UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

THE PRINCIPLE OF RESPONSIBILITY TO PROTECT (R2P): A CASE STUDY OF SOUTH SUDAN

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R52/82413/2012

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A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE DEGREE OF MASTER OF ARTS IN INTERNATIONAL CONFLICT MANAGEMENT TO THE INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES UNIVERSITY OF NAIROBI

SEPTEMBER 2015

DEDICATION

I hereby dedicate this research project to my Mother, Ms. Racheal Waithera Njiiri for her continued prayers, love, and unwavering support and also for encouraging me to further my studies. My brother and sisters for their understanding and my Uncles Mr. John Kiiru Njiiri and Mr. Paul Karanja Njiiri for their constant reminder on the importance of a good education.

I also dedicate the project to my friends and in particular; Catherine Naserian, Theresa Opudo, Gladys Masinde- Ouma, Jacqueline Opiyo, Joseph Ndwiga and Maureen Ochieng for their support and guidance. Last but not least, I dedicate the project to Ms. Anne Kilimo; my direct supervisor at the International Committee of the Red Cross (ICRC) for her flexibility and understanding.

ACKNOWLEDGMENT

I would like to first and foremost acknowledge and appreciate my supervisor for the patience, advice, guidance and constructive feedback that he gave me as I was writing this project. I would also like to acknowledge my friends and classmates who all offered their encouragement. This research project would not have been a success if it had not been for them

ABSTRACT

This research project explored the role of the state, regional and sub-regional organizations as well as the international community in ensuring that the principle of responsibility to protect is adhered to during times of conflict. In a bid to do so, the study was guided by the objectives; to examine the role of the state, regional, sub-regional organizations and the international community in the protection of civilians in the current conflict in South Sudan; establish the provisions of International Law in relation to the principle of responsibility to protect; determine who has the major role to protect according to International Law and examine the challenges of implementing the principle of the responsibility to protect. The study is therefore intended to show how the state, regional and sub-regional organizations as well as the international community have failed in their mandates to implement the principle of responsibility to protect in South Sudan. The study also intends to help policy makers re-think the principle and come up with a way forward to ensure that the loss of civilian lives is minimal.

From the study findings it is recommended that there is need for the AU and UN to ensure a greater harmonization and coherence between their institutions and the sub-regional bodies. Recommended ways to do this are: improvement of institutional capacity; strengthening of AU's RECs/RMs; having joint peacekeeping (UN-AU) missions; support the principles of ICC, and a realization of small arms and light weapons trade and their effect on AU's implementation of R2P

For further research, this project proposes further studies in the area of the relationship between small arms and light weapons and the responsibility to protect. This is in the light of the challenging effect of the circulation of arms and how they hinder AU's effectiveness in implementing R2P.

ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
AMIB	African Union Mission in Burundi
AMIS	African Union Mission in Sudan
AMISOM	African Union Mission in Somalia
APSA	American Political Science Association
AU	African Union
CEWS	Continental Early Warning System
CPA	Comprehensive Peace Agreement
ECOWAS	Economic Organization for West African States
EU	European Union
GCC	Gulf Cooperation Council
HRW	Human Rights Watch
ICC	International Criminal Court
ICISS	International Conference on Information Systems Security
ICRC	International Committee of the Red Cross
ICG	International Crises Group
IGAD	Intergovernmental Authority on Development
IDPs	Internally Displaced Persons
IGP	Institute for Global Policy
IHL	International Humanitarian Law

IMF	International Monetary Fund
LAS	League of Arab States
MONUC	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo.
MSF	Medicines San Frontiers
NATO	North Atlantic Treaty Organization
NGO	Non- Governmental Organization
NIF	National Islamic Front
NTC	National Transitional Council
OAU	Organization of African Union
OIC	Organization of Islamic Conference
POW	Prisoners of War
PSC	Peace and Security Council
R2P	Responsibility to Protect
RECs	Regional Economic Communities
RMs	Regional Mechanisms
SNA	Sudan Nationality Act
SNM	Somali National Movement
SPLA	Sudan People's Liberation Army
SPLM	Sudan People's Liberation Movement
TNA	Transitional National Assembly

UN	United Nations
UNHCR	United Nations High Commission for Refugees
UNMISS	United Nation Mission in South Sudan
UNOCI	United Nations Operation in Cote d'Ivoire
UNSC	United Nations Security Council
US	United States
USSR	Union of Soviet Socialist Republics
WFM	World Federalist Movement

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CHAPTER ONE

INTRODUCTION TO THE STUDY

1.0 Introduction

Africa being host to some of the world's most brutal violent conflicts and civil wars has been in the process of developing an effective security architecture that is dependent on responsible and accountable states. In the last decade, the AU has put in place a security framework that will enable collective action by states to prevent, deter and mitigate civil wars and atrocities. It is in this light that the Principle of R2P is being applied on the continent, as it recognizes the existence of this architecture at play among states. The principle was initially proposed in the 1980s by Gareth Evans and essentially took over 20 years to be formed and endorsed by Kofi Annan in the 1990s, before being adopted as a concept by the UN's World Leader's Summit in 2005.[1]

The continent is currently at a crossroads where policy makers, civil society and the international community all concede that the past atrocities such as in Rwanda, or intra-state wars like Liberia, Sierra Leone, and Burundi must serve as a learning curve for preventing recurrence in the future. However, implementing the doctrine of R2P is proving difficult.[2] In the case of South Sudan, the AU has the moral authority and recognition to implement collective responsibility on the continent, but presently lacks the financial and logistical capacity to sustain large interventions. Implementing R2P in Africa as the study seeks to explore, should focus on bolstering the capacity and reputation of the AU and its pillars, to carry out preventive, reactive

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[1] Mwanasali, M, *Africa's Responsibility to Protect*, in Adekeye Adebajo and Helen Scanlon, *A Dialogue of the Deaf; Essays on Africa and the United Nations* (Fanelle Publishers 2006

[2] Eklyor, T, Engendering Peace: *How the Peacebuilding Commission can live up to UN Security Council Resolution 1325*, Friedrich-Ebert Stiftung Briefing Paper, June 2006, (available at ccrweb.ccr.uct.ac.za)

or rebuilding action only where the UN is unable to.[3] More importantly, the future of R2P in Africa and elsewhere depends largely on all stakeholders' ability to heed the advice of the outgoing Under Secretary for Humanitarian Affairs, Jan Egeland, in a recent speech to the UN Security Council. Egeland states that the responsibility to protect should be depoliticized and translated into joint action by all the (UNSC) Council members and global organizations. The Council must transcend singular interests and become the core principle of humanity across all civilizations. When the lives and safety of civilians are at stake regardless of where, neither strategic nor economic or political interests should deter Council members from acting swiftly upon their united responsibility to protect.[4] Failure to capture these ideals of R2P will result in the doctrine becoming rhetoric in the lexicon of international relations

1.1 Background of the Study

During the United Nations (UN) World Summit held in 2005, world leaders made a commitment to protect populations from genocide, ethnic cleansing, war crimes, and crimes against humanity. This commitment was titled the responsibility to protect (R2P). In the Summit, leaders agreed that:

1. The State carries the primary responsibility for the protection of populations from genocide, war crimes, crimes against humanity and ethnic cleansing.
2. The international community has a responsibility to assist States in fulfilling this responsibility.
3. The international community should use appropriate diplomatic, humanitarian and other peaceful means to protect populations from these crimes. If a State fails to protect its populations or is in fact the perpetrator of crimes, the international community must be prepared to take stronger measures, including the collective use of force through the United Nation's Security Council (UNSC).[5]

These commitments were done to avoid the loss of humanity and crimes against humanity as was the case in Rwandan and the former Yugoslavian genocide. In Cote d'Ivoire for instance, there was an accelerating post-election violence in late 2010 and early 2011.The UNSC

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[3] *Imperative for Immediate Change*: The African Union Mission in Sudan. Human Rights Watch Report, Volume 18 No. 1A, January 2006.
[4] *Security Council 5577th meeting, SC 8884, 4 December 2006.* Available at: http://www.un.org/news.press/docs/2006/sc8884. doc.htm (accessed December 2006
[5] Institute for Global Policy, *About R2P*, http://www.responsibilitytoprotect.org/index.php/about-rtop 2009

in March 2011 condemned the human rights violations committed by supporters of the two presidents. In line with the third pillar which allows the United Nation intervention, power was transferred to President Alassane Ouatarra the winner of the elections and there was a reaffirmation that the United Nation Operation in Cote d'Ivoire (UNOCI) could use all necessary means to protect civilians. Later, according to a UN report, the UNOCI begun a military operation and the former president Laurent Gbaghbo in 2011 was transferred to the International Criminal Court (ICC) to face crimes against humanity charges such as rape, murder and persecution.[6] Currently, there are over 2.7 million Syrian refugees in neighbouring countries and over 6.5 million internally displaced persons (IDPs). The Syrian government has out rightly defied the responsibility to protect its civilians. It has continued in its aerial bombardment of opposition-held residential areas. The air strike and attacks on Aleppo killed 2,321 civilians between 1 November 2013 and 21 March 2014.[7]

Following the long civil war that has been in Sudan, the Security Council in 2011 established a UN peace keeping mission in South Sudan (UNMISS) to advice the government in fulfilling its responsibility to protect civilians. South Sudan gained independence on July 9, 2011 after breaking away from the larger Sudan. However, the nation has been characterised by inter-ethnic conflict. The government, Sudan People's Liberation Army (SPLA) has been contending with armed rebel groups and this has caused many deaths and displacement of people. The most recent conflict begun after President Salvar Kiir accused the former Vice President Riek Machar who lost his office in July 2013, of an attempted coup. The violence has since led to the deaths of

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[6]United Nations, *About the Programme*,
http://www.un.org/en/preventgenocide/rwanda/about/bgresponsibility.shtml (May 2014)
[7]GCR2P, *Populations at Risk, Syria*, http://www.globalr2p.org/regions/syria, 15 May2014

10,000 people and the displacement of approximately 923,000, while over 289,000 seeking asylum in neighbouring states.[8]

1.2 Statement of the Research Problem

The responsibility to protect in armed conflict has been a focal point on the international agenda for years. On one level, progress had been impressive in terms of policy documents and laws that have been developed. There have been so many policy statements and resolutions, so much information globally and advocacy and uncountable actors stepping out and vowing to carry out protection work. The lack of adherence to international humanitarian law (IHL) which is also known as the law of armed conflict , by states and non-state actors, as well as the prevailing culture of impunity, is the main cause of the large-scale human suffering we are witnessing.

Following the event of the Rwanda genocide and the Balkans in the 90s, the international community saw the need to seriously address the issue of protection of civilians and the violation of their human rights. In particular, two issues came up: First was whether states have the unconditional sovereignty over their affairs and secondly, whether the international community has the right to intervene in a country for humanitarian purposes.[9]

The Geneva Conventions of 1949 and the additional protocols of 1977 says that civilians and all persons not taking part in combat may under no circumstances be the object of attack and must be spared and protected but what we see in international and non-international armed conflicts is that the very same civilians who should be protected suffer most of the consequences of armed

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[8] GCR2P, *Populations at Risk*, South Sudan, http://www.globalr2p.org/regions/south_sudan . 15 May2014
[9] *Background Note on the Responsibility to Protect* ,
http://www.un.org/en/preventgenocide/rwanda/about/bgresponsibility.shtml

conflict.[10] What then is the role of the State and the International Community in ensuring that the principle of responsibility to protect is adhered to during times conflict?

1.3 Objectives of the Research

1.3.1 Main Objective

- To examine the role of the state, regional organizations and the International Community in the protection of civilians in the current conflict in South Sudan

1.3.2 Specific Objectives

- To establish the provisions of International Law in relation to the principle of responsibility to protect.

- To determine who has the major responsibility to protect according to International Law

- To examine the challenges of implementing the principle of R2P

1.4 Justification of the Research

1.4.1 Academic Justification

From Hiroshima to Rwanda, Darfur to Syria, thousands of civilians are being targeted on a daily basis despite the fact that there are laws provide for civilian protection during wars and violent conflicts. This brings the objective to query the same for South Sudan, as to whether the state is doing its best to protect its civilians. Additionally, the international community and also be questioned as to having taken any action or engrossed in ensuring that a peace deal is reached and it has forgotten to put measures in place that will ensure that innocent civilians are not targeted. The research will be important because it will show how the state has failed in its mandate as given by International Law to implement the principle of R2P and so has the International community. This is an area which has not been given adequate academic attention.

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[10] ICRC, *Geneva Conventions of 1949 and Additional Protocols to the Geneva Conventions of 1949*

1.4.2 Policy Justification

The study is also important because it will highlight the challenges faced by the mentioned entities in implementation and hence the reason why civilians continue to constitute majority of casualties during conflict. This will in turn help policy makers re-think the principle that so far can be said to be ineffective, and come up with a way forward to ensure that the loss of civilian lives and property is minimal and that the principle of targeting R2P is adhered to.

1.5 Literature Review

When stalemates occur during wars and more so conventional wars, belligerents will more often than not result to using military force against civilians of the opposite side in a bid to get them to surrender. Targeting civilians as a form of punishment is common. Downes[11] argues that when the enemies civilian population is targeted, it is likely that the civilian population will protest and demand that the government stops the fighting. Civilians can be put into several categories: humanitarian workers, refugees, media, women and children. In general, anyone who is not taking part in hostilities is a civilian.

This section of the study will look at academic literature containing information about R2P. The section will review literature under three thematic areas. These are:

- The Law on R2P

- International community and regional organisation role

- Case studies

1.5.1 The Law on R2P

There has been a lot of debate around the question of who has the first hand in the protection of civilians. The Secretary General's 2009 report on implementing the responsibility

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[11] Downes, A.B, *Targeting Civilians in War,* (New York, Cornell University 2008), 85

to protect specifies that this role lies with the state although other players cannot be blocked. In particular the report gives three pillars of the responsibility to protect as pointed out below:

1.5.1.1 The Protection Responsibilities of the State

States have the responsibility to protect their citizens against war crimes and other crimes against humanity or even their incitement. According to UN Resolution (60/1) in 2005, each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing as well as crimes against humanity. This responsibility includes the prevention of such crimes, including their incitement, through appropriate and necessary means.[12]

1.5.1.2 International Assistance and Capacity Building

In pillar one above, States recognise the fact that the responsibility to protect their population lies with them for as they say, charity begins at home. The rest of the paragraph states that: [13] The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability. By this, states accept that the International Community and the United Nations come in as complementary instruments to help them implement R2P. The International Commission on Intervention and State Sovereignty (ICISS) clearly states that R2P has three elements namely. These are: The responsibility to prevent so as to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk. The responsibility to react is the second element in order to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention and finally is the responsibility to rebuild

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[12] United Nations, *Resolution Adopted by the General Assembly: 60/1. 2005 World Summit Outcome* (United Nations, 2005) p. 39, Para138
[13] Ibid 3

so as to provide, particularly after a military intervention, full assistance with recovery, reconstruction as well as reconciliation, while addressing the causes of the harm the intervention was designed to halt or avert.[14]

1.5.1.3 Time and Decisive Response

Paragraph 139 of the summit outcome outlines that the International community has the right to apply the necessary peaceful means of conflict settlement to prevent the crimes stated in pillar one above. As such, it states:

> The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner...[15]

International Humanitarian Law protects civilians. Additional protocol to the Geneva Conventions II of 1977 states that the civilian population shall not, under any circumstances, is the object of any attacks.[16]

1.5.2 The Role of the International Community and Regional Organisations

The role of the international community is to compliment the state in its effort to implement R2P. Regional organizations fall under the international community. When states seem to forget of this responsibility, it is the role of the International Community to remind them (the states) of their obligations that, acts that breach the laws on R2P could end up at the International Criminal Court.[17]

Evans[18] argues that regional organizations have a greater advantage in understanding the dynamics of a conflict and can be better accepted as conflict resolvers and therefore play a big

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[14] ICISS, *A Report of the International Commission on Intervention and State Sovereignty,* 2001
[15] Ibid 3, Para 139
[16] ICRC, *Protocols Additional to the Geneva Conventions of 12 August 1949,* (Geneva 1996) p.36, Art. 51 (2)
[17] United Nations , *Implementing the Responsibility to Protect* (United Nations, 2009) P 23, Para 54
[18] Evans G, *The Responsibility to Protect Civilians,: Ending Mass Atrocity Crimes Once and for All* (Washington D.C,Brookings Institution Press 2008), 175-177

role in ensuring that some of these war crimes do not occur, and if they do occur, that some of the perpetrators are brought to book. In addition, Evans goes on to say that regional organizations are cost effective and have a greater sense of ownership. On the other hand he argues that although the United Nations system which more often than not represents the international community is the focal point for discussing R2P issues. It has a reputation of being "slow, cautious and bureaucratic.[19]

1.5.3 Case Studies

While the research study will be focusing on South Sudan, this section will look at different conflicts over time and how the principle of R2P has been implemented or not implemented. It will, as a way of conclusion compare the discussions with the current conflict in South Sudan. The war in Afghanistan begun in April 1978. Since then, the country has known no peace. Gossman[20] writes that between 1978 and 2001 when the Taliban were defeated, crimes against humanity were committed by the armed groups. The crimes included "large scale massacres, disappearances and summary executions of tens of thousands of Afghans, indiscriminate bombing and rocketing that killed thousands of civilians. Gossman notes that the main war crimes were committed between 1997 and 2001, when the Taliban who had the support of Pakistan massacred non-combatant and civilians, burned down villages and in August 2008 they massacred at least 2000 civilians.[21] Afghanistan continues to experience attacks day in, day out. In conclusion, he states that the failure to properly vet those vying for power in the country has provided an opportunity for terrorists to continue terrorizing civilians. This he attributes to

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[19] Evans G, *The Responsibility To Protect Civilians* Op cit.
[20] Gossman P, Afghanistan in R.Gutman, D. Rieff and A. Dworkin (ed), Crimes of War: *What the Public Should Know*, (London, W.W. Norton & Company, 2007) pp. 30-36
[21] Ibid

the fact that, while some people may want the past atrocities addressed and the responsible brought to book, some, as well senior U.S officials prefer to let the sleeping dogs lie.

