



South Africa's Foreign Engagement: Whither Human Rights?

Workshop Report
Compiled by Terence Corrigan¹

25 March 2009, Johannesburg

26 March 2009, Cape Town

Hosted by the Governance and APRM Programme
of the South African Institute of International Affairs

¹ Terence Corrigan is a researcher and seminar facilitator at the South African Institute of International Affairs (SAIIA). He would like to thank Ms Simphiwe Ngwenya, an intern at SAIIA, for her invaluable assistance.

Contents

Introduction	3
Presenters	6
Background	8
Session 1: South Africa's approach to human rights in its foreign policy and foreign engagements	11
Points arising from further discussion	20
Session 2: Can foreign policy be a vehicle for promoting human rights?	28
Points arising from further discussion	36
Session 3: Views from civil society and the media	44
Points arising from further discussion	53
Final thoughts	62

Introduction

When South Africa began to negotiate a transition to democracy in the early 1990s, many local and international observers viewed this less as a case of the country extricating itself from a political and economic impasse than as a drama of moral redemption in which the entire world could share. South Africa, an international pariah state under apartheid, would be a beacon to the world if it could succeed under a democratic dispensation, and promote and protect human rights, both at home and abroad. The country would signify humanity's nobler aspirations in both its internal arrangements and foreign relations. For many of the activists who had participated in the anti-apartheid 'struggle' inside South Africa or who had supported the anti-apartheid movement abroad, this was axiomatic.

A decade and a half after the transition, many who had held these views have been severely disappointed. The list of cases in which the South African government has shunted morality, human rights and democratisation aside is a lengthy one. A few examples should suffice: the sympathy shown to the ruling party of Zimbabwe, the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and its leader, President Robert Mugabe, as that organisation conducted a campaign of political repression and presided over a disastrous economic meltdown; its record at the UN Security Council (UNSC) in its first term as a non-permanent member in 2007–08, where it declined to censure Burma and seemed to prioritise its 'African agenda', often seeming deliberately to take positions contrary to the West; and its ambivalence at the UN on homosexual rights, despite having one of the world's most liberal constitutions at home. More recently, the denial in March 2009 of a visa to the Dalai Lama — an iconic figure to many human rights advocates — seemed to suggest that things had indeed gone in a direction that would once have seemed utterly inconceivable.²

² Since this conference, an election has been held and a new cabinet appointed, along with some reorganisation of government structures. The Department of Foreign Affairs, for example, has been renamed the Department of International Relations and Co-operation. The new deputy minister in that portfolio, Ebrahim Ismail Ebrahim, alluded to a possible change of emphasis and obliquely acknowledged the charges against the government when he made a speech on the budget vote in June 2009. He said: 'As a middle power we also recognise the limits of our ability to reverse human rights abuses globally, but this does not absolve us from standing on principle and speaking out against cases of gross violations of human rights and international law. As the Indian novelist and peace activist Arundhati Roy has said, "It has become clear that violating human rights is an inherent part of the process of implementing a coercive and unjust political and economic structure on the world. Without the violation of human rights on an enormous

Critics ask: How did South Africa arrive at this point? How could a country whose own political history should make it acutely sensitive to matters of democratisation, equality and human rights evidently show such indifference to them? On the other hand, however, are things quite that simple?

These are profoundly important questions, and relate to the identity of South Africa. They have drawn a great deal of attention in the media and from the public at large. With this in mind, the South African Institute of International Affairs convened (with the generous support of the UK High Commission) a set of two workshops entitled 'South Africa's Foreign Engagement: Whither Human Rights?' held in Johannesburg on 25 March 2009 and in Cape Town on 26 March 2009. These two conversations sought to bring together commentators from various backgrounds (academia, activism, the media, diplomacy and government) to examine the role played by human rights in South Africa's foreign policy and foreign relations. Invitations were sent to a wide range of organisations and individuals, with a view to securing a diverse spectrum of ideological positions, opinions and perspectives. Approximately 60 people attended in Johannesburg and 30 in Cape Town, including think tanks such as the Centre for Human Rights at the University of Pretoria, the Institute for Justice and Reconciliation and the Human Rights Institute; representatives of diplomatic missions in South Africa; academics and students; civil society interest groups; and several private individuals with an interest in the subject.

Each workshop was divided into the same three sessions (although with different speakers), to look at particular aspects of the issue. The first session looked at South Africa's approach to human rights in its foreign policy, through presentations from academics and a representative of the Department of Foreign Affairs (DFA). The second looked at theoretical and contextual issues, at the possibilities for foreign policy to be a vehicle for promoting human rights, and the state of international law in this regard. The third session involved the participation of civil society activists and journalists.

This report is intended to serve two purposes: to examine the broad issue of South Africa's foreign policy and the role of human rights, and, in doing so, to provide an overview of the substance of the discussions of the workshops. It

scale, the neo-liberal project would remain in the dreamy realm of policy." We intend to more robustly flex our muscles on human rights issues so that we can never be accused of betraying the ideals on which our democracy was founded' (Reply to the budget vote by Deputy Minister of International Relations and Co-operation Ebrahim Ismail Ebrahim to the National Assembly, 18 June 2009, <<http://www.info.gov.za/speeches/2009/09061909351001.htm>>).

therefore consists both of the author's thinking (and additional reading on the matter), and the insights of workshops presenters and participants.

For coherence and consistency, the two events are presented as a unified conversation.

Presenters

First session: South Africa's approach to human rights in its foreign policy and foreign engagements

Professor Adam Habib, deputy vice-chancellor, Research, Innovation and Advancement at the University of Johannesburg, a regular commentator on political affairs (Johannesburg)

Mr Pitso Montwedi, chief director, Human Rights and Humanitarian Affairs at the Department of Foreign Affairs (Cape Town)

Mr Paul Hoffman SC, director of the Institute for Accountability in Southern Africa (Cape Town)

Mr Terence Corrigan, researcher and seminar facilitator at the South African Institute of International Affairs (Johannesburg)

Chairs: Mr Steven Gruzd (Johannesburg); Dr Mireille Affa'a Mindzie (Cape Town)

Second session: Can foreign policy be a vehicle for promoting human rights?

Dr Danny Titus, executive director, Culture at the Afrikaanse Taal en Kultuurvereniging, and a legal scholar (Johannesburg)

Mr Jon Elliott,* Africa Advocacy director, Human Rights Watch

Dr Mireille Affa'a Mindzie, senior project officer, Conflict Intervention and Peacebuilding Support Project at the Centre for Conflict Resolution (Cape Town)

Chairs: Ms Elizabeth Sidiropoulos (Johannesburg); Mr Terence Corrigan (Cape Town)

Third session: Views from civil society and the media

Ms Nicole Fritz,* director of the Southern Africa Litigation Centre, legal academic and board member of Human Rights Professionals

Ms Elinor Sisulu, director, Crisis in Zimbabwe Coalition Board, writer, human rights activist and political analyst (Johannesburg)

Mr Zackie Achmat, founding member of the Treatment Action Campaign and the Social Justice Coalition, prominent civil society activist (Cape Town)

Mr Peter Fabricius, foreign editor of *The Independent Newspapers Group* (Johannesburg)

Mr Jan-Jan Joubert, political editor of *Die Burger* (Cape Town)

Chairs: Mr Richard Steyn (Johannesburg); Ms Rhoda Kadalie (Cape Town)

** If there is no city after a presenter's name, then he or she participated in both events.*



Background

The seminal statement of the South African foreign policy that post-apartheid South Africa was expected to follow was an article by Nelson Mandela, then leader of the African National Congress (ANC), but not yet president of South Africa, published in the prestigious journal *Foreign Affairs*.³ In it, he outlined the trajectory that South Africa's foreign policy would follow:

- **Human rights and democracy would be prioritised:** Mandela's piece was quite specific about this: as South Africa could not, in view of its own history, be indifferent to the sufferings of others, 'human rights will be the light that guides our foreign affairs'. And since rights depended on democracy, South Africa would 'be at the forefront of global efforts to promote and foster democratic systems of government'.
- **The importance of Africa to South Africa:** Closer co-operation and increased trade among the countries on the continent would be promoted. South Africa would pay especial attention to Southern Africa, aiming at a mutually beneficial arrangement. It would be mindful of the differences in development and 'resist any pressure or temptation to pursue its own interests at the expense of the subcontinent'. Along with this, it would seek to democratise international institutions to ensure that Africa's voice was heard.
- **The promotion of economic opportunities:** South Africa's economy would need to adjust from isolationism to integration into the world economy. It would be open to foreign investment and assistance in order to expand economic opportunities and alleviate poverty in the country.
- **The promotion of trade and a stress on reciprocity:** South Africa would reintegrate into the global trading regime and would deal with the relatively high levels of protectionism it maintained at the time the article was written. It would, however, not be forced to liberalise so rapidly as to cause itself damage. Its trading regime would stress reciprocity with other countries. The article noted concerns that the global 'South' tended to be marginalised, and that many issues in the Uruguay Round of World Trade Organisation (WTO) negotiations seemed to be driven by farming interests in developed countries. It recognised the importance of the country's established trading and investment partners, particularly the European Community (as it was then),

³ Mandela N, 'South Africa's future foreign policy', *Foreign Affairs*, 72, 5, November/December 2005, pp. 86–97, from which all quotes are taken.

but indicated that it intended to develop and build on relationships elsewhere.

The agenda laid out was one that many of the ANC's supporters (in South Africa and abroad) could be comfortable with. Its stress on morality and co-operation (what might be termed multilateralism) was consistent with the idea that South Africa would be an exemplar of 'superior morality'. That South Africa managed a 'miracle' transition (its imperfections aside or ignored) added to this mystique.

The ANC's many admirers abroad were deeply invested in hopes that South Africa would play this role. The anti-apartheid campaign in the Western democracies had been carried out very much in the language of justice and human rights, resonating strongly with memories of the US civil rights movement. South Africa — perhaps naively or unreasonably — was seen as a country of which great and extraordinary things could be expected. In this, the country was not alone, and such hopes speak to a widespread idealistic yearning. The ideological attractions of so-called revolutionary situations and the regimes that have emerged from them have been extremely powerful. During the 1980s, for example, Nicaragua was the destination of choice for large numbers of left-leaning activists who wanted to contribute to the building of a new society and, indeed, a new model of society, in that country.⁴

After the ANC formed a government in 1994, it rapidly became clear that the foreign policy orientation of the organisation as a liberation movement could not automatically be carried over to government. In the ensuing policy debate — which continued well into Mandela's presidency — two broad strains of opinion were identified. According to Brendan Vickers, then of the University of Pretoria, on the one side were the 'pulpit moralists, idealists and solidarists', whose focus was on using diplomacy to promote global reform, democratisation, human rights and justice; on the other were the 'pinchpennies, neo-realists and free-marketeers' whose focus was on a pragmatic engagement with the outside world and pursuing the national interest, especially in economic matters.⁵

The foreign policy of the post-apartheid era has significantly dulled these hopes. Roger Pfister, an academic specialising in international politics, identifies

⁴ For an interesting personal account of this (with some reflections on the conflicting feelings it evokes in hindsight), see Anthony A, *The Fallout: How a Guilty Liberal Lost His Innocence*. London: Vintage, 2008, pp. 63–81.

⁵ Vickers B, 'Pulpit morality or penny-pinching diplomacy? The discursive debate on Mandela's foreign policy', *Politeia*, 21, 2, 2002, pp. 80–100.

four tests that demonstrated the complexities of the world in which South Africa was to engage and the sometimes uncomfortable fit that human rights and democracy have with it. These issues were as follows:⁶

- **East Asia:** the handling of two political problems in this region of the world, i.e. the relationships with Indonesia and East Timor (with the latter achieving independence from the former in 1999) and the debate about recognition of Taiwan or China (diplomatic recognition was switched to China in 1997);
- **Nigeria:** the execution in 1995 of several Nigerian activists (including Ken Saro-Wiwa) by the military government and Mandela's subsequent attempt to have that country censured;
- **Zaire:** South Africa's attempts in 1997 to broker a ceasefire between the government and rebel forces; and
- **Lesotho:** South Africa's military intervention in 1998 in that country to deal with a purported coup.

To this list one might add that in certain quarters, the ANC's (and, as a consequence, the government of South Africa's) close links with and refusal to criticise such authoritarian regimes as those in Cuba and Libya were viewed as a distinct moral liability.

South Africa's position on these matters was not without controversy. However, it was Thabo Mbeki's involvement in foreign affairs — first as deputy president and later as president — that sparked heightened concern. The stance adopted in respect of the political, economic and humanitarian turmoil Zimbabwe (South Africa's goal seeming to be to support the incumbent party, ZANU-PF, and its president, Robert Mugabe) seemed to betray a stark indifference to human rights and democracy, although these were principles on which Mbeki's blueprint for a new Africa — the New Partnership for Africa's Development (Nepad) — depended. As his presidency proceeded, these concerns mounted. When South Africa was elected to the UNSC for 2007–08 — a long-held goal — many observers were dismayed that South Africa seemed actively determined to protect human rights abusers.

⁶ Pfister R, 'Studies in South Africa's foreign policy after isolation', in Carlsnaes W & P Nel, (eds), *In Full Flight: South African Foreign Policy after Apartheid*. Midrand: Institute for Global Dialogue, March 2006, pp. 27–28.

