From an African Union Rhetoric to Western Intervention in Libya
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Abstract:
Military interventions in Africa over the past years have been ambivalent. The case of Libya following the Arab Spring demonstrated the inability of the African Union to use an enforcement action to limit the rise of violence and a change of government. Tacitly put, the over reliance of the African Union on the peaceful resolution of conflict with little or no enforcement at the tactical level shows weaknesses of the continental organization. This is further compounded by the lack of unity between African Member States at the United Nations Security Council and the African Union. Even though the African Union has moved from a "non-interventionist" position to a position of "non-indifference", the military option regarding Libya regardless of the role the country played in its creation might have influenced the African Union not to use force. By increasingly becoming threatening to Western interest, Western intervention meant that the AU could not play the power politic game. Western powers portrayed their interest in dislodging Khadaffi simply because he was a threat to their interest. Even by relying on the responsibility of the international community to protect Libyans, it has been realized that the responsibility to protect as an international norm is an instrument to legitimize western intervention.
Keywords: Rhetoric, Intervention, Ambivalent, Silence and Leadership

Introduction: From the Egyptian to the Tunisian uprising, the Libyan uprising of February 2011 remarkably witnessed a litmus test for the African Union (A.U) to apply forceful intervention in order to prevent an external intervention from the West. For the A.U, enforcing its position when it comes to the protection of civilians when the State became a source of threat and insecurity to the people living within its boundaries exposed the continental organization's ambivalent position. Sovereignty, intervention and prevention are three essential elements of contemporary debate on the use of coercive means to secure humanitarian objectives (ICISS, 2001:3). On these three elements, lie our arguments in respect to the use of coercion in the Libyan uprising.

Conceptualization: Arguably, knowing and understanding the position of the A.U when it comes to the use of force within a Member State of the Union requires an understanding of what could be perceived as external intervention. As postulated by Charles-Philippe David

(2013:248), intervention refers to any action undertaken by one or many States, with the aim to stop an action perceived as undesirable by an intervening State or States. In the same line, "coercive action by States involving the use of force in another State without the consent of its government, or without authorization from the UN Security Council, for the purpose of preventing or putting to a halt a gross and massive violation of human rights or international law (Kioko, 2003:809). The necessity of interpreting intervention within the AU requires a legal and political backing from Member State of the organization. Even through cooperation with the UN, and even noticeably, the third pillar that reflects the R2P showed not to be in line with UNSC resolutions 1970 and 1973 (rebuilding). While Western intervention in Libya reflects liberal democracy, the AU's position to the Western approach is not defined.

The AU's Ambivalent Position: The decision or right of whether to intervene or not, justifiable or not, in Libya, humanitarian grounds seemingly did not change the A.U's position. This is in respect of article 4(g) on the "non-interference by any Member State in the internal affairs of another" of the AU's Constitutive Act. Added to this, article 4(e) on the "sovereignty and the territorial integrity of a Member State" of the Protocol Relating to the Establishment of the Peace and Security Council of the AU probably reinforced its position towards Libya. Despite the allegation of crimes committed by the armed forces, military intervention seemingly was not an envisaged pathway for resolving the conflict by the A.U.

After Col. Gaddafi made it clear that he intended to stay in power and to crush all unrest, this attracted condemnations from the international community. On 25th February, the UN Human Rights Council adopted a resolution condemning the "gross and systematic human rights violation" and strongly calling on the Libyan government to meet its responsibility to protect its population […] (Human Rights Council. 2011)

The Peace and Security Council responded immediately by "strongly condemn[ing] the indiscriminate and excessive use of force and lethal weapons against peaceful protestors, in violation of human rights and international humanitarian law (International Refugee Rights Initiative, 2012:25). Rather than forceful intervention, the A.U resorted to mediation and diplomacy. Basically, article 4(h) of the Constitutive Act reserves the Union the "right to intervene in a Member State pursuant to the decision of the Assembly in respect of grave circumstances, namely war crimes, genocide, and crimes against humanity". Equally, article 4(j) reserves the right of Member States to request intervention from the Union in order to restore peace and security".