In Rwanda, the genocide is said to have been rehearsed. Mark Huband[22] in the case study of the country noted that in 1993, close to a year before the massacre of Tutsis and moderate Hutus begun, the government carried out a census under which everyone was required to clearly indicate his/her tribe and this was eventually, out of the identification through the census, was followed by a slaughter of Tutsis in the northern part of the country. Huband goes on to say that it is not clear whether the signing of the Arusha accord by the then President Juvenal Habyarimana whose purpose was to end the civil war was a genuine effort to end the war or a break in which to finalise the preparations to exterminate the Tutsis. In conclusion, Huband observes that President Habyarimana upon his return to Rwanda from Arusha, made sure that he had put extremists in positions of power and authority whose main objective was to launch a final genocide strike against the hated Tutsi minority[23].

In Rwanda, there were reports of the international community actually taking part in the genocide. To be specific, France was accused of killing Tutsis and working very closely with the Hutus to carry out the mission. When former American President Clinton visited the country in 1994, he implied that his government and the international community had no idea of the magnitude of the atrocities that were being committed in Rwanda. However a report by the National Security Archive showed that the President and all top state officials had unlimited access to information about what was happening in Rwanda and they were advised to take action to prevent the genocide.[24]

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[22] Huband, Mark. 2001. *The Skull Beneath the Skin: Africa after the Cold War.*(Boulder, Colo: Westview Press, 2001),360
[23] Ibid 8, pp 360-364
[24] Ferroggiaro, W., *The U.S. and the Genocide in Rwanda : Information, Intelligence and the U.S. Response* (2004)

Ilibagiza says that the world said never again after the Nazi Germany. That all big powerful states swore to never again allow the killing of civilians witnessed in Germany during the holocaust but the same states watched as it happened again in Rwanda.[25] Fighting in the Democratic Republic of Congo started in 1996 and it is still on-going. To date millions of thousands of civilians have been killed and a million others displaced. Herbert Weiss[26] positions that it would have been impossible for the effects of the war to be completely prevented as it would have taken an international force far beyond any number that is politically imaginable. He however accuses the Congolese and other Africa forces that have been deployed there of human rights abuse in terms of rape, causing massacres and recruiting women and children. In support of the premise that has been put forward by different scholars accusing the international community of not doing much to implement R2P, this scholar says that, between 1997 and 2007, much could have been done to avoid the loss of lives and destruction of civilian property witnessed in DRC during this period.[27]

> If the responsibility to protect had meant something substantial, it might have been possible to reverse this horrific and deadly tide, but that would have required an international force many times the size of MONUC. Yet, not only was there no will to send an appropriate number of troops to a country the size of Western Europe with about sixty million inhabitants, but the major powers did not even use the real opportunities that existed from 1999 to 2003 to engage in mediation in order to reduce conflict and casualties where the blood flowed the most. The major lesson to be learned from this sad history is that the international community should engage itself in peace-making, whether it is between states and major actors in a civil war as it did in helping to give birth to the Lusaka Agreement or between local militia. The effort should focus on the arena where the violence is the greatest.[28]

In Uganda, the Lords Resistance Army has for the past 20 years and more terrorised the people of northern Uganda and committed all sorts of crimes aginst humanity. Looking back at Downes argument that civilian population is targeted to encourage the civilians to rise up in arms

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[25] Ilibagiza E, *Left to Tell*, (hay house UK ltd et al, 2006, 2007) p109
[26] Weiss, Herbert, *The Congo's Independence Struggle Viewed Fifty Years Later*, *African Studies Review* . Vol. 55, No. 1 , April 2012
[27] Ibid
[28] Weiss, Herbert. *Political Protest in the Congo* (Princeton, Princeton University Press), 2009

and force the governmet to stop the war, Downes says that in 1985, an American soldier justified the decision to bomb Iranian cities by arguing that the soldiers wanted to bring the Iranian people to the battle front because they hoped that this would encourage the Iranian people to rebel against the government and bring the war to an end.[29]

Civilians have continued to be targeted in the ongoing war in Syria. According to the human rights watch report titled "Death from the Skies, about 4200 civilians were killed in 2012 after the Syrian forces targeted civilan property such as hospitals and bakeries. This number has increased two folds since then. [30] Recently in April 2013, the city of Homs was shelled and countless civilians were killed. The UNSC in an official statement released to condemn the attacks on a technical insitute said:

> The Secretary-General condemns in the strongest terms the bombing and mortar shelling in the Zahra neighbourhood in central Homs yesterday, which killed and wounded dozens of civilians. In Damascus, mortar fire has again targeted civilian areas, hitting a technical institute. These are horrendous acts of terror against innocent civilians.[31]

In 1988, the Somali National Movement - SNM in Somalia attacked refugee camps under the management of the UNHCR. The attacks resulted in the death of 400 refugees, women and children inlcuded.[32] The principle of R2P has not always been ignored as there are instances where the international community has realised that something needs to be done. Bolopion argues that in the case of the Central African Republic, the United Nations has not been short of warnings to the warring parties to refrain from targetting civilians. He says:

> This time, the UN has not been short on warnings. "We have an opportunity, and the responsibility, to prevent what could become widespread atrocities," warned UN Secretary-General Ban Ki-moon in a recent report to the Security Council. Following a trip to the country, John Ging, the UN's operations director for

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[29] Downes, A.B, *Targeting Civilians in War*, (New York, Cornell University 2008) P 85
[30] Human Rights Watch, *Death from the Skies:A deliberate and Indiscriminate Air Strikes on Civilians*, (2013), 1
[31] Ki-Moon, Ban. http://www.un.org/sg/statements/index.asp?nid=7636, 30 April 2014
[32] Alasow O.A, *Violations of the Rules Applicable in Non.International Armed Conflicts and their Possible Causes*,(Boston, Martinis Nijhoff Publishers 2010)

the Office for the Coordination of Humanitarian Affairs, said he was "very concerned that the seeds of genocide are being sown.[33]

However, he poses a question as to whether the principal of R2P is becoming irrelevant and unusable because states as well as the international community tend to take action after serious atrocities have been committed. In some incidences, the R2P has been misused as again argued by Bolopino. The action by NATO to intervene in Libya was justified because the mission was to protect the Libyan people but after a while, it became clear that the mission was targeting the removal of Muammar Gadaffi.[34] Bolopino is not the only scholar who has begun to doubt the usefulness of R2P. Evans argues that the lack of consensus by the Security Council in 2013 on how to respond to the atricities gainst civilians in Syria raised questions about the viabilitity of this principle, but he goes on to say that although the principle may seem down, it is not out".

1.6 Theoretical Framework

This section will look at one theory (realism) that will help explain the topic under research.

1.6.1 Realism

Hans Morgenthau is considered the founding father of realism. The main assumptions of realism are that state as main actors, universal conformity is not possible. According to this school, conflict must arise, and no nation is willing to surrender their sovereignty to international institutions and a state is bound to fail as they lack power to sustain themselves. Realists also posit that the responsibility of each state to promote the interest of its people

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[33] Bolopion, P. *Genocide occurs when 'warning signs' ignored, action not taken.* Available at: http://www.un.org/apps/news/story.asp?NewsID=49865#.VQlZYl6UfWQ. Accessed 10/3/2015

[34] Phillipe, B., *After Libya, the question : To protect or depose* (Los Angeles , LA Times August 25 2011)

against opposition of international group, therefore the struggle for power overrides all other factors.[35]

Realists argue that the state is the main actor in international politics. The international system is considered insignificant. A big proponent of this view is Nicollo Machiavelli in the book called "Prince." He sees the state as a sort of stabilised system of power and that conflict is crucial to the functioning of a state. Thomas Hobbes views were deeply influenced by violent disruptions of the English civil war of the 1640s. His book Leviathan published in 1651, presents a fine example of a strong realism that gives roughly equal weight to egoism and anarchy. Assuming that people are naturally equal, that they are driven by competition, difference and glory, and that they interact in absence of government, Hobbes drew the famous conclusion that the natural state of man is war.[36]

Carr E.H. argues that war in the realist view is only undertaken in order to increase state power. Realists are not opposed to war as an instrument of politics but they are wary of any military action that may leave a state in a less advantageous position than before going to war.[37] On the other hand, Carr critiques realism as being hollow and goes on to say that in politics, the belief that some certain facts are irresistible reflects a lack of interest to change or resist these facts. He says that consistent realism lacks four things, namely: A finite goal, emotional appeal, right of moral judgement and ground for action[38]

[35] Morgenthau H. J and Thompson W.K, *Politics Among Nation: The Struggle for Power and Peace* (New Delhi, Kalyani Publishers 2001), 3-4
[36] Hobbee T, Leviathan, (Gutenberg E-book project January 05 2013)
[37] Carr, E H, *The Twenty Years of Crisis*, (Newyork , Harper Collins Publishers 2001), 41-43
[38] Ibid 24, P 89

1.7 Hypotheses

- The principle of R2P conveys upon states, regional and sub-regional organizations as well as the international community an obligation to protect during mass atrocity crimes

- A state has the first responsibility to protect its civilians.

- The international community has a responsibility to protect, where the state has either refused or is unable to protect its civilians.

- The principle of Responsibility to Protect has failed

1.8 Research Methodology

The research will utilize both qualitative and quantitative methods of research but it is based more on the quantitative epistemology that recognizes the importance of locating the research within a particular social, cultural, and historical context. It also takes seriously the social construction of these contexts and the identities participants construct within them. Both primary data and secondary data will aid the researcher in coming up with general conclusions and recommendations.

1.8.1 Primary Data

The researcher will mostly rely on the primary data. Questionnaires, interviews and focus group discussions will be used to collect this data. Due to time and financial constraints, the researcher will send the questionnaires to selected respondents via email and get answers through the same channels. She will also distribute some questionnaires to International Humanitarian Law experts at the International Committee of the Red Cross (ICRC) office in Nairobi as well as ordinary Kenyan citizens who are conversant with the topic under research.

The questionnaires to be sent via email will also be sent to Medicine San Frontiers (MSF) experts based in South Sudan who will also assist in gathering data from the selected sample. The researcher will use the nonprobability sampling method to select the samples. In particular and again due to time and financial constraints, the researcher will use the convenience sampling method.

1.8.2 The Secondary Data

Secondary data will be collected from desk research where material from other researchers on the same or related topic will be consulted. Books, journals, newspapers reports and other reports, journals among other sources of secondary data will be analyzed.

1.9 Scope and Limitations of the Study

This section will look at the challenges the researcher foresees in conducting this study. First and foremost, Distance will be a big challenge. The researcher will be conducting the study from Kenya and will have to rely on research assistants to distribute the questionnaires on their behalf. Although South Sudan is not too far from Kenya, the Security situation will not allow the researcher to visit the country and conduct the study on the ground. Financial constraints will be another challenge. If this was not a problem, the researcher could have been in a position to visit the country and conduct the research from Juba, where the security situation is not too bad but this would mean buying a plane ticket and staying in a hotel, catering for refreshments for interviewees among others.

A third challenge will be the reliability of the information received from respondents and having the research assistants to agree to distribute the questionnaires. Reliability will be hard to determine whether the questionnaires will be disseminated to the samples or not. In this case the researcher will have to purely rely on trust. Some respondents may be afraid of volunteering

information for fear of victimization and therefore the research assistance will have to convince the respondents that the information they give is strictly for academic purposes. Language barrier will also be another challenge.

1.10 Chapter Outline

This is how the study will be laid out and presented.

Chapter 1   Introduction to the Study

Chapter 2   South Sudan: A historical overview and the current situation

Chapter 3   Responsibility to Protect: Discussed in detail in view of International Law

Chapter 4   Challenges of implementing R2P

Chapter 5   Conclusions and recommendations

CHAPTER TWO

BACKGROUND OF THE CONFLICT SITUATION IN SOUTH SUDAN

2.0 Introduction

The Horn of Africa has experienced a peculiar pattern of state formation, quite distinct from state building processes in the rest of the continent.[39] Rather than states and boundaries being the exclusive result of European imperialism as elsewhere on the continent, in the Horn region Ethiopia has played a major role in shaping state borders and has therefore tended to be perceived as a colonial and expansionist state by some of its neighbours such as South Sudan. This has had far-reaching implications on inter-state relations in general and border relations in particular.

The birth of South Sudan introduced new dynamics into the debate on the inviolability of Africa's borders and engendered new border-related tensions between the sovereign states of Sudan (north) and South Sudan with real dangers of destabilizing spill-over effects into the broader Horn of Africa region. The independence of South Sudan represents another rare case of major border revision on the continent, almost 20 years after Eritrea's. This chapter therefore focuses on the historical overview of the South Sudan and also includes the issues of self-determination, secessionism and ethnic conflict.