It seemed that South Africa's commitment to human rights or democracy promotion internationally was suspect. The workshops were convened to discuss this in its various aspects.

Session 1: South Africa's approach to human rights in its foreign policy and foreign engagements

Professor Adam Habib set the scene very succinctly by restating the optimism and hope that had surrounded South Africa's entry to the UNSC. After two years, many observers were profoundly grateful to see South Africa leave: its tenure on the UNSC had been seen as a 'betrayal of our noble past'.⁷

Habib stressed the centrality of South Africa's transition and the character of the nationalist elite that has ascended to power as a consequence, with Thabo Mbeki being the most noteworthy and articulate representative. The key consideration here is that the elite is of the 'second generation' of liberation leaders. While it shares many of the instincts and affinities of the first generation (i.e. national founding fathers such as Julius Nyerere, Kwame Nkrumah and Kenneth Kaunda) towards fighting colonial relations and racism, this generation has also witnessed the failure of many post-colonial states and regimes. While there is some recognition of the internal deficiencies that contributed to



⁷ This comment was made by Archbishop Emeritus Desmond Tutu, who is sometimes described as a sort of moral conscience of South Africa, and was widely reported in the media. The specific prompt for this comment was South Africa's vote on Burma in 2007. See, for example, Quintal A, 'ANC supports Myanmar decision', *The Star*, 22 January 2007.

this situation, there is also an acute suspicion that this has occurred as a consequence of the designs of Western or 'imperialist' countries.

There is thus an appreciation of the relative weakness of developing countries — and particularly African countries — and the structural disadvantages they face in the world. Three responses to this situation have emerged:⁸

- **Appeasement:** In these terms, developing countries attempt to link with dominant Western powers in order to gain concessions, following the example of the East Asian 'tigers'. This is a strategy favoured by Pervez Musharraf in Pakistan and Ian Khama in Botswana.
- **Resistance:** This involves belligerent antagonism to the West, and more particularly towards the US; defiance; and arguments for 'delinking' from the dominant world order. Hugo Chavez in Venezuela and Robert Mugabe in Zimbabwe typify this approach.
- **Engagement:** This path views rhetoric as insufficient. It seeks to engage with such institutions as the International Monetary Fund (IMF) and the World Bank, as well as Western countries, and in so doing to subvert and reform the world order from within. The strategy entails a mixture of power and principle. It recognises the need to interact with power as part of this strategy. Thabo Mbeki's diplomacy with Zimbabwe is an example of this.

South Africa's overall foreign policy priority is Africa. In this it has worked for stability largely through assistance in peace-building initiatives; has helped build a continental architecture (notably the transmutation of the Organisation of African Unity — OAU — into the African Union — AU), usually in co-operation with such states as Nigeria; has tried to place Africa on the global map (Mbeki and South Africa, for instance, often stumped on behalf of Africa as a whole, rather than for South Africa as a discrete entity); and has tried to support economic growth through investment.

In the international environment, it has pursued policies of balancing and brinkmanship. Balancing is seen in its relationship with China, in attempting to use China as a counterweight to the West. It is also seen in the India-Brazil-South Africa (IBSA) initiative. IBSA formed the core of the G20+ at the WTO, which

⁸ The three responses given here were derived from Habib's talk, rather than being specifically used by him.

proved very strong at the Cancun talks in 2003. South Africa lacks power on its own, but in combination it can be a significant role player.

Brinkmanship is evident at the UN. South Africa's positions on Sudan, Burma and Zimbabwe reflect a view that multilateral institutions are manipulated by powerful countries. But where inconvenient for the West, Habib argued, issues are not raised, for instance, violations in Gabon, Egypt or Pakistan.

For instance, South Africa's response to the resolution at the UNSC on Burma in early 2007 (which called for the restoration of democracy in that country, the release of political prisoners and the cessation of military attacks on civilians, among other things) was that this was an issue best handled by the UN Human Rights Council (UNHRC) in Geneva. But in order to have made that point convincingly, Habib argues, South Africa should have taken the lead in raising this issue at the UNHRC. There has been a trade-off between human rights and systemic reform, with South Africa prioritising the latter.

However, human rights advocates and civil society are naïve in assuming that human rights alone can be the priority. They need to understand the context and South Africa's goals (such as reform of the international governance and trading system, co-operation among developing countries, and increased attention to Africa). The human rights community does not understand these dynamics and makes untenable and naïve demands.

Ultimately, the lesson for both the South African government and the global human rights community is to give equal weight to the need for systemic reform and the advancement and protection of human rights, and to pursue both goals simultaneously and consistently.

Mr Terence Corrigan noted that South Africa's position with respect to foreign affairs had evolved over time. There had been some attempt in the early post-transition period to emphasise human rights. Certainly, in rhetorical terms at least, human rights and morality were a vocal consideration. The difficulties with this approach were exposed in dealings with Nigeria and the execution of Ken Saro-Wiwa in 1995, when Nelson Mandela called for sanctions against Nigeria, but found South Africa isolated on the continent.

This was around the mid-point of Mandela's presidency. Thabo Mbeki, then deputy president, who had from the first played a significant role in running the country, and to whose heart foreign affairs have always been close, was having an increasing influence on the strategic direction and articulation of foreign affairs. The manner in which he and his associates viewed the world and

envisaged South Africa's interactions with it may help to explain the downgrading of human rights in this policy field.

The foreign policy orientations associated with Mbeki appear to have been directed by a key set of impulses. These include a focus on Africa, a stress on multilateralism, economic development and trade interests, security, and historical bonds. There was also a strong element of 'anti-imperialism' and suspicion of the developed world.

There is a tendency to assume that a given set of worthy, desirable and 'progressive' causes will naturally fit together. This is certainly not the case in contemporary Africa. What may on its own seem desirable may not be able to coexist with another equally desirable objective. Despite a putative commitment to human rights on the continent and the existence of an extensive body of governance standards formalising this commitment, human rights are routinely abused in many states. Likewise, a rhetorical commitment to democracy coexists with manipulated (and sometimes fraudulent) elections. Where South Africa has committed itself to multilateral co-operation with its fellow African states, demanding strict adherence to these standards would likely severely sour, if not destroy, this relationship. Thus, the choice has to be between multilateralism and friendly relations within the continent, or the vigorous promotion of democracy and human rights. Both would probably not be possible. Interestingly, the vision and mission statements on the DFA website (renamed the Department of International Relations and Cooperation — DICO) does not mention human rights.⁹

The position that South Africa found itself in was graphically illustrated by remarks made by the then deputy foreign minister, Aziz Pahad, in 1998.



⁹ See <<http://www.dfa.gov.za/departments/index.html>>, accessed 30 July 2009.

Having recently established ties with the People's Republic of China, reversing the position of the previous government that had for years recognised Taiwan, some observers had hoped that South Africa might be in a position to influence China on its human rights failures. This was dismissed by the government at the time. Indeed, the relationship with China was viewed as a major strategic issue, in terms of envisaged economic benefits and possibly diplomatic support for a seat on the UNSC. There was also certainly a sense of ideological kinship with the Chinese government and Chinese Communist Party (even if China had not been the major external sponsor of the ANC in the past), along with the idea that South Africa and China as 'Southern' countries would have mutual interests vis-à-vis international global governance reform and solidarity in the developing world, even if that meant challenging the West. Pahad said, 'I think we all agree that there are specificities in each country, which are not universal forms of human rights. We are adapting to the specific conditions of each country'.¹⁰

This was quite a remarkable comment, even if made off-the-cuff at a news conference. If human rights are not universal, they mean very little, if anything at all. They can certainly not be matters of principle if this reflects official thinking.

Party-to-party relations are another dimension of South Africa's foreign affairs; it is probably not possible to understand South Africa's relations with Zimbabwe without acknowledging the relationship between the ANC and ZANU-PF as fellow liberation movements. The erstwhile Zimbabwean opposition,¹¹ the Movement for Democratic Change (MDC), regarded Mbeki (the SADC¹²-appointed mediator) as biased in favour of ZANU-PF, and the ANC itself called at its congress in Polokwane for closer relations with former liberation movements (specifically listing ZANU-PF as an example of these).¹³ The affair of the Dalai Lama — which involved the refusal to grant him a visa to enter South Africa for a peace conference in early 2009, alongside a number of other Nobel laureates — was very topical at the time of the workshops. The affair of the Dalai Lama was probably at least in part motivated by party-to-party relations with China. This is

¹⁰ SAPA, 'SA defends Mbeki's decision not to raise human rights', 13 April 1998, <<http://70.84.171.10/~etools/newsbrief/1998/news0414>>.

¹¹ The MDC is now part of the Zimbabwean unity government.

¹² Southern African Development Community.

¹³ 'Party-to-Party relations amongst former liberation movements like SWAPO, MPLA, FRELIMO, ZANU-PF, PAIGC, CCM, SPLM/A, etc., must be prioritised by the ANC and meetings and structured support of the former liberation movements in the region must be pursued' (ANC, 52nd National Conference 2007 resolutions, international relations, no. 35, <<http://www.anc.org.za/ancdocs/history/conf/conference52/index.html>>).

not simply or even primarily a question of ideology: it might be better described as a sort of sentimental attachment or commonality of broad worldview, something more expansive than ideology alone. This applies to Zimbabwe too, since ZANU-PF and the ANC come from distinct ideological places.¹⁴ A related consideration here is to what extent the ANC as a party may have benefitted from this relationship and its actions.

Internationally, there is a great deal of dispute and a lack of consensus on values. In this respect, Pahad may have been speaking to a growing trend. In various parts of the world, particularistic interests are vocally rejecting universal values in favour of culturally specific ones. These are expressed, for example, in terms of 'Asian values', 'Islamic values' or, indeed, 'African values'. Indeed, as power and influence in the world become more diffuse — something that many human rights advocates are in favour of — it is probable that a multipolarity of power will produce a multipolarity of values. Human rights will probably face not only practical opposition, but ideological opposition too. South Africa may then have to make a firm choice on where it will stand on this issue, and this may have ramifications for the country's domestic arrangements.

Arising from this presentation, a number of open questions suggest themselves:

- South Africa has downgraded the importance of human rights from what had been expected in 1994. This is not especially contentious. But is this a **fundamental paradigm shift** or merely a **messy compromise**? Are the key values still intact?
- Can we talk about human rights if we accept **cultural or political grounds for restricting them**? Human rights, after all, mean nothing if all people cannot appeal to them at all times.
- What role can or should **domestic values** play in foreign affairs? Is there a firm red line between what occurs at home and abroad? This is possibly the key question to be answered by the workshop.

Mr Paul Hoffman SC anchored his presentation in the recent case of the Dalai Lama (detailed above). He noted that the Dalai Lama was not in control of an army — he was a religious leader in exile. His presence at the conference would

¹⁴ The ANC had traditionally been closer to Zimbabwe's other liberation movement, the Zimbabwe African People's Union-Patriotic Front, while ZANU-PF had been closer to South Africa's Africanist liberation group, the Pan-Africanist Congress.

not have suited the Chinese government, so it intervened to ensure his exclusion. South Africa's response, that sport and politics did not mix, was a little like listening to the late former National Party (NP) minister, Piet Koornhof. Hoffman asked, rhetorically, whether there was any difference between the old NP and the ANC with respect to human rights, answering that there was not. While neither had much respect for human rights, however, the ANC presides over a constitutional democracy.

As a constitutional democracy, all law should be held up to constitutional scrutiny. South Africa has a putative commitment to human rights and values, but a mockery is made of this when commercial interests and relations with China trump South Africa's values. The Dalai Lama would not have abused the platform.

Section 7 of the Constitution states that the 'state must respect, protect, promote and fulfill the rights in the Bill of Rights'.¹⁵ This is notable in respect of the Dalai Lama, as this affair violated a number of rights (freedom of speech, religion and movement).

Hoffman said that some gratitude should be expressed to one Dai Bing, an official at the Chinese Embassy, who indicated that it would be inconvenient for the Chinese if a visa should be extended to the Dalai Lama. China is indeed an 'economic powerhouse'; it is investing around \$48 billion in Africa and has around \$5 billion in its trade office in Johannesburg. This seems to have 'bedazzled' South Africa's policy movers and shakers. South Africa, meanwhile, scored an 'own goal' in that its actions gave the Dalai Lama's supporters a major platform.

Hoffman furthermore offered some thoughts on the relationship of human rights and foreign engagements to the fight against corruption. South Africa is a signatory to various international treaties (for instance, those of the UN and the AU). These require independent agencies to deal with crime and corruption, but the dissolution of the Directorate of Special Operations and its replacement with a unit of the police service has placed these functions under the relevant minister. This is a violation of the country's treaty obligations. He also noted that in terms of South Africa's own Constitution, international agreements are binding on the country and failure to honour them is a grave problem.

