Mediating Ownership, Sovereignty and State Stabilization – The African Union and the Responsibility to Protect

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Introduction

This paper inquires which role the concepts and norms human security and, more particular, the principle of protection play in recent discourse and missions in relation to a ‘new intervener’, that is, the African Union (AU) and what tension it creates during attempts to implement. Our analysis of recent practices of the AU, primarily its role during the intervention in Libya and the evolution of the protection norm within different sections of the AU, particularly focuses on questions of ownership and state sovereignty. The AU is in a particular ‘bridging’ or ‘straddling’ position. On the one hand it is perceived as a part of the international community with the mandate to implement international norms such as the responsibility to protect. On the other hand the AU is a vehicle to mediate and translate alleged universal norms to make them amenable to ‘African’ norms and cultural traditions against. Thus, the AU is an arena for congruence-making between the norms of the international community and the prevalent interpretations of African sovereignty. It acts as a gatekeeper to both sides.

In the paper we discuss the tensions the principle and practices of protection create for peace and security missions on the continent. We argue that the politics of protection which emerged from the discourse on human security at the same time reduces the latter’s comprehensive agenda, rooted in new perspectives on both development and security, to a focus on grave threats. The protection agenda creates dilemmas in relation to questions of ownership, regime stabilization and sovereignty.
This discourse of protection and its emphasis on the moral obligation to act on behalf of insecure populations has enabled new peace, development and security interventions in the global South which in many cases, however, focus on strengthening the state. At the same time, such hegemonic practices have been met by an increasing commitment and claim to autonomy of African actors to address insecurities on the continent. Drawing on recent critiques made against the turn to protection, we discuss Orford’s call to carefully study who claims to speak in the name of the international community, what vision of protection is conveyed and on whose behalf protection is exerted (Orford 2011, 138). We argue that rather than challenging state sovereignty, R2P has an instrumental role in stabilizing existing elites and preserving the pillars of traditional international relations. Furthermore, we argue that the global R2P is integrated yet resisted by regional organizations. We locate the tensions in the interpretation of the norm itself as well as in the implementation practices of the AU.

We first review the genesis of human security as a response to a crisis of traditional conceptualization of both security and development. After discussing the main points of criticism made against human security we will discuss the predicament of the narrow protection agenda. The empirical part will then analyze these tensions through a discussion of the AU’s role in the recent war in Libya and the evolution of the protection norm in the AU.

*The shaping of human security*

Liberal security interventions in fragile situations are today mainly justified by the need to protect the respective populations. The principle of protection has emerged from the broader concept of human security. Since it was first introduce by the United Nations Development Programme (UNDP) in 1994, human security remains high on the agenda both in the academic debate on security and development and Western foreign policy. Yet while the ascendency of human security is often interpreted in relation to changes in the concepts of security, particularly the discussion on the need to broaden and deepen security (Buzan 1983), human security in fact responds to a double crisis of both security and development (Duffield 2007, 111-119, Pospisil 2009, 106-107). During the 1980s the shortcomings of state-centred security and the incapacity of aid to significantly reduce poverty became subject to a number of UN enquiries. The Brundtland Commission Report on sustainability as well as the Palme Report on common security and disarmament paved the way for making human security in the mid-1990s thinkable (World Commission on Environment and Development 1987;
Independent Commission on Disarmament and Security Issues 1982). UNDP links human security to (human) development and conceptualizes the former as a precondition for the latter to take place (UNDP 1994, 23). Human security highlights security aspects of traditional ‘development’ topics including health, environment and education and thus moves the focus of traditional security policies from the state towards the individual and everyday challenges to security. In a broader view Pospisil has framed the emergence of the concept in the context of the interrelated discussions on how to deal with post-cold War violent conflict (Pospisil 2009, 111 -116). The sudden end of the Cold war brings an epistemological crisis. The fall of the Berlin Wall came as a surprise to both policymakers and security experts and accelerated the questioning of conventional concepts in strategic and security studies. Additionally, there was a need for new concepts that could explain the endurance of violent conflict (framed as ‘new wars’) during the 1990s.

For Pospisil the development of human security represents one suggested therapy (in combination with state- and peacebuilding) for the cure of fragile states identified in Western policy discourse as the main symptom of conflict during the 1990s and 2000s (Pospisil 2009, 116). Building on his mapping, it can be argued that the protection of civilians is seen as the primary justification for ‘engaging’ in crises situations, reactively or preventatively. The 1990s saw a turning away from the principle of non-intervention that was supposed to guarantee state sovereignty and – theoretically – international peace after 1945. The UN’s Agenda for Peace (1992), UNDP’s Human Development Report (1994) and its conceptualization of human security as well as the report by the International Commission on Intervention and State Security (2001) were key regulatory documents that paved the way for the now constant reference to the moral duty of protecting civilian populations when justifying humanitarian, statebuilding or stabilization interventions.

