

Shifting Power and Human Rights Diplomacy

South Africa



Edited by Doutje Lettinga & Lars van Troost



Published in March 2016 by
Amnesty International Netherlands

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Introduction

Algeria, Egypt, Ethiopia, Nigeria and South Africa are the powerhouses of Africa. Collectively sometimes referred to as the Big Five, these states account for 40 per cent of Africa's population, 60 per cent of the African economy and 58 per cent of Africa's military expenditure (Cilliers, Schünemann & Moyer 2015: 2). On the continent, South Africa was until recently the largest economy.¹ Compared to other African states, it has a developed and diversified economy; robust and independent media; strong rule of law and democratic institutions; rich infrastructure; and an active civil society. Through the African Union (AU), the Southern African Development Community (SADC) and the New Partnership for Africa's Development (NEPAD) as well as through its bilateral relations, South Africa has played an active role in regional issues.

South Africa has adopted, in many ways, a middle power position in its foreign relations and diplomacy (Schoeman 2000). On a global scale, it has changed from a pariah state before 1994 to an important member of the international community. Within the United Nations (UN), South Africa has been a non-permanent member of the Security Council (UNSC) in 2007-2008 and 2011-2012, and a member of the Human Rights Council (HRC) in the period 2006-2010, while it is currently serving a second three-year term since 2013. It participates in peacekeeping operations in the Democratic Republic of the Congo, Sudan (Darfur) and South Sudan. South Africa is a member of the G20 and the BRICS grouping (Brazil, Russia, India, China and South Africa), and it is the only African country among the European Union's ten global strategic partners (Cilliers 2014).

Its relative economic size, its active participation in international organizations and peace-keeping operations, and its port of entry status in Africa for outside (global) powers, reinforce the image of South Africa as an 'emerging power'. For some time South Africa has also been considered a moral force in the international community because of its legacy of a relatively peaceful transition from apartheid to democracy and the iconic status of its first post-apartheid president, Nelson Mandela. Liberal democratic values are embedded in South Africa's constitution and human rights promotion is part of the country's stated foreign policy.

1 In 2014 the Nigerian economy was formally recognized as being the largest in Africa by GDP. It continued to hold this position in 2015. See here a list of the top 20 largest economies of Africa, based on official data from the World Bank released on 1st of July 2015: <http://www.afrikanfacts.com/top-20-largest-economy-in-africa-2015/>.

In collecting essays for this third volume in the *Shifting Power and Human Rights Diplomacy* series, the editors started from an open question, rather than an assumption. The key question of this volume is to what extent South Africa has used its power and influence for human rights promotion and protection abroad, and whether it is likely to do so in the future. Following earlier publications on Brazil and India, Strategic Studies, an initiative of the Dutch section of Amnesty International, has collected critical essays from fifteen experts on South Africa's foreign policy agendas and diplomacy. Analysing different aspects of the country's past, present and future external human rights policies, the authors critically assess the likeliness that South Africa will use its power to defend human rights and international justice in the region or globally.

Like any other state, South Africa makes strategic decisions on how to balance and prioritize values and interests in its foreign policy. Even if a state is determined to pursue a value-based external policy, it may not always be in a position to influence other states' and powerful actors' human rights conduct. So apart from South Africa's appetite or distaste, how much power does it actually have to defend human rights worldwide?

South Africa's balancing acts

According to a recent forecast by the Pretoria-based Institute for Security Studies on the power and influence of the Big Five, South Africa has punched significantly above its weight, both in the region and globally (Cilliers, Schünemann & Moyer 2015). South Africa has been able to influence more international actors, institutions and regimes than would be expected on the basis of its economic, military and demographic size. Its economy is declining, the size of its population is expected to stagnate too, and South Africa has significantly reduced its military expenditure. In other words, its hard-power capabilities are shrinking.

Notwithstanding its decreasing material capabilities, South Africa has managed to present itself as a reliable, stable and rather prosperous country on a rising continent with important resource, trade and economic opportunities for other world powers. Or as Magnus Killander writes in this volume: "To many, South Africa is perceived as the economic gateway to Africa." Reflecting on South Africa's selection by the BRIC countries to join their grouping, Roy Robins (2013) writes in *Foreign Policy* magazine:

"The country's inclusion in the consortium had everything to do with politics, and very little to do with economic equivalency, developmental dynamics, or societal similarities. The invitation was about 'location, location, location' – and a favor

from some very powerful friends. In return for which the BRIC states get political capital, increased trading ties, and a steadfast African ally.”

Although South Africa’s power is declining (or may have been overestimated in the first place), other countries’ leaders may still fear being sidelined or overshadowed by South Africa. The country’s tense relationship with Nigeria and Zimbabwe since 1994 testify to delicate power relations. Particularly when South Africa is seen to neglect representing broader regional interests, its membership in global alliances such as IBSA or its overall economic diplomacy is sometimes viewed with suspicion. In order to gain or maintain legitimacy as a leader of Africa (and of the developing world) without being accused of dominance or hegemony, South Africa thus constantly needs to balance regional interests and self-interest. Particularly since the presidency of Thabo Mbeki, South Africa has consistently presented itself as an African country that sees its own interests as being closely aligned with those of others on the continent.

Also on the international stage South Africa finds itself in another difficult position. On the one hand there is China, its largest trading partner and sponsor of its BRICS membership, but also an economic competitor in Africa. On the other hand there are the Western countries, with Germany being its second largest trading partner and the EU as a whole being a bigger one than China. Some Western countries have long looked at their liberal democratic counterpart’s foreign human rights policy with great expectation, while China is not known for appreciating human rights champions. Balancing acts like these have shaped, and will continue to shape, South Africa’s external human rights policy.

The foreign policy context

Any understanding of South Africa’s external human rights policy has to take into account the historical, international and regional context within which the country operates, as well as the interaction between governments’ internal and external policy. In the region, South Africa faces some major inhibitions in the promotion and protection of human rights (Mubangizi 2006).

In the late 1980s and early 1990s Africa saw fast developments of democratization and strengthening of the rule of law and human rights. In 1986 the African Charter on Human and People’s Rights came into force. A year later the African Commission, mandated to promote and protect the rights in the Charter, was established. But soon these developments started to slow down. It took until 2004 for the 1998 Protocol establishing the African Court of Human and Peoples’ Rights (ACHPR) to enter into force. At the time of writing, 29 of the 54 African Union (AU) members have recognized the competence of the ACHPR, but

only seven have recognized its power to entitle non-governmental organizations and individuals to institute cases directly before it. South Africa is a party to the 1998 Protocol, but did not accept the ACHPR's competence to receive individual complaints.

A 2008 Protocol to merge the ACHPR and the non-operational African Court of Justice (the principle judicial organ of the AU) into the African Court of Justice and Human Rights has not entered into force yet. The same goes for the 2014 Malabo Protocol, which confers criminal jurisdiction upon the merger court in cases of genocide, crimes against humanity and war crimes, while also granting immunity to sitting heads of state or government. No other international or hybrid criminal court or tribunal provides similar immunities.

Despite democratic progress, the African continent still suffers from instability, insecurity and atrocities as well as authoritarian, failed and fragile states. This limits opportunities to find regional allies for human rights agendas and at the same time shields South Africa from African human rights criticism itself.

The region is also beset with poverty and socioeconomic inequality, despite considerable progress in human development. According to the United Nations Development Programme (UNDP) 41 per cent of Sub-Saharan Africans lived in extreme poverty in 2015.² Impressive economic growth rates have often not benefited the poorest. While South Africa is one of the continent's largest development aid donors, it is also a developing country itself. Domestically, South Africa suffers from high levels of inequality, poverty, crime, insecurity, functional illiteracy, and unemployment.

In this context, post-1994 governments have consistently attempted to position the country as a member of the Global South, emphasizing South-South cooperation as a primary guiding principle for foreign policy and aligning its position with the G77. South Africa has joined the BRICS and IBSA (India, Brazil, South Africa) groupings that share an interest in reforming the global governance system to create more equal political and economic relations. With Western power perceived to be in decline, and increasing resentment towards the West within the African Union, South Africa has strategically sought closer relations with countries such as China and India, both known for their indifference if not opposition to existing mechanisms of international human rights protection.

² See website of UNDP, 'About Sub-Saharan Africa', available at: <http://www.africa.undp.org/content/rba/en/home/regioninfo.html>

South Africa's future role in international human rights promotion

The various essays in this volume point to several contradictions in South Africa's foreign human rights policy and diplomacy. Democracy and human rights promotion often give way to economic and development interests, and strategic considerations cause South Africa to avoid or even oppose country-specific human rights criticism in multilateral fora. But South Africa is also sometimes a driver or key player in social and economic rights issues, peacebuilding, and standard-setting in the area of business and human rights.

As Karen Smith indicates in the first essay, South Africa continues to use pro-human rights rhetoric. Nonetheless, there has been a shift in its foreign policy from a preoccupation with human rights in the early post-apartheid years to an emphasis on state sovereignty. This is partly related to a shift towards South-South solidarity and an Africanist agenda. On the continent, the country has therefore been reluctant to mobilize its power to promote human rights issues.

Particularly at the UN, South Africa has adopted positions that at times seem at odds with its constitutional values or aspirations of serving as a model of peaceful transformation to democracy. Based on South Africa's voting record in UN bodies such as the Security Council, the General Assembly and the Human Rights Council, Eduard Jordaán draws the conclusion that South Africa's contribution to human rights has been disappointing at best, and shielding abusive governments at worst. South Africa has regularly voted with China and Russia against resolutions condemning repressive regimes and increasingly sides with its BRICS partners and developing countries in an anti-Western stance, equating Western-sponsored human rights and humanitarian resolutions with (neo)imperialist agendas.

In her essay on South Africa's relation with the two other IBSA states, Candice Moore shows that South Africa shares with India and Brazil a preference for negotiated solutions and silent diplomacy rather than intervention or public condemnation. Despite their very different foreign policy objectives and contexts, all three countries tend to abstain on country-specific resolutions (while being more progressive on thematic, especially socio-economic rights, issues). South Africa's reluctance to single out particular countries on human rights issues also stems from a concern of not being seen in the African Union as handmaiden of the West and its double standards on human rights.

Magnus Killander's essay shows that South Africa diverges from the European Union in its stance on country-specific resolutions in the UN, as well as on some thematic issues.

At the same time, South Africa and the EU share important economic interests, a commitment to foster peace and prosperity in Africa, and values with regard to human rights, rule of law and democracy. Given these shared values and overlapping agendas, Killander thus concludes that “there should be more opportunity for cooperation. This would require more engagement from both sides with the aim of finding common ground.”

One of the themes where the views of the EU and South Africa diverge is business and human rights. As elaborated in the essay of Josua Loots, South Africa has been in favour of developing a binding treaty on transnational corporations and human rights while the EU prefers to further develop the non-binding Ruggie principles. Loots sees South Africa’s support for a binding treaty as “a promising step in the right direction”.

Another promising area where South Africa may take human rights leadership is in peacemaking and peacebuilding in the region. Bright Nkrumah and Dan Kuwali show in their contribution that South Africa has taken a leadership role as mediator, peacekeeper and peacebuilder to advance peace and security on the continent and ‘African solutions to African problems’. It has invested in building continental institutions to respond to peace and security challenges and it continues to be involved in various peacekeeping operations in African states, thereby favouring diplomacy, negotiation, and conflict resolution over military power. But Nkrumah and Kuwali also write that, in addition to domestic socioeconomic constraints, “the ANC’s economic interests often override human rights concerns”, referring to South Africa’s disappointing mediation role in Ivory Coast and Zimbabwe and its silence on Sudan’s human rights abuses.

Garth Abraham’s essay on South Africa’s position on the Responsibility to Protect (R2P) echoes other authors’ assessments that South Africa’s foreign policy is pragmatic rather than principled. South Africa is not willing to compromise African solidarity and alienate its base of African support by being outspoken on violations of international human rights and humanitarian law. Abraham argues that South Africa’s position on the R2P has changed under the influence of its alliance with African countries and the BRICS towards a preference for state sovereignty and non-interventionism.

Jeremy Sarkin, too, writes in his contribution on South Africa’s relation with the ICC that “its friendship and comradely attitude towards other African states and the AU, as well as its partnership with Russia and China in BRICS, takes precedence over its international law obligations in its approach to foreign policy”. Referring to South Africa’s refusal to arrest ICC suspect President Omar al-Bashir of Sudan, Sarkin shows that South Africa is prioritizing its relations with and commitments to the African Union over its legal obligations under the Rome Statute.

In their essay, Anriette Esterhuysen, Emilar Vushe, Deborah Brown and Ran Greenstein show that South Africa's alliance and (partial) identification with the developing world shape its role in global debates about Internet governance. South Africa has aligned its position with that taken by the G77 group by, first, stressing the importance of the Internet to advance development and thereby the equality between developed and developing states and, second, by preferring government-led models of Internet governance over multistakeholder models. South Africa thus appears to ensure that the regulation of the Internet remains the sovereign right of states, not of international agencies from above or of civil society organizations or businesses from below.

While South Africa has made Southern solidarity and Pan-Africanism a key part of its foreign policy, its solidarity does not show itself in its position on African immigration. In her contribution on South Africa's past, present and future immigration policies, Audie Klotz shows that the country has not been receptive for migrants from Africa. Klotz argues that a security paradigm that frames African immigrants as a threat (to security, social welfare state, et cetera) negatively impacts the rights of immigrants and refugees and stands in stark contrast with the pan-Africanism espoused in its foreign policy.

Susan Wilding's essay focuses on the role and influence of South Africa's civil society on foreign policy development. In contrast to Klotz, Wilding is rather positive about civil society's impact on the government's response to xenophobia and discrimination. But she also argues that South Africa's civil society has fragmented and weakened after 1994 and that despite the proliferation of non-state actors operating in the realm of foreign affairs, the ANC government continues to consult in tight circles on foreign policy. Because South African external policy is largely driven by ANC objectives, human rights advocates and NGOs should, according to Wilding, invest in relation-building to remove suspicion that they are proxies of Western agendas. Wilding also suggests that they could engage more widely in conflict resolution and with service delivery organizations or think tanks that are trusted and seen as neutral.

The views expressed in the contributions that follow are those of the authors and do not necessarily reflect positions of Amnesty International, its Dutch section or Strategic Studies.

Doutje Lettinga and Lars van Troost

Karen Smith

South Africa's past, present and future foreign human rights policy and diplomacy

Once known for its peaceful transition to democracy and a reconciliation process, the moral authority of Nelson Mandela, and its progressive constitution, South Africa is now increasingly viewed as a state that undermines the international promotion of human rights, prioritizes economic interests and refuses to condemn the human rights violations of repressive regimes.

Introduction

In the post-Mandela era, and particularly under the Zuma administration, South Africa has come under increasing fire for what some regard as its progressive disregard for human rights. Most recently, the government has been criticized for allowing Sudanese president Omar al-Bashir to leave the country while the International Criminal Court (ICC), of which the South Africa is a member, had issued two warrants for his arrest on the grounds of war crimes, crimes against humanity and genocide. This blatant disregard for the authority of the ICC has served to further entrench perceptions that South Africa is no longer the torchbearer for human rights that it once was.

This is of particular concern as not only do policy-makers consistently emphasize that South Africa's foreign policy is based on human rights, but it is also a state of which much is expected in relation to the promotion of human rights. The struggle against apartheid that captured the world's attention for decades was, after all, essentially a struggle for human rights. This notion is summarized in official statements, such as this one by former deputy Minister of International Relations and Cooperation Ebrahim Ebrahim: "It is the very character of our history that should place us firmly as champions of democracy, good governance, human rights, development, peace and justice".¹ It was therefore expected that when the African National Congress (ANC) came to power following the first democratic elections in 1994, South Africa would become a beacon of hope

1 Ebrahim, E. (2013) 'Celebrating 19 years of South Africa's foreign policy', Public lecture by Deputy Minister of International Relations and Cooperation H. E. Mr. Ebrahim I. Ebrahim, South African Institute of International Affairs, 4 July: 10. Available at: <http://www.dfa.gov.za/docs/speeches/2013/ebra0704.html>.

and a model state not only for Africa but for the whole world. This is recognized in the preamble of the 2011 foreign policy white paper *Building a better world: The diplomacy of Ubuntu*, which states: "Since 1994, the international community has looked to South Africa to play a leading role in championing values of human rights" (DIRCO 2011: 4).

For a short while, South Africa managed to largely live up to these expectations. Cracks however started appearing and today the country is being called a "rogue democracy" and a state that "undermines the global human rights movement" (Gerson 2008). Eduard Jordaan (2014: 92), another contributor to this essay volume, calls it "a defender of oppressive regimes and an obstacle to the international promotion of human rights". In September 2015, *The Economist* published an article titled 'South Africa's foreign policy: clueless and immoral'. This is a far cry from the optimism expressed about the country during the presidency of Nelson Mandela.

A stated commitment to human rights

Post-1994 democratic South Africa positioned itself as an African state with a strong commitment to human rights and democracy. Even before becoming President, Nelson Mandela articulated the new government's foreign policy priorities in an article for *Foreign Affairs*. He wrote, "South Africa's future foreign relations will be based on our belief that human rights should be the core concern of international relations" (Mandela 1993: 97). This was reiterated in a 1994 ANC foreign policy document that stated that a core foreign policy principle would be "a belief in, and preoccupation with, human rights" (ANC 1994). While South African policy-makers still go to great lengths to emphasize the importance of human rights in the country's foreign policy, these official statements appear increasingly empty in the face of actual foreign policy decisions.

While Nelson Mandela, due to his international stature, managed to mostly elude international criticism about his human rights positions, it must be noted that even during his presidency, eyebrows were raised about, amongst others, South Africa's continued friendship with authoritarian regimes like that of Libya's Muammar Gaddafi. Mandela, however, was more outspoken about human rights than any of his successors have been. Concerns about South Africa's commitment to the promotion of human rights began to grow in response to President Thabo Mbeki's "quiet diplomacy" response to the crisis in Zimbabwe. Despite confirmed reports of widespread human rights abuses by the Mugabe administration, the South African government consistently maintained that Zimbabwe's internal issues should be solved by the Zimbabweans themselves, without undue external interference. This approach was in direct opposition to calls by the US and Europe for South Africa, as the regional power, to take a stronger position on its neighbour.

Criticism of South Africa's approach to human rights in its foreign policy increased as a result of its controversial votes as a non-permanent member of the UN Security Council (UNSC) in 2007-2008, voting against resolutions condemning human rights violations in, amongst others, Myanmar, Sudan and Zimbabwe (see the essays in this volume of Eduard Jordaan and Candice Moore on South Africa's voting record at the UN). South Africa defended its controversial votes on human rights in the UNSC on procedural grounds, arguing that the UNSC is not the appropriate forum to discuss human rights issues that do not pose a direct threat to international peace and security, and that it allows the five permanent members to exercise their veto power to protect certain states. Its second justification was based on what it called the "double standards" employed by the international community, and the West in particular, when it comes to defending human rights.

While this is, of course, a valid point, the fact that states like the US are inconsistent in their response to human rights violators should not be used as an excuse for South Africa to do the same. At the same time, whilst opposing criticism of and action against almost all other regimes that violate human rights, South Africa consistently supports the toughest possible action against Israel. This makes its claim that western states are inconsistent and hypocritical in their criticism of human rights violations sound rather unconvincing. Relatedly, the South African government's refusal to support the condemnation of human rights abuses by repressive governments seems to fly in the face of its own history, in which United Nations (UN) condemnation of the apartheid government and support for the liberation struggle played an important role in bringing democracy to the country.

Other decisions that have made international headlines have included that, since 2009, the government has thrice denied a visa to the Dalai Lama, including when he was invited to attend a conference of Nobel Peace Prize laureates. It has been speculated that this is due to pressure from South Africa's new best friend, China. This led Archbishop Desmond Tutu to pronounce that "This government, our government, is worse than the apartheid government, because at least you were expecting it with the apartheid government" (Spillius 2011).

Despite the continued pro-human rights rhetoric, there has therefore been a marked shift in South Africa's foreign policy away from a preoccupation with the protection of human rights to an emphasis on state sovereignty. This also manifests in South Africa's position on the Responsibility to Protect (see the essay of Garth Abraham on R2P elsewhere in this volume). While the country played an important role in the development of R2P, particularly in entrenching it in the African Peace and Security Architecture, in practice it appears to prioritize state sovereignty above human security (Brosig 2012: 7). Having said that,

South Africa is not, in principle, against any form of intervention. It has supported R2P at the regional level, and its role in the African Union-mandated missions in Darfur and Burundi show that South Africa is willing to participate in consent-based intervention, and shows a strong preference for regional interventionism. While it is on the principle of respect for sovereignty that South Africa justifies its preference for negotiated solutions to conflict rather than intervention on humanitarian grounds, there are also other, more pragmatic, reasons. It faces grave challenges domestically that already put pressure on its available resources. It is therefore unable to take on global responsibilities that might require it to channel resources into military operations.

The implications of UNSC resolution 1973 (2011) calling for humanitarian intervention in Libya proved to be a milestone in terms of signalling a shift in South Africa's position on R2P. South Africa voted in favour of the resolution, in contradiction of the position of the African Union Ad Hoc High Level Panel (Aboagye 2012: 38). Subsequently, however, South Africa condemned the North Atlantic Treaty Organization (NATO) action, which it argued used Resolution 1973, aimed at the protection of civilians, as a pretext for regime change. The situation in Syria reflects a similar position. South Africa initially voted in favour of a resolution drafted in February 2012, calling for President Bashar al-Assad to step down but then backtracked by calling for the Syrian people to be allowed to decide their own fate (Aboagye 2012: 43). Subsequently, South Africa has not supported any calls for pillar three (intervention by the international community) of the R2P doctrine. The result of the Libyan case is that South Africa is now seen as having firmly joined the ranks of R2P sceptics, including its BRICS partners (Brazil, Russia, India and China).

In fact, while there seems to be greater convergence amongst the BRICS in terms of their voting position on R2P, their positions are not as clear-cut and consistent as we are sometimes led to believe (see Stuenkel 2014). In addition, it is possible to identify differences in their motivations. For example, while Russia and China's preference for non-interference is arguably based predominantly on the recognition of sovereignty as the most important norm in international relations, South Africa's position is the result of its own experiences during the negotiated transition, where external mediation was largely rejected in favour of a South African solution. This led to a conviction that domestic and regional solutions are preferable to solutions imposed by the international community at large.

Primacy of the African agenda

Perhaps the strongest influence on South Africa's human rights stance is its troubled relationship with the rest of the African continent. Since 1994, the government has been

at pains to overturn the legacy left by the apartheid regime and establish itself as first and foremost an African state, but also one that would avoid behaving in a way that might be interpreted as hegemonic. On the other hand, the new government needed to show the international community, meaning mainly Western states, that it was committed to promoting democracy and human rights in Africa. This has been undermined by the strong Africanist strand in South Africa's foreign policy, linked to the lack of legitimacy afforded it by its regional neighbours in its attempt to play the role of regional leader. It means that the country has to be particularly careful in handling human rights issues in Africa. As a result, the principle of state sovereignty is often invoked to protect repressive African states from condemnation.

The last time the South African government or a senior policymaker publicly condemned another African state for its human rights violations was in 1995, when then president Nelson Mandela criticized Nigerian dictator Sani Abacha for the execution of Ken Saro-Wiwa and eight other activists, calling for sanctions against Nigeria. The response from Nigeria and the rest of Africa (accusing South Africa of being an agent of the West and 'un-African') was a hard lesson that the government would not forget. Instead, subsequent leaders have opted for a very different approach, refusing to publicly condemn fellow African governments and preferring to mediate behind the scenes. Thabo Mbeki's infamous 'quiet diplomacy' towards Zimbabwe remains the best known example of this back-door approach. While it has been criticized for not being effective, one could similarly argue that the Western approach of condemnation and punitive measures has also not always had the desired effect.

In 2014, South Africa again disappointed when it failed to condemn the Ugandan government's announcement that it had passed legislation criminalizing homosexuality. In light of strong international condemnation of the new law, the South African government remained largely silent, with president Zuma commenting, "South Africa respects the sovereign rights of other countries to adopt their own legislation" (Sowetan Live 2014). This was surprising to some, as the country is regarded as a world leader in advancing LGBTI (lesbian, gay, bisexual, transgender and intersex) rights, having been the first country in the world to prohibit discrimination based on sexual orientation in its constitution. In addition, South Africa was the driver behind a resolution on sexual orientation in the UN Human Rights Council in 2011.

The June 2015 al-Bashir debacle is a continuation of a long-standing dispute between the ICC and the African Union (AU), which resolved in 2009 not to cooperate with the Court in the arrest of al-Bashir. In disregarding the ICC's arrest warrants, South Africa affirmed its solidarity with the rest of Africa in this regard, including the criticism that

the ICC is biased against African leaders, and is therefore illegitimate. It can be seen as yet another attempt by the South African government to appease its regional neighbours, even if at a cost to its wider international reputation (see Jeremy Sarkin's essay on South Africa's position on the ICC and international criminal justice in this volume).

