Situation Report

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South Africa's Second Term at the UN Security Council: Managing Expectations

Introduction

The re-election of the Republic of South Africa as a non-permanent member of the United Nations (UN) Security Council for 2011 to 2012 follows shortly after its previous tenure from 2007 to 2008, and has attracted attention from a variety of quarters. Much of this attention is the result of selective interpretations in the West of the country's conduct during its previous tenure.[1] This is unfortunate because the associated caricature of Africa's largest economy, the only African member of the G20 and which aspires to membership of the BRICs (Brazil, Russia, India and China) and to permanent membership of the UN Security Council, prevents a serious interrogation of its potential role on the Council during the next two years.

The previous tenure was a busy one. In 2007 the Council passed 60 resolutions and it adopted 65 the following year. There can be little doubt that 2011–12 will be equally demanding. South Africa is also entering the Council at a time of unprecedented global flux. This paper provides a short section on how global shifts in power may impact upon the Council and the associated chances for reform, before examining key themes and issues that South Africa will likely have to confront during its imminent tenure. It also offers a number of policy recommendations.

Council composition and dynamics in respect of Security Council Reform

A great deal has been written about the shift in relative material power and influence that is taking place within the international system. What makes 2011 particularly interesting is the sharp acceleration of these trends since the global recession in 2009, the associated angst in the United States of America and a unique composition of the UN Security Council in 2011 consisting of a large number of the most prominent would-be additional permanent members.

South Africa left the Council in 2008 just as the global financial meltdown started to unfold. It returns at a time when the world is struggling to deal with the impact of that crisis. The United States' omnipotence is declining at a more rapid rate than any could have predicted as its fiscal chickens (years of excess) come home to roost. The US is struggling to manage this decline. For a brief period a more co-operative US administration allowed countries like Turkey to take initiatives

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and to lead the debate on Afghanistan by drafting resolutions concerning that country. Now, financially crippled and hostage to right-wing social populism embodied by the Tea Party Movement, US politics is adopting a decidedly more inward and protectionist stance, which may have a potentially polarising impact upon international relations. These developments may also impact upon relations within the UN Security Council.

Rather than confronting the challenge of restructuring the US economy, the US is seeking external explanations for its domestic imbalances. These are increasingly to be found in one word – China. Already the Federal Reserve is expected to embark upon successive rounds of quantitative easing in the years ahead – basically printing money to force down the value of the US dollar and force up the value of the Chinese Renimbi. The resulting excess liquidity is flooding into emerging markets such as South Africa, India and Brazil, strengthening their currencies and undermining domestic economies (and stability) at a time of anaemic global growth, with a few exceptions, such as China. Global tensions will increase in tandem with US efforts to curtail the threats to its power and privilege.

These shifts in global power present a small window of opportunity within the US to push for UN Security Council reform. Such reform requires agreement by the current five permanent members (the P5) as well as a coherent and doable agreement among aspirant Security Council members – a much larger community than generally accepted. In fact, regional politics is perhaps more to blame for lack of UN Security Council reform than reluctance by the permanent members. Eventually both remain extraordinary difficult to achieve.

Fixated on China as a potential global rival, the US has embarked upon a wide-ranging strategy of containment. Part of that strategy is partnering with and bolstering India – hence the deal to bring it in as legitimate nuclear weapon state and to boost economic and diplomatic ties. These overtures started under President George W Bush and have continued under his Democratic Party successor, Barrack Obama. The recent endorsement of India as a candidate for permanent membership on the Security Council, in addition to its long-stated support of a Japanese candidacy, is another component of that containment strategy, and one that is intended to build an alliance of middle and larger democracies that could balance the growing regional and global power of the Red Dragon. For the US strategy to be successful, it requires UN Security Council reform at a time when the US still has sufficient power to determine such a change and China is not prepared to block it. This will be an extraordinary difficult task for a lame-duck president to sell to Congress and the American public in the run-up to the US Presidential elections in 2012, but not entirely improbable.

It is generally accepted that neither China nor the US will readily veto the candidacy of a country to the UN Security Council if the aspirant has overwhelming support within the General Assembly. But, faced with a scenario that could largely constrain its global position, China will inevitably argue for moderate expansion – particularly wanting to ensure that neither India nor Japan accede to the Council in a permanent capacity. Efforts at moderate expansion heighten competition at regional level and it is at this level where the greater obstacles are to be found.

The emergence of multiple centres of power already complicates the conduct of international relations and demands both greater leadership from key countries and legitimacy from existing institutions. The greater complexity of this hot, flat and crowded world with its tremendous transaction speed places extreme demands on staid, unrepresentative institutions such as the UN Security Council. The signs of realignment are becoming increasingly evident, most especially in terms of the growing importance attached to the G20. Whereas for 40 years, from 1965 to 2004, the original G7 (Canada, Germany, France, the United Kingdom, Italy, Japan and the USA) produced 62–68 per cent of the global output, by 2010 this has dropped to about 50 per cent. In contrast, the G20, largely as a result of its inclusion of countries such as China, India and Brazil, among others, reflects roughly 88 per cent of the global GDP.

Part and parcel of this trend is an accelerating shift away from Western dominance towards greater heterogeneity and complexity, including the rising influence of non-state actors such as criminal networks, civil society and financial institutions, as well as supranational and intergovernmental agencies that govern matters from air travel to banks. These are challenges that South Africa struggled to master during its previous term on the Council. Despite valiant efforts by a very small team, it failed to engage in networked and issue-based diplomacy, sometimes resorting to moralistic platitudes that infuriated rather than informed influential civil society groupings as well as key countries in the developed world that will play a key role in decisions on UN reform. The question then is whether South Africa's next period of tenure will prove to be different.

Globalisation and complex economic interdependence seem to be impacting upon global relations to an unprecedented degree. Consider, for example, that the global GDP, in nominal terms, has increased from US$ 32,1 trillion in 2000 to US$ 61,2 trillion in 2008, that is, it has almost doubled. Simultaneously, and over the same period, world trade, also in nominal terms, increased by 245 per cent from US$ 13,1 trillion to US$ 32,2 trillion. Clearly, trade growth has outstripped GDP growth by a substantial margin. Meanwhile, global exports have tripled, reflecting the extent to which multiple commercial ties now bind countries together in an era where trade politics and currency manipulation are more important than the number of battleships and aircraft carriers.[2] Paradoxically, this more interdependent world is also a more competitive world as countries jostle and compete for relative economic benefit, bedevilling common responses to supra-national challenges such as climate change, organised crime and counter-terrorism. Competition is particularly intense at regional level, where the self-proclaimed status of candidate countries such as South Africa and Nigeria are not widely shared by others on the continent.

The disproportionate influence of the P5 members of the UN Security Council continues to weigh heavily on the focus and effectiveness of Council business that reflects an increasingly distant era of post-World War 2 power and privilege. For decades there have been few fundamental changes in the operational logic of the UN Security Council. The secretive, back-door diplomacy means most agreements are struck between these five countries before being presented to others in the Council, a fact that continues to irk the non-permanent members and detracts from the legitimacy of the UN Security Council as a whole. The P5 are effectively unaccountable and their decisions not subject to any review. Despite the fact that the UN Charter says explicitly that the UN Security Council is obliged to submit a report to the UN General Assembly, the P5 refuse to accept any explicit or implicit accountability to the 192 members. Indeed, most P5 members believe that far from the UN Security Council being accountable to the General Assembly, the reverse applies. This is most apparent in the behaviour of the US – a democracy at home but a country that refuses to accept democratic accountability abroad. However, despite their lack of veto power, the votes of the non-permanent members do carry considerable weight, partly because the UN Security Council requires the support of nine of the total 15 members for any resolution to be passed. Therefore, the dynamics in the relationship between non-permanent members and between them and the permanent members are of great significance.

Table 1: Security Council membership, 2010–2011

Permanent members (5) United States of America, United Kingdom, China, Russia, France	
2010 non-permanent members (10)	**2011 non-permanent members (with new ones in bold)**
Gabon, Nigeria, Uganda, Lebanon, Japan, Brazil, Mexico, Turkey, Austria, Bosnia and Herzegovina	Gabon, Nigeria, **South Africa**, Lebanon, **India**, Brazil, **Colombia**, **Germany, Portugal**, Bosnia and Herzegovina

In 2011, South Africa will serve alongside five current non-permanent members – Brazil, Lebanon, Nigeria, Bosnia-Herzegovina and Gabon – whose tenure extend at the end of the year and continue into 2012 alongside those of South Africa, India, Colombia, Germany and Portugal. An important factor is the presence of many aspirants to permanent seats at the Council in 2011, including Brazil, Nigeria, Germany, India and South Africa. In some sense this representation could encourage the renewal of calls for the Council to reform its membership structure to reflect the power realities of the 21st century although, in the past, competing regional and national interests have repeatedly foiled negotiations regarding any enlargement of the Security Council.

Although a number of important emerging countries (Mexico, Turkey and Japan) step down at the end of 2010, this will certainly be the strongest UN Security Council for some time. Nigeria, South Africa, India, Brazil and Germany are all more or less recognised as regional leaders. The extent to which regional competitors or detractors from their respective regions are prepared to allow a grand compromise in the interests of UN Security Council reform is, however, less evident.