Despite the controversy around definition and operationalization of human security, the concept continues to influence policy formulations (Chandler/Hynek 2010, Kaldor 2007, Owen 2004). UNDP initially defined human security as “safety from such chronic threats as hunger, disease and repression. And second it means protection from sudden and hurtful disruptions in the patterns of daily life – whether in homes, in jobs or in communities” (UNDP 1994, 23), highlighting seven categories of security: personal, economic, environmental, health, food, community, and political. Criticizing this encompassing notion which would arguably include “all bad things that can happen” (Krause 2004, 367), a narrower interpretation of human security gained influence. This view conceptualizes human
security primarily as the freedom from violent conflict, arguing that too broad a notion would impede the concept’s analytical utility not to mention any operationalization for policy. Concentrating on causes of conflict and violence, in contrast, would make the advancement of effective tools for protection possible. In this regard the Treaty on the ban of Anti-Personnel Mines and the establishment of the International Criminal Court are mentioned as having been influenced by human security.

A narrow view refocuses the question of security on the absence of threat and violence and reduces the aspiration of the human security concept to something similar to a negative peace. The different ‘schools’ try to balance the dilemma between aligning universal norms and values about the security and wellbeing of individuals on an abstract level on the one hand and presenting tools for their implementation in different contexts on the other. From the very beginning, the concept’s normative appeal has been acknowledged, its analytical value questioned.

Apart from questions about its operationalization, the concept was criticized primarily as locating insecurity in the postcolonial states in the Global South and thereby reconfiguring North-south relations as primarily guided by security concerns. Chandler has pointed out that by lumping together what are different sources of insecurity including disease, terrorism, environmental problems, migration advocates of human security deeply engage in securitization of regions with ‘deficient’ statehood (Chandler 2008, 435). This has led to a debate on the utility of elevating any sort of harm to individuals and population a security threat (for an illustrative discussion on the securitization of HIV/AIDS, see Elbe 2006).

A narrow definition additionally pushes aside the development-related aspects of security (such as disease and poverty) which were promoted by UNDP and the Commission on Human Security as constitutive elements of human security. In their radical critique of human security as the strategization of sustainable development scholars including Duffield and Pupavac have argued that rather than being guided by ideas of global citizenship and material wellbeing, human security is based on the idea of containment. Human security-turned development now aims at reconciling “people to a world without expectations of material progress” (Pupavac 2005, 163). It presents a turning away from material development towards a prioritization of containment and a “self-help survival strategy” based on self-reliance (Pupavac 2005, 172; Duffield 2005, 152). By giving up on a material development agenda, the development community has yielded to security logics: “If human security means freedom
from fear and want, it is not evident how a development model orientated around limiting wants, satisfying basic needs, and preventing frustration aspires to anything beyond the security agenda” (Pupavac 2005, 177).

In sum, for many critics, human security is nothing more than a new expression of humanitarian liberal interventionism. As Owen has summarized this critique gained influence with the rise of the ‘responsibility to protect’ as the interventionary corollary to human security (Owen 1994).

**The Predicament of the contemporary politics of protection**

There is no doubt that the end of the Cold War and the moralized call to protect populations from severe threats undermined substantially weakened the basic post-1945 principle of the international system: that of non-interference in domestic affairs. Even though a number of interventions during the Cold War were already justified by ending suffering, more often than not the principle of state sovereignty prevailed in the light of the confrontation between the US and the Soviet Union. Given the scope of human security and the tension between international law and human security (Doucet/de Larrinaga 2008), there was a demand to define policy-guiding criteria. It can be argued that since the advent of the norm of the ‘Responsibility to Protect’ the concept of protection has gradually pushed human security aside. In contrast to the official UN discourse, in which protection is conceptualized as “a subset of the more encompassing concept of human security [which] addresses more immediate threats to the survival of individuals and groups” (Ki-Moon 2011), we argue the concept of civilian protection troubles the comprehensiveness of the idea of human security which was initially aimed at addressing issues of rights, welfare and security in a joint way.

The principle of the ‘Responsibility to Protect’ was developed by the International Commission on Intervention and State Sovereignty in 2001, drawing on policy-oriented work in relation to conflict prevention and conflict management in Africa (Deng et al. 1996). In 2005 the UN member states formally acknowledged the responsibility to protect their citizens against genocide, war crimes, ethnic cleansing and crimes against humanity (UN 2005). In 2009, UN Secretary General Ban Ki-Moon presented a report on the implementation of R2P reiterating the three pillars of R2P: primary responsibilities is with the states, there is a
programme of international assistance for protection capacity-building, timely and decisive response by the international community in case the first two pillars haven’t averted the immediate threats to populations (UN 2009). The R2P is based on the principle that state sovereignty does not only involve rights but also responsibilities. The principal responsibility of the state is to protect its citizens. In cases, however, “where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect” (ICISS 2001, xi).

