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# The African Union and the "Arab Spring": An exception to new principles or return to old rules?

## Introduction

An unexpected wave of popular protests broke on Africa's northern shores in 2011, starting with the political demise of the Tunisian and Egyptian presidents, leading to more deadly conflict in Libya. These events – particularly those in Libya – have divided the African Union (AU), and shaken the organisation's fragile new foundations of democracy promotion and conflict prevention. Initially, the AU Peace and Security Council (PSC) issued two strong statements in support of the 'legitimate aspirations' for democracy of the people of Egypt and Libya, and condemned violence and violation of international humanitarian law against civilians in Libya[1]. After the North Atlantic Treaty Organisation (NATO) intervened in Libya, however, the older norm of non-interference in the internal affairs of member states was reasserted.

In this dramatic context, the AU has reached its tenth anniversary as a reformed and reinvigorated institution, which replaced the Organisation of African Unity (OAU) in 2002. It is an apt time to reflect on whether the AU's response to events taking place in North Africa over the past year is an exception to the organisation's track record of greater engagement in conflict resolution and political peer pressure among African leaders, or a sign that the old rules of the "dictators' club" of the 1970s and 80s still prevail?

There are three explanations for the reform of the OAU, which are important to understanding whether and to what extent the new principles adopted by the AU have been consolidated since 2002: (1) an overall increase in the number of African democracies; (2) an active role played by "norm entrepreneurs" within the OAU secretariat and the AU commission; and (3) strong leadership by key member states.

## Abstract

**The AU's response to popular uprisings in North Africa during 2011 – and to the NATO-led intervention in Libya in particular – differs from the organisation's record of rejecting unconstitutional changes of government in the past ten years.**

**In Subsaharan Africa, the AU has acted quickly to impose sanctions on leaders of *coups d'etat*, purportedly to uphold constitutional democracy. Although engaged in "African-led" peace missions in Sudan, Somalia, Burundi and elsewhere, the AU has not yet implemented the principle of 'humanitarian intervention' in terms of Article 4(h) of its Constitutive Act, 2000. The organisation's objection to foreign military intervention in Libya is consistent with its deeply entrenched anti-colonial principle of non-interference and reveals the lack of consolidation of new norms relating to the 'responsibility to protect'. The AU was shown to be internally divided over this issue, however, and a nuanced analysis is required to understand progress made in advancing new principles of democracy promotion and conflict prevention in Africa, in the broader context of the 'Arab Spring' and geopolitical considerations in the Mediterranean.**

**Three factors influencing the consolidation of principles within the AU are identified and recommendations made on how to steer popular protests within member states towards democratic outcomes.**

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[1] African Union Peace and Security Council, *Communiqué*, 260th Meeting, Addis Ababa, Ethiopia, 16 February 2011, PSCPR/COMM.(CCLX); African Union Peace and Security Council, *Communiqué*, 261st Meeting, Addis Ababa, Ethiopia, 23 February 2011, PSCPR/COMM.(CCLXI).

## Post-Cold War reform of the OAU old rules

The post-Cold War "third wave"[2] of democratisation washed a series of reforms across Africa in the mid-1990s, culminating in the reform of the OAU itself. Ironically, it was Zimbabwe's President Robert Mugabe who, as acting OAU chairperson, said in 1997 that:

The OAU merely used to admit coups had occurred, but now we want to address them. Democracy is getting stronger in Africa and we now have a definite attitude to coups and illegitimate governments[3].

A new set of rules for procedural democracy was taking hold, with an emphasis on constitutionalism. One-by-one many African countries adopted constitutions with presidential term limits, regular elections, separation of powers and multi-party representation. This did not result in substantial or consolidated democracy in many of these countries and reversals have taken place, most crucially, in cases whereby presidents have scrapped constitutional term limits to stay in power. By the turn of the millennium, however, the number of African countries respecting the letter, if not the spirit, of constitutional democracy had reached the tipping point needed to adopt the democratisation provisions of the AU Constitutive Act of 2000 and the related protocols, charters and decisions that followed[4]. These new principles include the rejection of unconstitutional changes of government and the right of the organisation to intervene in member states in certain "grave circumstances" of civil war.