South Africa, India and Brazil established the IBSA group in 2003. Largely a creation of former South African President Thabo Mbeki, IBSA is widely touted as an alliance of aspirant UN Security Council permanent member countries. Hence 2011 could reveal the likely outcome of this alliance's aspirations, although only Prime Minister Manmohan Singh of India still remains in office, as Mbeki and Lula da Silva of Brazil have both stepped down. South African President Jacob Zuma attended the most recent IBSA summit in Brazil that occurred back-to-back with the BRIC summit during April 2010. The subsequent Brasilia IBSA Summit declaration noted that:

> The Leaders reaffirmed their commitment to increase participation of developing countries in the decision-making bodies of multilateral institutions. They also reiterated the urgent need for the reform of the United Nations (UN) to render it more democratic and consistent with the priorities of developing countries. They particularly emphasized that no reform of the United Nations will be complete without a reform of the UN Security Council (UN Security Council), including an expansion in both permanent and non-permanent categories of its membership, with increased participation of developing countries in both. Such reform is of the utmost importance for the UN Security Council to reflect geopolitical realities and to have the representativeness and legitimacy it needs to face contemporary challenges. They committed to keep close coordination amongst the three countries and the broader UN membership to achieve substantial progress in the intergovernmental negotiations on UN Security Council reform presently underway in New York. They recalled that an overwhelming majority of the UN member states agreed to proceed with a fifth round of intergovernmental negotiations based on a negotiating text.[3]

The communiqué from the BRIC summit in Brazil that was hosted in Brasilia the next day – and which therefore excluded South Africa – expressed similar sentiments:

> We express our strong commitment to multilateral diplomacy with the United Nations playing the central role in dealing with global challenges and threats. In this respect, we reaffirm the need for a comprehensive reform of the UN, with a view to making it more effective, efficient and representative, so that it can deal with today's global challenges more effectively. We reiterate the importance we attach to the status of India and Brazil in international affairs, and understand and support their aspirations to play a greater role in the United Nations.[4]

Earlier, at the BRIC summit in 2009, members produced a declaration calling for a 'multi-polar world order' but there is little incentive for China and Russia

to work towards reform that would dilute their influence. Certainly the evident lack of a common identity within the BRICs means that their collaboration within the Security Council is by no means certain. The relationship between South Africa and China in terms of the latter's activities in Africa, for example, is that of commercial competitors, not partners. More important, India and China are regional and, potentially, global rivals. Eventually China (and Russia) has little incentive for reform in allowing others onto a Council at a time when it is so sharply rising in influence unless such reform will dilute and not strengthen the current dominant position of the West.

There is, therefore, also a concern that the presence in the Council of so many competitors, rather than providing a source of strength could become a source of inertia; non-permanent members may compete for the lowest common denominator to demonstrate their credentials as global 'good countries' for when their candidature is eventually put to the vote within the UN General Assembly. None of the aspirants to permanent UN Security Council membership will want to upset any of the P5 members, especially the US and China, whose support is increasingly seen as vital to any successful bid to reform the Council. Under US law, the State Department reports to Congress on voting patterns at the UN, measuring how other member states voted in comparison with the US voting record. It is not unlikely that a Republican-controlled Congress may be hostile towards a South African candidature for a UN Security Council seat compared to Nigeria and Egypt, both important US allies.

Despite South Africa's stated ambition to be included in the UN Security Council, no country has thus far endorsed the South African (or any other candidate from Africa) campaign to become a member, for to do so would run foul of the African position as set out in the Ezulwini Consensus.[5] The Ezulwini Consensus, Africa's response to the Report of the High-Level Panel on Threats, Challenges and Changes, is now five years old and probably in need of revision if the continent is to enjoy the prospect of UN Security Council reform during the next two years.[6]

In response, the Ezulwini Consensus on UN Security Council reform reads as follows:

1. Africa's goal is to be fully represented in all the decision-making organs of the UN, particularly in the Security Council, which is the principal decision-making organ of the UN in matters relating to international peace and security.

2. Full representation of Africa in the Security Council means:

    i.   not less than two permanent seats with all the prerogatives and privileges of permanent membership including the right of veto;

    ii. five non-permanent seats.

3. In that regard, even though Africa is opposed in principle to the veto, it is of the view that so long as it exists, and as a matter of common justice, it should be made available to all permanent members of the Security Council.

4. The African Union should be responsible for the selection of Africa's representatives in the Security Council.

5. The question of the criteria for the selection of African members of the Security Council should be a matter for the AU to determine, taking into consideration the representative nature and capacity of those chosen.[7]

Rather than an instrument that would allow reform, Ezulwini was crafted, in many senses, to frustrate reform at a time when countries such as Zimbabwe were particularly fearful of external pressure by other African countries, South Africa in particular.

Although unlikely, the aspirations of both South Africa and Nigeria for permanent member status in the Security Council (apart from Egypt) could be a source

of tension if the P5 consensus leans towards one additional permanent/semi-permanent member for Africa instead of two; each may seek to impress and convince others of their ability to act as a more responsible global actor. Nigeria faces a bruising presidential competition in April 2011 that may deflect attention from larger, international issues, as does South Africa in 2012. South Africa also has a president elected on a clear campaign promise to deliver services to an impoverished electorate dissatisfied with an absent president who appears more interested in events elsewhere than in domestic matters.[8] Stepping back from robust international engagement may prove to be a huge error for South Africa at a time of immense global challenge and opportunity.

This notwithstanding, it is noteworthy that although Nigeria and Brazil are generally regarded as US allies, they often represent the interests of the Southern bloc at the UN. Regional blocs have previously used their strength in numbers to advance their positions. However, the extent to which the first-term presidency of Dilma Rousseff (who takes over from President Lula on 1 January 2011) will focus on global as opposed to domestic matters remains to be seen.

The G4 group, which is made up of Germany, Japan, Brazil and India, is reportedly planning to launch a campaign for the addition of six permanent seats to the Council but without the power of veto, and a further four non-permanent seats. Given the rigidity of the common African position, this will present the Africans with an acute dilemma. France and the UK are outspoken supporters of the G4 proposals and, as suggested in these pages, the addition of four 'Western-orientated allies' is increasingly also in the interests of the US. So will China be prepared to veto such a campaign and will the Africans be prepared to go along or scupper such a bid? In fact, this scenario presents Africa as the swing region probably able to determine reform if it could remain united. A more conservative proposal, the Anglo/French 'intermediate model' for Security Council reform, proposes an additional five members to the Council for ten years, consisting of the G4 countries plus one seat for Africa.

Eventually it will become obvious that the oxymoron of permanent representation by specific countries has to be overcome. Only a system of elected representation (for all countries) onto a UN Security Council of the future meets the demand of democratic accountability about which the West so loves to lecture the rest. For example, reform that would see Europe with three permanent seats under the proposals currently on the table makes no sense at a time when the European Union is moving towards greater, not less, integration.

In the absence of reform, the Council will continue to suffer a continued decline in its own authority, perceived legitimacy and efficacy. At a time when global coordination is most needed, this is an opportunity that should not be squandered. This is such an obvious statement, and the need so blatant, that the options eventually to be considered (if at all) may include all kinds of contortions such as a pool of say 12 countries from which semi-permanent members would rotate onto the Council. These are then the more probable arrangements that would allow the impasse with the P5 as well as regional politics to be overcome (by allowing a larger pool of candidate countries from each region to serve more regularly instead of only one or two designated countries).

In summary, the next two years provide a limited window of opportunity in which the emerging world may legitimately claim some of the political space that, on a global level, they already occupy economically, culturally and often technologically. With leadership and skill the current global realignments may present Nigeria, South Africa, Brazil, India, Japan and Germany with the best opportunity yet to effect changes in the UN Security Council, in terms of its composition and voting procedures. With 53 out of 192 members in the General Assembly, Africa will undoubtedly play a huge role, be it negatively or positively, in enabling reform of this anachronistic body. In this sense, the road to a permanent seat for South Africa, Nigeria and even Egypt does not start in New York but rather began in Addis Ababa with their engagement on the all-important Ezulwini Consensus.

Rather than providing a country-specific analysis that would require a detailed discussion on Sudan, Somalia and so on, the remainder of this paper examines the following thematic challenges:

- The UN Security Council/African Union Peace and Security Council (AU PSC) relationship on conflict prevention, management and peace building
- International Criminal Justice and the role of the UN Security Council in the work of the International Criminal Court (ICC)
- Terrorism and counter-terrorism
- Non-proliferation of nuclear weapons
- Conventional arms control, including small arms and light weapons
- Issues relating to women in peace and security

The UN Security Council/AU PSC relationship on conflict prevention, management and peace building

During 2010 the numbers of peacekeepers deployed globally may have reached new heights but the support and enthusiasm for peacekeeping as the silver bullet that solves international security problems seem to be waning in favour of peace building, preventive diplomacy and other means as long as they fall short of the deployment of (additional) blue helmets. There are a number of reasons for this, including financial constraints, the already rapid expansion of UN peacekeeping in recent years, and a sense of lack of innovation and intellectual energy on the part of the office of the UN Secretary General (UNSG). The UN Security Council has recently also stood by and watched the development of various African peacekeeping challenges that have undermined its own credibility. Examples of the lack of commitment or mismanagement by the UN Security Council include Chad, where mounting pressure for withdrawal will see the UN Mission in the Central African Republic and Chad (MINURCAT) withdraw on 31 December 2010, and the DRC, where allegations of sexual violence and pressure for withdrawal saw the UN Organisation Mission in Democratic Republic of the Congo (MONUC) re-engage as the UN Organisation Stabilization Mission in the DRC (MONUSCO).

