

# An examination of unlawful foreign military operations in Africa

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**ABSTRACT:** For almost two decades, unlawful foreign military bases and troops have been scattered across fragile countries and regions in Africa, from the Horn to the Great Lakes; and from the Sahel to the Gulf of Guinea, with the potential to disrupt peaceful co-existence in these countries. This article argues that unlawful foreign military intervention in these African countries intensifies the security issues rather than build peace. It provides a comprehensive overview of the international legal framework regulating the use of force in international relations, and contends that, although the rules of international law on the use of force are clear, they are not sufficiently respected in practice. This article further demonstrates that, despite the unlawfulness of military intervention without the United Nations Security Council's explicit permission, this type of intervention is increasing in several African countries. It does not intend to enumerate all the unlawful military interventions of the African continent, but to explore how these operations exacerbate remonstrations rather than build peace. The article concludes that it is challenging to prove the unlawfulness of several military operations in Africa due to the diversity of actors, and the lack of transparency about this kind of operation. Inevitably, the most visible part of unlawful foreign military operations is its impact on the target countries of the continent.

## TITRE ET RÉSUMÉ EN FRANCAIS:

### Réflexion sur les opérations militaires étrangères illégales en Afrique

**RÉSUMÉ:** Pendant près de deux décennies, des bases et des troupes militaires étrangères illégales ont été implantées dans les pays et régions fragiles d'Afrique, de la Corne aux Grands Lacs; et du Sahel au golfe de Guinée, avec la possibilité de perturber la coexistence pacifique dans ces pays. Le présent article soutient qu'une intervention militaire étrangère illégale dans ces pays africains intensifie les problèmes de sécurité plutôt que de construire la paix. L'article offre un aperçu complet du cadre juridique international régissant le recours à la force dans les relations internationales et soutient que, bien que les règles du droit international sur l'usage de la force soient claires, elles ne sont pas suffisamment respectées dans la pratique. L'article démontre en outre que, malgré l'illégalité d'une intervention militaire sans l'autorisation explicite du Conseil de sécurité des Nations Unies, ce type d'intervention se multiplie dans plusieurs pays africains. Il n'a pas l'intention d'énumérer toutes les interventions militaires illégales sur le continent africain, mais d'explorer comment ces opérations exacerbent davantage les protestations plutôt qu'elles ne contribuent à la paix. L'article conclut qu'il est difficile de prouver l'illégalité de plusieurs opérations militaires en Afrique en raison de la diversité des

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The author would like to thank all the reviewers for their constructive comments, notably Dr Oyeniyi Abe.

acteurs et du manque de transparence des dites opérations. Inévitablement, la partie la plus visible des opérations militaires étrangères illégales est son impact sur les pays cibles du continent.

**KEY WORDS:** unlawful foreign military intervention, UN Charter, Security Council, African Union, colonialism

**CONTENT:**

1	Introduction .....	299
2	The use of force in international relations .....	301
2.1	The sacred principle of the prohibition of the use of force.....	302
2.2	The use of force authorised by the United Nations Security Council.....	306
3	The practice of unlawful foreign military intervention on the African continent .....	309
4	The impacts of Africa's growing suspicious foreign military bases and operations .....	317
4.1	Strengthening Africa's authoritarian regimes through unlawful military operations .....	318
4.2	Weakening fragile states and democracies .....	320
5	Conclusion.....	323

## 1 INTRODUCTION

Africa has for many centuries been a continent under military siege. There is some debate about the period when foreign military presence in Africa started. While some hold the view it started after the end of the Cold War, others take the position that it started in the postcolonial era. Either way, there is evidence that its roots are to be found in the late sixteenth century.<sup>1</sup> However, in popular discourse, discussions of colonialism in Africa usually focus on the phenomena, which took place between the 1800s and 1960s.<sup>2</sup>

Defining colonialism is not an easy task; even though it is universally agreed that colonialism is a form of domination. However, its precise meaning has defied scholars. Young considers that colonialism 'involved an extraordinary range of different forms and practices carried out with respect to radically different cultures, over many centuries'.<sup>3</sup> Colonisation is also perceived as a 'situation in which people are governed by other people politically, economically, intellectually and physically.' From the colonial power's point of view, the colony is 'a geographical area kept for political, strategic and economic advantage'.<sup>4</sup> Furthermore, one of the challenges in conceiving colonialism is that it is hard to distinguish it from imperialism.<sup>5</sup> Some

1 A Assensoh & Y Assensoh *African military history and politics coups and ideological incursions, 1900–present* (2002) 20.

2 S Ocheni & B Nwankwo 'Analysis of colonialism and its impact in Africa' (2012) 8 *Cross-Cultural Communication* 46 54. For example, the direct and overall domination of Nigeria by Britain between 1900 and 1960.

3 R Young *Postcolonialism: an historical introduction* (2001) 17.

4 S Klausner & E Eskimo *Capitalists: oil, politics, and alcohol* (1982) 24.

5 The concept of imperialism emerged in the modern age, associated particularly with the European colonial powers of the 17th, 18th, and 19th centuries and New Imperialism. It first became common in the current sense in Great Britain during the 1870s, when it was used with a negative connotation.

scholars, such as Said, use the term more broadly to define any 'system of domination and subordination organized around an imperial core and a periphery'.<sup>6</sup> In the same vein, Ocheni and Nwankwo assert that the phenomenon of colonialism qualifies as a direct form of imperialism 'because all colonialism is imperialism, but not all imperialism is colonialism'.<sup>7</sup> Frequently the two concepts are used as synonyms. According to Horvath 'colonialism, imperialism, and neo-colonialism are terms that remain undefined despite the enormous literature devoted to the phenomena'.<sup>8</sup>

Within the African context, colonialism and imperialism have largely been viewed in extremely negative terms by the indigenous people of the continent. In this sense, Rodney and Kabwegyere consider that 'the colonialists, out of selfish interests, hastened to dismember and balkanize Africa into small or fragile pockets of nonviable nation-states'.<sup>9</sup> According to them, the colonial era introduced into Africa more violence and instability.<sup>10</sup>

The negative impact of colonisation on Africa continues to be a subject of intense debate, especially with the presence of many unlawful foreign military operations across the continent. A careful analysis will show that colonialism still plays a major role in the tragedies and disasters we see in Africa today. There is a growing perception in Africa that a 'new colonial era' has begun.<sup>11</sup> In a neo-colonial state, the former colonial powers use numerous methods to ensure that the newly independent colonies remain dependent on them economically and politically.<sup>12</sup> Post-colonial studies have shown that the influences of colonialism and its agents are still very much present in the former colonies even after their independence.<sup>13</sup> The superpowers still perceived post-colonial Africa as a fertile area for their ideologies and for taking advantage of resources at low cost.<sup>14</sup> Besides the postcolonial powers, new actors in Africa, including China, are increasingly intervening militarily on the continent. Although not always realised, unlawful military intervention features as a prominent facet of how some states pursue their interests in Africa. The last several years have witnessed a growing number of unlawful foreign military interventions

6 E Said *Culture and imperialism* (1994) 9.

7 Klausner & Eskimo (n 2) 46.

8 R Horvath 'A definition of colonialism' (1972) 13 *Current Anthropology* 45 47.

9 Assensoh & Assensoh (n 1) 13.

10 As above.

11 M Langan 'Emerging powers and neo-colonialism in Africa' in M Langan (eds) *Neo-colonialism and the poverty of 'development' in Africa* (2017) 89 99; K Krumova 'The new form of imperialism in Africa' *The Aspen* 23 September 2011 Institute <https://www.aspeninstitute.org/blog-posts/new-form-imperialism-africa/> (accessed 18 September 2020).

12 A Taiwo 'Neocolonialism' (2017) Internet Encyclopedia of Philosophy. <https://iep.utm.edu/neocolon/> (accessed 18 September 2020).

13 As above.

14 'After the Cold War: Views from Africa; Stranded by superpowers, Africa seeks an identity' *The New York Times* 17 May 1992. <https://www.nytimes.com/1992/05/17/world/after-cold-war-views-africa-stranded-superpowers-africa-seeks-identity.html> (accessed 17 September 2020).

in internal and regional disputes in Africa. This kind of foreign military presence reflects the new policy of the imperialist powers towards several African countries.

Unlawful foreign military operations, which are perpetual and recurring phenomena, need to be investigated. This issue raises a range of legal issues, among which is the legal regime governing this kind of military operation. Legality is one of the biggest problems when it comes to military intervention. Consequently, proving the unlawfulness of several military operations in Africa is not an easy task due to the obscurity surrounding this type of intervention. In fact, international law, together with the practice, and the impacts could offer an overview of the unlawfulness of several foreign military operations in Africa.

