

Fall 2011

Obama's Africa Policy on Human Rights, Use of Force and Humanitarian Intervention: In Whose Interest

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Vincent O. Nmehielle & John-Mark Iyi, *Obama's Africa Policy on Human Rights, Use of Force and Humanitarian Intervention: In Whose Interest*, 7 Fla. A&M U. L. Rev. (2011).

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OBAMA’S AFRICA POLICY ON HUMAN RIGHTS, USE OF FORCE AND HUMANITARIAN INTERVENTION: IN WHOSE INTEREST?

Vincent O. Nmehielle & John-Mark Iyi***

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“Under Obama, [U.S.] foreign policy in Africa is based on four objectives - needs, threats, responsibilities and opportunities. Needs are energy for example, primarily in the form of fossil fuels, while threats are climate change, narcotics and people trafficking, terrorism and disease. Responsibilities are the promotion and protection of human rights, democracy and development and opportunities are in the form of African dynamics, investments and access to markets. These objectives serve both regions and hold the most importance to [U.S.] national interests concerning Africa. The current [U.S.] policy priorities in Africa are democracy and governance, conflict mitigation, economic growth and development, health issues, transnational issues, climate change and woman’s rights. The [U.S.] policy approach is based on partnership and collaborative diplomacy.”¹

I. INTRODUCTION

The relationship between the United States and Africa has largely been defined by the historical intercourse of the global North and South divide and how the results of that intercourse have played out in the domestic social, economic and political milieu of the United States and Africa.² Beginning in 1619, the first group of Africans were sold into slavery in North America, and several million more were subsequently transported from Africa to the Americas during the Trans-Atlantic Slave Trade.³ Colonialism followed and saw the “maximum exploitation of the human and material resources of the continent [Africa] and the appropriation of African peoples and territories.”⁴ The promise that man could live in freedom while pursuing his happiness as a member of the human community has never really been realized by Africans and Africa.⁵

1. Anton M. Pillay, *Great Expectations: Examining Obama’s Foreign Policy in Africa*, ConsultancyAfrica.com, www.consultancyafrica.com/index.php?option=com_content&view=article&id=764:great-expectations-examining-obamas-foreign-policy-in-africa-&catid=57:africa-watch-discussion-papers&Itemid=263 (Last visited 10/04/2012).

2. “The turning of Africa into a commercial warren for the hunting of black skins” was one of the chief sources of “primitive accumulation” that “signaled the rosy dawn of the era of capitalist production.” See, Lena Weinstein, *The New Scramble for Africa*, 60 INT’L SOCIALIST REV. (Aug. 2008), available at: <http://www.isreview.org/issues/60/feat-africa.shtml>, quoting Karl Marx, CAPITAL VOL. I 915 (1977).

3. PETER J SCHRAEDER, *Removing The Shackles? U.S. Foreign Policy Toward Africa after the Cold War*, in AFRICA IN THE NEW INTERNATIONAL ORDER: RETHINKING STATE SOVEREIGNTY AND SECURITY 187, 188 (Edmond J. Keller & Donald Rotchild eds., 1996).

4. Umzurike, U. O. *The African Charter on Human and Peoples’ Rights: Suggestions for More Effectiveness*, 13 ANN. SURV. INT’L & COMP. L. 8 (2007), available at: <http://digitalcommons.law.ggu.edu/annlsurvey/vol13/iss1/8>.

5. MOSES MOSKOWITZ, INTERNATIONAL CONCERN WITH HUMAN RIGHTS 1, 3 (1974).

This failure has been due primarily to the warped structure of the global North-South relationship, which has produced misfortunes for the peoples of Africa. As aptly put by Nino,

[T]hese misfortunes occur not only because of the scarcity of resources, but also because many use their fellow humans as just another resource, either for their own benefit or to realize peculiar visions of the absolute good. This practice of using men and women as instruments is even more disastrous if, as often happens, it is carried out by the powerful, by those who have access to weapons or other means of subjecting other people to their will on a large scale.⁶

In Africa, not even the noble causes of human rights promotion, protection, or enforcement have been spared this misfortune in her relationship with the global North in general and the United States in particular. These historical dialectics have necessitated the present excursion into the nature of the relationship between the United States and Africa and into who stands to gain what, particularly with President Barack Obama having been elected as President of the United States in 2008.

President Obama's election as U.S. President was greeted with great euphoria and a high expectation of change. While his election was celebrated globally as marking a high point in the struggle against racial discrimination and the clamour for equality in the United States, it was particularly celebrated across Africa.⁷ Many ordinary Africans naively saw President Obama, whose father is an African from Kenya, as their African "son" who had become the occupant of the highest political office in the world and leader of the free world. While no one can take away President Obama's African heritage, informed Africans are not naive to believe that President Obama is any less American than other U.S. presidents before him regarding his Africa policy thrust. With his sights now set on preparing for re-election for a second term as U.S. President, it is important to ask what interests President Obama's Africa policy has served during his first term of office.

Because it is impossible to analyze the Obama administration's policy on Africa relative to human rights, use of force and humanitarian intervention without considering the history of U.S.-Africa

6. CARLOS SANTIAGO NINO, *THE ETHICS OF HUMAN RIGHTS* 1 (1991).

7. Sebastian Berger, *Kenya Declares National Holiday in Celebration of Barack Obama's Presidential Victory*, *THE TELEGRAPH*, Nov. 5, 2008. <http://www.telegraph.co.uk/news/worldnews/barackobama/3385610/Kenya-declares-national-holiday-in-celebration-of-Barack-Obamas-presidential-victory.html>.

relations, an article of this nature by implication must, from the outset, set out the framework within which the U.S. has historically defined its African policy. Accordingly, section I of this article introduces the issue in this issue. Section II provides a historical background of the United States' policy on Africa in order to situate the analysis in its proper historical context and shed light on what factors have shaped, and continue to shape, U.S.-Africa policy, as well as highlight the policy shifts as those factors have changed over time. Section III considers the issue of human rights and the use of force in Africa vis-à-vis U.S. policy. Section IV examines the Obama Administration's policy on Africa on two of the four major policy thrusts as outlined by the administration and relevant to the subject discussed here, namely human rights protection and the peaceful resolution of conflicts. Section V provides the authors' conclusions.

The authors of this article hold the view that the United States has always defined its relations with Africa as a function of what purpose Africa has served in the pursuit and realization of U.S. national interests. As those interests have changed, Africa's relevance has swung between obscurity and at best indifference for U.S. policymakers and not even the election of an African-American U.S. President will change that. This philosophy cuts across the entire spectrum of U.S.-African policy including human rights, use of force and humanitarian intervention.

II. THE UNITED STATES, AFRICA AND THE IDEA OF HUMAN RIGHTS IN HISTORICAL PERSPECTIVE

One of the greatest achievements of the Twentieth Century was the advancement of human rights. The United Nations Charter, together with the International Bill of Rights, ushered in an era of internationalization of human rights with a momentum never seen before.⁸ From the north to the south, the shackles of colonial domination were broken

8. "[t]o reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small. . ." See, U.N. Charter Preamble, 1st plen. mtg, adopted on June 24, 1945 in San Francisco and came into force on October 24 1945. See also, U.N. Charter art. 2, 56. (duties of Member States and the United Nations to promote human rights); The Universal Declaration of Human Rights, G.A. Res. 217217217(III)A, U.N. Doc.A/RES/217(III) (Dec. 10, 1948); International Covenant on Civil and Political Rights (ICCPR), G.A. Res. 2200 (XXI)A (Dec. 16, 1966); International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. Res. 2200 (XXI)A (Dec.16, 1966); The Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260 (III)A December (Dec. 9, 1948). There are a plethora of other International Committee of the Red Cross instruments and UNGA Declarations that today form part of customary international law and international human rights law corpus.

in Africa, racial segregation dethroned in the United States and the flames of apartheid extinguished in South Africa. In the 1960s and 1970s, women's liberation movements engendered gender equality as the Third World agitated for solidarity rights, and in particular the right to development gained momentum.⁹ The United States played a key role in all of these events and Africa was considered only abstractly, relegated to either a positive or negative impact, depending on United States' interests.

As the only major power that emerged relatively unscathed from World War II, the United States was the chief architect of the new international legal and economic order, driving the process for the creation of most of the intergovernmental organizations (IGOs) and institutions that emerged after World War II, such as the United Nations (UN), the Bretton Woods Institutions, the General Agreement on Tariffs and Trade (GATT) agreement and many more.¹⁰ Thus, the United States had the historic opportunity to design global institutions that would shape the future of its inter-state relations, allowing it to establish a framework which would ensure that American values and interests would always be protected.¹¹ Though sometimes universal and in congruence with those of other states, the fact that these values were not always pursued in the common interests, despite rhetoric to the contrary, was manifested in the ensuing Cold War, and the impact is still felt to this day more in Africa than in nearly any other locale.

As most African states emerged from colonial rule in the 1960s, they looked up to the United States as the champion of human rights, as the United States had been instrumental to the creation of all of the most fundamental international human rights instruments.¹² But African states first had cause to seriously call American credentials into question when the United States opposed the Third World agitation for a New International Economic Order (NIEO) and the demand for a right to development.¹³ It stands to reason that since post-colonial Af-

9. For a detailed discussion of the subject, *See Generally*, PHILIP ALSTON, RYAN GOODMAN & HENRY I. STEINER, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* (3d ed., 2007); RICHARD B. LILICH, *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY AND PRACTICE* (2ed., 1991); SOHN L.B & BUERGENTHAL T., *INTERNATIONAL PROTECTION OF HUMAN RIGHTS* (1973); Thomas Buergenthal, *The Evolving International Human Rights System*, AM. J. INT'L L. 783-807 (2006).

10. MARGARET P. KARNS & A. MINGST, *INTERNATIONAL ORGANIZATIONS: THE POLITICS AND PROCESSES OF GLOBAL GOVERNANCE* 258 (2d ed., 2010).

11. *Id.*

12. *Id.* at 492; *See also* the major international human rights instruments *supra* note 8.

13. S.B.O. GUTTO, *Violations of Human Rights in the Third World: Responsibilities of States and TNCs in THIRD WORLD ATTITUDES TOWARD INTERNATIONAL LAW: AN INTRODUCTION* 275, 276 (Frederick E. Snyder & Surakiart Sathirathai eds., 1987); *See also*

rican states had suffered historical injustices that contributed to the present malaise on the continent, it was only fair that they should demand a NIEO that allowed them to participate in the distribution of global wealth.¹⁴

But realizing that a recognition of the right to development as a human right would impose a corresponding duty on the United States (and other countries of the global North) to transfer resources, knowledge and technology to the South (particularly Africa), the United States vehemently opposed almost every attempt by the UN to create or sponsor institutions and programs that would facilitate the recognition of the right to development as a human right.¹⁵ To this end, the United States waged an intellectual-cum-ideological war against the South that undermined the West's recognition of the human right to development.¹⁶

Whenever concerns of civil and political rights stood in the way of advancing the United States' national interests, such rights were often crushed ruthlessly. The promotion and protection of human rights in Africa by the United States has historically been subject to the United States' national interests. Post-colonial African history is replete with instances of United States providing support for some of the most brutal dictators and regimes with the worst human rights records, such as Mobutu Seseko of Zaire, the Jonas Savimbi-led National Union for the Total Independence of Angola (UNITA), and Mohamed Farar Aideed of Somalia, all of whom were clients of the United States at one time or another and for as long as they furthered the United States' national interests.¹⁷ In the late 1980s, the government of Aideed was the beneficiary of millions of U.S. dollars and

CLARENCE CLYDE FERGUSON JR., *Redressing Global Injustices: The Role of Law*, in *THIRD WORLD ATTITUDES TOWARD INTERNATIONAL LAW: AN INTRODUCTION* 365, 369-370 (Frederick E. Snyder & Surakiart Sathirathai eds., 1987); PHILIP ALSTON, *The Right to Development at the International Level* in *THIRD WORLD ATTITUDES TOWARD INTERNATIONAL LAW: AN INTRODUCTION* 811, 811 (Frederick E. Snyder & Surakiart Sathirathai eds., 1987).

14. CLARENCE CLYDE FERGUSON JR., *Redressing Global Injustices: The Role of Law* in *THIRD WORLD ATTITUDES TOWARD INTERNATIONAL LAW: AN INTRODUCTION* 363, 365, 371 (Frederick E. Snyder & Surakiart Sathirathai eds., 1987).

