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THE PRINCIPLE OF RESPONSIBILITY TO PROTECT IN CENTRAL AFRICA AND THE GREAT LAKES REGION.

THESIS SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF MASTER OF LAWS (LL.M) OF THE UNIVERSITY OF NAIROBI.

SEPTEMBER, 2016

DECLARATION

I TOM OKOTH OGOLA, declare that this dissertation is my own original work and that it has not been submitted for examination for the award of a degree at any other university.

SIGNED

.....

TOM OKOTH OGOLA

DATE

Supervisors:

Prof. A. MUMMA

Signature _____ Date _____

ACKNOWLEDGEMENT

My gratitude to my supervisor Professor ALBERT MUMMA for his profound support, guidance and patience in seeing me through this project.

DEDICATION

This work is dedicated to Diana and Jonathan for being the light of my life.

LIST OF ABBREVIATIONS

ECOWAS	Economic Community of West African States
DRC	Democratic Republic of the Congo
ICISS	International Commission on Intervention and State Sovereignty
ILC	International Law Commission
NATO	North Atlantic Treaty Organizations
R2P	Responsibility to protect.
UN	United Nations.
UNSCR	United Nations Security Council Resolution.
UNSC	United Nation Security Council.
UNAMSIL	United Nations Mission
US	United States
UK	United Kingdom
EU	European Union
ICTR	International Criminal Tribunal for Rwanda.
ICTY	International Criminal Tribunal for Yugoslavia
HLPR	High-Level Panel Report
NGO	Non-Governmental Organizations
PBC	Peace Building Commission
UNGA	United Nations General Assembly
SCC	Special Criminal Court
ICC	International Criminal Court
WB	World Bank
AU	African Union
UNA-UK	United Nations Association –UK
UNHRCHLMD	United Nations Human Rights Council’s High-Level Mission to Darfur
TJRC	Truth Justice and Reconciliation Commission.
UNMISS	UN Mission in South Sudan
IGAD	Intergovernmental Authority on Development
EAC	East African Community.

LIST OF CONVENTION / TREATIES

1. 1945 United Nations Charter.
2. Rome statute
3. Constitutive Act of the African Union

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CHAPTER 1:

INTRODUCTION

1.0 Background Information

The Responsibility to Protect (R2P or RtoP) is a concept under international law that is gaining wide usage and acceptance. The principle stresses that each state has a responsibility to prevent grave violations of human rights in its territory.¹ It further, bestows on the international community, the responsibility to support, assist and come to the aid of a state that is unable or lacks the capacity to protect its own from such grave violations of human rights.²

The importance of delivering on R2P in Africa is critical: ongoing conflicts and crises across the continent, including Burundi, the Democratic Republic of Congo (DRC), Kenya, Somalia, South Sudan, Uganda, Zimbabwe and Chad make it essential. The principle of Responsibility to Protect comprises of three central responsibilities namely:-the responsibility to prevent; the responsibility to react and the responsibility to rebuild.³

This research paper will focus on Central Africa and the Great Lakes Region. The African Great Lake region countries comprise of Burundi, the Democratic Republic of Congo, Kenya, Rwanda, Tanzania and Uganda. On the other hand Central Africa is a core region of the African continent

¹ UN General Assembly, *Implementing the responsibility to protect : report of the Secretary-General*, 12 January 2009, A/63/677, available at: <http://www.refworld.org/docid/4989924d2.html> [accessed 21 June 2016]

² Ibid at no. 1

³ INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT (2001) [hereinafter ICISS REPORT].

which includes Burundi, the Central African Republic, Chad, the Democratic Republic of the Congo, and Rwanda.

Appreciating the number of countries within the Central African Region and the Great Lakes Region, the study will only focus on Kenya, South Sudan, Central African Republic and the Democratic Republic of Congo.

At the regional (Great Lakes Region) level, Africa already has elements of the legal, peace, security and architecture required to convert the recognition of R2P into practice. The norms and mechanisms developed within the African Union (AU), the East African Community (EAC), and the Common Market for Eastern and Southern Africa (COMESA), the International Conference on the Great Lakes Region (ICGLR) and the Inter-Governmental Authority on Development (IGAD) form the subject of this research.

After 2013 the South Sudan civil war the UN Office for the Coordination of Humanitarian Affairs noted that almost 468,000 persons were displaced and an estimate of 83,000 civilians were displaced in to the neighboring countries.⁴ The civil war between the troops loyal to President Salva Kiir and those of former vice-president Riek Machar, spiraled South Sudan into a tribal conflict, pitting Dinkas against Nuers; as a result of this, the Ugandan legislature authorized military intervention into South Sudan in a bid protecting over 200,000 Ugandans in Juba.⁵

⁴ The UNOCHA, South Sudan Crisis Situation report as of 16 January 2014 Report number 11

⁵ The Inside Stories of Emergencies (IRIN) Doubts over Uganda's military intervention in South Sudan, 17 January 2014. Available at: <http://www.irinnews.org/report/99494/doubts-over-uganda-s-military-intervention-in-south-sudan>

It is this action by the Ugandan government that elicited a lot of international criticism as to its legality under international law. Questions have been asked whether the same was proper under international law as this move was not sanctioned by the United Nations Security Council (UNSC) and did conform to the Principle of Responsibility to protect.

On 21st December 2013, with the escalation of the civil war in South Sudan, the Republic of Uganda deployed its military troops to Juba to assist the embattled Juba government and evacuating Ugandan citizens from South Sudan.⁶ On 17th January 2014, the Ugandan parliament passed a motion authorizing the presence of their troops in South Sudan by stating that “a stable and prosperous South Sudan is vital for regional peace, security and stability...there was and still is need to prevent potential genocide and other atrocities against humanity in South Sudan”⁷.

1.1 PROBLEM STATEMENT

The practise of the principle of responsibility to protect has not lived up to the expectation in the focus countries. There have been sanction and unsanctioned intervention under the guise of responsibility to protect.

This paper will expound and discuss the concept of the Responsibility to Protect under International Law. While this work will be based on the legal concept of the Responsibility to Protect, the paper will also analyse the impact and effectiveness of the implementation and practise of the Principle to Protect in South Sudan, DRC Congo, Central African Republic, and Kenya.

⁶ The Crisis Group, From Conflict to Cooperation? Sudan, South Sudan and Uganda, 20 June 2016

⁷Yasiin Mugerwa and Mercy Nalugo, African Review: Uganda Parliament Okays troop deployment in south sudan. on 16th January 2014.

1.2. Research objectives

This paper will expound and discuss the concept of the Responsibility to Protect under International Law. While this work will be based on the legal concept of the Responsibility to Protect, the paper will also analyse the impact and effectiveness of the implementation of the Principle to Protect in Central Africa and the Great Lakes Region. The paper will also offer recommendations on how best the principle can be implemented within the region vis a vis the current strategy.

The paper will critically analyse case studies of the following countries South Sudan, DRC Congo, Central African Republic, and Kenya.

1.3. Hypothesis

My argument is that implementation of the principle of the Responsibility to Protect within Central Africa and the Great lakes region has not fully conformed to the international principles.

1.4. Scope of the Study

This study will focus on the principle of Responsibility to Protect in central Africa and the Great lakes Region; with particular emphasis on Kenya, Central African Republic, DRC, and South Sudan.

The study will focus on the above mentioned countries because, the problem has been acute in the past decade as compared to the other countries. They will therefore be able to build a good study and discussion around the concept.

1.5. Theoretical Framework

This thesis set out to discuss the concept of responsibility to protect as practiced in Kenya, DRC Congo, Central African Republic and South Sudan. The main aim of the principle is to try and intervene in cases of violence where the host nations are not able to protect their own population or are involved in the acts that are affecting their population.

This chapter will present and discuss the theoretical framework, of humanitarian intervention, which this thesis is based upon. Humanitarian intervention is included due to its importance historically in International law and to its more critical approach to the International Society.

Humanitarian intervention has been described as,

“...threat or use of force across borders by a state (or groups of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied”.⁸

Humanitarian intervention theory has been viewed as a fiduciary relationship. According to this new fiduciary theory, when states intervene to protect human rights abroad they exercise an oppressed people’s right of self-defence on their behalf and may use force solely for the people’s benefit. As fiduciaries, intervening states bear obligations to consult with and honour the preferences of the people they seek to protect, and they must respect international human rights governing the use of force within the affected state. By clarifying the respective responsibilities

⁸ Garrett, Stephen A., “Doing Good & Doing Well; An Examination of Humanitarian Intervention”, (Greenwood Publishing Group, Incorporated, 1999)

of the Security Council and individual states for humanitarian intervention, the fiduciary theory also lends greater coherency to the international community's "responsibility to protect" human rights.⁹

Humanitarian intervention is included as a theatrical framework due to its importance historically in International human rights law, and further that this thesis evaluates the implementation and practice of responsibility to protect framework as practiced in the four countries and ultimately assesses its success.

The relationship between a sovereign and his subjects shares common features with the parent-child relationship. Like parents, a sovereign bears special responsibility for "the support of his dependents or subjects."¹⁰ The practice in international community backed by the UN charter is that the larger community has a duty to intervene, where the sovereign state has failed to protect its nationals as long as the laid down rules under the UN Charter and other international instruments are followed.

Since the end of the Cold War we have seen a shift in the international environment. Unfortunately, the theoretical frameworks that ought to help us in understanding this new environment have not changed significantly since then. During the Cold War, Realism could be said to be 'king of all theories', including the military based concept 'balance of power' applied to the relationship between the U.S. and the Soviet Union. Interventions on the notion of 'humanitarian' were rare.¹¹

⁹ Evan J. Criddle, *Theoretical Inquiries in Law* 16.2 (2015) [Vol. 16:473]

¹⁰ Ibid

¹¹ Elin Sparring Jonsson et al, *Jönköping The Theoretical Frameworks of Feminism and Realism applied on the humanitarian intervention in Kosovo* march 2008

As we since the end of the Cold War have seen cases where a 'secure' state have not been able to provide security for its people, where the people within the nation have at least in part been subject to oppression and discrimination. That is a wider case ethnical and internal conflict. Therefore this following period have given room for Humanitarian Interventions to – in such a way to intervene where the state is not able to provide for the needs of the people.

This thesis discusses the concept of responsibility to protect the lens of humanitarian intervention as theoretical frameworks. We can demonstrate the intervention by the international community through regional organizations in Kenya during the post election violence in 2008. The case for DRC Congo, South Sudan and Central African Republic. The violence may not have stopped completely but the implementation of the principle of responsibility to protect in those countries is visible and the same has gone to try and alleviate human suffering in those countries.

Walzer (2004) puts the strength of intervening despite conflict in interest,

“...”humanitarian intervention” much abused, no doubt, but morally necessary whenever cruelty and suffering are extreme and no local forces seem capable of putting an end to them. Humanitarian interventions are not justified for the sake of democracy or free enterprise or economic justice or voluntary association or any other of the social practices and arrangements that we might hope for or even call for in other people’s countries. Their aim is profoundly negative in character: to put a stop to actions that, to use an old-fashioned but accurate phrase, “shock the conscience” of humankind.”¹²

¹² Walzer, Michael, “Arguing about War”, New Haven, CT, USA (Yale University Press, 2004)

The world can no longer afford to sit back and watch as women, children and girls bear the brunt of conflict. The world must as a matter of humanity intervene during conflicts to prevent genocide, war crime and crimes against humanity and carry out conflict resolution, peacemaking, peace-building, and reconstruction processes of the affected countries. Sustainable peace will not be achieved without the full and equal participation of the international community. This espouses the concept of responsibility to protect.

The intervention in the four countries have been varied with the legality of Uganda's intervention question but the principle of responsibility to protect concerns itself with the protection of human rights in the concerned states.

In conclusion, (Evans J 2015) states that the , intervening states must respect a foreign people's right to self-determination by making good faith efforts to consult with and respect the actual preferences of the people for whose benefit they purport to act. Second, the engage in humanitarian intervention must use force in a manner that respects the requirements of international human rights law (IHRL), including the heightened proportionality requirements associated with the human "right to life, and thirdly, the Security Council must become a more effective oversight body for humanitarian intervention, not only with respect to the Security Council's oft-criticized decision-making structure, but also with respect to how the Security Council designs its authorizing resolutions ex ante and supervises intervention .

1.6. Methodology

My research project will involve an exploratory study which will include review of the previous related studies. I will rely on the works done by the scholars before, books, journals, articles, the E-journals, newspapers, magazines, treaties and conventions.

My research will rely heavily on materials that have discussed the principle of Responsibility to Protect.

1.7. Research Questions

This study which evaluates the international law on the practise of the principle of Responsibility to Protect in the Great Lakes region seeking to answer the following questions:-

1. Has the principle of responsibility to protect been implemented successfully in the Great lakes region?
2. Has the process of implementation conformed to the practise under International Law standards?
3. What are the lessons learnt from the practise of the principal of responsibility to protect in the focus countries.

