within the OAU is also well displayed by another fact: from 1963 to 2002, a total of 42 African HoSG served as chairpersons of the OAU-Assembly. On this list there are prominent figures like Joseph-Désiré Mobutu (1967-1968), as well as Idi Amin (1975-1976) or Mengistu Haile Mariam (1983-1983). 17 of the chairs seized power in their countries by a coup d'état, eleven of them were ousted by another coup d'état or simply assassinated. The South African Political Scientist John Akokpari put it simple by stating that: "The

OAU was not designed as a human rights prevention or good governance promotion institution.”¹⁴

In terms of governance, 1990 marks a turning point for Africa. As a reaction to the end of the Cold War and its implications for African HoSG, the Assembly adopted a declaration reaffirming:

That Africa’s development is the responsibility of our governments and peoples. We are now more than ever before determined to lay solid foundation for self-reliant, human-centred and sustainable development on the basis of social justice and collective self-reliance, so as to achieve accelerated structural transformation of our economies.¹⁵

Besides economic plans (especially the Abuja-Treaty to create an African Economic Community)¹⁶ *good governance* became a central slogan of the new paradigm: *African Renaissance* or *African Renewal*.¹⁷ Nelson Mandela referred to the “quality of governance” when he addressed his colleagues weeks after his

¹⁴ Akokpari, 2003, 2.

¹⁵ OAU, Declaration of the Assembly of Heads of State and Government of the Organization of African Unity on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World, adopted 11 July 1990 in Addis Ababa, Ethiopia, OAU Doc. AHG/Decl.1 (XXVI).

¹⁶ OAU, Treaty establishing the African Economic Community, adopted on 3 June 1991 in Abuja, Nigeria, entered into force on 12 May 1994.

¹⁷ Since the term *African Renaissance* seemed to be occupied by South African protagonists, prominent figures of the African continent started to call the new paradigm *African Renewal* with the intention of detaching the term from South Africa.

election.¹⁸ His deputy and latter successor, Thabo Mbeki, became the most prominent advocate of good governance in Africa. In his speech at the United Nations University, he explained his vision of the new African liberation and demands:

That we must bring to an end the practices as a result of which many throughout the world have the view that as Africans, we are incapable of establishing and maintaining systems of good governance. Our own practical experiences tell us that military governments do not represent the system of good governance which we seek.¹⁹

In 2001 the commitment to *good governance* was boosted again when different visions of the new initiative for the continent (Millennium Partnership for the African Recovery Programme – MAP, OMEGA Plan) were merged to what should become the NEPAD – an official programme of the OAU (and of the AU from June 2002 onwards). Within the NEPAD, the APRM became – theoretically – a mighty tool to observe governance in Africa.²⁰ In addition to this mechanism, the AU has also expanded its list of principles compared to the OAU: the old value of non-intervention became the AU-principle of *non-interference* that was limited through:

¹⁸ Mandela, Nelson, Statement of the President of South Africa, Mandela, Nelson, at the OAU Meeting of Heads of State and Government, 13 June 1994, Tunis, Tunisia.

¹⁹ Mbeki, Thabo, South African Deputy President Thabo Mbeki speaks at the United Nations University, 9 April 1998: *The African Renaissance, South Africa and the World*.

²⁰ Cilliers, Jakkie, NEPAD's Peer Review Mechanism, Institute for Security Studies, Occasional Paper, No. 64, November 2012.

The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.²¹

The new APSA represents a very sophisticated framework to watch over peace and security throughout the continent. Despite successes, statistical data present a dark picture of the situation since 2002: according to the HIIK the number of violent conflicts could not be reduced since the establishment of the APSA.

With regard to the interconnection of governance and conflicts, one could assume that *good governance* is still an issue. Some figures in this context: since 2002 eleven HoSG have served as chairpersons of the African Union, three of them overtook power by a coup d'état. Among the 24 cases on the list of the ICC there are two acting presidents, two vice-presidents, one former president, and one former head of state as well as some other prominent political figures.

Once again: the assembly is the highest decision making body within the AU and it should be a primary objective of the HoSG to promote good governance in Africa. Following the actual *Governance Report*, a marginal progress can be observed. Thus it states: "Africa's democratization remains fragile and contestable."²²

²¹ OAU, 2000, Art. 4 (h).

²² United Nations Economic Commission for Africa (UNECA), African Governance Report III. Elections & the Management of Diversity, Oxford, 2013, 1.

E Conclusion

The overall picture of the security situation in Africa since 1960 is alarming. Although the HoSGs committed themselves to responsible governance, the continent has been troubled by violent conflicts. Of course there are external interests and structural influences which worsen the situation, but nonetheless *bad governance* constitutes a major factor to the situation. It initiates or reinforces different aspects of manifest conflicts and their escalation: *bad governance* fosters political, economic and/or socio-cultural inequality, marginalization, and exclusion.

Countless ways out of the crisis were created – most of them outside Africa. But there is also a very simple idea with a long tradition in postcolonial Africa on how to avoid or manage conflicts: responsible- or *good governance* is anchored in pan-African documents since 1958. Unfortunately the vision of *good governance* did not match the Machiavellian basics of politics: struggle for power and the defense of it, once achieved. *Good governance* was widely ignored until the 1990s, when the late OAU took up the subject again. It became a central principle of the AU and is on the Union's agenda since 2002. But even when the AU-Commission is serious about the commitment, it belongs to the assembly and the individual political leaders respectively to implement this principle in the African states. There are positive tendencies though: in 2011 there were 15 presidential and 20 parliamentary elections in Africa, for 2012 the figures are 10 and 13 respectively. But in 2011, the continent experienced three attempted coups d'état (Guinea, Guinea-Bissau, Niger). In 2012, the coups d'état in Guinea-Bissau and Mali were successful. Nonetheless the authors of the *Governance Report* are slightly optimistic: "Since the early 1990s, most African countries have witnessed democratic transition in which popular agitation

and struggle for political reform have ousted authoritarian and despotic regimes.”²³

Good governance seems to be the simplest approach to overcome the problem – although the implementation turned out to be all but simple. The international community partly tries to put pressure on African states with a poor governance record: *good governance* became a precondition for assistance. To counter this external control, African HoSG stress two other slogans of the African Renewal: *African ownership* and *African leadership*. The insistence on self-determination after the period of colonialism and post-colonial external influences is comprehensible – especially because the North in general has made proof of poor governance vis-à-vis Africa for centuries. Nevertheless *African ownership* and *leadership* possibly involves the risk of a new form of non-interference.

Despite all supportive (and destructive) external influences, it remains the task of the African HoSG to overcome the burden of *bad governance*. In this regard, President Nelson Mandela has declared vis-à-vis his counterparts in Tunis:

We know it is a matter of fact that we have it in ourselves as Africans to change all this. We must, in action, assert our will to do so. We must, in action, say that there is no obstacle big enough to stop us from bringing about a new African renaissance.²⁴

²³ UNECA, 2013, 5.

²⁴ Mandela, Nelson, 1994.

V Normative African Answers to Security Challenges

Kalkidan N. Obse^{*}

The ‘African Spring’ and the Question of Legitimacy of Democratic Revolution in Theory and Practice

Abstract

The ‘African spring’ has generated a spirited debate concerning the link between revolutions and democracy including the question of legitimacy of popular revolutionary action targeting authoritarian regimes. Focusing on the normative framework of the African Union, this article engages the question whether the concept of ‘democratic revolution’ could find support under emerging international and regional standards. To this end, the article assesses the traditional approach under international law as well as the implications of the emerging recognition of the right to democratic governance under international and regional standards. The study reveals that the pro-revolutionary implications of the principle of democratic governance are not as obvious as the importance of the principle as an (anti-revolutionary) injunction against the forcible ouster of democratically elected governments.