Besides its penchant for African solidarity, South Africa's membership of the BRICS grouping has also raised questions about how this might be influencing its foreign policy positions. This forms part of a broader debate about the implications of the so-called emerging powers and their demands to have a greater voice in global governance. Specifically, there is concern about the extent to which they will uphold the existing values of the global liberal order – including the protection of human rights. While South Africa is committed to liberal values in its constitution, it is clearly the junior partner in this collection of states, meaning that it is probably under great pressure to conform to the positions of the other members, particularly China. This is especially pertinent in light of the fact that China is now South Africa's largest trading partner, and should also be viewed in the context of the shift in foreign policy towards an increased emphasis on economic imperatives. This, in turn, is in line with government's position that foreign policy should be closely tied to domestic priorities – with the country's developmental challenges clearly at the forefront (see also Josua Loots' essay in this volume).

Conclusion: balancing foreign policy priorities

South Africa operates in a complex multilateral setting, and its membership of a range of international and regional organizations – including the UN, the Non-Aligned Movement and the AU, together with its multiple identities all place different obligations on it. While South Africa is a liberal democracy with a stated commitment to the protection of human rights in its constitution, it is also a developing country, and an African country. Even within the ruling ANC two divergent strands that emerged during the anti-apartheid struggle continue to influence policy. On the one hand, there is a commitment to liberal values like democracy and human rights, and on the other hand, a focus on African and South-South solidarity, and anti-Western sentiments. At the same time, the tremendous domestic challenges facing South Africa put pressure on the government to follow a pragmatist foreign policy, where economic and developmental interests trump a more value-driven foreign policy.

While it may be a valid point that all states struggle to balance foreign policy priorities, criticisms of South Africa's failings have perhaps been harsher because of the expectations of a post-apartheid South Africa by the international community, but also due to the

emphasis government puts on the promotion of human rights as being an integral part of its foreign policy.

Within the South African government and society the debate about the position that human rights should play in its external relations continues to rage. There are those (an apparently growing number) who feel that South Africa's foreign policy cannot be dictated by human rights issues alone. Others make it clear that South Africa's foreign policy must remain consistent with principles expressed in the constitution, with respect for and protection of human rights being central. Unquestioningly, in a complex international system, human rights cannot be the only consideration when making foreign policy, and human rights concerns will inevitably clash with other national interests. However, a state like South Africa, with a particular history and stated commitment to a principled foreign policy, needs to clearly set out the priority it affords to human rights.

Regretfully, the idea that the pursuit of national interest and a value-driven idealist foreign policy are irreconcilable have taken root in government, which has negative implications for South Africa's future role as a promoter of human rights in the rest of Africa and globally. This is based on the assessment that the West is in decline and it would thus best serve South Africa's national interest to align itself with the emerging powers, and China in particular. Government needs to remind itself of the ANC's 1997 foreign policy discussion document, which recognized that a focus on the principles outlined in the 1994 document on international affairs, including the promotion of democracy and human rights, "cannot be considered idealistic" and "should be seen as an essential part of defining the national interest" (ANC 1997).

The role of international human rights advocates should be two-fold. Firstly, they should cooperate with local human rights activists can raise awareness of human rights as essentially 'human' rather than 'Western' or 'African'. Secondly, they should continuously remind South Africa of its own history of fighting for equal human rights for all, which was translated into a strong constitutional commitment to the protection and promotion of human rights – both domestically and internationally. Given the constraints on the South African government outlined above, it is however unlikely that it will adapt its position on how to deal with states that violate human rights. The majority of policy-makers are highly sceptical of what they view as Western attempts – whether by governments or NGOs – to impose moral standards on African states. They are particularly wary of the strategy of public condemnation, which is regarded as being counter-productive in the long run. In addition, the hypocritical application of human rights standards by some Western states has raised questions about the legitimacy of the international human rights regime. In spite of this, by reminding South Africa of the way in which human

rights are tied up in its history and national identity, government could be persuaded to play a stronger, more activist role, particularly on the continent – but according to its own terms of engagement.

Eduard Jordaan

South Africa's human rights voting record at the United Nations

Despite frequent claims that it is committed to the international promotion of human rights, South Africa's record at the United Nations tells a different story. Greater scrutiny and civil society involvement might lead to an improvement in South Africa's record.

Introduction

In late 1993, a few months before South Africa's first democratic election, Nelson Mandela declared that South Africa's future foreign policy will be based on the "belief that human rights should be the core concern of international relations". In the same document, Mandela identified the United Nations (UN) as having a "pivotal" international role and promised that South Africa would be a "full and active" member of the organization (Mandela 1993). During these early years of South Africa's democracy, actions such as South Africa's vocal support for sexual orientation rights at the 1995 World Conference on Women in Beijing provided evidence of the country's support for these two foreign policy commitments. In speeches and policy documents South African policy-makers continue to proclaim the centrality of both the UN and human rights in the country's external policy, yet South Africa's recent behaviour at the UN gives the lie to the second commitment.

This chapter considers South Africa's behaviour in the principal human rights forums of the UN (the Security Council, the General Assembly, and the Human Rights Council) and demonstrates its poor record. South Africa's anti-human rights behaviour takes many forms, including outright opposition, abstaining on egregious cases, disowning its own pro-human rights decisions, using human rights to selectively criticize its opponents, and claiming technical or procedural shortcomings. South Africa is a proponent of UN reform, but the changes it envisions do not portend stronger support for human rights. South Africa often gets away with its anti-human rights behaviour because the media and civil society do not closely monitor its actions; when they do, the intervention is usually after the fact.

United Nations Security Council

South Africa sees the Security Council (UNSC) as central to global governance. It has twice served as a non-permanent member, in 2007-08 and 2011-12. While South Africa's eagerness to serve on the UNSC legitimizes this institution, South Africa has at the same time attacked it as undemocratic and unrepresentative. South Africa supports the African Union's (AU's) "Ezulwini consensus", which calls for an expanded UNSC which would contain, among others, two permanent veto-holding seats for African countries. While two veto-holding permanent seats are a pipe dream, an expansion of veto powers will empower more states to obstruct UNSC-led intervention in fraught human rights situations.

South Africa sees itself as an obvious candidate for one of these seats. Regardless of the capacity of South Africa's future participation in the UNSC, the country's past behaviour on the UNSC offers little hope that human rights will be a priority. During its two terms on the UNSC, South Africa on a number of occasions departed from the majority view. When South Africa did so, it was typically towards positions that were less supportive of human rights. South Africa frequently tried to steer an issue away from the UNSC and towards an authority that offered more protection to abusive regimes.

One of South Africa's first acts during its first term on the UNSC was to vote, alongside China and Russia, against a draft resolution that addressed human rights problems in Myanmar. South Africa argued, citing an ASEAN statement, that Myanmar did not pose a threat to regional security and hence was not a matter for the UNSC. South Africa further argued that the newly created UN Human Rights Council (UNHRC) was the appropriate venue for discussing the issue,¹ but it is worth noting that, in late 2007, South Africa did not join the call for a UNHRC special session on human rights in Myanmar.

Also during its first term on the UNSC, South Africa opposed sending a fact-finding mission to Zimbabwe, arguing that the country did not pose a threat to regional security (Bischoff 2009: 102). In 2008, South Africa voted against a draft resolution aiming to impose sanctions on the Mugabe regime. Explaining its vote, South Africa argued it was following the African Union's position.² In 2007, South Africa supported the Sudanese government in opposing a resolution aiming to impose sanctions against combatants

1 United Nations Security Council (UNSC) (2007) '5619th meeting of the UNSC', UN doc: S/PV.5619, 12 January. Available at:

http://www.un.org/ga/search/viewm_doc.asp?symbol=S/PV.5619.

2 United Nations Security Council (UNSC) (2008) '5593rd meeting of the UNSC', UN doc: S/PV.5933, 11 July. Available at:

<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/POC%20SPV5933.pdf>.

who attacked civilians or who refused to cooperate with the joint UN-AU mission in Darfur, UNAMID (Nathan 2010: 56). South Africa also fended for Iran, arguing that its nuclear programme was not a threat to international security and hence did not belong on the UNSC's agenda. Through its opposition, South Africa managed to negotiate a bigger role on the Iran issue for the International Atomic Energy Agency, where developing countries have more influence than they do on the UNSC (Bischoff 2009: 101).

South Africa was heavily criticized for its behaviour during its first UNSC term. In the early months of South Africa's second term (2011-12) the country seemed to have adopted a new direction. As the Gaddafi regime stood poised to decimate those opposed to its rule, South Africa in March 2011 supported a resolution that authorized the use of "all necessary measures" to protect civilians in Libya.³ South Africa's vote came as a surprise, especially considering the fact that its BRICS partners had abstained. However, South Africa soon distanced itself from its vote, objecting that by pursuing regime change NATO had overstepped the mandate it was given.

These concerns informed South Africa's next controversial action on the UNSC, when, in October 2011, it abstained on a resolution threatening sanctions against the Syrian regime should it persist in its violent crackdown on civilian dissent. South Africa saw in the resolution "a prelude to further actions... a hidden agenda aimed at once again instituting regime change".⁴ In February 2012, South Africa supported a resolution that demanded an end to violence in Syria, but in July 2012 again abstained on a draft resolution that threatened sanctions against the regime.

United Nations Human Rights Council

In 2006, the UNHRC replaced the UN Commission on Human Rights (UNCHR). According to then UN Secretary-General Kofi Annan, the UNCHR had become a stain on the UN's good name. States were using the UNCHR not to strengthen human rights but to criticize others or forestall criticism of themselves (UNGA 2005). South Africa played its role discrediting the UNCHR, most notably when in 2003 it strongly defended the African Group's choice of Libya as chair of this international human rights body.

3 United Nations Security Council (UNSC) (2011) 'Resolution 1973: Libya', UN doc: S/RES/1973, 17 March: 3. Available at: [http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/1973%20\(2011\)](http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/1973%20(2011)).

4 United Nations Security Council (UNSC) (2011) '6627th meeting of the UNSC', UN doc: S/PV.6627, 4 October: 11. Available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Golan%20Heights%20S%20PV%206627.pdf>.

South Africa was a UNHRC member from 2006 until 2010 and re-joined for a minimum of three years in 2014. On the UNHRC, South Africa's net contribution has been negative and destructive, its actions marked by antagonism towards Western states and the shielding of developing countries from international human rights scrutiny. South Africa has very rarely voted with Western states on votes that were significantly split. The only instances occurred in June 2006 in a vote on the rights of indigenous peoples, a September 2014 vote on sexual orientation, and two recent votes on the death penalty.

On the UNHRC, South Africa has refused to support efforts to pressure countries over their human rights records. During its initial four years on the Council, South Africa shielded the governments of Sudan, the Democratic Republic of Congo and Sri Lanka from stronger UNHRC scrutiny. During this period, South Africa had to cast three votes on human rights in North Korea, yet abstained each time. Since South Africa's return to the Council in 2014, it has abstained on pro-human rights resolutions on Belarus, Iran, Sri Lanka, Syria and, as before, North Korea. South Africa claims that international criticism and pressure do not lead abusive countries to improve human rights. The South African government seems to have forgotten the role of international pressure and condemnation in bringing about an end to apartheid, with the ANC having worked hard to isolate apartheid South Africa internationally. Moreover, South Africa's supposedly principled opposition to country-specific pressure has not stopped it from voting in support of every resolution – and there have been dozens – harshly criticizing Israel.

The UNHRC's universal periodic review (UPR), a mechanism that requires all UN members to pass through a peer review of their human rights records once every four years, is a form of country-specific scrutiny. The UNHRC's first year was an institution-building period, a time during which the organization had to work out the details of the UPR system. During this period, South Africa strongly supported African efforts to render the UPR as unthreatening to rights-violating states as possible. Although the UPR is a weak mechanism, it nevertheless creates an opening to pose tough questions to the governments under review. However, South Africa has not used these opportunities to hold governments to account, but has rather protected its friends and pressured its adversaries. When addressing developing countries, South Africa's typical approach is to thank them, praise them, especially for advances in economic, social or cultural rights, and then to timidly raise a few issues, while avoiding any suggestion that the government under review might be violating political or civil rights. When addressing Western states under review, however, South Africa's approach is what one would expect it to apply to all states, namely to tersely and directly address the main human rights problems in these societies. With regard to Western states, South Africa has brought up issues related to racism, xenophobia, immigration, indigenous peoples, sexism, and sexual orientation (Jordaan 2014).

South Africa prefers thematically organized rather than country-specific approaches to human rights problems. On thematic issues, South Africa's record is better, but still tainted. South Africa insists on the right to development, yet has pushed this responsibility to the international community while drawing attention away from the responsibility of governments to their own citizens. South Africa frequently speaks of international duties to the poor and to realize development, but avoids blaming governments of poor countries for poor economic governance. For instance, in its comment on Zimbabwe's UPR presentation, South Africa focused on economic sanctions as detrimental to human rights in Zimbabwe, but remained silent on the government's ill-advised economic policies.

South Africa has played a leading role in trying to address international racial and religious discrimination. South Africa has highlighted the experience of black persons in the African diaspora and has drawn attention to the discrimination that Muslims in Western societies experience. Problematically, however, South Africa has strongly supported the Organisation of Islamic Cooperation (OIC) attempts to restrict free speech. Until 2010, the OIC tabled annual resolutions on the defamation of religions, which seek the curtailment of free speech to secure "respect for religions and beliefs".⁵ South Africa sees itself as acting against "contemporary racism" under which it includes "the defamation of religions".⁶ A group of special rapporteurs have warned against such a conflation and have found that anti-racism measures "may not necessarily be applicable" to defamation of religions (Muigai et al 2009). Sceptics have also questioned whether *religions* can be defamed. Moreover, the aforementioned special rapporteurs have caution that the "defamation of religions" charge can be used to persecute non-believers, religious minorities and political dissidents (Muigai et al 2009), to which South Africa responded that "such states would behave that way regardless" (US Government 2009).

In June 2011, South Africa led the UNHRC to adopt the first UN resolution on sexual orientation. Commendable as South Africa's leadership was, it sprouted from a miscalculation. In March 2011 South Africa had tabled a resolution to define the relation of the 'new concept' of sexual orientation and its connection to international human rights. According to the draft text, no discussion on sexual orientation rights was to take place throughout the UN until the working group had finished its work (Jordaan 2014). Neither the opponents nor the proponents of sexual orientation rights would support South Africa. Isolated, South Africa deferred its resolution. South Africa faced a choice between fully withdrawing the draft resolution – a major loss of face – or returning with a progressive resolution,

5 United Nations Human Rights Council (UNHRC) (2007) 'Resolution: Combating defamation of religions', UN doc: A/HRC/RES/4/9, 30 March: 3. Available at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=13040.

6 South Africa (2009) 'Statement to the UNHRC', 30 September. Available at: <http://www.un.org/webcast/unhrc/archive.asp?go=090930>.

which is what happened in June 2011. National and international civil society pressure was important in pushing South Africa in a progressive direction.

After the June 2011 resolution, South Africa was mostly supportive of sexual orientation rights, but its leadership on the issue was marked by inconsistency and inaction, with the result that South Africa was obstructing progress on the issue. Brazil, Chile, Colombia and Uruguay eventually replaced South Africa as leader on the issue. While South Africa voted for the second sexual orientation resolution in September 2014, it was one of the states that had successfully lobbied for this resolution to be weakened from requiring two-yearly reporting on violence and discrimination on the basis of sexual orientation to a once-off report (Feder 2014).

Membership of the BRICS has assumed increasing prominence in South African foreign policy. Although South Africa does not match the other members in terms of power, BRICS membership is proof to South Africa that it is a major international player and also the instrument through which it reinforces this importance (Alden & Schoeman 2013: 115). Given that two BRICS members are highly authoritarian, it does not augur well for South Africa's human rights positions. It is against this backdrop that we should view events in March 2014 when South Africa for the first time spoke on behalf of the Like-Minded Group (LMG), a loose association of states that share, in varying measure, anti-hegemonic proclivities and a dislike of international human rights scrutiny, in this instance, Algeria, Belarus, China, Cuba, Egypt, Ethiopia, Russia, Saudi Arabia and Venezuela. As representative of the LMG, South Africa introduced various amendments aimed at weakening the resolution "The promotion and protection of human rights in the context of peaceful protests".⁷ In introducing the amendments, South Africa claimed that the LMG members were "fully supportive" of the rights of peaceful assembly and association and of free expression, but argued that these rights carry "concomitant duties and responsibilities" and "that protest, whether peaceful or otherwise, should not constitute a threat to national security or stability". This was coming from an ANC government, an organization that opposed apartheid through calls to "join in one determined offensive to make all of our country ungovernable".⁸ After South Africa's hostile amendments were rejected through various votes in the UNHRC, South Africa then became one of nine states to vote against the resolution, while 37 voted for and seven abstained.

7 United Nations Human Rights Council (UNHRC) (2014) 'Resolution: The promotion and protection of human rights in the context of peaceful protests', UN doc: A/HRC/RES/25/38, 11 April. Available at:

<http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/RES/25/38>.

8 South Africa (2014) 'Statement to the UNHRC', 28 March. Available at:

<http://webtv.un.org/meetings-events/human-rights-council/regular-sessions/watch/ahrc25l.20-vote-item3-56th-meeting-25th-regular-session-human-rights-council/3403776345001>.

United Nations General Assembly

South Africa's record in the General Assembly (UNGA), especially in its Third Committee, which is concerned with human rights matters, is a mixed bag but is poor enough to give us further reason to doubt the country's commitment to human rights. On the anti-human rights side of the ledger, South Africa has been a strong supporter of the defamation of religions resolutions in the UNGA, as it has also been in the UNHRC. Problematic too has been South Africa's support for the "Promotion of a democratic and equitable international order" series of resolutions. Despite the attractive title, the resolutions aim to limit international interference in the countries that abuse human rights, which is why they include the injunction that "international cooperation for the promotion and protection of all human rights should continue to be carried out with full respect for sovereignty, territorial integrity, political independence, the non-use of force or the threat of force in international relations and non-intervention in matters that are essentially within the domestic jurisdiction of any state".⁹

Solidarity with the Global South and presumed leadership of the developing world make South Africa reluctant to criticize developing countries over human rights. South Africa's positions on country-specific human rights problems have therefore been mostly negative for human rights. Over the past ten years, South Africa has abstained on all North Korea resolutions in the General Assembly. South Africa has also abstained on all Syria resolutions, which began to appear in 2011. After a number of votes against an annual resolution on Iran, South Africa has abstained since 2009. South Africa has mostly abstained on the annual Myanmar resolution, but in 2009 and 2010 voted for the resolution. In 2005, however, South Africa supported a motion to end discussion of human rights in Myanmar. South Africa has both abstained and voted against resolutions on Belarus.

Until 2010, South Africa's positions on sexual orientation rights were confused and inconsistent. In the UNGA, the biennial resolution on extrajudicial, summary or arbitrary executions is the focal point for disputes over sexual orientations rights. When this resolution comes up for consideration, opponents try to remove the term "sexual orientation" from the text. These hostile amendments are then put to a vote. In 2002 and 2004, South Africa abstained. In 2006, South Africa voted to retain the reference, but in 2008 and 2010 voted to remove the term. However, during the 2012 and 2014 votes on the amendment, and in line with South Africa's more progressive stance on sexual orientation rights in the

9 United Nations General Assembly (UNGA) (2014) 'Draft resolution: Promotion of a democratic and equitable international order', UN doc: A/C.3/69/L.43, 3 November: 1. Available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/C.3/69/L.43>.

UNHRC, the country strongly opposed efforts to remove the term. Also positive has been South Africa's support for resolutions calling for a moratorium on the death penalty.

As in other parts of the UN, South Africa's 'anti-imperialist' impulses (Nathan 2010; Bischoff 2009:105) trump support for human rights. One is offered a sense of South Africa's antagonistic relationship with the West by looking at US State Department reports on the way other countries vote on issues the US considers important. On these issues, many of which concern human rights, South Africa's voting coincidence with the US is very low. During the 2000-2014 period South Africa's highest voting coincidence rate is 44 per cent (in 2014). For six out of the fifteen years, South Africa's coincidence rate was zero. South Africa's average over the fifteen years is 16.7 per cent.

Conclusion

South Africa's poor human rights record in its foreign policy and international relations stems from trying to be a leader of Africa and the developing world and from trying to construct some kind of bulwark against the West. More concretely, South Africa tries to promote causes that will benefit the governments of developing countries and tries to avoid criticizing them over their rights records. South Africa's anti-imperialism also means that it is quick to point to Western missteps and that it frequently tries to frustrate Western initiatives, even at the expense of human rights.

Such an approach comes quite naturally for a foreign service whose leaders think they are engaged in struggles between North and South and for greater African sovereignty. It might be helpful to keep reminding South African policy-makers that human rights are universal, as South Africa's Bill of Rights makes plain, and not an imperial Trojan horse.

A lack of coverage of South Africa's behaviour at the UN in the local media makes it easier for South Africa to act against human rights. South African support for sexual orientation rights at the UN stemmed to a considerable degree from coverage in the local media and especially the active role of civil society organizations. One way to bend South African foreign policy towards support for human rights would be through more reporting and more vocal and active participation by civil society. However, it should be recognized that given the Global South frame through which South African foreign policy-makers view the world, they might be resistant to engagement and pressure from an international human rights NGO such as Amnesty International. A more fruitful approach will be to support and work with local civil society organizations which cannot be so easily ignored.

Candice Moore

South Africa, IBSA and human rights: a selective relationship?

In the current international context, IBSA states (India, Brazil and South Africa) have selected a middling path to promoting human rights. While these states voice opposition to some Western conceptions of human rights, they should not yet be singled out as promoters of new forms of human rights. Human rights advocates globally should cooperate with IBSA on a case-by-case basis, as understandings of human rights and democracy may differ between IBSA and such advocates as various issues arise.

Introduction

This essay will focus on the convergences and divergences in the role of human rights in the foreign policies of South Africa and its counterparts in IBSA, India and Brazil. It will also examine the extent to which these states can influence global human rights debates in the context of their aspirations for expanded roles in international affairs. The role of human rights in foreign policy should always be considered comprehensively. Arguably, there is no state that would act in a manner prejudicial to its own national interest in order to protect the rights of human beings, either within its own borders or beyond them. This is why any assessment of human rights in the foreign policies of states must be conducted on a multitude of dimensions, and take into account a variety of factors, including available resources, position in the regional and global hierarchy of states, and in cases of crisis, the specificities of context.

Backdrop to IBSA cooperation and rationale of the grouping

In 2006, the India-Brazil-South Africa trilateral partnership was formalized on the sidelines of a G8 meeting to which the three nations had been invited as observers. This grouping arose out of similarities the leaders of these states perceived to underline common positions and postures of the three nations in international affairs at the time. These included: a perception that the structure of the international system was not conducive to the pursuit of their own foreign policy goals because of outdated power imbalances (evident especially in the structure of the United Nations Security Council); and initially under the presidencies of Lula da Silva, Thabo Mbeki and Manmohan Singh, a concern with the plight of the global poor.

Indeed, Lula noted at a World Bank conference in 2004 that while the international agenda at the time was excessively focused on security, poverty was “the worst of all weapons of mass destruction” (Global Exchange 2004). Lula further called for a ‘Global Fund to Fight Hunger’ – a campaign that was realized in partnership with President Jacques Chirac of France and President Ricardo Lagos of Chile in the launch on 30 January 2004 of the global campaign to eradicate hunger and poverty (Fraundorfer 2015: 94-95). Indian Prime Minister Manmohan Singh echoed in a speech at Cambridge in 2004, “We need a new global vision that ensures the gains from globalization are more widely shared” (Singh 2004). Likewise, South African president Thabo Mbeki opined in 2003 that global poverty “constitutes the deepest and most dangerous structural fault in the world economy” (Mbeki 2003).

Yet the foreign policies of these three countries are very different in posture and emphasis. While South Africa sought to craft its foreign policy in the early years after the end of apartheid on an ‘Africa-first’ orientation, India and Brazil are long-standing and experienced campaigners on specific issues in the UN Security Council, whose concerns have broadly reflected a ‘Southern’ bias, and not exclusively an African one. Each state occupies a place in a distinct regional security complex – Brazil’s and South Africa’s characterized by a measure of regional ‘peace’, while India’s is characterized by security challenges. These different environments condition the responses of each of these states to international questions.

While one of the stated goals of the IBSA partnership is the increased exercise of diplomacy in resolving international conflicts and the reform of the United Nations¹, the trilateral partnership that IBSA embodies appears antithetical to the representation of broader interests in each member’s region. This issue came to a head in the months preceding the debates on UN reform in September 2005, when India, Brazil and South Africa each voiced their interest in permanent representation on the UN Security Council, but failed to win the support of their regional neighbours. More recently, this neglect of representing broader regional interests was evident in the prominence of India and Brazil in exclusive trade talks with the EU and US in attempts to save the Doha Development Round.² India and Brazil ultimately walked out on the talks due to dissatisfaction with US and EU proposals, leaving the Round – and with it, smaller states’ prospects for continued negotiations – in tatters (Dougherty 2007).