2.1 Historical Overview of the Conflict in South Sudan

At the center of the Sudan conflict, as Deng writes, is that the historical process that has separated the Arab Muslim North and the African South has its roots in the Arabization and Islamization of the North and in the resistance to those forces in the South. The assimilation processes favored the Arab religion and culture over African race, religions, and cultures, which

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[39] Taras, R.C., & Ganguly, R. (2002). *Understanding ethnic conflict: The international dimension*. New York: Longman

remained prevalent in the South.[40] The strands of this Northern hegemony go back to the days of Sudan's administration as a colony of Great Britain. The British put greater stock into the success of the North, thus leaving the South mostly to survive on its own in a pre-modern existence. The British merely wanted to keep order in the South; they were not interested in establishing a fully functioning political society there.[41] Thus, the North was primed to assert its dominion over the South when the country finally gained its independence. And the assertion of Northern hegemony began in earnest almost immediately upon Sudan's birth as a sovereign nation. In order to successfully implement the strategies of Arabization and Islamization in the South, the Sudanese military began to occupy that territory in 1958. This only further inflamed tensions between the two regions of the country, which led to the commencement of a long and bloody civil war in the 1960s.[42]

2.2 Secession and Ethnic Conflict in South Sudan

Secession may be considered as the out- come of four separate processes. The first involves the establishment of collective agreement about the existence and boundaries of a territorial sub-unit of the existing host state that will be termed the 'region'. Regions are territories in which a large majority of the population has a common interest in seceding from the host state. This common interest need not be over- riding, nor does it preclude the existence of other interests that militate against secession. The second process is the familiar one of collective action. It is important to understand what conditions regional populations form social movements

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[40] F.M Deng. *War of visions: Conflict of identities in the Sudan.* (Washington, D.C.: Brookings Institution.1995), 9
[41] Ibid: 11
[42] F.M Deng. *War of visions: Conflict of identities in the Sudan.* (Washington, D.C.: Brookings Institution.1995), 12

or political parties to press for their common interests. The next phase is usually the social bases of secessionism.[43]

Clearly the residents of some regions are more content to remain in the given state than others. What inclines regional movements or parties to demand secession rather than pursue their interests within the bosom of the host state? Decisions made by the rulers of the host state are also important in the process of secessionism. Secession can occur only when rulers conclude that it is less costly to relinquish sovereignty over the region than to maintain it. With the exception of a lull in fighting between 1972 and 1983, Sudan has been engulfed in a civil war that, since 1963, has opposed the South to the North.[44] Southern Sudan's demand for national self-determination has oscillated between calls for greater autonomy within a federal Sudan and outright independence. Since it is itself multi-ethnic, such claims have not been made with reference to ethnicity. And, contrary to what is sometimes claimed, the reality is more complex than it being simply a conflict which opposes Muslims to Christians.[45]

The history of the Southern Sudan's claim to self-determination can in fact be traced back to the colonial period. The South was not only governed by Britain separately under a distinct colonial army (the Equatoria corps), but movements between North and South were further limited in 1940 with the introduction of a special pass system which restricted northerners' entrance into Southern Sudan. Until 1946, it was considered necessary to protect the south from northern depredations. Arabic was prohibited, all Arabic names removed, and Christian missionaries, who were excluded from the north, were allowed to proselytize in the south. This

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[43] Rothchild, Donald, *Managing Ethnic Conflict in Africa. Pressures and Incentives for Cooperation*, Brookings Institution Press, Washington, D.C., 1997.
[44] Peter Woodward, *War - or Peace - in North-East Africa? The Centre for Security and Conflict Studies* (London: 1989)
[45] Peter Woodward, *War - or Peace - in North-East Africa? Conflict Studies* No. 219, The Centre for Security and Conflict Studies, London, 7 no. 15 (1989)

move was to have profound implications for the future: as a result of missionary activity, ethnic differences between northern Arabs and Southern Africans were reinforced by a religious difference. Only about 15% of southern Sudanese are Christian, but they include most of the first generation of southern nationalists.[46]

2.3 Conflict in Nationality Laws in Sudan

The majority of what formed the Republic of Sudan until 2011 was under Ottoman-Egyptian rule during the 19th century. In the 1880s, a rebellion under the leadership of Mohammed Ahmed, the self-proclaimed mahdi or redeemer of the Islamic world, created a nationalist and Islamic government. The mahdist rebellion was in turn defeated in 1899 and replaced by British-Egyptian condominium. The condominium was headed by a governor-general theoretically appointed by the Egyptian khedive with British consent, but was under effective British control. Egyptian independence in 1922 led to the withdrawal of Egyptian troops from Sudan, although the condominium continued (as did the presence of British troops in Egypt and Sudan). From 1924 onwards, Sudan was governed as two separate provinces, kept administratively quite segregated, with controls on movement between them. From the mid-1940s, as a degree of self-government was given to Sudan, and a legislative assembly and executive council were established in 1948,[47] the south began to be integrated into the central government's administrative and political structures — in which southern politicians complained of marginalization.

Under the British-Egyptian condominium, a Sudanese was any person who was subject to Sudanese jurisdiction. From 1948, the Definition of Sudanese Ordinance defined a Sudanese as every person of no nationality [thus excluding British, Egyptian and other nationals] who is

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[46] Mayall, James, *Sovereignty, Nationalism, and Self-determination,' Political Studies*, Vol. 47, No. 3, Special Issue 1999, pp. 474-502.
[47] Ibid

domiciled in Sudan and (i) has been so domiciled since 31 December 1897, or the person whose ancestors in the direct male line since that date have all been so domiciled' or 'who is the wife or widow of such a person.'[48] The 1952 Egyptian revolution led to the abrogation of the condominium treaty with Britain, followed by an Anglo-Egyptian agreement for a process leading to Sudanese self-government; Sudanese nationalists in turn unilaterally declared their own independence in late 1955. The proposed self-government statute was hastily adopted as the Sudan Transitional Constitution 1956.[49]

The 1956 Transitional Constitution did not provide for nationality, and legislation was adopted to replace the 1948 Ordinance with the first real nationality law, the Sudan Nationality Act 1957. This Act, amended several times, remained in effect until 1993. It provided that a person was Sudanese if he was born in Sudan or his father was born in Sudan and he or his direct male ancestors had been resident in Sudan since 31 December 1897 (prior to the defeat of the Mahdist forces). This date was later amended to 1 January 1924, when Sudan had been reorganized administratively into two provinces.[50] Naturalization was possible based on a 10-year residence period and other conditions, including adequate knowledge of Arabic and renunciation of any other nationality; a child born after the act came into effect was a national if his father was a national (whether naturalized or by descent); and a woman married to a Sudanese man could naturalize based on two years residence.[51]

Very shortly after independence, southern army officers rebelled against the Khartoum government. Though the mutinies were quickly suppressed, they marked the start of a civil war that escalated in the early 1960s, after southern demands for a federal system were decisively

[48] *Definition of "Sudanese" Ordinance*, 15 July 1948, Laws of the Sudan 1956, Vol.1, Title 1, sub-title 5
[49] Nasredeen Abdulbari, *Citizenship Rules in Sudan and Post-Secession Problems*, Journal of African Law Vol.55, No.2, 2011, pp.157-180.
[50] Ibid
[51] *Sudanese Nationality Act 1957*, Section 5(1) and Section 9.

rejected by Khartoum in 1958, and continued to 1972. In 1972 the Addis Ababa peace agreement temporarily ended the civil war, with the grant of a degree of autonomy to the south, enshrined in a new 1973 constitution for Sudan. In 1983, the war was reignited as the autonomy of the south was revoked. In 1989 the latest in a series of Section 5(1) and Section 9.[52]

The coups d'état in Khartoum brought Brigadier Omar al-Bashir to power as chairman of the Revolutionary Command Council for National Salvation, a body with both legislative and executive powers. In 1993, the Revolutionary Command Council was replaced by an appointed Transitional National Assembly (TNA), made up of members of the National Islamic Front (NIF) led by Dr. Hassan al-Turabi; Bashir became president of the new government. The military government replaced the 1957 Nationality Act with a new law, initially adopted as a provisional decree in 1993, and then amended by the TNA and enacted as the 1994 Sudan Nationality Act (SNA).[53] The 1994 SNA remains in force in the Republic of Sudan, as amended in 2005 (following the adoption of the Interim National Constitution), and again in 2011 (following the secession of South Sudan).

Despite the initiatives to Islamicise Sudan in other ways, the 1993 nationality decree was very similar to the 1957 law in relation to the grant of nationality by birth, providing that a person born before the act came into effect was a national from birth if he or his father was born in Sudan and he or his paternal ancestors were resident in Sudan since 1924. No religious or linguistic criteria were applied, even in relation to the conditions for naturalization. In addition, in part to accommodate the foreign Islamist activists invited by Dr. Turabi to settle and do business in Sudan, the period required for a resident in Sudan to become a naturalized Sudanese citizen was reduced from ten years to five years, and the prohibition on dual nationality was

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[52] *Sudanese Nationality Act 1957,*
[53] Provisional Decree No. 18 of 18 August 1993, amended and approved by Transitional National Resolution No.59 of 3 May 1994, and signed into law by the president on 17 May 1994.

removed. The new law also reduced the grounds on which nationality could be taken away by the executive compared to the 1957 Act.[54]

While naturalization was permitted under the 1994 law on the basis of five years residence, it remained discretionary (including conditions related to mental competency and good moral character, as well as residence, though not to knowledge of Arabic).7 A woman married to a Sudanese man (but not vice versa) could be naturalized on the basis of two years residence in Sudan with her husband.8 The amendments added back in some of the grounds for depriving nationality from a person who had obtained it by naturalization, including an act or words outside Sudan showing his non-allegiance or hatred of Sudan.[55] The 1994 law also removed adopted children from the definition of children; this was the only provision overtly relating to government adherence to Islamic legal principles, which do not recognize adoption in its modern form.[56]

In 1998 a new constitution was adopted, following a 1997 peace agreement between the government and the Sudan People's Liberation Movement (SPLM). It was drafted through a process that allowed for some public debate, though the final version was closely edited by the executive. The TNA became an elected National Assembly, and the NIF created the National Congress Party, headed by President Bashir, as its formal political arm and the only legally recognised party in the country. The constitution represented a step towards a more inclusive idea of nationality, in particular by removing gender discrimination in nationality by descent - a

[54] . Sudanese Nationality Law 1993, sections 4, 7, 10, and 11.
[55] Ibid: Section 11(1)(d).
[56] Nasredeen Abdulbari, *Citizenship Rules in Sudan and Post-Secession Problems*, Journal of African Law Vol.55, No.2, 2011, pp.157-180.

reflection of Dr. Turabi's relative accommodation to calls for greater recognition of women's rights, compared to other Islamist leaders. Article 22[57] provided that:

> Everyone born of a Sudanese mother or father has the inalienable right to Sudanese nationality, its duties and obligations. Everyone who has lived in Sudan during their youth or who has been resident in Sudan for several years has the right to Sudanese nationality in accordance with the law.

This provision was not, however, translated into an amended version of the 1994 nationality law, which continued to discriminate on the basis of gender. The civil war resumed, however, with brutal effects, exacerbated by efforts to exploit oil deposits discovered in the south; peace negotiations resumed in 2002 and finally brought the war to an end in 2005, with the adoption in Kenya of the Machakos Protocol, outlining the terms of a peace treaty, and subsequently a detailed Comprehensive Peace Agreement (CPA).[58] The CPA provided for a five year transition period, during which the south would have a degree of autonomy, followed by a referendum on independence. Meantime, however, a further rebellion had broken out in 2003 in Darfur, in the west of northern Sudan.

2.4 The Role of Geopolitics in Conflicts in the Sudan

The role that the independent variable of geopolitics plays is examined to determine the interests the international community had in preserving peace throughout Sudan and Africa at large.[59] Since countries such as the United States had an integral role in preparing and negotiating the CPA, it is likely they were interested in seeing a peaceful Sudan. This section explains historical geopolitical attitudes toward intervention and how the international community came to see South Sudanese secession as inevitable to a stable Africa.

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[57] Nasredeen Abdulbari, *Citizenship Rules in Sudan and Post-Secession Problems*, Journal of African Law Vol.55, No.2, 2011, pp.157-180.
[58] Ibid
[59] Carson, J. (2011). Transcript: *The conclusion of the Comprehensive Peace Agreement: US perspectives and policy goals in Sudan*. Chatham House . Accessed 26 April 2012
.http://www.chathamhouse.org/sites/default/files/public/Meetings
/Meeting%20Transcripts/070311carson.pdf

Herbst[60] notes how African nations faced international pressure to preserve their borders. For example, superpowers such as the United States pledged that they would not lend support to secessionist groups within Africa). It was a cornerstone of U.S. foreign policy to maintain the status quo in Africa in order to prevent chaos and disunity throughout the region. Neither the U.S. nor the U.S.S.R. involved themselves in any conflicts over disputed borders in Africa. African stability would become even further codified through decisions of the International Court of Justice, which declared in a border dispute between Mali and Burkina Faso that "because African states had decided to retain the colonial boundaries, the practices of the region must be respected despite the apparent conflict with the principle of the right to self-determination".[61]

Additionally, the international community often recognized official "authority" as residing within the traditional, colonial-era capital cities of each country. This was largely a result of the urbanized majority of the African independence movement as was previously noted, but it also stemmed out of a desire from the great powers of the world to confer a degree of stability onto the continent by recognizing the African governments that replaced the colonial governments. Thus, as Herbst argues, ultimately the international system allowed leaders to have full legal control of the territories that were within their borders[62]. This would have a profound effect on the concept of legal command that Englebert noted; African leaders would gradually create inertia by deriving more and more power from the international community that recognized their states as sovereign.

[60] Herbst, J. (2000). *States and power in Africa: Comparative lessons in authority and control*. Princeton, NJ: Princeton University Press. P. 108

[61] Moseley, W. G. (2012). Azawad: *The latest African border dilemma*. Al Jazeera English. Accessed 20 April 2012. http://www.aljazeera.com/indepth/ opinion/2012/04/20124149184982408.html.

[62] Ibid 135

When the government of Jaafar Muhammad Numeiri came to power in Khartoum in 1969, tensions eased between the North and the South. This led to an historic agreement in 1972 to give the south Sudan a sense of autonomy. While not fully independent, it could be said that the south Sudanese now possessed some degree of self- determination. This historic agreement established a self-governing, autonomous area in the south. Numeiri allowed Ethiopia to not only be the host of these peace talks but for its leader, Emperor Haile Selassie, to play the role of mediator. Selassie's level of clout within the continent's political system allowed him to play an active role in the talks, something that Iyob and Khadiagala note was an unprecedented move in the resolution of African political crises[63]. Ethiopia had clear motives for seeing a resolution to the Sudanese crisis as "facing Eritrean secessionism, it was useful for Haile Selassie to support a peaceful resolution of the Sudan conflict within the context of unity and inherited boundaries".[64] Thus, talks of secession were unofficially deemed off the table as far as Ethiopia was concerned.

These talks eventually led to the 1972 Addis Ababa Agreement. This is the treaty that allowed the south to form the Southern Regional Government, which was the autonomous southern government. Obviously, this was not true secession, but rather the granting of certain southern demands in order to curb demands for a breakaway state. In several crucial ways, the Southern Regional Government remained reliant on the Khartoum government for necessary resources, such as the allocation of tax revenues. The Ababa Agreement also provided for conditions such as an amnesty program for rebels who wished to join the Southern Defence Corps, an amalgamation of northern and southern troops that would preserve order throughout the south. Despite the fragile nature of this autonomy, the south did enjoy a period when it had the ability to shape some of its own affairs.

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[63] Iyob, R., & Khadiagala, G. M. (2006). *Sudan: The elusive quest for peace* . Boulder, CO: Lynne Rienner. 85
[64] Ibid: 85

However, tensions were bound to create a conflict in the future. The system implemented under the Ababa Agreement was one in which "the south became a sub-system of the Numeiri regime . . . an island of liberal democracy in an ocean of one party dictatorship and the personal rule of Numeiri . . . which lacked or was denied the economic power and resources to develop the region"[65]. Additionally, political and ethnic tensions within the new southern leadership allowed Numeiri to covertly curry favor with certain elements of the resistance and ultimately diminish the "true" autonomy of the southern region. A variety of factors, prominent among them the discovery of oil in the Upper Nile region of Sudan, led Numeiri to dissolve the Southern Regional Government in 1981 and to abandon many of the tenets of the Ababa agreement.[66] As explained previously, these are the events that led to the birth of the Sudan People's Liberation Movement/Army (SPLM/A) in 1983.