15. *Id.* at 374, 375.

16. The fallout from this conflict has had the effect that the U.S. has refused to ratify the ICESCR to this day. See generally, John-Mark Iyi, *Right to Development: Myth or Reality?* (June 2007) (unpublished manuscript) (on file with authors).

17. Ved P. Nanda, Thomas F. Muther Jr. & Amy Eckert, *Tragedies in Somalia, Yugoslavia, Haiti, Rwanda and Liberia -Revisiting the Validity of Humanitarian Intervention under International Law* Part II, 26 *DENV. J. INT'L L. & POL'Y* 827, 831 (1997/98). See also Rick Rozoff, *AFRICOM: Pentagon Prepares Direct Military Intervention in Africa*, STOP NATO (Aug. 24, 2009), <http://rickrozoff.wordpress.com/2009/09/02/africom-pentagons-prepares-direct-military-intervention-in-africa/>.

weapons. This aid is partially responsible for the intractable Somali conflict and the conflict in the Horn of Africa region today.¹⁸ Samuel Doe of Liberia was a long time beneficiary of U.S. aid while he ran a brutal dictatorship that eventually plunged Liberia into a bloody civil war, only to see that when the war started the United States promptly evacuated its nationals, becoming passive bystander in a war it helped promulgate.¹⁹ And more recently, what can be said of the United States' human rights policy and support for Hosni Mubarak of Egypt, can, perhaps to a lesser degree, be said of the defunct apartheid regime in South Africa.

Thus, from a historical standpoint, the United States' human rights policy towards Africa is mixed. As was once said of the history of the development of equitable principles under English law, "it is a roguish thing" that varies not only with the convictions of the U.S. President, but also on the world view of the incumbent U.S. Secretary of State.²⁰ "[T]he dynamics of [U.S.] domestic politics—including presidential leadership (or the lack thereof), executive-legislative relations, lobbying by domestic groups, and public opinion," depends on many amorphous and often vague variables.²¹ Whatever the administration and whatever its foreign policy thrust, there is just one constant interest, and that is U.S. national interest. This context is important because as we examine President Obama's human rights policy in Africa, it would be instructive to bear in mind that no matter what a particular U.S. administration professes,

[T]he U.S. and organizations like the North Atlantic Treaty Organization (NATO) have [always] 'served domestic political purposes by creating a web of international entanglements and domestic sup-

18. Ken Menkhaus, *Governance without Government in Somalia: Spoilers, State Building, and the Politics of Coping*, 31 (3) INT'L SEC. 74, 80 (Winter 2006/7).

19. Max A. Sesay, *Civil War and Collective Intervention in Liberia*, 23(67) REV. AFR. POL. ECON. 35, 40 (1996); CHRISTINE GRAY, INTERNATIONAL LAW AND THE USE OF FORCE 211 (2d ed., 2004).

20. "Equity is a Roguish thing, for Law we have a measure know what to trust too. Equity is according to the conscience of him who is Chancellor, and as that is larger or narrower soe is equity. Tis all one as if they should make the Standard for the measure wee call A foot, to be the Chancellors foot; what an uncertain measure would this be; One Chancellor has a long foot another A short foot a third an indifferent foot; tis the same thing in the Chancellors Conscience" quoted in H. Jefferson Powell, "*Cardozo's Foot*": *The Chancellor's Conscience and Constructive Trusts* 56(3) LAW & CONTEMP. PROBS 7, 7 (1993) concluding that the principles of 'equity varies with the size of the foot of the Chancellor of the Exchequer'. The term of Henry Kissinger as U.S. Secretary of State and the Presidency of George W. Bush illustrate this point.

21. KARNS & MINGST, *supra* note 10, at 261.

port constituencies that have influenced successive administrations' policies.²²

The implication is that no matter what is contained in the policy formulation, even the Obama Administration's foreign policy direction relating to human rights in Africa is ultimately shaped and directed by the same forces. The established pattern and continual U.S.-focused attitude has been made manifest in the United States' approach to the protection and enforcement of human rights in Africa.

A convenient place to begin this survey might be the post-UN Charter era by which time most African countries had emerged from colonial domination and the Cold War was raging.²³ From President Dwight D. Eisenhower to President John F. Kennedy to President Ronald Reagan, U.S. presidents during the Cold War viewed Africa with indifference and their policies consistently reflected apathy.²⁴ Africa only retained relevance in the United States when Cold War politics required the United States to build spheres of influence to check the spread of Soviet communism.²⁵ U.S. policy towards Africa during the Cold War era was consistent, coherent and based on the "twin pillars of anticommunism and containment."²⁶ Irrespective of whether the incumbent was a Democrat or a Republican, the United States realized the strategic significance of Africa in its ideological war with the Soviet Union and its foreign policy towards Africa was consequently tailored around the containment theory. This theory became the rationale for the United States' armed interventions and use of force on the African continent.²⁷ Outside the context of using African states as sandbags against communism, or as theatres of East-West confrontations, U.S. policymakers always conceived Africa as insignificant and undeserving of any serious commitment or engagement.²⁸ To quote Peter Schraeder,

Rather than view African countries as important in their own right, [U.S.] policymakers saw them as a means for preventing the future advances of Soviet communism; therefore [U.S.] relationships with

22. *Id.* at 258.

23. For an analysis of the events shaping Africa in this period and the role of the West, see generally, MARTIN MEREDITH, *THE STATE OF AFRICA: A HISTORY OF THE CONTINENT SINCE INDEPENDENCE* (2005).

24. SCHRAEDER, *supra* note 2, at 188.

25. *Id.* at 191.

26. *Id.* at 187.

27. *Id.* at 191.

28. *Id.* at 192.

African regimes advanced according to their relative importance within an East-West framework.²⁹

The United States propped up many regimes on the continent and helped them maintain power. For example, for over thirty years the government of Haile Selassie of Ethiopia was a client of the United States until relations broke down and the United States began to court the government of Siad Barre of Somalia in order to gain access to bases that would help stall any Soviet threats in the Horn of Africa and secure lanes for Middle East oil.³⁰ The United States offered its support to these ruthless dictators, regardless of their appalling human rights records, and provided that they align with the United States during the Cold War rivalry.³¹ Again, Schraeder asserts, “[i]n each of these cases, an overriding preoccupation with anticommunism led Washington to overlook the authoritarian excesses of these regimes in favour of their willingness to support [U.S.] containment policies in Africa.”³²

So, the assertion that in the past, the United States had no coherent foreign policy on Africa other than a patchwork of reactive rather than proactive measures is hardly sustainable.³³ What is probably true of U.S. policy during those periods is that Africa was not considered important unless a U.S. national interest was at stake. How much did this change in the post-Cold War sole-superpower world?

One would not even have to look far to come to the conclusion that, if ever Africa was of importance to the United States, it ceased being so after the collapse of the Soviet Union. The first decade after the Cold War saw Africa slip further on the national interest ranking of the United States. “Africa was a national interest backwater,” and successive administrations more or less pursued a policy of disengagement from the continent.³⁴ As pointed out above, during the heightened tensions of the Cold War, Africa was not considered as strategically important for its own sake. The United States’ foreign policy on Africa was pursued not because of the interest in Africa as an end product of such policy in itself, but as a means to some other more im-

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. Sandra T. Barnes, *Global Flows: Terror, Oil, and Strategic Philanthropy*, 48 AFR. STUD., no. 1, 2005 at 2.

34. Nicolas van de Walle, *U.S. Policy Towards Africa: The Bush Legacy and the Obama Administration*, 109 AFR. AFF., no. 434, 1 (2009).

portant ends of the United States' national interests. In a post-Cold War world, one may question the relevance of African policy to the United States' political regime. As Letitia Lawson rightfully notes,

[D]uring the Cold War, United States foreign policy toward Sub-Saharan Africa had little to do with Africa. As with other developing regions, African countries were first and foremost pawns in the great global chess game. Republican and Democratic Administrations alike supported American clients and sought to undermine Soviet ones.³⁵

It is not surprising that U.S. policy shifted towards minimum engagement in Africa during the 1990s following the Cold War.³⁶ Evidence of this gradual disengagement was manifested not only in the reduction of aid to Africa, which reached an all-time low in 1996, and a decrease in the number of U.S. embassies across Africa, but also in the quantity and quality of diplomats that staffed these embassies.³⁷ This buttresses the fact that despite the client-patron relationship that characterized U.S.-African policy from the 1950s to the late 1980s, Africa's relevance had to be tied to some other considerations to warrant the attention of U.S. policymakers. In fact, this view was so entrenched that the mantra was said to revolve around three canons of U.S.-African policy in the state department and relevant agencies:“(a) Do not spend much money [on Africa] unless Congress makes you[;] (b)Do not let African issues complicate policy toward other more important parts of the world[; and] (c) Do not take stands that might create political controversies in the United States.”³⁸ Contrary to how the United States treated most other regions in the world, Africa was pigeon-holed in a crises-cum-humanitarian response compartment to be addressed only when convenient and beneficial.³⁹

35. Letitia Lawson, *U.S. Africa Policy Since the Cold War*, 6(1) STRATEGIC INSIGHTS (Jan. 2007). available at: [http://www.google.com/url?sa=T&rct=J&q=letitia%20lawson%2C%20u.s.%20africa%20policy%20since%20the%20cold%20war%2C%206\(1\)%20strategic%20insights%20&source=web&cd=1&ved=0CCQQFjAA&url=http%3A%2F%2Fkms1.isn.ethz.ch%2Fserviceengine%2FFiles%2FISN%2F39766%2Fchaptersection_singledocument%2Fc64f8e6e-44c6-427f-8c5c-9f7f674b809b%2Fen%2F2_lawsonJan07.pdf&ei=cRNiT8lwhNa2B7OnxPwH&usq=AFQjCNG4RLmrBCIJ4Tq1NiIMzD_m2-k2xw](http://www.google.com/url?sa=T&rct=J&q=letitia%20lawson%2C%20u.s.%20africa%20policy%20since%20the%20cold%20war%2C%206(1)%20strategic%20insights%20&source=web&cd=1&ved=0CCQQFjAA&url=http%3A%2F%2Fkms1.isn.ethz.ch%2Fserviceengine%2FFiles%2FISN%2F39766%2Fchaptersection_singledocument%2Fc64f8e6e-44c6-427f-8c5c-9f7f674b809b%2Fen%2F2_lawsonJan07.pdf&ei=cRNiT8lwhNa2B7OnxPwH&usq=AFQjCNG4RLmrBCIJ4Tq1NiIMzD_m2-k2xw).

36. LAUREN PLOCH, CONG. RESEARCH SERV., RL 34003, AFRICA COMMAND: U.S. STRATEGIC INTERESTS AND THE ROLE OF THE U.S. MILITARY IN AFRICA 13 (2011), available at <http://www.fas.org/spp/crs/natsec/RL34003.pdf>.

37. van de Walle, *supra* note 34, at 5.

38. Michael Clough, *The United States and Africa: The Policy of Cynical Disengagement* 91(565), CURRENT HIST. 193, 195 (1992) as adapted in SCHRAEDER, *supra* note 2, at 195.