1.8. Literature REVIEW

The Responsibility to Protect has progressed rapidly in a short span of time. The principle has been defined as the global commitment to put an end to genocide, war crimes, crimes against humanity and ethnic cleansing.¹³ In 2005 the principle was unanimously endorsed by the United Nations General Assembly. This endorsement was later reaffirmed in 2006 by the Security Council.¹⁴ The resolution states: *'Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity'*.¹⁵

So far there have been international responses to humanitarian disasters in countries such as Somalia, Sudan, Bosnia-Herzegovina, Rwanda, Kosovo and now South Sudan.¹⁶ Stahn indicates in his article *"Responsibility To Protect: Political Rhetoric Or Emerging Legal Norm?"*¹⁷ that the concept of responsibility to protect is treated differently in the four documents associated with its

¹³ Glanville Luke, The Responsibility to protect beyond borders, 2012 Human Rights law Review pg.1-2

¹⁴ UN General Assembly, *2005 World Summit Outcome : resolution / adopted by the General Assembly*, 24 October 2005, A/RES/60/1, para 138 available at: <http://www.refworld.org/docid/44168a910.html> [accessed 30 June 2016]

¹⁵ Ibid at no.14, para. 138

¹⁶ W. Andy Knight; The Development of the Responsibility to Protect – From Evolving Norm to Practice. *Global Responsibility to Protect* 3, no.1 (2011) 3–36, ,

¹⁷ Stahn, Carsten. "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?" *The American Journal of International Law* 101, no. 1 (2007): 99-120

genesis, namely, the report of the Commission on State Sovereignty and Intervention,¹⁸ the High-Level Panel Report,¹⁹ the Report of the Secretary-General,²⁰ and the Outcome Document of the 2005 World Summit.²¹

Ban Ki Moon, the United Nations Secretary General in the United Nations January 2009 report, described the Responsibility to Protect as an idea whose time had come when he presented a detailed plan for implementing the principle within the UN system.²² There are four programmatic components stipulated in the report that are essential for operationalizing of the principle; capacity building, early warning and assessment, timely and decisive response and collaboration with regional and sub-regional organizations.²³

Early warning and assessment entails prevention other than curative measures. The United Nations believes that, the international community needs other interventions other than military interventions.²⁴ There is also the idea for developing a civilian rapid deployment force in the Secretary General's report that could help in the prevention of crimes.

¹⁸ ICISS, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (2001) Ottawa: IDRC

¹⁹ [The UN High-level Panel on Threats, Challenges and Change, "A More Secure World, Our Shared Responsibility" \(2004\)](#)

²⁰ UN General Assembly, *Implementing the responsibility to protect : report of the Secretary-General*, 12 January 2009, A/63/677, available at: <http://www.refworld.org/docid/4989924d2.html> [accessed 30 June 2016]

²¹ UN General Assembly, *2005 World Summit Outcome : resolution / adopted by the General Assembly*, 24 October 2005, A/RES/60/1, available at: <http://www.refworld.org/docid/44168a910.html> [accessed 30 June 2016]

²² Report of the Secretary-General of the United Nations, Ban Ki-moon, 'Implementing the Responsibility to Protect,' January 2009.

²³ Welsh J. *Implementing The 'Responsibility to Protect'* Oxford Institute for Ethics, Law, and Armed Conflict, *Policy Brief. No. 1/2009*.

²⁴ UN General Assembly, *Implementing the responsibility to protect: report of the Secretary-General*, 12 January 2009, A/63/677, "Annex: Early warning and assessment": p. 31-33. available at: <http://www.refworld.org/docid/4989924d2.html> [accessed 30 June 2016]

He further stated that the responsibility of the United Nations Member States was, to respond in a timely and decisive manner, in accordance with the UN Charter, when a state is manifestly failing to provide such protection.²⁵ Ban Ki-Moon's report further indicated that this response ought to occur through the institutions of the UN (primarily the Security Council and General Assembly) and not through unilateral action outside of them.²⁶ He also insisted that the international community's options are not limited to the use of violent means but there are wide array of prevention and protection mechanisms that can be explored by member states.²⁷

Collaboration with regional and sub-regional organizations implies that the operationalization of the Responsibility to Protect relies heavily on better collaboration between the United Nations and organizations at the regional and sub-regional level.²⁸ Ban Ki-Moon's report focuses on ways in which the UN could help to build regional capacity, but also to learn from different regions' experiences with measures to build state capacity and prevent conflict.²⁹

As highlighted in the Secretary-General's 2009 report, *Implementing the Responsibility to Protect*, civil society is a central part of implementing all three pillars of the principle, through: prevention work, addressing both the structural and long-term as well as immediate causes of mass violence; capacity-building to prevent, react to, and rebuild after mass atrocities; and to carry out peace-building activities before and after violence.³⁰

²⁵ Ibid at no. 24

²⁶ Ibid at no. 24

²⁷ Ibid at no. 24

²⁸ Ibid at no. 24

²⁹ Ibid at no. 24

³⁰ Ibid at no. 20

Therefore, when governments, regional organizations and the UN talk about the Responsibility to Protect, they mean not the concept put forward by the International Commission on Intervention and State Sovereignty but the principle endorsed by world leaders at the 2005 World Summit and reaffirmed by the Security Council in 2006.³¹ The International Commission on Intervention and State Sovereignty (ICISS) report *Responsibility to protect* was primarily concerned with re-analysing humanitarian intervention in the wake of the Kosovo crisis and the Secretary-General's challenge to the 1999 General Assembly to resolve the tension between sovereignty and fundamental human rights.³²

The ICISS in its 2001 report puts across the responsibility to protect with the sole idea that; *'Sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.'*³³

The commission tried to distinguish the idea of Responsibility to Protect from the concept of humanitarian intervention³⁴ in three ways.³⁵ The report emphasized, first of all, that the Responsibility to Protect looks at intervention from a different perspective than the doctrine of humanitarian intervention. The commission stressed that the principle addresses the dilemma of intervention from the perspective of the needs of those who seek or need support (e.g.,

³¹UN Security Council Resolution 1674 (2007).

³² International Commission on Intervention and State Sovereignty, *The responsibility to protect* (Ottawa: International Development Research Centre, 2001),

³³ICISS, *op. cit.*, fn. 7, p. viii

³⁴Simon Chesterman, *Just War Or Just Peace: Humanitarian Intervention And International Law* 228 (2001); *Dkosovo: The United Nations And Humanitarian Intervention*, 41 Va. J. Int'l L. 936 (2001).

³⁵Responsibility To Protect, *Supra* Note 2, Para. 2.29.

communities in need of protection from genocide, mass killings, ethnic cleansing, rape, or mass starvation),³⁶ rather than from the interests and perspectives of those who carry out such action.

The ICISS identified three circumstances in which this "residual responsibility" of the broader community of states is activated as follows: -

- a) When a particular state is clearly either unwilling or unable to fulfil its responsibility to protect";
- b) When a particular state ... is itself the actual perpetrator of crimes or atrocities"; or –
- c) Where people living outside a particular state are directly threatened by actions taking place there.³⁷

The Responsibility to Protect holds that when the host state does not fulfil its protective role, there is an entity outside the state that can step in to protect the people within this state from grave harm.³⁸ This idea of the transfer of responsibility to the international level is a relatively new idea that does not have deeply established roots. It was always accepted, to a certain extent, that the international community might have a *right* (and not responsibility) to step in to enforce the performance of sovereign responsibilities.³⁹ But the notion of having an international *responsibility* to protect is perhaps the most novel aspect of R2P.⁴⁰ This dimension of the R2P

³⁶ICISS, *op. cit.*, fn. 7, p. viii

³⁷ International Commission on Intervention and State Sovereignty, *The responsibility to protect* (Ottawa: International Development Research Centre, 2001),

³⁸ Hough, Peter, *Understanding Global Security*. (2004) London: Routledge.

³⁹ *Ibid* at no.38

⁴⁰ Pattison, James. *Humanitarian intervention and the Responsibility to Protect*. (2010) Oxford: Oxford University Press.

calls on its relationship with international law and how it might impact upon the existing international legal provisions of the pre-R2P humanitarian interventionism.⁴¹

The humanitarian interventions of the 1990s have revealed the legal dilemmas of the traditional humanitarian intervention debate. More particularly, the NATO unilateral action in Kosovo (without the UNSC authorization), often described as “legitimate but illegal,” raised a complex debate over the legal character of humanitarian interventions.⁴² The main areas of contestation were around three questions: whether there is a right to intervene, who has the right to authorize the intervention, and who should undertake it. R2P proponents suggest that the advent of the R2P principle offers a new legal framework in which the international community can respond differently to particular situation of humanitarian emergency.⁴³ However, a closer look at the legal content of the paragraphs 138-140 of the 2005 World Summit Outcome Document⁴⁴ reveals that the R2P does not hold any new legal weight that is able to transform the international legal framework in a way in which the international community can actually respond. As will be demonstrated, the legal requirements are, in reality, “old wine in new bottles”⁴⁵ This is in terms of the international “legal obligations” to protect, the “decision-making” process by which the international community should protect, as well as the actor responsible in undertaking the humanitarian intervention.⁴⁶

⁴¹ Ibid at no.40

⁴² Thakur, Ramesh *The United Nations, Peace and Security : From collective Security to the Responsibility to Protect. (2006)*UK : Cambridge University Press.

⁴³ Ibid at no.42

⁴⁴ Ibid at no. 21

⁴⁵ Bellamy, Alex J. and Sara Ellen Davis., *The Responsibility to Protect and International Law . (2011)* Leiden Boston : Martinus Nijhoff Publishers.

⁴⁶ Ibid at no.45

Thomas Weiss notes, that the term ‘international community’ is vague and ‘without a policy edge’.⁴⁷ Using it allows analysts to avoid pointing the finger at which specific entities are responsible when the so-called international community fails to respond or makes a mess of things’.⁴⁸ As such, referring to the international community does not help us to identify who should actually intervene when humanitarian intervention is called for under the responsibility to protect doctrine.⁴⁹ The ICISS report did make it clear that, whoever intervenes, the UN Security Council should authorize the action.⁵⁰ States at the 2005 World Summit adopted a similar (and arguably stronger) view.⁵¹ Yet the requirement for Security Council authorization identifies only a procedure that agents should follow when discharging the responsibility to protect. It does not identify which particular agent has this responsibility.⁵²

Emma McClean explains that from the ICISS commission, it emanated that the Responsibility to Protect has two basic principles which include; primary responsibility to protect people from genocide, war crimes, crimes against humanity and ethnic cleansing that lies on the territorial state and secondary Responsibility to Protect which lies on the international society when the state is unable or manifestly fails to protect its people.⁵³ This is also known as the responsibilities to help build capacity and use peaceful means to prevent and protect. Bellamy adds a third perspective which he calls the Security Council’s responsibility to use all appropriate means when necessary, in partnership with relevant international organizations⁵⁴

⁴⁷ Weiss, Thomas G. ‘Researching Humanitarian Intervention: Some Lessons’, *Journal of Peace Research*, (2001). 38/4: 419-28.

⁴⁸ *Ibid* at no.47

⁴⁹ *Ibid* at no.47

⁵⁰ *Ibid* at no.37

⁵¹ *Ibid* at no.27

⁵² *ibid*

⁵³ McClean, Emma, *The Responsibility to Protect: The Role of International Human Rights Law* (Spring 2008). *Journal of Conflict and Security Law*, Vol. 13, Issue 1, pp. 123-152, 2008.

⁵⁴ Bellamy, ‘Whither the Responsibility to Protect?’ *loc. cit.*, fn. 35, p. 166.

GeirUlfstein,⁵⁵ articulate that despite the implementation of measures pursuant to Resolution 1970 and the international condemnations, the Libyan government continued the brutalities against its own people and called on its supporters to attack the demonstrators.⁵⁶ The regional organizations thus saw the need for stronger international pressure. He further stated that resolution 1973 represents the first mandate by the Security Council for a military intervention based on the Responsibility to Protect against the wishes of a functioning government.⁵⁷

According to the Asia-Pacific Centre for the Responsibility to Protect (the Centre), upholding the Responsibility to Protect involves promoting and protecting human rights, upholding the rule of law to address impunity, protecting civilians in armed conflicts and many more measures.⁵⁸

The Asia-Pacific Centre for the Responsibility to Protect highlights states that:-

‘Governments play one of the most important roles in the promotion and implementation of the Responsibility to Protect. This governmental involvement must be at all levels, from ministerial and parliamentary support, to mainstreaming of relevant policies at the departmental level, to local government promotion and support. Each level of government has an important role to play in the prevention of mass atrocities and thus each level must be engaged and proactive in its R2P roles.’

