



FES South Africa

Occasional Paper Series

***Caught between Afro-Southern Solidarity and Liberal
Cosmopolitan values: Four Turning points in South
Africa's Human Rights Foreign Policy***

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Overview

- Post-Apartheid South Africa has had to live up to high expectations as a promoter and defender of human rights unlike most other countries. Nonetheless, even in the most optimistic Mandela era human rights challenged pragmatic foreign policy decision-making.
- The strength of South African foreign policy-making in the global arena directly relies upon its relations with other African states. This must be harnessed by sound ideology that brings together economic stability and human rights.
- South African foreign policy is often treated as an elite function but the ICC debacle shows how domestic political actors can interfere to the detriment of foreign policy-making.

Introduction

South Africa's foreign policy is entrapped: it is trapped between Afro-Southern (or Africa-South-South) *solidarism*, on the one hand, and lofty liberal cosmopolitan values, including human rights, on the other. There had long been a tension between the professed values of South Africa's foreign policy and its interests, a tension that the post-settlement governments had battled to square. Twenty-two years into the post-settlement period, South Africa learnt that good intentions, proclamations and edicts were not good enough in the hurly-burly of world affairs. Beyond this, it was learnt that declared good intentions in foreign policy hold major responsibilities and serious repercussions, especially when tested within the justice system. During the course of two decades, South Africa became increasingly uncomfortable with the burdens of a pro-human rights posture, and started to move towards a more pragmatic approach - ultimately in the direction of a post-human rights stance. Four major turning points reveal themselves on the question of human rights and cosmopolitan values in South Africa's foreign policy, and in the course of this uncomfortable role.

Turning point one: The negotiated transition and the "attempted" ethical foreign policy

The first major fork in the road was the pact transition from racist apartheid and white minority domination to negotiated democratic order. Since the dawn of democracy in 1994, South Africa's foreign policy and international relations had changed in unrecognisable ways from the decades of isolation and banishment which had preceded it. Having been on the receiving end of human rights abuses for decades under apartheid, the African National Congress (ANC)-dominated government led by Nelson Mandela felt duty-bound to show that it was different from its destabilising predecessor regimes. South Africa vowed that it would become a "good world citizen" and would pursue a human rights-driven foreign policy that would take its cue from its constitutional order. The Republic's foreign policy, it proclaimed, would be an "ethically driven" one and be based on the cosmopolitan values of human rights, democracy, international law and solidarity, co-operation, and placing Africa first. "Human rights", vowed Mandela, would be the "light that would guide our foreign

policy”.¹ So keen was Mandela on this crusade that he and former Minister of Justice Dullah Omar energetically championed the campaign for South Africa to sign up to the Rome Statute and domesticate the provisions for the International Criminal Court (ICC) into South African law.

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In 1998, South Africa adopted the Rome Statute and gave notice of its intention to ratify it and translate it into domestic law. Omar’s advisor, Mederd Rwelamira, became a member of the Court’s Preparatory Committee.

However, while there is no doubting South Africa’s commitment to a human rights ethos in its foreign policy, one that is built on the tenets of its much-vaunted Constitution, there is no gainsaying that in practice, even the Nelson Mandela government struggled to give true expression to such values and ideals. Mandela struggled with the arms sales dilemma in foreign policy, as well as how to relate to regimes in Iran, Syria, Indonesia, Egypt and others.

Turning point two: the Nigeria imbroglio

The second major turning point in South Africa’s foreign policy came early in the

post-settlement period with the humiliating Nigerian imbroglio when the Sani Abacha junta defied Mandela, Tutu and others’ counsel and intercession, executing Ogoni leader Ken Sarowiwa and a further 8 people in November, 1995. Mandela set out to ostracise Abacha but soon found that he and his ANC comrades were on the receiving end of African isolationist efforts.

This was a real fork in the road for the ANC government and they learnt major lessons. It was at this point that the then Deputy President Thabo Mbeki and his coterie of pragmatists, took over the levers of foreign policy and introduced a more pragmatic foreign policy that sought to balance interests with values and principles.

The Nigerian imbroglio resulted in the adoption of the ANC’s 1997: *A New ANC Foreign Policy Document*. Having learned rather tough lessons from controversies such as the Nigeria controversy, and the Two-Chinas dilemma², the ANC felt compelled to respond with another foreign policy discussion document, to reflect on lessons learned, and three years of post-apartheid foreign policy. This document was released on 30 July 1997 and entitled *Developing a Strategic Perspective on South African Foreign Policy*. The document was written in a frank manner, and was heavily influenced by Thabo Mbeki. The document sought to bring into greater harmony and synergy principle-ethical considerations, and those issues of pragmatism and economic calculations on the other. The document

¹ Mandela, N, 1993. South Africa’s Future Foreign Policy. *Foreign Affairs*, [Online]. 72/5, 86-97. Available at: <https://www.foreignaffairs.com/articles/south-africa/1993-12-01/south-africas-future-foreign-policy>[Accessed 26 October 2016].