Keywords: Right to Revolution; Democracy; African Charter on Democracy, Elections and Governance

* Lecturer at Addis Ababa University (College of Law and Governance Studies), Dr. iur. Candidate (University of Graz, Austria), LLB (Addis Ababa), LL.M. (St. Thomas-Florida); Email: kalnegash@gmail.com.

Table of Contents

A	Introduction	233
B	The Quest for a Normative Theory of Revolution	236
C	The Legitimacy of Democratic Revolution under International Law.....	242
D	The African Union and Democratic Governance	249
E	Conclusion	267

A Introduction

“The revolution of a gifted people which we have seen unfolding in our day may succeed or miscarry; it may be filled with misery and atrocities to the point that a sensible man, were he boldly to hope to execute it successfully the second time, would never resolve to make the experiment at such cost – this revolution, I say, nonetheless finds in the hearts of all spectators (who are not engaged in the game themselves) a wishful participation which borders on enthusiasm, the very expression of which is fraught with danger; this sympathy, therefore, can have no other cause than a moral disposition in the human race.”¹ – Immanuel Kant

The self-immolation of Mohamed Bouazizi in protest of ill treatment by the Tunisian police served as the tipping point for the Tunisian revolution which was ignited in late

¹ Kant, Immanuel, An Old Question Raised Again: Is the Human Race Constantly Progressing?, OQ 85. Cited by Korsgaard, Christine M., Taking the Law into Our Own Hands: Kant on the Right to Revolution, in: Reath, Andrews *et al.*, (eds.), Reclaiming the History of Ethics: Essays for John Rawls, Cambridge University Press (1997), 299.

December 2010. The incident caused widespread anger and popular anti-regime protests in Tunisia, which ultimately led to the stepping down of the country's president. This, in turn, encouraged an unprecedented wave of popular uprisings against authoritarian regimes in Egypt, Libya, Algeria and other Arab countries causing significant political shifts in several of these countries.² The affected regimes struggled to maintain their rule through a combination of repressive measures and promises of measured reforms. However, defiant protestors demanded nothing less than regime change, and regime change was exactly what protestors in Tunisia and Egypt got as ruling regimes in these countries crumbled under the sheer force of popular democratic awakening, mobilization and action.³ Then followed the downfall of the Gaddafi regime in Libya under slightly different circumstances involving armed struggle and intervention by NATO.

What came to be described as the "Arab Spring" came as a surprise both for the affected countries as well as outside actors and observers. The African Union is no exception. The nature and scale of the events, which took place in its Northern member states were such that the

² This is not to downplay the role of the Egyptian military in enabling the overthrow of the Mubarak regime. For a detailed overview of the role played by the military during the 2011 Egyptian Revolution, see Varol, Ozan O., *The Democratic Coup D'Etat*, *Harv. Intl. L. J.*, 53 (2012) 291, 343-345.

³ The shockwaves of the North African uprisings were also felt in some parts of Sub-Saharan Africa. Sub-Saharan countries that experienced varying degrees of popular protests following the North-African uprisings include Burkina Faso, Senegal, Cameroon, Benin, Swaziland, Botswana, Mozambique, Malawi, Uganda, Sudan, Djibouti, and Ethiopia.

regional organization was not prepared to deal with the events in any coherent or principled manner. The Egyptian revolution had already yielded the demise of President Hosni Mubarak when the Peace and Security Council (PSC) of the AU issued its first *communiqué* on Egypt expressing support to the 'legitimate aspirations of the Egyptian people for democracy'.⁴ In the context of the Libyan crisis, the PSC issued a *communiqué* condemning 'the indiscriminate and excessive use of force and lethal weapons against peaceful protesters', while, at the same time, highlighting 'the need to preserve the territorial integrity and unity of [Libya]'.⁵

The AU remained wary of NATO's heavy-handed approach to the situation and clearly favored its own roadmap, which prescribed a negotiated solution to the crisis.⁶ However, the absence of a coordinated African stance on the crisis was evident given the fact that all the three non-permanent African members of the Security Council (South Africa, Nigeria and Gabon) voted in favor of Resolution No. 1973. While some commentators criticized the organization's slow and confused approach to the North African uprisings, others wondered if its statements supporting 'the aspirations of the people' were compatible with the organization's normative instruments proscribing unconstitutional changes of government.⁷

⁴ AU PSC, Communiqué, PSCPR/COMM(CCLX), 16 February 2011.

⁵ AU PSC, Communiqué, PSCPR/COMM(CCLXI), 23 February 2011.

⁶ AU PSC, Communiqué, PSC/PR/2(CCLXXV), 26 April 2011.

⁷ See Mathews, Kay, The 2011 NATO Military Intervention in Libya, Implications for the African Union, in: Smith-Windsor, Brooke A. (ed.), AU-NATO Collaboration: Implications and Prospects, 2013. Available at

The above observations raise the central question of how mass protests that seek to oust authoritarian regimes are to be dealt with under emerging norms of international law and standards of the African Union. Is it possible to justify democratic revolutions as an expression of the constitutive power of the people or as a means of preserving democratic governance? Do such revolutions undermine constitutional democratic rule? Do they constitute an unconstitutional change of government under the relevant AU standards? The following discussion attempts to throw some light on these questions focusing on analysis of the questions in light of relevant international and African normative standards.

B The Quest for a Normative Theory of Revolution

The theoretical squabble on revolutions starts from the very definition of the term. One definition (known as the volcanic model) describes revolutions using the metaphor of explosions and eruptions thus depicting them as erratic natural disasters.⁸ Another model understands revolutions as fully intentional political phenomena and seeks to analyze the

[http://www.operationspaix.net/DATA/DOCUMENT/7761~v~AU-NATO Collaboration Implications and Prospects.pdf](http://www.operationspaix.net/DATA/DOCUMENT/7761~v~AU-NATO_Collaboration_Implications_and_Prospects.pdf). See also Sturman, Kathryn, Unconstitutional Changes of Government: The Democrat's Dilemma in Africa, SAIIA Policy Briefing 30, March 2011. Available at http://www.saiia.org.za/images/stories/pubs/briefings/saia_spb_30_sturman_20110322.pdf.

⁸ Aya, Rod, Theories of Revolution Reconsidered: Contrasting Models of Collective Violence, *Theory and Society*, 8 (July 1979) 1, at 40.

causes behind them (i.e. the political model). In the words of Rod Aya, the political model understands revolutions as 'vicious but principled fights over policy and resources'.⁹ Still another definition describes revolutions as change of regime affected through the use of violence.¹⁰ Others disagree, alleging that it is not necessary that a revolution employs violent means or has regime change as its outcome.¹¹

On the other hand, the subject of revolution hardly features in legal theory. The dominant perspective among legal scholars has been to view revolution as a *fait accompli*, a political question that does not lend itself to legal analysis.¹² In *Pure Theory of Law*, Hans Kelsen argues that revolution represents an 'important limitation' to his 'principle of legitimacy' since it has the effect of changing a legal order outside the way anticipated by that legal order.¹³ However, Kelsen observes that a revolution becomes validated by the sheer reality of its success and effectiveness, hence changing the basic norm (*Grundnorm*) of the legal order.¹⁴ Therefore, the central question for revolution relates to its effectiveness rather than its legitimacy.

⁹ Ibid.

¹⁰ See Stone, Lawrence, *Theories of Revolution*, *World Politics*, 18 (January 1966) 2, at 159.

¹¹ See Aya, *supra* note 8, at 40; See also Albert, Richard, *Democratic Revolutions*, 12 April 2011, 14-17 (unpublished manuscript, on file with author). Previously available at <http://ssrn.com/abstract=1808021> (last accessed May 2011).

¹² Khan, Ali, *A Legal Theory of Revolutions*, *B. U. J. Int'l L.*, 5 (1987) 1, 2.

¹³ Kelsen, Hans, *Pure Theory of Law*, translated from the 2nd German Ed., Knight, Max, University of California Press, 1967, reprinted 2005, 209.

¹⁴ Ibid., at 210.