The Centre also outlines that the media has various strategic and viable roles to play in promoting and implementing the Responsibility to Protect. These roles include not only those of

⁵⁵Geir Ulfstein and HegeFøsund Christiansen , The Legality Of The Nato Bombing In Libya. International and Comparative Law Quarterly,(2013) 62, pp 159-171

⁵⁶ Aljazeera, ‘Defiant Qaddafi Vows to Fight on’ (23 February 2011).

⁵⁷ Ibid at no.53

⁵⁸ The Asia-Pacific Centre for the Responsibility to Protect, ‘The Responsibility to Protect: Information about the Principle and Steps for Implementation.’

the conventional news media, like monitoring and reporting on current events, but also those contemporary and evolving roles proffered by emerging communication technologies, skills and media as essential apparatus in humanitarian crisis management, prevention, mitigation and resolution.

Hedley Bull, in his pluralist idea of conception of an international society emphasized the value of the principle on non-intervention and pointed to a core of principles in international relations that is often referred to as a morality of states.⁵⁹ He listed them in priority namely:-Maintaining international society; and Sustaining the sovereignty of the state; and peace. With respect to the first objective, states are interested in maintaining international society and this is followed by keeping their position as the principle actors in international relations. Sovereignty, principle of non-intervention is graded as a second because the international society at times sacrifices the sovereignty for peace. Peace is third as war may be necessary as means of maintaining international society.⁶⁰

Linklater⁶¹ stated that:

*'A pluralist international society strikes a balance between the principle of state sovereignty and the universal principle of order and peaceful coexistence. A solidarist international society endorses the principle of state sovereignty but strikes a balance with a commitment to universal moral principles which address the injustices suffered by the victims of human rights violations whether these be solitary individuals, indigenous peoples or ethnic and other minority groups.'*⁶²

⁵⁹ Bull, Hedley, *The Anarchial Society: A Study of Order in the World of Politics* (2002), Columbia University Press

⁶⁰ Ibid at no. 60

⁶¹ Linklater Andrew, *The Transformation of political Community* (1998) Cambridge: Polity Press

⁶² Ibid at no.62

The International Law Commission (ILC) on codifying laws related to serious international criminal activity and intervention for humanitarian purposes spelled out that it is not just the states' but individuals' responsibility with respect to crimes against the peace and security of humankind, thus confirming the legacy of Nuremburg that an individual could be held accountable on an international as well as domestic legal plane.⁶³

Findings from extensive research done by Andy Knight shows that during the 1990s, there were certainly at least nine cases in which multilateral military interventions were used, against the wishes of the governments of the targeted states or without necessarily waiting to get meaningful consent, in order to stop or prevent widespread suffering and death among the inhabitants of those states.⁶⁴ Those cases were Liberia, Northern Iraq, the former Yugoslavia, Somalia, Rwanda and Eastern Zaire, Haiti, Sierra Leone, Kosovo, and East Timor. He reiterates that in some of these cases, there was outright opposition to the 'humanitarian' intervention for instance, in Iraq, the former Yugoslavia and Rwanda. In other cases, the consent of the state government was either of little practical meaning or controversial particularly in Liberia, Haiti, and Sierra Leone. In at least one case, there was no government in place to consent to or reject the international community's decision to intervene (Somalia). And, in another case, East Timor, the consent was ambiguous at best, in that 'it emanated from an illegal occupying power, after significant international pressure that verged on coercion.'⁶⁵

⁶³The International Law Commission (1996) Available at http://untreaty.un.org/ilc/texts/instruments/English/draft%20articles/7_4_1996.pdf,

⁶⁴ *Ibid* at no.16

⁶⁵ *Ibid* at no.16

1.9. CHAPTER BREAK DOWN

1.9.1 Chapter One: Introduction

- The background;
- Statement of the problem;
- Hypothesis;
- Research question;
- Theoretical framework;
- Literature review;
- Research methodology.

1.9.2 Chapter Two: Evolution of Responsibility to Protect.

- Introduction.
- Responsibility to protect defined.
- The International Criminal Court and Responsibility to Protect.

1.9.3. Chapter Three: Responsibility to Protect.

- Introduction;
- The prevention component of responsibility to protect;
- Responsibility to prevent in Kenya;
- Realizing the responsibility to prevent;
- Conclusion.

1.9.4. Chapter Four: Responsibility to React.

- Introduction;
- Ugandans intervention in South Sudan;

- Concussion.

1.9.5. Chapter Five: Responsibility to Rebuild.

- Introduction;
- Rebuilding;
- The peace building commission;
- The peace building commission and the great lakes region;
- The role of criminal trials as a mechanism for rebuilding after the end of conflict vis-a- vis reconciliation.
- Conclusion.

1.9.6. Chapter Six: Conclusion.

- Findings on the Practise of responsibility to protect in the Kenya, Sudan, DRC and the Central African Republic.
- Conclusion and the way forward.

CHAPTER 2.

2. 0 THE EVOLUTION OF RESPONSIBILITY TO PROTECT

2.1. Introduction.

This chapter provides a historical overview of principle of responsibility to protect, and discusses the origins of the principle.

2.2 Historical development of the principle of responsibility to protect.

In the 1990s there were numerous wars that affected the world peace. The Rwandan genocide, Bosnia was, Yugoslavia turmoil and the fight for independence in east Timor. Since the establishment of the United Nations, most of the countries practiced the principle of state sovereignty to the letter. This had been commonly understood as entailing a right to non-interference, a right reflected in Article 2(7) of the UN Charter. The principle of non – interference made it so difficult for countries to intervene and stop the atrocities committed in the said countries. This led to genocide and mass atrocities being committed in the 1990s.

RtoP emerged out of the failure to protect populations from genocide and mass atrocities in the 1990s. Developments in a range of fields – including peacekeeping, refugee and displacement work, humanitarian relief, international diplomacy, and regional action – in response to these failures focused international attention on the protection of human life in situations of conscience-shocking inhumanity. The crises in Rwanda and Kosovo exposed critical challenges relating to the political will to act (Rwanda) and the authority on which action may be taken (Kosovo). The ICISS was established in response to these challenges and its report coined the

phrase ‘responsibility to protect’, developing earlier ideas about the state’s primary responsibility to protect its own population and the role of the international community when it fails to do so.⁶⁶

With the many wars from Bosnia, Rwanda genocide, Kosovo, Russian invasion of Georgia and Iraq invasion. The world belief in international law died and something brilliant had to come in to restore the belief.

The intervention in Kosovo was illegal: it constituted an obvious breach of Article 2 of the UN Charter⁶⁷. However, with international law having lost much of its credibility, the argument was raised: can such a breach not be morally justifiable? Can we not push international law aside for a moment when basic feelings of morality require us to intervene? Such was the plea of former British Prime Minister Blair, who in a 1999 speech called the NATO intervention in Kosovo a just war⁶⁸. By doing so, Mr. Blair pulled out of the bottom drawer an ancient doctrine which was thought to have disappeared with the establishment of the UN in 1945.⁶⁹

It suffices to note that, in 2002, the newly created African Union incorporated the concept in its Constitutive Charter. While Article 4(g) refers to the principle of non-interference in the internal affairs of other member states, Article 4(h) establishes 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.⁷⁰ The African Union thus became the first international organization (albeit a regional one) to convert the R2P-principle into positive law.⁷⁰

⁶⁶ Alex J. Bellamy, *The Responsibility to Protect: Towards a “Living Reality”*: UNA-UK April 2013.

⁶⁷ Thomas Verellen, *A Few Words on the Responsibility to Protect* *Jura Falconis* Jg. 48, 2011-2012, nummer 1

⁶⁸ Speech by Tony Blair, see http://www.pbs.org/newshour/bb/international/jan-june99/blair_doctrine4-23.html (last accessed on 4.5.15).

⁶⁹ *Ibid* note 1

⁷⁰ *ibid*

2.2. Responsibility to protect defined.

The journey of R2P is now a decade old, and it thus seems opportune to reflect on the key factors that have accompanied other successful normative enterprises. Three sets of causal factors are important in explaining normative success:

- an emerging norm, with the power to inspire significant amounts of sympathy, and to capture the imagination of many people around the world;
- the determined commitment of a substantial number of states and the no less important contribution of prominent moral entrepreneurs and
- the articulation and mobilization of an effective advocacy network, involving complex transnational civil society and trans-governmental sets of connections, actively engaged in regular exchanges of services and information.

The evolution of the concept of responsibility to protect includes the Genocide Convention, the promulgation and promotion of universal human rights, the recognition that war crimes and other crimes against humanity are the gravest of all crimes and ought to be punished, the utilization of humanitarian intervention as a means of curbing horrendous violations, the imposition of punitive and smart sanctions to curb genocidal practices, the codification of international criminal law, enforcement measures through Chapter VII of the UN Charter, the introduction of ad hoc criminal tribunals and the establishment of a permanent international criminal court through the Rome Statute to punish individuals who commit core crimes, the advocacy of norm entrepreneurs, and the conceptual work of the International Commission on Intervention and State Sovereignty (ICISS) that eventually led to the embrace of the R2P norm by the international community.

R2P builds upon the foundation the evolution of a new normative idea designed to address the most atrocious of crimes (core crimes) committed against innocent people.⁷¹

Clearly, the principle of ‘responsibility to protect’ has evolved considerably from its little beginnings. It emerged at a proliferation time in history when changes in the international political and security environment began to support other compatible ideas like the human rights norm and the democracy or popular sovereignty norm. Using this logic, sovereignty should not be used by state leaders as an entitlement to treat their citizens as they please. Basically, this indicated that the days of absolutism were coming to an end and that the so-called incompatibility of human rights and sovereignty could somehow be bridged. This research therefore provides a glimpse of the evolving narrative that preceded the adoption of ‘responsibility to protect’ as a norm in international relations.

This narrative was reflected in a number of the conventions, declarations, proclamations, and UN General Assembly resolutions. It was a narrative that called states and other actors to action on protecting human rights and putting people first when it came to security. It also provided the incentive for the utilization of multilateral and pluri-lateral configurations for humanitarian intervention (both consensual and non-consensual), sanctions, and arms prohibition, in a number of countries where the outbreak of atrocities threatened the lives of people and displaced them from their homes. However, when conscience-shocking atrocities, like the genocide in Rwanda

⁷¹ W. Andy Knight(2011) The Development of the Responsibility to Protect – From Evolving Norm to Practice 3–36.

and the ethnic cleansing, were allowed to erupt in the final decade of the last century, people everywhere began to wonder if ‘never again’ – after the Holocaust – really meant ‘never again’.

RtoP was conceived as an attempt to reconcile the ambiguity surrounding cases of proposed military intervention as we saw in the case of Kosovo by ICISS establishing thresholds based on traditional “just war” principles. These include last resort, right authority, right intention, responsible prospects and proportional means. As outlined in the report, “Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.”

The release of the report was unfortunately timed just following the September 11, 2001 attacks on the United States in New York and Washington. The outcome of that attack was a dramatic shift in American foreign policy, with an intensified focus on rooting out sources of terrorism and an aggressive pre-emptive style of interventionism. These events took the focus away from the civil conflicts of the 1990s and, like the flip of a switch, terrorism became the primary focus. With the U.S. intervention in Iraq looming, debates over the legitimacy of the invasion only introduced further questions around the notion of security in the twenty-first century. However, the RtoP concept got back on track in 2003 when Kofi Annan enlisted a group of 16 eminent individuals from various backgrounds to join the Secretary-General’s High-Level Panel on Threats, Challenges, and Change. They were enlisted with the task of analyzing “the threats to peace and security our world faces; to evaluate how well our existing policies and institutions are meeting them; and to recommend changes to those policies and institutions, so as to ensure an effective collective response to those threats.”

The panel published their report, *A More Secure World: Our Shared Responsibility*, in 2004, and it was the foundation for preparing a UN reform package leading up to the 2005 UN World Summit. The report included a number of references to RtoP and the responsibility of governments to protect their populations. As it states, “There is a growing recognition that the issue is not the ‘right to intervene’ of any [s]tate, but the ‘responsibility to protect’ of every [s]tate when it comes to people suffering from avoidable catastrophe—mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease.” The report upholds the notion of taking prevention seriously, but also suggests five criteria that should be met in order to evaluate the legitimacy of any intervention proposed under the banner of RtoP. The results of the Panel reflected that changing global dynamic of the end of the last century and the recognition that there had to be a framework governing international action to prevent or halt the suffering of civilian populations. What is revolutionary about this is not the status of the state as the primary agent in the affairs of the world, but it is the shift in how sovereignty is defined that marks a change.⁷²

At this junction, we had a blueprint that could well provide a framework with which to re-wire the UN system to make it an effective instrument of responding to the contemporary risks of civil conflict and global calamity. The question that is being asked is whether the international community, which is increasingly economically and socially interdependent, is willing to take on political responsibility for those who are being excluded from the protection of universal laws and rights? Indeed, there is a larger reality that can no longer be ignored by those in the more secure, prosperous enclaves of the world. Our own security interests are also at stake, not so

⁷² Welsh J .Oxford Institute for Ethics, Law, and Armed Conflict 2009. Policy Brief. No. 1/2009. Implementing The. 'Responsibility to Protect'

much by the old calculations of national interest but as measured by the personal risk to individuals.

