

UNIVERSITY OF NAIROBI
Institute of Diplomacy and International Studies

**HUMANITARIAN INTERVENTION, THE RIGHT TO
PROTECT: A CASE STUDY OF SOMALIA**

BY

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DECLARATION

I declare to the best of my knowledge that this research study is my original work and that all the sources that I have used have been acknowledged. No part of this study may be reproduced without prior permission of the author and / or the University of Nairobi.

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Be blessed

DEDICATION

Dedicated to my wife Alice and children Timothy, John & Jerry

ABSTRACT

Somalia is known for its anarchy and dysfunction. With the absence of government, security and rule of law, it has been left to its own devices and has been consumed by violence and civil unrest. Somalia's failing state has not only created a humanitarian disaster for its citizens, but also threatens the national security and geostrategic interests of its neighbors; Kenya, Ethiopia and other countries in the Horn of Africa. In October of 2011, the Kenyan government launched "*Operation Linda Nchi*" (Protect the Country), an armed intervention in Somalia to counter the growing terrorist threat and impart stability and governance to safeguard its security and other strategic interests. The Kenyan government is poised to construct a deep water port at Lamu, near the Somalia border to serve as the terminus of new oil pipelines to South Sudan through Uganda. Such vast investment requires much tighter control over the region. Tourism is critical to Kenya and hence a stable Somalia is in its strategic priority. In this connection therefore, Kenya's first mission is to keep Al-Shabaab at arm's length from its border and to achieve this, it is determined to carve out a buffer zone inside Somalia i.e. Jubbaland. The study seeks to also discuss the concerns and dilemmas that arise from armed interventions by analyzing just war theory to measure the morality of Kenya's decision to intervene in Somalia. The study also examines the previous UN and US intervention in the early 1990s as a means of understanding the relevant issues and concerns that the US and the UN faced and relating those experiences to the current intervention led by Kenya. The inclusion of the freedom of expression in the pantheon of self-defence is broadly consistent with the moral, legal, and consequentialist arguments in favor of the international norm of right to protect.

LIST OF ABBREVIATIONS

| | |
|---------|--|
| AMISOM | Africa Mission in Somalia |
| AU | African Union |
| COMESA | Common Market for East and Southern Africa |
| CPA | Comprehensive Peace Agreement |
| EAC | East African Community |
| FDI | Foreign Direct Investments |
| ICGLR | International Conference of the Great Lakes Region |
| ICISS | International Commission on Intervention and State Sovereignty |
| ICU | Islamic Courts Union |
| IDP | Internally Displaced Persons |
| IGAD | InterGovernmental Authority on Development |
| IGASOM | IGAD Support Mission in Somalia |
| KDF | Kenya Defence Forces |
| LAPSSET | Lamu Port Southern Sudan Ethiopia Transport |
| NATO | North Atlantic Treaty Organisation |
| NGO | Non-Governmental Organisation |
| OAU | Organisation of Africa Unity |
| SNM | Somalia Nationalist Movement |
| TFG | Transitional Federal Government |
| UN | United Nations |
| UNISOM | United Nation Operation in Somalia |
| UNITAF | Unified Task Force |

USA

United States of America

WWII

World War II

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CHAPTER ONE

INTRODUCTION

1.1. Background of the Study

A number of constructivist and English school scholars have investigated the extent to which humanitarian intervention is allowed and legitimised by international society. In other words, they have examined the nature and strength of a norm permitting humanitarian intervention. It is a contention of this study that another norm of humanitarian intervention, parallel but discrete, has been neglected. It is argued that ideas and beliefs shared by some members of international society, or more specifically a liberal world society of state and non-state actors, not only permit intervention but prescribe it in certain circumstances and this has been largely ignored in other literature. By focusing on questions of when, where and why humanitarian action is permitted, scholars have neglected to develop theoretical explanations for the significant inconsistencies in humanitarian action that can be observed in the world. States do not intervene to prevent human rights violations simply because they are allowed to. Only by considering when and where humanitarian action is prescribed and by examining the interplay of this prescription with the material self-interests of states can we begin to understand why states respond to some grave violations of human rights and not others.

The recent transnational waves of Arab demonstrations against their governments in Syria, Egypt and Libya which still is aimed at achieving political and civil rights in a democratic way and the continuing televised pictures of hundreds of people dying, particularly amongst children and vulnerable groups particularly in Somalia resulting from hunger caused by the extraordinary and continuous infighting has raised the issue of global ethics in terms of the rights of victims to expect aid and relief and the moral responsibility of the world to step in and provide assistance.

The grave violations of fundamental human rights of Somalis by the cruel Al Shabaab operatives have prompted members of the international community to militarily intervene and as the protests and state violence continues in other countries such as in Syria and Egypt they also are increasingly becoming more credible candidates for such similar intervention. The study will discuss the issue of military intervention in Somalia in terms of the positive rights that morally obligates others to assist people and other states in need. The main object of the study is to show that fundamental human rights and state sovereignty are universal and global in scope and cannot therefore be restricted by culture, geographical boundaries, national or the social barriers. Such a human rights approach provides a moral and rational ethical basis for military intervention that is cosmopolitan. Thus, establishing the necessary theoretical foundations for such intervention is essential to begin with. Defining humanitarian intervention in affairs of Somalia and the right to protect will pave the path to the theoretical framework for global ethics on the basis of positive rights, a definition that explains the meaning and scope of humanitarian intervention ethics that remains within the debate of international relations.