According to the AU Constitutive Act, the criterion for the exercise of intervention is twofold: first, it may be exercised only in cases of international crimes such as crimes against humanity, war crimes and genocide; and secondly, assuming that the AU has the necessary resources (financial or otherwise) to intervene if international crimes are committed in the territory of a member State, the implication is that the AU will be willing to exercise the right to intervene (Dyani-Mhango, 2012:13). Blindly put, the AU does not define what is a war crime, or a crime against humanity or genocide within its texts. This

probably creates a legal conflict when it comes to interpreting conditions that could warrant forceful intervention in a country like Libya.

Though the AU Constitutive Act indicates a shift from non-interference to non-intervention in a member State's domestic affairs, as prescribed under article 4(g), its position of non-indifference is ambivalent. Therefore, despite the African Union adopting a more interventionist stance in its Constitutive Act unlike under the preceding Organization of the African Unity, "the norm of non-interference continues to trump human rights concerns" (William & Bellamy, 2005:42-43). By reinforcing the post-Westphalian conception of the State, the AU in its article 4(a) reinforces the sovereignty of Member State of the Union. As such, intervention under the AU's framework could only be undertaken on the principle of consent of the host State. Under international pressure, the Libyan government unconditionally accepted the roadmap put forth by the AU Peace and Security Council.

Neither it is clear or not if the AU envisaged to impose sanctions on the Libyan government as to article 23(2) of the Constitutive Act which spells out that, any Member State that fails to comply with the decisions and policies of the Union may be subjected to other sanctions, such as the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly. Even in respect of sanctions, clarity is not made apart from sanctions on unconstitutional changes of government as in article 4(p) and 23(1) on governments who do not honour their yearly contribution. As a result, article 4(m) and (o) of the same Constitutive Act was not enforceable by the continental organization.

Even by directly condemning the disproportional use of force by Gaddafi's forces, appeals were made by the AU Peace and Security Council for a political dialogue to be organized in order to resolve the conflict. However, as threats of Western intervention intensified, the African Union's Peace and Security Council at the level of the Heads of State and government met on March 10th and reaffirmed its commitment to the respect of the unity and territorial integrity of Libya as well as rejection of any foreign military intervention (IPSS, 2012;94). This was in respect of article 3(b) of the Union based on defending the sovereignty and territorial integrity of a Member State. In its efforts to diffuse the mounting violence, the AU at its Extraordinary Summit on 25 May proposed an "interposition force" in the Misrata area that would monitor a ceasefire between Gaddafi forces and rebel forces, to be monitored by the AU, UN and LAS (Bah, 2017:64). According to DeWaal, this option could not materialize because no African country was ready to volunteer troops and much-needed funding from the EU was delayed (Abu, 2017:64).

Following the AU's non-military intervention stance on Libya, a "roadmap" was put in place by the AU PSC in order to resolve the conflict. Accordingly, the roadmap revolved around the following elements: i) immediate cessation of all hostilities; ii) cooperation of the concerned Libyan authorities to facilitate the timely delivery of humanitarian assistance to the needy population; iii) protection of foreign nationals including the African migrant workers living in Libya; and iv) dialogue between the Libyan parties and the establishment

of a consensual and inclusive transitional government (IPSS, 2012:94). The Libyan government unconditionally accepted the roadmap and agreed to declare a ceasefire. On the part of the National Transitional Council (NTC), the roadmap was rejected, requesting the removal of Col. Gadaffi from power.

Over reliance on the part of the AU on mediation and diplomacy without coordination with AU Member States in the UN Security Council prompted a vote in favour of intervention in Libya. In contrast to the African Union's non-intervention, the United Nations was decisive in advocating and authorizing timely forceful intervention in a manner consistent with the responsibility to protect (Kabau, 2012:70). With the systematic violation of human rights and international law, UNSC Resolutions 1970 affirmed Libya's responsibility to protect and imposed an arms embargo, travel ban on Gaddafi, family and key members of his government, froze the assets of the Gaddafi family and referred the situation to the International Criminal Court for investigation into reports of crimes against humanity (S/RES/1970, 2011). Resolution 1973 voted, imposing a no-fly zone on Libya and permitting foreign intervention. Ban Ki-moon issued a statement after the meeting pointing out that Resolution 1973 'affirms, clearly and unequivocally, the international community's determination to fulfill its responsibility to protect civilians from violence perpetrated upon them by their government (Breau, 2016:230). More frequently, motives for intervention are mixed: humanitarian motives may be genuine but may be only one part of a larger constellation of motivation during State action (Viotti &Kauppi, 2012:312).