1 IBSA (2003) ‘India-Brazil-South Africa dialogue forum Brasilia Declaration’, 6 June. Available at: http://www.ibsa-trilateral.org/images/stories/documents/comuneques/Brasilia_Declaration_2003.pdf.

2 The Doha Round is the latest round of trade negotiations in the World Trade Organization, with the stated objective of improving international trade for developing countries.

IBSA's role and heritage

The IBSA grouping displays remarkable convergence in interests and positions on various international questions covering the spectrum from security to international trade and the environment; among them, terrorism, the war in Iraq and international development. This development must be appreciated within the wider context of relations between the three countries and their regions (see Vieira & Alden 2011).

Significant political and economic relations between Brazil, India and South Africa, respectively, reach far back, to at least the mid-twentieth century. For Brazil and South Africa, the relationship should largely be seen in the context of Brazil's Africa relations and the fluctuations these experienced with changes in national leadership. With more independent, nationalistic foreign policy came greater emphasis on the Third World, namely Africa and Asia. Brazil's military rule from 1964-1985 was far from coherent in terms of foreign policy, but was initially characterized by stronger allegiance to the United States, and hence support for South Africa's minority government. South Africa was Brazil's primary trading partner in Africa in the 1960s, with about 40 per cent of Brazil's Africa exports destined for South Africa (Hoffman 1982: 62). Brazil's relations with Africa were generally informed by the cultural links perceived to exist between Brazil and Africa. These links were solidified with Brazil's stance on development at the end of colonization (Mourão 1994). Brazil had a substantial economic footprint in the rest of Africa, trading with oil producers such as Algeria, Gabon, Libya and Nigeria, and with a market presence in most African countries by the end of the 1970s (Forrest 1982: 81). India, too, was involved in technology transfer programmes and small-scale investments in Africa from the 1960s onward, under the premiership of Indira Gandhi.

The emergence of the special relationship between South Africa, India and Brazil must also be seen in the light of significant domestic economic, social and political changes. Domestic economic challenges (unemployment, unequal distribution of income) and opportunities (diversification of exports, tariff reductions) created the need for selective interactions with markets abroad. At the same time, traditional strategic factors, such as security and territorial expansion, are not very helpful in accounting for this partnership, given that the protagonists are located so far away from each other in geographical terms, though much has been made by policy-makers and analysts alike of a 'South Atlantic' region.³ Hurrell (2006) has noted that these states as part of the group of 'would-be great powers' avoid balancing behaviour in relation to the United States, China or other global powers; more puzzling in the post-9/11 environment. While they are

3 Brazil's plan for a Zone of Peace; South Africa's earlier cold war plan for a 'South Atlantic Treaty Organisation' (SATO). See White (2004).

seeking a greater global role – in a more polarized international environment since 9/11 – emerging powers are thus, by and large, not using traditional Realist approaches to power accumulation. The primary thrust of the relationship is really twofold: economic, with a broader normative basis (that the international power structure is outdated, and that global poverty must be eradicated are but two of the shared norms).

As noted, owing to the international climate at the start of the 21st century, a number of events made IBSA a necessity. More than a decade after the end of the cold war and the end of bipolarity, in both its security and ideological dimensions, IBSA, and the ideas that gave rise to it, evolved in a time characterized both by crisis and fear, on the one hand, and opportunity on the other. In the wake of 9/11 and the action against Afghanistan, along with the actions of the US and its ‘coalition of the willing’ in Iraq, Southern countries saw an opportunity in the terrorist threat to press the case for justice and equality in the international system. For example, Brazil’s President at the time, Lula da Silva, accused the US of disrespecting the United Nations and the rest of the world, and asserted that the United States did not have “the right to decide by itself what is good and what is bad for the rest of the world” (Etchaleco 2003). Admittedly, this was not a new issue for countries in the developing world, but one that found new voice in the climate spawned by 9/11, especially by three countries on their own national trajectories of growth in international stature.

Furthermore, most evident since the establishment of the World Social Forum in Porto Alegre in 2001, the territory formerly covered by “third worldism” at the global state level – issues like development and international political and economic equity – had been appropriated by new actors, among them NGOs and social movements. These movements were in many cases sharply critical of their home governments and their performance in ameliorating, amongst others, the effects of globalization (*Movimento dos Sem Terra*, MST, in Brazil; Electricity Crisis Committee in South Africa; and Karnataka State Farmers’ Association in India).

Hence, IBSA seeks to combine a concern with the traditional values of Southern solidarity with the desire to open new possibilities for national economic growth. South Africa’s commitment to Southern solidarity stems from the continuing links between governing parties, such as the Workers’ Party and the ANC, and civil society groupings, as well as from established foreign policy commitments to these values and interests.

South Africa's Foreign Policy and IBSA

South Africa has sought to balance its Africa-first foreign policy, which stems from its own liberation struggle and desire to locate itself within Africa, with the growing presence of South African commercial enterprises in the rest of Africa since 1994. South Africa has consistently run a trade surplus with Africa, meaning that the country exports far more to its African counterparts than it imports. In 1994 this figure was US\$1.21 billion, but it had grown to US\$4.08 billion by 2013 (Standard Bank 2013). This has been accompanied by some disquiet among African workers and domestic industries that South African commercial interests are suffocating domestic businesses. South Africa's economic expansion has not always been received well by African governments, with complaints from former President Moi of Kenya about South African corporate practice in that country, among others (Daniel, Lutchman & Naidu 2004: 347). The ruling ANC resolved at its 53rd National Congress – the party's highest decision-making organ – on the need for a business code of conduct for South African companies operating in Africa “to ensure that their conduct accords with South African business norms and standards such as upholding good business practice, labour standards and ethical conduct”. The document warned that “the Code of Conduct should, however, not inhibit the comparative advantage of South African companies and organisations in the business environment”.⁴

For the South African government, South-South cooperation has become one of the primary guiding principles of foreign policy. As reflected in a number of key documents, including the long-awaited White Paper on Foreign Policy (2011), and all of the Department of International Relations and Cooperation's (DIRCO) Annual Reports, South-South cooperation is a key tenet of South Africa's international engagement since 1994. The twenty-year period since the first democratic election in 1994 has seen this ideal develop into a guide for South African foreign policy, where “South-South relations are not ... simply about ‘high politics’, [but also for South Africa to seek to] solicit support from its Southern partners for NEPAD projects,⁵ particularly where the countries of the South have unique contributions to make” (Presidency of South Africa 2004: 72).

4 African National Congress (ANC) (2013) ‘53rd National Conference Resolutions’, 16-20 December 2012: 45. Available at: <http://www.anc.org.za/docs/res/2013/resolutions53r.pdf>.

5 The New Partnership for Africa's Development (NEPAD) projects and programmes span a wide array of sectors, including Agriculture and Food Security, Climate Change and National Resource Management, Regional Integration and Infrastructure, Human Development, Economic and Corporate Governance, and cross-cutting issues including Gender, ICT and Capacity Development. See: ‘NEPAD Programmes’ at the website of NEPAD. Available at: <http://www.nepad.org/nepad-programmes>.

Human rights play a specific role in South-South cooperation. The way in which South-South cooperation has evolved has been in line with its initial pre-occupation with the economic and social aspects of human rights, as opposed to the political.

Human rights and the new South-South cooperation

There is much scepticism outside the global South about Southern internationalism or the idea that countries of the global South can practice 'other-regarding' foreign policy postures. This scepticism derives from a very particular understanding of human rights on the part of the critics. From a Southern perspective, the West has typically been perceived as focusing on a view of human rights exclusively, or predominantly, through the prism of political rights. This runs head-on into the desire of global South states to place the restructuring of the international economic order at the forefront of the global human rights debate. The rationale of the Non-Aligned Movement (NAM), for example, shifted away from purely political issues during the Cold War, to focus on solutions to global economic problems.⁶

The role of human rights in South-South cooperation can be gauged on three planes: the extent to which human rights are conceptually linked to development in the foreign policies of emerging powers; the actual commitment of resources, political or material, to the defence of human rights in South-South cooperation projects; and pronouncements on human rights during times of crisis.

Human rights in IBSA's foreign policy positions

From the perspective of the rising powers, the actual defence of human rights is sometimes a secondary concern when compared with the preservation of regional and international peace and security. In the case of South Africa, this can be seen in its role in 'quiet diplomacy' in Zimbabwe, and also in its preference for negotiation with certain African leaders the West considers controversial, such as Sudan's Omar al-Bashir.

South Africa's position in the UN during its tenures as non-permanent member of the Security Council (2007-8 and 2011-12) especially, was repeatedly seen as giving cover to governments of dubious reputation, such as the military junta in Myanmar and South Africa's neighbour to the north, Zimbabwe. South Africa acted to preclude draft resolutions condemning human rights abuses in both states on the basis that the UN Security Council was not the appropriate forum for the discussion of the human rights situation in these countries. Giving South Africa's reasons for refusing to endorse the resolution

⁶ Non-Aligned Movement (NAM) (2001) 'Background: The Non-Aligned Movement description and history'. Available at: <http://www.nam.gov.za/background/history.htm>.

against Myanmar, which called for the release of all political detainees and an end to military sexual violence, proposed in January 2007, South Africa's then Permanent Representative to the UN, Dumisani Kumalo, stated the following:

- That it would compromise the “good offices” of the Secretary General, at that time providing a “channel for private and confidential communication” by Professor Ibrahim Gambari, the UN's special envoy to Myanmar;
- That the matters raised in the resolution would “be best left to the Human Rights Council”; and,
- That the resolution would take the Security Council out of its mandated jurisdiction of “dealing with matters that are a threat to international peace and security”.⁷

Then President Mbeki underscored this statement in an interview with the national broadcaster, affirming that,

“I am sure we will continue to insist ... that the Security Council functions in a manner within a framework that is defined by international law. It can't be the first one to break the law and put any matter on the agenda that it wishes.”⁸

In other words, in South Africa's and other IBSA countries' perception, multilateralism is often used as a means to achieve other goals, including geopolitical goals, such as building regional credibility and alliances. Emerging states thus prefer to limit their criticisms on human rights – and advice on procedural democracy – to their bilateral relations, while multilateral forums are utilized to make broader statements about the role of economic and social rights in the conception of human rights, and the importance of democracy more generally (Cooper & Farooq forthcoming). South Africa, for example, limited its advice to Zimbabwe to bilateral channels, during both Mbeki's presidency and his tenure as South Africa's special envoy to Zimbabwe, even going as far in 2008 as to vote against a resolution in the Security Council that would have placed an arms embargo on Zimbabwe, among other measures.

Resources for human rights in IBSA's cooperation projects

The research on the commitment of resources to the defence of human rights and democracy promotion by emerging states is in its early stages. Some observers have found that “[w]hile many of these countries stress national sovereignty and non-intervention

7 Permanent Mission of South Africa to the UN (2007) ‘Statement by Ambassador Dumisani Kumalo at the Security Council Meeting on the Situation in Myanmar’, 12 January. Available at: http://www.southafrica-newyork.net/pmun/view_speech.php?speech=8716955.

8 News24 (2007) ‘UN acted illegally – Mbeki’, 12 February. Available at: <http://www.news24.com/SouthAfrica/Politics/UN-acted-illegally-Mbeki-20070211>.

in their foreign policies, democratic emerging powers often incorporate state-building within their cooperation efforts. While these initiatives are not necessarily labelled as democracy promotion initiatives, they disseminate norms, technologies, and practices that are politically relevant” (Abdenur & De Souza Neto 2013: 19).

The IBSA Fund itself has only supported a handful of projects with potentially political undertones, including an adult (mainly women’s) literacy project in Guinea-Bissau, and the training of Presidential staff in Sierra Leone.⁹ Most of the other projects funded to date emphasize health, agriculture and sanitation.¹⁰ South Africa has repeatedly expressed a commitment to the promotion of participatory democracy through the frameworks of regional and continental institutions, such as the African Union, NEPAD and the Southern African Development Community, but official documents do not detail the government’s understanding of participatory democracy (see DIRCO 2015).

IBSA’s human rights defence during crises

During global crises, the IBSA states have shunned direct criticism on human rights issues, and have often sought to channel the debates on human rights in multilateral forums to those with the most diverse representation, preferring, for example, the UN Human Rights Council or General Assembly to the Security Council. Bilateral links are still preferred for frank discussions with counterparts.

The positions of the three states vary, however. While Brazil has often backed resolutions of the UN Human Rights Council condemning states that systematically abuse human rights, South Africa and India have shied away from such steps, depending on circumstances. In February 2011, furthermore, Brazil presented a proposal advocating the impartial investigation of all human rights violations by the UN Human Rights Council (Abdenur & De Souza Neto 2013: 21). India, meanwhile, has elected to abstain on resolutions that invoke the International Criminal Court (ICC), which it is not party to. South Africa, meanwhile, is a founding member of the ICC, having signed and ratified the Rome Statute on 17 July 1998.

Conclusion

This chapter, covering a broad spectrum, has shown that the promotion of human rights among the IBSA countries is not a straightforward matter. Not least because each of the individual IBSA states have their own preoccupations and foreign policy goals that

⁹ See the website of the United Nations Development Programme (UNDP) *IBSA Fund Website*. Available at: <http://tcdc2.undp.org/ibsa/>.

¹⁰ See the website of the United Nations Development Programme (UNDP) (2015) *IBSA Fund: 2015 Overview of Project Portfolio*. Available at: http://tcdc2.undp.org/IBSA/documents/UNDP_IBSA_Brochure.pdf.

determine their approaches to national and international development and the pursuit of South-South cooperation.

Nonetheless, South Africa shares with the other two countries, first, a preference for quiet diplomacy and negotiation over public criticism of other countries' human rights violations, stemming from a preoccupation with international peace and security over justice and accountability; and, second, a scepticism towards established multilateral institutions such as the UN Security Council as currently constituted, which are perceived as unrepresentative and hence illegitimate, to intervene in countries' human rights conflicts.

South-South cooperation, furthermore, is not to be confused with the promotion of human rights. While initial research indicates that IBSA's cooperation projects have hitherto predominantly focused on development and state-building, rather than democracy and human rights per se, there is still much that remains to be examined in the role of human rights in South-South cooperation.

As the global security context continues to pose challenges for established and emerging powers alike, IBSA states have their own regional contexts to contend with, militating against the taking of any hard positions on human rights within the borders of regional neighbours. IBSA itself has not met at Summit level for four years, so any assessments of its impact on human rights promotion globally should, in the meantime, be considered on a state by state basis. The leadership at the helm of IBSA will also be determinant of the types of initiatives the grouping conducts in the name of human rights. Under the leadership of Mbeki, Lula and Singh, IBSA was formed and initiated far-reaching proposals and projects, including the IBSA Fund and nuclear diplomacy in Iran. Under the current respective leaders, no new initiatives have been put forward for a number of years.

Human rights organizations and advocates can, however, still build constructive partnerships with the IBSA states towards technical assistance and capacity building for the strengthening and protection of human rights in specific contexts, rather than calling upon them to lead on human rights more broadly, or to be vocal on specific issues.

The role of human rights in South Africa-EU relations

Despite the convergence of values and the strategic partnership between the EU and South Africa, there is often a deep divide between the EU and South Africa on human rights in external relations. More engagement from civil society is needed in an effort to bridge the divide.

South Africa and the EU – Shared values and collaboration

South Africa and the EU clearly share values with regard to human rights, rule of law and democracy. For example, the Bill of Rights in the South African constitution and the EU Charter of Fundamental Rights provide for similar sets of rights. South Africa and EU member states have ratified most international human rights treaties.

The importance of the EU to South Africa and vice versa is clear from the important links between them, with the EU being South Africa's biggest trade partner. Trade relations were codified in the Trade, Development and Cooperation Agreement (TDCA) concluded in 1999, and in a strategic partnership concluded in 2007. South Africa is the only African country among the EU's 'strategic partners' (Bertelsmann-Scott 2012: 122). The Joint Action Plan of the Strategic Partnership notes the "common commitment to promoting an agenda of liberty, peace, security and stability in the world, and in Africa in particular".

The leaders of the EU and South Africa held annual summits from 2008 to 2013.² While there has not been any summit since 2013, lower level collaboration has continued "including on peace and security in the Political and Security Committee (PSC), on

1 The research leading to these results has received funding from the European Commission's Seventh Framework Programme (FP7/2007- 2013) under the grant agreement FRAME on Fostering Human Rights in EU's Internal and External Policies (project n° 320000). See for more information: www.fp7-frame.eu.

2 First EU-South Africa Summit, Bordeaux, France, 25 July 2008; second South Africa-European Union Summit, Kleinmond, South Africa, 11 September 2009; third South Africa-European Union Summit, Brussels, Belgium, 28 September 2010; fourth South Africa-European Union Summit, Kruger National Park, South Africa 15 September 2011; fifth EU-South Africa Summit, Brussels, 18 September 2012; sixth South Africa-European Union Summit, Pretoria, South Africa, 18 July 2013.

development cooperation and related cooperation in the Joint Consultative Council (JCC) [and] on trade in the Trade Consultative Committee (TCC)”³. There is also extensive collaboration between South Africa and individual EU member states.

The first formal human rights dialogue between the EU and South Africa was held in May 2013. The aim of the dialogue is “promotion, protection and fulfilment of human rights, democratic principles, rule of law, accountable governance and accountable electoral processes”⁴.

South Africa receives significant financial support from the EU. However, the EU’s Official Development Assistance (ODA) to South Africa is set to decrease over the coming years (European External Action Service 2015a):

“Following the EU’s 2011 ‘Agenda for Change’ refocusing funding on the world’s poorest countries, aid to South Africa will be reduced in 2014-20 to €241m (compared with €980m in 2007-13). The key sectors of cooperation are 1) employment creation; 2) education, training and innovation; 3) building a capable and developmental state. These key sectors reflect the key priorities as laid down in South Africa’s National Development Plan 2030.”

It should be noted that even before this reduction, ODA from the EU, though constituting 70 per cent of all ODA to South Africa, amounted only to around one per cent of South Africa’s budget (Masters 2014: 5). Despite the cuts, the communiqué of the 2013 South Africa-EU Summit notes planned support by the EU to the Department of Justice and Constitutional Development “to support initiatives on constitutional rights with particular focus on socio-economic rights in South Africa”⁵.

3 Van de Geer, R. (2014) ‘South Africa and the European Union: 1994-2014 – trends, developments and a perspective on the future’, lecture at the University of South Africa (UNISA), 31 October. Available at: <http://www.unisa.ac.za/news/wp-content/uploads/2014/11/SA-and-the-European-Union-final.pdf>.

4 Council of the European Union (2012) ‘Council conclusions on the establishment of a human rights dialogue with South Africa’, 3199th Foreign Affairs Council meeting, 19 November: 2. Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/foraff/133571.pdf.

5 SA-EU Strategic Partnership (2013) ‘Sixth South Africa-European Union Summit – Joint Communiqué’, 18 July: 9. Available at: http://eeas.europa.eu/delegations/south_africa/documents/press_corner/6th_eu-sa_summit_communique_en.pdf.

Synergies in views on human rights in South Africa and EU relations

The EU-South Africa human rights dialogue applies not only to the situation in South Africa and the EU but also entails “[p]ursuit of common approaches in multilateral fora, in particular around the promotion of the mandate of the United Nations Human Rights Council UNHRC” and “practical trilateral partnerships with third countries”.⁶

The EU clearly has an interest in collaborating with South Africa to promote human rights in third countries. As the European Commission noted in connection with the conclusion of the South Africa-EU Partnership (European Commission 2006):

“South Africa occupies a unique position on the international scene. On many occasions, it speaks on behalf of the emerging and the developing world. Its authority in international forums is remarkable and surpasses its economic weight. Although South Africa and the EU do not always take the same positions on international issues, they agree on many.”

South Africa, in turn, notes in its draft foreign policy white paper that it aims to ensure that European states remain engaged in Africa’s (economic) development, with a focus on providing development assistance, reforming the Common Agricultural Policy (CAP) and support the AU’s peace and security architecture (DIRCO 2011).

South Africa established an African Renaissance and International Cooperation Fund (ARF) in 2001 and is in the process of establishing a South African Development Partnership Agency (SADPC) (Masters 2014: 2). The strategic objectives of the ARF include promotion of democracy and good governance, support to socio-economic development and integration, humanitarian assistance and disaster relief, cooperation between South Africa and other countries, and post-conflict reconstruction and development (DIRCO 2014: 13). Interventions have included “programmes for civil servants from countries such as Burundi, the DRC, Rwanda, and South Sudan” (Masters 2014: 4).

As Masters points out (2014: 6), the focus on Africa – including peacemaking, peacekeeping and socio-economic development – is an “important point of convergence” between South Africa and the EU. However, the Joint Country Strategy Paper 2007-2013 makes very little reference to partnership in relation to the rest of the African continent (Masters 2014: 5).

6 Council of the European Union (2012) ‘Council conclusions on the establishment of a human rights dialogue with South Africa’, 3199th Foreign Affairs Council meeting, 19 November: 2. Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/foraff/133571.pdf.

The communiqué of the sixth South Africa-European Union summit, in 2013, in contrast, notes discussion on peace and security with regard to Zimbabwe, Mali, Madagascar, Somalia, DRC and Egypt and also outside Africa (Syria, Iran, Middle East peace process). The communiqué also takes note of cooperation in relation to maritime security in West Africa and the Horn of Africa. Since the discussions are confidential it is difficult to assess the results of the dialogue. However, there is evidence of some cooperation, for example with regard to Mali (Graham 2015: 86). Perhaps the greatest difference of opinion between South Africa and the EU has been with regard to Zimbabwe; the EU and South Africa clearly have different approaches, and South Africa has called for the EU to end its sanctions (European Union 2010).

The 2013 communiqué of the South Africa-EU Summit notes that:

“We believe that our Human Rights Dialogue which was formally launched in Pretoria on 27 May 2013, will pave the way for enhanced cooperation on human rights both bilaterally and at the international level. It represents a unique opportunity to establish synergies for further dialogue and cooperation on issues of common concern.”⁷

The Modalities of the EU-South Africa human rights dialogues highlights the following issues as benchmarks for EU-South Africa human rights cooperation⁸:

- (i) Fighting racism, racial discrimination, xenophobia and related intolerance;
- (ii) Cooperation regarding the ICC;
- (iii) Promoting non-discrimination based on sexual orientation and gender identity;
- (iv) Supporting freedom of press/access to information;
- (v) Working towards prevention of gender-based violence;
- (vi) Enhancing protection and promotion of the rights of children;
- (vii) Working on country resolutions;
- (viii) Progressive realization of the economic, social and cultural rights (right to development; human rights approach to the attainment of the Millennium Development Goals (MDGs) and responsibilities of transnational corporations (TNCs) and other business enterprises with respect to human rights);

7 SA-EU Strategic Partnership (2013) ‘Sixth South Africa-European Union Summit – Joint Communiqué’, 18 July: 9. Available at: http://eeas.europa.eu/delegations/south_africa/documents/press_corner/6th_eu-sa_summit_communique_en.pdf.

8 Council of the European Union (2012) ‘Council conclusions on the establishment of a human rights dialogue with South Africa’, 3199th Foreign Affairs Council meeting, 19 November: 4. Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/foraff/133571.pdf.

- (ix) Cooperation on human rights aspects of international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies (PMSCs), including reflection on the mandate of the open intergovernmental working group, and
- (x) Implementation of paragraph 5 of the Vienna Declaration and Programme of Action (VDPA).

Some of these issues clearly come from EU's human rights priorities as for example set out in the EU human rights guidelines. Others, such as the last three on the list dealing with socio-economic rights, corporate accountability, regulation of PMSCs and implementation of paragraph 5 of the VDPA clearly fall within South African priorities.

There is little controversy between the EU and South Africa on some of the issues above, for example the protection and promotion of the rights of children and measures against gender-based violence. However, some other issues are increasingly controversial and straining the relations between the EU and South Africa, as will be discussed below.

Divergent views on human rights in South Africa-EU relations

While South Africa was one of the early signatories of the Statute of the International Criminal Court, relations have recently soured. In June 2015 the EU called on South Africa to execute “the arrest warrant against any ICC indictee present in the country” (European External Action Service 2015b). This was clearly in response to President al-Bashir of Sudan being in South Africa for the Summit of the African Union (see Jeremy Sarkin’s essay for more details). The outfall over his visit led the ruling party, the ANC, to call for a South African withdrawal from the ICC. The discussion documents for the 2015 ANC National General Council (ANC 2015: 175) states:

“Continuing to be in the ICC especially when the big powers who are calling the shots are themselves not members, gives it the legitimacy it does not deserve. The West dominates the ICC through the influence they command within its structures and the huge financial contributions they make to its budget. In return they use the ICC as their tool for regime change in Africa.”