Rejecting the effectiveness theory, some legal scholars have attempted to articulate criteria that can be used to assess the legitimacy of revolution. To mention an earlier example, a 1987 article by Ali Khan, curiously titled “A Legal Theory of Revolutions”, sought to articulate a theory that could help ‘identify criteria which will verify the legitimacy of a revolution’.¹⁵ After denouncing ‘traditional’ scholarly positions considering revolutions as ‘injusticiable political questions’, the author argues that “[n]ot all revolutions are bad” and proposes criteria that can be used to determine the legitimacy of revolutions.¹⁶ The gist of what the author names ‘social approval theory’ is that a revolution is legitimate if the revolutionary regime institutes democratic rule and governs by rules acceptable to the community.¹⁷

A similar conclusion is advanced by Richard Albert in a paper titled *Democratic Revolutions*. Central to Albert’s argument is a critique of what he describes as mechanical and amoral nature of conventional revolutionary theory resulting from the alleged inability of the theory to pass judgment on the merits of revolution.¹⁸ Thus the author resolves to ‘reclaim for revolution its sacred ground’ by shifting the focus towards the normative dimension of revolutions.¹⁹ He employs the term ‘democratic revolution’ to refer to those revolutions that effect ‘democratic transformation of the state’ and are accepted as legitimate by the citizenry.²⁰

¹⁵ Khan, supra note 12, at 2.

¹⁶ Ibid.

¹⁷ Ibid., at 3, 20.

¹⁸ Albert, supra note 11, at 2.

¹⁹ Ibid., at 4.

²⁰ Ibid., at 18-23.

Ozan Varol's article titled *The Democratic Coup D'Etat* is another major contribution pertinent to our inquiry. Published in the aftermath of the 'Arab spring', the article presents the concept of 'democratic coup' as an antithesis to what it calls the 'anti-democratic model' of coups which views all coups as a threat to stability and democracy.²¹ The article challenges the traditional position, which it considers to be recently championed by Albert's notion of 'democratic revolution', by analyzing cases in which military coups paved the way towards democracy.²² Varol defines the 'democratic coup' as comprising the following attributes:

... the military coup is staged against an authoritarian or totalitarian regime; the military responds to popular opposition against that regime; the authoritarian or totalitarian leader refuses to step down in response to the popular opposition; coup is staged by a military that is highly respected within the nation, ordinarily because of mandatory conscription; the military executes the coup to overthrow the authoritarian or totalitarian regime; the military facilitates free and fair elections within a short span of time; and the coup ends with the transfer of power to democratically elected leaders.²³

Our use of the term 'democratic revolution' in this article does not endorse Albert's understanding of the term.

²¹ Varol, *supra* note 2, at 293.

²² *Ibid.*, at 322-345.

²³ *Ibid.*, at 295.

For one thing, his definition of the term is too vague as his paper does not clearly define what is meant by 'democratic transformation of the state' or when we can say a revolution is accepted as legitimate. On the other hand, as rightly pointed out by Varol, the theory is too restrictive as a result of its unwarranted exclusion of all types of coups from the ambit of 'democratic revolution'.

However, the most important flaw affecting all of the above discussed theories which, to varying degrees, make claims of normativity paradoxically relates to their lack of normative quality. Although the authors set out to offer a normative theory of revolutions, they end up essentially prescribing a 'wait and see' criteria having the effect of conflating the normative question of legitimacy of revolutions with assessment of the democratic quality of the post-revolutionary transitional process. It is at best questionable to what extent one can be justified to build a generalized normative theory of revolutions based on the observation that 'not all coups are equally anti-democratic'.

It may be appropriate to adopt part of the elements in Varol's definition of 'democratic coup' such as the requirements that a democratic revolution targets an authoritarian or totalitarian regime or that it responds to popular opposition. However, for the reason stated above, we need to leave out those elements that essentially concern the democratic quality of the post-revolutionary transition process. Further, we can see that the definition is restrictive to the extent that it is limited to the question of justifiability of revolutionary changes that involve the military. There is no reason to limit the scope of potentially justifiable revolutionary changes to coups or those cases which involve the military.

It is not uncommon for militaries to play a counter-

revolutionary role backing authoritarian regimes in power, the Libyan army under Gaddafi being a case in point. In those cases, the necessary force to overthrow the government may come in other forms such as continued uprisings that challenge the regime's capacity to govern, the involvement of armed dissident groups and, in exceptional cases, multilateral intervention by other states. For this reason, we adopt a broad Kelsenian understanding of the term 'revolution' which accommodates coups and other forms of regime changes.²⁴ And we borrow the democratic component from Varol's concept of 'democratic coup'. The combination gives us a more appropriate conception of 'democratic revolution' in which sense the term is used throughout this article.

For the purpose of this article, 'democratic revolution' refers to the downfall of an authoritarian or totalitarian regime following the departure of top rulers of the regime under circumstances involving mass protests calling for their departure and the installation of a democratic regime. Such a broad definition is capable of accommodating the different cases of democratically justifiable changes of governments. In what follows, we attempt to investigate whether the concept of 'democratic revolution' could find support in emerging international and regional normative standards.

²⁴ Kelsen defines revolution as follows: "A revolution in the broader sense of the word (that includes a coup d'E'tat) is every not legitimate change of this constitution or its replacement by another constitution. From the point of view of legal science, it is irrelevant whether this change of the legal situation has been brought about by the application of force against the legitimate government or by the members of that government themselves, whether by a mass movement of the population or by a small group of individuals." Kelsen, *supra* note 13, at 209.

C The Legitimacy of Democratic Revolution under International Law

The preamble of the Universal Declaration of Human Rights (UDHR) employs a curious language describing the lack of protection of human rights as a circumstance which might justify resort to rebellion. The third preambular paragraph of the UDHR reads: 'It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.'²⁵ Similarly, the African Charter on Human and Peoples' Rights (1981/1986) includes a provision which confers on colonized or oppressed people the right to resort to 'any means recognized by the international community' and obliges member states to assist oppressed peoples in their liberation struggle.²⁶ Nevertheless, it appears that the provision is concerned with the specific case of resistance to colonial rule and, as such, may not be invoked to support a right to revolution in the general sense.

The inclusion of the rather rhetorical language of revolt in the preamble of the UDHR had prompted some authors to uncritically adopt a position holding that the right to revolution is recognized under international law. For instance, writing in 1983, Jordan J. Paust claimed, '[t]oday, the right of revolution is an important international precept and a part of available

²⁵ UN General Assembly, Universal Declaration of Human Rights Preamble, 10 December 1948, 217 A (III).

²⁶ Organization of African Unity, African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, I.L.M., 21 (1982) 58, Articles 20 (2) & (3).

strategies for the assurance both of the authority of the people as the lawful basis of any government and of the process of national self-determination'.²⁷ His conclusion appears to be based on an overly expansive reading of the reference to revolution in the preamble of the UDHR as well as principles related to the right to participate in government and the right to self-determination.²⁸ While central to his argument is the rule under paragraph 3 of Article 21 (UDHR) which states that '[t]he will of the people shall be the basis of the authority of government', his argument fails to consider the implications of the second part of the same paragraph which states that 'this will shall be expressed in ... elections'.

Further, it is questionable if the right to revolution can be safely derived from the concept of the right to self-determination which is itself a concept lacking in clarity with regard to its object (objective) as well as the identity of eligible claimants of the right.²⁹ The principle of self-determination in international law originally had the purpose of preserving national sovereignty against the external threats of colonial rule or alien domination.³⁰ Over time, it obtained an

²⁷ Paust, Henry J., *The Human Right to Participate in Armed Revolution and Related Forms of Social Violence: Testing the Limits of Permissibility*, Emory L. J., 32 (1983) 545, 562.

²⁸ See *ibid.*, at 565-566.