Clearly, the anachronistic composition of the UN Security Council and the *realpolitik* considerations that seem to dictate the voting patterns of its P5 members affect its ability to engage with issues of conflict resolution across the world. Members seem to be selective about which conflicts to engage with and how they define the UN Security Council core mandate on threats to international peace and security. Perhaps the most glaring example of the lack of consistency in UN Security Council engagement on threats to international peace and security relate to its inaction on the crisis in Somalia – despite the repeated Council emphasis on the 'responsibility to protect' or R2P.[9] In recent years, when the UN Security Council eventually takes action to remedy a situation, it appears to do so reluctantly and slowly and the deployment of peacekeepers is often a laborious and lethargic process.

Against this background, and in light of the increasing willingness of the AU to deal with African conflicts, the AU has initiated a process intended to develop a stronger and more structured relationship with the UN Security Council, with particular emphasis on the 'Establishment of a Co-ordination and Consultation Mechanism between the African Union Peace and Security Council and the United Nations Security Council'. The AU PSC is particularly keen to get recognition from the UN Security Council that it is the authoritative body on peace and security issues on the African continent. It wants to be consulted on individual African cases under consideration by the UN Security Council and would like the UN Security Council to give serious consideration to requests and decisions made by the AU PSC. These are complex and contentious issues that deserve careful consideration, although the AU itself has been less than consistent in the application of its own approach.

During 2011 South Africa and Nigeria will serve on both the UN Security Council and the African Union's Peace and Security Council. This will allow for greater

collaboration between the two structures. In addition, Nigeria and South Africa will occupy leadership positions in their respective sub-regional groupings, the Economic Community for West African States (ECOWAS) for Nigeria and the Southern African Development Community (SADC) for South Africa.

Table 2: AU's Peace and Security membership from 2010

Members of the Peace and Security Council of the African Union as elected in January 2010	
For three years	**For two years**
Equatorial Guinea, Kenya, Libya, Zimbabwe, Nigeria	Benin, Burundi, Chad, Côte d'Ivoire, Djibouti, Mali, Mauritania, Namibia, Rwanda, South Africa

The AU desires to have clarity on the division of labour between itself and the UN in peacekeeping, with particular emphasis on the need for the UN Security Council to take the lead on conflict situations that may have international repercussions. The AU's repeated requests that the UN deploy a peacekeeping mission in Somalia provide just such an example. The extent to which the mantra of 'African solutions to African problems' has become a two-edged sword is evident when examining the resistance amongst the P5 and other major financial contributors to UN peacekeeping (such as Japan and Germany) to UN involvement in Somalia occurring without clear engagement and leadership from Africa. There is also the matter of predictable and sustainable funding for AU-led and UN Security Council-authorised peacekeeping operations in Africa. Finally, there is the issue of the capacity-building necessary to operationalise the African Peace and Security Architecture.

The joint UN-AU Panel on UN support for AU-led and UN Security Council authorised peace operations in Africa, otherwise known as the Prodi Panel, and the follow-up report by the UN Secretary-General, still awaits serious consideration and a final decision by the UN Security Council. During its previous term South Africa championed the relationship between the AU PSC and the UN SC, and this led to some tangible improvements in the relationship between these two structures, including regular consultations, joint field visits and, more generally, increased synchronisation in their respective decisions. This is an approach that Nigeria and South Africa are likely to pursue both collectively and individually.

While many in Africa would like the UN to be more supportive of AU decisions and fund AU peace missions through assessed (not voluntary) contributions on the UN peacekeeping budget, this is highly unlikely. Key members of the UN Security Council do not support some of the AU's decisions and there appears to be little appetite for any approach that is akin to automatic UN endorsement of AU decisions. While the AU believes that in circumstances requiring urgent action 'it is imperative that Regional Organizations, in areas of proximity to conflicts, are empowered to take actions in this regard …' even 'after the fact', the UN has not, and probably will not, agree to UN financing of such operations without appropriate oversight, including its approval of mandates.[10] As a result, the discussions on the Prodi Report at the Council (most recently initiated by Uganda) have been useful but generally ineffectual and inconclusive.[11]

However, it is interesting that, on 13 January 2010, when China, for the first time, took the initiative to organise a thematic debate during its presidency, this debate centred on the relationship between the UN and regional and sub-regional organisations. The debate followed on from the Secretary-General's Retreat with Heads of Regional and other Organisations on 11–12 January 2010, further emphasising the importance that the UN attaches to its relationship with organisations such as the AU. In its concept paper that was circulated ahead of the debate, China highlighted the opportunity that existed for further utilisation of the resources and comparative advantages of regional organisations, and placed particular emphasis on the need to do more in areas of dispute resolution, conflict mediation and preventative diplomacy.[12] In the words of the subsequent presidential statement: 'The Council underlines the importance of regional and

sub-regional organizations enhancing their peacekeeping capabilities and the value of international support to their efforts, in particular to the African Union, in terms of the 2006 United Nations-African Union Ten-Year Capacity-Building Programme for the African Union.'[13]

The relationship between the UN Security Council and the AU's PSC has become a regular feature of discussions since South Africa first made this a focus of its previous tenure in the UN Security Council. Recently, during the discussions of 16 July 2010 on preventive diplomacy in Africa, the Council requested the Secretary-General to submit, within twelve months, a report with 'recommendations on how best to optimise the use of preventive diplomacy tools within the United Nations system and in co-operation with regional and sub-regional organisations and other actors'.[14] This report will provide a valuable opportunity to continue and expand this relationship given the establishment of the joint United Nations-African Union task force on peace and security that held its inaugural meeting on 25 September 2010. Earlier, on 1 July 2010, the UN Office to the African Union was established to integrate the mandates of the former Liaison Office, the Peacekeeping Support Team, the Planning Team for the African Union Mission in Somalia (AMISOM) and the support elements of the African Union/United Nations Hybrid operation in Darfur (UNAMID) into a Joint Coordination Mechanism as a concrete step in the strengthening of co-operation between the UN Secretariat and the AU Commission.

The absence of sustainable funding for AU peace missions and the associated lack of an integrated logistic support system remains the largest challenge to African peacekeeping and an issue upon which the UN Security Council has not made much progress. Although the Council has expressed its determination to continue working, in accordance with its responsibilities under the Charter, towards a more predictable and sustainable solution, the African countries on the Council should commit to clear progress on this issue. In the process they will find support from the European partners on the Council which, through the European Union and bilaterally, have spent upward of €1 billion in the last decade to operationalise the African Peace and Security Architecture. This project needs to be concluded if the international community is to receive a return on its investment and if Africa is to reap the benefits of the efforts it has undertaken since the establishment of the Peace and Security Council some ten years ago.

International criminal justice and the role of the UN Security Council in the work of the ICC

The delicate balancing of peace and stability against the demands of justice for egregious crimes is one of the most vexing issues that face those who support international criminal justice. The drafters of the Rome Statute chose to regulate this relationship by defining an important role for the UN Security Council under the International Criminal Court (ICC) system. The UN Security Council, in terms of Article 13 of the Rome Statute, can refer situations to the Court in which international crimes appear to have been committed. In terms of Article 16 of the Statute, the Council can defer any investigation or trial from commencing or proceeding for a renewable period of 12 months, if the Council so requests, in a resolution adopted under Chapter VII of the UN Charter. By defining a role for the UN Security Council in the work of the ICC, the drafters of the Rome Statute created a link between the political and judicial functions of the world's leading bodies on international peace and security and criminal justice. This was contentious and, during the 1998 Rome conference negotiations, a number of countries objected to a role for the Security Council, which is a political body, in the working of the ICC, which is a judicial body.

The role of the UN Security Council in the work of the world's first and only permanent criminal court represents one way in which the tension between the search for peace and the demands for justice may be mediated. Inherent to Article 16 is the understanding that there may be instances where, in the interests of peace, it may be beneficial to temporarily allow the suspension of an investigation or prosecution by the Court. Nevertheless, the provisions of

Article 16 have not resolved the perennial debates about peace and justice. Within the context of the UN Security Council's relationship with the ICC and with regard to the work of the Court in Darfur, this issue has again become a highly salient one. The referral of the situation in Darfur to the ICC was the first exercise of the UN Security Council's power in relation to the ICC. Not all countries responded positively to this development. As could be expected, the Sudanese government – under President Omar Hassan al-Bashir – objected to the Court's exercise of its jurisdiction over the matter. The AU also expressed concern over this referral and in February 2009 it established a High-Level Implementation Panel on Darfur (AUPD) led by former South African president Mbeki. The AUPD was tasked with the development of recommendations aimed at bringing peace and reconciliation to Darfur. The subsequent AUPD report posited that justice and reconciliation are the crucial means of bringing lasting peace to Darfur. The AUPD also recommended the formation of a hybrid court to try criminal offenders and a truth, justice and reconciliation commission to promote reconciliation. If domestic justice mechanisms fail then the ICC should step in as the last resort. Justice, according to the AUPD, cannot be swept under the carpet in the name of peace.