The predictable risk that intervening powers would abuse their mandate to protect civilians and pursue the broader goal of regime change also added to the AU's cautious and critical attitude (Dembinski and Reinold, 2011:14). In this case, "the UN had decided unilaterally and as a matter of sovereign right that Libya was an Arab State and not an African one, and that for the purpose of its own intervention, the AU had no authority over North Africa (Kasaiji, 2013:127, see also Grovogui 2011:569 in Fiot & Koops, 2015:68). In politics force is said to be the ultima ratio (Waltz, 1979:113) where "power and power politics among States" and institutions exposed the AU's inability to undertake forceful intervention. This simply shows that "*Realpolitik''* was a determining factor to intervene or not. The move to a "post-Westphalian" order is primarily paired with a reordering of the relationship between two constituent elements of the principle of sovereignty: the rights of Sates, principally to non-intervention in the internal affairs on the one hand, and on the other, individuals' human rights (Kenkel, 2013:123)

Consequently, on 17th March 2011, the Security Council, concerned that the widespread and systematic attacks against civilians that were taking place in Libya amounted to crimes against humanity, and acting under its Chapter VII powers as provided by under the UN Charter, authorized Member States to "take all necessary measures" to protect the civilians under threat of attack (Kabau, 2012:71). This led to the violation of Libya's sovereignty. Practically, there is no synergy between sovereignty and intervention for humanitarian purposes within the AU's intervention framework. Cilliers and Sturman (2002:3) argue that; "the concept of sovereignty on which the international system and the OAU were founded, presumes that each State has the power, authority and competence to govern its territory.

For many African States, however, sovereignty is a legal fiction that is not matched by governance and administrative capacity". In relation to Libya, intervention was optional since neither the Assembly nor the State in question could request intervention from the Union. However, it was unlikely to take place since the government was a party to the conflict and was responsible for the gross violation of human rights and international law.

By universally recognizing the principle of consent, intervention otherwise is an illegal action precluded by any other form of infringement in a country's domestic affairs. In Booth's view, States and implicitly governments must no longer be the primary referent of security because governments which are supposed to be 'the guardians of "their peoples' security", have become the primary source of insecurity for the many people who live under their sovereignty, rather than armed forces of a neighboring country" (Gouch and Cilliers, 2001:2). Even if universal human rights as well as attendant responsibilities encourage and justify military intervention for a humanitarian purpose, caution for intervention should envisage limiting the destabilization of a whole region. Regardless of humanitarian purposes for intervention in Libya, mercantilist interest of western powers is disguised in their liberal peace or democratic peace process.

It would have been expected that at the continental level, the AU given its "right" to intervene would have limited foreign intervention by undertaking forceful intervention. Three factors could explain the AU's reluctance to invoke article 4(h) in Libya: first the strength of the host State; second, the residual power of the principle of non-interference and anti-imperialism within the African society of States; and third, the AU's lack of practical and military capacity for humanitarian intervention (William, 2011:5). Equally, reluctance on the part of the AU to invoke the principle of the Responsibility to Protect in order to intervene in Libya discredited the organization's ability to adopt an African approach to African problem.

The AU's action were consistent with the traditional orientation of protecting regime security or carving a political space for its benefactor, Gaddafi, rather than supporting the legitimate aspirations of the Libyan people that had no interest whatsoever in negotiating any form of accommodation or transitional power-sharing arrangement that would leave Gaddafi or elements of his regime in power (Kuwali & Viljoen, 2014:118). Unlike other social processes, conflicts have no precise termination points (Bercovitch, 2011:247). This is a reflection of the changing character of actors (both internal and external) involved in a conflict and the changing or dynamic nature of interests. This has led to a protracted conflict with a regional impact which over the past years, the AU is silent over an AU-led intervention.

The AU's Silence: Recognizing the AU's silent position over the past years with respect to the external intervention in Libya, there is a salient issue that should be raised. Is the African Union capable of projecting Africa's security interest beyond its boundaries? This requires an analysis of the AU's geostrategic interest in repositioning Africa in world politics. The AU has clearly lacked an effective strategy and policy to deal with the political turmoil that is currently happening in Libya, and till this day, not much is said about Libya

within the ranks of the AU (Mlambo & Dlanini, 2019:9). The Student Guide to Intelligence Analysis (2017) argues that AU failed to intervene in Libya for three reasons: Gaddafi had played a major role in the AU reforms; hence, the AU did not want to pressure him; the AU still leaned toward individual state regimes being the active intervener in issues surrounding breaches of human rights and security; and the AU was deemed incapable of acting and was overrun by NATO (Mlambo & Dlanini, 2019:9).