Besides the shifting balance between relatively democratic versus authoritarian member states within the organisation, two other factors account for the adoption of new norms of "non-indifference"[5], that is, democracy promotion and intervention for conflict prevention, mediation and resolution. Second was the role of significant "norm entrepreneurs" within the OAU Secretariat (and later the AU Commission). The appointment of Dr Salim Ahmed Salim as Secretary-General of the OAU in 1989 began an era in which the secretariat was to play a decisive political role. Salim was able to exercise considerably more political initiative than his predecessors. This was partially on account of his stature as a former prime minister of Tanzania (who steered the country through President Nyerere's retirement in 1985), and partially due to the changed context of the end of the Cold War. He was assisted by Ambassador Said Djinnit, as director of cabinet of the OAU Secretary-General from 1989-99, and Assistant Secretary-General in charge of Political Affairs (1999-2002), who became the first AU Peace and Security Commissioner. Their ideals were written into the legal framework of the AU, as expressed by Djinnit in a speech to the Assembly in 2002:

The Constitutive Act has… made provisions establishing, in essence, the principle of non-indifference to the internal affairs of Member States. The Constitutive Act [in Article 4(h)] has specifically provided for the right of the Union to intervene in a Member State in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity[6].

A third factor of change was the confluence in the late 1990s of reform agendas on the part of three powerful leaders, Muammar Gaddafi, Olusegun Obasanjo and Thabo Mbeki, of the OAU's most powerful member states at the time, Libya, Nigeria and South Africa[7]. The Nigerian and the South African presidents, who were both elected in 1999, came to the OAU table with plans for regional integration, better governance and development, as platforms from which to project their statesman-

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[2] S.P. HUNTINGTON, *The Third Wave: Democratisation in the Late Twentieth Century*, Oklahoma, 1992.

[3] President Robert Mugabe, quoted in *South African Press Association*, 4 June 1997.

[4] For a summary of empirical evidence of Africa's democratization, see U. ENGEL, *Unconstitutional Changes of Government - New AU Policies in Defence of Democracy*, Working Paper Series No.9, Leipzig, 2010, pp. 4-5.

[5] The term "non-indifference" was coined in a speech by the Peace and Security Committee (PSC) Commissioner Said Djinnit, "Speech to the Pan-African Development Forum Symposium on the African Union", Addis Ababa, 3 March 2002.

[6] *Ibidem*.

[7] T. TIEKU, *Explaining the Clash and Accommodation of Interests of Major Actors in the Creation of the African Union*, in «African Affairs» 103, 411, 2004, pp. 249-68.

ship. Gaddafi looked to the OAU for legitimation from 1997 onwards, after the Arab League rejected his appeals for support in the face of international sanctions. He resurrected Kwame Nkrumah's vision of a 'United States of Africa' as a vehicle for continental leadership.

## Gaddafi's role in creating the AU

Although all three leaders drove the reforms forward, Gaddafi's agenda was at odds with the normative direction the AU was taking towards greater emphasis on democracy, human rights and the "responsibility to protect" principle enshrined in article 4(h) of the Constitutive Act of the AU, 2000. A telling illustration of Gaddafi's divergence from these ideas is that in 2003, he succeeded in convincing the AU Assembly to adopt an amendment to article 4(h) of the AU Act, to extend the right of the AU to intervene in the case of «a serious threat to legitimate order» (Protocol on Amendments to the Constitutive Act of the African Union, 2003)[8].

The original wording of Libya's draft amendment did not refer to unconstitutional changes of government, but to «cases of unrest or external aggression»[9]. The word "unrest" commonly means popular protests against a government, which implies withdrawal of their consent and therefore the legitimacy of that order. Gaddafi had regime security in mind, without concern for legitimacy. The adoption of Gaddafi's amendment suggests that the "responsibility to protect" norm did not have enough support among Member States to prevent them from rejecting Libya's proposal out of hand. This goes some way towards explaining why the AU did not invoke article 4(h) in 2011 to intervene against Gaddafi's military suppression of the popular uprisings in Libya.

## The Maghreb revolutions of 2011

The events of early 2011 demonstrate the limitations of the AU's architecture for promoting democracy. The constitutionalism on which the AU's democracy promotion was founded does not provide for an adequate response to popular uprisings, or what could have been interpreted as "direct democracy" in action. On the contrary, taking to the streets to remove heads of state from power was interpreted by some within the AU as an unconstitutional change of government, since constitutional democracy only allows for removal from power by elections. This was the opinion expressed by several African MPs debating the issue within the Pan-African Parliament in March 2011[10]. The point was made that there is a fine line between a spontaneous expression of the will of the people and mob rule, since the peoples' will may be determined haphazardly by estimation of numbers (often filtered by the media), and not by an accurate vote.