The discussions on the details, circumstances, and arguments that were given by states and scholars in each and every one of those situations which prove the existence of unlawful military intervention in Africa is beyond the scope of this article. Also, its focus is only on foreign military intervention from an international perspective, with a particular focus on Africa.

The second part of the article starts by providing a general overview of the use of force in international relations while emphasising the principle of the prohibition of the use of force, as found in UN Charter and customary international law. In the third part, the unlawful foreign military intervention in the African continent is highlighted. This is done by focusing, mainly, on France, the United States (US), and China. The fourth part is devoted to some of the impact of these foreign military bases and operations.

## **2 THE USE OF FORCE IN INTERNATIONAL RELATIONS**

The rules of international law governing the use of force are clear. They are found in the UN Charter and in customary international law. As will be explained below, the UN Charter refers to two exceptions in which the prohibition on the use of force does not apply. First, forcible measures may be taken or authorised by the UN Security Council (UNSC), acting under Chapter VII of the UN Charter. Second, force may be applied in the exercise of the right of individual or collective self-defence, as allowed for in article 51 of the UN Charter. It is also crucial to consider that the use of force at the demand or with the duly given consent of the government of the territorial state does not give rise to an issue under the *jus ad bellum*.

## 2.1 The sacred principle of the prohibition of the use of force

The prohibition of the threat or use of force is ‘one of the cornerstones of the modern international legal order’.<sup>15</sup> Indeed, the use of force in international relations is restrained by both customary international law and by treaty law, mainly the UN Charter. Article 2(4) of the UN Charter explicitly prohibits UN member states from using force directed against the territorial integrity or political independence of another state, or in any other way incompatible with the objectives of the UN.<sup>16</sup>

The ‘use of force’ is prohibited between states under international law, both under treaty and customary law.<sup>17</sup> The question is whether the customary norm of the prohibition of the use of force is identical to or distinctive from the treaty norm.<sup>18</sup> In the *Nicaragua* judgment, the International Court of Justice (ICJ) approved the similarities and correlation between the principle of the prohibition of the use of force in article 2(4) of the UN Charter and customary international law.<sup>19</sup> In this context, D’Amato observes that even though treaty and customary norms are identical, they might develop independently, and their content may evolve.<sup>20</sup> While the majority of scholars, as well as the International Law Commission (ILC) and ICJ, view the prohibition of the use of force as having the character of *jus cogens*,<sup>21</sup> others challenge its peremptory character. For instance, Green questions whether the prohibition of the use of force is a *jus cogens* norm.<sup>22</sup> The author states that the prohibition of the use of force with the prohibition of the threat of force in article 2(4) leads to issues, given that the ban on the threat of force is certainly not peremptory in character. The crucial issue is the derogations to the prohibition of the use of force. He concludes that it is impossible to consider the prohibition of the use of force as peremptory, given that its derogations, related to self-defence and collective security, are universally accepted.<sup>23</sup>

15 O Dörr ‘Use of force, prohibition of (2015) *Max Planck Encyclopaedias of International Law* <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e427> (accessed 5 June 2020).

16 Art 2(4), UN Charter.

17 F Delerue *Cyber operations and international law* (2020) 281.

18 As above.

19 Case Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v the United States of America*) (27 June 1986) (1986) ICJ Reports 14, 89, para 187.

20 A D’Amato ‘Trashing customary international law’ (1987) 81 *American Journal of International Law* 101 104.

21 J Charney ‘Anticipatory humanitarian intervention in Kosovo’ (1999) 93 *American Journal of International Law* 834 837; N Wheeler *Saving strangers: humanitarian intervention in international society* (2002) 44 45; L Moir *Reappraising the resort to force: international law, jus ad bellum and the war on terror* (2010).

22 J Green ‘Questioning the peremptory status of the prohibition of the use of force’ (2011) 32 *Michigan Journal of International Law* 216.

23 As above.

In any case, it must be admitted that the interpretation of the use of force and its derogations is still controversial among scholars. Two main approaches are recognized.<sup>24</sup> First, a 'restrictive approach' is advocated, based on the strict interpretation of the prohibition of the use of force, authorising the use of force only when it appears to be necessary. Many authors prefer a legally and textually oriented method to interpret the rule.<sup>25</sup> Henderson supports a rather restrictive interpretation of the relevant provisions of the UN Charter, claiming that those articles must not be modified in spite of the new interpretations that appeared and increased in the last decades.<sup>26</sup> In a similar, but somewhat narrower context, Kolb supports a strict obligation to respect *jus contra bellum*. The author uses moral or pragmatic arguments to interpret the legal regime of the use of force and the maintenance of peace in international relations.<sup>27</sup>

Gray focuses on the practice, and the will, of states to confirm that different doctrinal intents aiming at easing the prohibition on the use of force have failed.<sup>28</sup> In response to the UN initiated major reports on the future of the Charter system, Gray considers that the efforts to amend or reinterpret the Charter provisions on the use of force are neither desirable nor likely to succeed. She also rejects any right of pre-emptive self-defence and advocated a responsibility to protect in cases of genocide or massive violations of human rights.<sup>29</sup> Furthermore, the author argues that states should not be permitted to aid another government's military in order to suppress rebellion 'when a civil war is taking place and control of the state's territory was divided between warring parties'.<sup>30</sup> In the same vein, Schachter notes that

[m]any legal scholars (and some UN resolutions, by implication) support the proposition that direct or indirect armed intervention on either side in a civil war is illegal. Under article 2(4) intervention constitutes a use of force 'against the political independence' of the state in question because it interferes with its people's right to determine their own political destiny.<sup>31</sup>

24 O Corten 'The controversies over the customary prohibition on the use of force: a methodological debate' (2005) 16 *European Journal of International Law* 803-822.

25 As above.

26 CH Henderson *The use of force and international law* (2018) 28, 33.

27 R Kolb *International law on the maintenance of peace. Jus contra bellum* (2018).

28 CH Gray *International law and the use of force* (2018) 79, 82.

29 As above.

30 As above.

31 T Christakis & K Bannelier 'French military intervention in Mali: It's legal but ... why? Part II: Consent and UNSC authorisation' EJIL: TALK! 25 January 2013 <http://www.ejiltalk.org/french-military-intervention-in-mali-its-legal-but-why-part-2-consent-and-unscc-authorisation/> (accessed 19 September 2020).

Turning to Africa, in the *Case Concerning Armed Activities on the Territory of the Congo*, the ICJ interpreted the prohibition of the use of force restrictively and found that Uganda acted unlawfully.<sup>32</sup> The Court held that the armed activities of Uganda in the Democratic Republic of Congo between August 1998 and June 2003 violated the international prohibition against aggressive use of force as well as international human rights and international humanitarian law.<sup>33</sup>

Second, the 'extensive approach' tends to favour a very flexible interpretation when it comes to the prohibition of the use of force. This approach admits more derogation such as 'preventive self-defence', 'humanitarian intervention', or even the implicit authorisation of the UNSC.<sup>34</sup> In other words, the flexible approach is based on a broad definition of self-defence, a rejection of a UN monopoly to authorise military actions, and the admissibility of humanitarian or pro-democratic interventions.<sup>35</sup> Franck claims that the evolution of custom shows a tendency to accept the legality of many actions conducted in the name of self-defence, humanitarian intervention, or even countermeasures. The author also promotes 'the concept of mitigation, which allows some 'limited violations' of the UN Charter'.<sup>36</sup>

While the restrictive approach should be promoted in the sphere of international relations between UN member states, practice shows that the opposite is the case. However, by and large, the broad interpretation approach seems to be increasingly neglected. At the African level, a wide range of international military installations is currently operating in several African countries like Djibouti, Mali and Libya. It seems increasingly obvious that the most powerful states are deploying their military bases in Africa to pursue their geostrategic interests.<sup>37</sup> This raises questions about the legal basis for such military deployment and intervention. Except for states' 'right of self-defence, the UNSC 'possesses the legal monopoly on the use of force'.<sup>38</sup> Thus, the intervention without the UNSC's clear approval is a breach of the UN Charter.<sup>39</sup> However, the question, essentially, is whether the UNSC is the only authority able to authorise states to use force. This question

32 Case concerning *Armed Activities on the Territory of the Congo (Congo v Uganda)* (19 December 2005) (2005) ICJ Reports 168.

33 M McGuinness 'Case concerning armed activities on the territory of the Congo: The ICJ finds Uganda acted unlawfully and orders reparations' (2006) 10 *The American Society of International Law Insights*. <http://www.asil.org/insights/2006/01/insights060109.html> (accessed 19 September 2020).

34 T Findlay *The use of force in UN peace operations* (2002) 6; CH Tams 'The use of force against terrorists' (2009) 20 *European Journal of International Law* 388.