The report served to solidify a new interpretation of sovereignty and collective security that is applicable within the UN framework. As Anne-Marie Slaughter has pointed out, the new conception of security “rests on solidarity more than self-defense, and awareness of common threats hence common responsibilities. “It essentially creates a bridge between traditional notions of common security, that through solidarity regarding self-defense, establishing a concept of collective security that takes into understanding what should be considered a threat, while respecting the role of the state in maintaining peace internationally.

The Responsibility to Protect (RtoP) has become a prominent feature in international debates about preventing genocide and mass atrocities and about protecting potential victims.⁷³ Responsibility to protect is now a concept under international law that is gaining wide usage and acceptance. The principle stresses that each state has a responsibility to prevent grave violations of human rights in its territory. It further, bestows on the international community, the responsibility to support, assist and come to the aid of a state that is unable or lacks the capacity to protect its own from such grave violations of human rights.

During the 2005 world summit, the principle of responsibility to protect was discussed at length and various pillars that makes it unique and different from humanitarian intervention developed and ratified. The principle of responsibility to protect comprises three central responsibilities—the responsibility to prevent, the responsibility to react, and the responsibility to rebuild. The discussion will be on the central Africa and the great lakes region.

⁷³ Alex J. Bellamy, The Responsibility to Protect- five years on. *Ethics & International Affairs*, 24, no. 2 (2010), pp. 143–169. © 2010 Carnegie Council for Ethics in International Affairs

The Responsibility to protect known in short hand as (R2P or RtoP) has progressed rapidly in a short span of time. The principle has been defined as the global commitment to put to an end genocide, war crimes, crimes against humanity and ethnic cleansing. In 2005 the principle was unanimously endorsed by United Nations General Assembly. This endorsement was later reaffirmed in 2006 by the Security Council. The resolution stated upon states: ‘Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity’.⁷⁴

The principle of RtoP rests on three equally weighted and consequential pillars: (1) the primary responsibility of states to protect their own populations from the four crimes of genocide, war crimes, ethnic cleansing, and crimes against humanity, as well as from their incitement; (2) the international community’s responsibility to assist a state to fulfill its RtoP; and (3) the international community’s responsibility to take timely and decisive action, in accordance with the UN Charter, in cases where the state has manifestly failed to protect its population from one or more of the four crimes.⁷⁵

It suffices to note that, in his work, Thomas Verellen highlights three advantages of R2P. First, R2P implies an evaluation of the issues from the point of view of those seeking or needing support, rather than those who may be considering intervention. Second, it acknowledges that the primary responsibility rests with the state concerned. Third, it means not just the responsibility to react, ‘ but the responsibility to prevent ‘and the responsibility to rebuild‘ as well.

⁷⁴ GA Res. 60/1, ‘2005 World Summit Outcome’, 16 September 2005, para. 138 (hereinafter Referred to as the Outcome Document).

⁷⁵ UN General Assembly (UNGA), “2005 World Summit Outcome,” A/60/L.1, September 15, 2005, paras. 138–40; UN Security Council (UNSC), S/RES/1674 (2006), April 28, 2006; UNSC, S/RES/1894 (2009),

The responsibility to protect came of age; the principle was tested as never before. The results were uneven, but at the end of the day, tens of thousands of lives were saved. We gave hope to people long oppressed. In Libya, Côte d'Ivoire, South Sudan, Yemen and Syria, by our words and actions, we demonstrated that human protection is a defining purpose of the United Nations in the twenty-first century.”⁷⁶

R2P's core principle is that state sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. But if it should default, the residual responsibility lies with the broader community of states. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the government in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect. The foundations of the international responsibility to protect lie in obligations inherent in the concept of sovereignty; the responsibility of the UNSC, under Article 24 of the UN Charter, for the maintenance of international peace and security; specific legal obligations under human rights and human protection declarations, covenants and treaties.⁷⁷

R2P as a concept has become generally accepted at the UN level, which has allowed a shift from discussions on the concept itself to debates on the ways in which to implement it.⁷⁸

It suffices, to note at this point that, responsibility rests with the concerned state. Since R2P acts like a link or a bridge between the international community and the state concerned, the international community will only intervene in cases where the concerned state has failed or is

⁷⁶ Ban Ki-moon, United Nations Secretary General, “Address to the Stanley Foundation Conference on the Responsibility to Protect, New York, 18 January 2012”.

⁷⁷ RAMESH THAKUR, “Responsibility to Protect” THE UNITED NATIONS, PEACE AND SECURITY From Collective Security to the Responsibility to Protect (2006) p 244 @ Cambridge University press.

⁷⁸ Read Thomas Verellen

incapable of protecting its own citizens or in situations where the concerned state is itself a perpetrator of the crimes against its own citizens.

All in all, the scope of R2P is larger than that of the traditional humanitarian intervention. While the latter is limited to the use of force, the former includes humanitarian assistance and the development of strategies to rebuild society after the advent of a humanitarian crisis.⁷⁹ R2P should be seen as a new perspective, an attempt to change the language of the debate. Even though such a change in perspective is not a panacea, its importance should not be underestimated either.⁸⁰

In concluding 'responsibility to protect' lies first and foremost with the state whose population is at risk, both because this reflects existing international law and also because it accords with reality. However, where the state in question is unwilling or unable to act, and the population faces serious harm as a result of internal war, insurgency, repression or state failure, the ICISS argued this responsibility should transfer to the international level.⁸¹

2.3. The International Criminal Court on the Responsibility to Protect

Carsten Stahn, Professor of International Criminal Law and Global Justice at Leiden University, has assessed the consequences of conflicts and the impact of the International Criminal Court and the 'responsibility to protect' principle. He has noted for example that, ⁸²in February 2011, the UN Security Council adopted a unanimous resolution (Resolution 1970) to refer the situation in

⁷⁹ *ibid*

⁸⁰ *ibid*

⁸¹ Reinventing Humanitarian Intervention: Two Cheers for the Responsibility to Protect? RESEARCH PAPER 08/55 17 JUNE 2008, house of commons(accessed on 23.4.15)

⁸²<http://www.haguejusticeportal.net/index.php?id=12998#>

Libya to the International Criminal Court (ICC) after the failure of the Gaddafi regime ‘to protect its population’.⁸³ This resolution marked the first incident in which the ICC was expressly recognized in Council practice as a core element of preventing and adjudicating atrocities in line with the Responsibility to protect concept.⁸⁴ The principle is based on the idea that domestic authorities maintain primary responsibility to ‘protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity’.⁸⁵ It contains at the same time a commitment to an international response in accordance with the United Nations Charter, should ‘peaceful means be inadequate and national authorities manifestly fail’ to live up to their responsibility.⁸⁶ With the decision authorizing the use of force ‘to protect civilians and civilian populated areas under threat of attack’⁸⁷ and the referral of the situation to the ICC under Chapter VII of the United Nations Charter, the protection against atrocity crimes took a central place in the collective response to the Libyan conflict. This type of reaction is likely to be perceived as a possible precedent for other contexts. With the Security Council referral, international justice has become one of the primary means of constraining violence and securing accountability, not only in the context of hostilities, but also in ensuring justice after conflict. The debate over the proper forum for proceedings against Saif al-Islam Gaddafi and Abdullah al-Senussi puts the interplay between domestic and international justice to a crucial test.

⁸³See the preamble of SC Res. 1970 of 26 February 2011

⁸⁴Security Council Resolution 1593 of 31 March 2005 does not expressly mention the Responsibility to Protect principle in connection with the triggering of ICC jurisdiction in relation to Darfur. It simply makes reference to ‘violations of international humanitarian law’. See the preamble of SC Resolution 1593.

⁸⁵See World Summit Outcome Document, 15 September 2005, para. 138. For a study, see Carsten Stahn, Responsibility to Protect: Political Rhetoric or Emerging Legal Norm, 101 AJIL 99 (2007)

⁸⁶Ibid., para. 139.

⁸⁷See para. 4 of SC Res. 1973 of 17 March 2011.

Carsten further indicates that the concept of responsibility to protect took a new turn in the High-Level Panel Report, where it was directly related to institutional reform of the United Nations. The high-level panel saw the idea of responsibility to protect as a means to strengthen the collective security system under the Charter. The panel treated the concept in two parts of its report. It mentioned the nexus between sovereignty and responsibility in the opening pages and subsequently developed the contours of the concept in the context of the "use of force," in a section entitled "Chapter VII of the Charter of the United Nations, internal threats and the responsibility to protect."⁸⁸ The United Nations high-level panel went so far as to speak of an "emerging norm of a collective international responsibility to protect," which includes not only "the 'right to intervene' of any State, but the 'responsibility to protect' of every State when it comes to people suffering from avoidable catastrophe.

The final text of the Outcome Document is a compromise solution that seeks to bridge two different positions. States avoided reducing the idea of responsibility to protect to a purely moral concept. However, paragraphs 138 and 139 of the Outcome Document represent a rather curious mixture of political and legal considerations, which reflects the continuing division and confusion about the meaning of the concept. The two paragraphs are drafted in a discursive fashion, which is typical of political declarations. The clearest commitment is contained in paragraph 138. It opens with the straight-forward statement that "[e]ach individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity."⁸⁹ Carsten says that the sentence reflects the traditional bond of duty between the host state and its citizens. This bond is expressly recognized by the respective heads of state and government by way of a collective affirmation.

⁸⁸CarstenStahn; *The American Journal of International Law*, Vol. 101, No. 1: Responsibility To Protect: Political Rhetoric Or Emerging Legal Norm? Jan., 2007), Pp. 99-120

⁸⁹Outcome Document, *supra* note 7, para. 138.

Finally he adds that, more importantly, the text of the Outcome Document does not firmly state that UN collective security action constitutes the only option for responding to mass atrocities through the use of force.

CHAPTER THREE:

3.0. RESPONSIBILITY TO PREVENT

3.1. The Prevention Component of R2P

The prevention component of R2P was widely applauded after being endorsed by the 2005 World Summit attended by heads of states. The preventive principle of the ICISS report is embedded in pillar one and two of the 2005 World Summit outcome document.⁹⁰

Paragraph 3.1 to 3.2 of the ICISS report indicates that; that more should be done in regards to prevention in order to avoid chances of intervention. In this regard prevention options should be exhausted before embracing intervention. It also acknowledges that conflict prevention begins with a national commitment for equal opportunities and fair treatment for all citizens.⁹¹

Most conflicts that have erupted in the various contexts have stemmed from inequality and the feeling that some communities have been side-lined in terms of governance, social and economic development. In the Kenyan context for instance, some communities felt that the 2007-2008 election had been rigged in favour of another. The post-election violence resulted in death of more than 1000 people, mass internal displacement of persons and destruction of property.⁹²

The ICISS report also reiterates in its 3.3 paragraph that prevention does not only lie on a sovereign state but also the international community has stake. It illustrates that for prevention to be a success international community must provide strong and indispensable support to each other. It suggests that international community support could be informed by development efforts that address the root cause of potential conflicts (such as poverty, repression and failures

⁹⁰ *UN General Assembly, 2005 World Summit Outcome : resolution / adopted by the General Assembly, 24 October 2005, A/RES/60/1, available at: <http://www.refworld.org/docid/44168a910.html> [accessed 18 April 2015]*

⁹¹ Report on International Commission on Intervention and State Sovereignty, Responsibility to Protect, December 2001, pg. XI

⁹² Back from the brink; the 2008 mediation process and reforms in Kenya.

of distributive justice), mediation efforts and other efforts to promote dialogue or reconciliation.⁹³

Damien Larramendy notes that the responsibility to prevent however advantageous still has contentious elements such as where prevention begins and who should lead prevention efforts.⁹⁴

Alex Bellamy notes that the responsibility to prevent can be implemented through: early warning systems, preventive diplomacy, ending impunity and preventive deployments. Of course, the prevention work should also reduce the overall number of cases to respond to.⁹⁵

There are three ways in which responsibility to protect can prevent mass atrocities. These include: ‘encouraging the internalization of the principle of discrimination within armed forces; by helping states and societies to build the capacities they need to resolve differences without recourse to violence and atrocities; and by persuading political leaders that they are likely to pay costs for the commission of mass atrocities, thereby encouraging them to adopt alternative strategies.’⁹⁶ Due to international engagement and observation some armed conflicts have not led to mass atrocities. These include the Chad, Mali and Cote D’Ivoire situations.⁹⁷

Prevention must be made a reality in order for R2P to be felt. ‘There have been many generic calls for a focus on the prevention of genocide and mass atrocities, and Member States of all stripes have repeatedly voiced their support for prevention.’⁹⁸

Alex Bethamy illustrates in his report to the United Nations Association –UK that a UN strategy of preventing mass atrocities could entail the following eight elements:⁹⁹.