Apart from the responsibility to protect and to react, it is important to know how rebuilding Libya will be done. Generally, like most African States experiencing State failure, rebuilding a State's economy and political order are central issues. At present, international efforts are geared towards creating a central political authority. Would this mean a step is being made towards consolidating the third pillar under the responsibility to protect? Arguably, UNSC Resolutions 1970 and 1973 did not prioritize the third pillar of the responsibility to protect (rebuilding). This could be explained by a lack of a common African position.

Apart from the lack of a coordinated action to manage the Libyan conflict, AU Member States present at the UN Security Council voted in favor of military action (Nigeria, South Africa and Gabon). Added to this, suspended its diplomatic relations with Libya while Gambia, Senegal and Mauritania recognized the Transitional National Council (TNC). As violence gained more grounds, the AU changed its position by recognizing the TNC. By so doing, the AU violated its article 4(q) on the "condemnation and rejection of unconstitutional changes of governments". Although the AU PSC, during its meeting on 26 August 2011, as well as the High-Level Ad Hoc Committee Meeting, made it conditional to recognize the TNC only after an all-inclusive transitional government was formed. Additionally, the recognition of the TNC by the AU amounted to an official endorsement of the AU's own marginalization by deliberate acts of the UN and NATO's coalition which actively but secretly supported the TNC (ACCORD, 2012:124).

NATO's intervention in Libya: Implication for the AU:
While intervention in Libya represents a success to western powers, its effects within Africa are heartfelt. Some of these consequences include;

State failure, fragile State, State collapse represents an extreme form of and a widespread of State weaknesses. I. William Zartman succinctly points out that "State collapse … refers to a situation where structure, authority (legitimate power), law, and political order have fallen apart (Emmanuel, 2012:78). Filatova (2000:15) refers to John Liffe's concept of 'State contraction' which involves the decay of basic social services and the economy and failure of the State to maintain control over its territory (Mathew & Solomon, P:30). Political instability and human rights violations such as torture, extrajudicial killings, arbitrary arrests and imprisonment still persist in Libya despite the intervention by NATO (Smith-Windoor, 2013:130). Even though many international organizations have expressed deep concerns regarding human right violation, different militias operating in Libya continue to commit human rights violations with impunity. The absence of a permanent African Court of Justice to try all perpetrators equally exposes the weak nature of the AU's

justice system. Consequently, the "African solution to African problems" translates a rhetoric.

NATO's intervention in Libya shows that AU principles regarding the peaceful resolution of conflicts cannot be enforced. This is so because the AU makes use of enforcement as the last resort. Even by using force as a last resort, undermining the AU's Security Architecture exposes the Union's incapacity to monopolize intervention in order to make use of the "African solution to African problems". As a result, future intervention in an African country where Western powers will perceive it as a threat, the AU's security governance architecture will be increasingly threatened.

The Absence of leadership within the AU: Leadership tussles at the continental and sub-regional levels have always posed a problem when intervention is concerned with African States. In the presence of a leader (who can exercise power), member States of the continental organization failed to make a regional step to limit western intervention in Libya. As a result, the AU reflected the image of the then OAU. Leadership in Africa results from the deficiency of a regional hegemon. According to Kindleberger (1986), the presence of a regional hegemon can promote cooperation ties within a regional bloc (James & Ngah, 2018:12). The inability of sub-regional organizations to acknowledge a sub-regional hegemon gradually affects the AU's position when it comes to enforcing its decisions. Countries like Algeria, Egypt, Nigeria, South Africa and Ethiopia with prospects of being potential sub-regional hegemons is feared by other State due to boundary issues rooted in their colonial past. However, for some other scholars, Africa's disunity stems directly from the narrow social and political structures that shape the operational environment within which the AU must maneuver for a successful intervention (Thomas & Okeke-Uzodike, (2016:73). Disunity within the AU is also rooted in the lack of a common interest. Being a picture of the European Union (EU), the AU has repeatedly failed to bring African leaders to share common interest as to the challenges that States face. Some of these challenges are related security (political security, economic security, societal security and environmental security). These challenges also stems from the lack democratic values and the uneven distribution of national income as only the ruling class has access to State resources.