R2P reconfigures an earlier debate held during the 1990s on the ‘right to intervene’ in relation to humanitarian interventions (Chesterman 2003, Wheeler 2000). The report on the ‘responsibility to protect’ acknowledges that the notion of the ‘right to intervene’ has been ‘unhelpful’ due to three reasons: it emphasized the claims and rights of the interveners rather than the needs of the beneficiaries; second, it stuck to the traditional language and the act of intervening rather than on preventative and long-term engagements; and thirdly the rhetoric of intervention trumping questions of sovereignty cut short a discussion on potential dissent (ICISS 2001, 16). The report claims that R2P takes these criticisms into account by assigning the primary responsibility to protect to the state. R2P, in a sense, brings state sovereignty back in. While the earlier discourse on the ‘right to intervene’, as Branch has argued with regard to Africa, simply dismissed African sovereignty, R2P assigns the primary responsibility to protect to the state. At the same time the R2P doctrine acknowledges that ‘weak’ states might need support in building protection capacity from the international community. Should the state prove to be incapable of protecting the population, the old ‘right to intervene’ principle, in which African sovereignty becomes graduated, is reinserted (Branch 2011, 107). The R2P report highlights the conditioning of sovereignty for some states while preserving it for others:

And in security terms, a cohesive and peaceful international system is far more likely to be achieved through the cooperation of effective states, confident of their place in the world, than in an environment of fragile, collapsed, fragmenting or generally chaotic state entities (ICISS 2001, 8).

R2P reinvigorates the distinction between effective and ineffective states. It also illuminates the close discursive proximity between human security and fragile states in the political rationalities. A threat to populations is primarily localized in the fragile state and it is the duty
‘capable’ states to intervene on behalf of these threatened populations. Yet at the same time the protection discourse cuts across the effective/ineffective divide in cases in which an ‘effective’ state is unwilling to protect (parts of) its citizens as the cases of Sudan and Libya show.

R2P and the weight assigned to protection in international peace and security agendas and missions is the most important outcome of the attempts to operationalize human security. It is at the same time problematic as R2P calls for (if necessary coercive) action by an international community which assumingly holds the right moral principles with regard to protection and is willing and capable to act accordingly. Furthermore, the current protection discourse illustrates a gradual abandonment of human security’s constitutively linked core pillars of a critique of traditional understandings of security, that is, freedom from fear and freedom from want. Going one step further, Makaremi asserts that the reduction of human security to protection or freedom from fear, turns the concept’s initial ambition of ‘deepening’, ‘widening’ and demilitarizing security upside down: The legitimacy of military action for ‘protection purposes leads to a remilitarization of security (Makaremi 2010, 113). The prioritization of protection shifts the focus from matters of everyday insecurity related to health and food (and thus development) towards the question of violence (Makaremi 2010, 112-113). Whereas the former now seem to be acceptable, the latter becomes intolerable to the point where they require intervention. Excessive violence ‘that shock the human conscience’ allows on a case-by-case basis for the suspension of the international principle of non-interference while at the same time R2P aims at establishing new international norms on international intervention (de Larrinaga/Doucet 2008, 527).

In these interventions freedom is, self-evidently, not denied. In contrast, according to R2P freedom can only thrive when authority is capable of protecting the population. It is here where Orford takes issues with the old idea that protection is the basis for legitimate rule (Orford, 2010, 2011). This idea features most prominently in the state theories of Hobbes and Schmitt who wrote under conditions of immediate political crises. However, as Orford argues, making protection the basis for legitimate rule prefers de facto over the de jure rule, strengthens unified or centralized institutions and tends to further authoritarian modes of authority. The claim/decision to effectively protect thus links absolutist and colonial regimes to the R2P. Orford asserts that protection has become the “basis for international authority” (Orford 2010, 344) in which the failure of many states in the global South to protect their citizens call for “international rule that is coherent, codified and integrated” but, in fact,
marginalizes appeals to rights and self-determination as the basis for legitimate authority (Orford 2011, 133-134). Generally, the discourse on protection raises a number of questions with regard to the right to speak on behalf of the international community as well as the claim to define protection. Orford (2011, 138) wonders if protection aims at an encompassing control of life in securitized states perceived to be a threat to international peace. Or is protection limited to police the growing ‘life-chance divide’ between the global South and the North (Duffield 2010)? Or does protection aim at providing the communities with the opportunities to shape their own social life? Orford criticizes that in the politics of protection the agency of the insecure people is denied as the power to protection is moved somewhere else: “… it posits the international community as the champion of the people’s right to protection” (Orford 2011, 134).

In relation to Africa this view is echoed by Branch who argues that sovereignty as responsibility means that the African state then gains its legitimacy through moral standards of the international community rather than through the demands and rights of its citizenry (Branch 2011, 103). The core element of sovereignty as responsibility is the conditioning of sovereignty. Francis Deng et al. argued as early as 1996: “[T]he obligation of the state to preserve life-sustaining standards for its citizens must be recognized as a necessary condition of sovereignty […] sovereignty becomes a pooled function, to be protected when exercised responsibly, and to be shared when help is needed” (Deng et al. 1996, xviii). In such logic, as Branch has argued, politics in Africa is reduced to the capacities of protection. If legitimacy of power is externalized, this undermines the question of accountability of government vis-à-vis the governed (Branch 2011, 109). As a consequence, Branch argues that “sovereignty will only be responsible when it is held accountable by those who are subject to it”. However, this “fundamental democratic principle R2P cannot acknowledge” (Branch 2011, 121)

**The African Union and R2P: Mediating ownership and sovereignty**

Two tensions follow this critique of the politics of protection, and both are linked to the questions of ownership and sovereignty. The first concerns the opportunities that the R2P provides to states willing to invest in their security/protection capacities. As only briefly discussed here in relation to Uganda, the willingness to intervene for purposes of protection may actually lead to militarization of existing conflicts and regime stabilization. The remainder of the paper will then analyze the second tension in relation to sovereignty and
ownership. We discuss how the R2P is evolving both conceptually and in practice within the AU, and specifically in relation to the recent war in Libya. To do so, we argue that it is useful to understand the AU as occupying a difficult mediating position, as implementing international norms on the one hand and defending state sovereignty on the other.