However, it should be noted that South Africa has played a part in preventing widespread African withdrawal from the ICC in recent years and there is still support for the ICC from some parts of government (Hunter 2015).

Other controversies between South Africa and the EU have played out in the UN system and relate to South Africa's sometimes controversial stance on human rights (from the perspective of the EU and many human rights NGOs) as a member of the Security Council (2007-2008, 2011-2012) and the Human Rights Council (2006-2010, 2014-present) (see also the essay of Eduard Jordaan in this volume).

The issue of country-specific resolutions by the UN Human Rights Council and Security Council in relation to human rights violations see a clear difference in approach between South Africa and the EU. Dam (2015) notes with regard to the UN Human Rights Council:

“South Africa’s reluctance to engage with country resolutions appears to have now become entrenched. South Africa contends that it does not wish to be involved in the Council’s work on country situations because these are politicized and divisive. In contrast with steps it takes on the African continent, it appears not to see relevance in using the Human Rights Council to address critical human rights situations. Nor does South Africa accept any leadership role in tackling crises in the region in which it is directly involved, such as in the Democratic Republic of Congo or in South Sudan. This stance could be justified if South Africa worked actively to address situations of serious violations in other ways that it deemed more effective. Instead, however, South Africa has simply not engaged in this important part of the HRC’s mandate, raising serious questions about its fulfilment of its responsibilities as a council member. In addition, South Africa’s support for all resolutions on Palestine, reflects its own double standards, given its systematic abstentions on all other situations.”

EU member states, in contrast, are at the forefront of calling for country specific resolutions to address serious human rights violations (HRW 2014a).

There has also been controversy around thematic resolutions of the Human Rights Council (Maphasa 2015). In March 2014, South Africa teamed up with Russia, Ethiopia, Saudi Arabia, Egypt and China to weaken a resolution on peaceful assembly (HRW 2015). This is particularly concerning in light of police violence in South Africa as exemplified by the Marikana massacre where over thirty striking miners were killed in August 2012.

In contrast, with regard to sexual orientation and gender identity South Africa has been the EU's only ally in Africa. South Africa introduced the first UN resolution on sexual orientation and gender identity, adopted by the Human Rights Council in 2011 (ARC 2011). Other African states are clearly opposed to LGBTI rights and South Africa has more recently taken a less active stance but still voted in favour of the 2014 Human Rights

Council resolution on the same topic (Maphasa 2015). However, concern has been expressed over South Africa's support for a 2014 Human Rights Council resolution on 'protection of the family' which could be viewed as retrogressive with regard to LGBTI rights (HRW 2015).

With regard to business and human rights (see also the essay of Josua Loots in this volume), South Africa is one of the states taking the lead in developing a binding treaty, with the EU preferring the development of an implementation framework for the (non-binding) Ruggie Principles. With regard to private military and security companies South Africa supports the elaboration of an international regulatory framework for such companies, with EU member states voting against a resolution on the topic.⁹ In both instances there is a clear divide between the global South and the global North.

Conclusion

The rhetorical agreement between the EU and South Africa in relation to foreign policy and human rights is not reflected in reality. Despite some laudable initiatives many within the EU have come to see South Africa as hindering rather than promoting protection of human rights at the UN. Conversely, South Africa is viewing the EU as being mostly interested in preserving its economic might and protecting the interests of its corporations. It is clear that South Africa has taken a retrogressive stance on many situations. However, it is also clear that the EU lacks interest in pursuing new normative instruments, in particular on issues of interest to the global South such as business and human rights and regulation of private military and security companies where there are strong interests within the Union that benefit from the status quo.

With regard to Africa there is rhetorical agreement between the EU and South Africa on the need for a peaceful and prosperous Africa, but some disagreement on how this laudable goal should be reached, and limited concrete collaboration.

South Africa is deeply committed to promote issues that it believes are in the interest of the global South. These interests should promote the founding values of the republic, such as human rights. Similarly, the EU has an obligation under the Lisbon treaty to

9 United Nations Human Rights Council (UNHRC) (2015) 'Renewal of the mandate of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies: resolution adopted by the Human Rights Council', UN doc: A/HRC/RES/28/7, 8 April. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/072/53/PDF/G1507253.pdf?OpenElement>.

promote human rights in its external policies. Considering the shared values there should be more opportunity for cooperation. This would require more engagement from both sides with the aim of finding common ground. Civil society in both the EU and South Africa has an important role in engaging both sides in taking human rights seriously.

Josua Loots

Foreign policy, business and human rights – the South African perspective

South Africa currently finds itself in a paradoxical position. It has over the past two decades received significant support from the global North, both economically and in terms of norms development, yet it is gradually shifting its focus to improve international relations with the global South and Far East, while being openly critical of the global North. In the midst of a polarized debate around business and human rights at the international level, South Africa has asserted itself as a key role player in and voice of the global South on this matter.

Introduction

The regulation of the human rights performance by business, domestically as well as abroad, relies almost entirely on the domestic legal frameworks of the home and host states. Therefore, in order to regulate the potential adverse effects of South African business operating abroad, clear foreign policy on the matter could not only be very helpful, but the determining factor in a situation where corporate human rights abuse comes to the surface.

South Africa's official foreign policy commitments (DIRCO 2011) are more general in nature, and do not address this issue directly. Nonetheless, inferences can be made based on actions within the country in circumstances where business operations and human rights concerns coincide, as well as positions that the country has taken up in multilateral organizations and platforms. This essay attempts to highlight the role that geopolitics have played in South Africa's foreign policy over recent years, several key events that sparked South Africa's interest in and position on business and human rights at international forums, as well as the future roles that civil society and the South African government can play as a promoter and defender of human rights in the context of business.

South Africa's 'global South' agenda

South Africa has committed itself to be a champion for the interests of the global South, especially those that are less developed than it (DIRCO 2011). However, the importance of

healthy bilateral relations with the more developed world is also highlighted in South Africa's foreign policy, as it sees this as being crucial in enabling it to represent and push the interests of the global South at bilateral and multilateral forums. Modern-age diplomacy is inextricably linked to economic relations, and is heavily influenced by trade and investment. As the discussions around business and human rights have mainly been polarized between states from the global North and those from the global South, it is imperative that South Africa maintains a balance between having good relationships with parties from both ends – in order for it to retain the benefits of having good trading relations with the global North, as well as being taken seriously when raising the human rights concerns of the global South. With the debate around the regulation of the human rights performance by business intensifying, South Africa is finding itself in an increasingly complicated position in terms of diplomatic relations.

The links between South Africa's trade and investment relationships, development strategies, and its foreign policy are evident from the discourse over the past few years. In addition to the leadership role that South Africa is attempting to play at the multilateral diplomacy level, it is also seen as an important economic role player in Africa, having ties with several countries from both ends of the development spectrum. To many, South Africa is perceived as the economic gateway to Africa, with numerous multinational companies situating their regional headquarters in the country based on relatively stable and well developed infrastructure, and good accessibility (Luiz & Radebe 2012). South Africa's foreign policy is squarely based on the socio-economic development of the African continent as a whole, and continuously speaks of the multiple forums on which it serves as being potential springboards for the economic growth and development that is needed in the region.

Developing a foreign policy position on a specific issue such as business and human rights is challenging, and involves various ministries and departments. Though it falls on the shoulders of the Department of International Relations and Cooperation (DIRCO) to drive the process, the multi-agency nature that is required to develop foreign policy on cross-cutting issues is often overlooked and greatly underestimated in terms of importance and value. Issues such as labour, development, finance and pollution must be taken into account when developing a foreign policy on business and human rights, hence the need to involve the relevant government departments and ministries. Not only is inter-agency communication and cooperation crucial in this regard, but also communication and cooperation with external stakeholders and constituencies. The South African Department of Trade and Industry (DTI), in cooperation with DIRCO, sets the agenda on foreign direct investment and the operation of South African companies abroad.

South Africa has several influential lobby groups, some of which focus on specific industries (including manufacturing, energy, mining and agriculture) and others focusing on bilateral state relations, which all strategically use parliamentary processes or the media to make their positions known to DTI and DIRCO, and the South African public at large. After a recent scathing article on South Africa's incoherent and detrimental foreign policy (The Economist 2015), South Africa's Deputy President Cyril Ramaphosa attempted to defend the foreign policy of the ruling party in parliament (Davis 2015). The Deputy President made it clear that South Africa intends to strengthen trade relations with countries such as China and Japan as part of "the best foreign policy this country has ever had" (Davis 2015). While DTI and DIRCO probably take the considerations of business lobby groups and trade unions (which have been key political players since the 1950s) into account, very little is reported on in terms of these departments' reactions to human rights interest groups.

South Africa is aware that it is a key player in the 'global South vs global North' debate, and seems to hold the position that criticism of the global North would automatically guarantee its status as protector of the interests of the global South. While South Africa is part of several trade agreements with the United States and the European Union (including the Economic Partnership Agreement), and benefits from arrangements such as the African Growth and Opportunity Act and Generalized System Preferences,¹ a recent policy discussion document emanating from within the ruling party ANC blatantly uses phrases like "the wrath of US-led Western imperialism" and "Washington's sponsored destabilisation" (ANC 2015). It is difficult to assess whether this sentiment is derived from South Africa's commitment to champion the interest of underdeveloped or lesser-developed countries in Africa, which are perceived to be victims of neo-colonialism or economic oppression from more developed countries, or from a more fundamental need to prove itself as an authority and committed member of the regional bloc.

The increasing display of South Africa's resentment towards the global North at international forums (Fabricius 2015) has already impacted on its economic ties with key trading partners. In 2007 a number of Italian investors filed a case against South Africa under the ICSID Additional Facility Rules,² arguing that the entry into force of the Mineral and

1 Vickers, B. (2014) 'South Africa's Trade Policy and Strategy Framework', Presentation to the Select Committee on Trade and International Relations by Dr. Brendan Vickers Chief Director: Research and Policy International Trade and Economic Development (ITED), 30 July. Available at: <http://www.thedti.gov.za/parliament/TPSF.pdf>.

2 The International Centre for Settlement of Investment Disputes (ICSID) provides facilities for conciliation and arbitration of investment disputes between contracting states and nationals of other contracting states, where a 'contracting state' refers to a state for which the Convention on the Settlement of Investment Disputes between States and Nationals of Other States has entered into force.

Petroleum Resources Development Act in South Africa effectively expropriated the investors' mineral rights.³ The dispute was settled, but it prompted South Africa to cancel several of its bilateral investment treaties (BITs) with significant foreign investors from the global North such as Switzerland, the Netherlands, Spain and Germany, while intensifying its trade relations with BRICS states, and most notably the People's Republic of China.

Key business and human rights events in South Africa

It is against this backdrop that one should look at the domestic events that acted as a catalyst for South Africa's engagement on business and human rights at the international level, as it also helps to understand the position that South Africa has taken over recent years. South Africa has attempted to provide a framework within which companies could be held accountable for human rights violations at the domestic level. In fact, South Africa is considered to have relatively well-advanced and progressive jurisprudence on corporate accountability with respect to human rights violations (International Commission of Jurists 2010). This reputation could be credited to one of the world's most progressive constitutions, and its vertical and horizontal implications in terms of rights protection.

Nonetheless, a few key events transpired that brought the regulation of the human rights performance by business (especially when using a broad interpretation that includes social and environmental performance) to the attention of the South African government, and the broader public. South Africa is home to the world's fifth largest mining sector in terms of Gross Domestic Product (GDP). It therefore comes as no surprise that most of the local developments around business and human rights took place in the mining sector.

In 2012, after protracted labour disputes and growing awareness around the living conditions of mineworkers in the platinum sector of South Africa, conflict between striking mineworkers and security forces broke out in Marikana that ultimately led to the death of 44 people. The government created the Marikana Commission of Inquiry to investigate matters of public, national and international concern that arose from the tragic incident, and the Commission concluded its investigation in early 2015. The Marikana incident caused a major ripple effect in the country that led to protracted industry-wide protests, raised public awareness about the social implications of business, and played an instrumental role in the creation of what is now the second largest opposition party in South

3 See Norton Rose Fulbright (2014) *Bilateral Investment Treaties in South Africa*. Available at: <http://www.nortonrosefulbright.com/knowledge/publications/118456/bilateral-investment-treaties-in-south-africa>.

Africa, the Economic Freedom Fighters. In 2013, mining giant Anglo American settled (for an undisclosed amount) a case with a group of miners that was brought against the company for a violation of their right to health, in what has been coined as the ‘silicosis case’ by the media. Since then, and in part as a result of the nexus between the industry and political powers, the role of business in rights realization (and by extension the regulation thereof) has found its way into many political discussions and strategies employed by the ruling ANC party.

The operations of South African business abroad are mainly regulated by the domestic legislative framework of the host state, with some exceptions. The South African legal landscape provides for some aspects of regulation abroad in terms of competition law, anti-bribery and corruption, intellectual property law, and the protection of personal information – all of which could potentially impact on human rights.⁴

In addition to the challenges that are coupled with jurisdictional provisions and *forum non conveniens* powers, transnational business activities are often regulated under BITs. South Africa is currently working on a new investment bill, which would essentially replace previously terminated BITs (Ensor 2015). While the bill will most likely play a key role on the regulation of foreign direct investment, as well as South African business abroad, it is still too early to assess its true potential or impact as it is currently (November 2015) being debated in parliament. However, as stated before, South Africa does not have a dedicated codified foreign policy position on business and human rights, and in the meantime the regulation of business activities, especially in light of human rights, falls on multilateral organizations and the international community to deliberate and clarify.

To bind, or not to bind...

Bearing in mind South Africa’s commitments to represent and advocate for the interests of the global South, its continuous efforts to play a role of leadership in Africa, the gradual shift of trade focus from the West to the East, and recent events that transpired in the private sector domestically, it makes sense that the realm of business and human rights would be an appropriate space for South Africa to assert itself. Discussions around business and human rights at international forums have only really gained momentum over the past few years, and although the UN Guiding Principles (UNGPs) on Business and Human Rights have been around since 2011, South Africa made its foreign policy on the issue clear by putting its efforts into a process that aims for something more binding in 2014.

⁴ See Webber Wentzel (2015) *Investing in South Africa: Charting the legal landscape*. Available at: <http://www.investinginsouthafrica.co.za/>.

Together with Ecuador, South Africa is playing a leading role in the deliberations of and process around a potentially binding instrument on business and human rights at the UN level. The first meeting of the Intergovernmental Working Group (IGWG) on Transnational Corporations and other Business Enterprises with respect to human rights took place in July 2015, and South Africa participated actively in all the discussions at the meeting.

The treaty debate is still in its infancy, and very little substance has been discussed at this point. There are speculations around the potential shape that such a treaty could take, but no active role player has taken a stance on the substance – including South Africa. While it is not clear what (exactly) serves as South Africa's motivation to play such a key role in the process, one can only assume that the elements elaborated on in previous paragraphs collectively play a role in forming South Africa's position. Discussions around the treaty have been dominated by issues such as 'the contentious footnote' contained in United Nations Human Rights Council (UNHRC) Resolution 26/9,⁵ which limits the scope of the future treaty to business with a transnational character.

Nonetheless, it is clear that South Africa is part of a group of states that is pushing for a more direct form of responsibility for business under international human rights law. While the recurring support for the footnote would undoubtedly have a major impact on the regulation of companies based in the global North, it should be noted that South Africa would be one of the African states affected most, as it is also a home to numerous multinational business operations.

Developments in the field of business and human rights at the UN level have not, however, come without a fair amount of resistance by and polarization between states. Though the issue was addressed in some respect at the IGWG meeting in July 2015, support for or resistance against a more binding approach to the regulation of human rights performance by business can generally be divided along developed and developing states – with the majority of developing countries being in favour of a more binding approach, thus in support of the treaty process, and the majority of developed states being against the new approach and throwing their support behind the existing UNGPs.

Once again, and perhaps even more notably than in instances relating to other areas of human rights, South Africa is siding with representatives from developing countries in support of the treaty and critical of the UNGPs. Many commentators have spoken out,

5 United Nations Human Rights Council (UNHRC) (2014) 'Resolution: Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights', UN doc: A/HRC/RES/26/9, 14 July. Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/9.

highlighting the fact that the two processes and potential instruments are not antithetical at all, as the UN Guiding Principles focus on existing domestic legal obligations of states and do not attempt to create (or prevent the creation of) new international legal obligations. This position was affirmed during the IGWG meeting.

The role of civil society

The lack of a codified foreign policy on business and human rights notwithstanding, it currently plays a central role in South Africa's foreign policy, and specifically its engagement at the UN. It is thus no surprise that business and human rights is also increasingly attracting attention from civil society on the ground, in addition to being the focus area of the South African Human Rights Commission in 2014 and 2015.

The Ibrahim Index for African Governance, which includes annual ranking of African countries on their participation and human rights⁶ records, found that South Africa had among the best participation scores on the continent in 2014, including a vibrant civil society.⁷ Civil society played a key role in assisting victims of corporate human rights abuses in the past, and regularly brings human rights issues in the private sector to the public attention – in fact, it was a civil society organization that worked on the previously mentioned silicosis case for several years.

Compared to those from other African countries, South African civil society is also relatively well represented at UNHRC sessions, and was an active participant at the sessions that focused on business and human rights. In addition to playing a role that includes the monitoring and evaluation of business' human rights performance, and the government's regulation thereof, civil society is increasingly playing a role in the development of foreign policy more broadly, with DIRCO institutionalizing briefing and debriefing sessions with civil society leading up to and after UNHRC sessions (see Susan Wilding's essay in this volume for more details on civil society's role in foreign policy formation).

In 2011 the South African government embarked on a journey of 'democratizing its foreign policy', culminating in the creation of a new platform called the South African Council on International Relations (SACOIR). SACOIR was created to foster engagement between

6 The 'participation and human rights' category, as used in the Ibrahim Index for African Governance, captures the relationship between government and citizen, and measures the extent to which individuals (including through civil society) can participate in the political process. It also takes into account the state's achievement in guaranteeing the political and social rights of all citizens.

7 See the Mo Ibrahim Foundation (2014) *Ibrahim Index of African Governance (IIAG)*, an annual statistical assessment of the quality of governance in every African country. Available at: <http://www.moibrahimfoundation.org/iiag/>.

government and a broad range of non-state actors that include civil society, academia, business, and labour in an attempt to give effect to the foreign policy priorities set out in chapter 7 of the National Development Plan (Presidency of South Africa 2012).

DIRCO also recently presented its ‘public diplomacy’ strategy, which focuses on the communication of South Africa’s foreign policy, its priorities and objectives, through direct and indirect communication strategies that are inclusive, transparent and consistent with a focus on local and international audiences.⁸ While the role that members of SACOIR could potentially play in the discourse around business and human rights is yet to be determined, it is clear that it could serve as an additional platform in the evaluation and reforming of both domestic and foreign policies on the issue.

Paving the way forward

At the advent of democracy, South Africa committed itself to a foreign policy guided by human rights. We have seen South Africa take positions in support of human rights in the face of adversity, most notably perhaps around LGBTI issues in Africa. Despite its commitments to pan-Africanism and African solidarity, South Africa has time and again supported LGBTI rights at international forums while being heavily criticized by other African states (Fabricius 2014a).

South Africa’s motivations and intentions around business and human rights at the UN are still unclear, but it would be unfair to say that the push for the direct regulation of human rights performance by transnational business is purely an act of global South solidarity; an act that does not have the best interests of people suffering from corporate human rights abuse at heart. In a world where domestic mechanisms are clearly not working as well as they should to mitigate and prevent the human rights impacts of business, South Africa’s interest in and position on the matter is a promising step in the right direction. However, it would be encouraging to see South Africa work closer with civil society and academia in an attempt to define the focus and scope of its endeavours at international forums in such a way that the victims of corporate human rights abuse have access to remedy, regardless of where business is domiciled.

Looking at recent negotiations around trade and investment agreements and the ongoing process to draft a new investment bill, one gets the impression that South Africa is reinventing its international identity in a way that attempts to link its economic interests very

⁸ Parliamentary Monitoring Group (2015) ‘Diplomacy strategy & functioning of SA Council on international relations: DIRCO input’, 18 February. Available at: <https://pmg.org.za/committee-meeting/20001/>.

closely with other national interests, while pushing heavily for a pan-African agenda. Official documents and statements clearly show that South Africa supports reform of the multilateral architecture, specifically the UN Security Council, and suggests fighting neo-colonialism. Increased monitoring and regulation of transnational business may be one of South Africa's strategies, but one cannot help but wonder whether this will really change the situation for victims of corporate human rights abuse on the ground, or even serve the best interest of people in Africa. Improved communications between government, business, and civil society is encouraging, but multi-agency cooperation between different ministries and departments is essential in the formulation of foreign policy on business and human rights. Together with multi-stakeholder initiatives like SACOIR, DIRCO is faced with a unique opportunity to formulate its foreign policy in a way that creates an environment conducive for the thriving of multinational business in a manner that is respectful of human rights, while meaningfully contributing to the development of Africa as a whole.

Bright Nkrumah and Dan Kuwali

South Africa's regional human rights policy and diplomacy: progress, problems and prospects

Following the collapse of the apartheid regime, the democratic South African government has successfully reintegrated itself into African regional affairs by playing a prominent role as a mediator, peacekeeper and peacebuilder on the continent. But the country's peacekeeping and peacebuilding policy is riddled with tension between idealistic values and economic constraints. Economic interests and socioeconomic conditions constrain South Africa's human rights leadership role in the region.

Introduction

The apartheid regime (1948-1994) in South Africa was characterized by a repressive system that adopted an antagonistic approach towards its neighbours and countries on the continent and beyond. The post-apartheid South Africa has embarked on an ambitious project to reform its terms of partnership with the countries in the region (Ngwenya 2013: 153). The country emerged from apartheid as an economic giant with its economy approximately three times larger than the other countries in the southern African region put together. After being voted into power in 1994, the African National Congress (ANC) government made several pronouncements asserting the new democratic regime's commitment to make human rights and good governance a major priority in its partnership with other countries on the continent.

The country's foreign policy towards Africa, therefore, underwent a radical transformation. Pretoria's foreign policy became more African centred by perceiving Africa not in terms of a 'threat to its security' but rather "as a community in which it endeavours to play a leading role to secure peace and security" (Monyae 2013: 140). As a result, Pretoria has emerged as a 'mouth of the South' and key player that drives the thinking and shapes decisions in the continental institutions. As the mouth of the South, South Africa has championed the values of democracy, human rights, poverty eradication and under-development not only in the Southern African Development Community (SADC) region but also in Africa as a whole. Consequently, a substantial amount of fiscal and human resources have been invested towards the reconstruction of fundamental institutions, which holds the key of enhancing development and human rights. Yet, the country's

contemporary responses on key human rights issues such as the recent failure of President Jacob Zuma's administration to arrest Omar al-Bashir, the Sudanese President accused of genocide, crimes against humanity and war crimes by the International Criminal Court (ICC), and South Africa's poor mediation response to the political quagmire in Zimbabwe and the Ivorian crisis, have raised concerns as to whether human rights considerations matter in South Africa's engagement with other African states.

Historical background

There has been a fundamental transformation in Pretoria's international relations and diplomacy from its previously aggressive and pariah posture to an ethical foreign policy that is meant, on the one hand, to transform the country into a democratic and human rights friendly regime, and on the other, to establish the country as a model African citizen (Marthoz 2012). In a clear break with the past, Nelson Mandela (1993: 88) intimated that "[h]uman rights will be the light that guides [the country's] foreign affairs". Mandela (1993: 89) further asserted that "South Africa cannot escape its African destiny. If we do not devote our energies to this continent, we too could fall victim to the forces that have brought ruin to its various parts." This philosophy, which Mandela espoused few months prior to becoming the country's first democratically elected president, influenced South African relations with African countries throughout his seven year term of office.

Due to its brutal colonial-apartheid history, and peaceful transfer of power to the ANC, South Africa possessed a deep understanding and experience in conflict resolution, peacekeeping, peacebuilding and peacemaking. Consequently, following this experience, the country has integrated some of its ideals in its foreign policy, thereby earning the reputation as a peacemaker, especially in the SADC region and on the continent. As an emerging middle power, Pretoria for more than a decade (1994-2008) adopted a reformist and pragmatic stance on peacekeeping and peacebuilding issues in its foreign policy. Yet, this agenda has not been consistent or adhered to over time. As the interests of domestic actors and decision-makers changed over time from Mandela to Mbeki and to Zuma, so has the ANC's engagement with the region evolved. To understand South Africa's contributions in regional peacekeeping, a brief detour into the peacekeeping attempts of the three ANC leaders is required.

Mandela and regional peacekeeping

In a clear departure from Pretoria's past aggressive and antagonistic relationship in the region, from the first years of Nelson Mandela's regime, the new South Africa has been interested in playing an influential role towards its neighbouring African states as a

mediator, peacekeeper and peacebuilder. Indeed, although the country's military wing was (and still is) well equipped and seemingly one of the best in the region, Mandela adopted contact and dialogue (negotiations) as his *modus operandi* for peaceful settlement of international disputes. A prime example at the continental level was in Libya, where Mandela and his representative Jakes Gerwel successfully persuaded Libyan President Muammar Gaddafi to surrender the suspects in the Lockerbie airline crash, to be tried in a Scottish court in the Netherlands, in return for relaxing economic sanctions (SAFPI 2012).