² Refer Breytenbach,W,1994. The Chinese dilemma: Dual recognition is the ultimate solution. *South African Journal of International Affairs*, [Online]. 2/1, 50-61. Available at: <http://www.tandfonline.com/doi/abs/10.1080/10220469409545116> [Accessed 1 November 2016]

highlighted key strategic lessons and new departures, including:

- One of the very first tests in the area of promoting democracy and human rights, Nigeria, highlighted the political limits of South African influence as an individual country. This further highlighted the importance and need to act in concert with others and to forge strategic alliances in pursuit of foreign policy objectives; and the idea that
- International relations is not merely based on solidarity, but largely on economic interests, particularly of the most developed countries. This is an important lesson for South Africa. Even though the country once benefited from international solidarity in the struggle against apartheid, this has not necessarily translated into favourable terms for South Africa's full integration in the international arena; and the notion, more significantly, that
- South Africa's involvement in the resolution of problems in the Great Lakes, particularly in the former Zaire, has taught the country a number of lessons about the realities on the African continent, and some of the challenges facing it and the continent as a whole.³ The July 1997 ANC document talks about the need for the political and economic revival of the continent – towards an African Renaissance, a rallying cry and new vision associated with Thabo Mbeki.

For the first time, the ANC stated that "the concept of the African Renaissance is being advanced as the main pillar of our

³ African National Congress, 1997. *Developing a Strategic Perspective on Foreign Policy*, [Online]. Available at: <http://www.anc.org.za/ancdocs/discussion/foreign.html> [Accessed: 10 November 2016]

international policy not only relating to Africa, but in all our international relations globally". According to the 1997 document, some of the key elements of the African Renaissance vision included the following:

- The economic recovery of the continent as a whole;
- The establishment of political democracy on the continent;
- The need to break neo-colonial relations between Africa and the world's economic process;
- The mobilization of the people of Africa to take their destiny into their own hands thus preventing the continent being a place for the attainment of geo-political and geo-strategic interests of the world's most powerful countries; and
- Fast development of a people-driven, and a people-centred economic growth and development aimed at meeting the basic needs of the people.

Just two years into democracy, that tough experience from the Nigeria saga profoundly impacted and shaped the future course of the country's foreign policy. Henceforth, the country would shun go-it alone, unilateralist strategies in Africa. Instead, it would highlight the need for "African co-operation" and "partnership" and continental interests. It would specifically promote "a common agenda with the African continent" and pursue "the political and economic revival of the continent".

Mbeki articulated an "African Agenda", which supported the idea that there can be no peace without development, and no development without peace. Curiously, this push towards developmental goals moved South Africa away from a human rights rhetoric. This was especially true as South Africa warmed up to emerging

powers in later years.

Turning point three: the *Broedertwis* (fraternal battle) between Mbeki and Zuma and the *Polokwanisation* of Foreign Policy

The third major fork in the road came in the wake of the combative transition from Mbeki to Jacob Zuma, which resulted in the recalling of Thabo Mbeki in September 2008. This hot-blooded quarrel had many serious ramifications, including the *Polokwanisation*⁴ of the state and policy making, for our purposes foreign policy in particular. It left deep fissures in the ruling party, the state and the broader body-politic, and today we are grappling with the consequences of factionalised governance, that did not spare foreign policy and diplomacy.

The Zuma era's Polokwanisation of foreign policy has been accompanied by a decline in the current faction, ruining the ANC's ability to read in nuanced way the complexities of international relations.

Slate politics became the order of the day and Mbeki and the Mbeki-ites quickly became *personae non-grata*. So, serious was the anger by the coalition of the angry that it undermined the re-establishment of a strategic centre in the Zuma era. As such, it is difficult to prove at times that current foreign policy decision-making is underpinned by strategic thinking at all.

⁴ For an elucidation of the concept "Polokwanisation", see Landsberg, C. 2012. The Jacob Zuma government's foreign policy: Association or dissociation? in *Austral: Brazilian Journal of Strategy and International Relations*, vol. 1(1):75.

The result is fierce competition among ministries and the lack of co-ordination to occupy the foreign policy space. The same can be said of the ANC. The ANC cadres and new government apparatchiks tried very hard to distance themselves from Mbeki and everything he stood for. They tried even harder to distance themselves from his domestic and foreign policies. But tried as they did, they struggled, and this resulted in a skittish, often schizophrenic, haphazard and fractured external policy matrix.