Nevertheless, Numeiri's decision eventually came back to haunt him. Various conservative Islamic groups were not pleased with Numeiri's apparent "partitioning" of Sudan. Furthermore, he also deepened his own personal Islamic faith and soon became weary of the uneasy alliance between an authoritarian state in the North and a liberal democracy existing in the South's new autonomous region. Thus, Numeiri imposed reforms to slowly chip away at the South's autonomy. In particular, he strove to impose shari'a law throughout the country. The South responded by forming the Sudan People's Liberation Movement and the Sudan People's Liberation Army. The goal of this movement was "the creation of a new, secular, democratic, and pluralistic Sudan"[67]

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[65]Ibid: 86
[66] Iyob, R., & Khadiagala, G. M. (2006). *Sudan: The elusive quest for peace* . Boulder, CO: Lynne Rienner.
[67] Ibid

During the 1980's and 1990's, the war became increasingly bloody and tragic, claiming the lives of many Sudanese through violence and famine. The taking of power by General Omar Hassan Ahmed al-Bashir in 1989 only further exacerbated the tensions between the North and the South. Bashir strove to make Islam even more central to the conception of a "Sudanese identity," and thus tensions continue to this day, even with the secession of the South.[68] The dissolution of the southern autonomous region brought with it a continuation of the civil war that had festered in Sudan since independence. Nevertheless, the Ababa Agreement and its aftermath had established a precedence that would not be broken in Sudan: the intervention of external powers in Sudanese affairs.[69]

It is apparent that members of the international community inexorably linked themselves with the situation in Sudan: The Addis Ababa Agreement drew regional and international actors into the conflict, helping to further rupture the walls of sovereignty that had shielded the conflict from outsiders. The roles of external actors as mediators and providers of diverse resources multiplied as geopolitical shifts in alliances affected the course of the conflict. External participation in the conflict presented numerous vistas and constraints to the Sudanese parties, at once offering resources to parties to strengthen their organizational capacity, but at [the] same time subjecting them to the vagaries of external dependence. [70]

The ascension of General Omar al-Bashir and his Islamists to power through a coup in 1989 would only serve to increase the level of international mediation in Sudan. In the early 1990's, old alliances of both the Sudanese government and the SPLM/A began to shift and break

[68] Deng, F. M. (1995). *War of visions: Conflict of identities in the Sudan* . Washington, D.C.: Brookings Institution.
[69] Carson, J. (2011). Transcript: *The conclusion of the Comprehensive Peace Agreement: US perspectives and policy goals in Sudan*. Chatham House . Accessed 26 April 2012. http://www.chathamhouse.org/sites/default/files/public/Meetings /Meeting%20Transcripts/070311carson.pdf
[70] Iyob, R., & Khadiagala, G. M. (2006). *Sudan*, op cit

down. Bashir sought to move his government toward a more anti-American standpoint by strengthening relations with nations such as Libya and Iran. This consequently led to Bashir losing support among fellow Arab states such as Saudi Arabia, Kuwait, Egypt, and the United Arab Emirates. Political change in Ethiopia also led to the cessation of Ethiopian assistance to the rebel forces. [71]

The Bashir government took advantage of these weaknesses in the SPLM/A in order to reverse many f the military gains the rebel force had gained in the past decade. A turning point came with Bashir's turning to Nigeria's president, Ibrahim Babangida, who was then the chairman of the O.A.U., to help Sudan resume peace talks with the SPLM/A .[72]Both sides saw something to gain in these talks, which came to be known as the Abuja peace talks of 1992 and 1993. Bashir's government saw Nigeria as an effective rican power that would help to counterbalance any type of external meddling in Sudanese affairs, whereas the SPLM/A viewed this as a potential chance to galvanize African support for their cause and against the Bashir government. [73]

Additionally, the Nigerians' experience with their own civil war gave them some clout in negotiating an ending to a seemingly intractable political conflict. Although the talks led to commitments by both sides to respect the diverse nature of Sudanese society, issues of great substance were largely ignored. Nigeria would try once more to get the two sides together, even going so far as to involve Kenya and Uganda, but saw its efforts become largely fruitless as the Bashir government consolidated its power through reversals of previous SPLM/A victories. As

[71] Cockett, R. (2010). *Sudan: Darfur and the failure of an African state* . New Haven: Yale University Press.
[72] Ibid
[73] Carson, J. (2011). *Transcript: The conclusion of the Comprehensive Peace Agreement: US perspectives and policy goals in Sudan*. Chatham House . Accessed 26 April 2012.
http://www.chathamhouse.org/sites/default/files/public/Meetings/Meeting%20Transcripts/070311carson.pdf

the humanitarian crisis worsened throughout the south, the United States sought to once again pressure the Bashir government to accept certain limitations on sovereignty in order to save lives of southern civilians. Although Sudan acceded to the continuation of aid to these civilians, they dismissed the creation of United Nations-monitored "safe zones" for citizens to live in and find shelter from the fighting between the Sudanese government and the rebel forces.[74]

These conditions would cause Sudan and the international community to engage in talks that would eventually lead to the CPA. However, this period had clearly established a precedent for external action taken inside of a sovereign African nation. O.A.U. notions of non-intervention were challenged as most of the post-independence African governments invoked the norms of sovereignty in keeping outsiders from these debates, but since national questions remained open and violently contested, regional and international actors found intervention opportunities.[75] Additionally, forces in both the north and the south became increasingly dependent on the benefits conferred upon them by external actors. All of this slowly led to the situation that existed in the early-1990: many members of the international community had a clear stake in seeing the conflict in Sudan resolved. The negotiations surrounding the formation of the CPA would further entrench the international community in a debate over the secession of the south

2.5 Post Comprehensive Peace Agreement (CPA) Sudan

After years of violent struggle, hope came for the Sudanese in the form of the Comprehensive Peace Agreement. A series of documents that were signed between 2002 and 2005, the CPA laid the groundwork for the secession of the South in 2011.[76] The issue of a peace settlement was especially pertinent at this time because of the ongoing humanitarian crisis

[74] Iyob, R., & Khadiagala, G. M. (2006). *Sudan*, op cit , 94-96
[75] Ibid
[76] Moseley, W. G. (2012). Azawad: *The latest African border dilemma*. Al Jazeera English. Accessed 20 April 2012. http://www.aljazeera.com/indepth/ opinion/2012/04/20124149184982408.html.

in the Darfur region of Sudan. Crucially, the CPA included an agreement for a cease-fire between the Sudanese military and the SPLM/A. The conditions of the agreements were that "both the North and South were to maintain separate armed forces, the 91,000 northern troops in the South were to be withdrawn within two and a half years, and the SPLA was to retire its forces from the North within the next eight months"[77]. Wealth sharing of oil revenues was also addressed in these agreements by splitting the profits between the Northern and Southern governments. However, the most important components of the CPA for this discussion are the power-sharing deals that were implemented. The CPA declared: "during a six-year interim period southern Sudan would be governed by the autonomous Government of South Sudan (GoSS), at the end of which time a referendum would be held, in 2011, supervised by international monitors. In it the southern Sudanese would decide either to remain an autonomous province in a unified Sudan or to become an independent republic. Finally, to settle the issue of shari'a law, it was decreed that non-Muslims would not be held liable for the statues unique to Islamic.[78]

To understand how Sudan and the international community arrived at the CPA, it is necessary to detail the peace process leading to the agreements contained within it. The early 1990's were a period of growing international isolation for the Bashir government. In 1993, the United States urged the implementation of sanctions against Sudan for its flagrant abuses of human rights and its connections to radical Islam and terrorism. These last two points were especially relevant in light of the 1993 World Trade Center bombings, of which Sudan, it was argued, was complicit in. I.M.F. expulsion and Arab League pressure on the Sudanese government followed United States distancing from Bashir's regime. It soon became clear that

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[77] Collins, R. O. (2008). *A history of modern Sudan* . Cambridge, UK; New York: Cambridge University Press. 269
[78] Ibid: 279

"mounting external pressure compounded an economy reeling under the strain of war, decreased agricultural production, soaring inflation, and high unemployment".[79] It was clear to Bashir that the current trajectory for Sudan was unsustainable, and thus some kind of mediation was needed to reduce the crippling effects of Sudan's international isolation.

This led Bashir to seek the aid of the Intergovernmental Authority on Development (IGAD), a body of several African states. Bashir saw IGAD intervention as preferable to intervention by external powers such as the United States. IGAD accepted the task because it viewed the Sudanese civil war as a threat to stability in Africa, especially since problems such as refugees were beginning to affect neighboring countries in profound ways.[80] September 1993 brought the Addis Ababa summit, which was the first round of these peace talks. This meeting established "a four-nation mediation committee composed of Kenyan president Daniel arap Moi, Eritrean President Issaias Afewerki, Ethiopian president Meles Zenawi, and Uganda's Yoweri Museveni. A ministerial committee from the four nations was later designated to lead the mediation under Moi's chairmanship"[81]. Simultaneously, U.S. mediators successfully reconciled the SPLA with other rebel divisions throughout the south in order to give the south Sudanese a more coherent voice in any potential negotiations. This union was consolidated in the Washington Declaration of October 1993, which united southern factions in opposition against northern hegemony.[82]

Bashir would return to IGAD negotiations in July 1997, but the United States swiftly implemented a series of increasingly coercive sanctions against Sudan. This was due in part to the fact that the U.S. did not believe the IGAD talks would result in any tangible solutions.

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[79] Ibid: 278
[80] Englebert, P. (2009). *Africa: Unity, sovereignty & sorrow* . Boulder, CO: Lynne Rienner.
[81] Iyob, R., & Khadiagala, G. M. (2006). *Sudan*, op cit , 94-96
[82] Krasner, S. D. (1999). *Sovereignty: Organized hypocrisy* . Princeton, N.J.: Princeton University Press.

Containing Sudan remained the principle objective of the U.S. and its African allies of Eritrea, Ethiopia, and Uganda. Some relief would come to Bashir's government, however, when in October 1997, Egypt began a process of reconciliation with Sudan. In part, Egypt undertook this initiative due to its concern over instability on its southern border. After uniting with Libya, Egypt essentially tried to impose a counter-IGAD peace process. Instead of isolating Egypt's efforts, IGAD agreed to open a new round of negotiations in May 1998 with several other representatives of countries and Kofi Annan present. However, as in the past, these talks led to little tangible solutions.[83]

U.S. relations with Sudan would reach a new low in August 1998 when the U.S. struck a pharmaceutical plant in Sudan due to suspected Sudanese involvement in the production of chemical weapons as well as the government's potential ties to Osama bin Laden.[84] In response, the U.S. was called upon to increase its commitment to the peace process; instead of bombing Sudanese government assets, the Clinton administration was persuaded that working with IGAD and the Sudanese government would foster a more stable situation in Sudan. However, this coincided with an increased Sudanese relationship with the Egyptian and Libyan governments, and Bashir favored working through their initiatives rather than trying to go through IGAD and the United States. Naturally, the United States was not supportive of Libya's involvement in the peace process, so peace talks would be stalled yet again.[85]

In response to these tensions, IGAD aggressively sought to bolster its credibility in the negotiating process by undergoing a professionalization of its position in the Sudanese negotiations. The United States and the SPLA began to warm to the Egyptian-Libyan plan as

[83] Ibid: 112
[84] Krasner, S. D. (1999). Sovereignty: *Organized hypocrisy* . Princeton, N.J.: Princeton University Press.
[85] Iyob, R., & Khadiagala, G. M. (2006). *Sudan: The elusive quest for peace* . Boulder, CO: Lynne Rienner. 112-5

well, essentially seeing no other way around Bashir's intransigence but to try to accommodate the two different sets of peace negotiations. John Garang, the leader of the SPLA noted in a 2000 visit to Cairo: "the SPLM believes these two initiatives must be coordinated or merged in order to achieve a solution that can neither be accused of being predominantly African (IGAD) nor principally Arab (the Egyptian-Libyan proposals)".[86] He essentially urged a merging of the two different peace plans being offered. However, a true merger would not come swiftly, as Egypt resisted calls of any kind of self-determination for south Sudan. As a result, IGAD's peace plan was in danger while the Egyptian plan was only bolstered.[87]

The Machakos Protocol signaled the way toward unity between the two regions of Sudan. Unlike previous agreements, the Machakos Protocol brought the two sides into agreement on two key tenets: First, the SPLA agreed that the sharia would stay as the source of legislation in the North, while the south would be legislated by a secular administration. Second, Khartoum accepted an internationally monitored referendum that was to be held after a transition period of six and a half years, as per the decision of the south on whether to secede or not.[88]

This was only the first step toward a wide-ranging peace initiative, even in the midst of renewed hostilities between the north and south. Key to this agreement was the provision on the internationally monitored referendum, which was insisted upon by the SPLM/A as a condition for them signing the Machakos Protocol. October 2002 brought with it a Memorandum of Understanding on Cessation of Hostilities, which called for an end to fighting in all areas of Sudan.[89] This agreement also created a muti-national Verification and Monitoring Team that would report on the progress of the cessation of hostilities. Further talks were had on security

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[86] Ibid : 116
[87] Ibid: 116-9
[88] Herbst, J. (2000). *States and power in Africa: Comparative lessons in authority and control*. Princeton, NJ: Princeton University Press.
[89] Ibid

and economic issues, as well as what the political composition of a future united Sudan might look like. The United States urged the creation of a special Security Council session to be held in Nairobi in order to finalize the peace agreements between the north and the south. The IGAD peace process was considered to be complete when, in January 2005, these agreements were united into one document and both sides signed the Comprehensive Peace Agreement.

However, it seems that, at least by 2010, international actors and the Sudanese themselves viewed secession as inevitable. Important to keep in mind is that, through the referendum contained within, the CPA essentially made secession inevitable.[90] As the CPA failed to be implemented, countries such as the United States came to view secession as the only option to securing any semblance of peace. Johnnie Carson, the U.S. Assistant Secretary of State for African Affairs, noted in a March 2011 talk: a delay in the referendum would have seriously jeopardized the entire CPA and potentially have condemned Sudan to more conflict and instability, a referendum that lacked credibility and international recognition would have greatly eroded the willingness of all parties to abide by the terms of the CPA.[91] If South Sudan and Sudan do not initiate hostilities against one another, it is likely that it could be said that "peace" has been achieved, at least between two different factions. However, if a war is started, perhaps the costs of South Sudan's secession will be made clear

2.6 Conclusion

Due to the longstanding and intractable nature of the Sudanese conflict, it is likely that nations were willing to bypass questions of whether or not South Sudan could survive as an autonomous state in an attempt to stop the bloodletting. Especially with the Darfur conflict,

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[90] Ibid
[91] Carson, J. (2011). Transcript: *The conclusion of the Comprehensive Peace Agreement: US perspectives and policy goals in Sudan*. Chatham House . Accessed 26 April 2012. http://www.chathamhouse.org/sites/default/files/public/Meetings /Meeting%20Transcripts/070311carson.pdf

international trust in the Bashir government simply collapsed. Independence was largely able to be claimed by the Tuareg because of the unstable political climate in Mali at the time. Furthermore, this independence was achieved through military dominion of several cities rather than a referendum. Thus, the international community had no direct involvement in this independence movement and likely feels no pressure to recognize it unlike they felt with the South Sudanese.[92]

It remains to be seen whether or not South Sudan will survive as a viable and effective member of the international community. A question such as that surely exists beyond the scope and objective of this thesis. The recent resumption of hostilities between Sudan and South Sudan, however, is not encouraging.[93] Clearly, the peace that the international community thought it was getting with secession was tenuous at best. It is unclear the toll that will be taken with the current fighting between Sudan and its former territory. Issues of oil and disputed borders remain to potentially cause another lengthy period of mass casualties. Yet, at least with independence comes the self-determination of the people of South Sudan. Although Bashir's regime is still a threat, it no longer exists as an internal menace to the south Sudanese. Thus the people of South Sudan have a chance to take advantage of the split, and the new era of autonomy and peace through the birth of their nation.

[92] Moseley, W. G. (2012). Azawad: *The latest African border dilemma.* Al Jazeera English . Accessed 20 April 2012. http://www.aljazeera.com/indepth/ opinion/2012/04/20124149184982408.html.
[93] Leonardi, C. (2011). *Paying 'buckets of blood' for the land: Moral debates over economy, war and state in Southern Sudan.* Journal of Modern African Studies ,
49 (2), 215-240.