²⁹ For instance, Antonio Cassese considers self-determination to be a loose standard which lacks specificity with regard to its scope of application as well as method of implementation, Antonio Cassese, *Self-determination of Peoples: A Legal Reappraisal*, Cambridge University Press, 1995, 128.

³⁰ See Castellino, Joshua, *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession with Formulations of Post-Colonial 'National' Identity*, Martinus Nijhoff Publishers, 2000, 22-29.

internal dimension as it began to be employed to support the demands of sub-national groups for autonomy and self-rule within a given state.³¹ Beyond self-rule, the principle is sometimes, albeit more controversially, invoked to support separatist aspirations of sub-national groups which seek to form their own state through secession.³² The right to secession has been likened to the right to revolution allegedly on the ground that both rights stem from gross violations of human rights and that they justify the use of force to overthrow the government or secede from the state concerned.³³ Be that as it may, it is unclear to what extent a generalized right to revolution can be established on the basis of the concept of self-determination given the conspicuous lack of consensus as to the scope and normative content of the principle.

The traditional position of international law concerning the legitimacy of revolutionary change is aptly conveyed in the famous decision of the *Tinoco case* involving Costa Rica and Great Britain.³⁴ The controversy concerns Costa Rica's repudiation of the financial undertakings of the former Tinoco

³¹ Shaw, Malcolm M., Self-Determination and the Use of Force, in: Ghanea-Hercock, Nazila *et al.* (eds.), *Minorities, Peoples and Self-Determination: Essays in Honour of Patrick Thornberry*, Martinus Nijhoff Publishers, 2005, 41.

³² See Eastwood, Lawrence S., Jr., *Secession: State Practice and International Law after the Dissolution of the Soviet Union and Yugoslavia*, *Duke J. Comp. & Int'l L.*, 3 (1993) 299, 346-347.

³³ Mullerson, Rein, *International Law, Rights and Politics, Developments in Eastern Europe and the CIS, The New International Relations*, Routledge, 1994, 92.

³⁴ *Arbitration Between Great Britain and Costa Rica*, *Am. J. Int'l L.*, 18 (1924) 147.

government on the ground that the revolutionary regime assumed power in violation of the then existing constitution. Commenting on the responsibility of Costa Rica for the actions of the Tinoco regime, William Howard Taft, the sole arbitrator of the case, held as follows:

To hold that a government which establishes itself and maintains a peaceful administration, with the acquiescence of the people for a substantial period of time, does not become a *de facto* government unless it conforms to a previous constitution would be to hold that within the rules of international law a revolution contrary to the fundamental law of the existing government cannot establish a new government. This cannot be, and is not, true.³⁵

Therefore, the traditional approach of international law to government recognition endorses the effectiveness theory to which we alluded in the above section. According to this approach, a government shall be recognized as long as it exercises 'effective control' over the territory it purports to govern.³⁶ This means a government which comes to power through non-constitutional means could very well enjoy full international recognition provided that it exercises effective control of the state.³⁷ To be sure, this approach is indifferent

³⁵ Ibid., at 154.

³⁶ O'Brien, John, *International Law*, Cavendish Publishing, London, 2001, 175.

³⁷ See Murphy, Sean D., *Democratic Legitimacy and the Recognition of States and Governments*, in: Fox, Gregory H. and

to the means through which government power is assumed be it a military coup or other forms of revolution. Nevertheless, it can be noted that the approach does not amount to establishing a 'hard-law right to revolution' under international law.³⁸ The more precise implication of the traditional approach is that revolution is permitted under international law as long as there are no rules prohibiting revolutions.³⁹

However, more recent developments in international relations reflect increasing international interest in the promotion of democracy as well as the protection of democratically elected governments. The origins of such developments can be traced back to the end of the Cold War and the associated 'wave of democratization' which facilitated the spread of liberal democratic values in diverse parts of the world since the 1990s. The post-1990s' international engagement in democracy has been expressed in various forms such as the promotion of democratic values through 'classic diplomacy', foreign aid to fund elections and democratic institutions, conditionalities and sanctions to promote transition to democracy (particularly in those cases democratically elected governments are illegally overthrown) as well as the launching of military interventions.⁴⁰ The United

Roth, Brad R. (eds.), *Democratic Governance and International Law*, Cambridge University Press, 2000, 139.

³⁸ Sloane, Robert D., *The Changing Face of Recognition under International Law: A Case Study of Tibet*, *Emory Int'l L. Rev.* 16 (2002) 107, 123-124.

³⁹ *Ibid.*

⁴⁰ Schraeder, Peter J., *Making the World Safe for Democracy*, in: Schraeder, Peter J. (ed.), *Exporting Democracy: Rhetoric vs. Reality*, Lynne Rienner Publishers, 2002, 219-220.

Nations and other international organizations have been at the forefront of efforts at democracy promotion as well as the protection of democracies.⁴¹ The international community's commitment to protecting democratically elected governments has gone to the extent of supporting military interventions to restore the deposed governments of Haiti (1994), Sierra Leone (1998) and Cote d'Ivoire (2011).

Observing the post-Cold War global interest in democracy, scholars have noted the emerging recognition of democratic governance as a global norm thereby articulating the case for the recognition of the right to democracy ("democratic entitlement") under international law.⁴² Proponents of the democratic entitlement school advocate changes to traditional rules of international law with a view to reflecting democratic values and standards. In relation to recognition of governments, proponents consider democracy to be a 'prominent yardstick' with which to assess the legitimacy of governments.⁴³ In particular, the forceful ouster

⁴¹ See Tusalem, Rollin F., *The United Nations and Democracy Promotion: Assessing the Effectiveness of the UN's Democracy Fund and Electoral Assistance Division*, in: Peksen, Dursun (ed.), *Liberal Interventionism and Democracy Promotion*, Lexington Press, 2012, 177-184; See also Samuels, Kristi, *Political Violence and the International Community: Developments in International Law and Policy*, Martinus Nijhoff Publishers, 2007, 118-120.

⁴² Franck, Thomas, *The Emerging Right to Democratic Governance*, *Am. J. Int'l L.*, 86 (1992) 46, 46-91. For a comprehensive introduction to the scholarly debate surrounding the recognition of 'democratic entitlement' under international law, see Fox, Gregory H. and Brad R. Roth (eds.), *Democratic Governance and International Law*, Cambridge University Press, 2000.

⁴³ See D'Aspremont, Jean, *Legitimacy of Governments in the Age of Democracy*, *NYU J. Int'l L. & Pol.*, 38 (2006) 877, 888.

of democratically elected governments is rejected by proponents of the school as something which constitutes an impermissible assault on democracy. In this regard, leading proponents of the school have suggested that external military interventions can be permissible to depose usurper regimes which overthrow elected governments.⁴⁴

On the other hand, the democratic entitlement theory has been used to provide support to the toppling of regimes which commit serious atrocities against their populations. For instance, Michael Reisman contends that regime change (i.e. through foreign intervention) can be appropriate in 'the most egregious instances of widespread human rights violations'.⁴⁵ Nevertheless, the plausibility of regime change in the most serious cases of human rights violations provides little justification for 'democratic revolution' aimed at ousting an authoritarian regime merely on the ground of its authoritarian or totalitarian nature. Following the traditional normative approach, we may hold such revolutions are permitted as long as there are no rules explicitly prohibiting them. However, it is questionable if the mere absence of a clear prohibitive rule against democratic revolution should provide a reliable justification for such a politically sensitive matter as

⁴⁴ Fox, Gregory H. and Brad R. Roth, Introduction: The Spread of Liberal Democracy and Its Implications for International Law, in: Fox & Roth (eds.), *supra* note 42, at 11-12; See also Reisman, W. Michael, Sovereignty and Human Rights in Contemporary International Law, *ibid.*, at 257-258 and Farer, Tom J., The Promotion of Democracy: International Law and Norms, in: Newman, Edward and Roland Rich, *The UN Role in Promoting Democracy: Between Ideals and Reality*, United Nations University, 2004, 55.