39. SCHRAEDER, *supra* note 3, at 195.

III. THE UNITED STATES' ATTITUDE TOWARDS THE USE OF FORCE AND PROTECTION OF HUMAN RIGHTS IN AFRICA

A long-standing argument exists among academics regarding the extent to which force may be used by a state or group of states which act to protect the citizens of another state endangered by mass atrocities at the hands of their own government.⁴⁰ The controversy revolves around two competing norms in the UN Charter, which are: (1) the maintenance of international peace and security through the peaceful settlement of international disputes, and (2) prohibition of threat of force or use of force on the one hand, and the respect for state sovereignty and the protection of human rights on the other.⁴¹

This controversy is due to the apparently irreconcilable international law norms enshrined in Article 2, section (4) and Article 2, section (7) of the UN Charter and the obligation imposed by Articles 55 and 56.⁴² But the view that sovereignty and non-intervention were immutable thrived because inter-state conflict was perceived as a threat to international peace and security.⁴³ However, this view has since changed given that most conflicts that spawn humanitarian disasters since the inception of the UN Charter and the end of the Cold War have been intra-state rather than inter-state conflicts, especially in Af-

40. There is an enormous volume of literature on humanitarian intervention debate both from international relations and international law perspectives. See e.g., IAN BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES* (1963); SIMON CHESTERMAN, *JUST WAR OR UNJUST PEACE? HUMANITARIAN INTERVENTION AND INTERNATIONAL LAW* (2002); FERNANDO R. TESON, *HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY* (2d ed., 1997); OLIVER RAMSBOTHAN & TOM WOODHOUSE *HUMANITARIAN INTERVENTION AND CONTEMPORARY CONFLICTS: A RECONCEPTUALIZATION* (1996); NICHOLAS J. WHEELER, *SAVING STRANGERS: HUMANITARIAN INTERVENTION IN INTERNATIONAL SOCIETY* (2000); KOFI FRANCIS ABIEW, *THE EVOLUTION AND PRACTICE OF THE DOCTRINE OF HUMANITARIAN INTERVENTION* (1999); George Wright, *A Contemporary Theory of Humanitarian Intervention*, 4 FLA. INT'L L.J. 435 (1988-9); Nicholas Onuf, *Humanitarian Intervention: The Early Years*, 16 FLA. J. INT'L L. 753 (2004); *Corfu Channel Case* (U.K. v. Alb.), 1949 I.C.J. 4 (Apr. 9); *Barcelona Traction Case* (Belg. v. Spain), 1970 I.C.J. 4 (Feb. 5); *Case of Military and Paramilitary Activities and Against Nicaragua* (Nicar. v. US), 1986 ICJ 14 (June 27).

41. Reisman asserts that human rights emerged victorious in this normative struggle. See Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84(4) AM. J. INT'L L. 866, 868 (1990); Christine Ellerman, *Command of Sovereignty Gives Way to Concern for Humanity*, 26 VAND. J. TRANSNAT'L L. 346, 350 (1993-4).

42. THOMAS G. WEISS, *HUMANITARIAN INTERVENTION* 22-23 (2nd ed. 2007).

43. NICHOLAS WHEELER, *The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society* in *HUMANITARIAN INTERVENTION AND INTERNATIONAL RELATIONS* 29, 33 (Jennifer Welsh ed., 2004).

rica.⁴⁴ Thus, the new threat to international peace and security has come from another source: conflicts stemming from violations of human rights.⁴⁵

In Liberia, for example, the rampant violations of human rights by the Doe regime led to a brutal civil war that unfortunately did not attract the sympathy of the United States, despite long historical ties between the two countries.⁴⁶ In fact, the official policy of the United States was that the conflict was an internal affair which only Liberians were best suited to deal with. However, the real reason for the United States' non-intervention was that Liberia, a former client of the United States during the Cold War, was insignificant to the United States as it prioritized the Iraqi invasion of oil-rich Kuwait.⁴⁷ The United States mobilized the international community through the UN to intervene and halt the Iraqi aggression and stopped Saddam Hussein's atrocities against Iraqi Kurds.⁴⁸ At the same time, however, Liberians and West Africa grappled with the bloody Liberian civil war with little or no interest by the United States, obviously because it had no interest in Liberia.⁴⁹ The case of Somalia is well documented and will not be rehashed here,⁵⁰ but it suffices to mention that the death of 18 U.S. soldiers that led to the termination of the mission could only be evidence of the reality that Africa is indeed the "backwater of U.S. foreign policy," at least when compared to the material and human resources committed by the United States to other missions elsewhere.⁵¹

An important unintended consequence of the United States' experiences in Operation Restore Hope, Unified Task Force (UNITAF) and United Nations Operation in Somalia (UNOSOM II) was the Presidential Decisions Directive (PDD) 25 in which President Bill Clinton

44. Marrack Goulding, *The United Nations and Conflict in Africa Since the Cold War*, 98(391) AFR. AFF. 155, 160 (1999); Peter Wallensteen & Margaret Sollenberg, *Armed Conflict, 1989-99* 35(5) JOURNAL OF PEACE 635, 637 (2000).

45. Antonio Cassese, *Human Rights in a Changing World* 85 (1990).

46. Max A Sesay, *supra* note 18, at 35.

47. *Id.* at 41.

48. Thomas G. Weiss, *supra* note 42, at 41.

49. Comfort Ero, *ECOWAS and the Subregional Peacekeeping in Liberia*, THE JOURNAL OF HUMANITARIAN ASSISTANCE (1995), available at <http://www.jha.ac/1995/09/25/ecowas-and-the-subregional-peacekeeping-in-liberia>.

50. For a detailed account of what went wrong with the Somali Mission, see MOHAMED SAHNOUN, *SOMALIA: THE MISSED OPPORTUNITIES* (1994).

51. Physicians for Human Rights, *Somalia: No Mercy In Mogadishu: The Human Cost Of The Conflict And The Struggle For Relief*, AFRICA WATCH (March 1992), available at <http://www.cja.org/downloads/No%20Mercy%20for%20Mogadishu.pdf>.

clarified the foreign policy thrust of the United States.⁵² The essential provisions of the directive provided that

[T]he United States will vote in the UN Security Council for multi-lateral peace operations, or, where appropriate, take the lead in calling for them, when member states are prepared to support the effort with forces and funds; when the U.S. decides that the operation's political and military objectives are clear and feasible; and when UN involvement represents the best means to advance U.S. interests. The U.S. will not support in the Security Council proposals for UN involvement in situations where such involvement is not viable or when it would interfere with U. S. interests.⁵³

This policy framework has undergirded subsequent U.S. intervention, or lack thereof, to protect human rights in Africa ever since, and it is not clear that there has been a significant policy shift irrespective of the political party in office. The first casualty of this policy was Rwanda, and the ignoble role played by the United States in order to avoid intervention and also prevent UN intervention is well documented.⁵⁴ The conflict in Darfur that erupted in 2003 has not attracted any significant engagement from the United States beyond the rhetoric of "never again" and diplomatic shuttle in Washington. This is underscored by the fact that despite labelling the humanitarian catastrophe in Darfur as genocide, the United States has succeeded in avoiding the corresponding obligations imposed by Article 1 of the Genocide Convention which require the United States to take steps (including intervention) to prevent, halt and punish the crime of genocide in Darfur.⁵⁵ Again, this demonstrates the implementation of PDD 25's policy that where U.S. national interests are not at stake, human rights violations including mass atrocities, war crimes, and crimes against humanity are insufficient to persuade meaningful United States intervention. In fact, the Rwandan genocide shows how the United States could become an obstructionist to UN action in genocides in Africa in cases where the United States determines that its national interests are not at stake.⁵⁶

Outside the Cote d'Ivoire conflict of 2002, the Darfur genocide can pass for the third African state victim of PDD 25. The humanitarian crises of the 1990s could not push Africa upward on the United States' foreign policy agenda. Given these antecedents, there is need

52. White House, *U.S. Policy On Reforming Multilateral Peace Operations, Presidential Decision Directive 25* (May 3 1994).

53. *Id.* at 2.

54. Physicians for Human Rights, *supra* note 51.

55. Michael Clough, *supra* note 38.

56. Wheeler, *supra* note 40, at 215- 216.

to question the Obama Administration's foreign policy on Africa in the context of the recent U.S. decision to send troops to Uganda and the U.S.-initiated NATO intervention in Libya.

The next section of this article considers how much the U.S. policy discussed above has changed and what accounts for that change. To what extent do human right considerations determine U.S. policy in Africa? Or, is the policy mainly driven by the United States' national interests? Has the Obama Administration fashioned a new policy for human rights protection and the use of force in Africa? If so, to what extent does it detract from what has been discussed above and in whose interest has there been a policy shift? The section will demonstrate that just as the Cold War shaped U.S.-Africa policy in the past, two events have forced and determined the direction of the United States' foreign policy on Africa in the last decade – namely, the rise of China and the events of September 11, 2001.⁵⁷

IV. HUMANITARIAN INTERVENTION AND OBAMA AFRICA POLICY

As previously discussed above, the doctrine of humanitarian intervention has been one of the most controversial subjects of international law. Many questions surround its legal validity and when it is justified to use force in the protection of human rights. But the most potent argument of opponents of the doctrine is its susceptibility to abuse. It is a common contention that humanitarian intervention can only be a banner for the propagation of war by powerful states.⁵⁸ This argument is based on the realist theory that states would only act when it is in their national interest to do so.⁵⁹ When this theory is applied to humanitarian intervention, the end result is that irrespective of what an intervening state proclaims to be its motives, its true intentions and motivation will always be some form of national self-interest, be it political or economic; implicit, or explicit.⁶⁰ This view was well articulated in President Clinton's PDD 25 and similar foreign policy documents of governments around the world.⁶¹ Regardless of what is actually contained in the Obama Administra-

57. John Prendergast, *Old Wine in New Bottles – U.S. Policy Towards Africa after 9/11 and Iraq* in GLOBAL CHALLENGES AND AFRICA: REPORT OF THE 2004 TSWALU DIALOGUE 109 (Richard Cobbold & Greg Mills eds., 2004).

58. Thomas Franck & Nigel S. Rodley, *After Bangladesh: The Law of Humanitarian Intervention by Military Force*, 67(2) AM. J. INT'L L. 275, 279, 294 (1973).

59. Wheeler, *supra* note 40, at 46.

60. *Id.* at 30.

61. PDD 25, *supra* note 52.

tion's policy on Africa, the practical effect is that it has simply continued along the same lines as previous policies.

In outlining his foreign policy on Africa on his first trip to Ghana in 2009, President Obama stated, "I will focus on four areas that are critical to the future of Africa and the entire developing world: *democracy*; opportunity; health; and the *peaceful resolution of conflict*. First, we must support strong and sustainable democratic governments."⁶² The President's commitment to this policy thrust and the modus operandi for its implementation, particularly with regard to the promotion of democracy and the peaceful resolution of conflict, did not have to wait long to be tested.

The Arab Spring and the role played by the United States in it clearly indicates that the United States' foreign policy on Africa remains unchanged and is ultimately determined by the United States' national interests rather than as contained in the rhetoric of President Obama's Africa policy document. Prior to the Arab Spring, the United States had supported Hosni Mubarak's Egyptian government, viewing it as a bulwark of strategic balance between Arabs and Israel in the Middle East, and thus a beacon of regional peace and stability.⁶³ Hence for the first few weeks of the Egyptian revolution, the United States' position oscillated between studied passivity and a "wait and see" approach.⁶⁴ As Egypt was the only Arab nation that had a peace treaty with Israel, it was the strategic calculation of the Obama Administration that a rush to side with the revolution against Hosni Mubarak - a long-time tested and trusted ally - could be counter-productive if the revolution failed.⁶⁵ At the same time, it was also felt that failure by the United States to side with the revolutionaries would paint it in a bad light and confirm the long-time assertion by many Egyptians and observers that the United States' commitment to the promotion of human rights and the rule of law and democracy in the Middle East and North Africa (MENA) was only true to the extent that it served to maintain the status quo of preserving the delicate balance

62. White House, Office of the Press Secretary. *Remarks by the President to the Ghanaian Parliament* Accra International Conference Centre Accra, Ghana (July 11, 2009) available at <http://www.whitehouse.gov/the-press-office/re,arks-president-ghanaian-parliament>, (*emphasis added*).

63. Egypt is the only country in the Middle East that has a peace treaty with Israel, and there were probably fears in Washington that the exit of Hosni Mubarak might jeopardize this delicate peace in the region.

64. See Speech by President Barack Obama on January 28, 2011, available at <http://www.whitehouse.gov>.

65. This can be contrasted with the attitude of the U.S. to the subsequent crisis in Libya.

of power in the region in the interest of Israel. If achieving this objective meant keeping Hosni Mubarak in power despite his poor human rights records, then so be it. Thus, the United States' interests in MENA must have trumped all other considerations, including the protection of millions of Egyptians who had been victims of Mubarak's human rights violations.

The above explains why the United States had to wait until such a time that there were indications of the likely outcome of the revolution before it came out with an official position pressuring Mubarak to step down from power.⁶⁶ Crucial to this decision was the role of the powerful Egyptian military, whose position clearly indicated that it sided with the people - a clear sign of the possible success of the revolution.⁶⁷ It must have been a tough decision for the Obama administration to withdraw its support for Hosni Mubarak, a long-time ally of Israel in the region. Perhaps, the main reason the U.S. abandoned Mubarak in the wake of the revolution was because the U.S. feared a possible backlash and accusation of hypocrisy and double-standards if she failed to support a people's pro-democratic revolution in Egypt while pretending to promote the same values elsewhere. The United States eventually adopted the position it did because it was the only way it was going to retain any credibility and leverage with the successor to the Mubarak regime.