CHAPTER THREE

THE PRINCIPLE OF RESPONSIBILITY TO PROTECT UNDER INTERNATIONAL LAW

3.0 Introduction

This chapter explores the Responsibility to Protect (R2P) and its development in order to determine whether it is now an accepted norm of international law. It examines what R2P means in today's world and whether the norm now means that steps will be taken against states that are committing serious human rights violations. The building blocks of R2P are examined to see how to make the doctrine more relevant and more applicable. Thus the responsibility to react should be viewed through a much wider lens and that it needs to be more widely interpreted to allow it to gain greater support. It is argued that there is a need to focus far more on the responsibility to rebuild and that it ought to focus on the transitional legal architecture as well as transitional political structures. These processes ought not to be one-dimensional, but ought to have a variety of constituent parts. It also argues further on the conceptualization of R2P under the international law, into the African context.

3.1 History and Development of the Principle of Responsibility to Protect in International Law

Following the tragedies in Rwanda and the Balkans in the 1990s, the international community began to seriously debate how to react effectively when citizens' human rights are grossly and systematically violated. The question at the heart of the matter was whether States have unconditional sovereignty over their affairs or whether the international community has the right to intervene in a country for humanitarian purposes.

In his Millennium Report of 2000, then Secretary-General Kofi Annan, recalling the failures of the Security Council to act in a decisive manner in Rwanda and Kosovo, put forward a

challenge to Member States: "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?"

3.2 From Humanitarian Intervention to the Responsibility to Protect (2001)

The expression "responsibility to protect" was first presented in the report of the International Commission on Intervention and State Sovereignty (ICISS), set up by the Canadian Government in December 2001. The Commission had been formed in response to Kofi Annan's question of when the international community must intervene for humanitarian purposes. Its report, *"The Responsibility to Protect,"* found that sovereignty not only gave a State the right to "control" its affairs, it also conferred on the State primary 'responsibility' for protecting the people within its borders.[94] It proposed that when a State fails to protect its people – either through lack of ability or a lack of willingness – the responsibility shifts to the broader international community.

In 2004, the High-level Panel on Threats, Challenges and Change, set up by Secretary-General Kofi Annan, endorsed the emerging norm of a responsibility to protect – often called "R2P" – stating that there is a collective international responsibility, 'exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing and serious violations of humanitarian law which sovereign governments have proved powerless or unwilling to prevent." The panel proposed basic criteria that would legitimize the authorization of the use of force by the UN Security Council, including

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[94] Sarkin, J., *The Responsibility to Protect and Humanitarian Intervention in Africa, Global Responsibility to Protect* 2 (2010) 371-387.

the seriousness of the threat, the fact that it must be a last resort, and the proportionality of the response.[95]

The 'principle of responsibility to protect' was accepted by all Member States of the United Nations World Summit in September 2005, in order for each State to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity. At the Summit, world leaders also agreed that when any State fails to meet that responsibility, all States (the international community) are responsible for helping to protect people threatened with such crimes. Should peaceful means – including diplomatic, humanitarian and others - be inadequate and national authorities 'manifestly fail' to protect their populations, the international community should act collectively in a 'timely and decisive manner' – through the UN Security Council and in accordance with the UN Charter – on a case-by-case basis and in cooperation with regional organizations as appropriate.[96]

In practice, the first time the Security Council made official reference to the responsibility to protect was in April 2006, in resolution 1674 on the protection of civilians in armed conflict. The Security Council referred to that resolution in August 2006, when passing resolution 1706 authorizing the deployment of UN peacekeeping troops to Darfur, Sudan. Recently, the responsibility to protect featured prominently in a number of resolutions adopted by the Security Council.

3.3 International Community and the Principle of Responsibility to Protect

The international movement towards advancing the responsibility to protect has grown from recognition of the global community's inadequate response to the 20th century's "grotesque and morally indefensible" mass atrocities: the Holocaust, Cambodia, Rwanda, Kosovo, and

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[95] Baylis, J., & Smith, S., ed., *The Globalization of World Politics*, Oxford University Press, Oxford, 2005, 564-565
[96] Kiernan, B., Blood and Soil: *A World History of Genocide and Extermination from Sparta to Darfur*, Yale University Press, New Haven, 2007.

Bosnia.[97] In each of these situations, international leaders sat by as genocides, war crimes, and crimes against humanity transpired in the most systematic and brutal ways. Inaction was defended on the grounds that state sovereignty trumped the international community's responsibility to protect the victims. At the dawn of the 21st century, then UN Secretary-General Kofi Annan issued a challenge to the international community. "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty," asked Annan at the UN Millennium Assembly in 2000, "how we should respond...to gross and systemic violations of human rights that affect every precept of our common humanity?"[98]

In response, the Canadian government convened the International Commission on Intervention and State Sovereignty (ICISS), a group of prominent international human rights leaders chaired by Gareth Evans, former Foreign Minister of Australia and now president of the International Crisis Group, and Mohamad Sahnoun, an Algerian diplomat and Special Advisor to the UN Secretary-General. In December 2001, the group issued a report, "The Responsibility to Protect," which answered Annan's challenge by re-conceptualizing the "right to intervene" as the "responsibility to protect," thus framing the issue around the victims of conflict rather on those exercising power.[99] R2P is based on three pillars; that the responsibility to protect any given population lies within the sovereign state; if a state is unable or unwilling to protect its population and finally the state is itself the cause of the threat. In any of these circumstances, the international community of states has a responsibility to protect those populations against genocide, war crimes, ethnic cleansing, and crimes against humanity, all within the umbrella term of Mass Atrocity Crimes. Although R2P's biggest innovations involve changing the

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[97] International Crisis Group, *Responsibility to Protect*, http://www.crisisgroup.org/home/index.cfm?id=5116&l=1.
[98] The International Commission on Intervention and State Sovereignty (ICSS), *Commission Report*, Available at: http://www.iciss.ca/pdf/Commission-Report.pdf. Accessed April 24, 2015
[99] ICG, *Commission Report*, Available at: http://www.iciss.ca/pdf/Commission-Report.pdf. Accessed April 24, 2015

paradigm of civilian protection from a right to a responsibility, and legitimizing the use of force as a last resort, the responsibility to protect encompasses the responsibility to prevent, the responsibility to react, and the responsibility to rebuild, thereby ensuring sustainable and lasting peace for the world's citizens whose lives are jeopardized by mass atrocities.[100]

In 2004, Secretary-General Annan created the High-Level Panel on Threats, Challenges, and Change to identify major threats to peace and security facing in the international community and to develop potential policies and institutions to address these challenges. The panel's findings were issued in "A More Secure World: Our Shared Responsibility," a report that endorsed R2P as an "emerging norm" and reiterated the ICISS definition of the doctrine as a threefold responsibility to prevent and respond to atrocity crimes and to rebuild societies neglected by their 2005 World Summit, when 192 member states met at the United Nations to discuss areas of development, security, human rights and reform of the United Nations.[101] At the conclusion, countries signed the 2005 World Summit Outcomes document, which stated that the UN has a responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. In 2006, the Security Council passed two resolutions, 1674 and 1706, both of which reaffirmed the provisions regarding R2P in the World Summit Outcomes document, and committed the Security Council to action to protect civilians in armed conflict. In 2007, NGO advocates continued to support R2P, and worked behind the scenes to create the resources for a new organization that can help organize R2P advocates into a movement with focus and vision. [102]

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[100] WFM, *World Federalist Movement: Our Vision*, Available at
http://www.wfm.org/site/index.php/pages/1.Accessed of May 3, 2015
[101] Cooper, H., Hagon, K., Wijeyaratne, S., Vercken, N. and Yermo, F., 147 Oxfam Briefing Paper; *Protection of Civilians in 2010 - Facts, Figures, and the UN Security Council's Response*, Oxfam International, Oxford, 2011.
[102] Ban, K. *Responsibility to Protect Came of Age in 2011, Secretary-General Tells Conference, Stressing Need to Prevent Conflict before It Breaks Out*; Address to the Stanley Foundation Conference on the Responsibility to

In recent years, the NGO community has begun to weave R2P awareness into its activities. The four international NGOs that have taken the lead in R2P activism are the World Federalist Movement (WFM), Oxfam International, Human Rights Watch (HRW), and the International Crisis Group (ICG). Additionally, in the United States the Chicago-based R2P Coalition has worked to create a community of R2P activists and advocates committed to educating key stakeholders and the public about R2P. These organizations all have differing approaches to promoting R2P. For example, WFM aims to build a broad-based movement for support of global democratic institutions.[103] WFM also hosts the Institute for Global Policy (IGP), which concerns itself with research and policy matters. Oxfam has both an operational and humanitarian component to its work, as well as a policy advocacy branch. HRW and ICG focus on fairly specific policy and research mandates. A more detailed picture of the work of these NGOs follows.[104]

3.4 Sovereignty and Responsibility to Protect

Traditional notions of state sovereignty cabin the domestic affairs of a state within the purview of that state, regardless of its misconduct—no matter how atrocious— towards its people, yet sovereignty has undergone drastic changes on the international stage.[105] For centuries, states have involved themselves in each other's affairs. While the principle of state sovereignty has not been discarded entirely, it has in recent years eroded. National sovereignty shifts with shifting state obligations. Thus, states limit their sovereignty by ratifying international treaties and joining international organizations.

Protect (RtoP), United Nations, 18 January 2012, available online at <http://www.un.org/News/Press/docs/2012/sgsm14068.doc.htm> (accessed 15 April 2012).
[103] *World Federalist Movement: Our Vision*, at http://www.wfm.org/site/index.php/pages/1.
[104] Cranstom, A. *The Sovereignty Revolution*, Stanford University Press, Stanford, 2004.
[105] Bartelson, J., *A Genealogy of Sovereignty*, Cambridge University Press, Cambridge, 1995.

National sovereignty today is therefore ever-changing, while historically the concept had been rather fixed. Regardless, certain states fight to protect their sovereignty even though on a regular basis they do so implicitly in the actions they take, for example joining treaties or other institutions which gives that institution the ability to take decisions affecting that state. In this context, R2P stems from the idea that each state is sovereign and has the responsibility to protect its own population from horrific crimes. Thus, the concept of R2P "reflects a profound shift in international law, whereby a growing sense of global responsibility for atrocities is increasingly encroaching upon the formerly sanctified concept of state sovereignty."[106]

This shift in international legal framework may be best summarised by a shift away from the notion of a "state-sovereignty-oriented-approach," where the states are bound only through their consent, and towards a "human-rights oriented approach."[107] It has been seen as a "revolution in consciousness in international affairs," "a departure in the relationship between sovereignty and human rights"[108] and "it has taken the world an insanely long time, centuries in fact, to come to terms conceptually with the idea that state sovereignty is not a license to kill." [109] R2P challenges previous notions that sovereignty meant non-interference in the domestic affairs of a state. The responsibility to protect means that sovereignty comes with responsibility; if a state does not meet its responsibility in this regard others must ensure that the doctrine is met. A central pillar of R2P is that a "state's sovereignty is inseparable from its responsibility to protect

[106] Turner, M., *UN Must Never Again be Found Wanting on Genocide*, Financial Times, 15 September 2005, available online at <http://www.ft.com/intl/cms/s/545f929a-2618-11da-a4a7-00000e2511c8,Authorised =false.html?_i_location=http%3A%2F%2Fwww.ft.com%2Fcms%2Fs%2F0%2F545f929a-2618-11da-a4a700000e2511c8.html&_i_referer=#axzz1sSn4rDQz> (accessed 16 April 2015).
[107] Centre for Conflict Resolution (CCR). 2007. *Africa's Responsibility to Protect. Policy Advisory Group Seminar Report, 23 & 24 April 2007 South Africa*. Internet: http://www.ccr.org.za/images/stories/Vol-19_R2P_Report.pdf (Accessed: 7 March 2014).
[108] Ibid: 15
[109] Centre for Conflict Resolution (CCR). 2007. *Africa's Responsibility to Protect*.

the people living in its territory and cannot be merely a form of control, and that the international community has a duty to take appropriate action.

3.5 The African Union Concept and the Post- Libya Responsibility to Protect

Within the African context, R2P has been and continues to be a pertinent issue. In some respects, aspects of sovereignty as responsibility and the R2P emanated from Africa, with key conceptual development of the norm by scholars such as Francis Deng. Africa's responsibility to protect served as a benchmark for the African Union's rhetorical shift from 'non-interference' to 'non-indifference' in protection of populations from mass outrages[110]. Five years before the 2005 World Summit, African states had already enshrined the right of intervention in the Constitutive Act (CA) of the AU (2000) confirming: 'the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity'.

The norms and principles of the AU (encapsulated by Article 4 of the CA) coupled with the AU's peace and security architecture (adherent to the Protocol Relating to the Establishment of the Peace and Security Council) resonate with the protection framework envisaged by R2P. Further demonstration of the AU's commitment to R2P was seen in the 2005 Ezulwini Consensus, in which the AU prescribed enforcement action by regional bodies with ex-post facto UN Security Council (UNSC) approval in urgent circumstances[111]. Taken as a unit, Article 4(h) and the PSC Protocol which collectively provide for the AU peace and security architecture bestow the AU with significant powers of operationalization with respect to R2P. Thus the AU's

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[110] Ibid:16
[111] Powell, K. 2005. *The African Union's Emerging Peace and Security Regime, Opportunities and Challenges for Delivering on the Responsibility to Protect.* ISS Monograph series No. 119 May 2005. Ottawa: The North-South Institute

actor-arena approach to R2P points to the notion that the AU's protection framework is the African tributary of the broader international stream of protection as far as R2P is concerned.

The NATO-led intervention in Libya in March 2011 presents a noteworthy case study for critical analysis of R2P implementation. The legal basis of UNSC Resolution 1973, which authorised a no-fly zone over Libya, was arguably incontestable, based on clear articulation of imminent mass atrocity crimes by the Gaddafi regime. Furthermore, Resolution 1973 represented the first time that the UNSC had authorized use of military force for humanitarian purposes against the wishes of a functioning government[112].

The Libyan situation was also pertinent in respect of the very short time frame, with Resolution 1973 adopted relatively speedily and then only a month lapsing before implementation of the no fly zone operation. Moreover, there was rare demonstration of the international political will to implement R2P through coercive measures[113]. In this regard, the role played by the Gulf Cooperation Council (GCC), the Organization of Islamic Conference (OIC) and the League of Arab States (LAS) proved instrumental. The Libya case thus adds to the argument that regional organizations are the new gatekeepers of international humanitarian action: Resolution 1973 would not have been feasible without the support of the LAS, GCC and the OIC[114].

However, absent from the debate that preceded adoption of Resolution 1973 was clear articulation of an AU position. The AU was set on a political solution to the Libyan crisis, explicitly rejecting foreign military intervention. Subsequently, the AU put forward a 'roadmap'

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[112] Asia Pacific Centre for the Responsibility to Protect (APR2P).2011. *R2P Ideas in Brief Vol 1 No.1*. Internet: http://www.r2pasiapacific.org/documents/R2P%20Ideas%20in%20Brief%20Libya%20%20Vol %201%20No%201%202011.pdf (Accessed: 20 February 2012).
[113] Bellamy, A.J. 2011(a). *Global Politics and the Responsibility Protect, from words to deeds*. London: Routledge.
[114] Bellamy, A.J & Williams, P.D. 2011. *The new politics of protection? Côte d'Ivoire, Libya and the Responsibility to Protect.* International Affairs, 87 (4) pp.825-850.

and established an ad hoc High Level Committee aimed at a political solution of the Libyan conflict[115]. In spite of the AU's actions, its role in the resolution of the humanitarian crisis was largely marginalised as seen in the leading role played by NATO in implementation of Resolution 1973. The rejection of the AU's 'roadmap' by Libya's National Transitional Council (NTC) further undermined the AU's role as an interlocutor in ending the crisis[116]. Not surprisingly, the apparently contra-AU votes of the three non-permanent African states on the UNSC during 2011 (Gabon, Nigeria and South Africa) in favour of coercive action ruffled many feathers. The backlash against the Libyan intervention and claims of mandate creep in subsequent months initiated fresh debate on whether Libya represented deeper normative consensus over R2P or revived rollbacks and 'buyer's remorse' challenging further African internalization of the emerging norm.