In relation to the first tension of the R2P, Branch discusses how R2P reaffirms the primary responsibility to protect to the state and offers assistance to those states that lack the protection capacities but prove their support of the principle. In simple terms, the provision of assistance on security/protection capacities can be used as a resource. As Branch argues, if regimes demonstrate their willingness to contribute to the international R2P they are likely to receive international support. However, the assistance will then be invested in propping up conflict management capabilities with less attention spent on accountability or democratic governance. For cases like Uganda or Ethiopia, who play a significant role in international peacekeeping operations but also in regional and unilateral counterterrorism actions (domestically or, for example, in Somalia), such a policy may lead to further militarization of these states: “In the name of protection, the African state can boost its military, police, and intelligence, taking advantage of externally provided material and symbolic resources to increase political repression…” (Branch 2011, 114). Branch quotes the case of Uganda where the government has decided to solve the conflict with the Lord’s Resistance Army (LRA) by force and thus militarizing and brutalizing the whole region. Furthermore, the Ugandan government managed to involve external militaries in their fight against this rebel group. In 2008 militaries of the US Africa Command advised the Ugandan forces on planning their Operation Lightning Thunder. Furthermore, in October 2011 President Obama made the decision to send 100 US military advisors to Uganda to assist the Ugandan forces in developing strategy for the defeat of the LRA. This decision follows the ‘Lord's Resistance Army Disarmament and Northern Uganda Recovery Act’, passed by the US Congress in May 2010. In his announcement in 2011, Obama made clear that the objective of sending “combat equipped forces” is to help the Ugandan Army to protect the civilian population and ensure the “removal of Kony from the battlefield” (Obama 2011). Ethiopia is a similar case: a strong contributor to multilateral peace missions and a country that has benefitted significantly from international security assistance. The country’s intervention in Somalia in 2006 was backed up by US special operations and air attacks (Washington Post 2007). Both countries are vocal AU member states. The ability to gain international assistance for unilateral and/or domestic actions affects these regimes’ decisions when and why to go through the AU on peace and
security issues and has thus an influence on the character and effectiveness of AU peace and security missions.

With regard to the second tension, for African actors the politics of protection embodies a dynamic of empowerment and disempowerment. It both reaffirms state sovereignty and delegates it to the international community. Regional organizations play a particularly interesting role here as they represent interests of their member states as well as norms of the international community. The tensions inherent in Orford’s questions to the politics of protection: who can claim to speak in the name of the international community, what vision of protection and on whose behalf is protection executed (Orford 2001, 138) are vivid in relation to the AU’s role in recent peace operations. R2P has been interpreted as facilitating ‘African solutions to African problems’ (see UNGA-UNSC 2011: para. 3). Most references to ‘threatened’ populations are made in relation to Africa. At the same time, the UN has lamented its ‘capacity crisis’ in the face of ever-growing demand for multidimensional peace operations, most of which are carried out on the continent. Furthermore, many African critics have stressed that it was the experiences of genocidal violence and authoritative government that forced the coming into being of the AU and that now, the ultimate test of the commitment to the AU will be the translation of the AU’s responsibility to protect into action (The Zimbabwe Telegraph 2011).

However, the ‘implementation story’ reveals a number of interesting tensions. On the one hand, the AU has adopted the norms of the international community. Article 4 (h) of the AU’s Constitutive Act has even been interpreted as going one step further than the UN on the commitment to protect civilians. It includes the right to intervene in a member state in circumstances of war crimes, genocide and crimes against humanity and has thus the potential to seriously threaten traditional state sovereignty (AU 2000). The UN strongly encourages the AU’s role in implementing the R2P: in UN discourse the ‘UN-regional-sub-regional partnership’ is a key plank in Ki-moon’s strategy to implement the R2P. On the other hand, the AU has also appropriated and ‘Africanized’ universal norms. The Union has defended a view that it is necessary to translate universal norms and make them suitable for an African context and by doing so, has defended claims to state sovereignty of the member states. This straddling position will be illustrated by reference to the AU’s role during the Libya crisis and how different sections within the AU draw upon and invoke the protection norm.
The AU and Libya

The AU response to Libya can be seen against the backdrop of a growing sentiment among Africans that their values may not coincide with those imposed from outside (Heinlein 2011a; The Guardian 2011; Amey 2011). We focus on the dynamic of how the AU mediates its willingness to show commitment to the R2P, good governance and human rights, with appropriations of these norms in directions acceptable to the African context. For instance, the AU Chairman, Equatorial Guinea’s President Teodoro Obiang Nguema, has argued that the concepts of democracy, human rights and good governance should “be adapted to African culture” (Amey 2011). Yet, other AU diplomats remind state leaders of the AU’s protection norms and the shift from non-interference to non-indifference to push them to act stronger against the Libyan government. Zachary Muburi-Muita, head of the UN office to the AU (UNOAU), has said that African leaders can no longer crush dissent with impunity, “In decades past, I'm talking about impunity here, you could get away with whatever because you are minister, you are a general, you are the president of your country.” “[In] the 21st century [it] is no longer permissible, acceptable, that you can do anything to your population just because you are at the leadership position” (Heinlein 2011b).