Hoffman later stressed the impact of the political orientation of the ruling party in the formulation of foreign policy. He noted that South Africa faced two

¹⁵ Constitution of the Republic of South Africa, 1996, sec. 7.

contending philosophies, which informed foreign policy and all other policies. The first was the Constitution, based on multi-party democracy and human rights. The other was the ANC's broad agenda, the National Democratic Revolution, in terms of which the ANC and its alliance partners seek hegemony over society (this, he added, is inconsistent with the rule of law). South Africa needed to return to the Constitution, taking its cue from section 198, which states that South African's were resolved 'as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life'.¹⁶

Mr Pitso Montwedi, the chief director of Human Rights and Humanitarian Affairs in the South African DICO (at the time still known as the DFA) began by noting that South Africa had worked hard for human rights at the UNHRC in Geneva. Human rights law was articulated at two levels — at a domestic level (at the Department of Justice, and to a lesser extent at the Presidency), and at the international level. He noted that there were four pillars (as had been outlined by Hoffmann) in respect to human rights law: respect, protection, promotion and fulfilment. The last of these — fulfilment — was often missing at the international level.

South Africa has an 'abiding faith in multilateralism'; it has never chosen to take unilateral positions; and it attempts to work within the UN or within multilateral systems. Since rejoining international society after 1994, it has ratified most of the international human rights treaties. (However, Montwedi pointed out that the management of some international instruments is not the preserve of the DFA.)¹⁷

Montwedi said that South Africa has adopted a distinct approach to human rights issues. In particular, it questions what it sees as the preponderant approach adopted by UN agencies that only the developing world has problems. In South Africa's experience, country-specific resolutions tend not to be the most productive route to pursue. Improvements can only be made with the support of the country concerned. These resolutions seem to indicate a 'total hostility' to the countries in respect of which they are made. South Africa is not comfortable with 'naming and shaming', where there is a reality of people suffering.

¹⁶ *Ibid.*, sec. 198.

¹⁷ This workshop report uses the name of the department as it was in March 2009, when the workshops were held.

Thus when the US and EU backed tough resolutions on the Democratic Republic of the Congo (DRC) and on Burundi, South Africa raised its concerns diplomatically. South Africa has invested itself very heavily in such situations. In the DRC, it has assisted with elections. In Burundi and Sudan, South African has attempted to engage with the governments concerned. In the UNSC, South Africa was 'relentless' in saying to the developed world that there was a role for the latter to play in terms of supplying equipment.

In terms of country resolutions, South Africa's approach is to assess through bilateral engagements whether to put the issue of human rights on the agenda, in the sense of determining whether affected countries are ready to work in a partnership with South Africa to resolve these issues.

Montwedi also indicated that there was a perception that South Africa had the world's worst voting record in the UN in respect of human rights, but he pointed out that the UNHRC adopted around 100 resolutions a year, and only around 10% of them concern countries.

He concluded that it was clear that the government was failing to communicate its positions accurately and indicated that it would be advisable to pursue greater engagement with civil society and with other observers to address this failure.

Montwedi added later that he had not addressed the issue of the Dalai Lama, as this was 'firmly within the purview of politicians' and was being dealt with politically. However, speaking as an individual, he noted that other states and statesmen had been wary of the Chinese reaction to contact with the Dalai Lama.

South Africa, China and the Dalai Lama

It is informative to note that in an exchange with Debra Patta, a journalist for the private South African television channel eTV, a prominent intellectual in the ANC, Pallo Jordan, confirmed — albeit somewhat obliquely — that South Africa's actions had been taken with a view to placating China.¹⁸

¹⁸ *3rd Degree* and *3rd Degree Plus*, broadcast on eNews (DSTV channel 403), 31 March 2009.

Points arising from further discussion

One member of the audience asked a question about who was influential in setting South Africa's foreign policy. It was noted that there were a number of personalities in the political and bureaucratic structures (including the ministers and deputy ministers involved with foreign relations). The Presidency was particularly important as a driver — a point noted elsewhere.¹⁹ The broad principles of South Africa's foreign engagements were shared by the ANC (party) and government elite. What appears to be interestingly absent from this milieu is Parliament — a point that has been noted by analysts,²⁰ and which has implications in particular for the discussions in the third session (see below).

The stances that South Africa has taken speak to the sense of identity and historical experience that is very close to the country's political elite. It cannot wish this away.

There was considerable discussion about South Africa's positions on the UNSC. It was suggested, for example, that its position on Burma was motivated by a desire to thumb its nose at the US, where it may have been sufficient merely to have abstained. In so doing, South Africa was squandering its moral capital.

The response was that South Africa had used these issues to 'shake up' the system. However, it did not follow this through properly. While its concern for the state of the global order was legitimate, it should have been willing to ensure that the real human rights issues under review should have been dealt with by the UNHRC. Unfortunately, South Africa did not play a leading role in pursuing the issue in that forum. The contention was that both South Africa and civil society needed to realise that both human rights concerns and the broader reform of the international system were important and had to be pursued simultaneously.

¹⁹ Johnson RW, *South Africa's Brave New World: The Beloved Country since the End of Apartheid*. London: Allen Lane, 2009, pp. 320–69; Olivier G, 'Is Thabo Mbeki Africa's saviour?', *International Affairs*, 79, 4, 2003, pp. 815–28; Corrigan T, *Mbeki: His Time Has Come*. Johannesburg: South African Institute of Race Relations, 1999, pp. 93–94.

²⁰ Nel P & J-A van Wyk, 'Foreign policy making in South Africa: From public participation to democratic participation', *Politeia*, 22, 3, pp. 49–71.

A vision for global reform?

South Africa has frequently demanded changes to the ‘institutions of global governance’. Pushing for this has been an often-cited driver of its foreign policy. On the issue of UN reform, there is a common AU position, the so-called ‘Ezulwini Consensus’. Written in 2005 in response to proposals for UN reform, it has several elements; in brief:²¹

- **Development:** This is a key issue for Africa as a whole. Development objectives are presented as the key goal that should be served by reforms and initiatives (debt cancellation, environmental protection, WTO negotiations, etc.).
- **Multilateralism:** The document stresses the involvement of multinational institutions in dealing with problems. A specific example is promoting the role of regional organisations in dealing with conflict situations (and for UN support in so doing).
- **Reform:** This entails Africa exercising greater influence on the UN system. The UN General Assembly should be ‘strengthened for it to play its proper role as the most representative and democratic body within the UN system and as the parliament of the world’, while the UNSC should be reformed to give Africa ‘full representation’, including a number of permanent and non-permanent seats. Africa has also insisted that permanent seats for Africa should also be accompanied by the veto. (During 2005 there had been discussion among the G4 — India, Brazil, Germany and Japan — about not insisting on the veto for any new permanent members, but the AU did not share that perspective, although there was some indication that South Africa favoured a potential compromise.) The document also asserts that the AU ‘should be responsible for the selection of Africa’s representatives in the Security Council’.

Concern was expressed that there was an attraction to the idea of ‘African solutions for African problems’. While this approach may suggest that the

²¹ Adapted from Corrigan T, ‘Expert report — South Africa’, paper prepared for the Bertelsmann Foundation Shaping a Globalised World conference, Global Policy Council, Berlin, 12–13 March 2009, <http://www.bertelsmann-stiftung.de/cps/rde/xbcr/SID-D8EE8F9B-4BCC72ED/bst_eng/ExpertReport_SouthAfrica.pdf>.

continent is determined to take control of its own destiny, it could suggest a decoupling of Africa from international trends, or one set of rules for Africa, and another from the rest of the world. This would suggest that that so-called 'universal values' may not in fact exist.

South Africa's position on homosexual rights was also queried and provides some insight into this aspect. South Africa had not supported a declaration at the UN General Assembly on decriminalising homosexuality in 2008.²² The country's explanation for this has been somewhat unclear. It claimed to support the 'spirit' of the resolution, but believed that

its contents still needs to be further debated/elaborated on, in order to align concepts such as 'sexual orientation' and 'gender identity' in international human rights law. This would ensure that its contents are embraced/accepted by the majority of the UN member states.²³

However, this is not entirely convincing, as part of the reason for enshrining such concepts in international human rights law is to use them to compel changes of behaviour by states that offend. By implication, part of the goal of such resolutions is clearly to pressure states that persecute homosexuals by making the views of other countries, and their disapproval of such persecution, clear. Trying to reach broad agreement on this issue is likely to imply that such persecution will continue for a very long time. There is, moreover, the bald irony that these rights are enshrined in South Africa's own Constitution — arguably against the wishes of most of the population.

South Africa's ambassador to the UN offered the following explanation:²⁴

When we became free, we said we would not discriminate against people based on sex, or religion or race So we don't oppress gays in that way and we have laws against it. But that is what we do in South Africa. The problem is that people want us to stand in the General Assembly and condemn others who may be doing things differently We are not campaigners to condemn other people.

²² The text and a link to a video presentation of the relevant session can be found at <http://www.ilga.org/news_results.asp?FileID=1211>.

²³ National Assembly, internal question paper no. 1 of 6 February 2009, question no. 18, <<http://www.dfa.gov.za/docs/2009pq/pq18.html>>.

²⁴ Lauria J, 'Unnecessary for SA to sign UN Declaration on Gay Rights', *Cape Argus*, 9 January 2009.

This comment, taken in the context of the general African orientation of South Africa's foreign engagement, suggests that a significant driver of South Africa's action here was not to offend fellow African states.

There was considerable discussion of the International Criminal Court (ICC); the trial of the former Liberian president, Charles Taylor, for human rights violations in Sierra Leone; and the warrant of arrest issued for the Sudanese president, Omar Al-Bashir, for alleged war crimes and human rights violations in Darfur, as well as related notions of impunity, immunity and justice. In particular, should those guilty of serious human rights violations be allowed to escape unpunished? South Africa had been enthusiastic about the ICC, but appeared now to have lost this enthusiasm. It was noted that while voices within Africa often objected to the ICC and accused it of targeting Africans (in the reported words of the chairman of the AU Commission, Jean Ping, 'the ICC was created to try Africans'²⁵), this did not withstand scrutiny, as Africa states had referred issues to it themselves. One speaker said



that it would be gratifying if many people, such as the former US president, George W. Bush, were indicted by the ICC, but this was not at present plausible. It was of concern that the inability of the institution to function flawlessly was used as a reason to prevent it from functioning at all.

However, the counter-argument made was that justice is often bartered in exchange for peace or stability. This occurred in South Africa, as it was doubtful

²⁵ *The Guardian* (Nigeria), 'AU chief accuses UN crimes court of selective justice', 28 January 2009, <http://www.nguardiannews.com/africa/article01//indexn2_html?pdate=280109&rptitle=AU%20chief%20accuses%20UN%20crimes%20court%20of%20selective%20justice>.

that the transition could have been made without provisions for giving amnesty to the 'securocrats'. (Indeed, it was not only supporters of the former government that felt the need to avail themselves of this measure: a number of high-profile members of the ANC did so, including a large group of senior leaders who applied for a 'collective' amnesty for undisclosed human rights violations. That this was ultimately refused raises the interesting theoretical prospect that high-ranking anti-apartheid activists could face prosecution.)

The outstanding matter in South Africa — possibly germane to other countries facing this question — is how much latitude should be given in respect of the rules that are laid down to govern the compromise. South African authorities occasionally announce that they intend to prosecute those who committed offences for which they did not apply for amnesty, but little appears to have happened in this regard.

An effectively functioning ICC with a track record of successfully prosecuting offenders would arguably in itself be at least a symbolic punishment for people who might not actually be brought to trial, as their freedom of movement around the world would be curtailed by the threat of arrest or harassment, while the possibility that at some point national sovereignty would not protect them would introduce a sense of insecurity into their lives.

On the tactical matter of South Africa's push for global governance reform, it was asked what specific entry points existed for this. These included the country's strategy of brinkmanship; its alliances, as with IBSA; and agitation for reform in the World Bank, IMF and UN systems.

The case of the Dalai Lama opened up some discussion about South Africa's relationship with other states and its foreign policy. The possible influence of China over South Africa was raised by panellists and members of the audience. One comment was that South Africa was developing a subservient, colonial relationship with China — something that commentators elsewhere, and in several different contexts, have remarked on as well.²⁶ However, others argued that, while regrettable, the Dalai Lama case was not an egregious violation of human rights — no one was killed or injured.

²⁶ Cilliers J, *Africa in the New World: How Global and Domestic Developments Will Impact by 2025*. Institute for Security Studies Monograph, 151. Pretoria: ISS, October 2008, p. 75.

South Africa and foreign pressure

The case of the Dalai Lama does obliquely raise the question of South Africa's response if pressed by an outside power (in this case China) to act against one of its citizens acting in accord with South Africa's law, but against that power's interests. For example: while the South African state may accept China's position on its territorial sovereignty and its definition of 'China', nothing compels ordinary South Africans to agree with this. In a free society, citizens have should have the right to agitate against their own government's policies, provided they do so within the domestic law. More than that, they have a clear right to information to decide on these issues. To the extent that the denial of a visa retarded this, the rights of South Africans *were* violated. Would South Africa stand firm if pressed by China to act against an advocate, say, for formal Taiwanese independence? Concerns (albeit contested) have been raised that South Africa may have participated in a so-called 'extraordinary rendition' of an alleged terrorist suspect at the request of a foreign power.²⁷

South Africa had taken a very controversial position on the so-called 'rape resolution', where it had not supported a draft resolution by the US that condemned rape as a military tool. This provoked a heated exchange. South Africa's stated position was that it was not opposed to this per se, but wanted to condemn rape in all its manifestations, and it thought that the resolution created 'two categories of rape'.²⁸ One of the workshop participants was 'ashamed' of the government's attitude, and said that South Africa was no longer speaking honestly and directly about human rights issues; it always seemed to attach qualifications to them. The participant argued that 'rape is a crime, end of story'.