⁴⁵ Reisman, W. Michael, Why Regime Change is (Almost Always) a Bad Idea, *Am. J. Int'l L.*, 98 (2004) 516, 517.

revolution.

In fact some scholars believe that there are international norms regulating the permissibility democratic revolution. For instance, Kristi Samuels claims that the existing Security Council policy against recourse to violence to resolve political disputes implies that 'recourse to force ... to overthrow a non-oppressive, non-democratic regime is prohibited'.⁴⁶ This can be contrasted with the alleged existence of 'high level of consistency' when it comes to the Council's rejection of political violence against elected governments which at times has been expressed through the authorization or implicit approval of military interventions to depose usurper regimes.⁴⁷ Therefore, it can be held that the pro-revolutionary implications of the principle of democratic governance are not as obvious as the importance of the principle as an (anti-revolutionary) injunction against the forcible ouster of democratically elected governments.

D The African Union and Democratic Governance

Regional organizations have long been at the forefront of efforts aimed at promoting and protecting democratic governance through the adoption of new normative standards sometimes known as the 'democratic clause'. The Organization of American States (OAS) is one such organization with a pioneering tradition of adopting regional standards dealing with democracy. The Inter-American

⁴⁶ Samuels, *supra* note 41, at 215.

⁴⁷ *Ibid.*, at 117.

regional commitment to democratic norms was initially expressed through the adoption, in 1991, of the Santiago Commitment to Democracy and the Renewal of the Inter-American System and the resolution on Representative Democracy. The resolutions enabled the OAS to promote democratic rule in its member states and adopt appropriate measures in the event of a disruption of democratic processes in any of the member states.⁴⁸ In addition, the 1992 Washington Protocol to the Charter of the OAS provided for the suspension from membership of OAS states whose governments came to power through unconstitutional means.⁴⁹

The OAS tradition of promoting democratic norms was further reinvigorated through the adoption of the Inter-American Democracy Charter of 2001. The Charter explicitly declares that “the peoples of the Americas have a right to democracy” and requires the member states to “promote and defend” democracy.⁵⁰ The core principles recognized under the Charter include free elections, human rights, the rule of law, multi-party system, separation of powers, independence of the branches of government, and the rejection of unconstitutional changes of government.⁵¹

⁴⁸ See the Santiago Commitment to Democracy and the Renewal of the Inter-American System, 4 June 1991, AG/doc2734/91 (adopted at the 3rd plenary session) and the resolution on Representative Democracy, 5 June 1991, AG/Res. 1080 (XXI-O/91), adopted at the 5th plenary session.

⁴⁹ See Protocol of Washington, 1-E, Rev. OEA Documentos Oficiales, OEA/Ser.A/2 Add. 3 (SEPF), I.L.M., 33 1005.

⁵⁰ Inter-American Democratic Charter, Organization of American States (OAS), 11 September 2001, I.L.M., 40 (2001) 1289, Art. 1.

⁵¹ See *ibid.*, Articles 3 and 19.

Coming to the African context, the OAU/AU policy towards democratic governance in Africa had undergone a dramatic evolution over the years. The main purposes for the establishment of the OAU were to defend the sovereignty of African states and eradicate all forms of colonialism as well as to promote the unity and solidarity of African states.⁵² The organization's preoccupation with the principle of non-interference in the internal affairs of member states initially meant that questions of democracy including domestic political struggles in member states were to be considered essentially internal problems.⁵³ The manner of ascension to political power was not that much relevant for regime recognition during the OAU era.⁵⁴ However, the organization eventually started to make a remarkable shift of policy which culminated in the adoption of the Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government (Lomé Declaration 2000).⁵⁵

The establishment of the AU signifies a resolve on the part of African states to accord greater significance to principles of human rights and democratic governance. The Constitutive Act of the AU (2000/2001) limited the scope of the principle of non-interference by, *inter alia*, permitting the

⁵² Charter of the Organization of African Unity, 479 U.N.T.S. 39, entered into force 13 September 1963, Art. 2.

⁵³ Odinkalu, Chidi Anselm, Concerning Kenya: The Current AU Position on Unconstitutional Changes in Government, Open Society Justice Initiative (January 2008). Available at http://www.afrimap.org/english/images/paper/AU&UnconstitutionalChangesinGovt_Odinkalu_Jan08.pdf.

⁵⁴ Ibid.

⁵⁵ Organization of African Unity (OAU), Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government (AHG/Decl.5 (XXXVI), July 2000.

organization to intervene in member states in cases of war crimes, genocide, and crimes against humanity.⁵⁶ Among the objectives and principles of the organization are included the ideals of democracy, good governance, rule of law and human rights. Further, the Constitutive Act provides for the rejection of unconstitutional changes of governments and the suspension of governments which come to power through unconstitutional means.⁵⁷ The premium placed on democratic governance in the constitutive act and a network of other regional instruments, which deal with various aspects of democratic governance has been held to constitute evidence of an African recognition of the right to democratic governance.⁵⁸

The Lomé Declaration has so far occupied a distinct status as AU's main normative instrument in relation to the promotion of democratic governance.⁵⁹ This is bound to

⁵⁶ For a comprehensive assessment of AU's policy of humanitarian intervention, see Aneme, Girmachew A., *A study of the African Union's Right of Intervention against Genocide, Crimes against Humanity and War Crimes*, Wolf Legal Publishers, 2011.

⁵⁷ Organization of African Unity (OAU), Constitutive Act of the African Union, OAU Doc.CAB/LEG23.15, 11 July 2000, Art. 4(p) and Art. 30. Available at http://www.au.int/en/sites/default/files/Constitutive_Act_en_0.htm.

⁵⁸ See Kale, Ndiva Kofele, *Participatory Rights in Africa: A Brief Overview of an Emerging Regional Custom*, *Neth. Int'l L. Rev.*, 55 (2008) 233, 237.

⁵⁹ Although the Lomé Declaration is not a legally binding instrument, it can be maintained that its recognition in the 2003 Protocol establishing the Peace and Security Council (PSC), AU's principal organ for peace and security matters, including unconstitutional changes of government, gives the declaration a higher legal significance. For instance Article 7 (g) the Protocol empowers

change given the recent coming into force of the African Charter on Democracy, Elections and Governance (2007/2012), a binding instrument which is designed to serve as a comprehensive framework for the promotion of constitutional rule and democracy in Africa.⁶⁰ A sound analysis of the question of legitimacy of 'democratic revolution' under the AU normative standards requires a comprehensive assessment of the implications of the various principles and standards recognized within the AU legal framework. In what follows, we shall systematically analyze the question in light of a set of three interrelated normative principles that can be extracted from the overall AU normative framework. These are: 1) the principle of prohibition of unconstitutional changes of government, 2) the principle of

thePSC to institute sanctions whenever an unconstitutional change of government takes place as provided for in the Lomé Declaration.

⁶⁰ African Union (AU), African Charter on Democracy, Elections and Governance, adopted by the eighth ordinary session of the Assembly, Addis Ababa, Ethiopia, 30 January 2007, entered into force 15 February 2012. Other regional instruments which, in one way or another, contribute to the normative content of African Union's standards of democratic governance include: The African Charter on Human and Peoples' Rights (1981/1986), the Declaration on the Framework on an OAU Response to the Problem of Unconstitutional Changes of Government (2000), the Constitutive Act of the African Union (2001), the Declaration on the Principles Governing Democratic Elections in Africa (2002), the NEPAD Declaration on Democracy, Political, Economic, and Corporate Governance (2002), the Protocol relating to the Establishment of the Peace and Security Council of the African Union (2003), and the AU Solemn Declaration on the African Common Defense and Security Policy (2004).

democracy and human rights, and 3) the principle of responsibility to protect.