In light of the above, this study explores the embedment of R2P within the peace and security architecture of the AU and the bearing of the concept on the AU's interventionist posture, both at the theoretical and practical level. The thrust of the study will be an analysis of the normative fit between the AU and R2P by drawing upon the process of norm localisation and by investigating the organisation's response to the Libyan crisis. Conclusions will then be drawn as to the pertinence of the R2P doctrine within the peace and security framework of the AU, and future prospects for operationalization by the AU will be considered.

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[115] Peace and Security Council (PSC) of the African Union. 2011 (a). *Communiqué of the 261st meeting of the Peace and Security Council PSC/PR/COMM(CCLXI) 23 February 2011.* Internet: http://www.peaceau.org/uploads/psc-communique-on-the-situation-in-libya.pdf (accessed 20 may 2013).
[116] Kasaija, P.A. 2011. *The Principle of African solutions to African Problems under the spotlight: The African Union (AU) and the Libya Crisis.* Africa Governance Monitoring and Advocacy Project (AfriMAP) September 2011. Internet: http://www.afrimap.org/english/images/paper/AfriMAP_NAfrica_Kasaija_EN.pdf (Accessed 26 July 2012)

3.6 Limitation and Prospective Expansion of the Principles of Responsibility to Protect

The Principle of Responsibility to Protect, as stated above, has been severely limited by the political statements of key players in the international law system.[117] This principle, about which Luck says "the good news is that little or no opposition to ... remains", is the 2009 three-pillar version of R2P. That is, that the state itself has the primary obligation of preventing situations from developing that would lead to the perpetration of genocide, war crimes, ethnic cleansing, and crimes against humanity and protect their populations in situations in which such crimes are being committed (Pillar One); that the international community should cooperate with and assist states in carrying out the responsibilities of Pillar One (Pillar Two); and, finally, that the international community is to act promptly to stop the commission of any of the four crimes, should they begin on account of or despite the local government's actions. The duties of prevention, prevention, and rebuilding that remain essential to the principle are clearly important. In particular, the emphasis on the preventative aspects that has developed over R2P's short lifespan is a welcome expansion in the application of the concept.[118]

A committed use of the international community's duty of prevention could eliminate the need for resorting to the third pillar at all, while extending the list of relevant players. International financial institutions as well as civil society and the private sector become important when matters of the prevention of conflict and violence arise, as all can contribute to the internal strength of a society. The concept of R2P, however, remains one the scope of which could be greatly extended. Addressing the R2P Principle only to situations of genocide, war crimes, ethnic cleansing, and crimes against humanity may have been a politically expedient first

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[117] Edward C. Luck, Special Advisor to the UN Secretary-General, describes this process positively as one that made the principle stronger and "more focused" as well as more "nuanced". Luck, Global Responsibility to Protect at 389
[118] Zähringer, N. 2013. *Norm evolution within and across the African Union and the United Nations: The Responsibility to Protect (R2P) as a contested norm.* South African Journal of International Affairs, 20 (2) pp. 187-205.

step; this limitation needs to be read flexibly to ensure its lasting relevance in a world that is quickly adopting a more cosmopolitan view of the goals of international law. Given that individual suffering is not dependent on the fact that thousands of others are suffering similarly or that there is no particular perpetrator of the suffering, the current restriction on the accepted scope of R2P can only be justified by seeing the Principle as a careful step forward along the existing path of legal development.[119]

Already suggested by the drafters of the ICISS Report, applying R2P to issues of Human Security broadly defined would be logical as well as desirable from the viewpoint of the beneficiaries of the Responsibility. Given that individual suffering is not dependent on the fact that thousands of others are suffering similarly or that there is no particular perpetrator of the suffering, the current restriction on the accepted scope of R2P can only be justified by seeing the Principle as an emphatic restatement of existing law.[120] Yet, if the development of the international legal order is to be for the benefit of individuals, including the situations of the more than one billion people living in absolute poverty, the over 30 million individuals living with HIV[121], and the estimated 2.5 million victims of human trafficking[122] revisiting the scope of R2P has to be imaginable.

The main conceptual argument against the expanding R2P's dictates beyond the four crimes already included is that of the potential unlimitedness of its scope: if R2P duties were imposed in response to a focus on preventing or relieving the harm to the potential victim, it could apply to situations in which, for instance, thousands of people are threatened by an

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[119] *UN Security General Report 2009*. See para. 2
[120] Witt, A. 2013. *The African Union and Contested Political Order(s)'* in U. Engel & J.G Porto (eds). Towards an African Peace and Security Regime: Continental Embeddedness, Transnational Linkages, Strategic Relevance. England: Ashgate Publishing Ltd. pp.11-30
[121] UNAIDS, World Aids Day Report 2011, 6 (2011) (estimates from end of year 2010).
[122] *UNAIDS, World Aids Day Report 2011, 6* (2011) (estimates from end of year 2010).

impending famine. If that were the case, what arguments could prevent states/the international community from having a duty to act to assist the thousands of others who are suffering from AIDS? And if those are to be helped, how can a state credibly argue that the threat of genital mutilation facing the girl-children of another population is not a threat? And should the UN require mobilization in response to a government's unwillingness to fund primary schools adequately? Or its refusal to prosecute corrupt public officials? Certainly, the argument goes, any human rights violation is bad for the victim, but not every human rights violation can be the trigger for required community action. From a political point of view, these arguments are defensible.[123]

Despite the high value given to human rights law, a perfect record of compliance with such individual protections is by no means the sole goal of the international community. And financing such a program of zero-tolerance for violations would be inconceivable even if the political will to do so exist. If R2P is viewed as mainly about the responsibility of the international community to prevent or respond to situations of grave consequence to individuals due to the harm to the community itself, however, the arguments about extension must be different.[124]

The limitation on scope must therefore be that preventing the enumerated crimes is necessary to protect community values – and that no other situations are dangerous enough to warrant the potential for infringing on traditional conceptions of sovereignty that an R2P action would entail. The legal arguments for this approach are that there is enough accepted law

[123] UNODC, *Human Trafficking FAQs* (available at www.unodc.org, last viewed 17 May 2012).
[124] Zähringer, N. 2013. Norm evolution within and across the African Union and the United Nations: The Responsibility to Protect (R2P) as a contested norm.' *South African Journal of International Affairs*, 20 (2) pp. 187-205.

regarding genocide, war crimes, crimes against humanity and ethnic cleansing to make the taking on of responsibility in these cases acceptable to governments. [125]

Many laws are designed to be generally applicable to an unknowable set of future circumstances, their scope of obligations and rights is amenable to delimitation, and principles of interpretation exist to ensure that such delimitation occurs in accordance with generally accepted practices.[126] Determining the scope of R2P is not fundamentally different than determining the scope of any other new principle. Once the underlying theory of why the principle exists is determined, the limits of the scope can evolve. It need not be predetermined.

To support the creation of a responsibility to protect, assist, and respond, in fact, that R2P need not be seen as breaking out of any trajectories in international legal development when so limited. But the argument that there are no other situations with such acceptance begs the question. And here the study, integrates the concept of 'Common Concern' in matters of R2P. Given the increasing number of problems that affect the global community as a whole, the scope of 'Common Concern of Mankind' and its traditional limitation to a political concept of joint action of States needs to be revisited Common Concern expressing fundamental community interests could function as the basic framework for determining which situations could be potentially considered worthy of the sovereignty-trumping potential of R2P. The principle of common concern responds to obvious institutional deficiencies in producing global public goods. It obliges states to cooperate in the pursuit of such goods, such as climate change mitigation and adaption. Failing such cooperation, it empowers states to act accordingly. R2P may be understood as a particular category of common concern, encompassing not only the right, but more importantly, also the obligations to act in case of gross human rights violations. Linking

[125] Philipp Aerni, *Climate Change and International Law: Exploring the Linkages between Human Rights, Environment, Trade and Investment*, 53GYIL 139-188 (2010).
[126] Ibid

R2P and common concern will allow their role in addressing the shortcomings of traditional precepts of international law to evolve without increasing the potential of misuse by placing limits on their invocation.[127]

R2P can apply to severe cases, triggering obligations to act to counter them? Common Concern thus would provide both legitimacy and limitation to international responsibility and to extraterritorial effects of action taken in accordance with the principle of proportionality in defense of shared values and interest of the global community there is still the problem of defining those areas where an obligation to act – different from a right to act – takes effect. The challenge is to identify those constellations beyond the four crimes where R2P applies as a rule and obligation. Extending and narrowing it to the realm of Common Concerns offers a first step. In conclusion, there is nothing in the concept itself that would speak against an expansion of R2P within a framework defined by a future principle of Common Concern.[128] While the practicality of extending obligations to address a large circle of threats can be doubted, recent experience has demonstrated that this is equally true of garnering real support for taking action in territories where genocide looks imminent. If anything, the amount and types of resources necessary to address the less violent human security issues might in fact be politically easier to secure.

3.7 Conclusion
This chapter has explored the principle of Responsibility to Protect under international law. It is clear that the principle is legally and politically challenged particularly contextualizing it in the African states. However the R2P has been effective on different cases and is still relevant in current situations of security and conflict. It is important that the principle goes under consistent development as part of international law. Particularly of importance to that the idea of

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[127] Anne Peters, *The Security Council's Responsibility to Protect*, 8 Int'l Org L. Rev. at 3 (2011).
[128] Vines, A. 2013. *A decade of African Peace and Security Architecture*. International Affairs, 89 (1) pp.89-109

why, when and to who R2P is applied to, is redefined and contextualized to the different situations that are unique in each region, such as Africa. The principle should as well be structured in a way that encourages fair and just justifications outlawing politics that play in interventions. In this light, the next chapter will focus on the case study, detailing the history of the conflict before and after secession, to the current conflict and humanitarian situation.

CHAPTER FOUR

CHALLENGES OF IMPLEMENTING THE PRINCIPLE OF RESPONSIBILITY TO PROTECT

4.0 Introduction

Despite its unanimous endorsement, R2P has been the source of contestation among States before, during, and after the World Summit negotiations, and claims about its status as a new 'norm' of international conduct have been strongly resisted. At the same time, R2P has been enthusiastically embraced by key sectors of civil society, and is part of the public consciousness in many Western countries. Over the past two years, the principle has been invoked to encourage international action in crises such as the attacks on civilians in Darfur among other conflicted areas in the works. This chapter examines the challenges that hinder the implementation of the principle of R2P.

4.1 Resistance to the Implementation of the Principle of R2P

Despite that UN bodies and many Western states have received well R2P, a gap remains between the enunciation of a principle and its effective operationalization. The implementation strategy for the ICISS report originally envisaged a series of initiatives within the UN: a General Assembly Resolution embodying the basic framework of R2P; Security Council guidelines for responding to military interventions with a humanitarian purpose and agreement to suspend use of the veto in such situations (provided no vital national interest was at stake); and leadership by the Secretary General to advance ICISS's findings — most notably in his efforts to reform the institutions of the UN in 2005.[129]

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[129] Institute for Global Policy, *About R2P*, Available at: http://www.responsibilitytoprotect.org/index.php/about-rtop2009 Accessed on 21/07/2015

These efforts have been confounded by three obstacles: resistance by the Permanent Five members of the Security Council to agree to any principles, in advance, that would commit them to action or curtail their use of the veto; objections from a vocal segment within the developing world to any action that smacked of a return to Western-style imperialism; and the war in Iraq in 2003, whose proponents twisted the language of R2P to provide a post facto justification for the U.S-led campaign to topple Saddam Hussein. More generally, the "Bush Doctrine" – with its focus on pre-emption and intervention - made many Non-western States suspicious about moves to broaden the list of legitimate exceptions to the prohibition on the use of force contained in the UN Charter.[130] As with all Declarations emanating from the UN, the paragraphs supporting R2P in the 2005 Outcome Document have ambiguous status in international law. In addition, in light of the objections to the principle noted above, the text which was ultimately agreed upon by States narrows the original notion of the 'responsibility to protect' in two ways.

First, while ICISS and Kofi Annan had spoken of a broad international responsibility to protect, Paragraph 139 of the Outcome Document locates the new responsibility firmly within the United Nations, and more specifically the Security Council. By tying R2P explicitly to the Council (and its powers under Chapters VI and VII of the Charter), the statement does not provide any new legal obligations on the part of States to prevent or respond to atrocities.[131] The existing mechanisms of collective security - which often involve unwieldy intergovernmental bargaining in the Council - will be used to designate human rights violations as threats to international peace and security and to recommend action. It is also silent on the question of what should happen if there is failure by Council members to place a country situation on its agenda (as happened, for example, in the case of Cyclone Nargis in Burma) or agree on

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[130] United Nations, *Implementing the Responsibility to Protect* . United Nations, 2009. P 23, Para 54
[131] ICISS, *A Report of the International Commission on Intervention and State Sovereignty*, 2001

appropriate action (as occurred in the case of Zimbabwe). Finally, it is important to note that the Council's role in authorizing actions designed to fulfill international responsibilities is not equivalent to the task of actually fulfilling such responsibilities. The latter requires some kind of accepted procedure for distributing responsibilities from the UN down to particular states and agencies, as well as a formula for sharing the costs of any policies or missions authorized to address a humanitarian catastrophe. Second, while ICISS had set as its threshold for action "large scale loss of life" or "ethnic cleansing" (actual or apprehended), the Outcome Document restricts the application of R2P to four specific crimes that already form part of existing international legal instruments. It also demands that states "manifestly fail" to protect their populations before the international community can intervene (whereas earlier enunciations of the principle had spoken merely of states being "unable or unwilling").[132]

Emphasis on a hierarchy of respondents, which begins with the state where a human rights crisis is occurring, has enabled those who oppose R2P to argue about when addressing a crisis should transfer from the national to the international level, and to prevent more timely responses from the Security Council. Thus, for example, even after then-U.S. Secretary of State Colin Powell stated in September 2004 that his government believed genocide had been committed in the Darfur region of Sudan, the response of the Council remained limited to monitoring the peace agreement, implementing an arms embargo against parties to the civil conflict, and establishing a commission to investigate reports of violations of international humanitarian law.[133]

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[132] ICISS, *A Report of the International Commission on Intervention and State Sovereignty,* 2001
[133] Ibid

The Council did eventually refer the Darfur case to the International Criminal Court, but it took almost two years before Member States were ready to contemplate a UN force to support the under-resourced African Union (AU) in its efforts to prevent more civilian suffering.[134]

Today, while there is a hybrid UN/AU force deployed in Darfur, the Security Council has proved unable to persuade states to contribute the necessary troops and equipment to sustain the mission. Notwithstanding these limitations, the Outcome Document provides a significant statement of political commitment by states to act in ways not explicitly provided for in the UN Charter: first, by committing to protect their own populations from the four crimes; and second, to participate in international efforts (where warranted) to encourage and assist other states in meeting these obligations. Moreover, the negotiation process over Article 139 saw changes to the traditional coalitions at the UN – particularly the tendency of "northern" developed countries to encounter resistance from "southern" developing countries, suspicious about interference in their sovereign jurisdiction.[135] Though certain developing countries, such as Pakistan, Algeria and Egypt, have continued to oppose R2P, a series of African states, most notably Rwanda, Botswana, and South Africa, have spoken in favour of it in the General Assembly. This disagreement has made it difficult for developing countries to paint R2P as a principle designed to facilitate the return to Western imperialism.

4.2 Challenges Facing the AU in implementing the Principle of Responsibility to Protect

The above analysis has shown how the AU is implementing its R2P obligation. However, it must be noted that the AU is still faced with many obstacles hindering them from effectively protecting civilians from mass atrocity crimes. These obstacles can be categorized as follows:

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[134] Mwanasali, M, *Africa's Responsibility to Protect*, in Adekeye Adebajo and Helen Scanlon, *A Dialogue of the Deaf; Essays on Africa and the United Nations* (Fanelle Publishers 2006

[135] United Nations, *Implementing the Responsibility to Protect* . United Nations, 2009. P 23, Para 54

human and financial resources, lack of political will, relationship between sub-regional organizations and finally the relationship between the AU and other international organizations especially the UNSC and the ICC.