When this resolution was in the news, numerous commentators argued that South Africa had acted out of an essentially political motive — to defy the

²⁷ Robertson D, 'Lawyer: South Africa involved in "rendition" of Pakistani', Voice of America, 8 June 2006, <<http://www.voanews.com/english/archive/2006-06/2006-06-08-voa45.cfm?CFID=267807356&CFTOKEN=19600502&jsessionid=de301282da40a2971d005a4216482e681275>>.

²⁸ Department of Foreign Affairs, 'Statement on South Africa's position on US draft UN resolution on eliminating rape', 12 November 2007, <http://www.southafrica-newyork.net/pmun/view_press_release.php?release=8417601>.

US. Sheila Camerer, formerly an MP for the Democratic Alliance and now South Africa's ambassador to Bulgaria, noted:²⁹

This is very odd, particularly in view of the fact that one of the most important decisions taken at the UN Women's Conference in 1995 in Beijing was that rape in a conflict or war situation should be treated as a war crime. I was part of the 25-woman government delegation headed by [at that time] our current Foreign Minister Nkosazana Dlamini-Zuma and Geraldine Fraser-Moleketi, and we were at the forefront of efforts to get this point written into the conference declaration. I had always believed that through the 1995 Beijing Declaration, rape as a war crime had become part of the UN legal approach. It is all the more surprising, then, that South Africa's [now former] UN ambassador, Dumisani Kumalo, is insisting instead on wording that recommends a general condemnation of all forms of rape. This is well and good, but perhaps he is unaware of our own foreign minister's role in Beijing in 1995 in getting rape in a war situation classified as a war crime as reflected in the Beijing Declaration. The US-drafted resolution is apparently designed to pressure governments such as Sudan and Myanmar to stop using rape to intimidate dissenters. The fact that it is a US-sponsored resolution seems to be Kumalo's main problem with it.

In a forthcoming analysis by Thomas Coggin, formerly an intern at SAIIA,³⁰ the argument is made that South Africa did not put its case across properly. He points out that South Africa's stated objection to the US resolution is incongruous when seen with the alternative resolution that it produced with its African partners. This also 'created two categories of rape' in that it also focused heavily on the military as opposed to civilians and that it mentioned the ICC. It arguably went further than the US resolution. However, the substantive grounds that would have justified objecting to the US resolution (in particular, the lack of a role for the ICC) were not presented to the public as reasons for so doing.

²⁹ Camerer S, 'SA ambassador opposes UN "rape as war weapon" resolution', *Thoughtleader*, 12 November 2007, <<http://www.thoughtleader.co.za/sheilacamerer/2007/11/12/sa-ambassador-opposes-un-rape-as-war-weapon-resolution/>>.

³⁰ Coggin T, 'South Africa's international legitimacy: The disparity between South Africa's domestic objectives and the voting decisions it has taken in the United Nations', forthcoming.

The role of political party structures in determining policy was made in the presentations and returned to briefly in the discussion. Ironically, while in some instances this may be an especially important driver of foreign policy, documenting and measuring this influence is very difficult. Political parties, unlike state institutions (in theory, at least), are essentially private organisations and are not subject to the same demands for accountability. Thus, political choices may be decided in the 'private' space of political parties, and, consequently, significant influence may be exerted on the state machinery to carry them out. It is unlikely that state structures will admit to acting in this way (not least because the sectarian interests of the political party may not match the broader interests of the country), so analysis of this will likely be based on the extrapolation of evidence and confidential contacts.

This impulse is particularly important in respect of party-to-party relations among the various liberation movements in Southern Africa. The acerbic academic and critic RW 'Bill' Johnson has argued for years that South Africa's attitude towards Zimbabwe has been driven by a sense of solidarity among the various 'liberation movements' in Southern Africa. Discussing the common sense of identity and destiny, as well as the summits held among these parties, he comments that 'Mugabe's struggle to stay in power became a struggle for their own survival too'.³¹ Similar interpretations have emerged from time to time from those of different ideological orientations,³² while some compelling evidence to support this has emerged from time to time.³³ It is certainly noteworthy that while the region is putatively committed to regional integration and strengthening the structures of SADC, when the community's tribunal ruled that Zimbabwe's land seizures were illegal, the response of that country's

³¹ Johnson RW, 'The final struggle to stay in power', *Focus*, 25, Second Quarter 2002, <<http://www.hsf.org.za/publications/focus-issues/issues-21-30/issue-25/the-final-struggle-is-to-stay-in-power/>>.

³² See, for example, Leonard T, 'Is Mugabe hiding behind "liberation" front?', *Cape Argus*, 29 March 2005, <<http://www.capeargus.co.za/index.php?fSectionId=3571&fArticleId=vn20050329080512218C309718>>. This piece cites Eddy Maloka, director of the Africa Institute (who has written sympathetically of ZANU-PF), as follows: 'Maloka said that when Kenneth Kaunda, the liberation hero and former president of Zambia, was unseated by Frederick Chiluba, it influenced the region's response to populist movements like Zimbabwe's MDC. "It wasn't acceptable that a former liberation movement should be overturned in this way," he said. "Naturally, the response of the region is to say: 'Let's rather work with the devil we know than the devil we don't'," said Maloka.'

³³ See Feinstein A, *After the Party*. Johannesburg & Cape Town: Jonathan Ball, 2007, p. 120.

government, which was to ignore the ruling, was not met with any censure from South Africa (an example, perhaps, of the incompatibility of varying goals).

Another issue was the apparent dissonance between the outspokenness that South Africa has shown in respect of Israel's actions and the US concerning the invasion of Iraq, and the low-key approach (at least publicly) that the country had shown in respect of Chinese and Iranian human rights violations and the situation in Zimbabwe. The answer given was that South Africa had felt that it was imperative to prevent a war in Iraq, and that its concern vis-à-vis Israel was for the self-determination of the Palestinians (although it remained engaged with both sides).

Session 2: Can foreign policy be a vehicle for promoting human rights?

Mr Jon Elliott, Africa Advocacy director at the international non-governmental organisation (NGO) Human Rights Watch (headquartered in the US), said that since 2001 there had been a change in the balance of influence on human rights and the way they had been managed and promoted. Prior to this, Western countries had identified themselves as the major guarantors of human rights and had been regarded as such by many international human rights organisations.

After the 11 September 2001 terrorist attacks in New York and Washington, DC, the responses of some Western governments (through measures such as illegal rendition and torture) undermined their claims of leadership on human rights. The Bush administration's withdrawal from the UNHRC³⁴ also



³⁴ The US did not seek a seat on the UNHRC and has been critical of what it views as the council's disproportionate focus on Israel. During 2008 it reportedly resigned its observer status. The new

opened a vacuum that states hostile to human rights have attempted to exploit. This has taken the form of 'pushback' against the UNHRC's human rights monitoring and reporting mechanisms and the independence of special rapporteurs, and the increased use of non-action motions (a motion that seeks to block action on a particular country situation) to support regimes clearly abusing basic rights within their national borders. At the UNSC, the US-led invasion of Iraq and the perception of its illegality also polarised international opinion and led many in the global South to see what remained of US policy on human rights as a coded 'regime change' agenda. This has contributed to a wider pattern of pushback, which was emboldened by the strong economic growth that some of its leaders (Russia, China, Algeria) were experiencing.

There have been some 'bright spots': some countries and regions in the global South have taken up the slack and have spoken out more consistently on human rights. These include a number in Africa (Sierra Leone, Liberia, Botswana, Zambia and Tanzania), Latin America (such as Costa Rica) and Asia. The recent administration change in the US could provide an opportunity to 'rebalance' this situation, since President Barack Obama had pledged, among other actions, to close the Guantanamo Bay detention centre (the centre was regarded by critics as emblematic of US hypocrisy on human rights).

Elliott said that it was disappointing to see that traditional advocates of human rights in Europe had also been 'going flaky' in recent years, notably Britain. This had helped create the context within which the 'spoilers' were able to make advances. Other European countries — the Netherlands and Scandinavian countries excepted — have continued to play at best a marginal role on human rights. He said there was a need — and now an opportunity — for changes in Western (and particularly US) approaches to human rights advocacy. Consistency of principle on Israel, Pakistan and Colombia (where the West had been seen to be equivocal on human rights when it came to friendly or strategic regimes) could help progressive influences in the global South begin to play a parallel role on Sudan, Burma and Iran.

There was also an opportunity for South Africa. The ANC government had legitimate problems with the makeup of the world order, but its approach in recent years (especially when on the UNSC) has given the impression of it being hostile to human rights. It could have chosen leadership role, charting a

administration of President Barack Obama indicated in March 2009 that it would seek a seat on the council.

‘progressive’ middle road between the West and the autocratic anti-human rights powers in the global South. But instead, Elliott argued, it has conflated — and convoluted — its goals of reforming the world order and protecting human rights, but has only ended up weakening the latter.

Concerns of *realpolitik* and human rights go hand in hand. For example, when conflict occurs, human rights are often a causal factor. Preventing, resolving and mitigating conflict therefore means putting human rights front and centre. Politicians and diplomats often make the mistake of thinking that human rights are a ‘soft’ issue that can be mopped up later once the political architecture of a peace agreement is in place. The experience of Sudan, the DRC, Somalia and other crises shows otherwise: a failure to address grass-roots causes of conflict, like justice, early on can undermine the viability and sustainability of political agreements. Taken together, these failures then end up weakening the global system for everyone.

In conclusion, looking at South African policy, effective conflict prevention and fairness in the international system can only be achieved by parallel activism on human rights issues. In this regard, citizen activists must continue to demand full accountability from all leaders, legislators and policymakers.

Dr Danny Titus began his talk by asking how South Africa’s foreign policy could be influenced.³⁵ He emphasised the existing set of conventions and treaties that provided a basis for states’ responsibilities and actions. He cited a newspaper article in the *Sunday Independent* by Carol Bogert, a representative of Human Rights Watch. In it, she said that while the end of apartheid had been met with joy, South Africa’s current stance was viewed with dismay. While most observers were aware of the approach taken in respect of Zimbabwe, less well known were the issues ‘on which the South African government has sided with reactionary rather than progressive forces’.³⁶

³⁵ An updated version of this talk will be published later in the year as a SAIIA occasional paper.

³⁶ Bogert C, ‘SA’s human rights reputation tarnished’, *Sunday Independent*, 7 September 2008.

Titus also cited a response to a question in Parliament as to whether South Africa still held to the views expressed by Nelson Mandela about the status of human rights in foreign policy in 1993. The minister of foreign affairs asserted that there had not been a change; that human rights remained a guiding principle; and that the country was committed to multilateralism, which 'still (was) far better than unilateralism'.³⁷



From a 'realist' perspective, the world is not governed by morality and law, but by power. The 'idealist' perspective would emphasise human rights as a central consideration.

The issue of sovereignty was also important. Sovereignty is a key consideration in international law, but it is being redefined. As the former UN secretary-general, Boutros Boutros-Ghali, said, the 'time for absolute sovereignty has passed'. Can or should states try and promote human rights across borders? If so, which governments? Which rights? In what ways should rights be pursued?

The Dutch government attempted in 1979 to integrate a human rights dimension into its foreign policy, as stated in a memorandum from its foreign ministry, 'Human rights and foreign policy'. The Netherlands has since become noted for its emphasis on this aspect of policy, with official strategies calling for an active role for ambassadors and interaction with human rights defenders in foreign countries.³⁸ This policy initiative was strongly emphasised in the

³⁷ National Assembly, internal question paper no. 3 of 20 February 2007, question no. 25, <<http://www.dfa.gov.za/docs/2007pq/pq25.htm>>.

³⁸ See, for example, Ministry of Foreign Affairs of the Netherlands, *Human Dignity for All: A Human Rights Strategy for Foreign Policy*. The Hague: Netherlands Ministry of Foreign Affairs, 2007.

Netherlands because of a widespread demand for and agreement with it by society at large.

South Africans have a right to influence the foreign policy of their country. Foreign policy should reflect what is done in the name of ordinary people. There should be a national reporting requirement regarding the country's international obligations, so that in this way South Africans are in a position to influence and feel part of policy and foreign engagement.

The South African government should undertake an evaluation of the manner in which foreign affairs are carried out. It should remember that consistency in policy is important for effectiveness. Civil society must be included in policy processes and the advice of NGOs and think tanks should be carefully considered. Some countries send reports by NGOs and think tanks to their embassies to assist in carrying out their duties. Does South Africa do this?

South Africa had a good reputation as an advocate of human rights, but it has lost this through its recent actions. It now has an opportunity to regain this. Government needs to be prepared to sit with civil society to map a way forward. There are some necessary steps that need to be taken:

- The policy and foreign activism up to 2009 needs to be evaluated.
- A strong conceptual framework should be developed, and the capacity of the DFA needs to be improved.
- Some international human rights instruments have not been ratified; these must be ratified and integrated with domestic law, as their interaction with South Africa's Constitution and law is an important matter that will influence the country's courts.
- Research and reports by NGOs and think tanks should be used to help develop good strategies.
- The multilateral institutions to which South Africa is affiliated, particularly in Africa, are not all very effective and need to be strengthened. This may be time consuming; the EU took some 50 years to achieve its level of integration and effectiveness.
- Domestic legal systems should integrate international obligations.
- Finally, human rights policy should step out of national boundaries and South Africa should align its international obligations with international human rights.