This view is supported by events in Yemen where the United States has also been ambivalent in its response to the crisis, sparking angry criticisms from protesters in the streets of Sana'i.⁶⁸ In fact, the nature of the U.S.-Yemeni arrangement by which the latter provides a military base for the United States in the region is such that an independent observer cannot help but conclude that it undermines the latter's sovereignty. This explains why, despite the death toll arising from the Yemeni uprising, we will not see a Libyan-style intervention in Yemen. Rather, we see an arrangement that is in the interest of the United States whereby the president of Yemen would receive immunity from prosecution in exchange for stepping down from power.⁶⁹ Hundreds of people have been killed just like in Libya and yet, Yemeni

66. Jeremy Bowen, *Egypt Unrest: Obama Increases Pressure on Mubarak*, BBC NEWS, February 5, 2011, <http://www.bbc.co.uk/news/world-us-canada-12371479>.

67. Lyse Doucet, *Egypt Protests: Army Rules out the Use of Violence*, BBC NEWS, Jan. 31, 2011, <http://www.bbc.co.uk/news/world-middle-east-12330169>.

68. Sudarsan Raghavan, *In Yemen, Anger from Activists Over U.S. Policy*, THE WASHINGTON POST, Apr. 21, 2011, <http://www.washingtonpost.com/world/in-yemen-anger-from-activists>.

69. *Yemen's President Saleh Arrives in U.S. for Treatment*, BBC NEWS, Jan. 29, 2012, <http://www.bbc.co.uk/news/world-middle-east-16778286>.

President Saleh refused to step down and reneged on promises of stepping down several times.⁷⁰ Apparently, the United States' latest move was probably aimed at giving Mr. Saleh a "soft landing" by which he received permission to visit the U.S. for "medical treatment," in exchange for him never returning to power in Yemen.⁷¹ This is in sharp contrast with the United States' attitude to the revolution in Libya. Just as the Bush Administration espoused "pre-emptive self-defense and regime change," the Obama Administration should take credit for its use of force in Libya to enforce its responsibility to "protect" the Libyan people.

The emerging norm of the responsibility to protect was conceived to prevent mass atrocities like Rwanda, Sebrenica, and Darfur, and the doctrine has developed very quickly.⁷² The NATO Operation Odyssey Dawn is the first use of force to implement the "responsibility to protect" norm.⁷³ The norm was first developed by Francis Deng and his colleagues at the Brookings Institution in their seminal work, *Sovereignty as Responsibility: Conflict Management in Africa*.⁷⁴ The responsibility to protect norm essentially reconceptualized the controversial doctrine of humanitarian intervention by shifting the emphasis from a right to intervene which was seen as an affront to sovereignty to the conception of sovereignty as entailing the duty of a state to protect its citizens.⁷⁵ In this sense, there is a shared responsibility which rests primarily on the host state to protect its people and secondarily, on the international community to do so when the state is unable or unwilling to protect its people.⁷⁶

The doctrine was formally endorsed by world leaders in 2005 in the World Summit Outcome Document and by the UN Security Council

70. *Id.*

71. The norm is still controversial and its scope a subject of debate.

72. The norm 'responsibility to protect' (hereafter R2P) is based on the report on a commission set up by the Canadian Government to re-examine humanitarian intervention and prevention of mass atrocities. See THE RESPONSIBILITY TO PROTECT: REPORT OF THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY (2001) (hereafter ICISS Report).

73. Alex J Bellamy, *Libya and the Responsibility to Protect: The Exception and the Norm*, 25(3) ETHICS AND INTERNATIONAL AFFAIRS 263, 264 (2011).

74. FRANCIS M. DENG ET AL, SOVEREIGNTY AS RESPONSIBILITY: CONFLICT MANAGEMENT IN AFRICA (1996).

75. Mohammed Ayoob, *Humanitarian Intervention and State Sovereignty*, 6(1) INT'L J. HM. RTS. 81, 84 (2002). For a detailed analysis of the R2P norm and its components, see generally the Report of the CISS, Gareth Evans, THE RESPONSIBILITY TO PROTECT (2008).

76. *Supra* note 71, at 13.

through resolution 1674 and 1976.⁷⁷ The doctrine seeks to deploy three tools: the responsibility to prevent (which involves a range of tools from preventive diplomacy and persuasion to economic assistance to enable the host state carry out this responsibility), the responsibility to react (which involves the use of force as a last resort), and the responsibility to rebuild (which deals with state reconstruction in a post-conflict situation).⁷⁸ Once more, the most contentious aspect of the doctrine has been the use of force to protect human rights.⁷⁹ Though the African groups had been the most vociferous supporter of the doctrine, there were those who foresaw a future Libyan situation and promptly, and perhaps rightly too, warned about the likelihood of abuse of the doctrine.⁸⁰ President Susilo Bambang Yudhuyono of Indonesia cautioned, “We need a consensus on the responsibility to protect people from genocide, ethnic cleansing and crimes against humanity. To this end, force should be used only when all other means have failed.”

Even without the statements of dictators and autocrats at the Summit, many states believed that the principle was likely to be abused. This view reflects the fear and suspicion of most small states about the possible use to which the doctrine could be put.⁸¹ Rightly so, the fear was that given the unrepresentative and undemocratic nature of the composition of the UN Security Council, the doctrine could be manipulated to pursue ulterior economic and political agendas such as regime change.⁸² In fact, the Arab Spring and the reaction of the UN and powerful states is a classic example of all the intrigues and anxieties expressed by many delegates at the World Summit.

The intervention in Libya, supposedly “authorized” by UN Security Council Resolution 1973, was aimed at enforcing the responsibility to protect the human rights of the Libyan people since the Gaddafi regime had failed to do so, or was the direct violator of

77. See ¶138 and 139 of the World Summit Outcome Document (2005) A/60/L.1 15th September 2005; S/RES 1674/(2006) Apr. 28 2006 on the Protection of Civilians in Armed Conflicts; S/RES/1894/(2009) Nov.11 2009; UN General Assembly Resolution A/RES/63/308 on the Responsibility to Protect.

78. *Supra* note 7,1 at 29.

79. *Id.*

80. See the comments of Venezuelan President Hugo Chavez and Robert Mugabe of Zimbabwe, available at <http://www.responsibilitytoprotect.org/document=archive/government?view=fjrelated&id=2409>.

81. *Id.*

82. *Id.*

those rights.⁸³ But this raises significant questions about the right to protect. First, the right to protect norm is built on the incremental approach outlined in Chapter VII of the UN Charter, which provides that non-coercive measures must first be deployed and that the use of force is to be a last resort.⁸⁴ Thus, "tough threshold conditions should be satisfied before military intervention is contemplated. For political, economic and judicial measures, the barrier can be set lower, but for military intervention it must be high: for military action ever to be defensible, the circumstances must be grave indeed."⁸⁵ The report set out other elaborate precautionary principles, but it is doubtful that the Obama Administration, in its apparent haste to get rid of an old foe, paid heed to any of these principles.

Second, the responsibility to protect doctrine does not envisage siding with one party in a civil war in order to change the outcome. The United States, under President Obama and its NATO allies, providing arms, training, and logistics to the rebels during the Libyan crisis, despite the existence of UN Security Council Resolution 1970 which imposed an arms embargo on all sides to the conflict.⁸⁶ There was no other UN Security Council Resolution backing this action and by no stretch of the imagination could Resolution 1973 have been relied upon to justify the military aid. Therefore, the United States' action in provided arms and training to the Libyan rebels was illegal under international law and violated Resolution 1970. From the time that France recognized the rebels (National Transition Council) up to the commencement of actual bombings, there was a *de facto* and *de jure* government in effective control in Libya and it was a brazen violation of international law to attack the Libyan forces.

Third, even as vaguely worded as Resolution 1973 is, there is no doubt that its scope did not encompass regime change. The relevant operative paragraph of the Resolution provides:

Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take *all necessary measures*, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Ben-

83. S/RES/1973/(2011) See U.N. Security Council Resolution S/RES/1973/(2011), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/268/39/PDF/N1126839.pdf?OpenElement>.

84. See *supra* note 71, at 29.

85. *Id.*

86. *Obama not ruling out Libya arms*, BBC NEWS, Mar. 30, 2011, <http://www.bbc.co.uk/news/world-africa-12902450>.

ghazi, while excluding a foreign occupation force of any form on any part of Libyan territory, and *requests* the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to the authorization conferred by this paragraph which shall be immediately reported to the Security Council⁸⁷

As sweeping as this paragraph may first appear, the pertinent question becomes whether sorties targeting Gaddafi's civilian presidential residence was in any way connected to civilian protection in the absence of any proof that Gaddafi himself was directly involved in combat or that his private residence was being used as military command or served some other military purpose.⁸⁸ Nor can it be proved that members of Gaddafi's immediate family that died as a result of NATO targeting Gaddafi could merely pass off as collateral damage. The overall purpose of the intervention had been clouded from the beginning because, apart from efforts to mobilize African States and the League of Arab States to support Resolution 1973, these regional actors were side-lined in the implementation process. Lamenting the situation, President Jacob Zuma of South Africa, who led the AU Committee on the Libyan crisis, said, "I think that the point we have been making is that those who have a lot of capacity, even the capacity to bombard the countries, really undermined the [African Union's] initiatives and effort to deal with the matter in Libya."⁸⁹ Once African and other state actors were manipulated into supporting the Resolution in order to gain international legitimacy for the planned operations, and once Resolution 1973 was adopted, a disguised license for regime change in Libya was handed over to NATO.

That the scope of what was permitted by Resolution 1973 was clearly exceeded by NATO, as demonstrated by the fact that every other member state of the UN Security Council outside the NATO bloc who voted for or abstained from Resolution 1973 subsequently condemned the enforcement *modus operandi* adopted by NATO. For example, the Russian Foreign Minister said that the Resolution aimed

87. See *supra* note 83, at ¶ 4. See also, ¶ 6 and 8 imposing a no fly zone and authorizing the use of "all necessary measures" to enforce compliance. . (*emphasis added*).

88. Gareth Evans, *When Intervening in a Conflict, Stick to UN Script*, THE SIDNEY MORNING HERALD, Mar. 24, 2011, <http://www.smh.com.au/opinion/politics-intervening-in-conflict-stick-to-un-script-20110323-1c6kz.html>.

89. *South Africa, War Crimes Court should Probe NATO role in Libya*, DECCAN HERALD, Aug. 25, 2011, <http://www.deccanherald.com/content/186211/war-crimes-court-should-probe.html>.

at protecting civilians had been misused to pursue the removal of the Gaddafi regime.⁹⁰

Even the Arab League, which was the first to call for a “no-fly-zone” over Libya, was forced to denounce the scale of attacks launched on Libya by NATO in purported enforcement of the Resolution.⁹¹ It is questionable whether the motive behind the Obama Administration’s decision to champion the intervention without the direct deployment of U.S. troops into Libya was driven by human rights considerations, or whether, as has been strongly expressed by critics of the operation, it was instead driven by a ploy to open up Libya’s oil reserves for American interests. There is evidence lending credence to this latter suspicion.

First, from the beginning of the intervention, there were mixed signals from both the United States and other NATO members as to what the possible scope of the intervention should be. At one point, President Obama’s Secretary of State, Mrs. Hillary Clinton, reportedly said that arming the rebels was legal and within the scope of Resolution 1973, whereas President Obama himself was said to have thought otherwise.⁹² Contradicting the United States in relation to arming the rebels, the French Foreign Minister, Alain Juppe, said, “I remind you that this is not what is envisaged by Resolution 1973. . . So for the moment France has agreed to the strict application of these resolutions.”⁹³ According to the United Kingdom’s (UK) Foreign Secretary, William Hague, the UK would not give arms to the rebels “in any form [] at the moment. Our focus is on trying to protect those civilian areas with the measures that we’ve been carrying out in the last ten days.”⁹⁴ This demonstrates the ambiguity of the Resolution, as well as the ulterior motives behind the initial intervention. On the question of whether Gaddafi could be legally targeted, NATO members also initially differed in their interpretation, but ultimately came to a consensus by their subsequent conduct, with some commentators even claiming that under Resolution 1973, Gaddafi was a legitimate target

90. *Libya: NATO Defends Operation during Russia Talks*, BBC NEWS, July 4, 2011, <http://www.bbc.co.uk/news/world-europe-14010305>.

