The ongoing inter-religious violence in the Central African Republic (CAR), coupled with the massive displacement of people there, has again highlighted the political and moral dynamics involved when the international community must decide on who should intervene, as well as when and how, so as to protect local populations from crimes perpetrated by their own governments. Despite our country’s first military sojourn into the CAR, and the opportunity it afforded some to score cheap political points, South Africans now seem disturbingly mute on the subject. This is unfortunate, since we need to be enhancing, not diluting, the ‘protection discourse’ in this country’s political and international relations narrative.

A public dialogue surrounding the merits of humanitarian intervention is long overdue, and requires both uniform political will and patriotism, considering that very often military intervention results in the ultimate sacrifice by members of our armed forces.

For those who perceive foreign policy only through a Realist lens, then the pursuit of power by any means, and the satisfaction of narrow national interests, is the ‘stuff’ of politics. By

By Anthony Bizos
extension therefore, the behaviour of states can be understood by the logic of consequence, cost-benefit considerations and utility maximisation in the pursuit of those national interests. Therefore, any proposed military intervention should serve to protect those interests, should account for the costs associated with the use of force, should measure the value of the use of force against employing more traditional diplomatic initiatives and should consider possible partners in the intervention so as to ensure burden sharing and legitimacy.

This myopic view of international relations assumes that states know what their interests are a priori, and that they behave in a rational way to achieve those interests, which are usually measured in relation to material gain. Unless we can be convinced of having material interests in the CAR therefore, it is easy to discern why this country’s naysayers would reduce the debate to a level which suggests that our President is duplicitous in his motives for intervention in that country, or that he is somehow pursuing his own personal agenda. This approach not only ignores the warnings by the United Nations that inter-religious violence in the CAR is heading towards genocide, but is also an affront to our country’s constitutionalism and parliamentary oversight. This self-serving politicisation of the matter overlooks the need to engage in a more progressive and constructive dialogue around humanitarian intervention, since we can safely assume that this is not the first, nor the last time, that we will be faced with an intervention dilemma.

Ontologically therefore, a more constructivist interpretation of international relations is warranted. Far from discounting the role of interests in state decision making, constructivism argues that material structures are only given meaning by the social context through which they are interpreted. The social context is rule governed, and states often act according to the logic of appropriateness, where reasoning is metaphorical and not necessarily influenced strictly by utility maximisation. From this perspective, one might examine humanitarian intervention as representing a collective action dilemma. The extent to which these types of dilemmas are resolved is dependent on whether the social identity of the state generates self or collective interests, or put more simply, the extent to which social identities involve identification with the fate of the other. This allows for a collective definition of interests based on feelings of solidarity, community or loyalty. Importantly, having such interests does not mean that states are now irrational, or no longer calculate costs and benefits, but they do so on a higher level of social aggregation, diffuse reciprocity and a willingness to bear costs without selective incentives.

Humanitarian intervention is nothing new. In fact, the right to intervene so as to protect the lives of those in other states finds precedent in treaty law, the Genocide Convention, international customary law, the UN Charter, as well as the Charter of the African Union. But the extent to which one might actually use coercive force, or the threat of it, to protect civilians from serious violations of their human rights, without the consent of the state in which the intervention occurs, has led to much debate about the legitimacy of this type of humanitarian intervention under international law. In this sense, any serious dialogue about humanitarian intervention cannot be divorced from an attendant discussion of the Responsibility to Protect (R2P) norm.

"Any serious dialogue about humanitarian intervention cannot be divorced from an attendant discussion of the Responsibility to Protect (R2P) norm."
to taking timely and decisive action through diplomatic, humanitarian and other peaceful measures, through Chapters VI and VIII of the UN Charter. It is only when peaceful means prove inadequate, and when states are manifestly failing to protect their populations, that the international community can invoke Chapter VII of the UN Charter which allows for the implementation of enforcement measures.

For the moment therefore, R2P seems to apply only to the four crimes of genocide, ethnic cleansing, war crimes and crimes against humanity. Furthermore it would seem that R2P, just like humanitarian intervention, should look to the UN Charter to determine whether intervention under its auspices is permitted. Additionally the prevention of these four crimes seems to be the basis for the R2P principle, with other options coming into consideration only when prevention fails. It also appears that the use of force should be undertaken strictly with prior UN Security Council approval.