35 Corten (n 24) 803.

36 T Franck *Recourse to force: state action against threats and armed attacks* (2002) 21 29.

37 A Samson 'The Grand Weiqi board: reconsidering China's role in Africa' (2011) 7 *Security Challenges* 61 62; S Degang & Y Zoubir 'The eagle's nest in the Horn of Africa: US military strategic deployment in Djibouti' (2016) 51 *Africa Spectrum* 111 120.

38 W Slomanson *Fundamental perspectives on international law* (2010) 476 477.

39 G Evans 'When may state use force?' *Australian Strategic Policy Institute* 30 April 2018 <https://www.aspistrategist.org.au/> (accessed 6 June 2020).

seems difficult to address, as the conventional sources are rather limited. Article 2(4) and Chapters VII and VIII of the UN Charter are far from providing explicit answers to the question raised. Thus, the answer can be found mainly in customary international law, with all the difficulties surrounding the task of establishing that law.

The idea that a military intervention within another sovereign state might be permissible, even without the endorsement of the government of that state, has a 'distinguished lineage in international legal and moral discourse'.<sup>40</sup> In other words, military intervention could be legitimate as a 'response to horrors as systematic attacks by a government on its own people, genocide, widespread starvation or complete failure of the government to ensure the most elementary conditions of life'.<sup>41</sup> Ironically, the world failed to intervene in Rwanda where almost a million people were killed due to the lack of intervention by the international community.

In the African context, article 4(h) of the Constitutive Act of the African Union (AU) establishes the right of the AU to intervene in a member state to prevent grave violations of human rights namely: war crimes, genocide and crimes against humanity.<sup>42</sup> Subsequently, the AU added amendments to enlarge the Constitutive Act to extend the right of intervention to 'a serious threat to a legitimate order to restore peace and stability to the member state of the Union upon the recommendation of the Peace and Security Council'.<sup>43</sup> It is evident that by the intervention, the AU Constitutive Act involves military intervention authorised by the AU Assembly and executed by African forces in an African states, where at least one of the grave circumstances cited above happens.<sup>44</sup> However, article 4(h) does not state whether the AU should request prior authorisation from the UNSC, leading to many interpretations.<sup>45</sup> Legally speaking, the AU needs authorisation from UNSC in the sense of article 53 of the UN Charter, which stipulates that no 'enforcement action shall be taken under regional arrangements or by regional agencies without the authorisation of the Security Council'. The matter of military intervention within the framework of the AU, as a regional organisation, is beyond the scope of this paper. The emphasis in this article is on foreign military intervention from a purely international perspective, with a particular focus on Africa.

40 M Ramuhala *Military intervention in Africa after the Cold War* (2001) 24.

41 A Roberts 'The road to hell ... a critique of humanitarian intervention' (1993) 16 *Harvard International Review* 2.

42 Art 4(h), AU Constitutive Act.

43 African Union 'Protocol on Amendments to the Constitutive Act of the African Union' 11 July 2003; not yet in force.

44 G Amvane 'Intervention pursuant to article 4(h) of the Constitutive Act of the African Union without United Nations Security Council authorisation' (2015) 15 *African Human Rights Law Journal* 282 286.

45 As above.

## 2.2 The use of force authorised by the United Nations Security Council

As noted in the previous section, the legal framework governing the military intervention and the use of force in international law is enshrined in the UN Charter. Under the UN Charter, the use of armed force is expressly allowed only in two cases: on the one hand, when it comes to 'self-defence'<sup>46</sup> and, on the other hand, when the UN itself, through the UNSC, authorised under the provisions of Chapter VII, 'the lawful use of force'.<sup>47</sup> While it is not expressly mentioned in the UN Charter, the right of self-defence against non-state actors has been increasingly invoked and admitted in practice even if its lawfulness has not yet been clearly proved.<sup>48</sup> The focus on this part will not be on the inherent right of collective or individual self-defence if an armed attack occurs against a member of the UN in the sense of article 51 of the UN Charter, but on the use of force by the UNSC if international peace and security are threatened.

The UN Charter is built around the objective of maintaining the international peace and security. Article 24 of the UN Charter entrusts the UNSC with the 'primary responsibility for the maintenance of international peace and security'.<sup>49</sup> To ensure that it thoroughly plays this role, the UNSC acts on behalf of the United Nations member states.<sup>50</sup> The functions and powers of the UNSC are very broad, including the use of military force, if necessary. However, this does not mean that its power is limitless. The Council is 'bound by fundamental principles of a peremptory or *jus cogens* character, in carrying out its functions and responsibilities, although there is no universal agreement as to which principles would include'.<sup>51</sup>

Thus, the UNSC may use force in case of threats to international peace and security. 'Before the Security Council can adopt enforcement measures, it has to determine the existence of any threat to the peace, breach of the peace or act of aggression.'<sup>52</sup> The range of situations which the Council determined as giving rise to threats to the peace

46 E De Wet *The Chapter VII powers of the United Nations Security Council* (2004) 262.

47 As above.

48 N Tsagourias 'Self-defence against non-state actors: the interaction between self-defence as a primary rule and self-defence as a secondary rule' (2016) 29 *Leiden Journal of International Law* 801-825.

49 Art 24(1), UN Charter stipulates: 'In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf'.

50 Art 25, UN Charter stipulates: 'The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter'.

51 T Gill 'The legal characterization and basis for enforcement operations and peace enforcement operations under the UN Charter' in T Gill & D Fleck (eds) *The handbook of the international law of military operations* (2010) 84.

52 Art 39, UN Charter.

covers 'country-specific situations such as inter- or intra-state conflicts or internal conflicts with a regional or sub-regional dimension'.<sup>53</sup> For this reason, all the member states have a duty 'to make available to the UNSC, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security'.<sup>54</sup> Also, the UN Charter established a subsidiary body of the UNSC, which is the Military Staff Committee (MSC). The main mission of the Committee is to advise and support the UNSC on all questions concerning the UNSC's 'military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation or armaments, and possible disarmament'.<sup>55</sup> According to the UN Charter the Military Staff Committee must 'consist of the Chiefs of Staff or the permanent members of the UNSC or their representatives'<sup>56</sup> and that the MSC 'shall be responsible under the UNSC for the strategic direction of any armed forces placed at the disposal of the Security Council'.<sup>57</sup>

The provisions of chapter VII of the UN Charter were ambitious. However, in practice, the MSC met regularly for some years,<sup>58</sup> but the military arrangements under article 43 of the UN Charter have never been concluded. In this context, Young investigated the causes that prevented the UN from establishing a standing military force under the direct control of the UNSC on the advice of the MSC. He concluded that the great potential of solidarity and agreement, which had marked the war effort and which had 'carried over into drafting of the Charter, broke down, leading to the polarisation of the international system and the onset of the cold war'.<sup>59</sup> In the same vein, Roberts and Zaum considered that 'the disagreement among the P5 about the size, the composition, and basing arrangement of national contributions' are behind the inability of the UNSC to establish permanent armed forces.<sup>60</sup> Without going into all the details, which require an explanation of a political, military, and legal nature, the UNSC fails to implement a standing UN military force. To overcome that deadlock, the UN developed the concept of peacekeeping,<sup>61</sup> which was not included in the Charter, and the practice of authorisation or delegation of military intervention.

The UNSC may recourse to the delegation of military intervention in case of a threat to international peace or security. However, the

53 As above.

54 Art 43, UN Charter.

55 Art 47(1), UN Charter.

56 Art 47(2), UN Charter.

57 Art 47(3), UN Charter.

58 L Burns & N Heathcote *Peacekeeping by UN forces: from Suez to the Congo* (1963) 197.

59 O Young *The intermediaries: third parties in international crises* 1967 122.

60 A Roberts & D Zaum *Selective security: war and the United Nations Security Council since 1945* (2008) 48.

61 M Goulding 'The evolution of United Nations peacekeeping' (1993) 69 *International Affairs* 451 464.

delegation of military intervention is not explicitly enshrined in the Charter, but it has been recognized by practice. Thus, the basis of the practice of military delegation can be deduced through an extensive interpretation of the UN Charter. That is to say, that the UN Charter recognises, implicitly, the practice of delegation of military intervention.<sup>62</sup> Therefore, every foreign military intervention must be based on prior authorisation from the UNSC. However, one important 'area of debate that began in the wake of the US-led invasion of Iraq remains unresolved: does the use of force necessitate a direct resolution from the UNSC sanctioning such action' or is 'implied Security Council authorisation' sufficient?<sup>63</sup>

The UN General Assembly (UNGA) can recommend collective measures to member states when the Security Council has failed to 'exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression'.<sup>64</sup> Also, regional organisations have the authority to react to situations that threaten international peace and security with the authorisation of the UN Security Council.<sup>65</sup> Such intervention has happened in various cases, including several within Africa. There are several examples of military interventions carried out in Africa under the auspices of the UN. Some military operations succeeded while others failed.<sup>66</sup> Of interest here, are the unsuccessful operations of military interventions. Darfur and Rwanda are examples of failed military interventions. What were the reasons for failure?