Tensions between principles, values and interests became pronounced and the Zuma government resorted to a highly ideological, interest driven, utilitarian, often expedient foreign policy, as was evidenced by the Central African Republic imbroglio in 2013⁵, and the issues around the nuclear deal controversy. The Zuma era's Polokwanisation of foreign policy has been accompanied by a decline in the current faction, ruining the ANC's ability to nuance its approach towards the complexities of international relations.

The ANC National General Council (NGC) discussion document of 2015 sent shock waves through the stalwarts of the movement. The international order (including the ICC) in its current shape is sated with dualities or contradictions and double standards, e.g. veto wielders versus the rest; disarmament versus non-proliferation; common but differentiated responsibilities; and others. Still, it is an order which South African foreign representatives have largely accepted but

⁵ Allison, S, 2014. South Africa in the CAR: Was pulling the troops a catastrophic mistake? *The Daily Maverick*, [Online]. Available at: <https://www.dailymaverick.co.za/article/2014-01-21-south-africa-in-the-car-was-pulling-the-troops-a-catastrophic-mistake/#.WEqB4bJ96Hs> [Accessed: 8 November 2016]

with a view to work towards alleviating these dualities from within the system in favor of developing countries. Just imagine withdrawing from the Treaty on the Non-Proliferation of Nuclear Weapons because the nuclear powers are not progressing towards nuclear disarmament.

Turning point four: the litigation of diplomacy and the Al-Bashir Court fiasco

The fourth major fork came on 15 June, 2015, with al-Bashir-Gate. The High Court ruled that the South African government was in violation of its own Constitution and legal obligations in relation to hosting and failing to detain Sudanese President Omar al Bashir. This was a real humiliation for the Zuma government. This landmark decision came about after South Africa's foreign policy was put in the dock and placed on trial. It set in motion the wheels of what Peter Vale and I have described as the post-human rights foreign policy.

One of the most disturbing trends of South African politics and diplomacy is that politics is increasingly being played out in the courts of law; and the South African Litigation Centre, the opposition parties, notably the Democratic Alliance (DA), and their handlers, must now live with the unintended, yet unsurprising, consequences of their decision to conduct foreign policy through the docks. It is the decision to take the government to court, to try to force its hand to arrest ICC fugitive, President al-Bashir which resulted directly in the government making good on its threat to withdraw from the ICC. The DA again says that the decision to withdraw is in violation of Article 231(2) of the Constitution which implores government to consult with parliament before such a decision is taken. At best the

DA can hope for a victory on procedure, but not the substance of the decision. This penchant to run to the courts is ill-advised, and continues to set bad precedents for the Republic's politics.

Many observers are baffled by the timing of this unprecedented decision. But this is the easy part. The ANC-led government wanted to avoid a more serious humiliation when the Constitutional Court of South Africa would have upheld the decisions of the High Court and Supreme Court of Appeal which found that the government was in violation of its laws and the Constitution. The government jumped before it was pushed, and the AU Commission Chair, Dr. Nkosasana Dlamini-Zuma, is correct to say government has a "sovereign right" to withdraw from the ICC. We should therefore draw a distinction between what is legally permitted from what is politically prudent. The Constitutional Court is likely to provide a roadmap on how government should withdraw legally and procedurally, and in line with the Constitution, but it cannot usurp a role that is reserved for the Executive.

The South African Government was caught out by the South African justice system. The decision by Justice Minister Michael Masutha and government to deposit to the United Nations Secretary-General the government's intention to withdraw from the ICC one year from 19 October 2016, i.e. 19 October 2017, was a pre-emptive move to counter any challenge to be brought before the Constitutional Court. There are some who argue that this deliberately created a crisis to precipitate and provide pretext for withdrawal. The question is how long will this current faction running the ANC withstand the public backlash?

This decision by the Zuma-administration to withdraw from the ICC is itself a factional one. This decision was not

What this dramatic decision for withdrawal infers for South Africa's foreign policy positioning instead, is a stance ironically in line with the Mbeki government - that in Africa there is an uncomfortable trade-off between peace and stability on the one hand, and justice on the other

underpinned or informed by an assessment provided by the full range of state institutions. To be sure, Minister Michael Masutha's decision that any attempted arrest of al-Bashir would have been tantamount to a declaration of war, and would have been antithetical to the preference for the peaceful resolution of disputes, does not explain the timing of the decision. What this dramatic decision for withdrawal infers for South Africa's foreign policy positioning instead, is a stance ironically in line with the Mbeki government - that in Africa there is an uncomfortable trade-off between peace and stability on the one hand, and justice on the other. It reinforced the preference for African solidarism instead of a collision course with fellow Africans. Notably, the Mbeki era African peace-making stance that has influenced the decision to withdraw from ICC champions the continental institutional architecture, and bodies like the African Union's (AU) African Court of Justice and African Court of Human and People's Rights. But this is likely to be a long-term solution. With all the resource constraints abounding, it is unlikely to see Africa assuming the peacebuilding role on its own. Thus, partnership with the UN and European

Union (EU) will be a major feature for the foreseeable future.