91. Amr Moussa called for an end to NATO bombings, arguing that it was killing civilians including children. See *Libya: Italy Urges Suspension of Hostilities*, BBC NEWS, Jun. 22, 2011, available at <http://www.bbc.co.uk/news/world-africa-13872674>.

92. The BBC quoted U.S. Secretary of State, Mrs. Hillary Clinton, as saying, “[I]t is our interpretation that UN Security Council Resolution 1973 amended or overrode the absolute prohibition on arms to anyone in Libya”. See *supra* note 87.

93. *Id.*

94. *Id.*

and could be killed by NATO.⁹⁵ What is clear, however, is that NATO had been programmed to topple Gaddafi and only the tactics changed in course of the war.

In any case, these actions square with the two legs of President Obama's foreign policy thrusts in Africa: the protection of human rights and promotion of democracy. However, the extent to which the end result would be in the interest of Africans beyond the the objectives of the US to effectuate regime change in real or imagined unfriendly African countries is a matter for conjecture. President Obama has stated that "the future of Africa is up to Africans," but he has pledged to partner with Africans to realize that future.⁹⁶ He has remarked, "I see Africa as a fundamental part of our interconnected world - as partners with America on behalf of the future that we want for all our children. That partnership must be grounded in mutual responsibility."⁹⁷ President Obama asserted that this partnership must be based on a fundamental commitment that leads to the ability to transform Africa by Africans.⁹⁸ This mouthed partnership was a far cry from the NATO intervention in which the views of the African Union were ignored and its efforts to fashion an amicable solution between the rebels and the Libyan Government was deliberately undermined by President Obama and NATO allies. According to President Obama, "[i]t is U.S. policy that Gaddafi has to go," and this is so regardless of the consequences for the Libyan people and the implications for regional peace and stability.⁹⁹ There was one important factor to be considered and that was U.S. national interest. It is clear that President Obama is following the same policy that previous U.S. administrations have pursued for the past ten years, which is a policy that is designed primarily to advance the United States' interests rather than Africa's or both.¹⁰⁰

From revelations now emerging, it can be concluded that the Obama Administration certainly had more than human rights protec-

95. Dapo Akande, *What does UN Security Council Resolution 1973 Permit?* EJIL TALK available at <http://www.ejiltalk.org/what-does-un-security-council-resolution-1973-permit/>.

96. President Barack Obama, Remarks by the President to the Ghanaian Parliament, Accra International Conference Center, Accra, Ghana (Jul. 11, 2009) [hereinafter President Obama's Remarks], <http://www.whitehouse.gov/the-press-office/remarks-president-ghanaian-parliament>.

97. *Id.*

98. *Id.*

99. *Air Strikes Keep Pressure on Gaddafi*, BBC NEWS, Mar. 22, 2011, <http://www.bbc.co.uk/news/world-africa-12814748>.

100. Daniel Volman, *Obama Expands Military Involvement in Africa*, AFRICAN SECURITY PROJECT, Apr. 2 2010, available at <http://www.concernedafricascholars.org/african-security-research-project/>.

tion and the promotion of democracy on its mind when it ordered the Libyan intervention. If the protection of civilians was the motive for the intervention, then the mandate of resolution 1973 ought to have been implemented with serious implications for both parties in the conflict –the Gaddafi regime and the Libyan North Transitional Council (NTC) alike.¹⁰¹ But it seems the responsibility was only to “protect” civilians against Gaddafi’s forces while the rebels were free to engage in wanton killings, violations of human rights, and international humanitarian law. In the recently published Human Rights Watch Report, evidence now abounds that while Government troops came under heavy bombardment by NATO, in order to “protect” civilians, the NTC rebels executed 53 Gaddafi supporters.¹⁰² The report does not mention whether these were soldiers or noncombatants. There were reports of several dozens of arbitrary arrests, detention, torture, and executions by the NTC.¹⁰³ The question is then, where was NATO? While NATO was busy attacking government bases and forces in a desperate bid to swing the pendulum in favour of the rebels, many other civilians that Resolution 1973 was meant to protect were being tortured and executed. There is evidence that even NATO was responsible for the killing of civilians it was meant to protect, though the exact figure is unknown.¹⁰⁴ There are other instances where the deaths of scores of civilians were linked to NATO attacks and occasions where NATO neglected to rescue African migrants fleeing its bombing, 63 of who died consequently.¹⁰⁵ These and other severe violations of human rights and international humanitarian law by NATO forces require investigation by the UN and the International Criminal Court (ICC) but in a world where might is right, this is unlikely to happen. There is no doubt that the Gaddafi government was also equally guilty of atrocities, but while he was swiftly indicted by the ICC which immediately issued a warrant for his arrest, none of such warrant has been issued against any of the rebel perpetrators.¹⁰⁶ This raises questions about

101. This obviously drags R2P norm into the murky water of selective intervention that has undermined and delegitimized the doctrine of humanitarian intervention all along and which R2P was supposed to avoid.

102. HUMAN RIGHTS WATCH, *WORLD REPORT 2012 (Libya)* 3 (January 2012) available at http://www.hrw.org/sites/default/files/related_material/libya_2012.pdf.

103. *Id.*

104. *Id.* at 5.

105. *Id.*

106. *Libya: Muammar Gaddafi Subject to ICC Arrest Warrant*, BBC NEWS, Jun. 27, 2011, <http://www.bbc.co.uk/news/world-africa-13927208>.

the legitimacy of the entire NATO intervention in Libya on president Obama's watch.¹⁰⁷

As controversial as this view might sound, we must observe that as appealing as democracy might be, it is not yet part of an uncontested principle of international law that there can be an external intervention by the use of force to support per se, a people's demand for democracy, or to change the form of social, economic or political organization of a state.¹⁰⁸ This still rests within the essential domestic jurisdiction of the state concerned.¹⁰⁹ Until such a time when this becomes a part of international law norm, regime change under the guise of enforcing the international community's responsibility to protect remains illegal, whether or not powerful nations such as the U.S. support it and particularly in the disproportionate manner that NATO unleashed its military might on Libya. There is no doubt that the intervention was sanctioned by the UNSC to protect civilians. Leaving aside the question of whether the situation in Libya actually constituted a threat to international peace and security, or whether NATO was contracted to enforce Resolution 1973, it is beyond dispute that the intervention was way beyond what Resolution 1973 contemplated and according to Michael Walzer, ". . . a military attack of the sort now in progress is defensible only in the most extreme cases".¹¹⁰

V. OBAMA AFRICA POLICY AND RESOLUTION OF CONFLICTS IN AFRICA

The 1990s was a turbulent decade for Africa with the number of non-international armed conflicts peaking between 1997 and 1999.¹¹¹ The New Millennium ushered in mixed feelings as some of the wars on the continent were ending, however a few ferocious ones like Darfur ensued. Some observers therefore predicted a tough time for Africa in the new decade. R Henderson had predicted this scenario a decade earlier when he wrote

107. Michael Walzer, *The Case Against Our Attack on Libya*, THE NEW REPUBLIC, Mar. 20, 2011, <http://www.tnr.com/article/world/85509/the-case-against-our-attack-libya>.

108. While some authors have argued for the right to intervene in support of democracy, the UN Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations adopted on UN General Assembly 2625 (XXV) 24th October 1970 which now forms part of customary international law is patently against democratic invasions.

109. One of the principles is the inalienable right of a state to choose its social, economic and political system without interference from other states, and the duty of states to refrain from fomenting or interfere in civil strife.

110. Walzer, *supra* note 108.

111. Wallenstein & Sollenberg, *supra* note 44, at 638

With the U.S. as the last superpower with the capacity to project military force globally and the lack of funds for United Nations Interventionist "peacemaking" operations, regional inter-governmental organizations will increasingly have to assume the responsibility for any regional right to interfere. They will have to provide and project the military force necessary to support international interventions for humanitarian purposes¹¹²

One of the immediate challenges before the leaders of the African Continent was an urgent need to fashion a workable mechanism for the maintenance of peace and security in the region. The 10-year old African Union (AU) successor to the Organisation of African Unity launched its new Constitutive Act in 2000 and sought to create a mechanism for the peaceful resolution of conflicts and the overall maintenance of peace and security on the continent.¹¹³ This took place at a time of great global change. First, a few years earlier, the International Commission on Intervention and State Sovereignty had published its report.¹¹⁴ China was on the rise as a global power and the balance of power was changing. Further, the terrorist attacks of September 11, 2001 had just occurred and the U.S. was smarting for war both in Afghanistan and Iraq. It was clear that there would be a great change in the global peace and security firmament and there was the need for the US to re-engage Africa, as many of the countries there were potential breeding ground for international criminality and terrorism.¹¹⁵

Perhaps one important area the Obama Administration has scored well in Africa was its ability to see to the implementation of the 2005 Comprehensive Peace Agreement in the Sudan which successfully ended three decades of civil war between Northern and Southern Sudan.¹¹⁶ President Obama's administration promised a committed and proactive Africa policy.¹¹⁷ Yet for almost a year after assuming office, the administration did not have a clear policy on resolving the

112. R Henderson, *Democracy, Neo-authoritarianism and International Security*, 26 CANADIAN SECURITY INTELLIGENCE SERVICE COMMENTARY (1992), available at <https://www.csis.gc.ca/pblctns/cmmntr/cm26-eng.asp>.

113. See The African Union Constitutive Act (2002).

114. See ICISS Report, *supra* note 71.

115. van de Walle, *supra* note 34, at 6.

116. The South seceded from the North in July 2011 after a referendum was held to determine the in 2010 to determine the future of the South. Since then however, tension has remained with occasional clashes over the oil-rich border province of Abyei.

117. Johnnie Carson, *U.S.-Africa Policy Under the Obama Administration*, Reimagine, Redefine, Reinvent: A New Paradigm for African Leadership, Harvard University Africa Focus Program Washington DC, April 5, 2010, available at <http://www.state.gov/p/afrls/rm/2010/139462.htm>.

Darfur conflict thereby raising doubts whether Obama would push through his pre-election promise to end the Darfur tragedy.¹¹⁸ There has been a lull in the conflict and this is the time to push for a comprehensive resolution of the conflict. So far, Obama has adopted a somewhat tentative partnership with the African Union. In 2010, for example, the Obama administration signed a \$5.8 million assistance pact with the African Union to support the AU's peace and security initiatives, among others.¹¹⁹ The U.S. is also supporting the AU in its efforts to have a fully operational African Standby Force with regional brigades across the continent.¹²⁰ At the same time, the administration has continued the aggressive militarization of Africa initiated by previous U.S. administrations.

A. Militarization of Africa

As mentioned above, terrorist threats such as the bombing of U.S. embassies in Nairobi, Kenya, and Dar es Salaam in Tanzania forced policymakers to reassess their view of U.S. Africa policy.¹²¹ There were calls for a review of the policy of disengagement with Africa and the need to develop a new U.S. Africa policy focusing on a robust military component and partnership with African states.¹²² In 2002, both the State Department and the Pentagon outlined that Africa represented a source of national security threats to the United States.¹²³ In assessing the underpinning themes of President Bush's 2002 National Security Strategy, Ploch points out that the poverty and state of hopelessness in Africa posed a threat to U.S. national security and its global war on terror.¹²⁴

118. Daniel Pepper, *Darfur Activists Frustrated with Obama's Sudan Policy*, TIME WORLD, Thursday Oct. 22, 2009, <http://www.time.com/time/world/article/0,8599,1931658,00.html>. See also Barron Young Smith, *The Obama Administration Finally has an Official Darfur Policy, but Where is Obama?*, THE NEW REPUBLIC, Oct. 18 2009, <http://www.tnr.com/blog/the-plank/the-obama-administration-finally-has-official-darfur-policy-where%E2%80%99s-obama>.

119. Press Release, The United States and the African Union' Office of the Spokesman Washington DC, (April 19 2011), <http://www.state.gov/r/pa/prs/ps/2011/04/161212.htm>.