The UN failed to prevent the Rwandan genocide by intervening much later, after the death of almost a million people. In this context, Barnett reveals the UN's 'sins of omission' and moral responsibility for the deaths of hundreds of thousands.<sup>67</sup> Additionally, the US' response to the Rwandan genocide demonstrates all three major reasons for inaction: the 'shadow of Somalia' as well as inaction because of a lack of national interest and internal pressure.<sup>68</sup> In the same vein, Power considers that 'Rwanda is emblazoned in the popular consciousness as a failure to take action, a case in which political will was the key stumbling block to action'. According to her, 'American leaders did not

62 UN Secretary-General's Reports on UN/Regional relations, UN Doc S/2006/590, S/2008/186.

63 J Sarkin 'The role of the United Nations, the African Union, and Africa's sub-regional organisations in dealing with Africa's human rights problems: connecting humanitarian intervention and the responsibility to protect' (2009) 53 *Journal of African Law* 6.

64 Report of the International Commission on Intervention and State Sovereignty, para 6.30. <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (accessed 20 September 2020).

65 Art 53, UN Charter.

66 Ramuhala (n 40) 60.

67 M Barnett *Eyewitness to a genocide: the United Nations and Rwanda* (2002) 46 48.

68 As above.

act because they did not want to'.<sup>69</sup> Likewise, the UN and international community failed in restoring peace to Darfur. Powell considered the Darfur conflict genocide and announced it as the worst humanitarian crisis of the 21st century.<sup>70</sup> Initially, the UN attitude to the conflict in Darfur was marked by considerable reluctance to take action and a tendency towards half measures. The EU and NATO have made it clear that they would not commit their own forces.<sup>71</sup> China has also failed to respond because of its oil ties to Sudan.

Failure to intervene in Rwanda and Darfur begs the question of who must intervene and why? These questions arise from the fact that neither states nor non-state actors intervened at a time when the intervention was expected. Additionally, quite perplexing, is whether all the military operations conducted in Africa were built on authorisation from the UNSC or any legal basis? Also, there is a profound contradiction between the supposed norm of non-intervention and the consistent interventionist practices of states.<sup>72</sup> Adding to the controversy is the issue relating to what constitutes a threat to international peace and security. Are peaceful demonstrations by people demanding political changes, to be considered a threat to international peace justifying military intervention?

### **3 THE PRACTICE OF UNLAWFUL FOREIGN MILITARY INTERVENTION ON THE AFRICAN CONTINENT**

Certainly, there is an important difference between the diverse types of foreign military operations in Africa. Even though they are not always successful, the operations undertaken under aegis of the UN are generally 'better funded and equipped, invoke selection criteria that should produce fewer grievances' than other operations operated by regional organisations or states.<sup>73</sup>

The foreign military operations undertaken, unilaterally, are recognised as unlawful. In this context, there has been criticism about the military presence of the US and France in Africa. Also, a remarkable number of other foreign powers like China 'have quietly been putting boots on African soil over the past couple of decades, though attracting

69 S Power 'Remember Rwanda but take action in Sudan' *The New York Times* 6 April 2004. <https://www.nytimes.com/2004/04/06/opinion/remember-rwanda-but-take-action-in-sudan.html> (accessed 20 September 2020).

70 'Powell calls Sudan killings genocide' *CNN* 9 September 2004. <https://edition.cnn.com/2004/WORLD/africa/09/09/sudan.powell/> (accessed 20 September 2020).

71 As above.

72 S Krasner *Sovereignty: organised hypocrisy* (1999) 9 25.

73 R Schiel and others 'Peacekeeping deployments and mutinies in African sending states' (2020) 16 *Foreign Policy Analysis* 251.

little attention'.<sup>74</sup> Does the UN or the AU endorse all those military operations? Are they controlling them? And if not, should Africans be worried?

While some of those foreign military operations and bases are the outcome of bilateral agreements between some AU member states and foreign powers, others are not.<sup>75</sup> In this context, the PSC did not stop expressing concerns about those bases on the continent and the establishment of new ones.<sup>76</sup> For instance, in April 2016, the Council called on member states to be 'circumspect' when 'entering into agreements' that would lead to the establishment of foreign military bases in their countries.<sup>77</sup> Despite its expression of concern, nevertheless, the number of foreign military operations and bases seems not to be decreasing. It is difficult to enumerate all military bases and operations in all the African countries, but it is claimed that the US and France have the most troops on the continent.<sup>78</sup>

Excluding UN operations, France maintains a military presence in Francophone areas of eastern, central, and western Africa, that involves an estimated 8,700 military personnel spread across the continent in various military operations and missions.<sup>79</sup> Also, the US has established a major military presence on the continent. Since the attacks of 11 September 2001 attacks, the US military has built 'a sprawling network of outposts in more than a dozen African countries'.<sup>80</sup> In 2020, the Pentagon map shows a network of 29 US bases in Africa.<sup>81</sup> Furthermore, new actors such as China, Turkey, and

74 P Fabricius 'AU summit 30: Should Africa worry about a growing foreign military presence?' *Institute for Security Studies* 25 January 2018. <https://issafrica.org/iss-today/au-summit-30-should-africa-worry-about-a-growing-foreign-military-presence> (accessed 22 September 2020).

75 A Asamoah 'Will countries heed the AU Peace and Security Council's concerns about foreign military bases on the continent?' *Institute for Security Council* 27 August 2019 <https://issafrica.org/iss-today/proceed-with-caution-africas-growing-foreign-military-presence> (accessed 19 June 2020).

76 As above.

77 M Diatta and others 'ISS Peace and Security Council Report - Questions over foreign military presence in Africa' (2019) 116 *Institute for Security Studies* 4 6.

78 As above.

79 A Sundberg 'France: A continuing military presence in Francophone Africa' FOI Memo 6814 (2019). For example, in Djibouti, France has a permanent force of 1,450 troops, is its largest overseas military base and the biggest permanent foreign establishment in Africa. In Dakar, Senegal, and Libreville, Gabon, France has regional cooperation bases (POC, Pôle Opérationnel de Coopération) that provide special support to their host countries and neighbours.

80 N Turse 'Obama's scramble for Africa: US military operations on the continent have accelerated far beyond the more limited actions of the Bush years' *Aljazeera* 15 July 2012 <https://www.aljazeera.com/indepth/opinion/2012/07/20127158391089237.html> (accessed 20 June 2020).

81 N Turse 'Pentagon's own map of US bases in Africa contradicts its claim of 'Light Footprint' *The Intercept* 27 February 2020. <https://theintercept.com/2020/02/27/africa-us-military-bases-africom/> (accessed 20 June 2020). In 2019, there were between 6,000 and 7,000 US troops in Africa.

The largest numbers of US troops in Africa are in Djibouti. Also, the US has roughly 400 troops in Somalia. Other military outposts are deployed in Somalia, Cameroon, Kenya, Mali, Niger, and Burkina Faso, Libya, etc.

the United Arab Emirates have set up military bases in the African Continent. Russia, on its part, is regularly extending its military influence across Africa by increasing arms sales, security agreements, and training programs.<sup>82</sup>

In principle, nothing in the UN Charter nor the AU Constitutive Act prohibits governments from concluding military cooperation agreements. All governments, including the African states, enjoy the full right to conclude bilateral or multilateral military agreements. Speaking of military agreements, you may wonder what their purposes are exactly. And, if the UNSC has the responsibility, under the UN Charter, for the maintenance of international peace and security, then why do states resort to military agreements? Also, why does the AU continue to express concerns about this kind of agreement?

Bilateral and multilateral military cooperation has become a predominant feature of international military operations to resolve crises, such as combatting terrorism or conflict resolution. In other words, to respond to such various threats and crises, military organisations are increasingly operating in the context of the bilateral and multinational framework. This may be under the aegis of the UN as already discussed, but also more recently, in the context of regional supranational organisations such as the AU or just between states.<sup>83</sup> Also, it seems that the UN Charter permits or encourages military action independent of the UN itself. According to the former Secretary-General Boutros Boutros-Ghali, the absence of a clear definition of the concept of regional agreements by Chapter VIII of the Charter leaves the door open to the UN to interpret the cooperation with regional organisations in the area of military intervention.<sup>84</sup>

However, the controversies, surrounding several military operations occurring in many African countries, are incontestable. On closer inspection, it gets more complicated, especially that, both visible and secret military bases are scattered across Africa.<sup>85</sup> Africa was a crucial geographical stake during the Cold War, and is once again emerging as an important area of strategic competition. As mentioned

82 'Russia exerts growing influence in Africa, worrying many in the West' *The New York Times* 28 January 2020 <https://www.nytimes.com/2020/01/28/world/africa/russia-africa-troops.html> (accessed 20 June 2020).