1 The Principle of Prohibition of Unconstitutional Changes of Government

The progressive consolidation and institutionalization of a regional norm against unconstitutional changes of governments in Africa can be considered to be a major achievement of the African Union in its decade-long existence. Building on late initiatives of its predecessor (the OAU), the AU has registered significant progress in dealing with the problem of unconstitutional changes of government through the development of the necessary normative standards and institutional mechanisms as well as by upholding the principle in practice. As a result, the norm which was initially inspired by the limited ambition of dealing with the scourge of coups in Africa currently enjoys a central position not only as an important pillar of the peace and security architecture of the AU but also as a key instrument for the promotion of constitutional rule and democracy in the continent.

The importance of the norm against unconstitutional changes of government stems from its incorporation in various instruments of the AU and its recognition in the practice of the organization and its member states.⁶¹ Article

⁶¹ For an assessment of AU's achievements in enforcing the principle of unconstitutional changes of government, See Ibrahim, Abadir M., *Evaluating a Decade of the African Union's Protection*

30 of the Constitutive Act specifically provides that governments that seize power through unconstitutional means be suspended from participation in the activities of the Union. This comes on top of a range of other sanctions stipulated under the Lomé Declaration and the African Charter on Democracy, Elections and Governance. It is also worth mentioning that the norm is backed by the African Commission on Human and Peoples Rights which unequivocally stated in two important cases that unconstitutional changes of government violate the rights to free expression, assembly and participation in government, as well as the right of peoples to self determination.⁶²

In the event of an unconstitutional seizure of government power, the Lomé Declaration authorizes the AU to take a range of measures to safeguard constitutional rule. These include the condemnation of unconstitutional changes accompanied by a call on perpetrators to effect a speedy return to constitutional order within six months, suspension of the government concerned from participation in organs of the Union pursuant to the Constitutive Act, as well as a range of

of Human Rights and Democracy: A Post-Tahrir Assessment, *Afr. Hum. Rts. L. J.*, 12 (2012) 30, 49-50; However, the organization has been criticized when it comes to its practice of turning a blind eye on incumbent governments which cling to power by refusing to accept election defeats, see Ademola Abass, African Regional Organizations, the African Peace and Security Architecture and the Protection of Human Rights, in: Abass, Ademola (ed.), *Protecting Human Security in Africa*, Oxford University Press (2011), 280.

⁶² See Constitutional Rights Project and Civil Liberties Organisation v. Nigeria, Communication No. 102/93, ACHPR (1998), AHRLR 191, 2000, paras. 50-53; See also *Sir Dawda K. Jawara v. The Gambia*, Communications, No. 147/95 and No. 149/95, ACHPR (2000), AHRLR 107 (2000), para. 71-73.

targeted sanctions in case of failure to restore constitutional order within the six months period including visa denials, restrictions of government-to-government contacts and trade restrictions.⁶³ Additional measures envisaged under the Democracy Charter include prohibition of perpetrators from taking part in elections held to restore constitutional order, the trial of perpetrators before the competent court of the Union and imposition of sanctions on any member state that has instigated or supported unconstitutional change of government.⁶⁴

Although the scope of the regional norm on UCGs has been broadened under successive normative reforms, a close reading of the relevant standards reveals that the issue of democratic revolution doesn't squarely fit into existing AU standards on unconstitutional changes. The more evolved version of the principle of prohibition of unconstitutional changes of government as enunciated under the recently ratified African Charter on Democracy, Elections and Governance covers five different cases of unconstitutional changes of government. These are:

- 1) A military coup d'Etat against a democratically elected government;
- 2) An intervention by mercenaries to replace a democratically elected government;
- 3) A replacement of a democratically elected government by armed dissidents or rebels;

⁶³ Lomé Declaration, *supra* at 55.

⁶⁴ Democracy Charter, *supra* note 60, at Art. 25.

- 4) A refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections; or
- 5) An amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government.⁶⁵

The first four cases of unconstitutional changes of government are also recognized under the Lomé Declaration while the fifth case of impermissible amendment or revision of constitutions is an innovation of the Democracy Charter. The first three cases may be considered to be pro-incumbent provisions which protect existing governments from the threat of being toppled by dissident groups. On the other hand, Article 23 (4) seeks to challenge attempts by incumbent governments to cling to power after losing elections although the practicality of such a provision can be questionable in light of AU's limited capacity to monitor elections. Similarly, Article 23(5) of the Charter can be used against incumbent governments which seek to extend tenure through amendment or revision of constitutions.

The first three cases deal with traditional cases of overthrowing of governments through military coups, the intervention of mercenaries and armed dissident or rebel groups. As such, they don't directly address the question of legitimacy of regime changes primarily driven by mass protests. On top of that, it should be underscored that the relevant provisions specifically deal with changes affecting

⁶⁵ Ibid., at Art. 23.

'democratically elected government', and not that of unelected regimes. In this regard, the main purpose of the provisions seems to be the protection of democratic regimes from the threat of forcible removal by the military or other armed groups. Although the AU seems to adopt in practice a blanket policy against all coups,⁶⁶ a literal reading of the relevant provisions reveals that the ouster of unelected regimes through unconventional or even violent means such as military coups or armed rebellion may not be considered an unconstitutional change of government in the technical sense.

In this sense, we may be able to easily justify the uprising in Libya and hold that it does not constitute an unconstitutional change of government given the absence of elections from the Libyan political scene prior to the uprising. However, justifying the uprisings against Tunisia's Ben Ali or Egypt's Mubarak can be more controversial since both presidents have been conducting elections to justify their rule. Thus, the justification for the ouster of the rulers mainly emanates from questioning the credibility of the elections conducted by the respective rulers.⁶⁷ At any rate, the existence or absence of democracy is an important factor in determining the legitimacy of regime changes through mass protests.

The foregoing analysis demonstrates that there are no rules explicitly prohibiting revolutions targeting authoritarian governments. This might lead us to say that a democratic

⁶⁶ Sturman, Kathryn and Aissatou Hayatou, *The Peace and Security Council: From Design to Reality*, in: Engel, Ulf and J. Gomes Porto (eds.), *Africa's New Peace and Security Architecture: Promoting Norms, Institutionalizing Solutions*, 2010, 72.

⁶⁷ See Sturman, *supra* at 7.

revolution shall be permissible as long as it is effective as per the dictates of traditional international law. Nevertheless, the mere absence of an explicit rule against democratic revolution does not serve as a strong normative justification for such revolution given our emphasis on the normative legitimacy of revolution. Further, making a distinction between democratic and authoritarian governments is difficult in practice since most governments tend to legitimize their rule by conducting some form of election. Now the question becomes who is to judge in cases where the results of elections are contested? In spite of its election monitoring mandate, the AU generally seems to adopt a differential approach leaving the determination of election outcomes to domestic electoral bodies and other authorized institutions such as national courts. This is evident in the organization's apparent unwillingness or inability to challenge incumbent regimes which seek to extend tenure through election fraud.⁶⁸ An important exception was the determined move made by the AU, in concert with international actors, to stop Laurent Gbagbo's attempt to extend tenure through election fraud during the 2010-2011 Ivorian election crisis. This was facilitated by the scandalous nature of the fraud as well as the severe international backlash caused as a result. It is important that the AU reinvigorates its election monitoring mandate since few cases of election disputes present

⁶⁸ See Abass, *supra* note 61, *ibid.*, see also Omotola, J. Shola, *Unconstitutional Changes of Government in Africa: What Implications for Democratic Consolidation?*, Discussion paper 70, Nordiska Afrikainstitutet, Uppsala, 2011. Available at <http://nai.divaportal.org/smash/get/diva2:478511/FULLTEXT01.pdf>.

themselves as clearly as in the case of the Ivorian election crisis.

2 The Principle of Democracy and Human Rights

The foregoing discussion reveals the limitations of a responsive approach to the problem of unconstitutional changes of government. Such an approach does not help us address the underlying problem of democratic deficit which lies at root of major political conflicts in Africa whether these reveal themselves in the form of coups or popular uprisings. The relevant normative standards in fact attempt to place the prohibition of unconstitutional changes of government within the broader framework of democracy although the monitoring of the practical implementation of the principles of democratic governance remains ineffective.