Mbeki's regional peace operations

Thabo Mbeki's approach towards contributing to peacekeeping and peacebuilding in the region was shifted from the unilateralist posture of the Mandela era to multilateralism. It was against this backdrop that Peter Kagwanja (2006: 159) intimated that indeed "Thabo Mbeki foreswore the unilateralism of the past and adopted a new multilateral strategy, guided by his precept of 'African Renaissance' ... which has made remarkable strides in promoting peace". In order to effectively address humanitarian crises, in 2001 Pretoria established the African Renaissance and International Co-operation Fund to enable the government to identify and fund humanitarian assistance, democracy and peacebuilding in African states (DIRCO 2013-2014). The fund has provided a leverage for Pretoria to be actively involved in relatively unstable regimes in Africa. However, as a party to the Rome Statute of the ICC, in 2008 Mbeki's government overtly opposed the indictment of Sudanese President al-Bashir by the ICC Prosecutor for crimes against humanity and war crimes. It is, therefore, clear that even at the risk of its international reputation in terms of humanitarian obligation, Pretoria displayed a desire to appease a fellow African brother like al-Bashir (see also the essay of Jeremy Sarkin in this volume).

Zuma's peace support operations

The inauguration of Jacob Zuma as the third President of post-apartheid South Africa in 2009 came with a lot of optimism that the human rights stance adopted under the previous regimes in Africa's policy would be maintained and possibly reinforced. At the 10th Anniversary of South African Peacekeeping in Africa, President Zuma asserted that South Africa "cannot survive in isolation, as its economic development and security is linked to the continent's stability ... When it brings about peace in the continent ... creates an environment that is conducive to reconstruction and development in our region, and possibilities of faster economic development".¹ Yet, although the Zuma administration

1 Zuma, J. (2009) *SANDF celebrates 10th anniversary of South African peacekeeping in Africa*. Cited from Nibishaka (2011): 2.

has attempted to continue with the operationalization of the South African Army Vision 2020,² the regime's peace operations are riddled with several internal constraints akin to what plagued the army in the Mandela and Mbeki eras (Nibishaka 2011: 4). Lindiwe Sisulu, the Minister of Defence and Military Veterans, in 2009 muted that Pretoria's regional military hegemony is threatened by the lack of contemporary intervention policy documents, the outflow of experienced personnel and deteriorating infrastructure (Esterhuysen 2010: 17). Therefore, in light of the fact that the duration within which the army is expected to transform is fast running out, one may conclude that the Army Vision 2020 looks increasingly like a pipe dream.

Problems of Pretoria's human rights policy in Africa

The lofty ideal of Mandela that "human rights will be the light that guides [South Africa's] foreign policy" has not been completely realized. Pretoria's human rights foreign policy on the continent has been fraught with the ANC's economic interests which often override human rights concerns. For instance, despite the questionable human rights record of some African states (including Zimbabwe, DRC, Congo, Gabon, Sudan and Uganda), South Africa still engages in arms sales with them (Wezeman 2011). This is due to the fact that in the apartheid era, the ANC was supported in exile by many regimes which have subsequently turned repressive; and the former has refrained from biting the finger that fed it. The ANC government has remained passive or soft on autocratic regimes which played a role in its liberation struggle. Even more so, in light of the principle of national sovereignty and territorial integrity which is jealously guarded under the AU Constitutive Act, South Africa has arguably refrained from interventions which might be envisaged by other AU states as overly interfering in the internal matters of its neighbours.

Further, Pretoria's commitment to human rights in Africa, specifically in areas of conflict prevention and resolution has not all been rosy. For example, South Africa's mediation attempts to convince the governments of Angola, DRC and Mozambique to resolve their respective civil wars through negotiated settlements in the early 2000s, failed to yield any positive dividends (Van Nieuwkerk 2013: 90). Then again, as the 2004 political crisis in the Ivory Coast worsened, the then President Mbeki, who was appointed as the AU lead mediator, managed to save the country from the brink of mass atrocities. Mbeki's negotiation record was, nonetheless, saddled with several constraints which brought his mediation role to an untimely termination. A key constraint was his overt bias towards the then President Laurent Gbagbo. His soft spot for the Ivorian president during 2005 Pretoria

2 Adopted in 2006, this strategic document is an attempt by the ANC regime to transform the SANDF into an effective, professional, well trained and well equipped force ready for quick deployment.

talks ultimately triggered accusations from key figures in the AU and United Nations (UN) that the mediation attempts lacked the requisite impartiality they deserved. Therefore, with an additional growing suspicion that Pretoria's real motive for this bias is for economic gains, the other Ivorian opposition political leaders instigated the rejection of the talks spearheaded by Mbeki.

Moreover, following the 2008 elections in Zimbabwe which were marked with intimidation and violence, initial efforts by Pretoria to influence the two parties – the Movement for Democratic Change (MDC) and the Zimbabwe African National Union – Patriotic Front (ZANU-PF) – to agree on a power-sharing structure indicated little success. South Africa's leadership role in the negotiation was even more opposed by the MDC as Mbeki was considered by the opposition as being pro-ZANU-PF. Indeed, due to economic interests, South Africa displaced democracy and human rights considerations and conspicuously allowed Mugabe to retain his presidency (Van Nieuwkerk 2013: 91). This assertion was later affirmed by Ayanda Ntsaluba, then Director-General of the Ministry of Foreign Affairs, when he affirmed that “linked to our own national interest, that we would do everything possible to ensure we speed up the process of the Zimbabwean economy regaining its place because it is an important trading partner for South Africa and an economically viable and vibrant Zimbabwe is in the best interests of South Africa” (quoted in SALO 2009: 26).

Further, regarding Pretoria's pursuance of corporate interest vis-à-vis human rights in the case of Sudan, Laurie Nathan (2010: 9) adds that the most prominent reason for South Africa's silence on Sudan's human rights abuses is the commercial importance of Sudan to Pretoria, which has resulted in the signing of “an agreement to co-operate on oil exploration” and “exclusive oil concession rights in a designated area” for South Africa.

Further, the triumph of economic interest over human rights considerations in South Africa's foreign policy is clearly evidenced in its acceptance of the invitation extended to it by China in late 2010 join the BRIC (Brazil, Russia, India and China) (Wasserman 2012). Although the expanded trade with China and Russia provides a platform for South Africa to develop its market, the controversial human rights record of the first two states pose a bad example for the latter.

Domestic constraints on regional Peace Support Operations

In light of past and ongoing peacekeeping records or operations conducted, several issues have been raised both at home and abroad regarding the competencies of Pretoria's security cluster to effectively contain humanitarian crises. Some concerns have

particularly been raised with respect to the lack of discipline, improper composition of the force, ineffective artilleries, poor management and inadequate fiscal and human resources (Nibishaka 2011: 7). It was against this backdrop that in 2014 South Africa's Department of International Relations and Cooperation revised the 1998 *White Paper on South Africa's Participation in International Peace Missions* (DIRCO 1998). The Parliamentary Monitoring Group reaffirms South Africa's foreign policy objectives, which are grounded on "[p]rioritization of the interests of the African continent" and "[p]romotion of human rights and democracy" in Africa.³ These objectives indeed are in accordance with Pretoria's initial foreign policy towards Africa and the region.

Nonetheless, irrespective of the promising nature of the revised White Paper which guides Pretoria's foreign policy, several domestic factors militate against the successful operationalization of ANC government's engagement with Africa. Specifically, the prevalent and deplorable socioeconomic conditions in the country have greatly limited the role of Pretoria on the international arena. For instance, the present socioeconomic impact of the HIV/Aids, the massive corruption charges against the President and some political figures, budgetary constraints, and the rate of poverty and inequality coupled with a high unemployment rate, has made the Zuma administration shift its attention to domestic priorities rather than regional matters (De Wet 2012).

Another constraint on Pretoria's human rights foreign policy relates to the issue of weak policy formulation and poor operationalization. For instance, Pretoria's African PSOs are influenced and driven by manifold groups of players from formulation to operationalization, and are thereby prone to compromises on fundamental issues such as protection of human rights on the continent. The government and state architectures in this arena range from the President, his cabinet, DIRCO, and the ANC, which in its present position as the incumbent party, exercises great influence over the details of Pretoria's engagement with the region. But the ANC regime arguably lacks the necessary expertise to effectively draft government and security policies, and to detect which area of foreign policy to pursue.

Indeed, for a foreign policy to achieve its intended end, there is the need for sufficient experts analysis, consultations and thematic areas to pursue. Arguably, Pretoria remains weak in a number of key areas of policy formulation and operationalization (Van Nieuwkerk 2013: 102). Although some human rights NGOs and social movements have attempted to influence the government's foreign policy in this respect, their influence in this direction

3 Parliamentary Monitoring Group (2014) 'White Paper on South African Policy and Revised White Paper on South Africa's Participation in International Peace Missions: Departmental briefing', 12 February. Available at: <https://pmg.org.za/committee-meeting/16893/>.

has been limited by lack of funding and adequate resources to effectively develop their knowledge on foreign policy and influence government decisions on external matters (Kenworthy 2012).

Drivers for Pretoria's continental Peace Support Operations

In 2009, DIRCO initiated a review covering fifteen years of Pretoria's foreign policy with the objective of assessing the progress made, and set out the challenges in order to enable the ANC administration to effectively engage with African actors (DIRCO 2011: 7). One of the findings was that Pretoria needs to strengthen its partnership with the rest of the continent. For this reason, the Deputy Director-General for African bilateral relations was charged with the mandate of determining in which areas and countries the government needs to intensify its engagement (Ngwenya 2013). It was against this backdrop that its strategic objective became that "South Africa will continue to support regional and continental processes to respond to and resolve crises, strengthen regional integration, significantly increase intra-African trade and champion sustainable development and opportunities in Africa" (DIRCO 2015: 31).

Indeed, the Country's Strategic Plan 2015-2020 is a clear repetition of previous plans which assert Pretoria's continued involvement in peacekeeping in Africa states. Pretoria has an overarching objective of contributing to Africa's socioeconomic development in line with Africa's Vision 2063,⁴ which is coherent with the initial objectives of the ANC. Thus, regardless of the country's fiscal constraints and new alliances with middle income countries (specifically the other BRICS countries), the country's strategic objectives towards Africa remain paramount under the Zuma regime.

Conclusion

As the international community joined South Africa to mark its 20th anniversary of freedom and democracy in 2014, it was apparent that South Africa has evolved as a promising regional foreign policy player. Besides adopting legislation and establishing strong institutions to consolidating democracy and human rights at home, South Africa has risen to prominence in foreign relations. There is no other country which has emerged from an entrenched regional and global seclusion to one of recognition. South Africa is seen as a 'mouth of the South' and a significant force in the SADC region, and it is also portrayed as an important regional power in Africa in the discussions about protection of

⁴ Africa's Agenda 2063 spells out the aspirations for the next fifty years, which include Africa as a peaceful and secure global player. See Africa Union (AU) (2013) 'Agenda 2063: Unity, Prosperity and Peace'. Available at: <http://agenda2063.au.int/>.

civilians and prosecuting suspects of international crimes. Therefore, the country has scored some considerable success in the region and become a legitimate voice of Africa on issues of peace and development at the global level.

The international community is gradually withdrawing its PSOs in the region and, this is why the military involvement of Pretoria and other regional actors in preventing humanitarian crisis on the continent (DRC, Central Africa Republic, South Sudan, Somalia) is expected to be developed and maintained in the coming years. However, Pretoria must address the ideological and capacity barriers which hinder its peacemaking abilities. These setbacks include the poor discipline in the military, ineffective management, redundant equipment, lack of economic and human resources, a serious dearth of political foresight, and the fact that the military is stuck in a time of warp.

International and domestic human rights organisations and actors could use their power and influence to stimulate the government to become a regional and global peace builder through the following approaches:

- (i) Starting strategic lawsuits against the government for (direct, indirect, beneficial and silent) complicity with violations committed by others.
- (ii) Using free-speech rights to condemn government's (in)action in conflict situations.
- (iii) Lobbying government officials to adopt human rights friendly foreign policy.
- (iv) Engaging and supporting the efforts of not only global organizations such as the UN but also regional organizations such as the AU, in particular the AU Peace and Security Council, and SADC to find lasting solutions to conflict situations in the region.

In 1994, South Africa declared that human rights would determine its foreign policy; as such, it lent considerable support to the development of the Responsibility to Protect doctrine (R2P). Over the years, however, South Africa's foreign policy has become more pragmatic – African solidarity appears to be its defining characteristic. South African support for R2P is now subject to an important caveat – no military intervention, unless the African Union approves. Sovereignty and non-intervention trump considerations of human rights.

Introduction

Immediately after the democratic transition in 1994, South Africa's declared intention was that its contribution to the international community would be guided by certain fundamental moral imperatives. The country's first democratically elected president, Nelson Mandela – while acknowledging that pragmatic considerations might also have to be addressed – was unequivocal in his commitment that “human rights will be the light that guides our foreign policy” (cited from: Adams 2012a). Having peacefully progressed from an apartheid past to a democratic present, through its example, South Africa was to lead Africa – and, possibly, the world – to a future in which a commitment to respect for the dignity of the human person was to enjoy primacy.

At the time when South Africa was undergoing its democratic transition, the world was coming to terms with two tragedies of horrific proportions – the multiple conflagrations in the former Yugoslavia and the genocidal violence in Rwanda. The soul-searching provoked by the ineptitude of the international response to these tragedies demanded a commitment to prevent their occurrence again in the future. *Plus jamais!* States and their leaders would no longer be allowed to ride roughshod over the fundamental rights of their citizenry. Were they to do so, the international community committed to respond; any attempt to hinder that response through claims to sovereignty and non-interference would no longer succeed. Alleged perpetrators would no longer be able to escape liability

1 This essay is based, in part, on Garth Abraham (2015).

for their actions; accountability was to trump impunity. Central to this ‘new world order’ was to be the doctrine of Responsibility to Protect (R2P); South Africa, amongst many nations, embraced the vision.

Twenty years after the democratic transition, South Africa’s commitment to human rights is less sharp and clear... the light burns less brightly... equivocation prevails – nowhere more so than in South Africa’s attitude to R2P. This essay will consider South Africa’s changing relationship with R2P and the extent to which that relationship reflects changes in the country’s response to gross human rights violations.

The idea behind R2P

R2P is rooted in the concept of humanitarian intervention: in the event of a ‘humanitarian crisis’ – either caused by a state or to which a state is unable adequately to respond – the principle of non-intervention is suspended and military intervention by an outside state, or group of states, is then justified. The potential abuse of the doctrine and the failure of the international community – through the United Nations Security Council (UNSC) – timeously to intervene in both Yugoslavia and Rwanda provoked UN Secretary-General Kofi Annan’s challenge to the member states attending the 54th session of the General Assembly, in September 1999, to “find common ground in upholding the principles of the Charter, and acting in defence of our common humanity” (ICISS 2001: 1).

The Government of Canada’s response to the challenge was the establishment of the International Commission on Intervention and State Sovereignty (ICISS) in September 2000. The 2001 Report of ICISS, while recognizing the importance of the concept of state sovereignty, suggested that sovereignty must be recast to imply ‘responsibility’. Thus, in circumstances where a population is suffering serious harm – because of internal war, insurgency, repression or state failure – and the responsible state is either unable or unwilling to act, the concept of non-intervention must yield to an international responsibility to protect. This international responsibility embraces three specific responsibilities: the responsibility to prevent (to address both the root causes and the direct causes of internal conflict and other man-made crises); the responsibility to react (to respond to situations of compelling human need with appropriate measures, which may include coercive measures such as sanctions and international prosecution, and, in extreme cases, military intervention); the responsibility to rebuild (to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert).

If military intervention is contemplated, six criteria need to be addressed: the action must be for a just cause (to prevent or halt genocide, crimes against humanity, or a similar cause); have the right intention (meaning without a subversive agenda); be used as a last resort; be authorized and executed by a legitimate authority – ideally, the UNSC; adhere in action to the principle of proportionality and international humanitarian law; and, have a reasonable prospect of success.

The concept of R2P enshrined in the ICISS Report was subsequently incorporated in the World Summit Outcome Document by the UN at its September 2005 meeting. R2P received further endorsement in Resolution 1674 of the UN Security Council, in April 2006, concerning protection of the civilian population during times of armed conflict, and in Secretary-General Ban Ki-moon's 2009 report *Implementing the Responsibility to Protect*. In the latter report (UNGA 2009: 8), Ban Ki-moon specifically addressed the new understanding of 'sovereignty as responsibility':

“... the responsibility to protect is an ally of sovereignty, not an adversary. It grows from the positive and affirmative notion of sovereignty as responsibility, rather than from the narrower idea of humanitarian intervention. By helping States to meet their core protection responsibilities, the responsibility to protect seeks to strengthen sovereignty, not weaken it. It seeks to help States succeed, not just to react when they fail.”

South Africa's waning support for R2P

South Africa fervently supported this new understanding of sovereignty; South Africa's current Deputy President, Cyril Ramaphosa, was a member of the ICISS. South Africa was not alone amongst African states in lending support. Apart from the personal contribution to the development of the concept made by Sudan's Francis Deng (sometime UN Secretary-General's Special Representative on Internally Displaced Persons), and Ghana's Kofi Annan (sometime UN Secretary-General), Algeria's Mohamed Sahnoun co-chaired the ICISS (along with Gareth Evans of Australia). Indeed, many have acknowledged the important contribution made by Africa to the development of R2P; in his 2009 report, Ban Ki-moon specifically mentions that “the evolution of thinking and practice in Africa has been especially impressive” (UNGA 2009: 6). In theory, the concept is also reflected in article 4(h) of the Constitutive Act of the African Union (AU) and forms the basis for operationalization of the AU's Peace and Security Council.

However, during the Libyan crisis in 2011, South African – and, to a considerable extent, African – support lost some of its lustre. The Libyan crisis coincided with South Africa's

second term as a non-permanent member of the UNSC. Framed in broad R2P terms, South Africa – along with India and Brazil – had lent support to Resolution 1970, which imposed selective sanctions on Libya and referred the Gaddafi regime to the ICC. Shortly thereafter, on 17 March, while on the one hand leading AU initiatives to resolve the crisis diplomatically, on the other, South Africa – with Nigeria and Gabon, but now without India and Brazil – voted in favour of Resolution 1973. Again couched in R2P language, Resolution 1973 – supported by the Arab League – imposed a no-fly zone over portions of Libya and authorized recourse to ‘all means necessary’ to protect the civilian population – particularly the citizens of Benghazi.

The following day, 18 March, South Africa’s Department of International Relations and Cooperation (DIRCO) issued a statement explaining support for the resolution:

“In adopting resolution 1970, the Security Council had hoped that the Libyan authorities would act responsibly and stop committing more acts of violence against their own people. The authorities have defied this Resolution and continued to kill and displace thousands of civilians whilst continuing to violate their human rights. We believe that the United Nations and the Security Council could not be silent nor be seen to be doing nothing in the face of such grave acts of violence committed against innocent civilians. We believe that by adopting resolution 1973, which South Africa has voted in favor [*sic*], the Security Council has responded appropriately to the call of the countries of the region to strengthen the implementation of Resolution 1970 and has acted responsibly to protect and save the lives of defenceless civilians who are faced with brutal acts of violence carried out by the Libyan authorities.”²

Although supporting the Resolution, the statement emphasized certain caveats – preservation of the sovereignty and territorial integrity of Libya and a rejection of any foreign occupation or “unilateral military intervention under the pretext of protection of civilians”.³ The statement also commended the decision of the AU’s Peace and Security Council to dispatch an Ad-Hoc High Level Committee to Libya to intensify efforts towards finding a lasting political solution to the crisis.

Despite lending support both to Resolution 1973 and the AU initiative, South Africa’s stance provoked considerable debate: internally, many within the ranks of the ruling party

2 ‘Why SA voted for UN resolution 1973’ Statement of Mr. Clayson Monyela, spokesperson for DIRCO (Department of International Relations and Cooperation), 18 March 2011. Available at:

<http://www.politicsweb.co.za/documents/why-sa-voted-for-un-resolution-1973—dirco>.

3 Ibid.

– the ANC – criticized support for Resolution 1973 (Smith 2015); continentally, opposition was more vociferous – the resolution was interpreted as fundamentally undermining of the AU initiative. The debate that raged and the launch of the NATO bombing campaign provoked South Africa seriously to question the sagacity of its decision.

Two months later, during a UNSC debate on the ‘Protection of civilians in armed conflict’, South Africa had opportunity to voice its disquiet within the UN. South Africa’s ambassador, Baso Sangqu, acknowledged the noble intentions behind the Libyan resolution (and that authorizing the use of force in Côte d’Ivoire⁴); however, he continued,

“[...] we are concerned that the implementation of these resolutions appears to go beyond their letter and spirit. It is important that, as international actors and external organizations provide constructive assistance, they should [...] fully respect the will, sovereignty and territorial integrity of the country concerned, and refrain from advancing political agendas that go beyond the protection of civilian mandates, including regime change.”⁵

In July, Sangqu was even more forthright:

“Clearly, action focused on the military solution has not had its intended purpose. Instead, it has worked to destabilize the country even further, and therefore the long-term security and stability of Libya remains uncertain as the situation deteriorates, with more loss of civilian lives and massive destruction of infrastructure.”⁶

By way of contrast, he pointed to the AU contribution and the framework agreement negotiated at its Assembly of Heads of State and Government in Malabo (AUPSC 2011). In response to calls for Gaddafi’s removal, Sangqu noted:

“We maintain that such statements do not bring us any closer to a political solution. We call on all parties to focus on genuinely assisting the Libyan parties to immediately begin a political dialogue in line with the AU road map [...] It is only through a Libyan-led and owned political process that a decision on the future of

4 United Nations Security Council (UNSC) (2011) ‘Resolution 1975 (2011)’, UN doc: S/RES/1975, 30 March. Available at:

http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1975%282011%29.

5 United Nations Security Council (UNSC) (2011) ‘6531th meeting of the UNSC’, UN doc: S/PV.6531, 10 May: 18. Available at:

http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.6531.

6 United Nations Security Council (UNSC) (2011) ‘6595th meeting of the UNSC’, UN doc: S/PV.6595, 28 July: 4. Available at:

http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.6595.

Libya, including that of Colonel Al-Qadhafi, can be based. This is a Charter-given right that will reaffirm the sovereignty, independence, territorial integrity and national unity of Libya.”⁷

Finally, in voicing concern about the manner in which Resolutions 1970 and 1973 had been implemented, he held that “[t]aking sides in any internal conflict situation in an effort to institute regime change in Libya sets a dangerous precedent that will surely damage the credibility of the Council and its resolutions”.⁸

During the course of the UNSC’s November 2011 debate on the ‘Protection of civilians in armed conflict’, South Africa had opportunity to articulate reservations about R2P more generally:

“We fully support international efforts to ensure that the normative and legal framework developed to defend the weak and vulnerable trapped in armed conflict is strengthened and further enhanced. The protection of civilians is, by its very nature, politically sensitive yet a critical and vital task. We must ensure at the same time that such efforts are not abused to further objectives that fall outside the scope of this noble and moral endeavor and sensitive responsibility.”⁹

Further, as an alternative to the manner in which R2P was being implemented, Sangqu lent South African support to Brazil’s interpretation of the doctrine through ‘Responsibility while Protecting’ (‘RwP’).¹⁰

In her opening address to the General Assembly in September 2011, the president of Brazil, Dilma Roussef, had first articulated the concept – subsequently developed by Brazil’s permanent representative to the UN in a short paper published in November 2011. In essence, RwP holds that military force is a last resort; that any response must be proportional to the threat posed; and, that no intervention should cause more harm than it seeks to prevent.

In the aftermath of the Libyan crisis, despite South Africa now appearing to be a critic of R2P, the country did support UNSC resolutions invoking R2P in respect of Sudan, Côte d’Ivoire, Guinea-Bissau, the Central African Republic (CAR), Yemen, Libya, the Democratic

7 Ibid: 5.

8 Ibid: 5.

9 United Nations Security Council (UNSC) (2011) ‘6650th meeting of the UNSC’, UN doc: S/PV.6650, 9 November: 22. Available at:

http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.6650.

10 Ibid: 22.

Republic of the Congo and Burundi. In none of the resolutions passed, however, was the use of force sanctioned; thus, South Africa's opposition to R2P appeared to be targeted specifically at recourse to military intervention.

This interpretation is borne out in South Africa's response to the developing crisis in Syria. What had started as peaceful protests calling for the release of political prisoners in March 2011, had by August 2011 escalated into an armed conflict in which crimes against humanity of various kinds were being perpetrated. Apparently favouring a political solution to the crisis, in that month South Africa, along with its IBSA allies – India and Brazil – sent a high-level delegation to Damascus to plead with Assad to end the hostilities. The pleas went unheeded; more violent repression was meted out.