The unprecedented decision by the UNSC to authorize the use of force for human protection purposes against the wishes of the Libyan government was possible due to support from the relevant regional organizations. Three regional actors: the League of Arab States (LAS), the Organization of the Islamic Conference (OIC) and the AU, set the context for the UN Security Council’s discussions on the crisis. But it was LAS’s position on Libya that had the most effective gate-keeper impact in framing the issues and defining the range of feasible international action (Bellamy & Williams 2011: 843). This was a harsh reminder of the AU’s lack of power, despite the recent year’s hard attempts at gaining international legitimacy for an AU role as the first intervener of choice in African wars. The AU used the international language of protection yet its member states wanted to be consulted by the UNSC on how protection might best be afforded in this particular conflict. The AU response to the rebellion in Libya was from the start state-driven and fragmented.

Initially, the AU Peace and Security Council (AUPSC) initially condemned the situation in Libya in unusually strong terms. On 23 February, it strongly condemned “the indiscriminate and excessive use of force and lethal weapons against peaceful protestors, in violation of human rights and International Humanitarian Law... [and] underscores that the aspirations of
the people of Libya for democracy, political reform, justice and socio-economic development are legitimate...” It also stressed the need to preserve the territorial integrity and unity of Libya (AUPSC 2011). At its next meeting at the level of Heads of State and Government on the 10 March, the AUPSC was moving in a more cautious direction. While it reiterated the AU’s concern at the prevailing situation in Libya, “which poses a serious threat to peace and security in that country and in the region as a whole, as well as at its humanitarian consequences”, and again underscored “the legitimacy of the aspirations of the Libyan people for democracy, political reform, justice, peace and security, as well as for socio-economic development, and the need to ensure that these aspirations are fulfilled in a peaceful and democratic manner”, it now specified the AU’s “strong and unequivocal condemnation of the indiscriminate use of force and lethal weapons, whoever it comes from, and the transformation of pacific demonstrations into an armed rebellion” (AU 2011). The AUPSC also reaffirmed its strong commitment to the respect of the unity and territorial integrity of Libya, as well as its rejection of any foreign military intervention, whatever its form. Formal AU lead on Libya was given to an AU ad hoc committee, comprising Mohamed Ould Abdel Aziz (Mauretania), Dennis Sassou Nguesso (Congo-Brazzaville), Amadou Toumani Toure (Mali), Jacob Zuma (South Africa), and Yoweri Museveni (Uganda). AU diplomats and bureaucrats have said that the AU’s cautious turn on Libya reflected the AU’s discomfort at criticizing one of its wealthiest and most outspoken leaders (Heinlein 2011b). Libya has been one of the AU’s ‘big 5’ members, responsible for paying approx. 15% of the Union’s ordinary budget. Furthermore, among the AUPSC members were some of the most authoritarian states on the continent: Equatorial Guinea, Zimbabwe, Chad and Libya itself.

African states were at pains straddling interpretations of R2P as ‘moral authority’ and as preserving state sovereignty. To illustrate this, we discuss that on the one hand, the AU’s choice of support at the UNSC was necessary for the legitimacy of the multilateral intervention in Libya. On the other, the AU clashed with international actors over what practices of protection were acceptable. African states soon argued that the principle of protection was being abused, that intervention in Libya was more about regime change than protection. This illustrates one dilemma of protection set out in the first part the paper: moral authority to protect can become a political resource to be filled with various different meanings. For African states, the mandate of the Security Council resolution 1973 was translated in a more regime supportive way than it was by the P-3 (UK US, France). The P-3/NATO way of implementing this mandate (their strategies) deliberately supported the
armed rebellion in Libya, thus weakening, eventually eliminating, Muammar Gadaffi’s regime.

South Africa, Gabon and Nigeria held non-permanent memberships at the UNSC in March 2011 and on 17 March these three states voted for UN Security Council Resolution 1973 which authorized the international enforcement of a no-fly zone over Libya. This was necessary for the formal legitimacy of the intervention: had two of the three African members chosen to abstain, resolution 1973 would not have been adopted because it would have fallen short of the required nine affirmative votes. Zuma, the ad hoc committee’s most vocal member, thus backed the Arab League’s request for a no-fly zone enforced by the P-3. South Africa agreed that this military route was necessary to protect the threatened civilians of Benghazi. But the South African representative marked his concerns, “we have supported the resolution, with the necessary caveats to preserve the sovereignty and territorial integrity of Libya and reject any foreign occupation or unilateral military intervention under the pretext of protecting civilians. It is our hope that this resolution will be implemented in full respect for both its letter and spirit” (UNSC 2011). Seen against the backdrop of regional/Arab support and of the disproportionate violence meted out by Gadaffi’s troops and mercenaries against civilians in Libya, South Africa could hardly have voted otherwise. There was too much of a risk of heavy international condemnation as this would in all likelihood have been seen as defending a tyrant. Also, South Africa and other African states may have hoped that the resolution would send a strong enough signal to Gaddafi to stop attacks and open up for mediation.