Recommendation: Regarding forceful intervention in a timely and decisive manner, a number of reasons could explain some of the challenges the AU is facing. It may be argued since the AU has a legal framework for forceful intervention, the lack of political will is merely the obstacle to its implementation (Kabau, 2012:76). Operationalizing the concept of the Responsibility to Protect and forceful intervention within the AU's political and legal framework is however constrained by issues. In respect of the right of intervention which is reserved under article 4(h) and 4(j), shows that the AU is not detaching itself from the post-Westphalian State-system. It will require that since the "right" for intervention rests on host State, the Assembly, and grave circumstances such as war crimes, genocide and crimes against humanity, the shift of the AU from the principle of "non-interference" to "non-intervention" and to a position of "non-indifference", requires the AU to adopt intervention

as a "responsibility" or "duty". As a "right", intervention translates an optional measure of whether to intervene or not which is discretional to Member States of the organization. As a "responsibility" or "duty", once it is clear that a Member State violates universal human rights and is a real or potential threat to the people living within its borders, it becomes a responsibility or duty of the organization to intervene. In contrast, adopting a *rights* approach to intervention for humanitarian purposes, like in the African Union model, renders it theoretically and practically more difficult to attain commitment of States on an issue they deem as discretionary, without an obligation to fulfill (Kabau, 2012:78).

Secondly, the AU needs to operationalize the African Court of Justice or since it is absent, the African Court of Justice and Human Rights needs to clarify article 4(h) in respect of intervention. This is so because till date, unconstitutional changes of government have been the most visible in the AU's justification for intervention like in Gambia, Kenya, Somalia, and Burundi. Does this mean the AU is only ready to intervene where there is an unconstitutional change of government? Certainly not, the responsibility to protect if institutionalized within the AU's legal framework could override State sovereignty and the ability of a host State to request intervention when it violates international humanitarian laws.

The   failure   of   some   Member   State   of the Union to honour their annual financial contributions poses a significant challenge that limits the organization's activities in the domains of peacemaking, peacekeeping as well as peacebuilding. As the case of the then Organization of African Unity, just five years after its creation, the African Union was already facing a situation of nonpayment of their obligatory contributions by many Member States of which the number was increasing (Mvelle, 2007:153). This further creates a setback for the continental organization. As Dominique Bangoura (2003:105) argues, one of the handicaps of the Organization without doubt is insufficient material, technological and financial means needed to adequately equip its structure with early warning system mechanism.

 Questioning the credibility of the continental organization as well as its continental early warning system and its mediation efforts are of great importance. Mediation has become an integral component of AU peacemaking initiatives and is acknowledged as having a potential to be instrumental in preventing, managing and ending conflicts (ACCORD, 2014:15). Unfortunately, the Libyan uprising in its infant phase witnessed an inability on the part of the AU to coordinate its mediation and diplomatic efforts in a timely and responsive manner. The AU should envisage adopting coercive diplomacy on a government to limit its use of force and from gaining support from other Member States of the Union. As such, the use of coercive diplomacy will entail "a strategy grounded on brandishing threat, the limited use of force, as well as stimulating offers aimed at influencing an adversary to stop or suspend actions undertaken […] coercive diplomacy wants to resolve crises and conflicts without a necessary recourse to a war" (Jakobsen, 2010:279 in David, 2013:230). The principle of subsidiarity in the management of conflicts within the African continent should be considered as the base for any intervention. With support from the UN

(financial, logistical and personnel), legitimating the use of coercion under the AU will create a spirit of limiting foreign intervention.

Conclusion : Despite the fact that African States belong to both the AU and the UN, there is a necessity for the UN to effectively operationalize Chapter VIII of the UN Charter. This should be done in respect of full responsibility for regional arrangements to have the full capacity and support to encourage the AU to be able to use enforcement actions. As a result, a full enforcement capability on the part of the AU could enable the continental organization to bridge article 4(h) and 4(j) of the Constitutive Act. Creating a condition favorable to by-pass sovereignty and consent of the host State, intervention through coercive diplomacy should be exercised with enforcement actions.

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