120. *Id.*

121. PLOCH, *supra* note 36, at 17.

122. See, e.g., The Report of the U.S. House of Representatives Subcommittee on International Relations 2001. "Africa and the War on Global Terrorism" Hearing Before the Subcommittee on Africa of the Committee on International Relations, House of Representatives, 107th Cong. (15 November 2001) available at http://commdocs.house.gov/committees/intlrel/hfa76191.000/hfa76191_of.htm.

123. Barnes, *supra* note 33, at 3.

124. PLOCH, *supra* note 36, at 14.

In response to these and other national security concerns, the U.S. established the Combined Joint Task Force, Horn of Africa, dedicated to combating terrorism in the Horn of Africa region.¹²⁵ This Task Force quickly expanded its area of operations to cover Seychelles, Mauritius and Eritrea, establishing a permanent base at Camp Lemonier in Djibouti and becoming the first U.S. permanent base in Africa after several decades.¹²⁶ According to Berrigan

“[A]s part of the CJT-HOA these soldiers are also building schools, digging wells and sanitizing slaughterhouses. Their work is delineated by the four Ps and the three Ds: Prevent conflict, promote regional stability, protect coalition interests and prevail against extremism in East Africa and Yemen through diplomacy, development and defense”¹²⁷

Undoubtedly, there is a gradual but steady militarization of Africa as a policy that is being pursued by the U.S.: what we are left to conjecture is its design, purpose and ultimate end. In 2005, the Defense Department Operation Enduring Freedom –Trans Sahara (OEF-TS) set up the Pan Sahel Initiative to cover countries like Mali, Mauritania, Niger and Chad.¹²⁸ The Trans-Sahara Counter Terrorism Initiative (TSCTI) was funded to the tune of \$500 million over a period of six years.¹²⁹ For some time after the Cold War, the U.S. had sought to establish its military presence in Africa given that all other regions considered of strategic interest to the U.S. had a military command to protect U.S. national interests and use force if necessary.¹³⁰ The U.S. has built airbases and arms depots on the island of Diego Garcia and is also discreetly building military surveillance facilities at Tamanrasset in southern Algeria.¹³¹ The Clinton administration had initially pursued the objective of establishing U.S. forces in Africa through the African Crisis Response Force, but it was met with little success as many African states, particularly the regional powers – South Africa and Nigeria – were skeptical and unenthusiastic about the policy.¹³² Therefore, given the increasing importance of Africa to the national security strategy of the U.S., it was recommended that a

125. van de Walle, *supra* note 34, at 7.

126. *Id.*

127. Frida Berrigan, *Africa: The New Military Frontier* (18 September 2007) http://www.fpif.org/articles/the_new_military_frontier_africa.

128. van de Walle, *supra* note 34, at 7.

129. Berrigan, *supra* note 128.

130. Barnes, *supra* note 33, at 7.

131. *Id.*

132. Paul Omach, *The African Crisis Response Initiative: Domestic Politics and Convergence of National Interest*, 99 AFR. AFF. 73, 80 (2000.).

special Command be established for Africa to promote U.S. strategic objectives.¹³³ In October 2007, the Africa Command (AFRICOM) was established by President Bush.¹³⁴ Without getting into the full mission statement, AFRICOM's mission statement says in part that the

[U]nited States Africa Command, in concert with other U.S. government agencies and international partners, conducts sustained security engagement through military-to-military programs, military sponsored activities, and other military operations as directed to promote a stable and secure African environment in support of U.S. foreign policy.¹³⁵

The U.S. has worked to reassure African governments that AFRICOM is not designed for war in Africa but at the same time, U.S. top military officials' remarks point to a different direction. For example, Rear Admiral Richard Hunt, the Commander of Combined Joint Taskforce-Horn of Africa (or CJT-HOA), is quoted to have stated that "Africa is the new frontier that we need to engage now, or we are going to end up doing it later in a very negative way"¹³⁶

Consequently, it is doubtful whether the peace and security challenges facing African states and the need to strengthen their military capability to maintain regional stability were actually the driving motives. For example, while the potential for cooperation and partnership between AFRICOM and African militaries receive much emphasis, little is heard of the combatant character of the command and the other invasive purposes to which it could be put. Africans have been rightly suspicious of the motives behind the creation of AFRICOM. The reasons for this suspicion are not few. First, in the feasibility study carried out prior to the creation of AFRICOM, only a brief mention was made of what precautions would be taken in order to make sure that the training and equipment provided to African militaries are not used by the respective government to suppress internal dissent or attack other states.¹³⁷

The case of Equatorial Guinea and Uganda have been cited as illustrating the danger inherent in this policy where one-party states could deploy the military weapons and training provided to maintain themselves in power and silence opposition.¹³⁸ The likelihood of such

133. Barnes, *supra* note 33, at 2; *See also*, The Testimony of EUCOM AOR before the Senate Armed Services Committee (Sept. 19, 2006).

134. van de Walle, *supra* note 34, at 3.

135. PLOCH, *supra* note 36, at 1, quoting the AFRICOM mission statement.

136. Berrigan, *supra* note 127.

137. PLOCH, *supra* note 36, at 3.

138. Barnes, *supra* note 33, at 11.

unintended consequences is real and would undermine U.S. objective of promoting democracy and human rights in Africa.¹³⁹ The concerns expressed above about the dangers in unrestrained US-militarization of Africa appear to be receiving the attention of commentators following recent developments in Mali¹⁴⁰ that occurred at the time of finalizing this article. On March 22, 2012, the Malian soldiers led by US-trained Captain Amadou Sanogo staged a coup to overthrow the democratically elected government of Toumani Toure, ending a 20-year period of fledgling democracy.¹⁴¹ Until then, Mali was ranked as one of the only few African countries to have attained the level of "flawed democracy" just a level beneath the 'full democracy' rank of the advanced democracies of the West on the global democracy index in 2010.¹⁴²

Secondly, why a combatant force if indeed the motive is capacity building? There are concerns about the true intentions behind creating a 'combatant' command if the purpose as proclaimed in the mission statement of AFRICOM is basically to partner with African states to provide training and capability to African militaries to ensure stability in the States and the region.¹⁴³ Fourthly, AFRICOM says its own mission is to respond to crisis and help strengthen stability, security capability, and capacity building. There is a lack of clarity as to the scope of this mission and African states have been skeptical and have therefore approached the partnership with caution.¹⁴⁴ AFRICOM has engaged in war games and military exercises around the continent, given that part of its mission is to lead military operations and deter aggression. This has further heightened suspicions that AFRICOM could well be serving some purposes other than Africa's stability.

Finally, the role AFRICOM played in the NATO-led intervention in Libya has further lent credence to the argument that AFRICOM was designed to further the U.S. interventionist agenda on the African continent. Because of this suspicion, most African states,

139. *Id.*

140. Abayomi Azikiwe U.S.-NATO Policies Lead to Coup in Mali *available at*: http://www.workers.org/2012/world/mali_0405/.

141. See Mali Coup Leader Trained with U.S Military: Pentagon, AFRICA DAILY, Mar. 27, 2012, *available at*: http://www.africadaily.net/reports/Mali_coup_leader_trained_with_US_military_Pentagon_999.html. He had attended military training in the US in 1998, 2003, 2004, 2007 and 2010.

142. Democracy Index 2010: Democracy in Retreat, *Report from the Economist Intelligence Unit*, 5 (2010) *available at*: http://graphics.eiu.com/PDF/Democracy_Index_2010_web.pdf p 5

143. Paul C Wright, *U.S. Military Intervention in Africa: The New Blueprint for Global Domination* (Aug. 20, 2010), <http://www.globalresearch.ca/index.php?context=va&aid=20708>.

144. *Id.*

with the exception of Liberia, refused to grant AFRICOM bases in their territories, as a result of which, it had to be located in Stuttgart in Germany. The controversial intervention in Libya by the West was the first military operation conducted by AFRICOM and to the delight of the U.S., it vindicated itself by conducting several sorties and demonstrating the capability to deploy at short notice (within 48 hours), and Gaddafi was toppled. Is this the grand design behind the creation of AFRICOM as rightly suspected by African states all along? This contradicts Obama's statement of his policy when he said "[A]nd let me be clear: our Africa Command is focused not on establishing a foothold in the continent, but on confronting these common challenges to advance the security of America, Africa and the world."¹⁴⁵

In the same speech President Obama had pledged to Africa that his administration would 'partner through diplomacy, technical assistance, and logistical support' to achieve peaceful resolution of conflicts on the continent.¹⁴⁶ But it is difficult to reconcile this policy thrust with the practice of the U.S. whereby it actively and covertly subverted the efforts of the foremost regional organisation's efforts to find an amicable settlement to the Libyan crisis. Rather than the African Union, the West, led by the U.S., found it more deserving to build an alliance with the Arab League on resolving the Libyan crisis because it found more elements within that organisation more amenable to the regime change agenda of the U.S. Surely, this is not what it is to 'partner' and 'support'. The AU had made frantic efforts, though somewhat belatedly, to find a solution to the Libyan crisis, but a solution that would probably leave Gaddafi in power was not acceptable to the U.S. and its allies, not necessarily the Libyan people. Whatever the rationale, the role of AFRICOM in the Libyan civil war has severely damaged its credibility and relationship with its African partners, and it is unlikely that it will get the elusive cooperation it has sought from African states since it was established in 2007.¹⁴⁷

In defending the decision to intervene in Libya, President Obama said the Libyan case was unique in that it provided peculiar circumstances that made it possible for coalition forces to unite to save lives.¹⁴⁸ What he did not mention however, was the legality of arming the rebels that was in clear violation of UNSC Resolution 1970 which

145. President Obama, *supra* note 97.

146. *Id.*

147. Jonathan Stevenson, *AFRICOM's Libyan Expedition: How War will Change the Command's Role on the Continent*, Foreign Affairs (9 May 2011), <http://www.foreignaffairs.com/articles/67844/jonathan-stevenson/africom-libyan-expedition>.

148. BBC NEWS, *supra* note 87.

imposed arms embargo on Libya, or was the arms embargo only enforceable against the Gaddafi regime?¹⁴⁹ That such action violates said Resolution and was even alluded to by the French Foreign Minister Alain Juppe when he said that France was ready to discuss the possibility of arming the rebels but that a new UNSCR would be obtained to that effect. He had asserted, "I remind you that this [arming the rebels] is not what is envisaged by Resolution 1973. . . so for the moment France has agreed to the strict application of these resolutions. . ." ¹⁵⁰ Though, France would go ahead to arm the rebels without a supporting UNSC resolution, there was no doubt about the legal interpretation of Resolution 1970 which forbade the supply of arms to Libya whether it was for government troops or the rebels. This further buttressed the argument that Obama manipulated an ambiguous and vaguely worded UNSC resolution to effect regime change in Libya and as such, his policy of resolution of conflict in Africa must be approached with caution as it seems to be designed to serve not the interest of Africa or Africans but that of the U.S. by getting rid of an old foe like Gaddafi. The way the U.S. has pursued the militarization of Africa highlights the strategic premium the continent now attracts.¹⁵¹ The commitment of material and financial resources to the process stands in contrast to the promotion of democracy and human rights objectives components of Obama's Africa policy.

B. *Protecting Corporate America*

The interest of corporate America in Africa cannot be divorced from the foreign policy thrust of any U.S. President, and Obama is no exception. Powerful multinational corporations have influenced, and continue to influence, U.S.-Africa policy and this has implications for human rights. Multinationals are driven primarily by profit, hence when the political operational environment is undemocratic; the first casualty is human rights. Daniel Kaufman calls this "state capture".¹⁵² In his analysis of the capacity of Multinational Corporations (MNCs) to

149. S.C Res. 1970, S/RES/1970 (Feb. 26 2011.).

150. BBC NEWS, *supra* note 86.

151. With the creation of AFRICOM, the U.S. now has EUCOM, CENTCOM, PACOM and AFRICOM completing the four legs of its global military power projection. See Frida Berrigan, Africa: *The New Military Frontier* (Sept. 18, 2007) http://www.fpif.org/articles/the_new_military_frontier_africa.