The latitude for interpretation inherent in the R2P norm, particularly when it comes to the question of who should intervene, and who can use force when, can be attributed to the fact that unlike the principle of humanitarian intervention, the former is not codified in the broader corpus of international law. R2P is often referred to as an evolving norm in the conduct of international relations. Hence, it is difficult to enforce compliance with its injunctions or to punish deviance. Therefore if we accept that norms are collective expectations about proper behaviour for a given identity, then we must also accept that in the absence of legal recourse, the crucial test of a norm’s existence is not that members of a community never violate it. Rather, a norm’s strength is measured by the level of opprobrium community members attract from their peers for engaging in behaviour that violates the norm.¹

If one accepts that R2P is an evolving norm, then central to our ‘protection discourse’ is a discussion around the extent to which the R2P norm might become constitutive of our country’s identity and interests. The acceptance of the validity and significance of norms needs to be expressed by discursive practices and not only by political utterances. It is only through a collective discourse that we might be able to connect the moral validity of the norm to our culture and cognitive priors. Hence a commitment to the logic of truth seeking might lead us to a national argumentative consensus.

A ‘world polity’ or universalistic model would argue that since states are cultural constructs and are embedded in a world society which encourages processes of modernisation, learning, imitation and organisational isomorphism, then states comply with norms for reputational enhancement and to align themselves with international standards. Linked to this might be the notion of ‘norm diffusion’ which argues that norms evolve in patterned life cycles resulting in a period of internalisation where they achieve taken-for-granted qualities domestically and internationally. One might contend however that this universalistic interpretation is limited, since it assumes that ‘good’ global norms somehow replace ‘bad’ local beliefs and practices. Of greater interest is how we can account for how the same norm will have a significant constitutive effect in one state, but fail to do so in others. One explanation might lie in the degree of ‘cultural match’ between a global norm and domestic practice, and how norm diffusion might be more rapid when a cultural match exists between a systemic norm and a target country, and the extent to which it resonates with historically constructed domestic norms.²

Most appealing is Acharya’s notion of norm localisation. Whilst interrogating which and whose ideas matter in the process of norm diffusion, he proposes an investigatory framework of diffusion which prioritises the agency role of norm-takers, through a dynamic congruence building process which he terms localisation.

Hence, norm localisation may “start with a reinterpretation and re-representation of the outside norm, including framing and grafting, but may extend into more complex processes of reconstitution to make an outside norm congruent with a pre-existing local normative order. It is also a process in which the role of local actors is more crucial than that of outside actors.”³

Our national dialogue around protection discourse should therefore assess the aspects of the R2P norm which are most congruent with our local beliefs and practices, and as opposed to being passive norm-takers we should also reconstruct the foreign norm so that it fits with our cognitive priors and identities. This will not only lead to the formulation of a progressive foreign policy when it comes to humanitarian intervention, but will also promote institutional design which supports the execution of the norm in practice.

This is important, since whereas R2P speaks about the residual responsibility of the international community, to intervene as a last resort, when governments are manifestly failing to protect their populations, it does not account for the fact that the international community is not an anthropomorphic entity, it requires agency. So at some point, some states need to take the initiative and lead in this regard. However, as Alex Bellamy cautions, given the difficult international politics and the inherent complexities of situations where mass atrocities are committed, responses will, by necessity, be uneven - displeasing some when responses are judged to go too far and others when they are judged not to be going far enough.⁴
As a country we need to decide whether the protection discourse is consistent with the moral and legal lens through which we view the world and conduct our foreign policy. As ‘good’ global citizens we are committed to international peace, and to the multilateral mechanisms which have been established to resolve conflicts. Our foreign policy principles revolve around the promotion of human rights and democracy, and the primacy of international law in the conduct of international relations. As such, our commitment to intervening diplomatically, or if need be, militarily, when states are manifestly failing to protect their populations must be congruent with mainstream and quasi-legal interpretations of the R2P norm. As a result, our proposed interventions have to be sanctioned by the UN Security Council, military actions need to be multilateral in scope, and subject to the precautionary principles pertaining to the use of force, and R2P should not be used as a guise to pursue interests by effecting regime change in the target country.