What we call the principle of democracy and human rights relates to a set of norms and principles within the AU normative framework that require the entrenchment of democratic norms as well as principles of rule of law and human rights. In contrast to the responsive approach, focus on the principle of democracy serves as a preventive tool suited to address violations of standards of democracy, rule of law and human rights which are the root causes of political conflicts including unconstitutional changes of government.

The principle of democracy is a key cross-cutting principle that animates the overall structure of the African Peace and Security Architecture (APSA). The African Charter on Human and Peoples' Rights clearly recognizes the right to participation in government 'either directly or through freely

chosen representatives'.⁶⁹ In interpreting the right to participation, the African Commission on Human and Peoples' Rights goes beyond a dissective approach, which understands the right in terms of its component units of the right to vote and the right to be elected. Interestingly, the right to participation is also understood by the commission in the teleological sense as a principle linked with the right of the people to self-determination. Decisions of the commission make it clear that failure to respect election outcomes or the toppling of democratically elected government constitutes a violation of the right to participation as well as the right of the people to self-determination.⁷⁰

Such a broader understanding of democratic governance is supported under several recent normative standards adopted under the auspices of the AU. The various instruments underline the centrality of democratic elections as the basis of governmental authority and require member states to regularly conduct elections which shall be free and fair.⁷¹ To this end, the member states are required to establish impartial electoral institutions capable of ensuring the conduct of free and fair elections as well as independent

⁶⁹ Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, I.L.M., 21 (1982) 58, entered into force 21 October 1986, Art. 13.

⁷⁰ *Supra* at 62.

⁷¹ See, e.g., Organization of African Unity (OAU), Declaration on the Principles Governing Democratic Elections in Africa, AHG/Decl. 1(XXXVIII), 8 July 2002, Articles 2 and 3; see also Democracy Charter, *supra* note 58, at Arts. 2(3), 3(4), & 17 and African Union (AU), The New Partnership for Africa's Development (NEPAD), Declaration on Democracy, Political, Economic and Corporate Governance, AHG/235 (XXXVIII), 18 June 2002, para. 13.

national courts which can arbitrate election disputes.⁷² Further, the instruments prescribe that competing political parties respect the outcomes of democratic elections with the new Democracy Charter stipulating a threat of sanction on incumbent regimes which refuse to accept election defeat.⁷³ What is more, the Democracy Charter targets the problem of perpetual incumbency in Africa by requiring member states to enable democratic change of governments from time to time as well as proscribing attempts to extend presidential terms through constitutional amendment.⁷⁴ In general, the various instruments include a range of standards, which obligate member states of the AU to ensure democratic governance including through respect for rule of law and protection of human rights.

In the context of our inquiry on democratic revolution, the premium placed on elections in the various normative standards helps remind us that elections, not revolutions, are the primary means by which the constitutive power of the people is expressed. Therefore, we should not be under any illusion that popular protests will generally serve as a substitute for elections however popular they are. This point cannot be emphasized enough given the contemporary tendency to romanticize popular protests simply looking at the number of people who take part in the protests. The anomaly is that opposing political factions could stage million-man marches behind their respective agenda. Nowhere should one look to see the dangers involved in such 'streetocracy' than the more recent military coup in Egypt staged against a

⁷² Ibid.

⁷³ See Democracy Charter, *supra* note 60, at Arts. 23(4) & 25.

⁷⁴ Ibid., Art. 23(5).

democratically elected government under the pretext of popular protests.

This is not to say that mass protests represent a danger in themselves. In fact, popular protests can be seen under a human rights lens. We can clearly justify popular protests, including those calling for regime change, in light of the recognition of freedoms of expression and assembly as well as the right to participation under the AU normative framework.⁷⁵ In this sense, every country can be required to recognize popular demonstrations as long as they are peaceful and fulfill other relevant conditions prescribed under international and African human rights law. In this connection, it is desirable that the African Commission on Human and Peoples Rights issues detailed guidelines that facilitate the implementation of the rights to expression and assembly under the Charter in a manner consistent with international human rights law.

3 The Principle of Responsibility to Protect (R2P)

The principle of responsibility to protect (R2P) is gaining increasing support as a limitation to sovereignty necessitated by the need to prevent gross and massive violations of human rights from taking place in any part of the world. The principle limits state sovereignty by recognizing the subsidiary 'responsibility' of the international community to protect civilian populations in those cases where a

⁷⁵ See African Charter on Human and Peoples' Rights, *supra* note 26, at Arts. 10, 11 and 13.

government is unwilling or unable to protect populations under its jurisdiction.⁷⁶ This 'responsibility' often involves intervention in the state concerned among other possible actions and measures that may be adopted with a view to protecting civilian populations. In the context of the Libyan crisis, the UNSC Resolution No. 1973 clearly acknowledged the 'responsibility to protect' by recognizing 'the responsibility of the Libyan authorities to protect the Libyan population' and authorizing 'all necessary measures to protect civilians'.⁷⁷ Nevertheless, the NATO use of the mandate to overthrow the Gaddafi regime had raised questions concerning the range of measures that may be authorized under the rubric of the responsibility to protect.⁷⁸ To be sure, NATO's broad interpretation of the mandate did not find much support within AU circles.⁷⁹

The principle of responsibility to protect no doubt enjoys a unique position in the African context owing to its explicit incorporation under Article 4(h) of the Constitutive Act of the African Union. However, AU's reluctance to fully embrace the NATO intervention indicates the continued significance of the principle of non-interference within the

⁷⁶ See Stahn, Carsten, Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?, *Am. J. Int'l L.*, 101 (2007) 99, 104.

⁷⁷ United Nations Security Council Resolution No. 1973 (2011), 17 March, 2011 "The Situation in Libya", S/RES/1973.

⁷⁸ See Pippan, Christian, The 2011 Libyan Uprising, Foreign Military Intervention and International Law, *Juridikum Zeitschrift für Kritik* 2 (2011), 164-168.

⁷⁹ See Tungwarara, Ozias, The Arab Spring and the AU Response, Open Society Institute, Africa Governance Monitoring and Advocacy Project, AfriMAP, 19 September 2011. Available at http://www.afriMAP.org/english/images/paper/AfriMAP_NAfrica_Tungwarara_EN.pdf.

regional organization. On the other hand, lack of AU enthusiasm for the military intervention can be explained in terms of the AU approach of supporting African solutions to African problems.⁸⁰ This approach is in fact evident in the way the principle of responsibility to protect is articulated under Article 4(h) according to which the mandate to intervene belongs only to the regional organization. Yet, AU's failure to consider the use of the provision in the Libyan situation casts doubts on the seriousness of its commitment to the principle. This is all the more remarkable given AU's admission of the regime's use of indiscriminate and excessive use of force and lethal weapons against peaceful protesters'.⁸¹

In relation to our inquiry on the legitimacy of 'democratic revolution', it will be important to determine to what extent the concept of responsibility to protect lends support to the toppling of repressive governments through the intervention of external actors. The prevailing opinion in this regard is that regime change is not necessary for the protection of civilians, hence should not be part of R2P as a matter of principle.⁸² Nevertheless, the conclusion of

⁸⁰ See Dersso, Solomon A., *The Quest for Pax Africana: The Case of the African Union's Peace and Security Regime*, *African Journal of Conflict Resolution (AJCR)* 12 (2012) 2, at 11-44. Available at www.ajol.info/index.php/ajcr/article/download/83269/73328; See also Maru, Mehari Taddele and Solomon Ayele Dersso, *The North Atlantic Treaty Organization's Intervention in Libya and its Political and Legal Implications for the Peace and Security Architecture of the African Union: A View from Africa*, in: Smith-Windsor, Brooke A. (ed.), *supra* at 7.

⁸¹ *Supra* at 5.