What this interpretation of events misses is that the AU principle was meant to apply only to challenges to "democratically elected governments". The uprising against Gaddafi was more clearly one against authoritarian rule than those against presidents Mubarak in Egypt or Ben Ali in Tunisia. The Libyan leader had never held so much as a charade of elections since himself seizing power in 1969, disqualifying his regime from even the broadest definition of a 'democratically elected government' challenged by unconstitutional change. This is in contrast to Tunisia and Egypt, in which the uprising's legitimacy depended on a judgement of the quality of elections won by these leaders in the recent past.

A second deciding factor for the legitimacy of these uprisings concerned the role of the military. The AU definition of unconstitutional changes of government refers to armed rebellions by the military,

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[8] For further analysis of this decision, see E. BAIMU – K. STURMAN, *Amendment to the African Union'sRight to Intervene: A Shift from Human Security to Regime Security?*, in «African Security Review» 12, 2, 2003, pp. 37-45.
[9] Unpublished draft amendment, quoted in *Ibidem*, p. 39.
[10] Author's own observation of a meeting of the Peace and Security Committee of the Pan-African Parliament, Midrand, South Africa on 18 March 2011.

"armed dissident groups" or rebel movements. In Egypt, the army stood carefully to one side until President Mubarak had bowed to peaceful public pressure to stand down. In Libya's case, the dissidents initially occupied the moral high ground as the firepower unleashed against them was so much greater than they could muster in self-defence.

Divisions within the AU over how to respond to these events were apparent from the outset. A PSC communiqué on 16 February 2011 sided unequivocally with the protestors in Cairo and against the Egyptian government. The communiqué

... notes the deep aspirations of the Egyptian people, especially its youth, to change and the opening of the political space in order to be able to democratically designate institutions that are truly representative and respectful of freedoms and human rights; [and] expresses AU solidarity with the Egyptian people whose desire for democracy is consistent with the relevant instruments of the AU and the continent's commitment to promote democratization, good governance and respect for human rights[11].

Similarly, on 23 February, the PSC issued a statement on the situation in Libya, that:

... strongly condemns the indiscriminate and excessive use of force and lethal weapons against peaceful protestors, in violation of human rights and International Humanitarian Law... [and] underscores that the aspirations of the people of Libya for democracy, political reform, justice and socio-economic development are legitimate...[12]

The language of these two communiqués was remarkable, given that Egypt and Libya were two of the AU's "big 5" members, each responsible for paying 15% of the organisation's ordinary budget. It was all the more remarkable for the fact that the composition of the PSC at the time included some of the most authoritarian states on the continent: Equatorial Guinea, Zimbabwe, Chad and Libya itself.

Following the February meeting of the PSC on Libya, the AU established a high-level committee to take further action, led by South African President Jacob Zuma and including Mauritania, Mali, Uganda and Congo (Brazzaville). The panel met on 10 March and rejected «foreign military intervention» in Libya. They resolved to travel to Libya to attempt mediation between Gaddafi and the opposition movement. At the same time, an international debate was unfolding on whether and how to respond to Gaddafi's military campaign against the uprising. This included a proposal to establish a "no-fly zone" over Libya – a euphemism for military action that stopped short of deploying foreign ground forces on Libyan soil.

Western powers, the United States in particular, were reluctant to intervene militarily in an oil-rich Muslim country without at least formal approval from a number of Muslim nations. This signal was received on 12 March, when the Council of the League of Arab States called for the imposition of a no-fly zone over Libya. Thus, the AU's approach of seeking to mediate between parties to the conflict was eclipsed two days later by the Arab League, a regional organisation which had long held antagonistic relations with Gaddafi.

On 18 March 2011, the United Nations Security Council (UNSC) adopted Resolution 1973, which mandated military intervention short of ground deployments, by a coalition of willing member states. All three African member states of the UNSC, South Africa, Nigeria and Gabon, voted in favour of the resolution. This placed the AU, and President Zuma, in a bind of having to simultaneously support the UNSC resolution, while maintaining the high-level committee's position of seeking a negotiated, "peaceful" solution to the Libyan conflict.

Although seeking a political resolution to the conflict was an important goal, the AU high-level committee's attempts to mediate were premature and unrealistic, seeking an assurance of a ceasefire from Gaddafi in April in the midst of the bombing, while the opposition movement refused to even

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[11] African Union Peace and Security Council, *Communiqué*, 260th..., cit.
[12] African Union Peace and Security Council, *Communiqué*, 261st..., cit.

enter discussions on the AU's terms. On the 25 May, an AU statement was issued which objected to NATO's interpretation of the UNSC resolution and called for an end to the NATO intervention. The Chairperson of the AU Commission, Jean Ping, complained subsequently that the AU was sidelined and ignored in international deliberations on Libya.