These recommendations – if implemented – will have a number of implications for Sudan, both in terms of the ongoing conflict in Darfur and for al-Bashir, who in July 2008 was indicted by the ICC and against whom, in March 2009, it issued arrest warrants on charges of alleged war crimes and crimes against humanity. Zuma has already stated that South Africa will continue to provide support to the AUPD and that it will also render assistance to the UN and other interested parties towards the peaceful resolution of the Darfur conflict.

The Article 16 'problem', and the manner in which it has been highlighted within the Darfur situation, means that the peace versus justice debate will be integral to South Africa's tenure at the UN Security Council. This was clearly an important issue for South Africa's Minister for International Relations and Co-operation, Ms Maite Nkoana-Mashabane, when she indicated that South Africa would support the deferral of al-Bashir's arrest warrant. This position is aimed at synchronising South Africa's agenda with that of the AU. For its part, in early 2009, the AU called on the UN Security Council to invoke an Article 16 deferral in the interests of ongoing mediation efforts to establish peace in Sudan. It does not appear that the UN Security Council considered this request and, according to the AU, it failed to officially (or appropriately) respond. In August 2010, the AU reiterated its request. The final decision on this recent request for deferral is likely to be made in 2011.

The AU has not responded kindly to the UN Security Council's lacklustre response to this deferral request and has on two occasions called for its member states not to co-operate with the ICC in respect of the warrant for al-Bashir's arrest. Moreover, the AU submitted a proposal for the amendment of Article 16 of the Rome Statute to the 8th Session of the ICC Assembly of States Parties (ASP) in November 2009. According to this submission (which was officially tabled by South Africa), the AU would like Article 16 to be modified to allow the UN General Assembly to act should the UN Security Council, within six months of receiving a request, fail to make a decision on whether to defer a situation. South Africa's submission on behalf of the ASP was made on the premise that African leaders are concerned that the ICC's involvement in Sudan is a reflection of the skewed power distribution within the UN Security Council specifically, and within global politics in general. A working group will be established at the upcoming 9th Session of the ASP in December 2010 to consider amendments to the Rome Statute; Article 16 is likely to be included in such amendments. It is therefore clear that Africa's concerns regarding Article 16 in particular and the role of the UN Security Council in the work of the ICC in general, reveal highly contentious issues deserving additional attention.

A recent effort to craft workable recommendations to address the Article 16 'problem' from an African perspective has recommended that:

- Affected states and intergovernmental organisations seeking deferral under Article 16 should make a reasoned case for such a deferral, using all

relevant UN procedures. In this regard, any submission to the UN Security Council requesting a deferral should clearly demonstrate that continuing ICC investigations and/or prosecutions would constitute a bigger impediment or threat to peace and security than deferring the proceedings. Thus far, it would appear that AU requests for deferral have not met these criteria.

- ICC States' parties (especially those from Africa) should work towards increased and deeper engagement between the AU, the UN Security Council and the ICC, including at the ASP.
- Where credible alternative justice mechanisms exist, affected states and relevant intergovernmental organisations should call for the appropriate use of relevant aspects of other provisions of the Rome Statute, most notably Article 53, to ensure that the broader interests of justice are upheld in the work of the Court, including restorative and transitional justice mechanisms.
- In line with the complementarity principle that underpins the ICC system, states should expand the use of domestic prosecutions of those accused of ICC crimes. Justice delivered locally for grave international crimes will almost always serve the needs of victims better, and strengthens the much-needed social contract between governments and their citizens.[15]

South Africa will be strategically placed to engage with matters relating to Article 16, the peace and justice debate, and the development of international criminal justice in general. However, it will have to pay due respect to the findings and recommendations of the African expert group study as these could help guide its engagement at the UN Security Council in terms of the increasingly contentious Article 16 debate. By positively shaping the Council's engagement on this important issue, South Africa could highlight another area (international criminal justice) where the UN Security Council's lack of reform remains an important stumbling block that hinders global co-operation on key issues. In the absence of progress, the uneven landscape of international criminal justice (reflected starkly by the role of the UN Security Council in the work of the ICC) will continue to undermine global efforts to end impunity for the most egregious crimes.

Terrorism and counter-terrorism

The attacks against the US on September 11, 2001 (9/11) resulted in a shift in focus for international counter-terrorism efforts. Most notably, in Resolution 1373 (passed just two weeks after the 9/11 attacks), the UN Security Council used its Chapter VII powers to declare terrorism a threat to international peace and security. In doing so, it imposed a number of legally binding obligations on all UN member states in the fight against terrorism. Unlike previous counter-terrorism related resolutions, the Security Council did this without any reference to either geographic boundaries or temporal limits, and without any definition of precisely what it meant by the term 'terrorism'.[16]

For more than five years, Resolution 1373 (together with other Security Council resolutions) ensured that the UN Security Council (with its clear combative and security-focused approach) was at the forefront of international counter-terrorism efforts. As a result, the General Assembly played a less visible role, which led to the perception in some countries that Western security interests had hijacked the UN counter-terrorism programme.

Then, in September 2006, with the unanimous adoption of the UN Global Counter-Terrorism Strategy, the General Assembly regained valuable ground in the fight against terrorism. The Strategy (and therefore the collective membership of the UN) reiterated that the fight against terrorism requires a holistic and multi-faceted response, one premised on respect for human rights and the rule of law. It recognised that it is important to address conditions that are conducive to the spread of terrorism as part of an effective counter-terrorism strategy.

The UN Global Counter-Terrorism Strategy, which was reaffirmed by the General Assembly in September 2008 and again in 2010, is an 'instrument of consensus' for an issue on which consensus has traditionally been difficult to achieve. It is

a call for a holistic approach towards addressing terrorism. Its inclusion of not just security-related issues but also those issues related to the conditions that are conducive to the spread of terrorism, such as poverty and lack of good governance, gives it broader appeal than the Security Council's counter-terrorism programme. As such, it helps to narrow the divide between the Security Council and the General Assembly and, more fundamentally, helps to reconcile the security agenda of the global North with the development priorities of the global South.

The Strategy consists of a resolution and a plan of action that lays down four pillars. These pillars are:

- *Measures to address the conditions conducive to the spread of terrorism*, including, but not limited to, prolonged unresolved conflicts; foreign occupation; dehumanisation of victims of terrorism in all its forms and manifestations; lack of rule of law and violations of human rights; ethnic, national and religious discrimination; political exclusion; socio-economic marginalisation; and lack of good governance
- *Measures to prevent and combat terrorism*, including a call on states to ratify and implement the universal legal instruments against terrorism and to introduce national legislation in line with international principles and best practices
- *Measures to build states' capacity to prevent and combat terrorism and to strengthen the role of the UN system in this regard*. These measures include: reaching out to the private sector for contributions to capacity-building programmes, in particular in the areas of port, maritime and civil aviation security; and encouraging the UN to work with member states and relevant international, regional and sub-regional organisations to identify and share best practices to prevent terrorist attacks, particularly on vulnerable targets
- *Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism*. This pillar cuts across all other parts of the Strategy. It specifically calls upon countries to make every effort to develop and maintain an effective and rule of law-based national criminal justice system

Importantly, the Strategy calls for the involvement of civil society, the private sector and regional and sub-regional organisations in the fight against terrorism. It also makes specific reference to the need to protect the rights of victims of terrorism. Global, regional and sub-regional organisations and civil society provide a resource that the UN system has not utilised to its greatest advantage.

South Africa played a key role in the development of the UN Global Counter-Terrorism Strategy and was the first country to host a national workshop to promote the holistic implementation of the Strategy at the domestic level.[17]

However, the recent increase in the number of terror attacks, attempted attacks and perceived threats in Europe, the US and Asia, has again increased the focus of many governments on the harder security and military aspects of counter-terrorism co-operation. While this is understandable in certain contexts, governments (especially from the developing South) should ensure that the UN does not lose sight of the important and longer-term development and rule of law objectives of the Strategy – objectives that are too easily sacrificed on the altar of expediency and for the sake of shorter-term (often Western) security imperatives. South Africa should work with its partners to maintain a leadership role in the General Assembly in global counter-terrorism responses. The UN Security Council should not be allowed to hijack this role (as it did in the years after 9/11).

There are five key issues relating to counter-terrorism that South Africa can address when it takes up its non-permanent member seat in the UN Security Council.

- First, South Africa should work with other members of the Council (and the General Assembly) to promote the implementation of the Global Counter-Terrorism Strategy, with a view to enhancing a multilateral framework for the

prevention and combating of terrorism from the perspective of the developing world and Africa. In this regard, South Africa should support UN entities in various regions (in partnership with regional organisations and civil society) to address specific regional challenges relating to the implementation of the Strategy.[18]

- Second, South Africa should support the work of the Counter-Terrorism Implementation Task Force (CTITF) to continue to strengthen the co-ordination and coherence of the entire UN system on matters relating to terrorism and the implementation of the Strategy with a view to eliminate wasteful duplication of efforts and resources. In this regard, South Africa could utilise its membership in the Council to support the CTITF in becoming the leading UN mechanism for counter-terrorism co-ordination and for the dissemination of knowledge and information, as well as a centralised database and resources for the prevention and combating of terrorism.