83 J Soeters & P Manigart 'Military cooperation in multinational peace operations: managing cultural diversity and crisis response' (2008) *International Journal of Cooperative Information Systems* 2.

84 D Hamburg & K Ballentine 'Boutros-Ghali's agenda for peace: the foundation for a renewed United Nations' in Boutros Boutros-Ghali (eds) *Amicorum Discipulorumque Liber* (1998) 489-509.

85 K Watson 'Where does the US have troops in Africa, and why?' *CBS News* 23 October 2017. <https://www.cbsnews.com/news/where-does-the-u-s-have-troops-in-africa-and-why/> (accessed 22 September 2020); T McCormick 'US operates drones from secret bases in Somalia' *Foreign Policy*, 2 July 2015. <https://foreignpolicy.com/2015/07/02/exclusive-u-s-operates-drones-from-secret-bases-in-somalia-special-operations-jsoc-black-hawk-down/> (accessed 22 September 2020); Turse N 'The stealth expansion of a secret US drone base in Africa' *The Intercept* 21 October 2015. <https://theintercept.com/2015/10/21/stealth-expansion-of-secret-us-drone-base-in-africa/> (accessed 22 September 2020).

earlier, while the US and France are at the forefront of conducting military operations on African soil, other military competitors, namely China and Russia, are rapidly expanding their military influence across Africa.<sup>86</sup>

Among the former colonial powers that once ruled Africa, France is the only country to have continued, post-colonisation, to deploy its military bases and installations in Africa, establishing what has been defined as a 'permanent intervention'.<sup>87</sup> Thus, decolonisation remains incomplete, and hence France's military post-colonial influence in Africa continues.<sup>88</sup> This was manifested through the neo-colonial networks of defence treaties with the majority of former African colonies,<sup>89</sup> in order to maintain a dominant role in its famous 'pré-carré', its African 'backyard'.<sup>90</sup> However, this kind of treaties has been largely criticised because it incorporates secret clauses, authorising the use of the territory and airspace of the African countries by the French army.<sup>91</sup> Also, neither the scope nor the limits of the French military intervention were clear.

Consequently, in the decades following the 1960s, when the colonial era ended, France continued to observe its former colonies in Africa as an 'exclusive sphere of influence'.<sup>92</sup> A significant 'piece of the post-colonial jigsaw' was France's large military presence in Africa.<sup>93</sup> France intervened military across national boundaries in African states and territories. This large 'French militarism in Africa'<sup>94</sup> was problematic with regard to its legal basis. It is within this context that the matter of the French unlawful military intervention arises.

Chafer and Cumming address the issue of the unlawfulness of the French military intervention in Africa.<sup>95</sup> They argue that 'until the

86 'Why foreign countries are scrambling to set up bases in Africa' *The Quint* 22 September 2020. <https://www.thequint.com/news/world/why-foreign-countries-are-scrambling-to-set-up-bases-in-africa> (accessed 22 September 2020).

87 R Luckham 'French militarism in Africa' (1982) 24 *Review of African Political Economy* 56.

88 F McNamara *France in black Africa* (1989) 5.

89 S Decalo 'Modalities of civil-military stability in Africa' (1989) 27 *Journal of Modern African Studies* 547-551.

90 R Marchal 'France and Africa: the emergence of essential reforms?' (1998) 24 *International Affairs: Royal Institute of International Affairs* 361.

91 G Martin 'The historical, economic, and political bases of France's African policy' (1985) 23 *Journal of Modern African Studies* 198-204; A Türke 'New Defence Partnership Treaties/Agreements of France in Africa' *CERPESC* 07 February 2013. [http://europavarietas.org/csdp/csdpblog/new\\_defence\\_partnership\\_agreements\\_of\\_france\\_in\\_africa](http://europavarietas.org/csdp/csdpblog/new_defence_partnership_agreements_of_france_in_africa) (accessed 22 September 2020) Revision of defence agreements and the conclusion of new Agreements / Treaties establishing a defence partnership was completed during the period 2009-2012.

92 Assensoh & Assensoh (n 1 above).

93 I Benneyworth 'The ongoing relationship between France and its former African colonies' (2011) *E-International Relations* 2.

94 Luckham (n 87) 56.

95 T Chafer & G Cumming 'France in the Sahel: a case of the reluctant multilateralism?' *The Conversation* 3 August 2020. <https://theconversation.com/france-in-the-sahel-a-case-of-the-reluctant-multilateralist-143467> (accessed 22 September 2020).

1990s, French military interventions were mostly unilateral and accompanied by the practice of self-legitimation.’ According to the authors, interventions were conducted based on ‘the French interpretations of security’.<sup>96</sup> In other words, the rules of engagement and levels of force deployed were determined by France – without reference to external legitimating authorities.<sup>97</sup> In the same vein, Recchia asserts that French leaders deployed thousands of combat troops unilaterally on various missions.<sup>98</sup> Critics have pointed out that France has a ‘historical record of unilateral military interventionism’ and is said to support the African political leaders, all of whom have arrived to power in an undemocratic way.<sup>99</sup> France’s support for numerous *coups d’état*, dictators, and rebellions during the Cold War years is, to a large extent, a part of its unlawful military intervention in Africa.<sup>100</sup>

There are numerous examples that illustrate this type of military intervention. One of the clearest examples of French unlawful military intervention was the reestablishment of Leon M’Ba as the President of Gabon after a transitory *coup d’état* in 1964.<sup>101</sup> Without even an official Gabonese request for assistance, French troops were flown in from Dakar and Brazzaville to support the authoritarian President. Once back in power, M’Ba was more repressive than ever.<sup>102</sup> Many others followed: in Congo-Brazzaville, Chad, Benin, Rwanda, Togo, and Central African Republic.<sup>103</sup> The Rwandan genocide represents a very extreme example of the consequences of the unlawful military intervention. French military troops have been accused of the participation and the execution of the Rwandese genocide.<sup>104</sup>

While the defence treaties and interventions were the most visible signs of France’s post-independence involvement, the influence of the French military on the national defence policies and armies of Francophone African states seemed less obvious but remains very important.<sup>105</sup> In the absence of deep historical links in Africa, the US has little historic interests to intervene in Africa.<sup>106</sup> Over time, the

96 As above.

97 As above.

98 S Recchia ‘A legitimate sphere of influence: understanding France’s turn to multilateralism in Africa’ (2020) 43 *Journal of Strategic Studies* 508.

99 T Koepf ‘France and EU military crisis management in Sub-Saharan Africa – no (more) hidden agenda’ (2010) *Institute for European Studies* 2.

100 As above.

101 M Reed ‘Gabon: a neo-colonial enclave of enduring French interest’ (1987) 25 *Journal of Modern African Studies* 283.

102 As above.

103 S Touati *French foreign policy in Africa: between pré Carré and multilateralism* (2007) 12.

104 ‘Rwanda Accuses France of Complicity in 1994 Genocide’ *The New York Times* 13 December 2017. Africa <https://www.nytimes.com/2017/12/13/world/africa/rwanda-france-genocide.html> (accessed 22 September 2020).

105 S Gregory ‘The French military in Africa: past and present’ (2000) 99 *African Affairs* 396.

106 G Lyons & M Mastanduno *Beyond Westphalia? State sovereignty and international intervention* (1995) 8.

American interest in Africa increased. As a result, the US is becoming one of the continent's most dominant global military players. The US military footprint and military activities have deepened since the establishment of the US Africa Command (AFRICOM) in 2008.<sup>107</sup> Besides the visible military operations, several reports showed that the US is conducting secret military missions all over Africa.<sup>108</sup> In his book *Tomorrow's battlefield: US proxy wars and secret ops in Africa*, Turse chronicles the rise of America's military presence in Africa for years.<sup>109</sup> According to him, the US military is 'increasingly engaged in a new shadow war' in Africa, serving to 'destabilize' whole countries and preparing the ground for 'future blowback'.<sup>110</sup> The author goes even further and talks about 'a US-backed uprising' and 'US-backed war' in Libya, which caused chaos in the country.<sup>111</sup>

Other commentators followed Turse in expressing concern at the dangers of the US 'shadow war' in Africa. Booker and Hartung, for example, observe that 'America's shadow war in Africa is dangerous and counterproductive'.<sup>112</sup> It is further argued that the secret enlargement of US military bases and special operations in Africa has initiated 'a new and lightweight style of warfare and welcomes the next phase of American military imperialism'.<sup>113</sup> Furthermore, it is worth noting that the perception of Africa being observed as 'a strategic hub' for American resources was a 'politicized thought process' published in 1997 by AFRICOM, which affirms that the alteration in US interest towards Africa was 'the culmination of a ten-year thought process within the Department of Defence'.<sup>114</sup> As Al Kassimi maintains, 'AFRICOM is an extension of the US informal empire, which amounts to the militarization of US foreign policy towards Africa to achieve US strategic economic interest on the continent'.<sup>115</sup> In addition, critics

107 N Turse 'Exclusive: The US military's plans to cement its network of African bases' 1 May 2020 *The Mail & Guardian* <https://mg.co.za/article/2020-05-01-exclusive-the-us-militarys-plans-to-cement-its-network-of-african-bases/> (accessed 22 September 2020).