Dr Mireille Affa'a Mindzie noted that the global context within which human rights were experienced was evolving.³⁹ State sovereignty drew a particular distinction between the domestic and international spheres. This was reaffirmed by the 1945 UN Charter and at the continental level by the 1963 Charter of the OAU, later replaced by the AU Constitutive Act.⁴⁰

Mindzie's presentation looked at three broad matters:

- the **development** of the international human rights system;
- the **limits** of human rights as an element in countries' foreign policies; and
- the **emergence** of an African position.

The 1948 Universal Declaration on Human Rights established a human rights system and worldwide set of norms. Human rights systems have also been established at the regional level. In Africa, the African Charter on Human and Peoples' Rights (1981) is notable. Most international human rights conventions include a variety of mechanisms that monitor and assess the implementation of their agreed obligations by states.

For example, the African Commission on Human and Peoples' Rights promotes rights under the African Charter. Human rights situations in various countries, including Chad, Mauritania, Nigeria, Sudan and Zimbabwe, have been considered by the commission. The body has gained in visibility, independence and credibility over the years. However, its effectiveness is hindered by limited enforcement of its recommendations, and the absence of any formal follow-up mechanism.

Furthermore, to promote good governance and democratic principles, AU member states have identified and agreed to condemn unconstitutional changes of governments. The Madagascar 'coup' in early 2009 has been the latest example of this.

Human rights and democratic principles are further used as conditions for trade and development assistance by multilateral structures and institutions such as the EU and the World Bank. The conditional aid policy of the EU illustrates that traditional considerations defining states' foreign policy, such as national economic and geopolitical interests, can be addressed by including human rights

³⁹ An updated version of this talk and paper will be published later in the year as a SAIIA occasional paper.

⁴⁰ Constitutive Act of the African Union, adopted in July 2000 in Lomé, Togo, Principles, art. 4, <http://www.africa-union.org/About_AU/AbConstitutive_Act.htm#Article4>.

in countries' international agendas. The World Bank is likewise beginning to concede that respect for human rights is important for poverty reduction and development strategies.

Human rights discourse needs stronger recognition as an element of states' foreign policy. This applies in a multilateral system, as well as to states' bilateral relations. The Cold War emphasised security interests; human rights concerns were secondary. The divide between Western and communist states manifested itself in the importance attributed to each category of rights — civil and political rights versus economic and social rights — and did not promote a unified human rights discourse by the UN. This division materialised in the adoption of two separate human rights covenants in 1966.

In a post-Cold War world, human rights are considered a Western-imposed ideology by increasing numbers of detractors. Human rights concerns are challenged by the attitude of powerful nations such as the US, which have often disregarded international human rights law and its monitoring mechanisms.

In a multilateral context, national interests still play an important role in the definition of states' foreign policy in bilateral relations. The 'organised hypocrisy' of Western democracies has been highlighted regarding trade agreements and economic transactions conducted with governments fingered for abusing human rights.⁴¹

The end of the Cold War carried opportunities for more autonomous foreign policies. In Africa, AU member states have developed an 'African Agenda' based on regional interests and building on the leverage provided by the continental middle powers. However, it remains unclear how effectively such an emerging continental policy is contributing to upholding human rights standards.

Although most African countries lack both diplomatic and economic muscle to conduct an individual foreign policy in a multilateral system, their collective voice, represented by the continental structures and regional 'hegemons', including South Africa and Nigeria, calls for a re-examination of Africa's perception and treatment by Western liberal democracies.

Mindzie argued that links with China provide several African countries with an alternative to conditionality systems imposed by international financial institutions and Western democracies. China's official approach to foreign relations is based on non-interference, the relativism of human rights and the

⁴¹ Perkins R & E Neumayer, 'The organized hypocrisy of ethical foreign policy: Human rights, democracy and Western arms sales', <<http://www.research.plym.ac.uk/pisc/PIP/HypocriticalForeignPolicy.pdf>>.

freedom of each country to define its timetable for implementing these rights. China's engagement with African countries has the potential to further corruption and encourage violations of the human rights that are perceived to threaten undemocratic regimes, as well as sustain militarism and fuel armed conflicts across the continent.

For African countries to benefit from China's intervention, a progressive, coherent and unified policy should be developed by the AU. Such policy, which would regulate China's relations with the continent, must consider trade practices and human rights concerns that are often raised by the country's engagement in Africa. The AU should emphasise the need to maintain the necessary efforts for good governance, respect for human rights and the rule of law promoted by Western countries and international financial institutions, which appear to be undermined by China's policy of aid without conditions.

As human rights concerns remain a variable component of states' foreign policies, African governments, through the AU, share the responsibility of ensuring that an emerging continental foreign policy complies with human rights and democratic values that African states have subscribed to, both at the universal and regional levels. Specifically, alternative and African-specific solutions to economic, peace and security, and justice and accountability concerns should not compromise agreed human rights standards. This responsibility also rests with an independent and active continental and international civil society.

Points arising from further discussion

Human rights in the contemporary world

Human rights are in a curiously divided space in political thinking at present. On the one hand, they probably enjoy more attention and respect than at any time in history. Jack Donnelly, an American academic, has argued eloquently that the idea of human rights has become so entrenched in political thinking that they are a 'standard of civilisation'. Human rights are a powerful legitimating agent, and to belong to global society, some acknowledgement of human rights is necessary.⁴² In respect of foreign policy, human rights have been invoked for nearly a century as a justification for particular courses of action. While not denying the hypocrisy inherent in this, Leslie Gelb and Justin Rosenthal argue that:⁴³

The morality of the strong will generally still prevail over that of the weak, and considerations of value almost inevitably will have to take second place. But they used to have no place. Second place means that leaders now have to be mindful of ignoring or abusing what are increasingly seen as universal values.

On the other hand, the idea of human rights as universal values has been questioned. Michael Ignatieff, Thomas Franck and Shashi Tharoor — academics in the fields of politics and law — have explored these challenges.⁴⁴ Three broad challenges to the universality of human rights are highlighted.⁴⁵ The first comes from Islamic societies, within which some prominent figures have argued that human rights are essentially a Western concept. In particular, the concept of separation of religion and state and the issues of gender and family relationships are held to be incompatible with Islam. The second challenge comes from the within the West. A number of influential critics have questioned whether human

⁴² Donnelly J, 'Human rights: A new standard of civilization?', *International Affairs*, 74, 1, 1998, pp. 1–24.

⁴³ Gelb LH & JA Rosenthal, 'The rise of ethics in foreign policy', *Foreign Affairs*, 82, 3, May/June 2003, pp. 2–7.

⁴⁴ Ignatieff M, 'The attack on human rights', *Foreign Affairs*, 80, 6, November/December 2001, pp. 102–16; Franck TM, 'Are human rights universal?', *Foreign Affairs*, 80, 1, January/February 2001, pp. 191–204; Tharoor S, 'Are human rights universal?', *World Policy Journal*, 16, 4, Winter 1999/2000, <<http://www.worldpolicy.org/journal/tharoor.html>>.

⁴⁵ Ignatieff M, *op. cit.*, pp. 103–5.

rights are not in fact limited in their applicability to the West. The third challenge originates in Asia and rides on the back of Asia's impressive economic growth. The Asian critique stresses the need for order, community and the satisfaction of material needs, and thereby provides some justification for political authoritarianism.⁴⁶ A fourth challenge — incompletely articulated, but important in South Africa's case — comes from Africa. It dovetails with the Asian challenge in asserting the cultural specificity of Africa and the imperatives of development. Colonel Gaddafi's dismissal of democracy as inappropriate for Africa is a good example of this reasoning.⁴⁷

The writings cited above note that the *arguments* against the universality of human rights are satisfactorily countered. For one thing, demands for human rights are made aggressively and often at great risk by non-Western people. Franck argues that human rights developed out of modernising processes that led to demands for greater personal autonomy. This does not imply a rejection of communal bonds, but rather adjusts and complements them.⁴⁸

It is, however, in the *political* and *social* spheres that human rights advances can be threatened. Human rights, democratisation and, indeed, modernity in general are profoundly threatening concepts to many autocratic elites. Their responses could range from raw repression — as in Zimbabwe — to reasonably successful development efforts that could blunt demands for change. In the latter case, people could be convinced that human rights are meaningless. Another strategy is the redefinition of human rights — gutting their universal nature by insisting on a particular parochial understanding.⁴⁹

As noted in the first session, the possibility exists that a multipolar world will produce a multipolarity of values. Some of these value systems may not be

⁴⁶ This theme has been taken up in several movies in varying degrees. These would, for example, include *Red Corner* (1997), *Return to Paradise* (1998) and *Brokedown Palace* (1999), which posit situations in which Westerners find themselves in justice systems with rules and values that conflict with what they are used to at home. Representatives of the various Asian systems depicted emphasise the need for order and protection in society, and at times question the assumptions prevalent in the West. The viewer is arguably left with 'food for thought', if not overt sympathy.

⁴⁷ BBC News, 'Gaddafi condemns African democracy', 4 February 2009, <<http://news.bbc.co.uk/2/hi/africa/7870431.stm>>.

⁴⁸ Franck TM, *op. cit.*, pp. 200–1.

⁴⁹ The author recalls remarks by a senior Chinese diplomat at a conference in Germany in March 2009 that China was committed to democracy and to human rights, but to an (undefined) 'Chinese understanding' of these concepts.

sympathetic to human rights. Human rights advocates will need to be prepared to deal with this challenge.

A notable instance of the latter — and a strategy for challenging human rights (although this may not be realised) — concerns non-binding resolution 10/22 of the UNHRC on ‘defamation of religion’ in March 2009.⁵⁰ Originating from a number of Muslim majority states, it purported to address discrimination against people based on religion (specifically Islam), but went further. As several commentators noted, it sought to limit criticism of religion itself — again, specifically Islam — in that it sought ‘to extend protection not to humans but to opinions and to ideas, granting only the latter immunity from being “offended”’.⁵¹ This is a redefinition of the very concept of human rights, and severely conflicts with a number of basic rights, freedoms and values intrinsic to a democracy — freedom of speech, opinion and religion, and the associated dialogue and enquiry that these freedoms and values enable. Conceptually, protecting religion in this way would be no different from demanding protection for socialism, liberalism or capitalism from criticism.⁵² South Africa supported this resolution. This is odd and disturbing: South Africa has a secular Constitution (during the drafting, the insertion of a preamble acknowledging the divine was explicitly rejected); many prominent citizens are atheists or agnostics; the media regularly carry material scornful of religion, and some columnists have made this a signature of their writing; and the works of militant secularists such as Christopher Hitchens and Richard Dawkins are freely available. Is it possible that South Africa did not fully realise the implications of this resolution? Would South Africa accept a binding resolution on this matter, which some states favour? If South Africa supported this resolution because it believed that it was right, then it implicitly rejected its own constitutional values. If it did so out of solidarity with other developing world countries, then it was willing to compromise its commitment to human rights — and to open the door to the abuse of the concept in future.

⁵⁰ See UN Human Rights Council, *Report of the Human Rights Council in Its Tenth Session, 2–27 March 2009* (advanced, unedited edition), <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A-HRC-10-29_AUV.doc>.

⁵¹ Hitchens C, ‘Don’t say a word’, *Slate*, 2 March 2009, <<http://www.slate.com/id/2212662/>>.

⁵² Karl Marx — to whose intellectual framework the writer does not subscribe — wrote that ‘criticism of religion is the prerequisite of all criticism’.

A significant part of the workshop discussions focused on the issue of values. Do common values exist across the world and in Africa? What is the nature of such values? Are all values consistent with human rights? There had been considerable controversy about South Africa's position at the UN vis-à-vis homosexual rights (a point raised in the first session). Social acceptance of homosexuality is thin in Africa, including in South Africa, the constitutional protections notwithstanding.

It was pointed out that culture changes, and, in this process, what was once unacceptable can gain acceptance. A case in point would be attitudes toward homosexuality in middle-class communities in developed countries: while these are now among the most tolerant places for homosexuals in the world today, people in such communities harboured strongly negative views less than a generation ago. However, while such processes may be useful for human rights advocates, it is important to remember that human rights need to exist and be defended on principle. Articulating the rights of people to exercise their sexual preference (or, indeed, any other right) should be equally compelling to those who personally dislike it. It is, after all, easy to defend things one finds agreeable.

A related point concerns the extent to which values may be promoted. Can a regional 'hegemon', as South Africa is sometimes described, bring other countries round to its way of thinking? This is possible in principle, provided it actively wishes to pursue this as a course of diplomacy and is willing to use



persuasion and, possibly, inducements to do so. South Africa has been reluctant to do this, as it is mindful of the sensitivities of other states in the region to South Africa 'bullying' them. It is debateable how easily changes can be encouraged. Experience also suggests that some states — described by one commentator as 'semi-authoritarian' — are adept at changing their behaviour sufficiently for reforms to be recognised (and possibly to take advantage of economic inducements offered by other states and international institutions) while maintaining their problematic power structures fundamentally intact. The idea of inducing reform is also tainted by the highly controversial US-led invasion of Iraq and the associated idea of regime change.⁵³ Whether this is a prescription for adopting a hands-off or non-confrontational approach to human rights violations and the states that perpetuate them is debateable. Ultimately, though, human rights are best secured when they are accepted as a good in themselves.