- Third, South Africa can play a constructive role in promoting the universality and the effective implementation of international and regional counter-terrorism legal instruments. South Africa should work with other Council members to encourage countries that have not yet done so, to ratify and properly implement all 16 international legal instruments against terrorism. In this regard, South Africa can reiterate the importance of appropriate human rights-based criminal justice responses to terrorism. The universal (and regional) legal regimes form the foundations of appropriate national criminal justice responses to terrorism and should therefore be supported. Extra-judicial forms of counter-terrorism should be avoided at all costs.

- Fourth, South Africa should work with other members of the Council to support the idea of merging and streamlining the various counter-terrorism committees, including those established pursuant to Resolutions 1267 (1999), 1373 (2001) and 1540 (2004), so that together they could form a coordinated UN Security Council body for the prevention and combating of terrorism. This will ensure synergy and the cost-effective use of resources.

- A final issue is the proposed establishment of the US/CTAG Global Counter-Terrorism Forum (GCTF) that will be launched in 2011. Described as a co-ordinator of global, bilateral counter-terrorism technical assistance, the GCTF should not undermine the counter-terrorism policy, assessment and facilitation role of the UN entities, especially those under the auspices of the Strategy. Here South Africa could work with its developing partners from the South to shape the role of the UN in relation to the GCTF.

Non-proliferation of nuclear weapons

The African Union's 2005 Ezulwini Consensus notes the need to:

- '... ensure that any action by the Security Council does not undermine existing international treaty regimes on weapons of mass destruction and conventional weapons and of international organizations established in this regard, such as the International Atomic Energy Agency (IAEA) and the Organization for the Prohibition of Chemical Weapons (OPCW), as well as the role of the UN General Assembly

- ... maintain the important role of the First Committee as a subsidiary body of the General Assembly and other multilateral disarmament machinery, in particular, the United Nations Disarmament Commission (UNDC) and the Conference on Disarmament (CD), in dealing with questions of disarmament and other related international security questions'[19]

Two significant nuclear disarmament and non-proliferation events took place in 2010, both of which involved South Africa's active participation. These events also provided an opportunity for South Africa to strengthen its established reputation as a major player in disarmament, non-proliferation and arms control issues.

South Africa and Nigeria were two of 47 heads of state and government invited by Obama to an international nuclear security summit on 12–13 April 2010, to implement his pledge to lead an international effort 'to secure all vulnerable

nuclear material around the world within four years'.[20] The Summit followed the historic chairing by Obama of a meeting of the UN Security Council on 24 September 2009. At this meeting the Council unanimously adopted Resolution 1887 (2009).[21] This Resolution aimed at implementing the nuclear security agenda that Obama outlined in his Prague speech, in which he made public his vision of a world without nuclear weapons. In a statement released the same day, Obama announced that: 'Today, the Security Council endorsed a global effort to lock down all vulnerable nuclear materials within four years. The United States will host a summit next April to advance this goal and help all nations achieve it.'

According to the communiqué of the Washington Nuclear Security Summit, nuclear terrorism is one of the most challenging threats to international security. The heads of states present thus committed themselves to strengthen their nuclear security measures in order to reduce the threat of terrorists, criminals, or other unauthorised actors acquiring nuclear materials. The Summit Work Plan provides guidance for national and international actions to honour the pledges of the communiqué, including co-operating through the UN to implement and assist others in connection with Security Council resolutions.

While the outcome of the Summit was generally welcomed, many developing countries took exception to their not being invited. Despite its title, Resolution 1887 (2009), while demonstrating the political will to address the dangers of nuclear weapons proliferation, was also seen as soft on the urgent need for the concrete steps to be taken towards nuclear disarmament, including, for example, de-alerting all deployed nuclear weapons and reducing the role of nuclear weapons in national security policies.[22]

The second significant 2010 disarmament and non-proliferation event involving high-level South African participation was the 8th Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) held at the UN Headquarters in New York from 3–28 May 2010. The NPT, which entered into force in 1970 and was extended indefinitely in 1995, is designed to prevent the spread of nuclear weapons and weapons technology, to further the goal of nuclear disarmament and to preserve the right of states to the peaceful uses of nuclear power.

The 2010 Non-Proliferation Treaty (NPT) Review Conference came at a key time for the future of nuclear disarmament and non-proliferation. In recent times the NPT has been in crisis and the 2005 Review ended without states parties able to reach a consensus on the way forward. Added to this, the nuclear-weapon states had yet to negotiate in 'good faith' the complete nuclear disarmament proposed during the 40 years since the NPT entered into force, as required under the Treaty's Article VI obligations.

For the first time since 2000, the 190 states parties to the treaty were able to reach consensus on the way forward, with the adoption of a final document consisting of a 64-step action plan and the Conference president's interpretation of the states parties' review of each article of the NPT. Many African states played a significant role in the relative success of the conference, both individually and as members of regional groupings such as their own Africa Group, the Arab Group and the Non-Aligned Movement (NAM). The adoption of a Final Document, while not meeting all of Africa's expectations, was seen by most as a significant achievement in that it maintained the three pillars of the NPT and helped to restore some of the Treaty's integrity.[23]

One of the most important outcomes was a concrete agreement on implementing the 1995 resolution on the Middle East. The so-called Middle East Resolution refers to the decision made in 1995 that all states in the region join the NPT and put their nuclear facilities under International Atomic Energy Agency (IAEA) safeguards. This has been a long-standing goal of South Africa and many other countries in Africa and beyond. After weeks of negotiations it was finally agreed that the 'UN Secretary-General and the co-sponsors (the US, Russia and the UK) of

the original resolution, in consultation with the States of the region, will convene a Conference in 2012, to be attended by all States of the Middle East'. As of November 2010, the designation of a facilitator and host government for the 2012 Conference has yet to be decided. Israel has rejected the idea and even officials in the Obama administration appear to be less than committed.[24]

During South Africa's two-year Security Council term, there will thus be at least two important events that relate to the non-proliferation of nuclear weapons which it could profile and support: the 2012 Conference in pursuit of a Middle Eastern 'zone free of nuclear weapons as well as other Weapons of Mass Destruction (WMD) including their delivery systems'; and the next Nuclear Security Summit in the Republic of Korea in 2012 where leaders will again gather to take stock of their post-Washington work and set new goals for nuclear security. In the case of the latter, South Africa could lobby for the inclusion of more developing countries at the Summit. In the case of the 2012 Conference on the Middle East, South Africa should work to ensure that the US, Russia and the UK meet their commitment towards the timely convening of this important event.

In addition to these two events, another issue of crucial importance to international peace and security is the pending expiry, in April 2011, of the mandate of the Security Council's 1540 Committee. The 1540 Committee consists of all Security Council members and monitors and oversees the implementation of UN Security Council Resolution 1540.

UN Security Council Resolution 1540 was adopted in April 2004 and was intended to close loopholes in the non-proliferation regime by addressing the inadequacies of existing treaties and conventions.[25] Operational Paragraph 1 requires states to refrain from providing any form of support to non-state actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons. As Security Council resolutions are mandatory, states are obliged to criminalise the proliferation of weapons of mass destruction to non-state actors by implementing and enforcing effective measures in their national legislation to prevent them from being able to manufacture, be in possession of, or use any type of WMD. Resolution 1540 also obligates UN member states to report to the Committee, no later than six months after its adoption, on progress made in implementing the Resolution's provisions or plans intended to do so.

While the Resolution is now generally commended as a positive initiative, this has not always been the case and at the time of its adoption a number of countries raised concerns regarding the role of the US in the drafting, adoption and implementation of it, particularly with reference to enforcement measures. In fact, the Resolution was not the result of traditional negotiation processes but, rather, involved the P5 spending some six months working on the draft text before it was handed to the Council's elected members. Although several members of the Non-Aligned Movement (NAM) and various NGOs had pushed to have some sort of input this was carefully controlled.[26]

The African continent does not have a good reporting record on Resolution 1540 and many of the submitted reports have been incomplete. This can be attributed to several factors, including insufficient knowledge of WMD-related concerns, a lack of urgency in addressing WMD-related concerns in the face of other more pressing concerns, and the lack of financial and human resources needed to comply with obligations.

The mandate of the 1540 Committee has been extended twice before – in 2006 by UN Security Council Resolution 1673, and in April 2008 until 25 April 2011. At that time the Committee is due to submit a comprehensive review and report to the Council. South Africa is sensitive to both these constraints and to the initial backlash against 1540. In addition, South Africa may want to initiate a process to consolidate 1540 with two other significant Security Council resolutions that are aimed at dealing with terrorism-related issues, the first being Resolution

1267 (1999) and the second, Resolution 1373 (2001). In both cases a committee was established to monitor the implementation of the Resolution. The 1267 Committee was tasked to oversee the implementation of UN Security Council sanction measures (including asset freezes, travel bans and arms embargoes) by states on individuals and entities belonging to or associated with the Taliban, Osama Bin Laden and al-Qaeda.[27] The 1373 Counter-Terrorism Committee was established to monitor and assist states in implementing measures to criminalise terrorism-related activities, and now continues to increase national counter-terrorism capabilities.[28] Developing countries simply do not have the capacity to fill in complicated forms for each and every UN Security Council resolution and there is a degree of 'reporting fatigue' when these are added to the existing plethora of requirements under conventions such as the Biological and Toxin Weapons Convention (BTWC) and the Chemical Weapons Convention (CWC).