108 N Turse and others 'Exclusive: Inside the secret world of US commandos in Africa' *Pulitzer Center* 11 August 2020 <https://pulitzercenter.org/reporting/exclusive-inside-secret-world-us-commandos-africa> (accessed 22 September 2020).

109 N Turse *Tomorrow's battlefield: US proxy wars and secret ops in Africa* (2015) 47.

110 Turse (n 109) 56, 77.

111 As above.

112 S Booker & W Hartung 'America's shadow war in Africa is dangerous and counterproductive' *The Hill* 1 June 2018. <https://thehill.com/opinion/international/367593-americas-shadow-war-in-africa-is-dangerous-and-counterproductive> (accessed 22 September 2020).

113 J Yun 'US expands secret wars in Africa' *The Chimes* 10 May 2016. <https://chimesnewspaper.com/24839/opinions/us-expands-secret-wars-africa/> (accessed 22 September 2020).

114 J Keenan 'AFRICOM: its reality, rhetoric, and future' in D Francis (eds) *US strategy in Africa: AFRICOM, Terrorism, and Security Challenges* (2010) 113.

115 K Al-Kassimi 'The US informal empire: US African Command (AFRICOM) expanding the US economic-frontier by discursively securitizing Africa using exceptional speech acts' (2017) 11 *African Journal of Political Science and International Relations* 307.

assert that the creation of AFRICOM reflects in part the Pentagon's proactive attempt to contain 'China's growing influence in Africa.'<sup>116</sup>

In this sense, China's growing military engagement in Africa should not go unnoticed. Initially, China has not been known for establishing military bases in Africa.<sup>117</sup> That has now changed, following China's decision to build a military base in Djibouti in the Horn of Africa in 2017 and to hold military drills in several African countries.<sup>118</sup> In other words, China has been forging stronger military ties with African nations through arms sales, security agreements, and military training programmes. How should this be interpreted in terms of China's global military positioning? And what are the implications of the Chinese military presence in Africa? The notable expansion in China's military presence in Africa since 2015 gives rise to several more complex issues for both China and the local communities involved. According to a report, China's increasing military and security presence in Africa is leading to concerns in some local constituencies.<sup>119</sup> The fact that China's state-centric attitude of security and development 'downplays the importance of human rights is likely to increase these tensions on the ground.'<sup>120</sup>

China's growing military entanglement in Africa has become more challenging to reconcile with its historical commitment to non-interventionism.<sup>121</sup> China's global economic and security ambitions seem to be tilting China towards a more interventionist approach, which is extending beyond UN peacekeeping contributions towards security and military missions of its own.<sup>122</sup>

Generally speaking, states justify the deployment of military bases in sovereign nations by the need to contain internal conflict, to combat terrorism in Africa, and to control illegal migration.<sup>123</sup> Military installations in African countries vary from permanent to temporary; and from large to small. Within this framework, the Swedish Defence Research Agency have studied the presence of twelve non-African state actors in Africa.<sup>124</sup> Its report not only identifies but also demonstrates

116 L Ploch 'Africa Command: US strategic interests and the role of the US military in Africa congressional' Research Service 22 July 2011 <https://fas.org/sgp/crs/natsec/RL34003.pdf> (accessed 22 September 2020).

117 T Neethling 'What the Djibouti military base tells us about China's growing role in Africa' *The Conversation* 1 August 2017 (accessed 23 September 2020). <https://theconversation.com/what-the-djibouti-military-base-tells-us-about-chinas-growing-role-in-africa-81783>

118 'China's Djibouti naval base increasing its power' *East Asia Forum* 16 May 2020 <https://www.eastasiaforum.org/2020/05/16/chinas-djibouti-naval-base-increasing-its-power/> (accessed 23 September 2020).

119 P Nantulya 'Chinese hard power supports its growing strategic interests in Africa' *Africa Center for Strategic Studies*. 17 January 2019 <https://africacenter.org/spotlight/chinese-hard-power-supports-its-growing-strategic-interests-in-africa/> (accessed 23 September 2020).

120 As above.

121 Neethling (n 117).

122 'China's growing global role and the impact of international law' *The World Economic Forum* 20 February 2019. <https://www.weforum.org/agenda/2019/02/chinas-growing-global-role-and-the-impact-of-international-law/> (accessed 23 September 2020).

the reasons behind the actors' military bases on the continent.<sup>125</sup> The report shows that the presence of military bases has increased, especially in the Horn of Africa and West Africa: 'Strategic interests, such as protecting economic interests, power competition, shows of military force, and maintaining historic ties, often lie behind the increase.'<sup>126</sup>

It may, in general, be noted that fighting terrorism, restraining internal conflict, and controlling illegal migration are reasons for deploying foreign military bases deployment in African states. These are not the only motives. Although Western governments indicated humanitarian and security obligations as the motives for military intervention in Africa, military actions often hide strategic interests.<sup>127</sup> Ulterior motives sometimes explain and justify the presence of foreign military bases in African countries, in particular those established without prior authorisation.

In the same vein, the Libyan crisis of 2011, and the intervention of foreign military operations in the country raise more questions. The military intervention under the scope of the UNSC in Libya<sup>128</sup> was for seven months conducted by NATO.<sup>129</sup> However, this military operation was problematic in terms of the legality and legitimacy of forceful regime change, particularly in that the resolution did not define the scope and limits of the intervention.<sup>130</sup> While it is crucial to examine the arguments regarding the use of force in the protection of civilians, against the will of a functioning state, this is not the main topic of interest in this section. Instead, what interests us the most is what happened after the UNSC ended its authorisation of the foreign military intervention in Libya. Even though the NATO intervention was fast from a historical standpoint, it caused, created, or somehow led to civil

123 S Feldstein 'Do terrorist trends in Africa justify the US military's expansion?' *The Carnegie Endowment for International Peace* 9 February 2018. <https://carnegieendowment.org/2018/02/09/do-terrorist-trends-in-africa-justify-u.s.-military-s-expansion-pub-75476> (accessed 23 September 2020); F Azzouz 'French military presence in Africa's Sahel a fiasco?' *Anadolu Agency* 7 September 2020. <https://www.aa.com.tr/en/africa/french-military-presence-in-african-sahel-a-fiasco/1965919> (accessed 23 September 2020).

124 'Power competition and natural resources behind military presence in Africa' Swedish Defence Research Agency <https://www.foi.se/en/foi/news-and-pressroom/news/2019-09-19-power-competition-and-natural-resources-behind-military-presence-in-africa.html> (accessed 3 July 2020).

125 As above.

126 As above.

127 P Schmitt 'France, Africa, and the ICC' in K Clarke - A Knottnerus & E Volder (eds) *Africa and the ICC: perceptions of justice* (2016) 129.

128 UN Security Council, Security Council resolution 1973 (2011) [on the situation in the Libyan Arab Jamahiriya], 17 March 2011, S/RES/1973(2011). The resolution called for an immediate cease-fire and the complete cessation of violence against civilians. It authorised member states to take all necessary measures to protect civilians under Chapter VII of the UN Charter while excluding any form of occupation of Libyan territory.

129 'UN votes to end foreign intervention in Libya' *The New York Times* 27 October 2011.