In early October, four European states (France, Germany, Portugal and the United Kingdom) proposed a draft resolution to the Security Council¹¹ condemning the Assad regime and threatening targeted sanctions. Nine states voted in favour of the resolution (including two African states: Gabon and Nigeria), two against (China and the Russian Federation), with four abstentions: Lebanon and the IBSA alliance. While expressing concern about the deteriorating political and humanitarian situation in Syria, South Africa's ambassador, Sangqu, explained South Africa's abstention thus:

“South Africa was concerned about the sponsors' intention to impose punitive measures that would have pre-judged the resolution's implementation. We believe that these were designed as a prelude to further actions. We are concerned that this draft resolution not be part of a hidden agenda aimed at once again instituting regime change, which has been an objective clearly stated by some. We are thus concerned about the fact that the sponsors of this draft resolution rejected language that clearly excluded the possibility of military intervention in the resolution of the Syrian crisis. We maintain that the Security Council proceed with caution on Syria lest we exacerbate an already volatile situation.”¹²

At the end of January 2012 a Western/Arab draft resolution¹³ was tabled before the UNSC demanding a halt to the military action, supporting the peace plan proposed by the Arab

11 United Nations Security Council (UNSC) (2011) 'Draft Resolution 612', UN doc: S/2011/612, 4 October. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2011/612.

12 United Nations Security Council (UNSC) (2011) '6627th meeting of the UNSC', UN doc: S/PV.6627, 4 October: 11. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.6627.

13 United Nations Security Council (UNSC) (2012) 'Draft Resolution 77', UN doc: S/2012/77, 4 February. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2012/77.

League and calling on Assad to cede power. Although defeated by the vetoes of China and Russia, South Africa – together with India (Brazil had, by that stage, ceased to be a member of the Security Council) – supported this weaker resolution. In doing so, Sangqu reiterated what had now become South Africa’s qualification to R2P:

“Fundamentally, no foreign or external parties should interfere in Syria as its people engage in the critical decision-making process on the future of their country. Any solution must preserve the unity, sovereignty and territorial integrity of Syria. We are also satisfied that the final draft resolution [...] was not aimed at imposing regime change on Syria [...].”¹⁴

In September of 2012, during an informal, interactive dialogue in the General Assembly of the UN on the ‘Responsibility to Protect: Timely and Decisive Response’, South Africa’s Permanent Mission to the UN issued a statement in which it emphasized continued support for R2P and recognized the role of regional and sub-regional organizations as partners in the implementation of R2P. R2P, the statement held, must have as its primary interest the “safety and well-being of the affected” civilian population; any mandate for its implementation must be fully respected and must not be used as a pretext for other motives, including regime change. In the words of the South African government: “Put plainly [...] the primary objective of responsibility to protect is not regime change.”¹⁵

South Africa’s Foreign Policy objectives

At the heart of the debate about the implementation of R2P are two opposing visions for international society. For the one, human rights enjoy primacy – the need for intervention in the event of their gross violation trumps all other consideration. For the other, state sovereignty and non-intervention are sacrosanct. In the heady days that followed its democratic transition, because of its own history, South Africa, it was assumed, would embrace the former. The international community (particularly the West) – desperate for an African state to offer direction and stability to the continent through personal example – vaunted South Africa as both *the* continental power with the necessary moral authority and as a member of a select group of emerging international powers, potentially deserving of a seat at the table of the ‘great and the good’. Initially, South Africa bought into the rhetoric.

14 United Nations Security Council (UNSC) (2012) ‘6711th meeting of the UNSC’, UN doc: S/PV.6711, 4 February: 11. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.6711.

15 United Nations General Assembly (UNGA) (2012) ‘Informal, interactive dialogue on the Responsibility to Protect: Timely and Decisive Response’, Statement delivered on behalf of the Permanent Mission of South Africa to the United Nations, 5 September. Available at: <http://responsibilitytoprotect.org/South%20Africa.pdf>.

In 1995, for example, Nelson Mandela vociferously condemned the decision of Nigerian dictator, Sani Abacha, to execute nine Ogoni activists, and called for the imposition of sanctions. While Mandela was immediately lauded by the West, his utterances were strenuously criticized by other African states. The lesson for South Africa was clear: the interests of the continental elite and those of the West are not necessarily congruent. A choice would have to be made.

Calculating that the support of African states is in its long term best interests – apart from the political support to be garnered, a peaceful and prosperous Africa will benefit all – South Africa, pragmatically, began to champion something akin to Ali Mazrui's¹⁶ idea of the *Pax Africana*. Africans themselves need to create and consolidate peace on the continent and Africa needs to become its own policeman; 'African solutions to African problems'. This continental focus paralleled increasing disenchantment in South Africa's relationship with the West and its agenda. In such circumstances, beyond the continent South Africa began cultivating relations with less critical members of the international community: China and Russia. Currently South Africa is progressively consolidating a position of consequence as a member of BRICS.

Given that those with influence in both sets of allegiance – Africa and BRICS – vaunt sovereignty and non-intervention as a cornerstone of domestic and foreign policy, an obvious casualty in the course that South Africa is attempting to chart for itself has been the initial commitment of its foreign policy to human rights.

It was Mandela's successor, Thabo Mbeki, who noted the mood and changed course. Despite constant rhetoric in support of quiet diplomacy during the Mbeki years, South Africa failed positively to intervene in Zimbabwe. Further, during its first term as a non-permanent member of the UNSC in 2007-2008, South Africa's support for human rights was lacklustre; it opposed a draft resolution criticizing the human rights record of the incumbent military junta in Myanmar.

The government of Jacob Zuma has continued to drift from the original moorings. The Dalai Lama was refused a visa to attend a meeting of Nobel Peace Prize laureates, and, even if not positively promoting, South Africa acquiesced in the suspension of the SADC Tribunal in August 2010 (Melber 2012).¹⁷

16 For more information on the life and work of Ali Al'amin Mazrui (1933-2014) see: https://en.wikipedia.org/wiki/Ali_Mazrui.

17 The Tribunal of the South African Development Community (SADC) settled legal disputes based on the SADC Treaty (1992). For more information on the SADC Tribunal see: <http://www.sadc.int/about-sadc/sadc-institutions/tribun/>.

Following the recent al-Bashir debacle,¹⁸ the Secretary General of South Africa's ruling party, the ANC, articulated the prevailing wisdom: "when it comes to international relations, it is not possible to elevate human rights above all other considerations; [o]nce you emphasise one principle over the other, you will say you have human rights but have no relations with the continent. Nobody will want to touch you. What kind of a nation is that?" (cited from Grootes 2015).

Conclusion

South Africa continues to maintain that human rights remain a core value underlying its foreign policy. In theory, South Africa remains committed to the idea of responsible sovereignty through the prevention of mass atrocities; it continues to support an end to impunity for those who perpetrate gross human rights violations. Support for human rights, however, is not unequivocal. It is viewed through a web of pragmatic consideration: South Africa is determined not to compromise African solidarity.

Consequently, South Africa remains a supporter of R2P... but subject to clearly articulated caveats. Fearful that protection of the civilian population will mask ulterior objects, it is not supportive of military intervention authorized by the UNSC. Intervention that precludes military intervention, or intervention specifically authorized or endorsed by the AU, it is prepared to support (South Africa continues to deploy peacekeeping forces in the DRC and Sudan).

Further, in circumstances where issues of sovereignty and non-intervention are under threat – particularly in an African context – South Africa's support for R2P will remain qualified. Tragically, pragmatism of this kind jeopardizes the lives of those who rely on the strong and the good to act positively and promptly in the interests of the weak and the poor. As Nelson Mandela commented, "to be free is not merely to cast off one's chains, but to live in a way that respects and enhances the freedom of others" (cited from: Adams 2012b).

18 In June 2015, Omar al-Bashir, president of Sudan, visited South Africa to attend an AU Summit; despite a High Court ruling requiring that he be detained in South Africa pending its decision on an arrest warrant issued by the ICC, the Zuma regime allowed him to 'escape' (see essay of Jeremy Sarkin in this volume for more details on this case).

Jeremy Sarkin

South Africa's (past, present and future) relationship to the International Criminal Court and international criminal justice

South Africa had a very problematic relationship to international criminal justice prior to 1994. The Mandela presidency was the high point of South Africa's prioritizing of human rights and international criminal justice in its foreign policy agenda. Nowadays, South Africa prioritizes politics and economics over human rights and international criminal justice. This can be seen through South Africa's relationship with international criminal justice over the last few decades, and particularly with the International Criminal Court.

South Africa's past relationship to international criminal justice

South Africa had an anomalous position within the international community and towards international law during the apartheid era (Botha 1992/3: 36). It refused to sign and ratify the various international human rights treaties existing at that time, only changing its position in the post-apartheid era. South Africa did not, however, fear international criminal justice, as there were no criminal mechanisms to hold South African leaders accountable for the violations that were being committed in the country. That said, the country was concerned about sanctions, as well as the sports and other boycotts that were instituted.

South Africa's present relationship to international criminal justice

In 1994 South Africa rejoined the international community with gusto (Carlsnaes & Nel 2006: X). It quickly ratified a whole range of international treaties, including the Genocide Convention. The Mandela presidency saw South Africa complying generally with its touted human rights-focused foreign policy agenda (Alden & Le Pere 2004: 286).

During the Mandela presidency South Africa was a major supporter of the creation of the International Criminal Court (ICC). South Africa was amongst the first group of countries to sign the Rome Statute, which it did on 17 July 1998, as the first African state to do so (Rakate 1998: 217). It formally ratified the Rome Statute on 27 November 2000 and domesticated it in 2002 with the enactment of the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002 (Katz 2003: 25). This law came into force in August 2002 (Du Plessis 2003: 1).

After the Mandela years there was a shift in South Africa's foreign policy, with human rights no longer being so firmly advanced, and not standing so high on the agenda as had previously been the case (Alden & Le Pere 2004: 283). Particularly, with respect to international criminal justice South Africa's role since the Mandela Presidency has not been one of active engagement. There are two parts to this: 1) what South Africa has done internally where matters of international justice occurred within the country, and 2) its role internationally on international criminal justice issues.

Domestically, while there have been attempts to hold accountable a range of people in the country who are sought internationally for crimes committed around the world, South Africa has not been a willing party to such processes. South Africa has rather provided refuge to leaders such as former President Jean-Bertrand Aristide of Haiti and former Madagascan President Marc Ravalomanana. Therefore, it is clear that the government of South Africa has generally been reluctant to act against foreign leaders, even leaders with an arrest warrant issued against them.

Where it has acted, it has done so after being pushed to take action by civil society. In 2009, for instance, it took civil society mobilization to force South Africa to agree that it would arrest President Omar al-Bashir of Sudan if he arrived in the country. South Africa's civil society has not taken on the state much as far as foreign policy is concerned, but there have been examples where civil society has been active, such as on South Africa's role regarding the ICC. South Africa, as a state party to the Rome Statute, had a duty to execute the ICC arrest warrant against al-Bashir if he attended the inauguration of President Zuma. Al-Bashir did not arrive, but the South African government eventually and reluctantly agreed, as a result of civil society pressure, that he would be arrested if he were in the country. Civil society has had to resort to various types of pressure on a number of occasions to force compliance with South Africa's constitution and its international and domestic obligations.

South Africa's stance on the ICC (see generally Sarkin 2011-12) in the post-Mandela years has also changed since the heady years of its vital role in the creation of the Court. Now, South Africa is seemingly not so in favour of the role of the Court, siding instead with the African Union (AU) and other countries that oppose the role that the Court now plays. South Africa has supported various AU resolutions on the ICC and is no longer willing to play the central supportive role it previously fulfilled with respect to the court. Exemplifying this is the fact that the country does not cooperate with the Court when ICC arrest warrants demands it. As described above, already in 2009 South Africa was at first unwilling to arrest President al-Bashir if he came to the country. At that stage, South Africa rather endorsed a 2009 AU decision that held that African states would not

cooperate with the ICC to arrest President al-Bashir (Tladi 2009: 57). The South African government only changed tack because of the public outcry about its chosen course of action (Stahn 2015: 74-75).

President al-Bashir's arrival at the AU Summit in Johannesburg on 13 June 2015 again put South Africa's obligations and commitment to international justice into focus (Sarkin 2015). Al-Bashir's arrival tested the nation's resolve to uphold international criminal justice, while juggling its desire to be a major role player in Africa and in the African Union. This balancing act occurred because, while South Africa has rhetorically been in favour of international justice, it has supported the African Union's resolutions not to cooperate with the ICC. In regard to walking this tightrope, Garth Abraham (2015: 4) has noted that: "In South Africa's case, the obvious casualty in the game of maintaining the delicate balance between a commitment to continental sovereignty and the role of an emerging international power has been the initial commitment of its foreign policy to human rights" (see also Abraham's essay in this volume).

South Africa, by attempting to provide President al-Bashir immunity before he arrived in 2015 and by allowing him to enter the country for the first time, indicated explicitly on what side of the fence it sits. It indicated again that its friendship and comradely attitude towards other African states and the AU, as well as its partnership with Russia and China in BRICS, takes precedence over its international law obligations in its approach to foreign policy.

Context: shifting power relations

The context to this is that South Africa seems to have taken this stance to challenge the balance of power in the international community. It has taken positions with various international institutions such as the Non-Aligned Movement, BRICS, and the African Union, as well as with Russia and China, believing that this approach favours South Africa's national interests at present and into the future. South Africa clearly wants a leadership role in Africa and internationally and therefore sides with the developing world particularly in Africa. It has developed policy for Africa such as the African Renaissance and the African Peer Review Mechanism that enhance its position within that community. South Africa also wants strong relations with the African Union, and other African countries, and thus its stance on human rights at times, it believes, must come second.

This is specifically true of its relationship to the ICC, to which its position has been affected by the growing antagonism of the African Union towards the Court. This opposition has arisen relatively recently and is contrary to the initially very strong support that

many African countries expressed for the court at the time of its creation. The change has been connected to the Court's overwhelming and, it is argued by many in Africa, disproportionate focus on crimes committed in African contexts, leading to accusations of unjustifiable selectivity and a double standard (Tladi 2009: 62). Fighting this selectivity by the Court is seen to be a continuation of the continent's struggle against racism, imperialism, and its subjugation by foreign powers (Okafor & Ngwaba 2015: 102).

The tensions between the AU and the Court were exacerbated when the ICC issued an indictment against Sudanese President Omar Hassan al-Bashir despite the AU having expressed concern that this could undermine existing intra-African peace efforts (Mills 2012: 404, Tladi 2009: 57). This conflict resulted in a 2009 AU decision that held that African states would not cooperate with the ICC to arrest President al-Bashir (Tladi 2009: 57). South Africa supported this position partly because it often takes positions that are not out of step with its global partners. Not wanting to walk a different path to the positions of others that it is aligned to seems to be an important policy position for the country.

This context must also be seen in the light of South Africa seeming to have a policy position of favouring diplomacy and negotiation over hard power. South Africa has on numerous occasions taken up a role of mediator in conflict situations. It has used its successful transitional process as a means to play such a role in the situations of other countries in crisis.

South Africa's future relationship with international criminal justice

South Africa's future relationship with international criminal justice is directly tied to its larger national interests and its relationship with its various international partners in Africa and within BRICS. China and Russia, particularly within BRICS, have over the last decade been able to influence South Africa's position on a range of matters, including human rights issues (Bohler-Muller 2013). An often-touted example of this is South Africa's ongoing refusal to grant a visa to the Dalai Lama. South Africa has constantly denied that it has refused to grant him a visa, though, and has argued that its delays in granting him a visa are not indicative of its position on the matter. It is, however, clear that China's position on the Dalai Lama is clearly behind South Africa's stance.

China and Russia do not have human rights as a key plank of their domestic or foreign policies, and in fact are at times antithetical to human rights both at home and abroad. They do not support international accountability and have not supported international justice or notions such as the Responsibility to Protect (R2P) (Sarkin 2011-2012: X). Russia, China and India are not supporters of the ICC, and are against positions that limit state sovereignty. They oppose issues that are seen to interfere with what are

supposedly internal domestic matters. They argue that many matters which have a human rights dimension ought to be in the purview of that particular state alone, and that the international community should not involve itself in many of these cases.

Thus, a key question for South Africa's position on international justice issues in the future is what happens within the BRICS and in Africa: does South Africa see its role firmly within BRICS and is its international role firmly associated to its role in the African region? (see Kornegay & Bohler-Muller 2013). This will be a difficult matter for South Africa's stance on international justice, because while the nation's atrocious history should see it be supportive of justice and accountability, South Africa wants to be part of as many international fora as possible and aims to be as influential as possible. It wants to have a leadership role in the AU, BRICS, the Non-Alligned Movement, the G77 and others. At present the AU position and the BRICS position on international justice are similar. But there may be situations in the future where there is divergence between their views. This would put South Africa in a difficult position. What is clear is that at present being part of BRICS is not something that is counter to South Africa's role in Africa, but a position that actually promotes that role (Carmody 2012). Thus, Volchkova & Ryabtseva (2013: 8-9) believe that:

“The BRICS forum might play an important role in promoting South Africa's role on the continent. For example, Russia believes it is possible to increase South Africa's influence among its neighbours and in the overall global economic arena through the development of a national currency exchange within BRICS. If the BRICS countries manage to execute trade in national currencies, all remaining African countries might settle accounts with Russia, Brazil, India and China in South African Rands.”

But it should not be forgotten that South Africa's role in Africa is an important part of why it is in BRICS in the first place (Besada, Tok & Winters 2013) and why the other members of BRICS sought South Africa's membership (Carmody 2012). South Africa's membership in BRICS might not always be positively viewed by African states and may cause difficulties in the future. A divergence in opinion can occur and other African states could see South Africa looking rather beyond Africa than inwards.

Regardless, South Africa's role in the African Union and in BRICS are critical determinants of what it decides to do in the future as far as international justice is concerned. Whether it remains a member of the ICC is dependent on what other African state parties of the ICC decide to do. While some, such as Kenya (Mueller 2014: 1) and Uganda have made utterances about leaving the Court, no country has yet done so. In October 2015 the

ANC's National General Council resolved that South Africa will leave ICC. However, it seems that South Africa has been canvassing other African countries to do so as well. It is very cognizant of what other African countries say and do with regard to ICC membership. It will also have to determine whether it joins the reformed African Court of Justice and Human Rights, which is envisioned to also have criminal jurisdiction to hold perpetrators of serious international crimes accountable. It is likely that South Africa will follow the path of joining the new, enlarged African Court with criminal jurisdiction.

South Africa's future role with the ICC is thus somewhat unclear. While the ANC may have resolved to leave the Court there are many steps that will need to occur for it to do so. It will have to repeal the Implementation Act and then take resolutions in both houses of parliament. It then has to file a notice with the UN Secretary-General and then only a year later it may actually withdraw. It may be affected by a case that might be opened concerning the country, because in April 2015 the Prosecutor of the ICC indicated that she was ready to investigate the xenophobic attacks in South Africa. This occurred after a petition by the South African NGO Socio-Economic Rights and Accountability Project (SERAP) was filed with the ICC on 23 April 2015 asking for a hate speech inquiry to be held into statements by the Zulu King Goodwill Zwelithini. These statements were alleged to have caused killing, violence and discrimination against non-South Africans living in South Africa. If this occurred, it would have a dramatic impact on South Africa's position on the ICC. Such a case is, however, unlikely for a range of reasons, including the lack of appetite by the ICC for taking on another African situation.

Conclusion

South Africa's position in the international community and with regard to international issues in general, and in particular on international criminal justice matters, has dramatically changed over the years. Much of this change has not been publically debated and seems rather to have been positions taken by the ANC with little external consultation. Even in parliament, a stance is adopted after an event rather than putting a position on the table beforehand. Even on positions taken at the UN there has been an absence of debate until after the fact. While South Africa was an outcast in the years before 1994, after the advent of democracy it became a key role player in the community of nations in general, and on justice issues specifically. However, its commitment to human rights and justice as eminent concerns in the post-1994 era has given way to a greater focus on its political and economic interests. While South Africa played a key role on the ICC in the past, that role has changed. It no longer plays the same supportive role it did. It now supports the critical camp of African states that see the Court as biased towards the continent and anti-African leadership. South Africa no longer favours the role the Court

plays. South Africa's stance today mirrors those of the AU and BRICS. In this regard, South Africa's international role has become pragmatic rather than principled. As Nathan (2005) notes, South Africa's role has been full of ambiguities, inconsistencies and incongruities. South Africa seeks a preeminent role internationally. As a result, its stance on human rights and international justice has become less important and to some extent has been sacrificed in the quest to claim and maintain a dominant role, partially in its quest for a permanent Security Council seat when that institution is reformed.

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South Africa in the international arena: privacy, security, and Internet governance

South Africa's foreign policy focus on state sovereignty as well as its security-oriented paradigm have hampered its pursuit for civil and political rights protection online and offline. Only intervention by civil society organizations, possibly in alliance with progressive state officials, to allocate greater weight to rights, could help shift the balance of state policy in a more positive direction.

Introduction

In a recent report by Human Rights Watch, South Africa was taken to task for having “largely failed to utilize its membership at the United Nations Human Rights Council [UNHRC] to support resolutions that would have helped the promotion and protection of human rights in various countries” (HRW 2015). This was the case despite the fact that it plays “a highly visible role at the Human Rights Council, including by championing the Council’s engagement on various thematic issues such as combating racism and discrimination” (HRW 2014b).

This contradictory approach to rights-related issues is characteristic of South Africa’s general orientation. The broad support for proclamations in favour of rights in the global arena does not always translate into support for specific policies and interventions that may affect and interfere in relations with key countries regarded as diplomatic allies. While never actively denying a commitment to fundamental human rights, South Africa’s strategy of building a counterforce that will challenge the traditional hegemony of Western countries on the global stage takes precedence in shaping their positions on the international stage.

In what follows we review South African policy positions with regard to the various issues involved in Internet governance, surveillance and privacy online, in particular through its participation in the World Summit on the Information Society (WSIS) review process.

The World Summit on the Information Society (WSIS) Review process

The World Summit on the Information Society was a pair of UN conferences held in 2003 and 2005, which set out a coordinated international action plan for harnessing the use of information and communication technologies (ICTs) for development with the aim of fostering the establishment of an inclusive information society. WSIS also brokered a delicate consensus on how the Internet should be governed, and proposed a path forward for how to achieve more democratic and inclusive Internet governance with outcomes such as the Internet Governance Forum. The UN has been conducting a review of WSIS as part of its ten year anniversary, which is culminating in a high-level review meeting at the UN General Assembly (UNGA) in December 2015.

South Africa does not yet have a specific consolidated public position on the WSIS review process, though its views can be inferred from a range of sources, as well as interventions made by the government in international forums. The Department of Telecommunications and Postal Services (DTPS)¹ commissioned a WSIS follow-up and implementation progress report earlier in 2015 and it does in general take the WSIS very seriously. The report was developed by the South African Communications Forum (SACF), an industry body. To our knowledge it is not yet publicly available at the time of writing. The country's positions will likely be closely aligned with those of the Group of 77 (G77), as will be outlined in more detail later on in this essay. South Africa has been speaking on behalf of the G77 group in the WSIS preparatory meetings at the UN General Assembly in New York.

Although invested in promoting a development-oriented agenda within the WSIS framework, the government is not likely to cede its interest in seeing progress on issues related to Internet governance, and enhanced cooperation in particular, a position rooted in an understanding of Internet public policy being the responsibility of sovereign states rather than of 'multistakeholder' processes. South Africa's position on Internet Governance Forum (IGF) renewal might be used as a bargaining chip to secure gains in the broader governance debate although it has – in spite of some reservations on its value – been broadly supportive of the IGF.

1 Originally, the Department of Communications was in charge of all communication matters in the country, including telecommunications. In 2014, responsibility for telecommunications was transferred to the newly created Department of Telecommunications and Postal Services (DTPS), which creates the policy framework with which the national regulator – the Independent Communications Authority of South Africa (ICASA) – has to work. Together with the Department of International Relations and Cooperation (DIRCO), they are the most important bodies in charge of decision-making on international Internet policy issues in South Africa.

South Africa's security and development concerns in the WSIS review

Development will likely continue to be a key internal driving force in South Africa's position in the WSIS review. Minister Siyabonga Cwele, former Minister of Intelligence, heads the DTPS with a mandate focused, but not limited to, "using ICTs to deal with the effects of persistent unemployment, inequality and poverty prolonged by the legacy of apartheid".²

South Africa's National Development Plan (NDP) also acknowledges ICTs as central to development, with the goal of achieving universal access by 2020 (Presidency of South Africa 2012). Much investment is being put into the domestic ICT sector: in November 2013, a broadband policy was finalized. Called "SA Connect", it is a comprehensive plan to develop and implement nationwide broadband ICT infrastructure to meet the electronic communications needs of citizens, business and the public sector (South Africa Connect 2013).