⁵³ Carothers T, 'The backlash against democracy promotion', *Foreign Affairs*, 85, 2, March/April 2006, p. 60. As the title implies, this article deals with promoting democracy rather than human rights per se, but the arguments can be applied to both.

In historical perspective ...

South Africa's position of not making ethics the dominant concern in its foreign engagements is not historically unique. Neither are all morally ambiguous choices necessarily entirely bad in an historical perspective. During the Second World War, the US — the world's foremost democracy — supplied enormous quantities of war materiel to the highly repressive and anti-democratic Soviet Union. It also reportedly linked up with the Mafia in Italy. But these actions contributed to defeating Germany and Nazism.

Subsequently, the US provided economic and military aid to South Korea, which was ruled by a series of authoritarian governments. South Korea is today a functioning democracy and one of the world's wealthiest countries. North Korea did not receive such assistance and is today one of the world's most repressive and reclusive states with, by all available accounts, a truly appalling human rights record. This is not to say that the US 'democratised' South Korea, or that its actions were entirely altruistic. There were clear strategic ('national interest') motivations involved, mostly the maintenance of a strong anti-communist, pro-US government, a combat-worthy military to support it and an economic base to showcase the superiority of the capitalist system against its Cold War rivals. But it is not difficult to argue that such support helped create the conditions within which demands for democracy could eventually grow.

A good argument could be made that ethical choices have to strive to ensure that the moral negatives (such as providing support to the Soviet Union) are outweighed by the moral positives (defeating Nazi Germany). This is not an easy calculation, as the broader decision must also account for the 'national interest' (commercial or security advantages), while the long-term consequences of any engagement cannot easily be predicted, although the short-term ones possibly can. This latter point is important: South Korea throughout the Cold War was a firm ally of the US (it contributed, for instance, a large number of highly competent troops to support the US and South Vietnam in the Vietnam War), but a US observer concerned about human rights may have found his/her country's support of South Korea morally dubious in light of its internal repression, and may have been eager to cease this support. That South Korea would democratise in the 1980s was an unknowable factor. A cut-off of assistance might have left it vulnerable to attack and annexation by North Korea. In that scenario, it is most unlikely that democracy, human rights or prosperity — not to

mention the national interest of the US — would have been served in the long term.

Is this argument applicable to South Africa's engagements? Possibly, although in the most visible such engagement — Zimbabwe — it would be easier to argue the contrary. For a decade, Zimbabwe did not make any progress in almost any sphere: its economy and political institutions collapsed, while in South Korea these developed in the authoritarian period. South Africa received scant real benefit — in any respect — from Zimbabwe, while the US could at least count on South Korea as an ally. Indeed, the Zimbabwean crisis strained South Africa's economy, complicated its relationship with the West, raised questions about the viability of Nepad and quite possibly helped compromise the spread of democracy in Africa.

An important area of concern in this session was the question of global governance reform. While this was a major area of interest for South Africa, there was some suggestion that it was investing in hopes that powerful non-Western countries — notably Russia and China — were not really interested in such reform, and the support it could reasonably expect from them was limited. This is simply not a particularly important issue for them, and they would probably have their own problems with according more weight to certain other countries that might objectively merit it — for example, China might not welcome a permanent Japanese representative on the UNSC. At the same time, South Africa had taken up a rather confrontational attitude towards the West, with the result that it had diminished its reputation as a defender of human rights, while reinforcing autocrats.

The idea that reform and enlarging the various bodies to allow for broader presentation would intrinsically be beneficial is open to question. Wider and more representative global institutions, in particularly the UNSC, may be able to confer broader legitimacy on decisions taken, but would make reaching such decisions harder. The result could very well be a near-permanent state of paralysis.

One participant asked what could be done where a country that had hitherto been a strong defender of human rights abrogates that responsibility, and then tries to assume it again. Can it be taken seriously? This was not only a consideration for South Africa, but also for the US. The response on this score

was that it would depend on that country's actions matching its rhetoric — whether it could demonstrate a renewed commitment in fact as well as in word. It would need to be held to account on this issue. Inconsistency was a very damaging problem for all would-be human rights defenders, making it important to strive to be as even handed as possible.

Whether South Africa has the means to endow its foreign engagements with a concern about human rights was a debateable point — especially given that the country has pressing domestic problems, which makes the case for a foreign policy that focuses on maximising benefits (although there is little indication that it has done that — certainly, South African business has not received significant support from the government in doing business in Africa). This was questioned: South Africa has resources that are not always optimally used (as the frequent under-spending by some government departments attests). It also has a fairly wide diplomatic presence throughout the world and is not an insignificant economic force. Moreover, smaller and poorer countries such as Zambia, Botswana and Sierra Leone have attempted to stand up for human rights concerns. Human rights, it was noted, are a positive contributor to development.

The accessibility and accountability of South Africa's foreign policy apparatus were criticised. Some participants argued that the government and ANC believed that the country had performed well, and did not need to explain itself — the result being a lack of accountability. This was in contrast to the early 1990s, when deliberation and consultation were encouraged and there was an expectation that policy would be widely owned. However, this space has progressively closed. This is partly linked with tense and defensive attitudes by the government. It tends to see its critics as representing hostile 'white' interests.

Some forceful interventions raised concerns about the mutuality of obligations and the responsibilities of the developed world and the more powerful countries (especially the so-called Permanent Five on the UNSC). Some countries had gone to great efforts to reform their economies, but had not seen increased aid or investment, and rapid development was not taking place.

Problems that had beset the UN Human Rights Commission had continued on into the UNHRC — in particular, human rights were still being used as a shield and a weapon in diplomacy. A code of conduct should be enforced at the council, along with an ethics committee to which states could bring complaints. There was also a need for a new paradigm — from 'stopping violations' to a 'preventions approach'.

While the ‘duplicity’ of the West was noted in respect of double standards and a less-than-enthusiastic embrace of global governance reform, it could legitimately be asked if Africa had adhered to its side of the implicit bargain. The commitments to good governance, democracy and human rights in the Nepad initiative were arguably a high point for the continent, but solidarity among the various heads of state had proven a stronger impulse. Thus, thuggish and corrupt governments were not facing any sort of sustained pressure — Africa continued to function on the principle of ‘the lowest common denominator’.⁵⁴ Another participant added that part of this solidarity was ‘anti-woman’, since it served the interests of ‘African patriarchs’. There was accordingly a need to adopt gender sensitivities and analyses in foreign engagements.

On the positive side, South Africa was lauded for the influential role it had played in creating the ICC, and it had worked hard to build alliances to found the court. This is a tradition that should be continued, with a focus on protecting rights. Indeed, this is one of the great possibilities created by the globalised world. Alliance building — especially within multilateral institutions — can allow relatively small and weak countries, or an alliance of the weak and strong, collectively to exert a great deal of influence. However, this multilateral approach — very much the preferred approach taken by South Africa — was only likely to work as well as ‘the slowest part of the equation’ (perhaps the least committed member of the alliance). Ultimately, the credibility of this approach would be found in its results.

Session 3: Views from civil society and the media

Ms Nicole Fritz said that she looked at developments in South Africa’s approach to human rights with bewilderment. She recounted observing the euphoria that accompanied the inauguration of the new US president, Barack Obama, and being reminded of what it was like when South Africa experienced its transition to democracy. The lesson is that one can never take such things for granted. She then asked what civil society could do to move South Africa back to its former orientation.

⁵⁴ Although a major change has occurred in that coups are generally no longer acceptable — as evidenced by the suspension from the AU of Mauritania, Guinea and Madagascar after coups in these countries.

The bulk of this presentation concerned efforts by the Southern African Litigation Centre (SALC) to prevent a transfer of arms to the Zimbabwean government following the elections in that country in 2008.⁵⁵ Had these arms reached their destination, they would certainly have been used against ordinary Zimbabweans thought to be sympathetic to the opposition.

The campaign took place in April 2008. A Chinese ship, the *An Yue Jiang*, was attempting to dock in Durban and offload a consignment of arms that would then be transported across South Africa and delivered to the Zimbabwean army. The editor of the investigative magazine *Noseweek* raised the alarm about this (sacrificing a scoop in the process). He knew that by the time he was able to publish the report, the arms would have been offloaded and it would have been too late. This allowed for mobilisation.

Dock workers refused to handle the cargo, while churches and the SALC assembled a legal team to challenge the transfer of arms through South Africa. The latter endeavour was successful in that an order was given suspending the authorisation permit to transport the arms and ordering that the cargo should be impounded. However, the ship left Durban before this could be done.

The official response of the South African government was that South Africa could not meddle in trade between two countries, and could only follow the administrative requirements and ensure that these were fulfilled. Fritz maintained that even in this respect, South Africa's authorities had failed in their duties.



⁵⁵ See Fritz N, 'People power: How civil society blocked an arms shipment for Zimbabwe', SAIIA Occasional Paper, 36. Johannesburg: SAIIA, July 2009.

The ship left Durban and sailed to Luanda, where it offloaded a cargo of construction equipment, and then sailed back to China. The information in Fritz's possession suggested that the arms did not reach Zimbabwe, despite some recent reports to the contrary.

This was a powerful demonstration of solidarity: civil society was exercising the doctrine of the responsibility to protect. South Africa is, however, fond of conspiracies and there have been suggestions that the campaign was undertaken at the behest of the US. This indicates a fixation with a 'neo-imperialist paradigm'. This allegation was untrue: the mobilisation was organic and spontaneous.

There has been considerable interest in the case as a successful example of mobilisation, although it is unclear whether replication is possible, as it relied on a particular conjunction of events. However, as long as the government disregards the views of its citizens, protests of this nature will occur.

Turning to comments made earlier about civil society's supposed lack of pragmatism in condemning the stance that South Africa had taken, Fritz commented that it would be better if South Africa were more pragmatic. Instead, it seemed intent on frustrating the West and, in so doing, playing into the hands of, for example, the Sudanese government. So after having fought for the ICC, it now seems content to see it founder. South Africa's position on Burma was also troubling, given South Africa's own history.

South Africa's stance on structural reform is translating into demanding absolute equality of treatment for all, failing which it rejects all action — unless the big powers are subject to censure, no one will be. Consistency for its own sake is damaging; action must be taken where it can be so that examples are set.

Ms Elinor Sisulu of the Crisis in Zimbabwe Coalition said that she had 'jumped' at the chance to address the workshop. She hoped that better-informed people in South Africa would be in a position to influence South Africa's and SADC's policies on Zimbabwe and would help build regional solidarity and shift the discussion on what can and should be done on Zimbabwe. She admitted that efforts thus far had not been successful.

A wide variety of groups in South Africa and the region have worked together to mobilise support for Zimbabwe's beleaguered civil society. They have tried to employ a variety of methods — letters, lobbying, marches, etc. — to appeal to the South African government and SADC to acknowledge and take measures to stop human rights violations and address the post-electoral conflict.

After Zimbabwe's harmonised elections on 29 March 2008, the Zimbabwean government responded to the MDCs election victory by withholding presidential election results for over a month. It was finally declared that 'there was no clear winner', because Morgan Tsvangirai had won 47.9% of the vote, and therefore failed to win over 50% as required by the legislation. The 27 June run-off poll was marked by such a ferocious campaign of state-sponsored violence that Tsvangirai was forced to pull out of the poll,



leaving Robert Mugabe as the sole candidate. Activists within Zimbabwe obtained Zimbabwe government documents that detailed the proposed roll-out of state-sponsored violence against the opposition in the months leading up to the run-off. This report was provided to the South African Presidency, while the churches also provided an extensive dossier of violations. The response by the South African Presidency has been to muddy the issue — activists are exhorted to understand the workings of power, the role of the West and claims that the MDC also has a military wing.

President Thabo Mbeki sent a delegation of generals to Zimbabwe to investigate the reports. They confirmed the churches's report, but it has never been made public and there is no evidence that any efforts were made by either the South African government or SADC to discourage the Zimbabwean government from its violent campaign. A change in policy in the form of public condemnation of the violence by the South African president himself may have had an effect on the violence that preceded the second election and saved lives.

This was not the first time that Mbeki failed to respond to an official report. When the European Commission president, Jose Manuel Barroso, met with Mbeki in June 2005, he raised the issue of the Zimbabwean government's ongoing Operation Murambatsvina that had destroyed the homes and livelihood

of hundreds of thousands of urban Zimbabweans. Mbeki responded that he was waiting for the report of the UN special envoy, Professor Anna Tibaijuka. To this day, there has been no public response by the South African government to Tibaijuka's damning report, despite the fact that South Africa was directly affected by a massive refugee influx from Zimbabwe as a result of the operation. South Africa's approach was to ignore the grave nature of the violations and to deny their impact on the livelihood and well-being of millions of fleeing Zimbabweans and the South African communities that have had to host them. This has not served the country's interests, as the situation has stoked xenophobic responses to the huge Zimbabwean influx, a situation that the police and Department of Home Affairs bureaucracy are ill-prepared to handle.