130 M Payandeh 'The United Nations, military intervention, and regime change in Libya' (2012) 52 *Virginia Journal of International Law* 357.

war.<sup>131</sup> Accordingly, the ongoing conflicts in Libya led to several unlawful foreign military intervention operations. For example, reports showed that Russia has set up many military bases in Libya without any authorisation from the UNSC.<sup>132</sup> Russia has set up military bases in Benghazi and Tobruk, where it has deployed special forces and has been sending weapons to help the head of the Libyan National Army.<sup>133</sup> The size and overall strength of Russia's military presence in Libya lacked clarity. It is pointed out, too, that French forces are known to have been operating in Benghazi, providing intelligence support to the Libyan National Army.<sup>134</sup>

Unlawful foreign military intervention in many African countries is controversial when it happens. Generally speaking, it is challenging to prove the unlawfulness of certain military operations. Powerful states try to legalise or legitimate their intervention through military agreements with authoritarian or fragile African countries. The scope and limits of such military agreements, concluded behind closed doors, are generally obscure. Thus, the lack of transparency, the vagueness, and the open-ended nature of the operation's goals challenge the legality of certain military operations in Africa. Likewise, unauthorised military interventions, as in the case of Libya, raise more than a question of its legality and compliance with international norms and standards. Meanwhile, the UNSC remains silent regarding the underlying motives of powerful states and NATO's interventions in Africa. It appears increasingly clear that the most powerful states are expanding their military bases in Africa to extend their geostrategic interests.<sup>135</sup> Thus, it is pertinent to wonder whether these kinds of military operations are making a bad situation worse.

#### 4 THE IMPACTS OF AFRICA'S GROWING SUSPICIOUS FOREIGN MILITARY BASES AND OPERATIONS

With the number of foreign military operations and bases increasing, peace is still far from being reached in many African countries. The instability in Africa is principally due to the armed conflict, terrorism, anti-government turbulence, but also to a significant extent to the presence of suspicious foreign military bases and operations.

131 M Green 'To what extent was the NATO intervention in Libya a humanitarian intervention?' (2019) *E-International Relations* 4. <https://www.e-ir.info/2019/02/06/to-what-extent-was-the-nato-intervention-in-libya-a-humanitarianintervention/> (accessed 10 July 2020).

132 'Russia's real designs in Libya' *The Arab Weekly* 21 October 2018.

133 'Russia now has at least 14 combat jets in Libya as satellite images reveal new details' *The Drive* 27 May 2020.

134 Foreign Policy: French military operating in Libya. <https://foreignpolicy.com/2016/02/25/french-military-operating-in-libya/> (accessed 5 July 2020).

135 Samson (n 37) 62.

#### 4.1 Strengthening Africa's authoritarian regimes through unlawful military operations

Authoritarianism is a form of government marked by strong central power and limited political freedoms. Political scientists have outlined different typologies of authoritarianism.<sup>136</sup> As with all labels of regime types, there is no full unanimity on what is meant by political authoritarianism.<sup>137</sup>

In Africa, Freedom House has tracked a significant retreat in political rights, civil liberties, and the overall quality of democracy.<sup>138</sup> Also, a report made by the Bertelsmann Transformation Index (BTI) on democratic trends between 2015 and 2018 comes to the conclusion that Africa is a 'divided continent'.<sup>139</sup> The report reveals that 'while many of the continent's more authoritarian governments have become even more repressive and entrenched, a number of aspiring democracies are holding their own.'<sup>140</sup>

In line with these trends, more countries shifted towards authoritarian rule than democracy during this period. Most notably, increasing government abuses in Uganda and Mozambique led both to be downgraded to 'moderate autocracies.' Similar developments in Burundi and Zimbabwe saw them falling to the index's least democratic classification: 'hard-line autocracies'.<sup>141</sup> In this context, France continues to exert control over its former African colonies through different means, including military agreements with dictators, accused of human rights violations, and tyranny.<sup>142</sup> As discussed above, France has been seen as complicit in allowing African dictators to remain in power, by providing them military support. In return, the dictators offer French companies 'lucrative contracts and facilitate the French military mobility and deployment.'<sup>143</sup> For example, in 1986, France launched *Operation Epervier* to protect the authoritarian regime of Hissène Habré against the advance of Libyan forces, and Libyan-

136 F Cerutti *Conceptualizing politics: an introduction to political philosophy* (2017) 16 21.

137 S Purcell 'Authoritarianism' (1973) 5 *Comparative Politics* 301.

138 The Freedom in the World 2018: Democracy in crisis: 2018 Freedom House. <https://freedomhouse.org/report/freedom-world/freedom-world-2018> (accessed 24 September 2020).

139 A Divided Continent: BTI 2018 Regional Report Africa: 2019 Bertelsmann Stiftung 4.

140 As above.

141 'Both democracy and authoritarianism are on the rise in Africa' *The Conversation* 18 February 2019. <https://theconversation.com/both-democracy-and-authoritarianism-are-on-the-rise-in-africa-111789> (accessed 23 September 2020).

142 'Briefing: Is Macron set to finally smooth Franco-African relations?' *The Christian Science Monitor* 1 February 2018. <https://www.csmonitor.com/World/Europe/2018/0201/Briefing-Is-Macron-set-to-finally-smooth-Franco-African-relations> (accessed 23 September 2020).

143 As above.

backed rebels. Thus, French forces have remained in the country ever since.<sup>144</sup>

Similarly, the US has been 'empowering African dictators since the 1960s and creating a democratic crisis that still affects several countries'.<sup>145</sup> For instance, in the 1980s, the US helped bring former Chadian Dictator Hissène Habré to power in an effort to reduce the influence of Muammar Gaddafi.<sup>146</sup> According to Human Rights Watch, the US 'provided essential military support to his insurgency, and then to his government, even as it committed widespread and systematic human rights violations'.<sup>147</sup> Afoaku talks about a kind of 'international clientelism' between the US and authoritarian regimes, which is a patron-client relationship between 'unequal partners 'based on an unwritten contract for the exchange of non-comparable goods or services'.<sup>148</sup> The 'patron state' can offer material aid or crisis insurance in the form of a reliable response when the client is threatened. It can also offer 'brokerage with the outside world, including financial and political institutions as well as multinational banks and businesses.' In return, 'the client-state offers goods and services, including military bases and services that support the patron's regional interests, votes in international *fora*, and other expressions of loyalty'.<sup>149</sup>

It must be admitted that it is difficult to prove the actors involved in patron-client relationships, and goods and services exchanged between them, including the military agreements. On this basis, the transparency on military agreements between the authoritarian African governments and superpowers must be highlighted. For example, Ero claims that the lack of transparency, from both US and African governments, on the US military's presence in Africa is a matter for concern, as is their apparent compliance to work with authoritarian governments:<sup>150</sup>

It does feed into that broader concern that some states are being propped up... the US is seen as legitimising and further prolonging authoritarian tendencies, or states that are not seen as having legitimacy.

The issue has become more complicated in light of the presence of secret foreign military operations. As stated earlier, some states

144 N Powell 'The flawed logic behind French military interventions in Africa' *The Conversation* 12 May 2020 <https://theconversation.com/the-flawed-logic-behind-french-military-interventions-in-africa-132528> (accessed 23 September 2020).

145 'The United States of America has a long history of supporting African dictators' *The African Exponent* 19 October 2017. <https://www.africanexponent.com/post/8618-the-united-states-of-america-has-a-long-history-of-supporting-african-dictators> (accessed 23 September 2020).

146 'Enabling a dictator, the United States and Chad's Hissène Habré 1982-1990' *Human Right Watch* 28 June 2016. <https://www.hrw.org/report/2016/06/28/enabling-dictator/united-states-and-chads-hissene-habre-1982-1990> (accessed 23 September 2020).

147 As above.

148 O Afoaku 'US foreign policy and authoritarian regimes: change and continuity in international clientelism' (2000) 17 *Journal of Third World Studies* 16.

149 As above.

150 Turse and others (n 108).

conduct secret military operations in Africa. For instance, Stephens asserts that the 'role of the US military in Africa is not clear to anyone.'<sup>151</sup> According to the author, the US 'has obscured the nature of its military actions through ambiguous language and outright secrecy.' Also, the US was not clear 'about the objectives of its operations, how those operations are carried out, the facilities it uses, and how it partners with governments in the region.'<sup>152</sup> Thus, ordinary Africans are seldom told about the full extent of US military operations or offered a say in how and why Americans operate in their countries. Even basic information, like the progress and scope of deployments of the US troops on the continent, are mostly unreported across Africa.<sup>153</sup>

In a related context, the exposure to some different approaches to military management and control could be dangerous in terms of strengthening the African military dictatorships. For example, in the Chinese model, the People's Liberation Army (PLA) is subordinate to the absolute control of the ruling party, which itself supersedes the government and parliament. In contrast, the majority of African constitutions place the military under civilian control and multi-party legislative oversight.<sup>154</sup> As the Chinese military drills are increasing in Africa, some African observers have accordingly expressed concern that 'the extensive application of the Chinese model could be harmful given the currency of personality-driven governing styles and the tendency to bypass constitutional checks'.<sup>155</sup>

#### 4.2 Weakening fragile states and democracies

Fragile and 'failed states' in Africa were favourable ground for unlawful foreign military intervention. Thus, political instability and internal conflicts are generally accompanied by unlawful foreign military intervention in the politics and governance of the fragile states. Frequently, dominant states use force or pressure over a weaker state and could intervene militarily easily. In these instances, military intervention could be an instrument handled by powerful states to dominate weaker states. In this context, the continued French domination in Africa is a good example of such a trend. As already stated above, even after the end of the colonial era and after the independence of most of the colonies, France intervened militarily more than 50 times on the continent.<sup>156</sup> Claiming to be an advocate of peace, France intervenes in many African conflicts using the pretext of

151 H Stephens 'The truth about the US military in Africa' (2019) *World Politics Review* <https://www.worldpoliticsreview.com/insights/26330/the-truth-about-the-u-s-military-in-africa> (accessed 6 July 2020).