In addition, security concerns are a priority in the country's decisions regarding ICTs. South Africa has since worked with members of the African Union (AU) on a continental cyber-security framework, which was recently adopted by the African Union Summit.³ It has participated actively in the African Union and the African Union Commission⁴ and has contributed to the AU Agenda 2063 (AU 2015). South Africa also contributed to the Southern African Development Community's 'Regional Infrastructure Development Master Plan' (SADC 2012).

South Africa's policy in these matters is captured in the Cybercrimes and Cybersecurity Bill,⁵ which was released for public comment in August 2015, and is open for comments until 30 November 2015. As academic and freedom of expression activist Jane Duncan (2015) puts it: "The Bill threatens digital rights in significant ways, especially the freedoms of expression and of association, and the right to privacy. It lacks important checks and balances and increases state power over the internet in worrying ways." Basically, its paradigm of securitization is based on fear and control: "Governments rush to securitise

2 'Budget Vote Speech 2015', Address by Dr. Siyabonga Cwele, Minister of Telecommunications and Postal Services, Republic of South Africa, on the occasion of the 2015/16 Budget Vote, 21 May. Available at: <http://www.dtps.gov.za/mediaroom/media-statements/482-minister-cwele-budget-budget-vote-speech-2015.html>.

3 African Union (AU) (2014) *African Union Convention on Personal Data Protection and Cyber Security* (adopted 27 June 2014).

4 The Commission of the African Union is the executive and administrative branch or secretariat of the African Union. It is made up of a number of Commissioners dealing with different areas of policy. The Commissioner for Infrastructure and Energy is responsible for telecommunications and internet matters. More available at: <http://www.au.int>.

5 'Cybercrimes and cybersecurity bill. Draft for public comment', Republic of South Africa, Ministry of Justice and correctional services, 2015. Available at: <http://www.justice.gov.za/legislation/invitations/CyberCrimesBill2015.pdf>.

and militarise these problems to justify government control of the internet. They gain public acquiescence by creating a moral panic and convincing the public that there is no alternative but to accept government intervention.” An agenda of rights, development and freedom cannot be achieved “by handing decision-making about the internet to increasingly secretive, unaccountable governments. Trading freedom for security is no security at all”. This securitization paradigm based on ‘fear and control’ that Duncan refers to is not only prevalent in South Africa. It has become the predominant entry point for approaching internet governance in many parts of the world – including in Europe and North America. It is also encouraged by some intergovernmental initiatives such as the International Telecommunications Union’s Global Cybersecurity Index which ranks countries according to their readiness to respond to cyber attacks.⁶

Internationally, South Africa is part of BRICS (Brazil, Russia, India, China, South Africa) and the India-Brazil-South Africa Dialogue Forum (IBSA). The outcome statement from the 2013 5th BRICS Summit recognized the critical and positive role the Internet plays globally in promoting economic, social and cultural development, and emphasized the importance of a peaceful, secure, and open cyberspace. It noted that “security in the use of Information and Communication Technologies (ICTs) through universally accepted norms, standards and practices is of paramount importance” (BRICS 2013).

South Africa and the G77’s priorities: development and state sovereignty

Broadly, South Africa has aligned its position on development and the WSIS review with the position taken by the G77, and it is likely to continue doing that and play a leading role in shaping and presenting that position. In particular, it sees poverty reduction as one of the key priorities for the WSIS, and believes that the outcomes of the review must “recognize the obvious and explicit synergies between the Vision of utilizing ICTs for Development and the newly crafted SDGs [Sustainable Development Goals]”.⁷

What is also interesting about that G77 statement is that, referring to the ten-year WSIS Review, it says that: “It is imperative that, as per the modalities resolution, the focus of this Review is anchored in the vision of the Tunis Agenda. There is no need to renegotiate or re-invent the Tunis Agenda”.⁸ This can be taken to mean that while South Africa and

6 The 2014 results of this survey is available at:
<http://www.itu.int/en/ITU-D/Cybersecurity/Pages/GCI.aspx>.

7 ‘Intervention on behalf of the Group of 77 and China by the representative of South Africa at the First preparatory meeting for the General Assembly overall review of the implementation of the outcomes of the world summit on the information society (WSIS)’, New York, 1 July 2015. Available at:
<http://www.g77.org/statement/getstatement.php?id=150701>.

8 Ibid.

the G77 are committed to exploring synergies between WSIS goals and the SDGs, they are not likely to opt for complete integration, at least not to the extent of letting go some of the non-SDG-related aspects of the Tunis Agenda,⁹ such as enhanced cooperation in internet to increase “the capacity of developing countries to innovate and to participate fully in, and contribute to, the Information Society”¹⁰ and the notion that “policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues”.¹¹

The outcome documents of the WSIS’s first phase, which concluded in December 2003, had a far stronger focus on human rights, development and on inclusiveness and partnership in building a people-centred development oriented information society than the Tunis Agenda. The Tunis Agenda is far more political, and reflects governments’ increased awareness of the strategic importance of the internet and their own influence over decision-making.¹² As a consequence, global internet related debates focused less and less on development, or on human rights, and more on more on geopolitical relations between states on the one hand, and contestation between multistakeholder (involving nongovernmental actors) and multilateral (among governments) models of governance.

As in other areas, the sovereign right of states is central to South Africa’s foreign policy agenda. This is captured in that same G77 statement from July 2015, in reference to cybercrime: “In maintaining cyber security, States should abide by the following principles: sovereign equality; the settlement of international disputes by peaceful means without jeopardizing international peace and security, and justice; consistency with the principles of the United Nations; and non-intervention in the internal affairs of other States”.¹³

9 The Tunis Agenda (November 2005) is the outcome document of the second phase of the United Nations’ World Summit on the Information Society (WSIS). Available at: <http://www.itu.int/net/wsis/docs2/tunis/off/6rev1.html>.

10 The World Summit on Information Society (WSIS) (2005) ‘Tunis agenda for the information society’, WSIS doc: WSIS-05/TUNIS/DOC/6(Rev. 1)-E, 18 November, No. 89. Available at: <http://www.itu.int/net/wsis/docs2/tunis/off/6rev1.html>.

11 Ibid: No. 35a.

12 A particularly sore point was the location of ICANN (the Internet Corporation for Assigned Names and Numbers) in the United States which many believed put the US in a privileged position, resulting in not all governments being involved in internet governance on an ‘equal footing’. The G77 governments’ other concern, and this would have been shared by South Africa, was that decision-making on internet development and use had become too multistakeholder with private sector actors in particular, but also civil society and the technical community, having more influence than governments, thereby undermining the responsibility and authority of sovereign states.

13 ‘Intervention on behalf of the Group of 77 and China by the representative of South Africa at the First preparatory meeting for the General Assembly overall review of the implementation of the outcomes of the world summit on the information society (WSIS)’, New York, 1 July 2015. Available at: <http://www.g77.org/statement/getstatement.php?id=150701>.

The purpose of this language is to ensure that ultimate authority regarding policy remains in the hands of states, which must not be undermined either by international agencies from above, or by civil society organizations from below. This is the only way to ensure equality between developed and developing countries (with South Africa somewhere in between the two categories), and preventing the development agenda from being hijacked by the same forces that dominated the global system during colonial times and continue to do so in post-colonial times.

WSIS review modalities: limited role for non-governmental stakeholders

South Africa supported the original draft version of the resolution presented by Fiji in September 2013 on behalf of the G77 states, which proposed a full-scale review process for WSIS+10 (which was an extended version of the earlier WSIS Forums, held in Geneva in 2014).¹⁴ It is important to read this text carefully. It asks for a full-scale review and preparatory process and creates the opportunity for participation by other stakeholders. The draft resolution states that an intergovernmental preparatory committee should be established, and that this committee would decide on how non-governmental stakeholders could participate.¹⁵

The 1 July 2015 G77 statement reaffirms the earlier July 2014 resolution¹⁶ adopted by the UNGA, which outlined the modalities for the overall review. According to the resolution, the high-level meeting will be “preceded by an intergovernmental preparatory process, which also takes into account inputs from all relevant WSIS stakeholders”.¹⁷ The process will result “in an intergovernmentally agreed outcome document” for adoption by the UN General Assembly.¹⁸

South Africa will likely stick to the letter of this resolution, which limits the role of non-governmental stakeholders to that of providing input rather than actively shaping the outcome documents. In this sense, it is in line with its overall statist approach as outlined in the previous section.

14 United Nations General Assembly (UNGA) (2013) ‘Draft Resolution: Information and communications technologies for development’, UN doc: A/C.2/68/L.40, 7 November. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N13/552/87/PDF/N1355287.pdf?OpenElement>.

15 Ibid.

16 United Nations General Assembly (UNGA) (2014) ‘Resolution: Modalities for the overall review by the General Assembly of the implementation of the outcomes of the World Summit on the Information Society’, UN doc: A/RES/68/302, 31 July. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/302.

17 Ibid: 2.

18 Ibid: 2.

South Africa's position as related to human rights online

South Africa has never put much emphasis on the human rights-related content in the WSIS framework. Generally, at least in international forums, it maintains that tackling extreme inequality is only possible in the context of policies and programmes that take economic, social and cultural rights seriously – giving them prominence and priority equal to that of civil and political rights.

Speaking on behalf of the G77 and China, South Africa recommended that the WSIS review should establish a shared understanding on the applicability of international rights, ethics, and freedom of expression and norms to activities in cyberspace. The statement noted that the WSIS review was an opportunity to call on governments to protect their citizens from human rights violations online, close the gap on the digital divide, and promote gender rights.¹⁹ This progressive statement holds promise for rights advocates in South Africa provided it is really embraced, understood and integrated into communications policy. But this cannot be assumed. There is a strong possibility that this text was negotiated in New York without active participation from DTSPS personnel, or for that matter, from the Department of Justice that leads for South Africa on human rights matters.

South Africa has expressed serious reservations with attempts to equate the online and offline exercise of the right to freedom of opinion and expression. It is the most vocal member of the United Nations Human Rights Council to have openly questioned this assumption. While it joined the consensus for the 2012 UNHRC resolution,²⁰ since then it has adopted a position of dissociating itself from UN resolutions that reference the protection of human rights offline and online. It did so for the 2014 UNGA resolution on the right to privacy in the digital age,²¹ the 2014 UNHRC resolution on Internet and human

19 'Intervention on behalf of the Group of 77 and China by the representative of South Africa at the First preparatory meeting for the General Assembly overall review of the implementation of the outcomes of the world summit on the information society (WSIS)', New York, 1 July 2015. Available at: <http://www.g77.org/statement/getstatement.php?id=150701>.

20 United Nations Human Rights Council (UNHRC) (2012) 'Resolution: The promotion, protection and enjoyment of human rights on the Internet', UN docs: A/HRC/RES/20/8, 16 July. Available at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G12/153/25/PDF/G1215325.pdf?OpenElement>.

21 United Nations General Assembly (UNGA) (2013) 'Resolution: The right to privacy in the digital age', UN doc: A/RES/68/167, 18 December. Available at: www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/167.

rights,²² and the 2015 UNHRC resolution on the right to privacy in the digital age, which created the mandate of a Special Rapporteur on the Right to Privacy.²³

What is the logic behind this stand? This requires some speculation as the explanations given by South Africa's diplomatic representatives are not always clear or easily accessible. Partly it is due to procedural issues, related to the question of which UN agency should be in charge of monitoring the right to privacy and which forum would be appropriate for taking decisions on the matter. Partly it is based on the notion that the right to privacy is new and trendy, and thus might deflect attention from other more pressing and persistent concerns with questions of poverty, development, inequality and racism. Partly it is due to so-called "mandate fatigue", which is UN-speak for concern over the proliferation of new UN Special Procedure mandates, which puts pressure on the already stretched UN human rights budget (less than 3 per cent of the total annual UN budget) and adds to the packed agenda of the UNHRC (all Special Procedures report to the UNHRC on an annual basis).

Such concerns are central to South Africa as a country historically emerging from a long period of colonial oppression. They are linked to a worry that not all countries are at the same level of development and therefore that requiring them to develop mechanisms of facilitating free access to and expression on electronic media might be suitable for developed countries, but not necessarily for developing countries.

South African officials also raised objections to the implications of the right to privacy and freedom of expression online. Rejecting the equation between such rights on- and offline, their argument seems to be that unlimited freedom of expression online opens up large-scale opportunities for dissemination of hate speech and racism against vulnerable populations, which violate people's rights. This may be the case for offline speech as well, of course, but national authorities can monitor the situation and put in place mechanisms to ensure a balance between freedom and potential hurt. Online speech is much more difficult to monitor and it evades the power of states, which remain the key actors on the international scene. In that sense, recognizing an unlimited right to freedom of expression online would work in favour of powerful groups in developed countries, with access to advanced technology, and thus reproduces global relations of inequality.

22 United Nations Human Rights Council (UNHRC) (2014) 'Resolution: The promotion, protection and enjoyment of human rights on the Internet', UN doc: A/HRC/RES/26/13, 14 July. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/082/83/PDF/G1408283.pdf?OpenElement>.

23 United Nations Human Rights Council (UNHRC) (2015) 'Resolution: The right to privacy in the digital age', UN doc: A/HRC/RES/28/L.27, 24 March. Available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/28/L.27.

Considering the rapid update of the internet and social media in South Africa by previously disadvantaged groups, this view is questionable. The internet has become a platform for young black South Africans to express their disaffection with state that they feel is failing to deliver jobs, services, or affordable university education. It is used to challenge corruption and make fun of politicians. It is a platform for precisely the kind of speech that the ruling ANC party would rather not hear and this is a more believable reason for the state wanting to curtail online speech than that it can reproduce global relations of inequality.

The role of states as the key actors on the international scene was an additional concern. South Africa regards the status given to NGOs and other non-state players as a threat to the principles of international diplomacy and global order, which are based on national states and inter-governmental relations. Non-state actors are not accountable to anyone, which is why South Africa is opposed to including them as partners in the quest for extending rights to non-traditional areas of concern.

The common thread in all these positions taken by South Africa, is that on matters related to privacy, security and other online practices, international agreements between sovereign states are needed, at regional levels, through bodies such as the African Union and at inter-state level such as the BRICS group, and then globally. As Ambassador Matjila, Director-General of the Department of International Relations and Cooperation (DIRCO), said at the BRICS Ministers' Meeting on 29 September 2015:

“It is no longer prudent to think that bilateral, technical cooperation agreements alone will eradicate crimes committed online. Furthermore, the lacklustre approach towards this challenge is a further impediment to finding a global solution. Regarding the Budapest Convention, South Africa agrees that this Convention can be useful in elaborating an international instrument at the UN. At the regional level, the African Union also has an instrument; the AU Convention on Cyber Security and Personal Data Protection. Both these conventions have their merits and can be utilised to elaborate an effective international instrument that can be accessed and owned by Member States equally. It is in this context that South Africa advocates for an international, legally binding instrument on cybercrime.”²⁴

24 'Statement by Ambassador J.M. Matjila at the International Relations Ministers' Meeting on the margins of the 70th Session of the United Nations General Assembly (UNGA70)', Director-General Department of International Relations and Cooperation (DIRCO) and BRICS Sherpa, New York, 29 September 2015. Available at: <http://www.dirco.gov.za/docs/speeches/2015/matj0929.htm>.

The key phrase here seems to be an international instrument (e.g. a treaty) that can be “accessed and owned by Member States equally”.²⁵ This means two things in particular: (1) denying equal role either to supra-national bodies that could override the sovereignty of the state by creating a framework above it to which it would be subordinate, or to sub-national bodies (such as NGOs and other civil society organizations) that may undermine the power of the state within its boundaries; and (2) focusing on equality between states, to prevent developed countries from dominating the agenda. In essence, these two principles serve to guide South Africa’s international policy, in its independent intervention in debates and as part of the G77 group, in which it plays a leading role on such matters.

Internet governance

The general position of the country on Internet governance at the global level is that it should be government-led, with developing countries having equal voice to developed countries, and that other stakeholders should be engaged in “their respective roles and responsibilities”.

During the 1 July 2015 WSIS preparatory meeting, South Africa endorsed the G77 view that much work remains to be done in order to implement the WSIS outcomes fully, particularly in the field of Internet governance. Similarly to other G77 countries, South Africa identified the lack of progress on enhanced cooperation (which they would interpret as a greater role, on an equal footing with one another, for *governments*) as one of the major obstacles preventing developing countries from fully benefiting from ICTs. Achieving progress on enhanced cooperation is thus likely to emerge as a key task for South Africa in international negotiations.

In general, South Africa has not been opposed to the IGF, but also has not been a great supporter. When it has spoken on the IGF, it said that the mandate of the IGF should remain as it was presented in paragraph 72 of the Tunis Agenda, which provides an extensive list of tasks. It has said on the one hand that the IGF does not outline concrete outcomes, which diminishes its value, but on the other hand South Africa has not shown much interest in making it more outcome-oriented. Perhaps South Africa’s reluctance to play a more active role has to do with the more open-ended definition of stakeholders, beyond national governments, in the IGF, which dilutes the focus on the central role of states that is evident in other South African policies and statements.

²⁵ Ibid.

Conclusions

South Africa's foreign policies have been shaped by a focus on the sovereignty of national states, and the need for equality between developed and developing countries in the international arena. These principles have led it to challenge policy frameworks that – in its view – give excessive power to international multistakeholder bodies such as ICANN in which business entities are generally very influential and to civil society organizations, and thus undermine the central role of states. This focus may lead to a clash with another important policy imperative, that of protecting human rights online and offline. And indeed, at times, asserting state power and working with a security-oriented paradigm hampered the quest to enhance rights locally and globally, in particular civil and political rights. Only intervention by civil society organizations, possibly in alliance with progressive state officials in South Africa and like-minded business entities, to change this orientation and allocate greater weight to rights, could help shift the balance of state policy in a more positive direction. If South African human rights activists want rights on the internet to be respected and promoted they are going to have to work hard to achieve this, and engage multiple ministries and departments.

Audie Klotz

Security (still) trumps rights in South African migration policies

Despite South Africa's transition to a rights-respecting democracy, a collective perception of threat from "foreign Africans" remains entrenched, manifest in restrictive immigration policies and periodic violent attacks. South Africa's approach to the region remains focused on limiting human mobility and protecting allies regardless of their human rights records. In the face of populist antipathy and official ambivalence, advocates for migrants' rights will need to work even harder to maintain the legal status quo through domestic courts. Any further progress will require building stronger alliances with social service organizations at the local level, in order to challenge xenophobia from the bottom up.

Introduction

Despite long-standing and significant cross-border population flows, post-apartheid South Africa perpetuates a negative discourse about immigration. At the elite level, its policies emphasize detention and deportation, adopted by politicians who frequently invoke fears of being swamped by migrants falsely claiming asylum (e.g., Immigration Act of 2002, Immigration Amendment Act of 2011). At the local level, xenophobic mobilization has resulted in periodic outbreaks of violence, including exceptionally widespread attacks on homes and shops in 2008 that targeted people perceived to be foreigners, regardless of whether they were long-time denizens, held official refugee status, or indeed had been born elsewhere in South Africa (Hassim et al 2008).

No objective change in migration at the national level can explain these sentiments and flare-ups, because demographic trends appear stable. However, it is crucial to keep in mind that statistics on migration are notoriously unreliable, especially in the context of apartheid, which outlawed formal African immigration and tightly regulated mobility even within the country, thereby creating a large undocumented population of both nationals and foreigners. At best, macro-level estimates suggest that the current foreign African population is approximately the same proportion as during the apartheid-era. For instance, one government estimate in 1961 implies that 5 per cent (800,000) of the 15 million total official inhabitants were foreign Africans (based on figures in Owen 1964). And a more recent compilation of government figures on visas issued, deportations, border post entries

and departures, and asylum applications suggests approximately 2 million migrants annually among 50 million inhabitants, which amounts to less than five percent of the overall population in South Africa (Ilgit & Klotz 2014: 144, drawn from Department of Home Affairs 2008).

Alternatively, a securitization framework explains how a fear of “foreign Africans” legitimizes such attacks, and why this collective perception of threat remains entrenched, despite the replacement of apartheid with a rights-respecting democracy (Ilgit & Klotz 2014). This analysis proceeds in three steps: a characterization of the dominant discourse of threat, a brief history of the institutionalization of that discourse, and finally an identification of links between dominant discourse, migration policies, and foreign policies. Looking ahead, trends revealed by this analysis provide scant reason to expect any further incorporation of human rights into South Africa’s migration policies. More likely, rights advocates will need to work even harder within the domestic court system to maintain the status quo, in the face of populist antipathy and official ambivalence.

Immigration as a security threat

Reactions to outbreaks of anti-foreigner riots in 2008 provide an opportunity to explore how South African political leaders articulate security and to see what role, if any, rights play in those discourses. For example, despite routine media coverage of xenophobic motives for the attacks, President Thabo Mbeki explicitly refused to label the widespread violence as xenophobia, instead blaming the victims for fuelling crime (Mail & Guardian 2008). And Mangosuthu Buthelezi of the Inkatha Freedom Party, who had done much to foster the prevailing anti-foreigner discourse as Minister of Home Affairs from 1994 until 2004, sought to dispel accusations (reminiscent of apartheid-era violence) that his Zulu followers were the main perpetrators (Dibetle 2008b) .

Lack of action by the police to quell the violence also distanced the government from responsibility. After two weeks, in an extraordinary move eerily reminiscent of apartheid-era unrest, the army finally intervened to restore order (International Organization for Migration 2009). Few of the attackers were ever prosecuted (Govender 2008). Meanwhile, neither the Department of Home Affairs nor provincial authorities wanted to provide assistance for thousands of displaced people (Dibetle 2008a). Rather, suffering most of the direct effects, municipal governments ultimately set up some shelters. Since township dwellers cited competition for subsidized housing as one of the key issues driving the attacks, officials repeatedly stressed that emergency camps, set up along the lines of international relief standards, were not houses or luxurious accommodations (Joubert, Foster & Tshabalala 2008). Most camps were disbanded after a few months, precisely to

prevent their conversion into informal settlements. Home Affairs and police officials even treated the situation as an opportunity to deport foreigners, with little distinction paid to their legal status (United Nations High Commissioner for Refugees 2010).

Still, elements of a rights-based discourse have emerged in the post-apartheid era. Led by the newly established South African Human Rights Commission, the Roll Back Xenophobia campaign sought, albeit unsuccessfully, to influence media coverage by stressing constitutional protections for foreigners (South African Human Rights Commission 1999; McDonald & Jacobs 2005). More successfully, lawyers have navigated the courts to demand rights of migrants, including those protected under the new constitution (Handmaker et al 2008). And some individuals and organizations at the local level have managed to preclude or at least dampen xenophobic violence (International Organization for Migration 2009). Other efforts within civil society include support networks for victims dealing with issues ranging from legal and humanitarian assistance to community and government relations (Everatt 2011).

Yet, due largely to the lack of political and social allies, these rights advocates remain relatively weak, which enables long-standing anti-foreigner discourse to persist (Klotz 2012; Pugh 2014). Crucially, most of the major economic actors who rely on foreign workers – whose counterparts in other countries often push for fewer restrictions – remain relatively silent. In particular, the mining conglomerates have historically been most dependent on imported labour, based on bilateral contracts with neighbouring states, which have often continued in the post-apartheid era (Crush 2000; Crush & Tshitereke 2001). Consequently, these businesses negotiate directly with governments – much like corporatist arrangements in many European countries – instead of engaging in public debate or the parliamentary process. This bifurcation even enabled the mining sector to reframe its contract labour system as international agreements to be honoured and as a cost-effective service to South Africa (Chamber of Mines, cited in Crush & Tshitereke 2001: 54-6).

Thus, in contrast especially to Europe, xenophobic discourse does not have to compete with an alternative pro-market discourse that emphasizes the value of immigration. In addition, unions – historically, powerful advocates for the rights of migrant workers in many European countries – have done little, aside from the National Union of Mineworkers' successful lobbying for the rights of long-term residents to vote in the 1994 elections. The Congress of South African Trade Unions periodically condemns xenophobia, and characterized the 2008 attacks as misplaced scapegoating that distracts from employer exploitation, but has not engaged in the debates over immigration policies (Hlatshwayo 2011).

Within this political context, post-apartheid officials face few incentives to reconsider an inherited frame of foreign Africans as a threat (Vale 2002; Vigneswaran 2008). And in the absence of any major opposition in parliament, the ANC has little reason to challenge this discourse (Neocosmos 2010; Klotz 2013). Thus they and their constituents readily embrace physical exclusion – notably barriers to entry, police sweeps in areas known for high migrant populations, detention and deportation without sufficient regard to legal processes – as the solution. Too often either the police or Home Affairs officials ignore official refugee papers (Amit 2015). Furthermore, as the next section details, institutionalization of this discourse within the bureaucratic side of the state demonstrates why democratization has had little ameliorating effect.