This however should not discount the inherent tension that exists between de jure and de facto interpretations of sovereignty that often stall decision making at the UN Security Council. Experience shows that powerful states, and particularly the P5, often retain the power of decision on the issue of intervention, whilst weaker states claim sovereignty as their last line of defence against such intervention.2 In this sense, de facto sovereignty, understood as the rights of states being derived from their capacities to enforce, trumps its de jure counterpart which views sovereignty as an actual or perceived set of rules establishing legal equality between all states. This is particularly true whenever the de facto interpretation centralises emergency or crisis to its definition of sovereignty.

Whereas in ‘normal’ situations the UN Security Council seems to promote a more normative expression of sovereignty, in crisis situations, decision making seems to revolve around the P5 and the assumption that it is their ability to exercise decisive force, when required, that marks their sovereign power. This then might explain why intervention initiatives are often delayed, while the P5 use the Security Council to manage their often conflicting interests. Furthermore, in the absence of a higher authority to serve as a check and balance against the P5, and in instances where intervention is eventually mandated, the P5 often seem to transgress the precautionary principles inherent in R2P.

At another level, we might want to consider our R2P in relation to our status as a global middle power or as a perceived continental hegemon. The latter title often invokes an apologist thread in our foreign policy initiatives. Suffice to say however that we have a better and more stable economy than many other countries on the continent, coupled with a more advanced political programme. Furthermore, the recent insertion of “soft power” into international relations lingo suggests that material incentives are not the only way in which hegemonic power is exercised. Rather, acquiescence from secondary states is better achieved through socialising the latter using substantive beliefs instead of material payoffs. If the R2P is an emerging norm, then we have an obligation to lead the way in the process of normative persuasion. If not as a hegemon, then as an important norm entrepreneur, our country through its actions, and sometimes through the threat of the use of force, has to ‘frame’ R2P as a new issue area so that it resonates with broader public perceptions and understandings.

However, we need to be cautious of unilateral justifications for intervention, and avoid the stigma of being accused of behaving like the ‘America of Africa.’ Rather, through a co-operative foreign policy, involving diverse stakeholders, and including civil society, we might convince target states that their responsibility to protect their own populations is not only appropriate, but serves their broader interests too.

It is not inconsistent that we should desire to construct a durable peace on the continent whilst pursuing material benefits. The latter will be more difficult to achieve however if we choose to remain an island of prosperity in a sea of poverty. Since R2P also calls for a responsibility to rebuild societies after intervention, our protection discourse should also account for our role in continental post-conflict reconstruction and development (PCRD). This will not only allow us to capitalise on our country’s human resources, but will in the long term satisfy material considerations too.

At yet another level, our protection discourse should be guided by the significant role that our country played in the transformation of the OAU into the African Union (AU). The latter is now undertaking bold steps to develop an elaborate continental peace and security architecture so as to provide African solutions for African problems. The principle of non-indifference to human rights violations now seems to be slowly trumping the traditional notion of non-interference in each other’s domestic affairs.

Article 4 of the Constitutive Act of the AU grants it the right and responsibility to protect. Whereas Article 4 still refers to non-interference in the affairs of member states, coupled with the right of the latter to self-defence, this has to be interpreted in relation to Article 4(h) which affirms the right of the Union to collectively intervene in a member state, pursuant to a decision of the Assembly in respect of grave circumstances, which includes war crimes, genocide and crimes against humanity. Interpretations also need to consider Article 4(j) which declares the rights of member states to request intervention from the Union to restore peace and security, Article 4(o) which promotes the respect for the sanctity of human life and Article 4(p) which goes as far as condemning unconstitutional changes of government.

Critically, the report also proposed ‘precautionary principles’ to mitigate against the possible misuse of force in military interventions.3
Even more significantly, the Ezulwini Consensus (to which South Africa is a signatory) and which represents the common African position on the proposed reform of the United Nations, suggests that since the General Assembly and the Security Council of the UN are often far from the scenes of conflict, and may not be in a position to undertake a proper appreciation of the nature and development of conflict situations, it is imperative that regional organisations, in areas of proximity to conflicts are empowered to take action in this regard. Furthermore, the African Union considers it legitimate to sanction action in times of emergency, without UN Security Council approval, and then seek it retroactively, at which point the UN should contribute financially to the actions taken by the African Union.