⁹³ *Report on International Commission on Intervention and State Sovereignty, Responsibility to Protect*, para 3.3

⁹⁴ Review by Damien Larramendy on *Responsibility To Protect* by Alex J. Bellamy (Polity Press, Cambridge, 2009)

⁹⁵ A J Bellamy, *Responsibility To Protect* by Alex J. Bellamy(Polity Press, Cambridge, 2009)

⁹⁶ A J Bellamy, *The Responsibility to Protect—Five Years On*, Ethics & Int’l Affairs (2010)

⁹⁷ *ibid*

⁹⁸ A J Bellamy *The Responsibility to Protect: Towards a “Living Reality” Report* written for the United Nations Association- 2013

1. *A shared understanding of the factors that can increase the risk of genocide, war crimes, ethnic cleansing and crimes against humanity; factors that mitigate these risks; the instruments that are at the international community's disposal for addressing these issues; and the manner in which they might be used to support the building of relevant capacities.*
2. *Assessment of the work that the UN system, its partners and bilateral donors, already undertake which contributes to the mitigation of these risks; areas where there are gaps in the relevant capabilities (including capacity gaps and coordination gaps); and the development of a programme of work designed to close those gaps.*
3. *Refinement and use of the convening authority granted in 2010, which permits the Office on Genocide Prevention and RtoP to convene senior officials from across the UN system in order to develop policy advice for the Secretary-General in situations involving the risk of genocide, war crimes, ethnic cleansing or crimes against humanity. This authority provides a mechanism for ensuring coherent UN responses to emerging RtoP related crises, but has yet to be used, and has raised concerns within the system, about how it should be used and the bureaucratic arrangements underlying it. These concerns could be addressed by the development of detailed terms of reference in partnership with stakeholders to clarify how the convening authority ought to operate, and the establishment of a partnership between the Office on Genocide Prevention and RtoP and the OHCHR that would enable co-convening .*
4. *The mainstreaming of RtoP's prevention goals across the UN system (above).*
5. *The strengthening and regularising of assistance to Member States, in partnership with regional and sub-regional arrangements, bilateral donors and non-governmental actors,*

⁹⁹ *ibid* at no. 12

aimed at helping them achieve their primary responsibility to protect, as set out in the second pillar of RtoP.

6. *The strengthening of the UN Secretariat's support for early decision-making and preventive action through (a) early warning and assessment, (b) impartial, consistent and transparent analysis of situations and policy options, (c) provision of information about the situation, (d) provision of other advice or support as requested.*
7. *The strengthening of partnerships between the UN and regional and sub-regional arrangements especially in relation to (a) strengthening the preventive capacity of regional and sub-regional arrangements; (b) the two-way sharing of analysis and assessment; and (c) the establishment of "anticipatory" relationships in advance of any crisis to facilitate the coordination of preventive action.*
8. *The development of a strategy for engaging in partnerships for prevention with civil society organisations.*¹⁰⁰

3.2 . Responsibility to Prevent in Kenya

In the aftermath of the disputed 30 December 2007 elections in Kenya, ethnic and tribal violence resulted in the killing of some 1,500 people and the displacement 300,000 more.¹⁰¹ The international community responded with a coordinated diplomatic effort led by AU mediator Kofi Annan and supported by the Secretary-General and Security Council. Approaching the situation, 'in the RtoP prism', Annan persuaded the country's President, Mwai Kibaki and main opponent, Raila Odinga, to conclude a power-sharing agreement and rein in the mobs.¹⁰² This diplomatic effort, couched squarely in RtoP terms, pulled the two leaders back from the brink and saved Kenya from a terrible fate. It also provided a tangible demonstration of RtoP's capacity to facilitate atrocity prevention through peaceful means.

¹⁰⁰ *ibid* at no. 12

¹⁰¹ Back from the brink; the 2008 mediation process and reforms in Kenya.

¹⁰² *ibid* at no 11

The crisis in Kenya has been highlighted as a unique case of political action and a successful example of mediation as a crisis prevention response.¹⁰³ Meredith Preston-McGhie and Serena Sharma note that the Kenyan crisis in 2008 was seen as an ‘illustration of African leadership in concert with strong international backing, and a model of rapid and decisive action to forestall an escalation of violence and political upheaval in the country.’¹⁰⁴ The African Union in conjunction with the United Nations came together to offer amicable solutions for the conflicting parties. Koffi Annan the then Secretary General of the United Nations led the mediation process to the end. This act clearly indicated the UN’s commitment to R2P. The Kenyan situation has therefore been noted as the most successful R2P example that involved international intervention. However, the Kenyan situation raised the question of ‘whether or not the atrocities and the state’s failure to prevent them and protect their citizens was the overriding motive for the attention and action of the international community.’¹⁰⁵

In the Kenyan case the international community downplayed the use of force and focused rather on prevention of dimension of Responsibility to Protect.¹⁰⁶ As discussed above, mediation was used by the UN secretary General as a prevention tool; this acts as preventive diplomacy. ‘The Kenya example indicates that some of the core standards for effective mediation are possible, and effective in preventing conflict and protecting civilians. Firstly, the rapidity of the response and ability of international and regional actors to pull together such a high-level mediation process so quickly was hugely important to counter the momentum of the violence with the momentum of dialogue. Related to this, the remarkable consensus of the international

¹⁰³ Meredith Preston-McGhie & Serena Sharma *Kenya*, in Jared Genser, Irwin otlar, Desmond Tutu, and Vaclav Havel, [The Responsibility to Protect](#),(OUP,2011).

¹⁰⁴ *ibid*

¹⁰⁵ *ibid*

¹⁰⁶ *ibid*

community and their discipline throughout the process of supporting the mediation and deferring to Kofi Annan's leadership was critical.¹⁰⁷

The Kenyan example focuses on dealing with both immediate and broader prevention by working on long term prevention measures. Long term prevention measures looked at the root causes of the conflict. In this regard, a commission of inquiry into past atrocities as well as the post election violence was suggested. This commission was later formed and investigated the clashes that engraved the country. Later on the International Criminal Court stepped in and conducted its own independent investigation in which suspected perpetrators of the violence were charged with various international crimes before the court.¹⁰⁸

Scholars such as Preston-McGhie and Serena Sharma have named Kenya as the ultimate 'sound test case for RtoP's preventive dimension that is the responsibility to prevent. However they also say that it is also quite premature to designate the case as a story of success.¹⁰⁹

However, the value of a well-judged early intervention cannot be overemphasized. The longer the conflict remains unaddressed, the more intractable it is likely to become and more difficult it will be to bring protagonist to the table; at the same time intervention must be timed well and the context evaluated with judgment.¹¹⁰

¹⁰⁷ *ibid*

¹⁰⁸ *ibid*

¹⁰⁹ *ibid*

¹¹⁰ Back from the brink; the 2008 mediation process and reforms in Kenya.

3.3 Realising the Responsibility to Prevent

States like the Democratic Republic of Congo, Chad, South Sudan and Central Africa Republic, have failed in preventing mass atrocities against their citizens. Civil wars have continued to rage in different parts of these states for as long as ten or more years. These are the examples where the countries themselves as well as the international community through the United Nations have continuously failed to end mass atrocities.

A research has shown that, more than 5.4 million people have perished from civil war in DRC since 1998, making it the worst atrocity in the face of the world.¹¹¹

Prevention, unfortunately, does not always work. A strategy for advancing RtoP principles cannot be considered viable and sustainable unless it also includes ways the responsibility to protect of generating the will and capacity to respond effectively to the failure to prevent.¹¹² The case of DRC, and CAR might be a good example of the words of Edward C Luck. The states were unable to prevent the mass atrocities and at the same time the international community was not prepared to respond effectively as well. While people are keen on prevention, strategies must be put in place in order to curb any lapse when prevention fails.

The United Nations must focus on structural prevention in order to ensure that actual prevention of international crimes happens. Structural prevention is the ideology that the 'root causes of violent conflict are systemic and involve economic inequality, under-development and poor governance...'¹¹³ This statement suggests that all UN organs are involved somewhat with conflict prevention. Therefore, UN must ensure that institutions within it that are mandated to oversee the implementation of R2P doctrine directly and indirectly, are reformed and working

¹¹¹ Delphine Schrank, *Democratic Republic of Congo* in Jared Genser, Irwin Oler, Desmond Tutu, and Vaclav Havel, [The Responsibility to Protect](#), (OUP, 2011).

¹¹² Edward Luck, *the Responsibility to Protect: Growing Pains or Early Promise?* Ethics and International Affairs, Volume 24.4 2010

¹¹³ *ibid* at no. 10 pg 99

towards achieving the values, attitudes, policies and practices in a functional way. In Kenya, there was a failure in structural prevention led to the escalation of the 2007/2008 post election violence in the country.¹¹⁴ However, it has also been debated that R2P has been used as to tool of shaping a favourable response to crisis other than a crisis prevention tool.¹¹⁵ Paul Collier et al therefore suggest that for structural prevention to be efficiently executed, countries must ensure that they provide for economic Development and low poverty levels.¹¹⁶

Edwin Luck makes an important point that prevention becomes challenging when policy implementing bodies are inconsistent in how they apply, guidelines, templates or standards in regards to R2P. The unpredictability of these bodies (i.e. The Security Council of the UN, the General Assembly or the Peace and Security Council of the African Union) in prevention or invocation of R2P acts as an enabling factor to the failure of prevention. Prevention can only be achieved if R2P is invoked equally and without any malformed political agendas from implementing bodies.¹¹⁷ But the sad truth is that ‘There are...simply too many RtoP crimes being committed in too many places to address all of them simultaneously or equally effectively.’¹¹⁸ On the other hand Alex Bellamy also notes that ‘one cannot sustain a commitment to the long-term prevention of genocide and mass atrocities as part of RtoP while also conceptualizing RtoP as primarily a speech act that acts as a catalyst for action.’¹¹⁹

The Secretary’s General report on Early warning, assessment and the responsibility to protect, states that the Special Adviser of R2P (Office of the Special Adviser to the Prevention of Genocide); acts ‘to collect existing information, in particular from within the United Nations

¹¹⁴ *ibid* at no. 20

¹¹⁵ *ibid* at no. 20

¹¹⁶ Paul Collier, V.L. Elliot, Havard Egge, Anke Hoeffler, Marta Reynal Querol And Nicholas Sambanis, *Breaking The Conflict Trap: Civil War And Development Policy* (OUP,2003).

¹¹⁷ *ibid* a no. 20

¹¹⁸ *ibid* at no. 20

¹¹⁹ Alex J. Bellamy, *the Responsibility to Protect—Five Years On*, *Ethics & International Affairs* 24, no. 2 (2010), pp. 143–69.

system, on massive and serious violations of human rights and international humanitarian law of ethnic and racial origin which, if not prevented or halted, might lead to genocide; (b) to act as a mechanism of early warning to the Secretary-General, and through him to the Security Council, by bringing to their attention situations that could potentially result in genocide; (c) To make recommendations to the Security Council, through the Secretary-General, on actions to prevent or halt genocide; To liaise with the United Nations system on activities for the prevention of genocide and to work to enhance the capacity of the United Nations to analyse and manage information regarding genocide or related crimes¹²⁰ Such ideas are very good on paper unless put in practice. The UN must stop theorizing prevention but put it into practice as well. The report itself in paragraph 10 (a) continues to expound that ‘Preventing the four specified crimes and violations requires full utilization of the information gathered and the insights gained by existing United Nations entities, not the re-labelling or duplication of their work.’¹²¹ As Thomas Weiss puts it: the Office of the Special Adviser to the Prevention of Genocide is not ‘a real job, it’s not something you can really do anything about from the inside at this point in time. I think it would make much more sense to keep this as a focus or a part of the High Commission for Human Rights and keep it alive, but not expect it to go anywhere because I don’t think it will.’¹²²

3.4 Conclusion

All in all the, the major dilemma that paralyses the responsibility to prevent is the dilemma of comprehensiveness. Although there is no agreeable path in which responsibility should follow, it is generally assumed that conflict involves ‘early warning, preventive diplomacy and crises management.’¹²³ The responsibility to prevent can only be realised if the early warning mechanisms, that are involved in pointing out potential risks work hand in hand with preventive

¹²⁰ UN General Assembly, *Implementing the responsibility to protect : report of the Secretary-General*, 12 January 2009, A/63/677, available at: <http://www.refworld.org/docid/4989924d2.html> [accessed 27 April 2015]

¹²¹ *ibid* no. 32 para 10a

¹²² Thomass Weiss , An Interview between Author Aiden Hehir and Professor Thomas Weiss from Ralphe Bunche Institute for International Science on 19 August 2009

¹²³ *ibid* at no. 10

diplomacy which calls for brokering talks and agreements with conflicting parties and ending impunity through crisis management. Crisis management can involve preventive deployment of missions which work towards preventing any possible outbreak of violence while protecting the human rights of civilians as well as building confidence in the affected society by distilling fear.