152. Daniel Kaufmann, *Qaddafi's Corrupt Influence in the U.S.: International State Capture*, BROOKINGS INSTITUTION (Mar. 7, 2011) available at: http://www.brookings.edu/opinions/2011/0307_qaddafi_kaufmann.aspx.

influence the foreign policy directions of U.S. administration, Daniel Kaufmann asserts

[t]here is still a particular dimension of state capture that goes relatively unrecognized – the capture of states' foreign policies vis-à-vis autocratic countries by multinationals and lobbyists who favor the lenient treatment of these autocratic regimes so to pursue commercial objectives. In short, I am talking about state capture in the international arena or international state capture.¹⁵³

There is no need to rehash the role of Corporate America in the decision to invade Iraq. In fact, in Africa, MNCs have been known to decide the political future of the governments of most resource-rich countries. So much so that the executive of a MNC could boast about the eventual fall of former Democratic Republic of Congo (DRC) President Laurent Kabila thus:

[W]e want that Kabila fellow out of there. We will soon get him out . . . we are not alone in this. The USA and Canadian mining interests have also been let down . . . and Mugabe can kiss good-bye any suggestion that South Africa will support the so-called SADC allies in the DRC . . . We cannot allow Zimbabwe to usurp our interests in the DRC¹⁵⁴

So whatever human rights policy initiatives has been undertaken by the Obama administration, it has been undertaken in the narrow interest of corporate America and the larger interest of the U.S. In Kaufmann's words "the ongoing crisis in Libya is exposing this type of capture."¹⁵⁵ So we have such groups as U.S.-Libya Business Association (USLBA), which is notorious for its ability to mix deal-making with diplomacy through U.S. embassies. While they smile to the bank, Gaddafi continues in power, and the U.S. administration looks the other way.¹⁵⁶ Writing about Equatorial Guinea and how MNCs, and not human rights, are a major driver of U.S.-Africa policy, Barnes articulates this corporate influence and interest:

[A]gain, Equatorial Guinea is instructive. At the same time that experts warned the U.S. government not to repeat Cold War mistakes of propping up dictators, the State Department authorized a private, for-profit military company of former Pentagon officers to

153. *Id.*

154. NAISON NGOMA, PROSPECTS FOR A SECURITY COMMUNITY IN SOUTHERN AFRICA: AN ANALYSIS OF REGIONAL SECURITY IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY 160 (2005).

155. Kaufmann, *supra* note 153.

156. See Marcus Baram, *Libyan Opposition Leaders Slam U.S. Business Lobby's Deals With Gaddafi*, HUFFINGTON POST BLOG available at: http://www.huffingtonpost.com/2011/02/24/muammar-gaddafi-us-business-lobby_n_827769.html.

work with President Nguema to strengthen Equatorial Guinea's Coast Guard and its ability to protect off shore oil operations being conducted by Exxon. Nguema came to power through a coup; he leads a one-party state; and he has been charged with glaring human rights abuses. Yet relations with Equatorial Guinea were reestablished at the urging of oil companies, and military expertise was provided to help protect them.¹⁵⁷

In defending his decision to send troops to Central Africa, Obama says it is in the national security interest of the U.S.¹⁵⁸ Could it also be that following the recent discovery of oil in Uganda, oil majors are already gearing up and, given the usual 'deal-making plus diplomacy' strategic equation, the Obama administration has sent the troops as forerunners for the interest of corporate America in Uganda? It is too early to tell, but what is certain is that whether it is for the interest of national security or aimed at protecting corporate America, the interest of Uganda, Central Africa and Africa was not the primary consideration.

Sensing the future dangers such attitudes pose to their commercial interests in Africa, some MNCs now adopt what Barnes calls a 'strategic philanthropy' policy in their African operational countries. This still does not structurally alter the systemic polarity that fosters and sustains endemic poverty and human rights violations in Africa or the skewed international economic order that make it possible.¹⁵⁹

VI. OBAMA AFRICA POLICY AND THE GLOBAL WAR ON TERROR (GWOT)

As aptly put by Prendergast and rightly so in our view,

[M]uch as the Cold War defined U.S. foreign policy from the 1950s until 1990, the global war on terrorism has become the dominant paradigm for Bush administration foreign policy, and Africa is no exception. This is slowly changing the nature of the Bush administration policy towards Africa. In general terms, overt democratization and human rights objectives appear to have been downgraded, in favour of support to regimes that line up favourably on counter-terrorism objectives and Iraq policy.¹⁶⁰

157. Barnes, *supra* note 33, at 11.

158. Mareik Schomerus, Tim Allen, & Koen Vlassenroot, *Obama Takes on the LRA: Why Washington Sent Troops to Central Africa*, FOREIGN AFFAIRS (Nov. 15, 2011), <http://www.foreignaffairs.com/articles/136673/mareike-schomerus-tim-allen-and-koen-vlassenroot/obama-takes-on-the-lra>.

159. Barnes, *supra* note 33, at 15.

160. Prendergast, *supra* note 57, at 110.

In 2004, the Africa Policy Advisory Panel, a group of experts on Africa commissioned by Congress in 2003, produced a report noting that “HIV/AIDS, terror, oil, armed conflicts, and global trade” have determined the direction of U.S. foreign policy in Africa in the preceding decade, resulting in a policy shift in the U.S.¹⁶¹ George Bush stated in his 2002 National Security Strategy that the priority of his Africa policy is “combating global terror.”¹⁶² President Barack Obama also stated that combating terrorism is one of the priorities of his Administration’s policy on Africa.¹⁶³ The Obama strategy on terrorism in Africa as outlined in the 2011 National Strategy for Counterterrorism says it is designed to destroy Al Qaeda operations in Africa and helping to build the capacity of African forces to serve as countermeasures against terrorists and their allies within the region.¹⁶⁴ This will effectively make African forces the first line of defense in the U.S. war on terror in the continent while the U.S. plays the role of a supervening counterweight.¹⁶⁵

Africa has remained on the U.S. radar of global war on terror since the terrorist bombings of U.S. embassies in Dar es Salaam, Tanzania and Nairobi in Kenya in 1998. The activities of Al-Qaeda in the Maghreb (AQIM) and Al Shabab have worried U.S. policymakers.¹⁶⁶ Thus, the Obama policy has largely continued the Bush policy that focused on building domestic security and intelligence capabilities of African states through bilateral engagement and alliances to help combat terrorism as they arise in Africa and before reaching American soil.¹⁶⁷ The 2006 National Security Strategy identified Africa as “a high priority” and concluded that U.S. national security rested on forging a partnership with Africans to ‘strengthen fragile and failing states and bring ungoverned areas under the control of effective democracies.’¹⁶⁸

161. J. Stephen Morrison, *Overview, in* RISING U.S. STAKES IN AFRICA: SEVEN PROPOSALS TO STRENGTHEN U.S.-AFRICA POLICY 2 (Walter H Kansteiner III & J Stephen Morrison eds.) (2004), available at http://csis.org/files/media/isis/pubs/rising_u.s._stakes_in_africa.pdf. (Hereafter Kansteiner & Morrison RISING U.S. STAKES IN AFRICA).

162. PLOCH, *supra* note 36, at 14.

163. President Obama’s Remarks, *supra* note 97.

164. EXEC. OFFICE OF THE PRESIDENT, NATIONAL SECURITY STRATEGY FOR COUNTERTERRORISM, Jun. 14, 2011, available at http://www.whitehouse.gov/sites/default/files/counterterrorism_strategy.pdf.

165. PLOCH, *supra* note 36, at 14.

166. *Id.* at 17.

167. *Id.* at 14.

168. *Id.*

One of the focus areas of Obama's U.S.-Africa policy is to combat terrorism on the continent. To this end, the U.S. has sought to partner with its allies, and financial aid to countries like Ethiopia, Kenya, has increased significantly, with an eye on combating Al Shabab in Somalia. As part of this policy, the U.S. actively supported the incursion made by Ethiopia into Somalia to fight the Al Shabab Islamists. The militarization of Africa, particularly the Horn of Africa, is targeted at tackling Al-Qaeda operatives in this region. It is also the reason behind the provision of military training and equipment to these countries. In effect they have become a 'layer' in the U.S. global war on terror.¹⁶⁹ The need to focus on Africa as a partner on the war on terror was first developed by Paul Wolfowitz during the Bush Administration. He had stressed the need to partner with Africa and help it strengthen its institutions to defeat terrorism.¹⁷⁰ The theory is that the evolution of terrorist cells in East, West and Southern Africa constitutes a threat to the U.S., and to the world.¹⁷¹

The U.S. has therefore focused on Somalia in its counter-terrorism efforts in the Horn of Africa. Ethiopia is the strategic centre of the U.S. Horn of Africa Counter-terrorism policy and Djibouti is the logistical nerve centre.¹⁷² Ethiopia provides intelligence about different groups in the region while Djibouti hosts a number of U.S. military and intelligence personnel. Kenya and Uganda are becoming more drawn into the networks to counter Al-Qaeda in the region. As a result of this, other objectives in the region have been downgraded. Democracy is no longer as strongly emphasised in Uganda, Rwanda and Ethiopia.¹⁷³ The U.S. involvement in Somalia outside counterterrorism has been minimal, and it has not been engaged in the DRC despite the magnitude of the crisis.¹⁷⁴

In fact, it is a confirmation of this that the U.S. Congress recently released a report stating that the Boko Haram activities in Nigeria are a threat to U.S. national security, thus paving the way for both military and material resources to be channelled to combating those activities by the U.S. At the time of writing, the U.S. is engaged in intense collaboration with the Nigerian government to work out a

169. *Id.* at 15.

170. Deputy Sec'y of Def. Paul Wolfowitz, Remarks at the Africa Center for Strategic Studies (Feb. 9, 2004), available at <http://www.defense.gov/Speeches/Speech.aspx?SpeechID=98>.

171. Ritt Goldstein, *Africa, Oil, Al Qaeda and the U.S. Military* (Mar. 30, 2004), available at http://www.atimes.com/atimes/Front_Page/FC30Aa02.html.

172. Prendergast, *supra* note 57, at 110.

173. *Id.*

174. *Id.* at 111.

comprehensive security policy for cooperation, integration, and assistance, and, perhaps, some have mentioned intervention. It is interesting to note that the U.S. focus on security is two-pronged – securing oil facilities and investment in the Niger Delta, and because of the recent activities of Boko Haram, combating terrorism in the North by creating a section for it in the security partnership.¹⁷⁵ This is the reason the Obama Administration has pursued a policy of arming African militaries while it expands its own military presence in the continent.¹⁷⁶ Since the inception of the U.S. war on terror, it is estimated that it has spent over \$1.238 trillion and just five percent of this was spent on aid to foreign countries.¹⁷⁷

The reason for connecting Africa to the war on terror is not far-fetched. Africa, which has a huge Muslim population, with most living in extremely poor countries, could easily become a breeding ground for terrorists with fundamentalist Islamic persuasion, hence the need to build up Africa's capacity to help the U.S. fight its war.¹⁷⁸ It is therefore only in response to combating terrorism that the U.S. has increased aid to Africa and African militaries since the Clinton era and the creation of the numerous counterterrorism outfits across Africa.¹⁷⁹ Besides this, Obama does not really bring anything tangibly new to U.S.-Africa policy. The fight against terrorism, HIV/AIDS, the promotion of democracy, good governance and human rights, and the rule of law have featured in the rhetoric of previous administrations, but U.S. policy will ultimately be guided by strategic and economic interests.¹⁸⁰ Apart from the fact that Africa was not a highpoint in his electioneering campaign, the fact that financial crisis and budget deficit cuts had hit the U.S. for most of the Obama administration also means that Obama has little financial leverage to engage Africa.¹⁸¹

175. John Alechenu, *U.S., Nigeria Hold Talks on Boko Haram*, PUNCH (Jan. 24, 2012), <http://www.punchng.com/news/us-nigeria-hold-talks-on-boko-haram/>.

176. Daniel Volman, *Obama Expands Military Involvement in Africa*, AFRICAN SECURITY RESEARCH PROJECT (Apr. 2, 2010), <http://concernedafricascholars.org/african-security-research-project/?p=93>.

177. AMY BELASCO, CONG. RESEARCH SERV., RL33110, THE COST OF IRAQ, AFGHANISTAN, AND OTHER GLOBAL WAR ON TERROR OPERATIONS SINCE 9/11 3 (2011), available at <http://www.fas.org/sgp/crs/natsec/RL33110.pdf>.

178. PLOCH, *supra* note 36, at 14.

179. van de Walle, *supra* note 34, at 7.

180. *Id.* at 17.