There is a disconnect between organised civil society and the government. Many parts of civil society (trade unions, churches, etc.) are sympathetic to the plight and struggles of the Zimbabwean people, while the Mbeki presidency clearly subscribes to the ZANU-PF propaganda view that the Zimbabwean crisis is a conflict between a beleaguered Robert Mugabe and the West. In view of his open contempt for the MDC and his strong support for Mugabe, Thabo Mbeki is the worst possible mediator. All attempts to change the South African government's view have met with little success. There are hopes that a Jacob Zuma presidency may see things differently, but so far there is no concrete indication that this will happen.

Mr Jan-Jan Joubert of *Die Burger* began by noting the commitments with regard to human rights that Nelson Mandela had made in 1993. He also acknowledged several achievements in South Africa's foreign policy, notably its peace-building efforts and generally 'putting Africa on the map'. However, he said that its moral compass was 'rusty' and it was making a number of wrong decisions. It was no longer acting as a bridge between the 'North' and the 'South'. There was great disappointment with the stances it had adopted at the UNSC, where it was frequently 'mired in technicalities' and forgot right and wrong, Joubert argued.

South Africa's biggest problem concerns the situation in Zimbabwe. South Africa, Joubert said, 'let down our neighbours in Zimbabwe terribly'. For reasons of stability, it had turned a blind eye to abuses of human rights there.

South Africa should also support the efforts of the ICC over Sudan.

South Africa needed to rise above 'Southern' solidarity and commercial interest, but that would involve a profound change of heart. There was an all-

encompassing hubris in the government that made admitting mistakes virtually impossible.

On the role of the media, South Africa needed media outlets and journalists who were prepared to tackle the tough issues truthfully.

Mr Peter Fabricius, foreign editor of *The Independent Newspapers Group*, said that the media attempts to expose as much as possible. Sometimes, this is quite fortuitous. For instance, elements of the story concerning the Dalai Lama were broken as a result of a chance encounter with a Chinese diplomat. The media shine a light. Unfortunately, journalists with specific foreign affairs experience and expertise are a 'dying breed'. Fewer and fewer are posted abroad, because of cost factors. There is also limited public interest in foreign affairs.

South Africa's priorities in respect of foreign affairs have also changed. The country has concentrated much more on global governance reform, on building a coalition to oppose the Western powers and on advocating development rights.

When the ANC came to power, it seemed set on being a missionary for human rights. Its voting record at the UN, especially over the last two years with its temporary seat on the UNSC, has undermined that hope. The Democracy Coalition Project considered ten issues before the UN and recorded the votes of various states at the UNHRC. South Africa voted in favour of the position judged most favourable for the protection of rights in respect of only three of these issues, abstained on two and voted against five.⁵⁶

⁵⁶ Democracy Coalition Project, *Human Rights Council Report Card: Government Positions on Key Issues 2007–2008*. Washington, DC: Democracy Coalition Project, October 2008, p. 12.

Issue and Democratic Coalition Project's preferred position	South Africa's position relative to the preferred position
Voted against amendment on reporting on abuses of freedom of expression	Against
Voted against amendment on the 'importance of the media to report and deliver information in a fair and impartial manner'	Against
Supported special session on the right to food	For
Voted in favour of resolution on good governance in the promotion and protection of human rights	For
Favoured a broad interpretation of the participation of NGOs in the universal periodic review outcome debate	Abstain
Supported special session on Myanmar	Against
Voted to extend mandate on the Democratic People's Republic of Korea	Abstain
Favoured renewal of mandate on the DRC	Against
Favoured renewal of mandate on the Group of Experts on Darfur	Against
Voted in favour of resolution on Israeli settlements in the occupied Palestinian Territory	For

South Africa's position was that the UNHRC should not intervene where governments did not request it, and the country evidently supports the policing of the media to ensure that they remain 'responsible', rather than the protection of media freedom.

There seems to have been considerable paranoia in government about the US. With the departure of Thabo Mbeki, there may be a return to a stress on human rights. With the government less concerned at changing the world order and more focused on dealing with the country's internal challenges, human rights might find a more prominent place.

Mr Zackie Achmat, a prominent civil society activist in the Treatment Action Campaign and Social Justice Coalition, said that he was not surprised about the direction of South Africa's foreign engagements. He noted that section 195 of the Constitution described an open, accountable, transparent and ethical public administration. It was also clear that 'People's needs must be responded to, and the public must be encouraged to participate in policy-making'.⁵⁷

In global engagements, every type of right is directly affected. The most powerful actors in global engagements are not subject to democratic accountability. These include the banks, the insurance industry and transnational corporations. There are at present no NGOs dealing with this, although NGOs need to realise that they operate in a global context. The actions of one set of actors in one part of the world can affect ordinary people elsewhere, and create the conditions and need for activism by social movements.

Activism around policy is often reactive. Civil society needs to become more proactive. The idea of 'earth hour' on 28 March 2009 is an example of such proactive activism. Citizens need to mobilise to put greater pressure on the oil, mining and car industries, for example, in respect of various social concerns.

Civil society concerned about human rights should also be wary of co-operating with groups that may share some of their strategic goals, but not their values. So there is no scope for rights-oriented civil society to co-operate with religious fundamentalists.

Civil society activism has been quite influential in certain areas. This was noticeable when challenges were mounted over the issue of access by the poor to cheap generic medicines — civil society mobilisation was important in ensuring a favourable outcome.

What the world is witnessing now is a 'race to the bottom'. Fair labour practices are being compromised in order to achieve overall economic competitiveness. The type of globalisation that should be promoted is one based on solidarity. The conditions of the poor in Africa are linked to the labour conditions of Chinese workers.

Turning to the issue of the Dalai Lama, Achmat said that it was interesting to see that the then minister of health, Barbara Hogan, had been denounced by the government for having expressed a contrary view about the decision and that elements in the ANC had called for her dismissal.

⁵⁷ Constitution of the Republic of South Africa, 1996, sec. 195(e).



Numerous questions remained unanswered: on what day did the cabinet decide not to issue the visa? Where are the relevant minutes of these discussions? Where are the letters and memoranda? If cabinet was not responsible for having made this decision, who had done so? What was the role of the immigration authorities? What was the role of the minister of home affairs? Answering these questions is important for establishing accountability in the conduct of foreign affairs, taking it out of the back rooms and placing it before the citizens of the country. The case of rendition is disturbing and sets a precedent for a foreign policy conducted over people's heads and without concern for their rights.⁵⁸

⁵⁸ This is an apparent reference to the case of Khalid Mahmood Rashid, a Pakistani living in South Africa who disappeared in late 2005. It subsequently emerged that he had been extradited to Pakistan. The apparent secrecy surrounding this case raised concerns that South Africa has participated in the programme of so-called extraordinary renditions. See *Independent Online*, 'Rashid case negative for SA internationally', 13 June 2006, <http://www.iol.co.za/index.php?set_id=1&click_id=15&art_id=qw1150202882829B216>. It may also be relevant to the case of Khalfan Khamis Mohammed, who was deported from South Africa to the US, where he was wanted in connection with the bomb attack in 1998 on the US Embassy in Tanzania. In the US, he could face the death sentence. South Africa did not seek assurances that he would not be executed. See SAPA, 'Bomb accused's life in Cape judge's hands', *Independent Online*, 26 March 2001, <http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=qw985603141934B263>; Ellis E, 'Tanzanian man's death penalty fight fails', *Independent Online*, 20 April 2001, <http://www.iol.co.za/index.php?art_id=qw987769382274A621>.

Points arising from further discussion

Central to the concerns of this session was that diplomacy and foreign affairs are by their nature largely perceived as the provinces of states rather than individuals. The issues that diplomats engage with are generally removed from the everyday experiences of ordinary people. Indeed, Thabo Mbeki's preoccupation with foreign affairs probably counted significantly against him among a population that wanted their domestic concerns addressed.

Discussion following the presentations emphasised the irony of South Africa's position on promoting human rights globally. The notion that action should only be taken with the consent of the offending state was unlikely to prove an effective method of advancing human rights. This was quite remarkable in view of South Africa's history and the demands made by the ANC prior to its unbanning (and, indeed, for some time afterwards) for sanctions and pressure on the previous regime to force change in South Africa.⁵⁹ One participant termed this position 'amazing' and said that to argue that sanctions were counterproductive was a 'very bad excuse' for the country's stance. One participant noted that in her



⁵⁹ See McLeod S, 'Does', *Time*, 25 June 1990, <<http://www.time.com/time/magazine/article/0,9171,970448,00.html>>. An interesting remark by Ahmed Kathrada — a prominent ANC activist at that time — about economic sanctions against the then government is quoted in this article, as follows: 'It will make them more amenable to talking to us, to conceding things to us.' For the ANC, foreign pressure was intrinsic to its political strategies — a search through the ANC's website (using the keyword 'sanctions') turns up pages and pages of documents dealing with its sanctions campaign.

interactions with Burmese democracy activists there was a great deal of interest in the South African experience, and it was disappointing to see that South Africa was not extending to others the external support that it and the current ruling party had previously relied on.

One participant agreed that the comments about important actors in foreign affairs being unaccountable were well taken. It was pointed out that South Africa was in favour of making transnational corporations accountable. South Africa also acknowledged the need for co-operation across borders.

The processes underlying South Africa's foreign policy were discussed at length. It was pointed out that there were definitely problems (cases of rendition being among them). There was also insufficient co-ordination among departments whose responsibilities should properly be functionally linked (the Department of Home Affairs and the DFA).

A question was posed as to the influence that the ANC as a party plays in foreign policy, with particular reference to the refusal of a visa to the Dalai Lama. Was the decision made at the behest of the ANC, or with benefits to the ANC — as distinct from the state — in mind? News reports that emerged in the wake of the Dalai Lama affair suggest that the ANC received large sums of money from, among others, the ruling party of China. It has been widely and publicly speculated possible that this funding was a significant motivator.⁶⁰ This in turn raises the very important question of regulations around party funding. This is a point of great interest to South Africa's civil society and it has been central to a number of scandals.

Where did responsibility for the decision on the Dalai Lama lie? The government cannot really claim a 'collective decision' — as it has done on many issues — if a decision was not in fact collectively taken. Without minutes or memoranda from a meeting at which such a decision was taken, this is impossible

⁶⁰ Emphasising the issue as being one of party-to-party rather than government-to-government or, indeed, party-to-government relations, the *Mail & Guardian* quoted 'an ANC insider' as saying: 'The ANC have never asked for money from foreign governments; it is always from one ruling party to another' (Rossouw M, 'ANC's dodgy funders', *Mail & Guardian Online*, 21 March 2009, <<http://www.mg.co.za/article/2009-03-21-ancs-dodgy-funders>>). See also SAPA, 'Dalai Lama visa saga shows need for party funding laws', <<http://www.polity.org.za/article/dalai-lama-visa-saga-shows-need-for-party-funding-laws-2009-03-27>>; Myburgh J, 'Is the ANC selling out our sovereignty?', *Moneyweb*, 24 March 2009, <<http://www.moneyweb.co.za/mw/view/mw/en/page66309?oid=282195&sn=Detail>>; see also Myburgh J, 'How not to deal with dictators', *Politicsweb*, 7 August 2008, <<http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=96124&sn=Detail>>, which discusses the ANC's record of receiving money from foreign sources and the possible relationship of this to foreign policy.

to establish. It was argued by one participant that the decision to deny the Dalai Lama a visa may not have been made at cabinet level, but in the bureaucracy. When China found out about the proposed visit, it let South Africa know that the decision would have consequences. It is not important who precisely was involved. The important matter was that South Africa had given in to Chinese pressure.

This point introduced discussion of the nature of South Africa's relationship with China. While the importance of China as an economic and political force in Africa and South Africa is undeniable, pressure on and threats to South Africa's sovereignty by China are a very poor basis on which to build a relationship, unless South Africa is satisfied with a 'colonial' relationship. The fact that Western countries trade with China and that many states are careful not to offend China does not make this any less so. Indeed, herein lies a good argument for using the West and probably a coalition of others as a counterweight to China on particular issues (just as China, it was argued above, is viewed by South Africa as a counterweight to the West). As China will likely feature increasingly prominently in Africa as a diplomatic and economic force in future, South Africa will need to decide whether it is opposed in principle to powerful states exercising influence over the less powerful, or whether this is contingent upon largely ideological or political factors. It is not clear whether it has given this matter much consideration thus far. In other words, will it apply the same standards to Chinese hegemony as it has done in respect of Western hegemony?

Whether the Dalai Lama affair was a sufficiently grave violation for civil society to focus its efforts on was questioned by one participant. There were impassioned responses to this.

A comment was made from the floor that the speakers had not addressed how activists might get government to hear and act on their views. Discussions of the role of the media highlighted that they can publicise important issues, although it was reiterated that there was insufficient investment in specialist reporters. Activism around foreign engagement was important: since governments do not like their actions to be criticised or it to be pointed out that they are not living up to the standards that they would like to meet — and be seen to meet — exposure of governments' failings may have an impact. So, on the issue of the Dalai Lama, the response might be to maximise exposure of the situation in Tibet.

Discussions continued on the relationship between governments and civil society. There was a recognised need by representatives on both sides for more

and better-quality engagement between the two sides. However, civil society should always remain independent: a society whose civil society is compromised by close links with the government is deprived of a key democratic support.