Lumping different activities under the conflict prevention banner should be avoided as this risks prevention losing its ideal and distinctive meaning.¹²⁴ The UN must start focusing on progress of R2P principles rather than its perfection in theory. ‘A viable long-term solution to the cessation of egregious human rights abuses perpetrated by states against their own people is objective and consistent law enforcement rather than reliance on the benevolence of powerful strangers.’¹²⁵ This statement sums it all because prevention must come from within the state for it to be effective and efficient.

CHAPTER FOUR:

4.0. RESPONSIBILITY TO REACT

4.1. Introduction

Alex J Bethamy suggests that the reaction principle is quite understood to be the “use of non-consensual military force.”¹²⁶ For the longest time R2P has been viewed as using military force.¹²⁷

¹²⁴ Michael Lund, *Operationalizing the Lessons from the Recent Experience in Field level Conflict Prevention Strategies* (2004) 122 in A Wimmer, R Goldstone, D Horowitz, U.Joras and C Schetter (eds) ‘Facing Ethnic Conflicts; Towards a New Realism’ (Oxford; Rowman & Littlefield)

¹²⁵ Aidan Hehir, *The Responsibility to Protect; Rhetoric, Reality and the Future of Humanitarian Intervention*, Palgrave Macmillan,(2012) p 208.

¹²⁶ *ibid* at no. 10

The ICISS reaction principle corresponds with the pillar three of R2P from the World Summit outcome document which is; timely and decisive response.¹²⁸ The Secretary General's report on R2P suggests that; '.....A reasoned, calibrated and timely response could involve any of the broad range of tools available to the United Nations and its partners. These would include pacific measures under Chapter VI of the Charter, coercive ones under Chapter VII and/or collaboration with regional and sub regional arrangements under Chapter VIII. The process of determining the best course of action, as well as of implementing it, must fully respect the provisions, principles and purposes of the Charter. In accordance with the Charter, measures under Chapter VII must be authorized by the Security Council.'¹²⁹

Para 4.1 of the ICISS report says that;

“The “responsibility to protect” implies above all else a responsibility to react to situations of compelling need for human protection. When preventive measures fail to resolve or contain the situation and when a state is unable or unwilling to redress the situation, then interventionary measures by other members of the broader community of states may be required. These coercive measures may include political, economic or judicial measures, and in extreme cases – but only extreme cases – they may also include military action. As a matter of first principles, in the case of reaction just as with prevention, less intrusive and coercive measures should always be considered before more coercive and intrusive ones are applied.”¹³⁰

¹²⁷ Stephen John Stedman, *UN transformation in an Era of Soft Balancing*, Ethics & International affairs, 83(5)2007933-

¹²⁸ *ibid* at no.7

¹²⁹ UN General Assembly, *Implementing the responsibility to protect : report of the Secretary-General*, 12 January 2009, A/63/677, available at: <http://www.refworld.org/docid/4989924d2.html> [accessed 18 April 2015]

¹³⁰ *ibid* at no. 7 Para 4.1

The above paragraph therefore points out a range of different options for reacting to mass atrocities and humanitarian crises.¹³¹ It also suggests that less intrusive methods such as peace talks or ceasefire talks and sanctions should be explored before more coercive measures such as military intervention are explored.

The ICISS report further notes that, ‘tough threshold conditions should be satisfied before military intervention is contemplated...There are a series of additional precautionary principles which must be satisfied, to ensure that the intervention remains both defensible in principle and workable and acceptable in practice.’¹³² It however concludes that the threshold can be lowered if the measures are political economic or judicial.¹³³ ICISS report also indicates that the failure of preventive measures to cool off a conflict does not necessarily call for military intervention.

The decision to intervene (military action) should only be considered in extreme cases only. Intervention intrudes into sovereignty and self-reliance of states, hence the principle of non-intervention should always be considered. However there ‘must be limited exceptions to the non-intervention rule for certain kinds of emergencies.’ The ICISS report describes such emergencies to be ‘cases of violence which so genuinely “shock the conscience of mankind,” or which present such a clear and present danger to international security, that they require coercive military intervention.’¹³⁴

There according to the Commission the threshold can be justified if and only if there is: ‘*large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale “ethnic cleansing,” actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape*’

¹³¹ Bellamy book

¹³² *ibid* at no.7 para 4.2

¹³³ *ibid* at no. 7

¹³⁴ *ibid* at no. 7

There have been UN missions deployed for military intervention in DRC, and Central Africa Republic in a bid to restore the states' authority, capacity as well as to encourage political reconciliation and economic reconstruction.

4.3. Uganda's intervention in south sudan

Background of the conflict

South Sudan is so far the youngest nation in the globe having voted to leave Sudan in 2011.

Despite its being a young nation, it has seen its citizens going through a long and protracted war that commenced barely two years after independence.

In 2013 the South Sudanese President, Salvar Kiir removed Riek Machar from serving as his vice president. This fuelled chaos that later mutated into ethnic violence between soldiers from the Dinka ethnic group from which President Kiir hails from and those from the Nuer Community from which Machar hails. These are the two largest ethnic communities in South Sudan.

The war was aggravated when Salvar Kiir announced that there was a failed coup-attempt by Machar. Subsequent to this, several army generals defected and joined in the rebellion. It is reported that the South Sudan Government made an admission that more than 70% of the army had defected to the rebellion.¹³⁵

As the violence gained momentum, armed groups targeted civilians along ethnic lines, committed rape, sexual violence looted and recruited children to their ranks. The war disrupted farming as it prevented farmers from planting and harvesting hence plunging the nation into a food crisis.¹³⁶ In July 2014, the UN Security Council declared South Sudan's food crisis the

¹³⁵ <http://www.voanews.com/content/south-sudan-thousands-defect-spla/1855749.html>

¹³⁶ United Nations Office for the Coordination of Humanitarian Affairs, South Sudan, Last Attempt to Stop Humanitarian Crisis accessible at <http://www.unocha.org/top-stories/all-stories/south-sudan-last-chance-prevent-famine>

worst in the world¹³⁷ as a result of which it authorized deployment of security forces and peacekeepers to aid in nation building. Over time it upgraded the mandate of the security forces to that of protecting civilians authorizing them to use force.

Massive loss of lives and property was caused by the “White Army” an ethnic military group cum the lead rebellion militia would have easily slipped into genocide as the group had taken control of three states and was headed to Juba. The group was involved in open cold-blood murder that was directed towards the Dinka Community.

Abraham A. Awolich in his article, The Question of Ugandan Troops in South Sudan¹³⁸ states that the South Sudan Government had three options in dealing with the crisis:

- First, it could have accepted defeat and relinquish power to the rebels, a scenario that would have resulted in colossal loss of lives and property.
- Second, it could have resorted to rebels’ tactics of ethnic recruitment and mobilized allied ethnic groups to wreak havoc, a situation that would have led to genocide and anarchy across the country.
- Finally, the government could have asked for regional and international intervention to thwart what could potentially have been genocide.

The government chose the last option which option Abraham finds logical and so does the author of this article as this option is in the best interest of the civilian.

With defection of several army generals and expansion of the White Army- which group recruited even children, the South Sudanese Government requested for regional intervention and specifically invited Ugandan troops to buttress the SPLA troops. It is also alleged that the UN did support Uganda’s intervention; the same is yet to be confirmed by the UN authoritatively.

¹³⁷ South Sudan Crisis Situation Report No. 55 (as of 25 September 2014) accessible at <http://reliefweb.int/report/south-sudan/south-sudan-crisis-situation-report-no-55-25-september-2014>

¹³⁸ The Sudd Institute Weekly Review dated March 4, 2014

4.4. Principles of Responsibility to protect

The Report of the International Commission on Intervention and State Sovereignty has issued principles for military intervention with regards to the Responsibility to Protect. The principles are:

- 1) The just cause threshold- military intervention is only warranted if there is serious and irreparable harm occurring to human beings, or imminently likely to occur either of the kind that causes large scale loss of life or ethnic cleansing.
- 2) The precautionary principle- These are:
 - a. Right intention: The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned.
 - b. Last resort: Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded.
 - c. Proportional means: The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.
 - d. Reasonable prospects: There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.
- 3) Right Authority- the report proposes the UN Security Council as the right authority.
- 4) Operational Principles and these are:
 - a. Clear objectives; clear and unambiguous mandate at all times; and resources to match.
 - b. Common military approach among involved partners; unity of command; clear and unequivocal communications and chain of command.

- c. Acceptance of limitations, incrementalism and gradualism in the application of force, the objective being protection of a population, not defeat of a state.
- d. Rules of engagement which fit the operational concept; are precise; reflect the principle of proportionality; and involve total adherence to international humanitarian law.
- e. Acceptance that force protection cannot become the principal objective.
- f. Maximum possible coordination with humanitarian organizations.

From the above, one thing is clear, Uganda was definitely not the right authority to commence a military intervention.

Uganda's Intervention

There have been arguments on whether Uganda's intervention was justified. Proponents of the intervention argue for it on the ground that it is in line with the UN Charter which encourages friendly relations and cooperation among states. Further to this, Uganda's intervention was requested by South Sudan's head of state with an intention of protecting South Sudanese citizens against the adverse effects of war.

Forceful external intervention is justifiable only if the State in question has failed to protect its citizens as the state itself has the primary responsibility to protect its citizens. Failure to do so opens the floor for external forceful intervention. For this reason, it is well in order for a state in conflict to invite another state to aid in quelling the conflict.

The choice of Uganda by the South Sudanese Government could have been influenced by a number of factors such as:¹³⁹

- i. The close friendship between South Sudan's President, Salvar Kiir and Uganda's Yoweri Museveni
- ii. Uganda's intervention is in line with IGAD's¹⁴⁰ objective to maintain regional peace and stability

¹³⁹ Supra note

- iii. The economic interest that Uganda has in South Sudan namely:
- a) South Sudan is a major market of Uganda's agricultural products
 - b) Many Ugandans work in South Sudan hence repatriating money to South Sudan and this has contributed to Uganda's revenues
 - c) Security wise, the SPLA is a key ally in Uganda's fight against the Lord's Resistance Army (LRA)
 - d) In 2006 Uganda discovered up to 2,5 million barrels of oil in the Albertine-Graben region- Both countries are landlocked and have been considering constructing an oil refinery and pipeline to serve them both.¹⁴¹

The intervention by Uganda has largely been taken as being illegal because there seems to be malafides in it. In 2014, the SLPA and the Rebel Forces in South Sudan did enter into a Cessation of Hostilities Agreement (CoHA) in January 2014 with a condition in the agreement that both parties 'redeploy and/or progressively withdraw forces, armed groups and allied forces invited by either side from the theatre of operations in the Republic of South Sudan'.

Despite this condition, Uganda's troops remained in South Sudan and this goes against the international law principle of *pacta sunt servanda*, meaning, agreements should be observed in good faith. Further to this, Uganda later imposed conditions to the effect that it would only withdraw upon deployment of IGAD Protection and Deterrence Force (PDF).

Secondly, Uganda has no "responsibility to protect" in International Law as IGAD does not have the mandate to intervene in state affairs whereas neither the AU nor the UN had sanctioned Uganda. This is dangerous to the populace as it is difficult to tell whether the intervening state is

¹⁴⁰ IGAD is a regional body in the East Africa region with six countries in the Horn of Africa - Djibouti, Ethiopia, Kenya, Somalia, Sudan and Uganda

¹⁴¹ Explaining the (il) legality of Uganda's Intervention in the current South Sudan Conflict, South Sudan News Monday, 06 October 2014 09:45 Written by The Nation Mirror Admin By Kasajja Phillip Apuuli

acting in good faith or it is pursuing the goals of the beleaguered leader of such a nation in pursuit of non-nationalistic goals which tends to escalate the conflict.

There are reports that Uganda's intervention was marked with atrocities as it carried out mass killing using banned weapons, Gun-shift Helicopters and MIGs bombarding and thousands ground forces advancing against Nuer's who were also the target of SPLM's massacre and genocide.

4.5. Conclusion

The question that arises is whether Uganda's intervention was necessary. In light of the International Commission on Intervention and State Sovereignty's Report, Uganda was definitely not the right authority to intervene and it is also questionable if it met any of the other guidelines. However, the international community had taken a back seat as the violence in South Sudan escalated. Uganda may not have had the right intention to intervene and if it did, it was not its primary intention. However, it is obvious that without Uganda's intervention there is a very high possibility that an ethnic community would have been cleansed as the SLPF forces were slowly losing military strength.