152 As above.

153 Turse and others (n 108).

154 Nantulya (n 109).

155 S Hess & R Aidoo 'Charting the roots of anti-Chinese populism in Africa: a comparison of Zambia and Ghana' (2014) 49 *Journal of Asian and African Studies* 137.

156 Powell (n 144).

‘intervention against terrorism’ or ‘help to restore security at the request of the country concerned President’. French intervention in ‘African conflicts seems to be useless’ because most of the time it does not resolve the problems. For instance, neither territorial problems are solved, nor safety is insured in Mali today.<sup>157</sup>

Critics accused France of ‘pursuing a neo-colonialist agenda in Mali’.<sup>158</sup> With regards to the French military intervention in Mali in 2013, Christakis and Bannelier consider that military intervention is prohibited ‘when the objective of this intervention is to settle an exclusively internal political strife in favour of the established government which launched the invitation’.<sup>159</sup> According to them, the French military intervention in Mali was ‘a violation of the principles of non-intervention and non-interference in domestic affairs and the principle of self-determination of peoples’.<sup>160</sup> France has been widely criticised for interfering in the internal affairs of its former colonies, such as Mali and Madagascar, and for causing political conflicts in those countries.<sup>161</sup> Similarly, it has been conceived as pursuing ‘a strategy of domination on behalf of its own interest to keep the dependence of African states’.<sup>162</sup> That is why several African countries are superficial democracies and fragile states that are unable to address their fundamental political, governance, and security challenges.

The situation that put this discussion right in the spotlight is unlawful military intervention in Libya. The Libyan case showed that NATO went far beyond any mandate.<sup>163</sup> Although NATO may have had the primary goal of protecting civilians, there is a substantial amount of evidence that suggests that the intervention was focused on regime change.<sup>164</sup> This change of mission goals challenges the legitimacy of the intervention, and of NATO itself, especially that the situation in Libya continues to degrade.

Furthermore, as already mentioned, the argument of countering terrorism is often used as a pretext by powerful states to legitimise their military intervention in the continent, particularly that fragile African countries are often more vulnerable to violent terrorist attacks. In this context, Booker and Hartung consider that the military effort of the US to contain terrorism in Africa was limited.<sup>165</sup> In contrast, they admitted

157 T Korkmaz ‘La Françafrique’: the special relationship between France and its former colonies in Africa’ (2019) *INSAMER* [https://insamer.com/en/la-francafrique-the-special-relationship-between-france-and-its-former-colonies-in-africa\\_2307.html](https://insamer.com/en/la-francafrique-the-special-relationship-between-france-and-its-former-colonies-in-africa_2307.html) (accessed 15 July 2020).

158 ‘The interests behind France’s intervention in Mali’ *Deutsche Welle* 16 January 2013.

159 Christakis & Bannelier (n 31).

160 As above.

161 B Charbonneau ‘Dreams of empire: France, Europe, and the new interventionism in Africa’ (2008) 16 *Modern & Contemporary France* 280.

162 Korkmaz (n 162).

163 G Ulfstein & H Christiansen ‘The legality of the NATO bombing in Libya’ (2013) 62 *International & Comparative Law Quarterly* 160 161.

164 Green (n 22) 216.

165 Booker & Hartung (n 112).

that the presence of the US military bases could weaken already fragile democracies, facilitate corruption, and ‘increase the flow of deadly weapons to a region already awash in them.’<sup>166</sup> In this sense, Turse declares that

US “stability” operations in Africa have increased, militancy has spread, insurgent groups have proliferated, allies have faltered or committed abuses, terrorism has increased, the number of failed states has risen, and the continent has become more unsettled.<sup>167</sup> Besides, a report made by the Institute for Security Studies revealed that the foreign military presence in Africa is dangerous for the continent in terms of security and stability.<sup>168</sup>

With this in mind, the US has been accused of ‘ruling class wages war on African people abroad through AFRICOM and other means.’<sup>169</sup> In order to ‘maintain their oppression and exploitation of African people, this class uses military might’,<sup>170</sup> and as Nkrumah warned in *Neo-colonialism, the last stage of imperialism*, ‘military aid, in fact, indicates the last stage of neo-colonialism’.<sup>171</sup> Thus, ‘US imperialism has killed millions on the African continent through these wars and interventions’.<sup>172</sup> Similarly, on several occasions, the French army has been implicated in killing civilians in Africa.<sup>173</sup> This demonstrates the dangerous nature of the foreign military presence in Africa.

It must be admitted that the interrelation between unlawful military intervention, terrorism, and security is more complicated than it seems. That is why security concerns and instability could be mentioned when it comes to unlawful military presences in several African countries. In a narrow sense, the unlawful foreign military presence may ‘act as an incitement to attack, where the host country becomes a target in a conflict in which it may otherwise have no stake.’<sup>174</sup> Libya, a petroleum rich country, has for instance become embroiled in an increasingly intensifying competitive geostrategic struggle, with the Libyan Civil War pitting the UAE, Egypt, and Russia against Qatar, most of Europe, and Turkey.<sup>175</sup>

166 As above.

167 Turse (n 109) 5.

168 Diatta and others (n 77).

169 AFRICOM Watch Bulletin #6 *The Black Alliance for Peace* 16 July 2020 <https://blackallianceforpeace.com/africomwatchbulletin> (accessed 26 September 2020).

170 As above.

171 K Nkrumah *Neo-colonialism: the last stage of imperialism* (1965) 2.

172 AFRICOM Watch Bulletin #3 *The Black Alliance for Peace* 4 June 2020 <https://blackallianceforpeace.com/africomwatchbulletin> (accessed 26 September 2020).

173 ‘French military in Mali says it killed civilian by accident’ *France 24* 1 September 2020 <https://www.france24.com/en/20200901-french-military-in-mali-says-it-killed-civilian-by-accident> (accessed 26 September 2020).

174 ‘Nationalism, security, and foreign military bases: A question of interests’ (1988) 10 *Third World Quarterly* 5.

175 T Megerisi ‘Geostrategic dimensions of Libya’s civil war Africa’ Africa security brief no 37 *Center for Strategic Studies* 18 May 2020 <https://africacenter.org/publication/geostrategic-dimensions-libya-civil-war/> (accessed 8 July 2020).

## 5 CONCLUSION

The article demonstrates the extent to which unlawful military intervention in Africa has evolved, in terms of theory, practice, and how it expanded on the African continent. The unlawful foreign military presences in Africa are deeply rooted in history. The continent has never fully recovered from the colonial era. Former colonial powers such as France maintained a military presence in their former colonies, while the US and China became increasingly interested in establishing military bases on the continent. It is common knowledge that colonialism had very harmful effects on every conceivable aspect of Africa's growth and stability. The same is true when it comes to neo-colonialism, manifested through unlawful foreign military intervention and presence. This has left Africa manipulated by the hands of foreign powers. With few exceptions, African countries with abundant mineral wealth experience poorer democracy, instability, and weaker economic growth. Reconstructing damaged Africa and stopping unlawful foreign military intervention is an urgent challenge. The steps to change are difficult and require agreement from many political actors in Africa. Thus, many factors and efforts must come together to achieve this, including the strengthening of the AU military force. By doing so, the primacy of AU military building must be reinforced. The AU has shown proof of confronting some challenges. For instance, the organisation launched a successful naval and military intervention into the Comoros in March 2007. Little noticed internationally, this intervention was an extremely significant development for the AU. However, the reinforcement of the AU military force depends on other factors and actors. A better military coordination between the AU and other regional and continental organisations and African governments appears crucial.

Without powerful AU military forces capable of implementing efficient interventions, many African conflicts will either remain unresolved or depend on military forces outside the continent to try to impose a non-African solution for Africans. This opens the door for unilateral and unlawful foreign intervention. To achieve greater unity, 'African solutions to African problems' seem a viable solution towards a united and peaceful Africa. Accordingly, the AU's campaign on 'Silencing the Guns in Africa by 2020' could only be achieved in a context of peace.