After all, there is not a single peace agreement or mediation on the continent (or indeed internationally) that does not deal with human rights abuses and impunity. It is how you sequence trust-building between protagonists, dealing with long-term structural issues of a conflict and addressing impunity that affects the success of a peaceful transition. South Africa as a peace-builder invariably will face these issues.

Peace-building requires dealing with issues of social transformation, addressing the structural causes of conflict. This includes dealing with human rights abuses. In my view, the ICC could be a useful tool in inducing protagonists and spoilers to the table, even if the tool is not used as a first resort. An example is how South Africa induced Former President of Madagascar Ravalamona to abandon his spoiling by threatening him with ICC. Mind you South Africa voted for Libya's referral to the ICC during its tenure at the United Nations Security Council because South African representatives saw its usefulness as a tool to induce President Muammar Gaddafi toward accommodating the rebels in Benghazi. This questions the very foundations of the commonly juxtaposed position on African peace-making and the pursuit of human rights.

Conclusion

While the liberal democratic values enshrined in South Africa's Constitution are frequently acknowledged, no one should ignore the progressive socio-economic obligations spelled out in it. South Africa's Constitution and its foreign policy aspires to both first and second generation rights. As such, there is not simply an obligation to promote political

human rights and freedom at home but also in our foreign policy abroad. Twenty years into South Africa's democracy, the tension between the cosmopolitan values enshrined in our Constitution and the massive socio-economic challenges that need to be addressed in our country will persist. Within this context, there is a huge policy-to-implementation gap that is becoming a common and disturbing feature in South Africa's foreign policy. Nobody can deny the centrality of, and avowed commitments to human rights in both South Africa's domestic and foreign activities. But the government has struggled, and at times failed dismally to operationalise its human-rights foreign policy in practice. It must still adopt a formula to implement foreign policy in practice, and this challenge is likely to persist for some time into the future. This question has always bothered us: how does one operationalise a human rights foreign policy? What should be the "instruments of policy"? Not forgetting that South Africa's voting record in the United Nations Human Rights Council has remained largely progressive - this even though the country differed with the West on the approach, stressing co-operation rather than confrontation.

The Jacob Zuma government struggled to close the gap between the stated ideals of

South Africa's foreign policy and its operationalization in action. Whether President Zuma completes his second term or not, time will tell whether this goal would be realised. One thing is evident: while South Africa is no serial violator of human rights, South Africa is becoming increasingly uncomfortable about wearing the human rights mantle and the costs that come with it, including talking tough to human rights violators.

The irony is that, one of the lowest points in South Africa's foreign policy, when it was forced to make clear its intentions to withdraw from the ICC as it tried to avoid a showdown with the Constitutional Court over the al-Bashir matter on 22 November 2016, could paradoxically become one of the most exciting periods in the Republic's post-apartheid diplomacy. Its decision to withdraw from the ICC has forced the UN, western powers and others, and of course the ICC to engage the South African government. With this, South Africa could play a leading role in meaningful and thorough transformation of the global political and economic order, and help bring about real and meaningful change in the global imbalance of power. The problematic question is: How does South Africa push for global order re-configuration while it is busy withdrawing from these institutions?

Recommendations

- Civil society, world governments and institutions are adamantly protecting a Nelson Mandela foreign policy legacy that is poorly analyzed in historical and current geopolitical developments. For fair foreign policy decision-making processes to take place, it is best to avoid the judicial system and instead, use political tactics to leverage foreign policy to address domestic concerns.
- South Africa's stated intention to withdraw from the ICC is an opportunity for state and important non-state actors to openly embark on a new path of engagement and discuss the direction and co-ordination of South African foreign policy to leverage domestic needs, continental interest and international direction of the country.
- Foreign policy can no longer be considered legitimate if it is made by South African elites. It is recommended that the government makes use of various NGO platforms, the South African Council of International Relations, the Parliamentary Committee on International Relations, the media and other avenues to ensure a participatory process in foreign policy-making.
- Noting the political factions and divides among ministerial approaches to foreign policy, non-state actors and think tanks will have to maneuver foreign policy interests in a track-two diplomacy approach in which they engage both governmental actors as well as fellow civil society actors. In fact, the avowed sense of competition and rivalry amongst NGOs and think-tanks should make way for greater co-operation.

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