The reaction component is most debated principle of R2P. The issue of non-consensual military force threatens the sovereignty of states in crisis. Apart from military intervention, the question of politically vested interests also arises. Practical challenges of reaction also engulf the Security Council. The question of how practical it is to economically sanction states where civilians are dying of war or choose the military intervention path. There are some things that only military intervention can help with such as saving civilians from war crimes, genocide. Measures that seek to coerce compliance and measures that seek to protect citizens must be clearly vetted in

order to ensure that crises are managed in better ways. It will never be easy to judge when the Security Council should initiate last resort measures or calculating a balance of consequences.

CHAPTER FIVE

RESPONSIBILITY TO REBUILD

5.0 Introduction

Since the end of World War II, the majority of conflicts have been within states rather than between states. While some of these conflicts can be managed through peaceful means, others escalate into violence. Violent conflicts often destroy a society's physical and social

infrastructure. Rebuilding this infrastructure is an integral part of managing such conflicts, promoting reconciliation, and preventing their reoccurrence.¹⁴²

The rebuilding process, goes beyond merely redeveloping physical structures. Efforts to rebuild society may include providing security for citizens, reforming legal and political institutions, revitalizing economic and social structures, assisting the return of refugees, promoting reconciliation, and facilitating political participation. In some cases, it is possible to rebuild existing structures while in others it is necessary to create new ones. Actors and agencies working to rebuild a social and political society can range from international organizations and non-governmental organizations (NGO's) to local and international governments as well as the local population.¹⁴³

Having discussed the concept of responsibility to protect through the principle of reaction and prevention, it is important to look at the last principle of rebuilding. Rebuilding has been viewed as post conflict management where the international community has come in to assist in coming up with solutions and strategies to long term sustainable peace, building of infrastructures and institutions to enable rule of law and proper democratic space in the countries affected.

Restoring governance and strengthening and building trust in government in crisis and post-conflict countries are important aims of the United Nations' in "Reinventing Government" programme.¹⁴⁴

¹⁴² Teachers guide on rebuilding societies after conflict; United States Institute of Peace.

¹⁴³ Ibid.

¹⁴⁴ The Challenges of Restoring Governance in Crisis and Post-Conflict Countries: 7th Global Forum on Reinventing Government Building Trust in Government 26-29 June 2007, Vienna, Austria, No ST/ESA/PAD/SERE/101.

This chapter draws on experience in Kenya, DRC Congo and , Central African Republic to review where rebuilding as a principle of R2P has been used and achieved and used further to prevent future conflicts and promote long term and sustainable peace.

Delphine Schrank, has demystified that, post-conflict rebuilding is chiefly about enabling and empowering states and societies to establish sustainable and legitimate peace. It is about building the local institutions necessary to protect civilians in the long term. It suffices therefore, to state that rebuilding as a principle of responsibility to protect concerns itself with ensuring sustainable peace post conflicts.¹⁴⁵

5.1. Rebuilding

The responsibility to rebuild was institutionalized by the World Summit through the creation of the UN's Peace-building Commission¹⁴⁶ and has been accompanied by renewed interest in questions of justice after war (the so-called *jus post bellum*)¹⁴⁷. In many respects, the “responsibility to rebuild” is the one of the most important parts of the R2P because it requires intervening actors to establish a clear and effective post-intervention strategy.¹⁴⁸

The R2P concept does not only protect and react in cases of mass atrocities but also implies that after protection and reaction, there should be a ‘genuine commitment to helping to build a durable peace, and promoting good governance and sustainable development.’¹⁴⁹ International

¹⁴⁵ Delphine Schrank, *Ruibuilding in Jared Genser, Irwin otlter, Desmond Tutu, and Vaclav Havel, The Responsibility to Protect*,(OUP,2011).

¹⁴⁶ The United Nations Peace Building Commssion available at <http://www.un.org/peace/peacebuilding/>

¹⁴⁷ UN Security Council, Security Council resolution 1645 (2005) [on establishment of the Peacebuilding Commission], 20 December 2005, S/RES/1645 (2005), available at: <http://www.refworld.org/docid/44168ba50.html> [accessed 16 July 2015]

¹⁴⁸ Report on International Commission on Intervention and State Sovereignty, *Responsibility to Protect* , December 2001, pg. 39

¹⁴⁹ *ibid* at no. 3

role players must work in collaboration with local authorities in ensuring that the safety of the public is reconstituted. The collaboration should incline towards a progressive outlook of fully transferring the responsibility to rebuild local authorities.¹⁵⁰

Section 5 of The ICISS report outlines some of the post conflict interventions that must be considered in order for rebuilding to be successful. These include: Peacebuilding, Security, development, justice and reconciliation.¹⁵¹ Firstly, an essential function of an intervention force should be to provide basic security and protection for all members of the state in which intervention is transpiring. This also means that intervening military forces are obliged to prevent revenge killings and even “reverse ethnic cleansing” after the initial objectives of interventions are met.¹⁵² The second obligation pertains to achieving justice and reconciliation between parties. In accordance with the R2P, “external support for reconciliation efforts should be conscious of the need to encourage this cooperation, and dynamically linked to joint development efforts between former adversaries.”¹⁵³ The final peace-building responsibility of military intervention should be to encourage economic growth and sustainable development. It is stipulated that intervening parties end any coercive economic measures they may have applied to the country before or during the intervention, and not prolong punitive sanctions.¹⁵⁴

5.2 The Peace Building Commission

A number of non-governmental bodies have developed “justice packages,” which can be adapted to the specific conditions of a wide variety of operations, and these should be considered an integral part of any post-intervention peace building strategy, pending the re-establishment of

¹⁵⁰ *ibid* at no. 3

¹⁵¹ *ibid* at no. 3

¹⁵² *ibid* at no. 3, pg. 40-41

¹⁵³¹⁵³ *ibid* at no. 3, pg. 39

¹⁵⁴ Report on International Commission on Intervention and State Sovereignty, Responsibility to Protect , December 2001, pg. 42-43

local institutions. Such measures should include a standard model penal code, able to be used in any situation where there is no appropriate existing body of law to apply, and applied immediately the intervention begins to ensure protection of minorities and allow intervening forces to detain persons committing crimes.

The Peace Building Commission (PBC) is an intergovernmental advisory body that supports peace efforts in countries emerging from conflict, and is a key addition to the capacity of the International Community in the broad peace agenda.¹⁵⁵

In the enabling resolutions establishing the Peace Building Commission, resolution 60/180¹⁵⁶ and resolution 1645 of 20 December 2005¹⁵⁷, the United Nations General Assembly and the Security Council mandated it:

- to bring together all relevant actors to marshal resources and to advise on and propose integrated strategies for post-conflict peace building and recovery;
- to focus attention on the reconstruction and institution-building efforts necessary for recovery from conflict and to support the development of integrated strategies in order to lay the foundation for sustainable development;
- to provide recommendations and information to improve the coordination of all relevant actors within and outside the United Nations, to develop best practices, to help to ensure predictable financing for early recovery activities and to extend the period of attention given by the international community to post conflict recovery.

5.3 The Peace Building Commission on the Great Lakes region

Resolution 1653 of 2006 called upon the countries of the great lakes region to ‘continue in their efforts to create conducive conditions for voluntary repatriation, safe and durable integration of

¹⁵⁵ *ibid* at no.3

¹⁵⁶ UN General Assembly, *The Peacebuilding Commission : resolution / adopted by the General Assembly*, 30 December 2005, A/RES/60/180, available at: <http://www.refworld.org/docid/44168ac40.html> [accessed 16 July 2015]

¹⁵⁷ *ibid* at no. 2

refugees and former combatants in their respective countries of origin. In this regard, calls for commensurate international support for refugees and reintegration and reinsertion of returnees, internally displaced persons and former combatants.¹⁵⁸

The resolution urged the governments concerned in the region to enhance their cooperation to promote lawful and transparent exploitation of natural resources among themselves and in the region; as well as invited the international community, including regional organizations, international financial institutions and relevant bodies of the United Nations system, to support and complement the peacebuilding and development initiatives required to sustain peace, security and stability in the countries of the Great Lakes region.¹⁵⁹

The Peace Building Commission delegation reiterated the importance of moving quickly on the reintegration component of the disarmament, demobilization and reintegration programme in the Central African Republic.

With a considerable number of disarmed and demobilized combatants waiting, finalizing the reintegration strategy considered and approved by the Disarmament, Demobilization and Reintegration Steering Committee and resolving the issues related to the funding required, its sources and the mechanisms to be set up to manage its disbursement have become urgent.¹⁶⁰

The delegation also stresses the importance of examining ongoing and planned programmes and activities of various international partners with a view to assessing the feasibility of creating stronger synergies between those activities in the area of economic revitalization and the reintegration component of disarmament, demobilization and reintegration. One such example, which on the face of it shows considerable promise, is the European Union development hubs

¹⁵⁸ UN Security Council, Security Council Resolution 1653 (2006) The situation in the Great Lakes region , 27 January 2006, S/RES/1653 (2006), available at: <http://www.refworld.org/docid/44168ba80.html> [accessed 16 July 2015]

¹⁵⁹ *ibid* at no. 13

¹⁶⁰ *ibid* at no. 13

programme, which can potentially create employment opportunities for ex-combatants in various secondary cities of the country. Similarly, the possible realignment of ongoing activities funded by the World Bank could be considered with a view to facilitating the reintegration of ex-combatants into host communities, many of which were affected by conflict in past years.

The delegation took note of the continued apparent lack of an overall medium to long-term national strategy on security sector reform in the Central African Republic. At present the reform revolves around a list of 10 seemingly randomly selected projects, with a price tag of around \$60 million. This approach seems disconnected from the goal of building an effective, ethnically diverse and well trained republican army areas.

It is noteworthy to say therefore that, Central African Republic after several years of war has experienced relative peace under the interim government. Its efforts to rebuild and foster sustainable post conflict peace and a legitimate government has come up with special criminal court (SCC) that will offer justice to the post conflict victims.

Kenya was a success story of R2P in action. When conflict broke out in December of 2007, the international community intervened in time through the panel of eminent African personalities. The panel intervened well in time and mediated between the protagonists to end the violence. During the Kenyan mediation, the panel of eminent African personalities said that to effectively implement the healing and the process of moving forward, you have to look to the past to determine when and where the country got derailed.

The Panel came up with a body known as Kenya national dialogue and reconciliation, whose main goal was to achieve sustainable peace, stability and justice in Kenya through the rule of law and respect for human rights. Under the Kenya national dialogue and reconciliation, Kenya was able to come up with a complete reform agenda that ensured a complete end to violence, solution to long term grievances like land reforms, regional development imbalances, and lack of equal access to opportunities, unemployment, poverty and inequalities.

The peace process and rebuilding activities in the DRC has been done largely by the UN through the peace keeping mission and other initiatives. United Nations rule of law initiatives are indispensable to international peace and security. In conflict and post-conflict settings the United Nations assists countries in establishing the rule of law by ensuring accountability and reinforcing norms, building confidence in justice and security institutions, and promoting gender equality. The Organization is increasingly focused on emerging threats to the rule of law, such as organized crime and illicit trafficking, and the root causes of conflict, including economic and social justice issues.¹⁶¹

Restoring governance and strengthening and building trust in government in crisis and post-conflict countries are important aims of the United Nations' in "Reinventing Government" programme.¹⁶²

Since the 2002 peace accords, the Democratic Republic of the Congo (DRC) has been emerging from a long period of State decline and protracted crisis, the roots of which go back to at least the mid-1970s. Today most of the country is at peace and experiencing a burst of economic rebound activity. Nevertheless, the DRC is still a fragile post-conflict country with enormous needs for reconstruction and economic growth. The opportunities are huge - the country's vast natural and

¹⁶¹ United Nations security report on the rule of law and transitional justice in conflict and post conflict societies. S/2011/634.

¹⁶² Ibid.

mineral wealth is one of the richest on Earth. With its immense potential, the DRC could have a bright future as a leading powerhouse of African growth and development.¹⁶³

Since 2003, progress has been made in rebuilding the Congolese State, including the holding of national elections in 2006, the passing of key constitutional and legal reforms, and the establishment of new institutions such as provincial assemblies. Although some advances have been made in the security sector, there is continued instability in the eastern part of the DRC and the situation remains fragile.¹⁶⁴

Rebuilding as practised in the three countries has had its fair share of challenges, and cannot be wholesomely assumed to be a hundred percent success. To be specific, Kenya has had challenges with implementation of her new constitution and the findings of truth justice and reconciliation commission. The new constitutional framework was part of the rebuilding process.

This is a common challenges in all the four states, Kenyan, DRC, South Sudan and CAR. All the countries have failed to put in place proper legal framework to prosecute the perpetrators of crimes, lack of proper legislative structures to foster peaceful, free and fair elections. These legislative framework are fundamental benchmarks towards reconciling and rebuilding of these nations. Failure to implement the same has left the four states on the brink of future reoccurrence of violence.