Protection discourse is not an anathema to the continent. In 1991, Presidents Obasanjo and Museveni argued that, “sovereignty has become a sacred cow and many crimes have been committed in its name. If the European countries can surrender some of their sovereignty for greater development, African states should similarly surrender some of their sovereignty for greater security, both at the intra and inter-state levels.”

Certainly not all AU member states have localised the R2P norm in the same way. Norms are inherently contested, and the way in which they are empowered at a domestic level varies significantly. Domestic elites inevitably emerge as gatekeepers who ultimately control the political agenda. Therefore norm diffusion is either a consequence of societal pressure, where non state actors and policy networks support an international norm and mobilise and coerce decision makers to change state policy; or is a consequence of complex elite learning whereby domestic elites, predominantly, adopt new interests because they have internalised new norms through shared understandings. Either way, there is a causal relationship between domestic political structures and the way in which international norms might provide domestic agents with new understandings of their interests. The nature of the domestic structure, whether it be liberal, state- above-society, corporatist or statist, determines the characteristics of the norm takers and either promotes or inhibits their ability to localise the international norm, so that it ‘fits’ more congruently with their cognitive priors.

This variance in norm localisation at a domestic level should not however detract from the philosophical foundations of the African Union. The thread of Pan-Africanism and African Renaissance remains relevant and the constitutional shift from regime to human security is an important basis for the emergence of a security community. Delayed efforts by the AU to operationalise an African Standby force, an early warning system, regional military brigades and a Panel of the Wise, demonstrates the need for greater financial resources, capacity and political will, but should not undermine the ideological prerogatives of the institution. This work in progress serves to enhance institutional memory, and helps to develop collective wisdom. As a repository of knowledge, the AU has the potential to eventually fulfil its mandate.

Until AU decision making structures can become ‘partially autonomous’ from member states, and until the institution has the capacity to invoke its protection mandate (as envisaged in the Ezulwini Consensus) it is still prudent for it to act within the confines of the UN Charter and the Security Council. For now, this not only promotes legitimacy and burden sharing, but also enhances the subsidiarity prerogatives which the African Union perceives for itself.

Since R2P is an evolving norm, and in the absence of an authoritative “how to do it” template, its application is subject to experience, and learning from ones mistakes. It is not progressive for government critics to play the ‘blame game’ with the benefit of hindsight, or to pounce on ad hoc instances requiring possible intervention and then manufacturing conspiracies. Rather, our country’s mixed R2P record should encourage further dialogue as to how we can make this norm more consistent with our foreign policy priorities.

South Africa’s participation in AU initiatives to deploy peacekeeping missions to Darfur and Burundi, although not precise examples of intervention without consent, did demonstrate the seriousness with which the continent perceives indigenous solutions for African problems, and the extent to which regional organisations, might be suited to resolving regional conflicts. The subsequent transformation of these missions into hybrid AU-UN forces also speaks to the benefits of continental/international partnership and collaboration.

Burundi in particular also demonstrated the relevance of mediation as an instrument of conflict resolution. This speaks specifically to the prevention component of the R2P norm. South Africa proved adept at leading this process. What we seem to have forgotten however is that success in Burundi was very much the result of a concerted national effort. The South African parliament voted in favour of substantial funding for the Presidency, foreign affairs and defence, the African Renaissance Fund was mobilised, and as a result our mediators were afforded sufficient resources and pre-negotiation intelligence capacity.

Following the disputed elections in Kenya in 2007, South Africa supported the coordinated diplomatic initiatives of the UN Security Council and the AU appointed mediator, Kofi Annan, to ensure a peaceful settlement and a power sharing agreement there. This was another good example of atrocity prevention using peaceful means. South Africa’s two tenures as a non-permanent member of the UN Security Council in 2007-2008 and 2011-2012 met with much scrutiny and criticism, particularly in relation to Myanmar and Zimbabwe. If anything the criticism within some circles, further accentuates the need for our country to engage in protection

“A norm’s strength is measured by the level of opprobrium community members attract from their peers for engaging in behaviour that violates the norm.”
discourse. There need not be a tension between those who encourage a human rights-friendly foreign policy and those who see South Africa as the champion of a consolidated Africa Agenda, or the promoter of a more equitable global order and multilateral institutional reform. Our two tenures have possibly taught us that we need to manage both strands of our foreign policy more effectively, in the context of the UN Security Council. The latter, as mentioned earlier, presents a polarising environment, characterised by multiple alliances and strategic partnerships, depending on issue areas, and rapidly changing geopolitical circumstances.