4.3 Lack of Reliable Financial Resources

If the AU is to succeed in its goal of promoting peace, security and stability on the continent, an extra-budgetary resource mobilization is required to meet its goal. Member states should show more commitment in terms of funding and training experts to work in the organisation. It is devastating to note that only 10 Situation Room assistants are gathering and analysing data for a continent that is approximately 300 million square kilometres in size. According to a World Bank report published in 2009; an estimated average of 23,000 qualified academics were emigrating from Africa each year leading to an acute shortage of skilled human resources on the continent.[136]

The AU like many other institutions in Africa is implicated in this brain-drain phenomenon. There are few technocrats working in this institution as pointed out above. It important that the financial status of the AU makes it unattractive for experts to render their services in this organisation. Unlike other major organizations like the United Nations and the European Union who have considerable resources available, the AU depends on a few African States and largely on donor organizations for funding, as a result the level of benefits, allowances and salaries available to its staff is less attractive compared to these other organizations. The AU has in a number of situations invoked article 4(h) of its Constitutive Act, these situations include Burundi (AMIB), Sudan (AMIS) and Somalia (AMISOM). The majority of the peacekeepers came from a handful of African states; in fact the Somalia mission had only two troop

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[136] Imperative for Immediate Change: The African Union Mission in Sudan. Human Rights Watch Report, Volume 18 No. 1A, January 2006

contributing countries, Uganda and Burundi. Furthermore, the largest operation conducted by the AU, the Sudan mission, had only four contributing states, (Nigeria, Rwanda, Senegal and South Africa). The deployment of peacekeepers in these conflict situations exposed a major gap between the PSC's willingness to authorize such missions and the AU's ability to implement them.[137]

It goes without saying that the AU needs reliable financial resources to fund its institutions and to engage in its peace and security mandate effectively or in this case to perform its R2P Obligations. In relation to the second aspect of its mandate, article 21 of the PSC Protocol provides for the establishment of a peace fund, to pay for peace support missions and other peace and security related activities. The sources of generating income for this fund are three-fold: firstly, financial appropriations from the AU's budget; secondly, voluntary contributions from Member States of the Union and finally contributions from external sources within and outside Africa.[138] The lack of financial resources has affected the AU's peacekeeping and intervening capability. This can be seen in its peacekeeping missions. Firstly, in Burundi, the total approved strength of AMIB was 3,335 and the troop-contributing states were South Africa, Mozambique and Ethiopia. The total budget for the first year of this mission was estimated at $110 million dollars.[139]

This has proved to be a huge problem as such resources were not available to the Union. This hampered the ability of troop contributing countries to fully deploy their troops. To salvage the situation, the AU requested that troop-contributing countries should be responsible for the first two months of deployment, awaiting reimbursement from them, with the AU assuming

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[137] African Peace and Security Architecture (APSA) 2010 Assessment Study
[138] Omorogbe, E. *Can the African Union Deliver Peace and Security?* (2011) Journal of conflict & Security Law, 1-28
[139] Agaoye, F. *The African Mission in Burundi: Lessons Learned from the first African Union Peacekeeping operations* (2004) 2 Conflict-Trends

responsibility at the end of this period. This policy did not work out, as Ethiopia and Mozambique did not have the resources to deploy their troops leaving the initial burden on 1600 South African troops to deliver the complex mandate on their own. AMIB never reached its approved strength of 3,335. During May 2004, at the close of the mission, its strength stood at 2,600.[140] The AU encountered the same or even worse problems when it conducted its peacekeeping mission in Sudan.

The AMIS I was the first mission which only consisted of 60 military observers and 300 protectors to the observers. It became evident that the small number of personnel coupled with the vast land area of the Sudan resulted in the AU's failure to effectively monitor the ceasefire agreement in Darfur. This mission was supported by the European Union (EU) which provided €12 million in June 2004 for a period of 12 months. The PSC decided to enhance the mission in Sudan, which became AMIS II. The mission's personnel were increased to 3,320 in 2004 and later to 7,731 in 2005.[141]

With the increase in personnel came greater responsibility. The AMIS II"s mandate was strengthened to include: "monitoring compliance with the ceasefire agreements, it was to contribute to a secure environment for the delivery of humanitarian relief and the return of internally displaced persons and refugees to their home".[142] However, of great importance was the provision that AMIS II could protect civilians whom it encounters under imminent threat and who were in the immediate vicinity of dangers. With the increase in personnel and the mandate for AMIS II the AU was again faced with resource constraint to enable AMIS II in efficiently carrying out this extended mandate.

[140] „The Chairperson of the AU Commission Welcomes the Decision of the UN Security Council to Authorize the Deployment of a Peacekeeping Operation in Burundi" (22 May 2004) Press Release No 046/2004
[141] AU Communiqué (28 April 2005), PSC/PR/Comm (XXVIII) 9
[142] „The Chairperson of the AU Commission Welcomes the Decision of the UN Security Council to Authorize the Deployment of a Peacekeeping Operation in Burundi" (22 May 2004) Press Release No 046/2004.

4.3.1 Lack of Human Resources

Even though the PSC Protocol provided for a secretariat, it took the AU fifteen months to recruit the first staff member, and nearly two years for it to appoint the head of the division.[143] According to the 2010 APSA Assessment Study, the PSC Secretariat only consisted of 4 professional staff members, one secretary and an administrative assistant and even the professional staff were appointed through external partner support.[144] To complicate matters, the PSC Secretariat does not have a legal expert despite the fact that it deals with a lot of issues requiring legal interpretation.[145] There is also a shortage of staff dealing with the CEWS. In order to accomplish its mandate of gathering and analysing data the Protocol made provision for a Situation Room.[146] The Situation Room is responsible for the monitoring of potential, actual and post-conflict situations in Africa.[147] In order to perform its function there are 10 Situation Room Assistants working on a 24/7 shift basis. This number is substantially inadequate to cover all regions in Africa.

4.3.2 Political Challenges

There have been many statements, declarations and laws that signal a broad international consensus about the importance of civilian protection.[148] The depth of political commitment to realising this lofty goal is not always clear and varies considerably across governments and organizations. Specifically, what costs are African Leaders willing to endure in order to protect civilians, and how far are they willing to challenge the old notion of sovereignty in countries

[143] Williams, P. *The Peace and Security Council of the African Union: evaluating an embryonic international institution* (2009) Journal of Modern African studies 603
[144] African Peace and Security Architecture (APSA) 2010 Assessment Study
[145] African Peace and Security Architecture (APSA) 2010 Assessment Study
[146] *Protocol relating to the Establishment of the Peace and Security Council of the African Union* 2003, Article 12
[147] African Peace and Security Architecture (APSA) 2010 Assessment Study
[148] *The AU Constitutive Act, the UN World Summit Outcome*, Ezulwini Consensus.

where the government is the main perpetrator and the leader of that government is an influential figure in the continents political sphere? On paper article 4(h) of the AU Constitutive Act implies that the Union is willing to override the norm of non-intervention in what is called 'situations of grave circumstances'. [149]

However, when the need arose for African Leaders to rise to the occasion they were unwilling to undertake the obligations and commitments to which their states had subscribed. When the Libyan situation erupted many people declared the situation as one of grave circumstance requiring intervention. African Leaders were silent as to the violent action taken by the Gaddafi regime against the Libyan people, due to the influential role Gaddafi played in Africa's politics. In fact when the international community reacted, African Leaders took a negative stance refusing to cooperate with the UNSC resolution 1970 and the ICC's request to arrest and surrender Gaddafi and members of his government. Another example of how a lack of political will by African leaders can serve as a hindrance to the protection of civilians is the role of the Sudanese Government in the Sudan Conflict. It can be seen from the AU-UN peacekeeping mission in Sudan that Sudan's blocking tactics not only delayed the deployment of peacekeeping forces, but damaged peacekeeping's wider political credibility, creating a political systemic crisis. [150]

The Sudanese Government was also notorious for using ceasefire periods to consolidate its position, regroup with a view to launching subsequent military incursions. Thus when they declared a ceasefire on 12 November 2008 in Darfur and pledged to disarm all its allied militia, the armed groups in Darfur met the declaration with suspicion. According to Murithi, the basic

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[149] UN General Assembly and Security Council, *Report of the Panel on United Nations Peace Operations*, (Brahimi Report), A/55/305-5/2000/809, 21 August 2000
[150] McGowan, P. *African Military coups d"etat, 1956-2001: Frequency, trends and distribution* (2003) 41 No 3 Journal of Modern African Studies 339

conditions required for an effective peacekeeping operation based on the Brahimi Condition were absent in Darfur. It was stated that "there was no peace to keep and the Government and the parties continued to pursue a military solution to the conflict". It was further acknowledged that as far as the situation in Darfur was concerned the effectiveness of a peacekeeping operation was largely contingent upon the commitment of the parties to the peace process without which peacekeepers can be vulnerable themselves.[151]

4.3.3 Lack of Effective Institutional Cooperation between Inter-African Organisations

Despite the above reasons for sanguinity, there are several challenges and obstacles to the effective institutional cooperation between inter-African organizations in implementing R2P. These impediments can be put into two categories. Firstly, there is a continuing existence of a „disharmony" of regional groupings; and the dissonant nature of sub-regional cooperation and integration processes. Secondly, the overlapping membership within these groupings is also a point for concern.[152] After the Cold War, African countries developed a policy known as „African Solutions to African Problems". In order to enact this policy, a large quantity of sub-regional organizations emerged. These organizations established peace and security structures to promote peace and security in Africa and recently are also actively involved in the protection of civilians (R2P).

The absence of clear lines of communication or hierarchical structure amongst these organizations makes it complicated as there is no coordination when they are implementing their human security protective mandates, but also breeds the danger of confusion, duplication of effort and a dissipation of energies and resources. For instance, there is no direct linkage between

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[151] United Nations Report of the Secretary-General on the Deployment of the African Union-United Nations Hybrid Operation in Darfur' S/2008/659, 17 October 2008 at 14.
[152] Franke, B. *Competing Regionalisms in Africa and the Continent's Emerging Security Architecture*, Spring 2007, African Studies Quarterly, vol. 9, Issue 3, pg 36-64 at 50. Available at http://www.africa.ufl.edu/asq/v9/v913.pdf, last accessed 21/08/2015.

the PSC, POW and similar structures in the RECs/RMs, which means that there is a coordination deficit in the activities of the Union and these sub-regional organizations.[153] A clear example was seen in the Niger crisis when ECOWAS and the AU appeared uncoordinated in their response.[154] Another key challenge to the AU's effective implementation of R2P is the dissonant nature of the sub-regional cooperation and integration process. No serious interface has been institutionalized among RECs themselves to allow for the building and deepening of synergies and to ensure that they work individually and collectively according to a grand continental African Peace and Security Architecture.[155] A clear example is exhibited in the interlocking system that is envisaged, whereby the decisions of the PSC benefit from information and analysis from other components such as the early warning.

At another level, there seems to be a huge communication gap between the AU PSC and similar organs in the RECs. This is a fundamental challenge given that enforcing decisions of the PSC rests with members who are also members of the RECs/RM. Therefore without proper coordination, implementing PSC decisions will be significantly diminished, potentially undermining the credibility of the PSC. The institutional anarchy is further complicated by the fact that many African States simultaneously belong to more than one regional intergovernmental body that aspires to play a role in the maintenance of security, conflict management and in the recent past the protection of civilians against mass atrocity crimes.[156] Of the 53 Member States to the Union, 26 are members of two sub-regional organizations, 19 are members of three such organizations and two AU Member States, the Democratic Republic of

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[153] African Peace and Security Architecture (APSA) 2010 Assessment Study
[154] African Peace and Security Architecture (APSA) 2010 Assessment Study
[155] African Peace and Security Architecture (APSA) 2010 Assessment Study
[156] Berdal, M *Peacekeeping in Africa 1990-1996: The Role of the United States, France and Britain*, in Furley, Oliver and May, Roy (eds.), *Peacekeeping in Africa*: Ashgate Publishing, Aldershot

the Congo and Swaziland, even belong to four such organizations.[157] This overlap amongst Africa's organizations not only leads to wasteful duplications of effort and counterproductive competition among countries and institutions, but also tends to dispel collective efforts towards the common goals of the AU and muddy the goal of integration. There is a huge burden on countries belonging to two or more organizations, as they are faced with multiple financial obligations and they have to cope with different meetings, policies, decisions, instruments, procedures and schedules.[158]

The Relationship between the African Union and the United Nations as a Challenge to the African Union's Effective Implementation of the Responsibility to Protect A key challenge to the AU's effective implementation of R2P is its relationship with the UN, especially the UNSC. On 17 March 2011 the UNSC unanimously adopted resolution 1973, this resolution demanded a ceasefire and authorised the international community to establish a no fly zone and use all necessary measures short of foreign occupation to protect civilian populations. As stated above, this resolution was supported by all three African countries in the UNSC at the time. However in the wake of continuous NATO-led air strikes across Libya, criticisms of this resolution have mounted from the AU and individual African leaders. Disapproval centres on allegations that NATO and its allies are conducting a campaign for regime change or political assassination rather than the protection of civilians and that NATO have over-stepped its mandate. The AU took a more intrusive approach to the settlement of the crisis aiming for a more diplomatic resolution of the conflict. However the tension between these organizations rose to such an extent, that the AU explicitly condemned NATO's action, stating that, "the African Union hereby orders an immediate stop to the bombing of any African country by NATO forces or

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[157] Ibid
[158] Udombana, N. *A Harmony or a Cacophony? The Music of Integration in the African Union treaty and the New Partnership for Africa's Development* (2002) 13 No 1 Indiana International and Comparative Law Review 185

there will be a complete break in diplomatic relations with all the countries participating in the military aggression against Africa..."[159]

With such conflict existing between the two organizations, it would be really difficult to protect vulnerable civilians. For example, the AU is now threatening to cut diplomatic ties with NATO countries that are involved in the bombing campaigns. This could be costly not only for the credibility of the R2P doctrine. This situation is cause for concern, as African countries need the support of these countries both economically and for the maintenance of peace and security. Furthermore the AU does not have the necessary military resources to undertake peacekeeping missions without the support of these countries.

4.3.4 The Challenging Relationship between the International Criminal Court and the African Union

The relationship between the ICC and the AU should also be considered as a hindrance to the AU's effective implementation of R2P. The strain in their relationship can be seen in the two situations referred to the ICC by the UNSC, the first concerning Darfur and more recently Libya.[160] The AU holds a certain perception about the ICC which can briefly be stated as follows. Firstly, there is the suggestion that the ICC is a hegemonic tool of western powers. Secondly, they argue that the ICC is an institution which is specifically targeting and discriminating against Africa. Thirdly, there is a suggestion that the ICC is undermining, rather than assisting, African efforts to solve its problems. This complaint was expressed most in terms of the Sudan referral and now the Libyan arrest warrants. This emphasises the point that the

[159] AU Condemns *NATO Countries & Their Sponsored UN Resolutions 1970 and 1973 Over Libya– Report* available at http://www.republicreport.com/african-union-au-condemns-nato-countries-au-pressrelease-reports, last accessed 21/9/2011.
[160] UNSC Resolution 1970, S/RES/1970 (2011)

court's work is undermining the peace efforts or conflict resolution processes in these situations.[161]

The situation of Sudan was so alarming, that African States through the AU, accordingly called on the Security Council to defer the ICC"s investigation into President al-Bashir by invoking article 16 of the Rome Statute. As international criminal prosecution is one aspect envisaged by the ICISS in the implementation of R2P this strain in relationship between the ICC and the AU is having an adverse effect on the continent, especially in its protection of civilians against mass atrocity crimes. The ICC does not have its own police force and has to rely on the cooperation of states to conduct investigations and to arrest and surrender suspects.[162] This strain in relationship between these organizations have helped high profile suspects evade justice in the case of al-Bashir, and at the time of writing, there was little show of willingness from African states to help arrest or facilitate the surrender of Gaddafi until his subsequent death. With the failure of the UNSC to effectively reconsider the AU"s article 16 request, the AU Assembly in July 2009 in Sirte, Libya took a decision not to cooperate with the ICC.[163]

In this decision the AU observed that because its request to the UNSC has never been acted upon, all member states "shall not cooperate" with the ICC, pursuant to the provision of article 98 of the Rome Statute relating to the immunities, in the arrest and surrender of al Bashir.[164] This position was further reiterated at the AU Assembly in Kampala, Uganda in July 2010.295 Many African states have taken this position concerning the arrest warrant of Gaddafi as is seen in the statement Chadian President Idriss Deby's press adviser who stated that "it is

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[161] AU Condemns *NATO Countries & Their Sponsored UN Resolutions 1970 and 1973 Over Libya– Report* available at http://www.republicreport.com/african-union-au-condemns-nato-countries-au-pressrelease-reports, last accessed 21/9/2011.
[162] Article 98 of the *Rome Statute Rome Statute of the International criminal Court (ICC)*
[163] Decision on the meeting of African state parties to the Rome Statute of the International criminal Court (ICC), Doc. Assembly/AU/13(XII), 13th Ordinary Session of the Assembly of the AU, Sirte, 1-3 July 2009.
[164] M. du Plessis, *The International Court that Africa Wants* at 14, 2010 Institute of security Studies

true we ratified the Rome Statue which established the International Criminal Court but we also endorsed the decision of the African Union adopted on July 2009 in Sirte, Libya refusing to cooperate with ICC. Even though this AU decision refers to the al-Bashir matter specifically, the press adviser said this decision is extended to all suspects wanted by the ICC who are still at large.