## Was Libya exceptional?

The AU's response to Gaddafi's war to stay in power contrasts with a pattern established since 2002 on the rejection of military power grabs by way of coups d'etat. From Madagascar to Mauretania, Togo to Niger, and now Mali in 2012, the AU has acted consistently and quickly to implement sanctions in keeping with its new principle to reject unconstitutional changes of government. But in Libya, this ultimate test case for the AU's new norms, the older anti-colonial principles of state sovereignty and non-interference in internal affairs in Africa proved to be the more entrenched point of view among member states in 2011. This was despite the fact that soon after its launch, the AU was credited with being at the forefront of the international debate on humanitarian intervention, contributing to the United Nations' acceptance of the idea of sovereignty as the "responsibility to protect"[13].

While Gaddafi's purported stature within the organisation has been commonly cited as the reason why the AU rejected military intervention to stop his attacks on civilians, there are several more compelling reasons for this stance. Each of the three factors enabling the reform of the OAU into the AU may also be considered to explain the organisation's approach to the Libyan crisis in 2011.

First, although there has been an increase in the number of democracies in Africa since the end of the Cold War, there are still many undemocratic regimes represented in the Assembly of the AU, who felt threatened by the North African popular protests for democracy.

Second, the norm entrepreneurs within the OAU Secretariat, and later the AU Commission, may have succeeded in changing the principles of the organisation on paper. They may also have drafted the initial communiqués of the PSC in the early days of the uprisings in North Africa, before the government officials under President Zuma took over the handling of the AU's mediation efforts in Libya. The consolidation of these new principles depends on the position taken by the AU heads of state themselves, however, most of whom remain committed to the older rule of non-interference most of the time. Where they have acted to condemn unconstitutional changes of government, this is arguably in defence of incumbent governments, rather than democracy *per se*.

In addition, while the PSC has applied the norm of rejection of unconstitutional changes of government in many cases, it has stopped short of applying the article 4(h) right to military intervention[14]. Each of the AU peace missions undertaken to date has been with the consent of the government of the country in which the mission has been deployed, even in Sudan, where the PSC worked hard to convince President Al Bashir to consent to the AU deployment to Darfur.

Finally, the combination of strong leadership driving the reform agenda of the AU forward was weakened after the departure from politics of presidents Mbeki and Obasanjo. The cause of an African "responsibility to protect" lacks a bold champion on the continent in 2011.

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[13] A. BELLAMY, *Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit*, in «Ethics and International Affairs», 20, 2, 2006, pp. 143-169.
[14] P. WILLIAMS, *The "Responsibility to Protect", Norm Localisation and African International Society*, in «Global Responsibility to Protect», 1, 4, 2009, pp. 392-416 and p. 407.

## Conclusion

The AU's divided opinion of the North African uprisings, and its ineffective response to the conflict in Libya in particular, are an exception to the generally consistent record the organisation has established in acting against unconstitutional changes of government. This is because the popular uprisings of 2011 were not regarded in the same light as the military *coups* that the AU has acted against elsewhere on the continent. They are therefore unlikely to affect the AU's mode of action in the future, as has been demonstrated recently in the AU's implementation of sanctions against the military takeover in Mali. Nevertheless, norm entrepreneurs working within the AU should promote further debate and understanding between member states about the democratic principles which should inform the rejection of unconstitutional changes of government.

The unwillingness of African leaders to invoke article 4(h) of the AU Constitutive Act in the case of Libya, while going against the letter of the new principle adopted by the organisation in 2000, is consistent with the practise of AU PSC over the past ten years, which has stopped short of intervening without the consent of the affected member state. In geopolitical terms, North Africa must also be recognised as an exceptional sub-region of Africa, which overlaps with the Arab and Mediterranean realms. The AU mantra of 'African solutions to African problems' cannot be applied to conflicts which also clearly pose a threat to the security of Southern Europe and affect international relations in the wider context of an "Arab Spring". The AU should not have been sidelined in international debates about Libya, but at the same time could not expect to be given the leading role in North Africa to the extent that it has been in sub-Saharan conflicts, for example, in Burundi, Somalia and the Democratic Republic of Congo (DRC).

Following the popular uprisings for democracy in North Africa in 2011, the AU PSC needs to clarify when and why a civilian-led uprising against a head of state *should not* be defined as an unconstitutional change of government. It then needs to develop guidelines for the AU on how to steer popular uprisings towards the restoration or establishment of constitutional democracy, including provision for transitional government, a timeframe for elections and the consolidation of democratic institutions. The principle of humanitarian intervention, which was adopted in 2000 at the height of international support for this radical idea, will need to be refined and debated within an African context for some time to come.