Days after the vote, Zuma and the ad hoc committee distanced themselves from it at their first meeting in Nouakchott, Mauritania, on 19 March 2011. This was not done by regretting the vote, but by condemning the methods of Operation Odyssey. It was not the principle of protection that the committee attacked rather how it might be implemented in a legitimate way. In the case of South Africa, the Zuma government balanced international protection arguments with a preference for African-owned mediation over military measures and African solidarity (Channel 4 News 2011; Center for Security Studies 2011). He insisted that the Libyan people should have the right to determine their future. Political talks would result in this, rather than the AU or UN saying Gaddafi must go (Times Live 2011). Jacob Zuma criticized the air strikes, suggesting they were part of a regime-change doctrine. A strong

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1 Gelot interview.
defensive impulse among some African leaders came to dominate the AU’s Libya position (Gelot 2011:58; Museveni 2011). These leaders defended a world order of less external interference in African politics, and less meddling with state sovereignty.2

The AU tried to safeguard an African approach to protection in Libya – an African solution to African problem. By protecting civilians within the framework of the mandate in 1973, the committee meant that the NATO bombings should avert mass atrocities but thereafter not so overtly side with the rebels. The committee wanted to see a comprehensive cessation of hostilities at the earliest possible date. They pointed out that the armed rebellion also killed civilians, and that neither the rebels nor the international community did enough to protect foreign nationals, including the African migrants living in Libya (AU 2011). Protection, to sum up, would best be ensured if a cessation of hostilities could allow for the start of an AU-owned political process. International actors should refrain from taking positions or making pronouncements such as recognizing the NTC.

However, the AU failed to convince the international community to support the proposed African solution. Once 1973 had been passed, the AU’s gate-keeper role was sidelined (Heinlein 2011c; Clottey 2011). Western powers and the LAS set the tone on Libya. The AU’s role was formally recognized in resolution 1973, but henceforth the committee was brutally reminded of its lack of international influence: the UNSC denied its request to visit Libya and the EU did not facilitate African Peace Facility (APF) money towards funding such mediation trips. For reasons still unclear, the AU was not represented at the two international meetings in London and Paris where the intervention over Libya was discussed. Paul Kagame (Rwanda) and Thabo Mbeki lamented that the big powers had not valued the AU’s ability to vest the intervention with political support and moral authority in Africa (Waever 2011). Being the secondary gate-keeper on the Libya crisis reflected on the AU’s ownership dilemmas. The AU structures are heavily dependent on donor money which constrains the autonomy of the organization. Some 77 percent of the AU resources are funded by foreign partners and the remainder by the member states. Most of the West’s funding to the AU goes into peace and security; the AU Peace and Security Department (AUPSD) is the best funded in the AU Commission.3

2 The committee’s distancing move assuaged those most conservative African leaders, for whom foreign involvement in Libya was a neo-imperialist regime-change project, motivated by greed and thirst for oil (Robert Mugabe (Zimbabwe); Teodoro Obiang (Equatorial Guinea)).

3 Sweden, for instance, bankrolls 160 out of 200 PSD officials salaries, Gelot interview.
The Head of the AU Commission, Jean Ping, to some extent personifies the ‘straddling-function’ played by the AU in the Libya case. He has had the difficult position of justifying the state-dominated committee position internally and externally, in reference to the AU’s protection norm (AU 2011). He juggled the acknowledgement that few African leaders supported Gadaffi (he had lost the legitimate claim to sovereign power) with the idea of solidarity. He did not speak in support of Gadaffi, yet he criticized Westerners for double standards in Africa (that Westerners treat heads of state in Africa differently from others).\(^4\)

The AU Commission’s posture on Libya and the whole Arab Spring development was moderate. Its officials were grappling with the issue of popular revolutions in Tunisia, Egypt and Libya in the light of the AU’s emerging norm of rejection of unconstitutional changes of government.\(^5\) While the protection norm has been more influential in the AU to date, changes of government for example through military coups are today regularly condemned by the AU (no longer considered an internal matter). When the AU balances between the two norms in relation to specific cases they may collide, as they did in the Libya case, because sometimes an armed rebellion or coup removes an authoritarian anti-democratic government. For some, Libya displayed some elements of unconstitutional change of government for two reasons: the armed nature of the NTC and the involvement of foreigners and mercenaries (on behalf of both sides) in this civil war (Maru 2011). At the same time, the situation did not qualify for a harsh rebuke from the AU because of the anti/undemocratic and unconstitutional character of Gaddafi’s regime. The AU normative frameworks support public demands to assert the general will of the people. In Libya public protests enjoyed great popular support, there were massive violations of people’s substantive rights, and absence of constitutional mechanisms of redress. In part because of their own poor democratic credentials and in part because of the common understanding that the AU should guard against R2P being used for regime change purposes, African leaders were reluctant to legitimate rebellion and armed struggle as a means of political transition. In the case of Libya it was helpful to invoke the norm of unconstitutional changes of government to legitimate the AU’s non-recognition of Libya’s National Transitional Council (NTC) (for which they were harshly criticized by Western donors). The AU’s public stance evolved; by June, the committee said Gadaffi had to leave office. On 21 September, the AU extended an official de facto recognition of the NTC (AUPSC 2011c). The condition was that Libya form an all-inclusive transitional government.