181. *Id.*

VII. CHINA, OBAMA'S AFRICA POLICY, AND THE RESOURCE RACE

Besides counterterrorism, the other important driver of U.S.-Africa policy is energy security.¹⁸² The rise of China is changing the geostrategic calculations in Africa and a *resource race* between the U.S. and China is fast driving the new scramble for African oil and markets.¹⁸³ The argument that oil is a national security matter for the U.S. was advocated by former Assistant Secretary for Africa, Walter Kansteiner and his defense counterpart, Michael Westphal under the Bush Administration.¹⁸⁴ They linked uninterrupted oil supplies to U.S. national security and were thus able to drive a policy that would not only increase funding but also permit the use of force to protect oil supplies.¹⁸⁵ About twenty percent of global oil production could come from West Africa and central Africa, particularly Nigeria, Gabon and Equatorial Guinea and Angola in Southern Africa within the next 10 years if the environment remains investment-friendly.¹⁸⁶ African oil supplies are increasing, and as the Middle East becomes more volatile, it is a more likely alternative for energy security.¹⁸⁷ Just as terrorism drives U.S. policy in countries of the Horn of Africa, countries like Nigeria, which is currently the fifth largest supplier of oil to the U.S., have become more and more important as U.S. dependence on African oil increases.¹⁸⁸

Other emerging producers like Angola and Equatorial Guinea now feature prominently in U.S.-Africa policy and the increasing need to focus its policy on the Gulf of Guinea, which is believed to be the next hub of oil explorations.¹⁸⁹ As mentioned above, Africa is being militarized by the U.S. but it is only when related to the covert war to secure Africa's oilfields that that militarization makes sense. As stated by a top U.S. military official in 2003 "a key mission for U.S. forces (in

182. Sam Raphael & Doug Stokes, *Globalizing West African Oil: U.S. 'Energy Security' and the Global Economy*, 87:4 INT'L AFF. 903, 907 (2011) (Hereafter, Raphael & Stokes *Globalizing West African Oil*).

183. van de Walle, *supra* note 34, at 14.

184. Morrison, *supra* note 162, at 3.

185. Daniel Volman, *The Bush Administration and African Oil: The Security Implications of U.S. Energy Policy*, 30 AFR. POL. ECON., no. 98, 573 (2003).

186. David L. Goldwyn & Robert E. Ebel, *Crafting a U.S. Energy Policy for Africa*, in Kansteiner & Morrison RISING U.S. STAKES IN AFRICA, *supra* note 162, at 6.

187. Raphael & Stokes *Globalizing West African Oil supra* note 183, at 907.

188. *Id.* at 4.

189. Barnes, *supra* note 33, at 3.

Africa) would be to ensure that Nigeria's oil fields . . . are secure."¹⁹⁰ In all of these, Africa, and Africa's interests have hardly been featured, save wherever it converges with U.S. national interests, such as training African militaries to combat terrorism (but with little attention to the human rights records of allies in the war on terror such as Egypt under Mubarak, or Angola, but which enjoy close relations with the U.S. based on U.S. strategic and energy security interests, respectively).

The reason Gaddafi was taken out was not just because the U.S. or NATO allies wanted the human rights of Libyans protected, as much as it wanted to see an old and strong foe of the U.S. and the west gone when the opportunity presented itself. Now, Western oil companies have lined up to carve up the spoils of war.¹⁹¹ This will explain the suspicion that no matter the level of atrocities attributed to the NTC, it is unlikely that perpetrators on its side would be held to account, as doing so would undermine a regime the U.S. had helped to install. A recent Amnesty Reports shows how TNC troops committed human rights and international humanitarian law violations but no indictment or warrant of arrest has come from the ICC as of yet.¹⁹²

The activities of multinational corporations such as ChevronTexaco, Halliburton, and ExxonMobil are engaged in human rights violations in African countries. In fact, according to Daniel Kaufman, U.S. diplomacy and human rights policy has always been influenced by corporate interests.¹⁹³ U.S. Corporations are not only involved in human rights violations in Africa, some of them have captured the regulatory, legislative, and monitoring authorities of the African host states.¹⁹⁴ Even while the war in Libya was still raging, Western officials and business executives from multinational corporations were already manoeuvring to secure juicy oil and state reconstruction deals.¹⁹⁵

190. U.S. Energy Info. Admin., *Is Offshore West Africa the World's Next Frontier for Oil*, International Energy Outlook 2010 (Jul. 27, 2010) available at: <http://www.eia.gov/forecasts/ieo/index.cfm>.

191. Svetlana Kovalyova & Emma Farge, *UPDATE ENI Leads Libya Oil Race; Russia, China May Lose Out*, REUTERS.COM (Aug. 22, 2011), <http://www.reuters.com/article/2011/08/22/libya-oil-idUSL5E7JM17F20110822>.

192. Human Rights Watch, *supra* note 193.

193. Kaufmann, *supra* note 153.

194. *Id.*

195. Jerome Taylor et al., *Dash For Profit in Post-War Libya Carve Up*, THE INDEPENDENT (Aug. 24, 2011), <http://www.independent.co.uk/news/business/news/dash-for-profit-in-postwar-libya-carveup-2342798.html>.

For obvious reasons, the U.S. now critically depends on Africa's oil.¹⁹⁶ Hundreds of thousands of jobs in the U.S. depend on the constant oil supply, from Africa and American Big Power firms like ExxonMobil and ChevronTexaco are investing billions of dollars in Africa's oil sector that needs to be protected.¹⁹⁷ It stands to reason that the Obama Administration is pursuing a policy of militarization primarily to protect these American commercial interests by force if necessary. The restive Niger Delta of Nigeria and Cabinda of Angola pose severe threats to oil supplies and fears of interruptions are clearly woven into the U.S. militarization of Africa policy. As the potential for conflict between Iran and Israel in the Persian Gulf escalates, Africa's profile as a major player in the global energy markets is bound to rise. With this projection, the objective of the U.S. through EUCOM, NATO, and now AFRICOM, has been to ensure energy security and access to sea lanes for Africa's oil supplies.¹⁹⁸ As observed by Barnes, "there are no provisions in the new strategic philanthropy to address the systemic power imbalance in the global flows of capital that produce and reproduce African poverty. This structural imbalance—nothing more, nothing less—is the Achilles heel of global economic and political systems today."¹⁹⁹

This assertion is still true under the Obama Administration, where there is no significant policy trade initiative (apart from AGOA) to promote free trade for Africa and help it overcome the conditions that recreate the vicious cycle of poverty, suggesting that the opponents of free trade within the Obama Administration and party are still dominant.²⁰⁰

Obama is being pressured to take more proactive steps in Africa as other global competitors, especially China, become more visible on the continent.²⁰¹ Obama has scarcely initiated any new Africa programme of his own, and has basically focused on funding those begun by previous administrations.²⁰²

As the Chinese economy expands, China is seeking new energy and raw materials as well as markets for its export-led industrialisa-

196. GOLDWYN & MORRISON, *supra* note 184, at 8-11.

197. *Id.* at 12.

198. Barnes, *supra* note 33, at 6.

199. *Id.* at 15.

200. van de Walle, *supra* note 34, at 17.

201. James Butty, *Assessing Obama's Africa Policy, Looking at 2012 and Beyond*, VOICE OF AMERICA (Jan. 11, 2012), <http://www.voanews.com/english/news/africa/Butty-Africa-Obama-Second-Term-Kimenyi-11january12-137073473.html>.

202. *Id.*

tion and it has rightly identified Africa as its top priority.²⁰³ China's investment in Africa has topped \$50 billion; it has written off billions of dollars in debt owed by poor African countries, providing loans without conditionalities and building roads and railways and other infrastructure across Africa at high speed.²⁰⁴ Chinese investment in Nigeria's and Sudan's oil sectors stands at \$3 billion and \$10 billion, respectively.²⁰⁵ China is strategising for political influence, strategic mineral, market and oil in Africa.²⁰⁶ Given the West's colonial and post-colonial legacy in Africa, it seems many African countries are opting for the Chinese model of loans without strings, unlike the IMF/World Bank, and the OAD of Western nations that come with political and economic control.²⁰⁷ This is what is fuelling the current resource race in Africa. There is, however, the fear and danger of China promoting its command style capitalism, which many autocratic African governments might find more attractive than the so-called democratic capitalism model prescribed by the West and the Bretton Woods Institutions.²⁰⁸

The Obama Administration does not emphasize the fact that its Africa policy is driven by the twin concerns of terrorism and oil, yet the indisputable fact is that Africa *per se* is not an important consideration for the U.S., outside the context of oil and counterterrorism partnership.²⁰⁹ The U.S. sends arms to the Transitional Federal Government of Somalia and Ethiopia to combat Al Shabab but the DRC has hardly received any significant attention.²¹⁰

VIII. CONCLUSION: U.S. POLICY, HUMAN RIGHTS IN AFRICA AND THE DEATH OF AN IDEA

Throughout history, U.S.-Africa policy has been a one-dimensional arrangement viewed through the prism of U.S national interest, be it economic or strategic. Africa has never been important in its own rights and the internationalization of human rights and its ascendancy on U.S. foreign policy agenda has not changed that. As is characteristic

203. Peter Brookes, *Into Africa: China's Grab for Influence and Oil*, THE HERITAGE FOUNDATION, 1 (Mar. 26, 2007), <http://www.policyarchive.org/handle/10207/bitstreams/12139.pdf>.

204. *Id.*

205. *Id.* at 2.

206. *Id.* at 3.

207. *Id.*

208. *Id.* at 4.

209. *How Different is His Policy?*, THE ECONOMIST, Jul. 16, 2009, <http://www.economist.com/node/14038237>.

210. *Id.*

of U.S. foreign policy elsewhere, the Obama Administration policy on Africa has been characterised by double-standards and lip-service and he has simply continued where previous administrations left off. The Arab Spring is evidence of this. Whereas Gaddafi was swiftly indicted by the ICC and attempts were made to kill him when it became difficult to topple him, President Ali Abdullah Saleh of Yemen was given a free passage to visit the U.S. despite presiding over the killing of hundreds of civilians in Yemen.²¹¹ Gaddafi remained a sponsor of terrorists in the eyes of the U.S., a man that would pursue weapons of mass destruction any day and prepared to use oil as an economic weapon against U.S commercial and national interests. So, the uprising and an ambiguous UNSC resolution was the perfect opportunity to secure long-term U.S interests in Libya.

Whenever the U.S. has had to use force purportedly in the protection of human rights in Africa, whether overtly or covertly through the CIA, its economic and strategic interests have been the driving motives. While the U.S. propped up some of Africa's worst dictators and still supports others on the continent for obvious U.S. interests, these policies are often disguised in the garb of 'promoting human rights and democracy'. Yoweri Museveni of Uganda is a staunch ally of the U.S., and the Obama Administration recently sent 100 U.S. Special Forces to help Uganda capture or kill Josph Kony, the leader of the Lord Resistant Army rebel group responsible for some of the worst atrocities in Uganda, and the Central African region. Apart from the fact that the Obama administration has continued to ignore the DRC, Museveni runs a one-party state and he can only compare to Robert Mugabe in his high handedness against opposition and political dissent. Yet, Museveni does not attract criticism or sanctions. The discovery of oil in Uganda therefore appears to be main attraction in a fast changing world where new global powers are emerging at a time when the American economic hegemony is in decline. The competition for natural resources and the need to secure these resources have led to an intense struggle between newcomers like China and are threatening to redefine the strategic and economic relations between Africa and the West. Not surprisingly, the U.S. has responded with swift projection of its militarization of the African continent with a military machine spread across the continent and ready to launch 'humanitarian intervention' to enforce the responsibility to 'protect' Africans when in fact, the mo-

211. *Yemen's President Saleh Arrives in U.S. for Treatment*, BBC NEWS (Jan. 29, 2012), <http://www.bbc.co.uk/news/world-middle-east-16778286>; See also, *Yemeni President Arrives In US For Medical Treatment*, THE GUARDIAN, Jan. 29, 2012, <http://www.guardian.co.uk/world/2012/jan/28/yemeni-president-heads-to-us>.

tive is the defense of the interest of corporate America and protection of the energy sources of the U.S. In all of these, Africa's interest rarely counts and human rights in Africa will always be sacrificed on the altar of U.S. national interest regardless of what President Obama Africa policy purports.