Institutionalized discourse of threat

Data that bureaucracies use to categorize and measure immigration reflect migration discourses across time and across institutions. In South Africa, African immigrants have remained the overarching target of xenophobia, but the specific nature of that putative danger has evolved over time: women from Lesotho in the 1960s, Mozambican refugees in the 1980s, and undocumented Zimbabweans in the 2000s. Along the way, the government has gradually shifted from making exceptions for Africans from the region in colonial times to a simpler dichotomy distinguishing citizens from foreigners in the post-apartheid era.

South African treatment of foreign Africans is rooted in their role as migrant labourers. Historically, the mining sector, not the government, tabulated the movement of foreign labourers in great detail, according to arrangements between imperial governments (Jeeves 1985). Africans from the neighbouring British Protectorates (now Botswana, Lesotho and Swaziland) were the exception; they had generally been treated on a par with black South Africans who settled in the cities as part of an urbanization process that apartheid aimed to halt (Evans 1997; Posel 1997; Kynoch 2005).

Meanwhile, the 1913 Immigrants Regulation Act precluded any potential foreign African immigration by requiring an ability to assimilate, which meant being white (especially German and Dutch or English-speaking). Consequently, black immigrants from Africa could not acquire residency status, and there were a series of legal battles over the status of South Asian British subjects as well as Jewish immigrants. In the 1920s and 1930s, quotas targeting Jews led the state to generate detailed statistics on birth, place of prior residence, and citizenship (Bradlow 1978; Shain 1994; Peberdy 1999). From the 1950s into the 1980s, the government shifted its emphasis to facilitating the entry and

integration of whites fleeing former colonies, who were viewed as being savvy about segregation (Peberdy 1999).

Yet nationality was still fluid as late as the 1960s. Many immigrants of all races were British imperial subjects. When South Africa became a republic (independent from Britain) in 1961, they instantly needed to be identified as foreigners. In particular the government warned that an influx of foreign Africans threatened to swamp South Africa, even though most came from tiny Lesotho (Owen 1964). Consequently, the Aliens Control Act of 1963 established the first regional border posts. And in 1965 the former Protectorates were finally listed as a separate category in immigration statistics, evidence that African mobility was now regulated through nationality. Subsequently, the categories used to track migration have used a basic hierarchy between foreign Africans and Africans born in South Africa (albeit denied citizenship rights under apartheid).

The only major change in the post-apartheid era was passage of the 1998 Refugees Act, which finally established asylum policies and procedures in line with international agreements. Ironically, this recent recognition of rights for refugees has reinforced the binary distinction between citizens and foreigners in the discourse of threat. Both politicians and the public, not just perpetrators of the 2008 attacks, routinely express concern about the fiscal impact of illegal immigrants masquerading as asylum seekers and thus overburdening social services such as housing and health care (Hassim et al 2008). These concerns even appear explicitly in legislation such as the Immigration Amendment Act of 2011.

Effects of discourse on migration and foreign policy

Migration policies span labour markets, political asylum, citizenship rights, and border controls, thus inherently precluding coherence. Even so, inconsistencies in the overall orientation of the post-apartheid government are striking. Notably, the Refugees Act of 1998, developed in consultation with the United Nations High Commissioner for Refugees (UNHCR), marked the first time any South African government had ever recognized asylum status in policy or law. This change met resistance from the Department of Home Affairs, still staffed mostly with apartheid-era bureaucrats. In the face of such resistance, the courts have proven an avenue for ensuring implementation of many refugee rights, as well as for clarifying the scope of constitutional protections applicable to non-citizens (Handmaker et al 2008).¹

¹ See also the section *Refugee and migrants rights programme* on the website of Lawyers for Human Rights. Available at: <http://www.lhr.org.za/programme/refugee-and-migrant-rights-programme-rmrp>.

Yet the 2002 Immigration Act offered only modest reforms to the inherited apartheid-era approach that severely curtailed African mobility. And all subsequent legislation and corresponding regulations have retained a fundamental emphasis on detention and deportation, in line with the dominant discourse of threat. Currently, two draft bills, tabled for comment on 6 August 2015, perpetuate this trend. The Border Management Agency bill represents the culmination of a Cabinet decision in 2009 to shift enforcement to the Department of Defence (Department of Defence 2014: viii; Netshirembe 2015). And the Refugees Amendment bill tightens procedures for asylum seekers and exudes concern about fraudulent documentation.

Many aspects of these policies have developed in reaction to political and demographic pressures generated by recurring crises in neighbouring Zimbabwe. For instance, the UNHCR estimates for 2009 included over 300,000 “persons of concern”, almost half of whom were Zimbabweans (UNHCR 2009; UNHCR 2010). However, because Home Affairs does not categorize Zimbabwe as a refugee-generating country, very few victims of political violence have an approved asylum status. Also, Home Affairs attempted through procedural guidelines to prohibit asylum claims if the applicant has transited through a safe third country (LHR & ACMS 2013). Unlike those fleeing conflicts elsewhere on the continent, most Zimbabweans cross directly into South Africa, thereby limiting any applicability for a safe third country rule.

In addition, South Africa continues to reject free movement in the region, as originally proposed in 1995 by the Southern African Development Community (SADC). Instead the government has emphasized better administrative coordination (Oucho & Crush 2001). Consequently, its bilateral policies have sought to coordinate visa requirements with neighbouring countries. In 2005, South Africa and a subset of SADC members adopted a protocol pledging to work towards the elimination of barriers to integration, including human mobility (Williams 2011). To facilitate, South Africa’s latest immigration regulations, approved in 2014, include a “treaty” visa.

Within this SADC framework, South Africa has recently attempted to regularize the status of undocumented Zimbabweans by issuing a special permit, initially called the Dispensation of Zimbabweans Project permit, then replaced in 2015 by the Zimbabwean Special Dispensation permit.² However, given the requirement of a valid passport, any such programme’s effectiveness is inherently limited, because few Zimbabweans can acquire that documentation, due to financial constraints or political risk.

² Department of Home Affairs (2015) ‘Zimbabwe special permit (ZSP)’. Available at: <http://www.home-affairs.gov.za/index.php/immigration-services/zimbabwean-special-permit-zsp>.

Prognosis

Ultimately, South Africa confronts a conundrum. Its discourse of threat rejects pan-Africanism applied to foreign African migrants, while its regional foreign policies, especially strong relations with Robert Mugabe in Zimbabwe, exacerbate the population flows that it seeks to avoid. Alternatively, if South Africa formally acknowledged the depths of political repression in Zimbabwe, its categorization of other authoritarian regimes as refugee-generating countries would have to expand dramatically. Given its acknowledgment of both international and constitutional legal protections for refugees, the consequences would be a much larger number of legitimate asylum claims in addition to a much narrower set of potential safe third countries on the continent.

A similar contradictory dynamic is evident in South Africa's involvement in African Union (AU) initiatives, such as its promotion of a rapid reaction force aimed to reduce interventions on the continent by former colonial powers (Fabricius 2014b). Such efforts are unlikely to resolve festering conflicts in Sudan or the Democratic Republic of Congo without a stronger commitment to human rights. Faced with such dilemmas, South Africa increasingly tries to abide by a minimalist interpretation of its international commitments. In essence, security continues to trump rights, as South Africa gradually shifts away from its initial post-apartheid concerns with human rights towards bolstering its status at the AU and diversifying ties with the other BRICS, especially China.

Consequently, advocates for migrants' rights now work harder and harder domestically merely to maintain the status quo. As avenues for international pressure diminish, court proceedings will continue to be the most effective avenue for preserving legal gains made by rights advocates during the first two decades of the post-apartheid era. Any further progress, however, will require building broad-based alliances between advocates for migrants' rights and social service organizations within local communities, in order to challenge xenophobia from the bottom up.

Susan Wilding

Influencing South African foreign policy: engaging the ANC on human rights

Disillusioned with the post-apartheid ANC government because of a lack of access to and inclusion in policy formulation, South African civil society has wilted from a strong, vibrant and effective civil society during the apartheid era, to a fragmented and weakened civil society post 1994. South African civil society will have to work hard to influence foreign policy, embracing new and innovative ways of engaging with government to uplift the voices of the voiceless.

Introduction

South Africa was an international pariah prior to 1994. Given the grievous human rights abuses during apartheid, it would have been unwise for the international community to entertain any human rights diplomacy by the erstwhile National Party government. Therefore, this essay focuses on the foreign policy and human rights diplomacy post 1994 since the African National Congress (ANC) government came into power.

The foreign policy of South Africa as a ‘new’ – 21 years old – democracy inscribes human rights at its very core and states that it will continually strive for the betterment of not only its people, but of the people of Africa, going so far as to call it “South Africa’s diplomacy of Ubuntu” (DIRCO 2011), with ‘Ubuntu’ loosely translating as ‘humanity or kindness to others’.

Domestically South Africa, following the atrocities of apartheid, has what is “widely regarded as one of the most progressive constitutions in the world” (De Vos 2015). The constitution, being the highest law of the land, lists “human dignity, the achievement of equality and the advancement of human rights and freedoms” among the founding values of the Republic of South Africa. In light of the above, several analysts have reported being puzzled as to why the foreign policy of South Africa is so unpredictable and so disconnected from the domestic – it is often disparate and sometimes adversarial to domestic human rights policy (Spector 2013). This chapter will seek to highlight some of the (past, present and future) human rights advocacy and domestic influences on foreign policy and the human rights diplomacy of the government of South Africa.

The foreign policy of the ANC over time

In South Africa's first democratic elections for the National Assembly, in 1994, the ANC won 252 of the 400 seats. This marked the end of apartheid. The party has governed unrivalled ever since. As a result, the foreign policy of South Africa may be seen as the foreign policy of the ANC. Although South Africa is a multiparty democracy, the ANC has such a high percentage of the votes that opposition parties are constrained in their influence. The short history of ANC foreign policy is outlined under each of the three (full term) South African Presidents.

The Mandela years (1994-1999)

The Mandela years focused on the international allies that had helped the ANC during the liberation struggle. Mandela's task was to put South Africa back on the international scene after being isolated for so many years. These years were transfixed by an iconic and charismatic leader who chose peace over potential violent conflict. South Africa became the bastion of human rights around the world and Nelson Mandela spent most of his time visiting foreign dignitaries and improving diplomatic relations. Domestically, the constitution (heralded as one of the best human rights documents in the world) came into being. All domestic realities were catapulted outwards as South Africa moved onto the world stage. Mandela spent a good deal of his time mediating foreign conflicts, like in the Democratic Republic of Congo, and he pursued peace in places like Burundi. President Mandela, although the embodiment of human rights at home and abroad, was often criticized for his relationships with leaders such as Fidel Castro of Cuba and Muhammed Gaddafi of Libya (Firsing 2013) who provided the ANC with support and solidarity during the anti-apartheid struggle. Mandela's foreign policy can be seen as centred around relationship building with new friends of South Africa and old ANC supporters.

The Mbeki years (1999-2008)

The Mbeki years saw a shift in focus to Africa. All foreign policy was geared to nurturing the continent, sometimes at the cost of the international community; the latter was often due to the fact that Mbeki was engaging with several authoritarian African heads of state or governments condemned internationally. In 1995, while still Deputy President, he stated that "South Africa should place itself within the context of the South African region and define its place on the continent of Africa and the world" (Pillay 2011). President Mbeki led the 'African Renaissance',¹ his dream for South Africa in an African context. His

1 The African Renaissance was referred to by Thabo Mbeki as the emergence of the continent from "a long period of darkness and fear into one of light and a dream fulfilled", in which "through our persistent efforts we have redefined ourselves into something other than a place of suffering, a place of wars, a place of oppression, a place of hunger, disease, ignorance and backwardness", and "succeeded to create a new world of peace, democracy,

foreign policy focused on forging economic and political relationships that would favour Africa first and firmly establish Africa as a significant player in geopolitical affairs, while fulfilling his values of what post-colonial Africa should look like, based on social cohesion and a growing and sustainable economy.²

Mbeki also spearheaded South-South cooperation with the building of the IBSA dialogue forum. He was a great mediator, spending large amounts of time continuing the work of his predecessor by promoting peace and conflict resolution, which was the mainstay of his foreign policy thrust. Mbeki was instrumental in negotiations to end the civil wars in Burundi and the DRC. But he refused to criticize Zimbabwean President Robert Mugabe for his human rights violations, due to the fact that Mugabe was a strong ally to the ANC. In retrospect, for some, Mbeki's foreign policy appeared more clear and direct being predicated on African affairs and African solutions to African problems (Pillay 2011).

The Zuma years (2008-present)

The Zuma years, as they continue, are the most confusing for South African foreign policy. If one was to try and summarize, they could be described as the years of economic gain and multilateral cooperation in favour of South Africa's economic growth.

Notably, Zuma has left the 'African approach' to foreign affairs and seems to have ushered in a new 'economic approach' to foreign policy which also coincides with South Africa becoming a member of the BRICS economic grouping (with Brazil, Russia, India and China). Under Zuma and despite the development of a White paper on foreign policy in 2011, outlining the strategic priorities for South Africa, Zuma's foreign policy seems to be driven by economic gain, often at the expense of domestic needs and at the behest of corporates. The debacle in the Central African Republic, where thirteen South African soldiers lost their lives for unclear objectives, is a case in point (Parker 2013). Although, the diplomacy of Ubuntu may have precedence on paper, human rights appear to have taken a back seat in reality.

South Africa's external human rights policy since Zuma

Since joining BRICS in December 2010, South Africa has been voting increasingly in unanimity with BRICS at the United Nations Human Rights Council (see the contribution

development and prosperity", Mbeki T. (2001), 'Address to the joint sitting of the National Assembly and the National Council on the New Partnership for Africa's Development', Cape Town, 31 Oct., cited from Nathan (2005): 363, footnote 11.

² Mbeki, T. (1998) 'African renaissance statement of Deputy President Thabo Mbeki', Johannesburg, Gallagher Estate, 13 August. Available at: <http://www.dfa.gov.za/docs/speeches/1998/mbek0813.htm>.

of Eduard Jordaan in this volume). Evidence of this can be seen in South Africa's abstention on the resolution on Sri Lanka that would have led to an investigation into war crimes in the country. India also abstained while Russia and China voted against.³ In April 2014, South Africa voted against a Human Rights Council resolution on the promotion and protection of human rights in the context of peaceful protests, siding with China, Cuba, India, Kenya, Pakistan, Venezuela and Vietnam.⁴ South Africa's alignment with BRICS countries, and China in particular, is also evidenced in South Africa's refusal to grant the Dalai Lama a visa in 2014 to attend a conference of Nobel Peace Prize laureates in South Africa.

Although it is still to be seen whether the voices of democratic countries like India, Brazil and South Africa who are part of the BRICS are able to positively influence human rights in China, it is becoming evident that these countries' view of democracy may be changing. The three democracies missed a strong opportunity to condemn governments during the crackdowns in Tunisia, Egypt, Libya and Syria during the people's uprisings or so-called Arab Spring of 2011 (Tiwana 2014), choosing to be observers on the side-lines with Russia and China. In reaction to this trend of 'bloc voting', South African civil society has found that engaging in the BRICS discourse is a vital tool for influencing foreign policy. In practice, local civil society organizations (CSOs) have held many BRICS related discussions, workshops and conferences trying to analyse the political and economic relationships of the grouping and determine how best to engage these governments. There has also been an increase in international solidarity with civil society in India and Brazil specifically, with BRICS relevant meetings being held on the side-lines of international CSO gatherings. The information sharing has proven useful in helping to structure an approach to influence foreign policy within the BRICS groupings. Unfortunately, and due to the current environment for CSOs in China and Russia, these CSO engagements have been largely between Brazil, India and South Africa only.

An important human rights concern on which South Africa has been fairly consistent, including during the Zuma presidency, has been the issue of the Israeli occupation of the Palestinian territories and the conflicts in Gaza. This support by South Africa for the Palestinian people is based on historic factors including the support rendered by Yasser Arafat and the Palestinian Liberation Organization (PLO) to the anti-apartheid struggle, coupled with strong domestic pressure to support the Palestinian cause. Domestic support

3 United Nations Human Rights Council (UNHRC) (2014), 'Promoting reconciliation, accountability and human rights in Sri Lanka', UN Doc: A/HRC/RES/25/1, 27 March. Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/25/1.

4 United Nations Human Rights Council (UNHRC) (2014), 'The promotion and protection of human rights in the context of peaceful protest: resolution adopted by the Human Rights Council', UN Doc: A/HRC/RES/25/38, 11 April. Available at: <http://www.ohchr.org/Documents/Issues/Executions/A-HRC-RES-25-38.pdf>.

for the Palestinian struggle goes back to a statement made by Nelson Mandela in 1997 when he said: “We know all too well that our freedom is incomplete without the freedom of the Palestinians” (Srikanth 2015). Grassroots activism for Palestine remains strong, comprising a vast network of organizations in South Africa. Students and trade unions as well as organized networks have used their positions to practice this activism. An example being when the South African Transport and Allied Workers’ Union refused to unload Israeli goods at the Durban harbour (Srikanth 2015). The combined civil society pressure with government’s already committed will to stand by the Palestinian fight for sovereignty, makes this a successful foreign policy stance.

Other areas where South Africa played a positive role with regards to human rights concerns are racial discrimination, where South Africa continues to support the Durban Declaration and Programme of Action (2001), and the rights of sexual minorities, which South Africa supports, albeit sometimes waveringly. Given the history of apartheid, South Africa was well placed to be at the forefront of the fight against racial discrimination. The hosting of the Durban conference (31 August- 8 September 2001) was the first commitment towards driving the agenda on the international stage. The Durban Declaration urges “States to establish and implement without delay national policies and action plans to combat racism, racial discrimination, xenophobia and related intolerance, including their gender-based manifestations”.⁵ South African civil society groups remain engaged with government on the issue of race and xenophobia. When it comes to issues where there is a common agenda (i.e. the racism agenda) the government is more open to discussions with civil society, and includes it in consultations around the National Action Plan (which is still to be finalized).

During the xenophobic attacks in South Africa both in 2008 and more recently in 2015, civil society was extremely active in holding government to account. Large open meetings were held to discuss grass roots campaigning and the protection of migrants within South Africa’s borders. Civil society was quick to act, and shared with government plans to campaign on a local level. South Africa has remained consistent in its foreign policy on these issues and strongly condemns xenophobic attacks. In this example, civil society and government work go hand in hand (see the essay of Audie Klotz for a different view).

Aside from the few areas where government and civil society share common goals and engagement is successful, for the most part, the ANC continues to consult in tight circles.

5 United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001) ‘Durban Declaration and Programme of Action’, UN doc: A/CONF.189/12, 8 September: No. 66. Available at: <http://www.un-documents.net/durban-d.htm>.

This type of governance, in which civil society and the public at large are left out of the decision-making process, entirely is what remains problematic, as the lack of communication and explanation to the people of South Africa increases the view internally and externally of an erratic foreign policy.

Civil society and human rights advocacy

Outside of the normal government institutions and parliament, human rights advocacy remains largely in the hands of civil society. The 'global civil society alliance' CIVICUS defines civil society as being "the arena, outside of the family, the state, and the market, which is created by individual and collective actions, organisations and institutions to advance shared interests".⁶

Civil society in South Africa played a vital and leading role in the anti-apartheid struggle. Civil society rallied in the apartheid era to gain support from foreign governments against the apartheid government and also to expose the gross human rights violations taking place in the country. Without any real influence on the foreign policy of the government of the day, due to the nature of the regime, civil society continued to lobby foreign governments with a common goal to end the apartheid regime.

However, after 1994 and the country's first democratic election, a number of events led to the weakening of civil society in South Africa and its ability to influence policy-making in general. Firstly, the ANC subsumed high-level civil society leaders into the rank and file of government, leaving civil society organizations with no leadership and causing many of them to close down or struggle with internal changes that set them back in their agendas. Secondly, and in addition to this, civil society – in all its different facets – had been fighting for one common goal: the end of apartheid. When apartheid ended and after the victory chorus had rung out, civil society found itself fragmented and unable to unify on any one cause. The result is a civil society that acts in silos – struggling to coalesce around common issues and trying to find common ground.

Having tried to influence foreign policy through engagement of post-1994 governments with little success, today civil society's methods have reverted back to the days pre 1994. Trade unions, think tanks and non-governmental organizations now seek to influence South African foreign policy from the outside again. Perhaps it is a habit from the apartheid struggle or indicative of a government that does not listen, but the greatest method of influence is often from international pressure created from the inside. Although the

6 CIVICUS: World Alliance for Citizen Participation. Available at: www.civicus.org.

enabling environment for civil society remains open,⁷ allowing South African civil society to engage government on all levels – and indeed at times encourage it – results are most notable when advocacy is directed at the international community that, subsequently, pressures the South African government to change. A prime example is the LGBTI advocacy, which in all its avenues has always leaned on the support of sympathetic governments and likeminded organizations to place pressure on the government from outside. With much success in some instances, such as the South African-led SOGI resolution of 2011,⁸ and some failures in the follow-up to the resolution.

The logic here is that international advocacy targeted at UN bodies or sympathetic Western governments will result in top-down pressure on leaders to act in accordance with the wishes of domestic civil society organizations. Such a system, regrettably, perpetuates a cycle of belief that, because civil society organizations from the global South are predominantly externally funded, they are being used by Western governments to influence African domestic and foreign policy (Schiffer & Shorr 2009). Wedded to this, and due to a long history of colonization, is a strongly held, and in some cases freely expressed, anti-Western sentiment amongst African leaders. The fact that South Africa is now increasingly aligning with the BRIC countries and the African Union (AU) means that Western-funded CSOs are even viewed as more ‘suspicious’, but hitherto they have no alternative sources of funding. This is the context in which CSOs – many of which are funded by Western governments – must navigate and operate. Some organizations successfully manage to attain local funding from government itself and/or from the national lottery fund. However, and in the context of a massive global funding crisis, most CSOs are forced to rely on foreign funding and deal with the ramifications of being viewed suspiciously.

A perceived ‘hierarchy’ in acceptable civil society forms also impacts the context for civil society (Yachkachi 2010). Dr. Yachkachi postulates that CSOs involved in development, conflict resolution and service delivery have a much better relationship with government and are often subcontracted by government to become service providers. They are not regarded with as much suspicion and are more likely to be invited into closed circles. However, while they may have more influence on foreign policy, their thematic focus is different from the majority of human rights organizations and as such they may not take up issues relevant to the human rights sector, leaving those issues to be advocated for by the organizations that remain ‘outside’ the circle. On the other hand, human rights

7 Rights to freedoms of expression, association and assembly are protected by South Africa’s constitution.

8 United Nations Human Rights Council (UNHRC) (2011) ‘Human Rights, Sexual Orientation and Gender Identity: resolution adopted by the Human Rights Council’, UN doc: A/HRC/RES/17/19, 14 July. Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/19.

organizations are viewed suspiciously and impact on policy-making is low. This is particularly evidenced in the case of the Southern African Development Community (SADC) CSO engagement, which tends to side-line human rights organizations, as evidenced in the attendees of these consultations which include development organizations, trade unions and the council of churches yet no human rights advocates.⁹

Think tanks, such as the South African Institution of International Affairs (SAIIA) are often consulted by government on foreign policy. Seen as a more 'neutral force' by the government, perhaps because they can provide government with more evidenced-based research positions (and indeed research that is sometimes commissioned by government), they are often invited to the inner circle of negotiation and given a platform on which to influence foreign policy. In South Africa, CSOs have started to consult with think tanks but more so on developmental issues than on human rights. A case in point is the Oxfam and SAIIA collaboration on development called the Network of Southern Think-Tanks (NeST).¹⁰

Conclusion

With the ANC holding a monopoly on power, foreign policy in South Africa will continue to be driven by ANC objectives. Civil society remains active in attempting to influence human rights foreign policy, but in the current status quo it is often left out of the negotiations, especially at the highest levels of influence. More effective engagement with government resulting in greater influence on foreign policy will require civil society to be better organized through solidarity platforms both domestically and internationally. With greater knowledge sharing, capacity building, and advocacy between organizations, South African civil society can provide a united front in negotiations with government, applying pressure as a unified force. In addition, by engaging more widely with think tanks, trade unions and development organizations, human rights organizations can attempt to get a 'seat at the table', or at least influence the discourse between government and the more 'trusted' organizations invited into the tighter circles of negotiation. Relationship building is also vital to influencing foreign policy. By building relationships that help to remove governments' suspicion about human rights organizations' agendas, CSOs will be given more of a voice at these all too important negotiations on the future of South Africa's human rights foreign policy.

9 See the 9th Civil Society Forum statement to the SADC Heads of State and Government Summit (17-18 August 2013): 'SADC: We want: Acting together- Ensuring accountability', 10 September 2013. Available at:

<http://www.sadccngo.org/wp-content/uploads/2013/09/9th-CSF-Statement-1489F56.pdf>.

10 See website of SAIIA (2015) 'The launch of NeST South Africa reference group', 28 January. Available at:

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ISBN 978-90-6463-374-4

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