In the long run, the element of rebuilding focuses on building and fostering the institutions, cultures and behaviours necessary for achieving responsible sovereignty in regions where the

¹⁶³ The Democratic Republic of the Congo Post-Conflict Environmental Assessment United Nations Environment Programme Synthesis for Policy Makers; © 2011, United Nations Environment Programme. @ http://postconflict.unep.ch/publications/UNEP_DRC_PCEA_EN.pdf. Viewed on 23.7.15 at 7.40am.

¹⁶⁴ Ibid.

later has been solely lacking.¹⁶⁵ Some of the frame works can be seen in the passage of new constitution in Kenya, establishment of highbred court in Central African Republic, security infrastructure put in place in Democratic Republic of Congo.

Finally, it is worth noting that the rationale behind rebuilding efforts in Kenya, Central Republic of Africa, DRC Congo and South Sudan, was to attain legitimate, long term and sustainable peace.

5.4 .The role of criminal trials as a mechanism for rebuilding after the end of conflict vis-a-vis reconciliation.

Debates have focused too much on trials in international and hybrid courts as the primary conduit for international contributions to justice in post-conflict states. This has been illustrated by the trials of Kenyan suspects, DR Congo, Sudan at the ICC and the trials before AD Hoc tribunals like the International Criminal Tribunal for former Yugoslavia and International Criminal Tribunal for Rwanda. There is proposed hybrid court for the Central African Republic. In today's transitional justice literature and debate, a central core theme concerns the relationship between peace and justice. The International Criminal Court (ICC) not only features prominently in such debates but also is often invoked in support of the contention that justice poses a threat to peace.¹⁶⁶

While justice most obviously entails the prosecution, fair trial and punishment of those who violate the law, such a formalized, procedural understanding fails to capture the inherent complexities of justice.¹⁶⁷

¹⁶⁵ Delphine Schrank, *Ruibuilding in Jared Genser, Irwin otlar, Desmond Tutu, and Vaclav Havel, The Responsibility to Protect*,(OUP,2011).

¹⁶⁶ Janine Natalya Clark*, *Peace, Justice and the International Criminal Court Limitations and Possibilities*.
Downloaded from <http://jicj.oxfordjournals.org/> on 8.9.15.

¹⁶⁷ *Ibid.*

Reconciliation has only recently been recognized as a necessary component of post-violence reconstruction. The role of criminal trials in fostering rebuilding through peace and justice has led to the big debate known as the peace and justice debate. This can be associated with the ICTY and ICTR.

Questions have been asked whether there can be peace without justice and whether justice can lead to reconciliation and lasting peace. Reconciliation is an over-arching process which includes the search for truth, justice, forgiveness, healing and so on.

At its simplest, it means finding a way to live alongside former enemies – not necessarily to love them, or forgive them, or forget the past in any way, but to coexist with them, to develop the degree of cooperation necessary to share our society with them, so that we all have better lives together than we have had separately.¹⁶⁸

The role of criminal trial as a mechanism of rebuilding after conflict as manifested itself in some instances as hindrance to reconciliation. A good example is a classic case of Kenyan cases before the international criminal court. While the victims have cried out for justice, and happy to see the perpetrators tried, tension has been rising from the accused communities who feel they are unfairly targeted. This has not only created a lot of suspicions amongst the victims' families and communities as against the accused families and communities but has also frustrated the reconciliation exercise.

Justice can be a highly divisive and polarizing notion, as highlighted by the contrasting ways in which Kenyans reacted to the news of the arrest of the Ocampo five, in 2010 and the subsequent

¹⁶⁸ David Bloomfield, Teresa Barnes and Luc Huyse, "Reconciliation After Violent Conflict A Handbook" © International Institute for Democracy and Electoral Assistance 2003.

acquittal of President Kenyatta. Members of certain communities protested while some celebrated in both instances. This was the same story in Uganda when warrants of arrests were issued against Joseph Kony and other leaders of Lord Resistance Army in Northern Uganda.

The critical point, therefore, is that rather than viewing the ICC (criminal trial process) as either an obstacle to peace or as an instrument of peace, a more nuanced perspective is ultimately required. We need, in other words, to acknowledge and to examine both the Court's limitations and its potential, and thus to recognize that as regards the relationship between criminal justice and peace, there are no clear-cut answers.¹⁶⁹

5.5 Conclusion.

The responsibility to protect implies the responsibility not just to prevent and react, but to follow through and rebuild. This means that if military intervention action is taken –because of a breakdown or abdication of a state's own capacity and authority in discharging its “responsibility to protect” – there should be a genuine commitment to helping to build adorable peace, and promoting good governance and sustainable development. Conditions of public safety and order have to be reconstituted by international agents acting in partnership with local authorities, with the goal of progressively transferring to them authority and responsibility to rebuild.¹⁷⁰

It is worth noting therefore that rebuilding as a component of responsibility to protect will ordinarily entail the process of peace building, justice and reconciliation and development processes which is the final peace building responsibility of any military intervention. This were

¹⁶⁹ Janine Natalya Clark*, Peace, Justice and the International Criminal Court Limitations and Possibilities. Downloaded from <http://jicj.oxfordjournals.org/> on 8.9.15.

¹⁷⁰ International Commission on Intervention and State Sovereignty report, the responsibility to protect, The R2P (2001), text available at <http://www.iciss-ciise.gc.ca/>.viewed on 14.9.15.

evident in Kenya with the TJRC, peace building initiative in the DRC, South Sudan and the Central African Republic.

CHAPTER SIX.

6.0 CONCLUSION.

This paper set out to discuss and look into the principle of responsibility to protect in Central Africa and the Great Lakes Region. More specifically the paper looked at the situation in Kenya, DR Congo, Central African Republic, and South Sudan. For the principle of responsibility to protect to be successful, the paper presupposes that the concept of state sovereignty is no longer absolute.

International actors have appreciated as much that Sovereignty also entails the responsibility of a State to protect its people. If it is unable or unwilling to do so, the international community has the responsibility to help that State achieve such capacity and such will and, in extreme necessity, to assume such responsibility itself.¹⁷¹ The veil on absolute sovereignty can therefore be lifted.

¹⁷¹ S/PV. 5015, July 30, 2004.

The implementation of the responsibility to protect (RtoP) is a work in progress. That is true in 2011. It is likely to be so in 2021 and 2031 as well. As a policy tool, not just an aspiration or standard, the RtoP is in its infancy. In these formative years, choices are being made, both at the United Nations and in national capitals that could profoundly shape the future development of this promising, perhaps even historic, concept.¹⁷²

Implementation, then, would be the process or act of fulfilment. Given the uncertainties noted above, the emphasis should be on the process more than on a single, conclusive act of fulfilment. It is a matter of advancement rather than attainment. In fact, in successful cases, there are likely to be multiple acts of fulfilment over time, each step decreasing the likelihood of slippage or the possibility that precipitating events could occur without notice and comment by civil society, government officials, neighbouring countries, or international civil servants based in sub-regional, regional, or global institutions.¹⁷³

6.1 Findings on the Practise of responsibility to protect in the Kenya, South Sudan, DRC and the Central African Republic.

To answer as to whether the RtoP has been successfully implemented in the central and great lakes region, we shall ask ourselves the question; did the cases in DR Congo, CAR, Kenya and South Sudan meet the threshold of RtoP? This can be in the affirmative. RtoP envisages that each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. There were referrals for DRC as well, where the former Vice President P R Bemba has been facing charges of war crimes and crimes against

¹⁷² Edward C. Luck , From Promise to Practice: Implementing the Responsibility to Protect” in Jared Genser, Irwin Cotler, Desmond Tutu, and Vaclav Havel, THE RESPONSIBILITY TO PROTECT” Oxford Scholarship Online, January 2012

¹⁷³ ibid

humanity before the ICC. CAR is setting up hybrid court to try the perpetrators while are still ideas being mooted of referring perpetrators in South Sudan to the ICC.

The four crimes referred to were all witnessed in the four countries. Kenya referred to as a special case, witnessed crimes against humanity. As has been confirmed by the International Criminal Court (ICC), the nature and magnitude of violence in the aftermath of the elections, coupled with the prospect of escalation, amounted to crimes against humanity.¹⁷⁴

Does the international community have responsibility to intervene and protect in another state?

The articulation of the principle of R2P and its endorsement by the international community offers enormous potential to protect civilians from crimes against humanity, ethnic cleansing, genocide and war crimes. This potential is ripe for realization in Africa where many such violations continue to occur, but also where the legal and peace and security architecture to deliver on the principle exists. Ongoing conflicts and commission of atrocities across the continent from Darfur to DRC is a test of whether leaders in regional and sub-regional bodies have the political will to deliver on the mechanisms and standards embodying R2P which they have put in place.

All that said, it would certainly be desirable if, over time, the various layers of responsibility built into RtoP were to evolve into rules of customary international law, as distinct from simply being, as they are now, normative principles of political and moral, but not legal, weight. But

¹⁷⁴ Gareth evans, in Jared Genser, Irwin otlter, Desmond Tutu, and Vaclav Havel, *The Responsibility to Protect*,(OUP,2011).

that will depend on how comprehensively the new norm is implemented and applied in practice, as well as recognized in principle, in the years ahead.¹⁷⁵

It is important to note that upholding responsibility to protect does not necessarily mean forceful intervention, fact-finding missions, diplomacy and sanctions are all integral part of R2P. Military measures may be pursued only when other options have been exhausted and only when authorized by the UN Security council.

It can be seen from the practice in Kenya that the international community through the regional body (AU) reacted in time to prevent the situation getting out of hand and therefore there was no need of military intervention. This seems to be the case in South Sudan even though a lasting solution has not come forth to the conflict that started in 2013.

In The South Sudan situation, when the conflict broke out, the United Nations established the UN Mission in South Sudan (UNMISS), albeit with a mandate to support the government in building a democratic state. The Intergovernmental Authority on Development (IGAD) has led peace talks between the warring sides since early January 2014, until 26th August 2015 when a peace deal was brokered and the warring parties put pen to paper. These reflect the efforts of the international community through the principal of responsibility to try and bring a lasting peace in south Sudan.

It suffices to note that there were different manifestation of the principle of responsibility to protect in DRC and central African republic but the military intervention has been thought of as a last resort in all the case save for the Ugandan military intervention in South Sudan that has been termed as illegal since there was no approval from the United Nations Security Council.

¹⁷⁵ ibid

6.2 Conclusion and the Way Forward.

It is very important to note that responsibility to protect is still an emerging international norm, and for it to hold and be widely accepted and used in the international community, the United Nations must meet its obligations as enshrined under Article 2(1) and Chapter VII of the UN Charter.

Humanitarian intervention has a troubling past. Whether it is the failure to act in Rwanda or the use of force in Bosnia or Kosovo, there is a deep division about the morality, efficacy, and consequences of humanitarian intervention.¹⁷⁶ The international community must therefore support the framework of responsibility to protect so as to deal with the so many suspicions amongst the members of the Security Council and to silence the critics who are concerned that R2P is merely a justification for interference by developed countries in the affairs of developing nations.

As discussed herein, the framework of responsibility has had its fair share of challenges in Central Africa and the Great Lakes Region. In fact the South Sudan situation has painted a glimpse picture of the framework and the proponents of RtoP have argued that the international community has failed to embrace it so as to end the humanitarian crisis in South Sudan.

The African Union officially endorsed Responsibility to Protect under Article 4(h) of the 2002“Constitutive Act of the African Union” stipulates “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect to grave circumstances namely:

¹⁷⁶ Ambassador Richard W. Williamson, Sudan and the Implications for Responsibility to Protect; policy analysis brief, innovative approaches to peace and security from the Stanley Foundation. October 2013. Accessed at www.stanleyfoundation.org. on 14.9.15.

war crimes, genocide, and crimes against humanity.” Africa being the most affected continent with frequent conflicts, it should be at the fore front in marshalling its member states and regional block like EAC, ECOWAS, SADDAC in legitimizing the frame work of responsibility to protect for a prosperous and peaceful Africa.

However, for all the reasons mentioned already, the practise of intervention has changed dramatically since 1945. Many new states have emerged and are still in the process of consolidating their identity. Evolving international law has set many constraints on what states can do, and not only in the realm of human rights. The emerging concept of human security has created additional demands and expectations in relation to the way states treat their own people. And many new actors are playing international roles previously more or less the exclusive preserve of states.¹⁷⁷

The United Nations, the international community as a whole and the proponents of R2P must take bold measures to help this emerging norm take root so it can gain greater legitimacy and contribute to concrete processes, procedures, and practices in protecting people from genocide, war crimes, ethnic cleansing and crimes against humanity, and to further prevent their incitement.

¹⁷⁷ International Commission on Intervention and State Sovereignty report, the responsibility to protect, The R2P (2001), text available at <http://www.iciss-ciise.gc.ca/>.viewed on 14.9.15.

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