In summary, the position taken by the AU not to cooperate with the ICC with respect to the arrest warrants in the Sudan and Libya situation has opened an important can of worms. This dilemma can be summarized as follows: How do you reconcile justice and the protection of civilians against mass atrocity crimes? These questions raise important points of debate which are beyond the scope of this study. Nevertheless, it is noteworthy to state that the ICC warrants are consistent with an expressed agreement in a variety of important African documents, which states that international crimes should not be met with impunity.[165] This fact is also clearly expressed in the AU Constitutive Act. The AU by refusing to cooperate with the ICC in prosecuting al-Bashir and Gaddafi is clearly failing to fulfil its obligations, undertaken in many international documents, especially its obligations stipulated in the Constitutive Act.

4.4 Future Challenges

While the implementation plan for R2P is both comprehensive and politically sensitive, it leaves some important questions unanswered and opens up the possibility for institutional overlap. Indeed, there is a risk that by placing so much emphasis on Pillars 1 and 2, the Secretary-General's report will enmesh R2P in the already well-established agendas of capacity-building and conflict prevention, and obscure what is truly novel about the concept – namely, generating and exercising the international responsibility to respond to mass atrocities when state

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[165] Akande, D. M. du Plessis and C. Jalloh, *An African expert study on the African Union concerns about article 16 of the Rome Statute of the ICC*, ISS Position Paper 2010.

authorities fail to protect their populations. More significantly, in some areas the report calls for greater UN activism in areas traditionally seen as being within the domestic jurisdiction of states.

Thus, while R2P is designed to be an ally of sovereignty, rather than its adversary, some States will view with suspicion the measures he has outlined. In particular, there are four main issues that will challenge those tasked with the implementation of R2P over the coming months. Recent events in global politics show how the language of R2P can be used in ways not necessarily intended by the original authors. In the case of the cyclone in Burma, for example, many called for the application of R2P – some even going so far as to characterize the actions of the military junta as a crime against humanity.[166] But this broad rendering of the principle did not necessarily help the cause of R2P, raising concern within the developing world about the extent of interventionism implied by the concept.

While most proponents of the principle countered that this was a misapplication of R2P, the incident showed how quickly it can be politicized to suit the interests of powerful players. Examples such as these pose two challenges. First, despite the desire of the Secretary-General to narrow the scope of R2P, there are those who may not accept the largely legalistic conception of 'mass atrocity' contained in his report. If segments of international civil society invoke R2P in conscience-shocking situations (such as Burma or Zimbabwe) and exert pressure for action, only to be told "it doesn't apply in this case", they may begin to wonder whether the principle has any value. This possibility needs to be carefully managed, as the successful implementation of R2P relies on actions by national governments - who in turn often respond to advocacy from civil society.[167]

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[166] Address by UN Secretary-General Ban Ki-moon to the conference on *Responsible Sovereignty: International Cooperation for a Changed World*. UN doc. SG/SM/11701 of 15 July 2008
[167] *Implementing the responsibility to protect*. Report of the Secretary-General. UN doc. A/63/677, 12 Jan. 2009.

Second, the case of Russia's appeal to R2P raises the question of whether the interpretation and application of the principle can in fact be 'controlled'. It is more likely to go the way of other concepts in international society (such as 'self-defence' or 'sustainable development'), whose meanings are now the subject of contestation between opposing sides in a conflict. This possibility for argumentation needs to be considered in all facets of implementation, since it could affect States' willingness to accept offers of capacity-building, early warning assessments, or requests by the Security Council to participate in diplomatic or military initiatives. Inadequate cooperation between the UN and regional organizations. As noted above, the Secretary General's implementation plan calls for a substantial up-grading in the relationship between the UN in New York, and a series of regional bodies.[168] Yet, the track record of collaboration and resource-sharing between the centre and regions should raise questions about the likelihood of fulfilling these aspirations.

The joint work of the UN and African Union in places such as Burundi and Sudan, for example, reveal a lack of capacity at the centre of the UN to analyze the regional implications of crises, insufficient communication with and inclusion of regional actors, and inadequate support for regional action. Furthermore, in some areas of the world, regional capacity is embryonic or non-existent, meaning that the United Nations does not have an eager and willing partner with whom it can cooperate in fulfilling the responsibility to protect. Lack of attention to 'hard power'. While the Secretary-General's focus on assistance and capacity-building has been a prudent strategy for gaining buy-in from reluctant members of international society, he may have paid too much deference to the opponents of R2P.[169] This can be seen in the lack of specificity

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[168] *Report of the International Commission of Inquiry on Darfur to the UN Secretary-General* (Geneva: 25 January 2005).
[169] Glannville, L. *The antecedents of sovereignty as responsibility*, (2010) European Journal of International Relations XX(X) 1

over how the UN will mobilize resources (both financial and military) to respond to crises when more peaceful means have failed.

Resistance to preventive measures is also a major challenge. The assumption appears to be that these actions represent a less controversial and potentially more effective way of advancing R2P than discussing military intervention. But effective preventive measures can also be highly intrusive, and therefore do not avoid the problem of States' sensitivities about sovereignty. Developing countries have already expressed concern that any monitoring process for R2P-related crimes might place a category of States under permanent surveillance.[170] They also contend that the process of choosing the States to which preventive measures would apply is likely to be a subjective exercise, and could be influenced by the strategic interests of major powers.

These kinds of objections have already limited the capacity of existing UN bodies – such as the Peace-building Commission – to pursue an agenda of prevention. It is therefore crucial that proponents of R2P learn from these experiences. In addition, it must be recognized that while most diplomats agree that it is better (and less costly) to prevent a crisis than to respond to one that has occurred, there has historically been great difficulty mobilizing support and resources for preventive measures. In contemporary international society, the political will to act (which is linked to the costs actors are asked to bear) is often fashioned out of extreme and real-time necessity rather than longer-term strategies. It is almost two decades since the publication of Boutros Boutros-Ghali's Agenda for Peace, which called on States to develop systematic efforts in preventive diplomacy,[171] yet neither the creation of new UN bodies to coordinate actions

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[170] *Report of the International Commission of Inquiry on Darfur to the UN Secretary-General* (Geneva: 25 January 2005).
[171] Boutros Boutros-Ghali. Report of the UN Secretary-General: *Agenda for Peace* June 17, 1992

related to prevention (such as the Department of Political Affairs), nor the rise of non-governmental organizations dedicated to the cause of conflict prevention, have produced a significant body of successful cases.

4.5 Conclusion

Building strong institutions to prevent mass atrocity crimes should be a priority in the world especially in Africa. Since its inception in 2002, the AU has served as a mediator among conflicting parties and furthermore, it has sent peacekeeping troops to protect Africans in conflict zones. It was very instrumental in the negotiations leading to the successful referendum for Southern Sudan. However, there is much more to be done. This chapter has expounded on the challenges that are hindering the AU from implementing the principle of R2P. The next chapter will summarize, conclude and recommend what can be done to make the implementation of R2P more effective.

CHAPTER FIVE

CONCLUSION, SUMMARY AND RECCOMMENDATIONS

5.1 Conclusion

The study embarked on a journey to examine the principle of Responsibility to Protect, in Africa and particularly in South Sudan. From the study it is clear that the mandate for states under the Principle of R2P is to take coercive, and in particular military, action against another state for the purpose of protecting civilians in that state at risk of mass atrocity crimes – genocide, ethnic cleansing, or other large scale crimes against humanity or war crimes.

The study observed that R2P has been unanimously welcomed but the effectiveness of its implementation in practice has been far from assured. Under international law, the study observed that, the idea of R2P was as articulated the International Commission on Intervention and State Sovereignty (ICISS), was to identify a new idea that *could* compete, in a way that "humanitarian intervention" had proved unable to, with the old, narrow idea of sovereignty as immunity. "The responsibility to protect", thus: not anyone's "right" to act, but everyone's "responsibility", and the action in question was framed not as "intervention" but "protection". However, despite the intentions to protect, the implementation of R2P has crippled the concept, at times where it is most needed such as Africa, and in particular for this study, South Sudan. South Sudan requires international assistance to end the civil war and ensure accountability for mass atrocity crimes. With ongoing resource deficits and a hostile operating environment, UNMISS is struggling to uphold its protective mandate.

5.2 Summary

Despite professed commitments to prevent future man-made humanitarian catastrophes, the world's response to the Darfur crisis has been muted or rather possessing some degree of

ineffectiveness. The AU-UN forces has proven unable to halt sporadic escalations of violence or prevent the humanitarian situation from deteriorating. The UN Security Council has taken an ambivalent position. R2P in this case is to ensure that there are early warning and response focal points established within all the key South Sudan government and intergovernmental organizations; to have in place civilian capability able to be utilized, as occasion arises, for diplomatic mediation, civilian policing and other critical administrative support; and to have in place capable military resources, available both for rapid "fire-brigade" deployment in the most extreme cases which cannot be otherwise addressed, and for longer-haul stabilization operations as is the case is Darfur.

However, several challenges have affected the implementation of R2P as stipulated in chapter four of the study. Such include financial constraints and political challenges. Overwhelmingly the biggest challenge in the years ahead will be political. the study thus surveyed that for effective implementation of R2P, all the necessary institutional preparedness has been done, with the necessary early warning and response, civilian, and as necessary military, resources must be ready and in place for operation. However challenges such as governments, and the international organizations being reluctant to take the necessary decisions to act, particularly when the expenditure of national treasure, or even worse political gimmicks is potentially involved. In any difficult situation inertia will always be the default option. Generating the necessary political will to do anything hard, or expensive, or politically sensitive, or seen as not directly relevant to national interests, is just a given in public affairs, both domestically and internationally. The point is that its absence should not be a matter for lamentation, but mobilization.

5.3 Recommendations

The AU and UN have both set up guiding principles and peace and security architectures which seems to accommodate the implementation of its R2P obligations in Africa. However, they need to ensure a greater harmonization and coherence between its institutions and the sub-regional bodies. This can be done in several ways as recommended below:

1. Improvement of Institutional Capacity.

The AU needs to revise the Maputo Structure, which currently limits the Commission's ability to hire staff through its regular budget. The PSC and CEWS need to be provided with additional staff to deal with their additional responsibilities as their current staffs are overwhelmed with their available workload. They also have to ensure that the additional staff they hire are well trained and have in-depth knowledge of the dynamics of peace and conflict in the continent. This is where the UN comes in very useful. The UN has recognised that one of the AU Commission's major challenges is the lack of sufficient institutional capacity in key management, support and strategic planning functions. This capacity is required to address both its immediate peacekeeping demands and its longer-term goal of operationalizing the African Standby Force. This will help to alleviate the human resource deficiency facing the AU. However, even the UN has noticed that the AU would ultimately have to develop a capacity that would best suit its own needs; United Nations systems cannot be simply exported but should be seen as a resource that the AU can adapt to meet its own unique requirements.

2. Strengthening AU's RECs/RMs

The AU need to establish a stronger institutional linkage with the Regional Economic Communities (RECs and, Regional Mechanisms (RMs). There is need to clarify the level and mandate of the liaison. For instance should they be serving military officers or civilians and which field should they be experts in, (for example do they need public relations experts)?

Furthermore, the level of progress by the RECs/RMs is disproportionate therefore the AU needs to step in and act as a bridge. They would have to ensure that RECs/RMs have equal access to partner support and that they are not lagging behind in the development of their institutions. Furthermore, partnership between the AU, RECs/RMs and external multilateral and bilateral actors has emerged as a major challenging feature to the efforts of the AU in the operationalization of the APSA. Enhanced dialogue on decision-making will improve the collective ability of both organizations to respond to the many peace and security challenges we face in Africa.

3. Hybrid Peacekeeping Missions

Having joint peacekeeping (UN-AU) missions is very important and can bridge the financial and human resource gap. The UN can fund the missions as it has the necessary finances to undertake these missions, whereas the AU can provide the human resources. The problem solving capacity of this trend is two-fold. Firstly, it settles the issue of the legality of article 4(h) as this UN-AU cooperation will need the endorsement of the UNSC. Secondly, it will provide the necessary finances required to sustain an effective peacekeeping mission as can be seen in the improvement of resources from AMIS to UNAMID and with the logistics support given to AMISOM by the UN.

4. Support the Principles of ICC

Another important recommendation involves the ICC's work in Africa. The ICC's work in Africa is imperative and deserves continued support. The position taken by African States can be remedied. If African leaders think they are being discriminately targeted by the ICC then they can improve their judiciary so that these cases can be tried by their own domestic courts.

In the case of states that are unable or unwilling to prosecute African leaders should summon up the political will to make sure that the actions of these people do not go unpunished. They have undertaken the obligation in several international treaties never to allow heinous crimes to go unpunished therefore they have to summon up the will to undertake their commitment.

The African Commission on Human and People's Rights has also taken a more proactive stance on the implementation of R2P. It has recognised the doctrine of R2P in a resolution it passed, it recalled its mandate to promote and ensure human and people' rights under the African Charter and also recalling the principles enshrined under the Constitutive Act of the AU and the PSC Protocol, which provides that the Union shall intervene, to prevent, in situation of genocide, war crimes and crimes against humanity, in a Member State of the African Union.

5. Realization of Small Arms and Light Weapons trade and their effect on AU's implementation of R2P

According to the ICISS report, civil conflicts are fuelled by arms and monetary transfers that originate in the developed world and their destabilizing effects are felt all over the world from globally interconnected terrorism to refugee flows, the export of drugs, the spread of infectious disease and organised crime. It is a phenomenon that out of an estimated 500 million small arms and light weapons in circulation worldwide, 100 million are found in Africa. Their widespread availability has contributed to massive violations of human rights and international humanitarian law. Thus the study observes that the AU in its quest to protect people in African against mass atrocity crimes must pay due attention to this trade.

In light of this, the study suggests further studies in the area of the relationship between small arms and light weapons and the responsibility to protect. This is in the light of the challenging effect of the circulation of arms and how they hinder AU's effectiveness in implementing R2P.

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APPENDICES

Appendix I: Interview Guide

This interview guide is intended to collect date for the purposes of academic research only. The researcher is a student at the University of Nairobi's Institute of Diplomacy and International Studies and is due to graduate in December 2014 after the completion of her thesis. The information given will not be at any time be used against the respondent and the respondent is free to choose whether to give their name or not.

Your cooperation is highly appreciated.

1. How old are you?...

2. Please state your occupation and nationality
   ....

3. What do you understand by war"
   ....

4. Are you familiar with the conflict in South Sudan
   ....

5. Do you know what Responsibility to Protect (R2P) is?
   If Yes, please explain...

6. Do you think this principle has been well implemented in the case of the ongoing conflict in South Sudan? Please explain your answer briefly.
   ....
   ....

7. Do you think the principle should be revised
   If so, please explain how and if No, why?