⁸² See Sobers, O. Hilaire, *The Inter-American System of Human Rights*, in: Zyberi, Gentian (ed.), *An Institutional Approach to the Responsibility to Protect*, Cambridge University Press (2013),

important R2P missions in regime change (such as in the case of the recent Libyan intervention) is raising fears that the principle might be used to promote political goals that are not warranted by the imperatives of protecting civilians.⁸³ At any rate, the status of the R2P principle as an emerging norm makes it difficult to clearly ascertain if the principle – in its current authoritative expression – might permit measures, which go to the extent of toppling a government which fails in its duty to protect the population.

Even if we were to include regime change within the ambit of the R2P principle, we should be reminded that the application of the principle is limited to exceptional cases involving grave and massive violations of human rights. With regard to Article 4(h), such grave circumstances specifically include war crimes, genocide and crimes against humanity. This implies that the principle may not be used to justify intervention or other interfering measures under the mere objective of putting an end to authoritarian or totalitarian rule. Needless to say, the relevance of the principle in the context of ‘democratic revolution’ is limited to those revolutions

461-462.; see also Seyle, Conor and Eamon Aloyo, The Role of Business in Third Pillar Interventions under the Responsibility to protect, in: Fiott, Daniel Zuber, Robert and Joachim Kops (eds.), *Operationalizing the Responsibility to Protect: A Contribution to the Third Pillar Approach*, Brussels: The Madariaga – College of Europe Foundation, Global Action to Prevent War, the Global Governance Institute and the International Coalition for the Responsibility to Protect, 2012, 82.

⁸³ Hoffmann, Julia and André Nollkaemper, Concluding Observations, in: Hoffmann, Julia *et al.*, (eds.), *Responsibility to Protect: From Principle to Practice*, Amsterdam University Press, 2012, 368-369.

targeting authoritarian regimes especially implicated by one or more of the above-mentioned grave circumstances.

E Conclusion

Our analysis of the question of legitimacy of democratic revolution reveals that the existing human rights and democratic norms do not necessarily provide sound normative justifications for revolutions targeting authoritarian governments. The rhetoric of the right to revolution has little normative support under existing international and regional human rights laws. The regional norm on the prohibition of unconstitutional changes of governments is to be understood in the negative sense as a norm designed to challenge the forcible removal of democratically elected governments and not in the positive sense of permitting revolutions targeting authoritarian governments. It can be observed that making a distinction between democratic and authoritarian governments is difficult in practice since most governments tend to legitimize their rule by conducting some form of election. Nevertheless, the premium placed on elections in the various normative instruments helps remind us that elections, not revolutions, are the primary means by which the constitutive power of the people is expressed. In general, the pro-revolutionary implications of the principle of the right to democratic governance are not as obvious as the importance of the principle as an (anti-revolutionary) injunction against the forcible ouster of democratically elected governments.

Closing Remarks

Africa entails contradictions and diversities like no other continent. The chapters included in this special issue gave a brief, but comprehensive glimpse into the contradictions, conflicts and diversities both challenging and enriching African states and societies. Indeed, while countries like Rwanda and Ethiopia experience economic growth rates exceeding 8 % per annum, the Democratic Republic of Congo (DRC) and the Central African Republic (CAR) remain stuck in a vicious circle of violent conflict and impoverishment.

Scholarly work and reflections on Africa, particularly in the legal field, usually entail either analysis on particular issues on Africa and/or European responses to those particular issues. However, their intellectual approach remains a European perspective, (in most cases) unable to mirror the challenges in their vast complexity. The asset of the previous chapters is that they achieve to span an arch not only between different academic disciplines, but also between different scholars. In that regard, this publication reflects the often cited demand “African responses to African challenges”. With regard to the European perspective, which Africa is written about? The migrants’ Africa, Europe fears? The Africa Europe perceives as a factor of instability and threat in its immediate vicinity? The methods and theories we employ thus pre-shape the Africa we analyze and impact directly on the legal and political measures recommended and adopted. The ties, are they cooperative or negatively connoted, between Africa and Europe remain close until today. In this regard, there are hardly any genuine African problems, but rather situations concerning a – more or less larger – international community. The focus on the state still occupies a central role both in traditional

scholarly and political approaches. Nevertheless, a major shift towards an increasing human approach, i.e. focus on the human either as individual or group, has taken place particularly in the last two decades. One of them is about whether a human security approach can replace the traditional focus on state security. Sharp distinction between local, transnational and international effects and causes is seldom possible; the difference between state and private, in particular on the African continent has blurred (e.g. state security forces act on behalf of transnational mining corporations); migration increasingly involves sexual exploitation and violence (e.g. human trafficking), in many cases caused by and linked to a lack of education in the countries of origin. In this regard, the contributions in this edition follow a common stream: that shifting towards human security is indispensable. Given the extremely complex multidimensional nature of the challenges Africa currently faces, it seems that viewing them through the lens of a human security approach might provide observers with a much clearer picture of the underlying root causes, when compared to traditional approaches.

As the past teaches, cooperation between Europe and Africa has not always been on the glamorous side. Too strong was the conviction that authoritarian regimes in Europe's southern vicinity provide at least stability and security, despite detrimental consequences for the people. Indeed, Europe "has to show humility about the past. [It] was not vocal enough in defending human rights and local democratic forces in the region", as EU commissioner Stefan Füle has put it.¹ Trivial enough to note, there has been a wide gap between words and deeds of the EU

¹ Füle, Stefan, Speech on the recent events in Northern Africa, Speech/11/130, 28 February 2011, 2. Available at http://europa.eu/rapid/press-release_SPEECH-11-130_en.htm (2 September 2013).

towards its African partners. Unfortunately, the revolutionary events in Northern Africa did not basically change the political approach of the EU towards Africa. Although additional efforts were made to strengthen democracy and human rights, the EU's approach remains highly defined by a focus on security and the state. As the contributions in this volume reveal, particularly the fight against irregular migration continues to be a top priority of the EU. The conclusion of new partnership agreements with African states usually depend on concessions in the field of migration, i.e. readmission agreements and enhanced cooperation in the field of border control.

The challenges on the African continent are sometimes so intricate that the measures to tackle these challenges might pose contradictions in themselves. Three events have been significant in this regard: the inability of the international community to pacify Eastern DRC, the intervention in the civil war in Libya and the military coup in Egypt.

In a major push to control the region of Eastern DRC, the UN Security Council adopted SC Res. 2098 establishing a UN intervention brigade tasked to offensively combat rebels. Although the article devoted to this topic in this special issue provides a thorough analysis of the issues at stake, it remains unclear and contradictory how the UN's impartiality is compatible with the mandate of SC Res. 2098. Besides the legal contradictions, the UN's offensive mandate might contribute to a further negative impact on the security of the people in Eastern DRC.

Most recently, the military has toppled the democratically elected Egyptian president Mohamed Mursi. In contrast to the usual political responses triggered by military coups, the EU governments (as well as the United States) have been quite modest in their critique

and cautious not to designate the events as a military coup.

Finally, the legalization of the Responsibility to Protect (R2P) by two Security Council Resolutions paved the way for an intervention in the Libyan civil war. It did not only prevent more massacres by the Gaddafi regime, but also brought a swift end to the civil war. Furthermore, the legalization of R2P represents one of the major progresses in international law and international relations with regard to the underpinned basic common values of a growing international community.

As the above-mentioned examples show, the role of the international community, particularly of the EU, still remains in the limbo between new forms of cooperation and the realization of (securitized) self-interests, disregarding human security with its focus on the security of people. Therefore, although the events of the so-called Arab Spring shed light on the human rights and security changes taking place in Africa, a paradigmatic shift has still to take place regarding how the international community, in particular the EU, responds to challenges in the region.

*Wolfgang Benedek, Vanda A. Dias,
Lisa M. Heschl, Matthias C.
Kettmann, Reinmar Nindler,
Kalkidan N. Obse, Stefan Salomon*