Since 1994, South Africa has committed itself to a policy of non-proliferation, disarmament and arms control as an integral part of its commitment to democracy, human rights, sustainable development, social justice and environmental protection. Its position remains unchanged from the one set out by the former Minister of Foreign Affairs, Dr Nkosazana Dlamini-Zuma, at the opening of the Nuclear Suppliers Group (NSG) Plenary meeting, Cape Town on 19 April 2007 when she stated:

> Whilst South Africa is committed to the continuous review and strengthening of measures aimed at preventing the proliferation of weapons of mass destruction, we believe that real progress in securing our world from the threat of nuclear weapons can only be achieved through concomitant progress in the area of nuclear disarmament.[29]

South Africa is therefore one of many UN members that promote the belief that equal attention be given to disarmament and non-proliferation, particularly in light of the NPT's requirement under Article VI that nuclear weapon states fulfil their obligations to eliminate their nuclear arsenals. It is a key member of the New Agenda Coalition, launched in 1998 by eight non-nuclear-weapon nations (Brazil, Egypt, Ireland, Mexico, New Zealand, Slovenia, South Africa and Sweden) with the distinct purpose of campaigning for this outcome. In addition, South Africa has emerged as a crucial bridge between developed and developing countries, offering frank support for the right of countries to develop nuclear technologies for peaceful purposes. Added to this, South Africa's renewed interest in developing its own nuclear fuel cycle puts it at centre stage in non-proliferation debates.[30]

In contrast, the P5 – all of whom are nuclear weapon states – were successful in removing any proposal that required them to take more meaningful steps to advance disarmament from the recent Non-Proliferation Treaty Review Conference outcome document. At this meeting, it became clear that the P5 were unwilling to accept the need for timelines for disarmament, and resolved only 'to seek a safer world for all and to achieve the peace and security of a world without nuclear weapons'. The document states that 'significant steps' leading to nuclear disarmament should promote international stability and be 'based on the principle of increased and undiminished security for all'. This, in effect, places various conditions on nuclear disarmament, with, for example, reductions in conventional forces by certain states, and the resolution of regional conflicts.

South Africa's membership on the UN Security Council therefore represents an opportunity for it to engage the P5 on moving forward in the quest for a nuclear weapon-free world by making this topic a theme during its month-long presidency of the Council and by mobilising for greater civil society involvement in global disarmament and non-proliferation debates and action.[31]

Conventional arms control

South Africa is a continental leader on the design and implementation of national control of small arms, light weapons and larger conventional arms. Over the past 15 years the South African government has made substantive contributions to

establishing and strengthening international arms control instruments in both the UN and other international forums.

South Africa is the most active African participant in the UN Register of Conventional Arms (UNROCA) process, and has to date submitted 16 annual reports on arms transfers. The UNROCA is a voluntary reporting instrument established in 1991 and covers seven major categories of conventional arms: battle tanks, large-calibre artillery, combat vehicles, combat aircraft, attack helicopters, warships (including submarines) and missiles (including missile launchers). The aim of the Register is to foster regional and international confidence building. In recent years South African government representatives have also played a significant role in reviewing and revitalising the UNROCA.

South Africa is the only African member of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (1995). The Wassenaar Arrangement is currently the sole international instrument that specifically relates to the control of conventional arms and dual-use goods. This instrument seeks to promote more effective transparency and responsibility in transfers of conventional arms and dual-use goods and technologies.

South Africa has been a strong proponent of the two UN instruments that relate to the control of small arms and light weapons (SALW), namely: the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All Its Aspects; and the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. The latter it is the only global, legally binding instrument that addresses the issue of small arms. South Africa is one of the few African signatories to this Protocol and is the co-author of the annual UN General Assembly SALW 'Omnibus' Resolution that charts the way forward in terms of the UN programme of action.

In 2011 and 2012 there will be a meeting of governmental experts and a Review Conference on the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All Its Aspects respectively. There is widespread speculation that a number of key issues in the programme of action will not be addressed at these meetings.

As a member of the UN Security Council, South Africa would be expected to provide leadership and representation when engaging in discussions within the Council on these matters. Most African governments are largely in favour of more rigorous conventional arms control. Hence the South African government should seriously consider taking a more active leadership role on current conventional arms control processes within the UN. Such a role would prove particularly beneficial if it were supported by civil society and backed up by informed research.

A UN process is currently being implemented to establish a legally binding treaty to govern the international conventional arms trade. It is widely referred to as the Arms Trade Treaty (ATT). The UN will be hosting a conference of states parties to negotiate the detailed terms of an ATT in 2012 and there will be a total of four UN PrepComs in 2010 and 2011 to prepare for the 2012 meeting. South Africa is one of a handful of African states with specific conventional arms-control policy and legislation, as well as a dedicated conventional arms-control coordination agency. South Africa is also openly supportive of the process.

The scope and range of a future ATT remains a complicated matter among UN member states, as such a treaty will have a direct impact on national sovereignty, most especially the ability of governments to acquire arms to protect and defend themselves. An ATT will also have consequences for arms production and exports, which is a source of income for a number of states, particularly the P5. Arms-control experts are concerned that, given these dynamics, the scope and range of an ATT is likely to be severely limited (if such a treaty is successfully negotiated at all).

Engagement by African states in UN efforts to develop an ATT has been inconsequential and has lacked depth. Only a handful of African states such as Egypt, Kenya, Nigeria and South Africa have formulated or expressed a substantive position on the ATT. This trend continued at the July 2010 Preparatory Committee discussions on an ATT (in preparation for formal treaty negotiations in 2012), with very few African states actively contributing to the debate. There also appears to be confusion among many African states about the scope, range, requirements and implications of a future ATT. In addition, many African governments have not prioritised the ATT process and consequently have only deployed staff from their permanent missions to the UN to attend ATT meetings, as opposed to sending arms-control specialists from their capitals.

In Africa, it is typically the responsibility of the national security forces to facilitate conventional arms transfers. This state of affairs has led to a lack of communication between relevant government departments, with arms often being imported or exported without the knowledge of the foreign ministry.

A related problem, which is also symptomatic of ineffective controls over the conventional arms trade in Africa, concerns the African countries that participate in the UN Register of Conventional Arms. Only a small minority of states provide information on conventional arms transfers, even in cases where exporting countries (from outside of Africa) report conventional arms transfers to those African countries that participate in the UN Register of Conventional Arms.

Previous efforts to encourage African governments to interact more vigorously with the ATT process have been largely unsuccessful, as these processes have focused almost entirely on the content, scope and negotiation dynamics of a possible ATT (and related factors), rather than locating it within the context of African foreign policy, military interests and national conventional arms controls. As a result these ATT processes have usually been general and abstract.

There are three key aspects of international conventional arms control that South Africa can address when it takes up its membership as a non-permanent member of the UN Security Council:

- First, in the negotiations on the development of an ATT, it has become apparent that the seven categories of conventional arms that are covered by the UN Register of Conventional Arms will, as a minimum, constitute the scope of a future ATT. However, the participation of UN member states in the Register has been waning in recent years. Therefore, South Africa can play a leading role in encouraging UN member states to participate more actively in the UN Register of Conventional Arms processes, which in turn would lead to a more effective future ATT.
- Second, as South Africa is a country with high levels of small arms violence – although it is also a country that has achieved considerable success in controlling small arms proliferation and reducing homicides that are the result of the proliferation of small arms – South Africa has considerable moral authority to promote more effective implementation of the UN small arms instruments. In particular, South Africa can promote a more targeted and sustainable implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All Its Aspects at the meeting of Governmental Experts (2011) and the 2012 Review Conference.
- Third, since the mid-1990s, South Africa has consistently respected and adhered to UN Security Council arms embargoes. Recently, for example, South African authorities confiscated a shipment of arms from the Democratic People's Republic of Korea (DPRK) that was destined for the Republic of Congo. This shipment was in violation of UN Security Council sanctions in relation to the DPRK. Hence, as a non-permanent member of the UN Security Council, South Africa can continue to actively promote the enforcement of UN Security Council arms embargoes.

Issues relating to women in peace and security

South Africa's return to the UN Security Council will coincide with the AU's Decade for African Women, 2010–2020, a period in which women in peace and security will remain a critical issue for both the continent and the UN.

Although both the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW 1979) and the Beijing Platform of Action (1995) drew attention to the effects of conflict on women and the relative absence of women in conflict prevention and conflict-resolution structures and efforts, it was Security Council Resolution 1325 (2000) that clearly focused on the issue. In particular, it called for the protection of women during conflict, the prevention of gender-based violence and sexual exploitation and abuse and the participation of women in peacemaking, peacekeeping and peace building. Subsequent Resolutions 1820 (2008), 1888 (2009) and 1889 (2009) sought to reinforce that landmark resolution. Resolution 1820 recognised that conflict-related sexual violence is a matter of international peace and security. Resolution 1888 called for the appointment of a Special Representative of the Secretary-General to co-ordinate UN efforts to address conflict-related sexual violence and Margaret Wallström of Sweden has been appointed to this role. Resolution 1889 calls for the UN Secretary-General to submit to the Security Council a set of indicators for use at the global level to track the implementation of Resolution 1325.