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\(^4\) Gelot interview.

\(^5\) The existing guidelines relating to this norm are found in: the AU Constitutive Act; the Lomé Declaration; and the not yet binding African Charter on Democracy, Elections, and Governance (the Addis Charter).
This turn may be attributed to the realization of the necessity to recognize the reality on the ground in Libya “in the interests of protecting and serving the Libyan people – the intention of the AU roadmap” (Meru 2011).

The AU’s approach to Libya illustrates the tensions that emerge when acting on the Union’s commitments to human rights, democracy, governance and the protection of civilians in Africa. With regard to ownership and state sovereignty, African leaders have demonstrated that they are willing to cooperate with the international society for the improvement of civilian protection; yet in a way which preserves state sovereignty (Welsh 2008). Some sections of the AU, however, were keen to pressure the Union to act as a part of the international community. We shall exemplify this with regard to the AU Commission’s Peace Support Operation Division (PSOD) and the African Court on Human and Peoples' Rights (African Court). Lastly, further tensions come out when considering the AU’s relations to the International Criminal Court (ICC).

The evolution of the protection norm within different sections of the AU

The AU Executive Council and Assembly increasingly support the AU Commission’s development of a protection of civilians approach for AU-mandated peace support operations. In the recent year, one PSD official observed that, “We had to sideline some member states and use others strategically to move forward and get agreement”.\(^6\) In line with global developments (more and more conflicts being read through a protection lens) AU members realize that the Union must draft its own policy on protection and act in line with it – otherwise it will lose its ability to play the gatekeeper role. The AU must in a sense seize the moment to set the debate, to define the issue along a favored direction. The AU PSOD is engaging with donors, external institutions and collaborates closely with the UN OCHA and DPKO to integrate the concept of protection of civilians into the work of the AU. On 18 May 2011, the AUPSC debated an AU protection approach for the first time (AUPSC 2011b). The AUPSC encouraged the AU Commission to mainstream the protection of civilians into “the whole spectrum of the African Peace and Security Architecture.” This entails for example: (i) mainstreaming the Draft Guidelines for the Protection of civilians into the work of AMISOM, (ii) drafting a lessons learned report, (iii) developing protection threats, vulnerabilities and risks indicators for the Continental Early Warning System (CEWS), (iv) preparing a Guidance Note on protection mandates, (v) preparing a Framework for developing mission-specific

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\(^6\) Gelot interview.
protection strategies, (vi) and drafting of training guidelines, as well as through the conduct of awareness-raising and outreach activities.

In another unprecedented development, the African Commission on Human and Peoples' Rights (ACHPR) urged the government of Libya to “immediately end the violence against civilians” on 25 February 2011 (Dolidze 2011). The ACHPR acted boldly in favor of a human rights-approach and in contradistinction to the generally moderate AU response to Libya. The complaint against Libya came from Human Rights Watch, Interights and the Egyptian Initiative on Personal Rights (EIPR). On 1 March, the ACHPR condemned the actions of the Libyan government, and on 3 March it instituted proceedings against Libya in the African Court for “serious and massive violations of human rights guaranteed under the African Charter on Human and Peoples’ Rights.” In the application, the Commission alleged that demonstrations in Benghazi and four other Libyan cities on Feb. 19 were “violently suppressed by security forces who opened fire at random on the demonstrators, killing and injuring many people.” The African Court ruled on 25 March that Libya had to immediately cease any action that would result in the loss of life (AU Press Release 2011). The court issued the orders without hearing written or oral hearings because of what it called the imminent risk of loss of life. Moreover, the Court ordered Libya to report to it within fifteen days on its progress in implementing the order. The Court ruling was heralded as a positive step for the protection of civilians agenda in Africa: it was the first-ever issued by the African Court against a state, and driving this ruling was the situation of “extreme gravity and urgency” as well as the risk of “irreparable harm to persons”. Hence, the ACHPR and the African Court chose to invoke human rights and protection norms to condemn an AU member state in unusually bold terms. However, Libya ignored the Court order.

In contrast, the AU’s relation to the ICC is an example of how the promise of R2P is translated in sovereignty strengthening ways rather than taken advantage of to emphasize responsible leadership and protective capacities. To show commitment on fighting impunity and upholding global values, the AU may cooperate with the ICC both to prevent war crimes, genocide and crimes against humanity, and to enforce international law. However, the AU’s position on the ICC developed into one of non-cooperation in 2011. For a non-African entity to seek the trial of a sitting African president has even been termed as ‘abuse of African sovereignty’. At the 17th AU Summit on 23 June to 1 July 2011, AU member states said they

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7 African signatories to the Rome Statute make up the biggest bloc of states parties to the Court. Any state party may refer a case to the Court (ICC 1998: para. 13b).
would not cooperate with the ICC in arresting and surrendering ICC suspects al-Bashir and Gaddafi. The AU Assembly has requested the UNSC to defer the proceedings initiated against al-Bashir, the investigations and prosecutions in relation to the 2008 post-election violence in Kenya, as well as the process on Libya, under the provisions of Article 16 of the Rome Statute (AU Assembly 2011). Indicating the AU’s choice to favor regime stabilization in their translation of global norms, AU commissioner Ping has accused ICC Chief Prosecutor Luis Moreno-Ocampo of bias. He highlighted that the ICC has not acted in Gaza, Iraq and Burma and such selectivity shows double standards against African states (Sudan Tribune 2011). Furthermore, the AU has defended the choice of Chad, Kenya, and Djibouti to not arrest al-Bashir when he visited their countries on the grounds that they were discharging their obligations under Article 23 of the AU Constitutive Act and Article 98 of the Rome Statute as well as acting in pursuit of peace and stability in their respective regions.