Libya was a watershed moment in that it was the first time that the UN Security Council authorised the use of force against a member state for human protection purposes. South Africa voted in favour of UN Security Council Resolution 1973 enforcing a no-fly zone and imposing an arms embargo on that country. Many argued that South Africa’s decision was inconsistent with the more conciliatory policy stance being promoted by the AU’s Ad Hoc Panel on Libya. The latter’s five-point roadmap proposed an alternate strategy aimed at securing a peaceful and negotiated solution to the conflict. Subsequent insinuation that South Africa is prone to “selling out” to bigger powers is unhelpful. If anything, Libya represents a crucial case study in the enhancement of our protection discourse. Libya confirmed the polarising environment characteristic of the UN Security Council, and the extent to which it is a forum where conflicting P5 interests play out. The fact that China and Russia abstained from the Resolution is testament to this.

The fact that Resolution 1973 ultimately resulted in a heavy handed French-NATO initiative was not only contrary to the terms of the Security Council resolution, but also highlighted the extent to which de facto sovereignty trumps de jure equality in times of crisis and emergency. It is noteworthy that although India and Brazil also abstained on Resolution 1973 it did not lead to a fall-out in the context of our membership of BRICS and IBSA.

The contested elections in the Ivory Coast demonstrated that South Africa needs to consult more transparently with other continental pivotal states, in this case Nigeria, and other sub-regional organisations, in this case ECOWAS, about the scope and nature of proposed interventions. Sub-regional organisations are certainly the building blocks towards a continental security community. However, they need to be developed cognitively around an African agenda and not around presumed regional spheres of influence.

The tendency for states to adopt multiple memberships in sub-regional blocs leads to multiple interests and therefore outcomes. The tendency towards ‘forum shopping’ by states, depending on issue areas, and for reputational enhancement, functionally weakens these organisations in relation to security initiatives. If sub-regions continue to work autonomously of the AU, this not only leaves the door open for foreign powers, or their proxies, to influence regional security politics, but also leads to a duplication of functions, and an inefficient division of labour. Furthermore, sub-regional organisations need to engage in protection discourse, if the R2P norm is to be localised and the AU is to remain relevant continentally.

Egypt represents an interesting case for R2P, in that it almost tested the AU’s commitment to invoking its responsibility to protect in relation to an unconstitutional change in government. However the case also demonstrated the fine line that is developing in political nomenclature around what constitutes a coup or what can be alternately understood as a popular revolt. Either way, Mubarak’s capitulation soon after the uprisings began, did not necessitate international military intervention.

Finally, in relation to Syria, South Africa has voted in favour of UN Security Council Resolutions 2042 and 2043 respectively, appointing a Joint Special UN and Arab League Envoy to that country, as well as a UN Supervision Mission to Syria. South Africa is also a signatory to Resolution 66/253 adopted by the UN General Assembly condemning Syria for its violations of human rights and fundamental freedoms.

By re-framing our proposed intervention in the CAR, and potentially in other intra-state conflicts on the continent, within the broader context of ‘protection discourse’ we might go some way toward a national dialogue around our commitment to the R2P norm. It is important to remember that norms evolve in patterned life cycles and that they are by necessity contested. It is how we manage this contestation domestically that will determine the progressiveness of our foreign policy. Norm localisation requires building congruence between transnational ideas and indigenous beliefs and practices in a local context. We need not be passive ‘norm takers’ but should adapt external ideas to meet our local practices. The threat of the use of force or actual military intervention, to protect vulnerable populations from their own governments, is now a legitimate consideration for important states in the international community. Our status globally and continentally warrants attendant national dialogue in this regard.

As a country we need to decide whether the protection discourse is consistent with the moral and legal lens through which we view the world and conduct our foreign policy.

References