October 2010 marked the tenth anniversary of Resolution 1325 but, with the continued rhetoric, and notwithstanding the adoption of various legislative frameworks by many countries committing to addressing gender concerns in the arena of peace and security, there is still a long way to go towards its successful implementation. A 2009 UNIFEM Report indicated that: '[I]n a review of 21 major peace processes since 1992 only 2.4% ... were women. No women have been appointed chief or lead mediators in UN-sponsored peace talks, but in some talks sponsored by the AU or other institutions women have joined a team of mediators (for example, Graça Machel in the Kenyan crisis in 2008). Women's participation in negotiation delegations averaged 5.9% of the 10 cases for which such information was available.' A Security Council Report in October 2010 noted that:

- Currently there are 5 female heads of missions (CAR, Nepal, Liberia, Timor, Cyprus) and 4 deputy heads (MINURCAT, MONUSCO, UNMIL, UNAMI)
- There are 2 female formed police units – Liberia (from India) and Haiti (from Bangladesh)
- The first female UN police advisor (Sweden) was appointed in March 2010
- There has never been a female force commander
- There have only been two women in the position of Deputy Secretary-General
- Of the 17 DPKO Missions, only 11 have a dedicated gender advisor
- Of the 191 permanent representatives to the UN in New York only 24 (12.5 per cent) are women
- In 2010 only three members of the Security Council – Brazil, Nigeria and the US – had female permanent representatives
- In the 65 sessions of the General Assembly there has been only one female president from Bahrain in the 61st session (2006–2007)
- Since the adoption of resolution 1325 only 14 of the 24 UN Security Council field missions met with women's organisations[32]

In April 2010 the UN Secretary-General Report to the Security Council 'expressed its continuing deep concern about the persistent obstacles to women's full involvement in the prevention and resolution of conflicts and their participation in post-conflict public life'. In the UN Open Debate that commemorated the tenth anniversary of Resolution 1325 on 26 October, led by UN Under-Secretary-General for UN Women Michelle Bachelet, the call for a 'stronger implementation, monitoring and accountability framework' was reiterated.

Part of the process of accelerating the implementation of this Resolution is the adoption of national action plans. Presently there are only 23 countries, six of

which are African (Côte d'Ivoire, DRC, Liberia, Rwanda, Uganda and Sierra Leone) that have adopted these plans. South Africa, known to be a leading nation on the deployment of women peacekeepers and at the forefront of the advocacy to implement Resolution 1325, still does not have an action plan. The completion of South Africa's action plan will demonstrate the extent to which the country is serious about promoting women in peace and security and the extent to which it will be able to encourage other countries to adopt the same stance. South Africa can also lead in pushing for more women to be represented at negotiation tables and in peacekeeping. It must introduce concrete measures and monitoring tools for the prevention of gender-based violence and for the protection of women during conflict. The recent mass rape of women on the DRC-Angola border bears testimony to the urgency of this matter.

The 15-year review of the implementation of the Beijing Declaration and Platform for Action and the outcomes of the 23rd special session of the General Assembly that was held in March 2010 exposed the urgency of linking issues of women, peace and security to the achievement of developments such as the implementation of UN Millennium Development Goals (MDGs). The September meeting, which examined the implementation of these MDGs, exposed the grave extent to which many African countries, including South Africa, have had limited dividends in reducing child mortality, improving maternal health and combating HIV/AIDS, all of which are exacerbated by the lack of peace and security.

In July 2010, the UN General Assembly created UN Women – the UN Entity for Gender Equality and the Empowerment of Women. UN Women brings together previously distinct institutions working on gender equality and women's empowerment in the UN, such as the Division for the Advancement of Women (DAW), International Research and Training Institute for the Advancement of Women (INSTRAW), Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI) and the UN Development Fund for Women (UNIFEM). The functioning of this new umbrella body will be crucial for engendering peace and security.

South Africa's tenure on the UN Security Council should therefore provide clear leadership on the protection of women during conflict, the prevention of gender-based violence and the participation of women in peace and security-related matters.

Conclusion

Now in its second decade of freedom, South Africa is clearly in search of a foreign policy identity. Having fought and gained the liberation of the country, the old guard within the African National Congress (ANC), still firmly in charge of foreign policy if not domestic matters, is faced with an acute dilemma in a rapidly changing new world order. Its natural instinct, and one that is not necessarily shared by all South Africans, is to align itself with the global South (a much used but largely unhelpful term) and to distrust the West. The challenge here is that the relevance of old alliances such as the Non-Aligned Movement and the G77 may remain powerful blocking forces within the UN system, but they reflect little of the emerging powers and the shifts in power and influence demanded by the 21st century. South Africa has often played a key role within these alliances by serving as a bridge between opposing camps on crucial matters such as the review of the Nuclear Non-Proliferation Treaty in 2000 and, more recently, during the COP15 climate change negotiations in Copenhagen. This ability to move forward constructively needs to be nurtured and re-energised – something clearly recognised within the Department of International Relations and Cooperation.

Within both government and civil society in South Africa the emerging foreign policy debate is largely that of clearly defining its national interests. However, the debate gets bogged down in perennial circular discussions on the South African identity. If we can decide who we are, the argument goes, we will be able to decide what we want. The search for the holy grail of national identity is not one that can be easily resolved, nor will it provide adequate guidance towards the future. Clearly Africa is of huge importance for South Africa because its leadership position on the continent (and its negotiated settlement process) is the bedrock of its international standing. Economically South Africa's relationships with Africa

are key to the country's economic progress. At the same time, South Africa needs to project itself as a global actor; hence its aspirations towards membership of the BRIC countries and the like. Eventually the country may realise that its future ambitions are less ideological than many would want, but the pursuit of a rules-based world where South Africa, as a relatively small economy with declining leadership capacity in Africa, secures an equitable future for itself in a highly competitive world where economics, not politics, rule.

There can be no simple or straightforward answers to the question of how South Africa will conduct itself within the UN Security Council during 2011 and 2012. However, its conduct will be influenced by a combination of factors and forces that include the composition and ensuing power dynamics of the Council; the issues that are likely to be put before the Council, including the manner in which they are packaged and presented; South Africa's willingness or lack thereof to serve as a voice for weaker states in the international system, particularly the African region; and its ambitions for permanent membership of the Council. Unforeseen events are sure to intrude, which may range from an Israeli military attack on Iran (with the attendant consequences for global oil supplies) to the radicalisation of the Arab peninsula and Northern Africa. If Africans employ a US-style response to the threat of radical Islam, Darfur could ignite a regional conflagration and terrorism could spread across the Sahel. Any of these potential events could derail the steady stream of good news that has emerged from Africa's development trajectory in recent years.

The UN Security Council was established to avert and deal with these and other threats to international peace and security. This paper has therefore sought to highlight some of the longitudinal issues and opportunities that South Africa will be presented with during its second term in the UN Security Council. It has not dealt with country-specific security issues such as how South Africa is likely to react to the issue of sanctions on Iran; instability in Darfur; the referendum in Sudan on 9 January 2011, which is bound to occupy the attention of the Council for most of that month; the need to support stability in Somalia; and a possible war between North and South Korea. Nor has this paper dealt with the perennial debate on improved peacekeeping mandates, about which much has been written and more will inevitably follow.

In response to the election of Colombia, Germany, India, Portugal and South Africa to the UN Security Council, Susan E. Rice, the US Permanent Representative to the UN warmly congratulated all, stating: '[E]ach is a strong democratic nation that has demonstrated its commitment to the principles of the UN Charter ... We look forward to working closely with these countries to address issues fundamental to international peace and security, including nuclear non-proliferation, counter-terrorism, conflict prevention and resolution, promotion of democracy and human rights, and the oversight of complex UN field operations.' It would indeed be gratifying if these countries, and indeed the US itself, could actively engage on the list of priorities so clearly defined by Ambassador Rice.

South Africa will, as in the past, take its role on the UN Security Council seriously and view it as a mandate on behalf of Africa, and it will not adopt a role that narrowly reflects only its own national agenda or ambitions. Hence South Africa's position will reflect many of the provisions most succinctly outlined in the Ezulwini Consensus. These include the need for closer co-operation and co-ordination between the General Assembly, the Security Council, ECOSOC, the major funds and programmes, the UN specialised agencies and regional organisations, as well as the reform of the UN Security Council and the Bretton Woods institutions in particular.[33] There are many opportunities sketched out in this paper but it is important to recognise that South Africa's ability to impact upon these matters is limited. President Zuma will inevitably face unrealistic expectations from diverse constituencies. In conclusion, one can only predict with certainty that the next two years are going to be testing and quite probably tumultuous. South Africa is, inevitably, in for a bumpy but exciting ride that will have long-lasting implications for the future global positioning of Africa's largest economy.