Thinking about influence

Perhaps the most intriguing question to emerge from this session was how ‘non-state actors’ (with an emphasis on civil society) could influence foreign policy. Foreign policy is traditionally seen as a field beyond the understanding and influence of ordinary people. Diplomacy is assumed to be a matter for states and their representatives to engage in. Moreover, the link between the well-being of a country’s citizens and that country’s foreign engagements is often an attenuated one. Thus, even engaged citizens — and, for that matter, arguably, most elected politicians — would rather spend their energies attending to issues within the country where the problems are more visible and subject to influence and where the consequences of actions are more immediately visible.

However, changes have been under way for a long time. Cheap, reliable travel and communications — especially the Internet — have put civil society groups in a position to consolidate and co-ordinate their efforts across the world, to publicise their causes, and to apply pressure to policymakers in different places simultaneously. The anti-apartheid movement was an early example of what was possible in this regard, albeit without the technology that would become available in the 1990s.

Human rights have been a most useful tool in that they are a common political and social ‘language’ within which demands and desire may be formulated. A commentary on human rights work by women’s groups from different regions could be referring to many other similar experiences when it noted:⁶¹

Women from different regions have been able to use human rights concepts to articulate diverse demands in relation to a broad array of issues. Human rights language creates a space in which different accounts of women’s lives and new ways of demanding change can be developed. It provides a set of overarching principles to frame alternative visions of gender justice, without dictating the precise content of those visions. The idea of universal human rights provides a powerful vocabulary for naming gender-based violations and

⁶¹ Bunch C with P Antrobus, S Frost & N Reilly, ‘International networking for women’s human rights’, in Edwards M & J Gaventa (eds), *Global Citizen Action*. Boulder: Lynne Rienner, pp. 221–22.

impediments to the exercise of women's full equality and citizenship. Furthermore, the large body of international human rights covenants, agreements and commitments gives women potential political leverage and concrete points of reference for their organising and lobbying activities.

What specific strategies are available to civil society groups to influence government policy on a national level? They are fundamentally outsiders in South Africa's foreign policy milieu (one participant said that civil society was treated with contempt). Proceeding from that, it must be realised that there is no fixed formula for influence: successes and failures coexist. In a democracy, public opinion is theoretically a very important tool. The US opinion analyst Daniel Yankelovich notes in relation to US foreign policy that 'under certain conditions, public opinion can have a decisive influence. The trick is understanding what those conditions are'.⁶² He cautions, however, that while public opinion is generally decisive in domestic policy, its relationship to foreign policy is less clear. The relevance of public opinion to any policy is, of course, that negative public opinion has the potential to turn supporters into opponents; or, in other words, it can cost the government votes and possibly its incumbency.

South African civil society has not chosen to use this particular avenue of influence very often. The Treatment Action Campaign, which carried on a campaign that was extremely critical of South Africa's approach to HIV/AIDS, never suggested encouraging its supporters to support any opposition party. This was despite the considerable invective directed against this organisation, some of it referencing race, from the government and from the ANC itself. Indeed, some of its leaders remained proud of and emphasised their ANC credentials.⁶³ The desire to remain 'on side' with the ANC is a strong one for many activists and may offer some scope for influencing policy 'from the inside'. But it is democratically problematic. It deprives civil society of a potent tool for accountability and it gives the government a sense of assurance that ultimately its support base is assured. In the long run, civil society severely limits its influence if there is no likelihood that the government will suffer any serious political punishment.

⁶² Yankelovich D, 'The tipping points', *Foreign Affairs*, 85, 3, May/June 2006, p. 116.

⁶³ For example, Achmat Z, 'A majority is good enough', *Mail & Guardian Online*, 20 April 2009, <<http://www.mg.co.za/article/2009-04-20-a-majority-is-good-enough>>.

If this means of influence is not at this point a realistic option, alternative means of exercising influence must be explored. The options available to any organisation will depend on the nature of that organisation. Gareth Evans, president of the International Crisis Group, defines three types civil society organisations working on or around human rights issues:⁶⁴ the ‘thinking’ ones, the ‘talking’ ones and the ‘doing’ ones. ‘Thinking’ groups engage in research and analysis; ‘talking’ groups focus on advocacy and drawing attention to problems; while ‘doing’ groups focus on intervening ‘in the field’. In practice, individual organisations may carry out elements of all these functions. Co-operation among different groups has — as mentioned earlier — been enabled by technology. This also provides opportunities for different types of groups to co-operate, utilising their respective strengths and expertise. The case of the resistance to the Chinese arms shipment destined for Zimbabwe speaks to this, in that different interest groups worked for a common goal — even if there was no formal agreement and discussions between all the parties.

High-profile activism (associated most with the ‘talking’ and ‘doing’ groups) around human rights has tended to be framed in highly moral terms and to adopt a ‘naming, blaming and shaming’ approach.⁶⁵ This can be highly effective in bringing an issue to the attention of the public, and even in gaining the attention of governments. It is, however, not necessarily conducive to good and effective policymaking. As one commentator put it: ‘What works for rallying the troops can be alienating to the policymakers, while the facts required for detailed policy work are of little interest to the public.’⁶⁶ A case in point is the campaign for debt relief for the developing world in the UK. Highlighting the plight of people suffering from famine while governments spent large sums servicing debts had a profound effect on public opinion. However, treasury officials who were sympathetic to the general cause found that many of the arguments advanced

⁶⁴ Evans G, ‘Preventing deadly conflict: The role and responsibility of governments and NGOs’, lecture at the Centre for Study of Human Rights, London School of Economics, 2 February 2001, <http://w.lse.ac.uk/collections/humanRights/articlesAndTranscripts/Preventing_deadly_conflict.pdf>.

⁶⁵ Mertus JA, *Bait and Switch: Human Rights and US Foreign Policy*. London & New York: Routledge, 2004, p. 148.

⁶⁶ Clark JD, ‘Ethical globalization: Dilemmas and challenges of internationalizing civil society’, in Edwards M & J Gaventa (eds), *Global Citizen Action*. Boulder: Lynne Rienner, 2001, p. 21.

were not economically sound, nor were the full range of contributory factors to the humanitarian problems properly acknowledged. The officials also had to spend a great deal of time dealing with questions about this.⁶⁷

Moreover, while moral arguments may appeal to committed activists and are a legitimate consideration, they are seldom the only impulses in policy. They must compete with a range of other factors, which are themselves entirely legitimate. To this end, solid research and command of facts are important — areas where the ‘thinking’ groups can make their greatest impact. Civil society has been criticised at times for manipulating information to suit its case — not only is this morally questionable, but it can produce unintended negative consequences. It has been argued, for example, that campaigns against child labour as a whole have pushed many young female workers out of such industries as textile manufacturing into more hazardous fields, such as prostitution.⁶⁸ The optimum policy change is one where policy makers and practitioners are convinced that such change will be for the better and they are committed to implementing it. A necessary corollary is that citizens need to develop an engaged and critical approach to policy arguments — not an easy task!

Following on from this is the question of the institutional opportunities for civil society engagement. A number of academics have noted that opportunities for civil society to make its voice heard in South Africa’s foreign policy are limited.⁶⁹ As one analyst, Anthoni van Nieuwkerk, noted a few years ago, civil society has ‘been slowly marginalised so that current challenges in our foreign policy ... will be decided not by outside influences, the media or business but internally by the state and those decisions will be informed by the interests of the state’.⁷⁰ As was noted in the discussion of the first session, Parliament has not played a particularly large role in foreign policy — although this is the forum within which civil society can most legitimately expect an entry point into foreign affairs.

Changing this situation would mean transforming civil society outsiders

⁶⁷ *Ibid.*, pp. 21–22.

⁶⁸ Harper C, ‘Do the facts matter? NGOs, research, and international advocacy’, in Edwards M & J Gaventa (eds), *Global Citizen Action*. Boulder: Lynne Rienner, 2001, pp. 247–58.

⁶⁹ Vickers B, ‘Pulpit morality or penny-pinching diplomacy? The discursive debate on Mandela’s foreign policy’, *Politeia*, 21, 2, 2002, pp. 80–100; Nel P & J-A van Wyk, *op. cit.*

⁷⁰ Vickers B, *op. cit.*, pp. 86–97.

into an inherent part of the policy process. Attempts to forge a South African foreign policy formulated on the basis of extensive citizen involvement and influence would not be without difficulties. The following three considerations illustrate this:

- Many South Africans would probably view foreign affairs as a distinctly secondary priority to domestic development. The level of understanding such important matters as the various international agreements that inform states' interactions is probably rather shallow. Two academics, Philip Nel and Jo-Ansie van Wyk, however, argue that research on this matter suggests that prudent inputs for policymaking do not necessarily require a deep understanding of the subject. Participation in issues would anyway over time help to create the necessary understanding.
- Many who are most interested in such issues are likely to be focused on particular causes, often with strong moral feelings attached. This is entirely reasonable and to be expected in a democracy, but because competing views would need to be taken into account — not least 'national interest' imperatives — a participatory process would nonetheless not leave every group satisfied. Congenial outcomes would not be a foregone conclusion. However, if the process is viewed as legitimate, this would probably be accepted.
- The instinct of a large proportion of citizens is unlikely to be oriented towards human rights or other idealistic considerations. The outbreaks of xenophobic violence in 2008 and the evident failure of such initiatives as the 'Roll Back Xenophobia' campaign would suggest that many citizens would be unwilling to see South Africa undertake costly foreign endeavours with little direct benefit for its own people. A strong public voice would likely represent this perspective, which would also be likely to favour tough border and immigration controls and restricting development assistance. These views would not be well received by 'idealists'.

Civil society human rights activists might need to accept this description:⁷¹

⁷¹ Mertus JA, *op. cit.*, p. 191.

While they have proven influential by framing policy choices in human rights terms, human rights is only one of a range of arguments that are socially available. Human rights groups have yet to figure out a way to ensure that their approach prevails with any consistency, finding all too often that the power of competing frameworks pushes them back down to the bottom of the hill. But, as in all matters of weight and gravity, leverage can prove just as important a factor as sheer strength. For human rights organisations to truly succeed, perhaps the straightforward ‘shoulder to the boulder’ approach should be rethought.

Final thoughts

The relationship between human rights and foreign engagement is a difficult one. This is true both in general conceptual terms and with specific reference to a given country. In South Africa’s case, this difficulty is given an added dimension by the assumption that many people held of the country playing an almost messianic role in the world, as well as by numerous South African activists who find themselves making arguments about the country’s democratically elected government that would not have been out of place prior to the advent of democracy.

What seems clear from the workshop and the from the broader discussions presented here is that South Africa has effectively deprioritised human rights as an element of foreign policy, certainly when measured against Nelson Mandela’s early stated commitment. That said, it may never have been realistically possible for human rights to be the guiding light that Mandela postulated. The question is, to what degree has South Africa succeeded in integrating human rights (and other idealistic concerns) into its foreign policy, within the limits imposed by competing priorities?

The answer is, not especially well. Human rights considerations, while not entirely absent, have not been a prominent feature in practice. However, it would be wrong to say that this has been a case of idealists losing out to realists, as Brendon Vickers schematised the two strains of thought. Intriguingly, neither camp seems to have achieved the foreign policy it wanted.

The idealists did not see South Africa take up the cause of human rights, while the realists did not see a foreign policy driven by largely economic self-interest. Instead, a curious hybrid has emerged in which human rights and democratisation have been sacrificed in order to stand with the developing world, including many countries with very dubious domestic arrangements. For this, South Africa has received very little material reward (with the possible exception of a trade relationship with China), and in the case of Zimbabwe, it probably endured damage — directly and indirectly — for its stance. Perhaps the operative concept here is that in some instances, policy was driven neither by realism nor by idealism, but by sentiment and ideology.⁷²

Similarly, South Africa made the enormous task of global reform its signature foreign policy theme. Beyond emphasising to other countries the importance of this issue, it is not clear what precisely was achieved by it. Where it has made an impact — in respect of the ICC in particular — its subsequent actions have led many to question where its commitments lie.

Globally, human rights are being both asserted and challenged. In Africa, an extensive body of treaties and conventions exist, which are the clear building blocks for a sustainable human rights culture. But to build this, firm — and possibly conflictual — positions will need to be taken. South Africa will need to decide where it stands.

Civil society was generally disconcerted by the approach taken by the South African government to human rights. It sought a foreign engagement marked more clearly by human rights commitments. However, its interactions with the government have been less than happy, and there was frustration about the lack of opportunities to engage and make substantive input into the policy process. Its contributions had tended to come in the form of confrontation and activism outside of formal processes.

The media, for their part, noted that while they strove to inform their readers, not enough was being done to produce specialist foreign affairs reporters.

Finally, it was felt by all sides that better consultation and engagement were necessary to explain and discuss matters relating to the country's foreign engagements. Such a process is needed, and would certainly be an asset to the policy process. But foreign policy is probably the most difficult of all areas for governments to share and for citizens to engage in. Embarking on this would be a difficult process and would require genuine commitment from all parties. If

⁷² For an interesting discussion on this, see Olivier G, 'Ideology in South African foreign policy', *Politeia*, 25, 2, 2006, pp. 168–82.

successful, it would be a significant democratic asset to foreign policy, and to policymaking in the country as a whole.