Meanwhile, the AU’s non-cooperation stance has met with increasing criticism from specific states and from within African societies (see Institute for Security Studies 2011; Daily Observer 2011; Amey 2011). Botswana has said that it supports the ICC, and will not go along with the AU position. Other African countries express an interest in joining or engaging more with the ICC rather than isolating it. The possible trial of former Chadian president Hissène Habré will be a test case for African leaders to prove that they will hold their colleagues accountable for mass atrocity crimes. There has been such a marginal progress on the trial since 2006 that the AU Commission recently recommended the AU Assembly to: 1) try Habré in Chad; 2) try Habré in any other AU member state party to the UN convention against torture willing to try him; 3) extradite him to Belgium, and 4) expeditious trial in Senegal in view of its legal responsibility under international law (AU Commission 2011).

The AU is also considering the establishment of a continental criminal court to prosecute Africans accused of mass atrocity crimes such as genocide, crimes against humanity and war crimes committed on African soil. Political differences as well as the very real funding question remain to be ironed out before such a court can be established.

The use of protection by the AU PSOD and the African Court could be seen as the AU adopting the international norm of protection. However, the process of implementation is

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8 On 14 July 2008, the chief prosecutor of the ICC decided to charge Sudan’s President Omar Hassan al-Bashir with genocide, war crimes and crimes against humanity in the Darfur region. African leaders have staunchly opposed the indictment. The situation in Libya was referred to the ICC by the UNSC through Resolution 1973.

9 For instance, Egypt and Tunisia have expressed interest in joining the ICC. Côte d'Ivoire has requested an ICC investigation into the post-election violence in that country.
fraught with tensions bearing testimony to how the different parts of the AU actively build congruence between the globally and regionally acceptable protection principles. The actions of AU member states show that the R2P cannot be understood as a static concept. The UN-regional-sub-regional partnership will not function in a top-down fashion. The AU guidelines on protection are as much about adoption as about appropriation. African governments are on the defensive, they do not want to see R2P posing a threat to African sovereignty and cultures (or being dominated by Western ideology/liberal governance). By appropriating protection language, the R2P norm empowers African actors as much as it constrains them.

**Conclusion:**

In this paper we have addressed some of the tensions within the contemporary international politics of protection. We have argued that the principle of protection reduces human security questions of threat and violence and when seen as a global norm, creates dilemmas with regard to ownership and sovereignty. We have analyzed these in the case of the AU’s challenges when faced with the double mandate of representing the norms of the international community on the one hand and representing and preserving the sovereignty of its member states on the other. While the former tasks the AU with the responsibility to intervene in cases in which a state is unwilling or incapable to protect its citizens, the latter calls for adjusting these norms so that the states’ sovereignty is protected.

The core idea of the protection principle, conditional or pooled sovereignty, is being resisted by many African heads of states. The AU and African states have so far not openly criticized ‘irresponsible’ yet strong states. Zuma’s foreign policy, the AU’s skeptical stance towards the ICC, or the AU’s solidarity with autocrats such as Mugabe or al-Bashir are examples of the perseverance of the ‘anti-imperialist’ impulse which in many cases is stronger than the appeal to the norms of the international community. In turn, African leaders have pointed to the illusive nature of the morally right international community. The need for the APSA was partly based on the argument that the UN did not intervene in time to save lives in Rwanda. Simply put, the selective nature of the UN’s implementation of the R2P helped build a case that Africans are better placed to save Africans. However, we wish to raise as a concern in need of further research the question on what basis the AU may claim to be less of a false

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10 Gelot interview.
promise than the UN. Given the tensions in how the AU implements the R2P the question presents itself of who these practices benefits.

The creations of the APSA and the associated notion of African solutions to Africa’s problems have the intention to strengthen African ownership, regional security institutions as well as more accountable domestic security governance on the continent. The R2P and protection developments suggest these aims will only be met if African states behave responsibly in the eyes of international community. Through this lens the AU, depending on its adaptability, plays different roles: partner, gatekeeper, subcontractor or (un-)willing executioner. Thus, the AU’s bridging function between claims of African states and norms of the international community will continue to have ambiguous effects with regard to implementing the norm to protect as the case of Libya has demonstrated.

What is at stake, however, is the principle of ownership or self-determination as the basis for legitimate authority. The R2P vests the question of legitimacy of rule in the international community who makes it conditional on the state’s protection management capacities. In that sense, protection becomes disempowering for the citizens’ claims and empowering for the elites as a bargaining tool in a securitized relationship between the international community and the ‘threatened’ populations in Africa.

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