1   As Issaka Souaré of the Institute for Security Studies recently argued: '… it would appear that some observers reduce South Africa's performance in this period to two issues: its opposition to a Council resolution on the human rights violations in Myanmar (also known as Burma), and its objection to calls for the Council to impose sanctions against Zimbabwe, Issaka K. Souaré, South Africa's Readmission to the UN Security Council, ISS Today, Pretoria. http://www.issafrica.org/iss_today.php?ID=1045 (accessed 11 November 2010).

2   Simon Freemantle and Jeremy Stevens, *Placing the BRIC and Africa commercial partnership in a global perspective*. Standard Bank discussion paper, 19 May 2010: 1.

3   http://www.ibsa-trilateral.org/index.php?option=com_content&task=view&id=102&Itemid=46 (accessed 4 November 2010).

4   http://www.reuters.com/article/idUSN1513243520100416 (accessed 5 November 2010).

5   South Africa's potential as a member of the BRICs or indeed as a candidate for a permanent seat at the UN Security Council is largely derived from its political and economic leadership position in Africa. Compared to the BRICs the South African economy is much smaller, with Mexico and South Korea more viable additions according to the authors of the Goldman Sachs report who first coined the acronym. Mexico and South Korea are respectively the world's 13th and 15th largest economies while South Africa is the 32nd position. However, size is not everything, for China outstrips the size of Russia and India by the same margin (four times) that they outstrip South Africa. The situation on a GDP per capita basis is more favourable for South Africa, however.

6   The Common African Position on the Proposed Reform of the United Nations: the Ezulwini Consensus, 7th Extraordinary Session of the Executive Council of the African Union, 7–8 March 2005, Ext/EX.CT/2 (VIII).

7   Ezulwini Consensus: 9–10.

8   As a result, President Jacob Zuma, in his June 2009 state of the nation address, listed the ten priority areas that formed the basis for his government's Medium-Term Strategic Framework for 2009 to 2014. Understandably these areas focused on domestic matters, although included, as the eighth priority, a commitment to working with Africa and the rest of the world to pursue African advancement and enhanced international co-operation. Most revealing was the explicit statement that: 'The main goal of government for the medium term is to ensure that our foreign relations contribute to the creation of an environment conducive to sustainable economic growth and development.' (This speech is available at allafrica.com/stories/200906030272.html) Less than a year later, speaking as the Minister in the Presidency for Performance Monitoring and Evaluation, Collins Chabane added further nuance to this statement, noting that President Jacob Zuma has 'two main priorities: to make South Africa a global diplomatic and economic player and to provide efficient services.' (See *Chabane outlines Zuma's priorities* by Stephen Grootes | 2010/09/23 09:40:47 AM http://www.eyewitnessnews.co.za/articleprog.aspx?id=49169.) Indeed the first foreign trip that the President undertook was to Angola, followed by visits to various other African oil-producers and then to each of the BRICs.

9   Security Council Resolution 1674, adopted on 28 April 2006, 'reaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity'. The resolution also commits the Council to action to protect civilians in armed conflict. http://en.wikipedia.org/wiki/United_Nations_Security_Council (accessed 10 November 2010)

10   Ezulwini Consensus: 6.

11   The six-member UN/AU High-Level Panel on the Financing of AU-led Peace Support Operations (also known as the Prodi Panel), which was chaired by Romano Prodi, former Prime Minister of Italy and former Chairperson of the European Union Commission, was established in accordance with UN Security Council Resolution 1809, on 16 April 2008. The Panel was tasked with assessing how the international community could support the AU's military, technical, logistic and administrative capabilities in peace support operations.

12   Update No. 2 UN Co-operation with Regional and Sub-regional Organisations in the maintenance of international peace and security, 8 January 2010. http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.5715945/k.21C/Update_No_2brUN_COOPERATION_WITH_REGIONAL_AND_SUBREGIONAL_ORGANISATIONSbrIN_THE_MAINTENANCE_OF_INTERNATIONAL_PEACE_AND_SECURITYbr8_January_2010.htm

13   Statement by the President of the Security Council, S/PRST/2010/1, 13 January 2010, http://www.un.org/Docs/sc/unsc_pres_statements10.htm (accessed 9 November 2010).

14   Statement by the President of the Security Council, S/PRST/2010/4, 16 July 2010, http://www.un.org/Docs/sc/unsc_pres_statements10.htm (accessed 9 November 2010)

15   Done by the Institute for Security Studies through an African expert study on the AU's concerns about Article 16. This study is part of the ISS's work on 'The ICC that Africa wants' which aims to constructively shape the work of the ICC from an African perspective. The report, which was written by three leading African international criminal law experts and endorsed by 18 African and international legal experts (from government, academia and civil society), provides a comprehensive overview of the role of the UN Security Council in the work of the ICC and makes several practical and policy-relevant recommendations aimed at breaking the current deadlock on the Article 16 deferral request by the AU. Available at www.issafrica.org.

16   The Ezulwini Consensus: 5 noted the following: 'There is particular value in achieving a consensus definition of terrorism within the General Assembly, given its unique legitimacy in normative terms. The Assembly should rapidly complete negotiations on a comprehensive convention on terrorism. The legal definition of terrorism should be the subject of a treaty concluded by the General Assembly and is not a matter to be determined and imposed by the other organs of the United Nations. The appropriate definition must also

address the root causes and conditions that impel people towards terrorist acts.'

17 Held on 24 November 2008, and entitled 'Promoting awareness and implementation of the United Nations Global Counter-Terrorism Strategy in South Africa: The role of Government and Civil Society', the aim of the workshop was to promote awareness of the Strategy among key government departments and civil society organisations and to explore key areas of action required to ensure effective and integrated implementation of the Strategy. Recognising the important role of civil society in implementing the Strategy, the then Department of Foreign Affairs partnered with the ISS to host the event. Following the General Assembly's biennial review of the Strategy on 8 September 2010, the Department of International Relations and Co-operation (DIRCO), in partnership with the ISS, plans to host a follow-up workshop to prioritise the efforts to implement Pillars one and four of the Strategy.

18 The ISS has been advising the director of the Counter-Terrorism Implementation Task Force (CTITF) – the UN body tasked with ensuring the implementation of the Strategy – for the past two years and is partnering with the CTITF to hold several workshops in Africa to raise awareness and promote the implementation on the Strategy.

19 Ezulwini Consensus: 4.

20 The other African states invited were Algeria, Egypt and Morocco.

21 UN Security Council Resolution S/RES/1887 (2009): Nuclear Non-Proliferation and Nuclear Disarmament.

22 See for example, N.D. Jayaprakash. 'Non-proliferation and the Challenge of Nuclear Disarmament: A Critique of UN Security Council Resolution S/RES/1887 (2009), http://dissidentvoice.org/2010/05/non-proliferation-and-the-challenge-of-nuclear-disarmament/ (accessed 1 December 2010).

23 For a detailed analysis of the Review Conference see: Foy Kum Hubert, Amelia Broodryk and Noel Stott, 'Keep Calm and Carry On'. An Initial African Assessment of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) 2010 Review Conference, ISS Paper 211, July 2010. http://www.issafrica.org/publications (accessed 6 November 2010).

24 See for example: BBC News. 'Israel rejects Middle East nuclear talks plan.' 29 May 2010; Reuters. 'US "regrets" that Israel singled out in treaty text.' 28 May 2010.

25 Olivia Bosch and P. van Ham, 'Global Non-proliferation and Counter-terrorism: The Impact of UN Security Council R 1540'. The Hague: Clingendael Institute, 2007.

26 L. Olberg, 'Implementing Resolution 1540: What the National Reports Indicate', *Disarmament Diplomacy*, Issue no. 82, Spring 2006. http://www.acronym.org.uk/dd/dd82/82lo.htm (accessed 15 October 2010).

27 Also known as the Al-Qaida and Taliban Sanctions Committee.

28 See: Dominique Dye, 'African perspectives on countering weapons of mass destruction', ISS Paper 167, September 2008. http://www.issafrica.org/publications (accessed 7 November 2010).

29 Address by the Minister of Foreign Affairs, Dr Nkosazana Dlamini Zuma at the opening of the Nuclear Suppliers Group (NSG) Plenary meeting, Cape Town, 19 April 2007.

30 Jack Boureston and Jennifer Lacey, 'Shoring up a crucial bridge: South Africa's pressing nuclear choices', *Arms Control Today* 37, no.1, January–February 2007.

31 This is no better illustrated than by the Geneva-based Conference on Disarmament (CD) – the international multilateral forum for disarmament negotiations. Although the CD has a permanent agenda since it successfully completed negotiations of the Comprehensive Test Ban Treaty in 1996, its members have been unable to reach agreement on a programme of work and therefore have been prevented from addressing substantive issues, including a Fissile Material Cut Off Treaty (FMCT). Unlike in most international fora, no formal mechanism exists for civil society to have an input into the CD and to put pressure on the CD's members to develop and adopt a substantive programme of work. South Africa, together with Indonesia, Austria, Sweden, Croatia, Algeria, and Belarus have called for greater participation of NGOs in the CD's work and have highlighted the potentially positive contribution of civil society.

32 Report on Women, Peace and Security, No. 2, October 2010. Available at www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.6239031/k.197D/CrossCutting_Report_No_2brWomen_Peace_and_Securitybr1_October_2010.htm (accessed 14 November 2010).

33 Ezulwini Consensus: 7.