According to Holzgrefe, humanitarian intervention can be defined as the threat or use of force across state borders by state (group of states) aimed at preventing or ending widespread and grave violations of fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.¹ It may seem to be a crazy idea to raise moral questions of intervention with regards to Somalia in the wake of the disastrous kidnappings by Al-Shabaab in the Kenyan soil and which prompted the Kenyan Defence Forces to intervene through the famous *Operation Linda Nchi* project in 2011. Under the current situation, Somalia is unable to stand by itself and needs the assistance of the international community in terms of capacity building, disarming all armed individuals and pockets of violent

¹ Bellamy, A., "Right to protect," *The Global Effort to End Mass Atrocities*. Cambridge: Polity Press, 2009.

insurgence, building of good governance, restoring rule of law, rebuilding of the economy, social and cultural systems and engaging the community in peace building. The plight of children, elders and helpless women starving to death is a fundamental violation of human rights that must be addressed through the use of force. However, calling on humanitarian military intervention is not an easy task, as the argument for and against humanitarian intervention is subject to the most heated debate amongst moral theorists as well as international law proponents.

However, not everyone approves of the intervention, for example, Huntington referring to USA's intervention into Somalia in 1993 stresses that it is morally unjustifiable and politically indefensible that members of the USA armed forces should be killed to prevent Somalis killing one another.² This view jeopardizes the a country's notion of cosmopolitanism that in its philosophical agenda transcends the national boundaries of a state in favor of global justice, conflict resolution, global governance and wider issues of other ethics. Other non-interventionist, particularist, who is less hostile is Allan Buchanan who claims that states should concern themselves more with the well-being of their own citizens over the well beings of nameless persons in distant lands.

United Nations Charter states that all should refrain in their international relations from the threat or use of force against territorial integrity and political independence of any state, or any other manner inconsistent with purpose of the United Nations. Moreover, the Charter indicates nothing in the present Charter and shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state. For Somalia though, none of these debates are needed as the Islamic militants and clan-based warlords primarily would resist any

² Kazianis, H., "Intervention in Libya: Example of R2P or Classic Realism." *e-International Relations*, 2011.

initiative and move that aims at getting a mandate from the Security Council authorizing an intervention in interest of the deteriorating human conditions in Somalia.

1.2. Statement of the Research Problem

Somalia is characterized by chronic human suffering which portends dire consequences for its citizens. Pockets of interventions have been applied but to no avail. Chronic insecurity in Somalia caused by inter-clan conflicts diverts the attention of international and regional bodies from nation building to conflict problem solving has been the main headache. Conflicts that have taken place in Somalia contain elements of legal justification based on the massive violations of human rights before and after Operations Linda Nchi by the Kenya Defence Forces. The main issue of concern therefore is whether it was appropriate and needful for the Kenyan government to take coercive action in particular military action against Somalia, in order to protect people at risk within and in other surrounding sovereign states. Further there are a number of arguments and criticisms that have emerged touching on international humanitarian intervention and the right to protect. One of the main concerns is the use of force by KDF through the famous *Operation Linda Nchi* strategy and questions have been raised as to whether humanitarian intervention legitimizes the use of force by one state upon the other and whether the use of force is justified in the name of humanitarian intervention. Similarly, the argument touching on humanitarian intervention and the right to protect is whether it amounts to a right to save or to punish. Somalia has been continuously faced with violent conflicts mostly in form of civil wars and inter-clan wars and therefore even the stronger western states have been getting difficulties to intervene or purport to intervene. To justify the right to protect, the UN Charter sanctions the use of force for self-defence. Further the same Charter under chapter VII sanctions humanitarian intervention or any other action with respect to threats to the peace, breaches of peace, and acts

of aggression. This is a dilemma in its own right and therefore creating a room for heightening of cross violation of fundamental rights which this study seeks to explore. This begs the question thus, is the normative change from international humanitarian intervention to right to protect through use of force justified? Is right to protect more likely to lead to better intervention and management of internal conflicts in Somalia? In general the question still remains why existing humanitarian intervention strategies have not addressed the endemic human suffering in Somalia and within the region despite the intervention efforts from international society. Persistent threats and other security challenges have continued to impede the economic and socio-political progress in the region and the entire world. Terrorism, kidnappings, ethnic and inter-communal violence, religious tensions, refugee crisis, piracy, smuggling of weapons and money laundering are rising at alarming levels in the region.

1.3. Objectives of the Study

1.3.1. General Objectives

This research examines the place of humanitarian intervention, right to protect and whether use of force to protect lives is justified within the context of state sovereignty.

1.3.2. Specific objectives

- (i) To establish moral factors that influence the humanitarian intervention in Somalia pursuant to right to protect.
- (ii) To examine and show why the use of force as a measure of last resort was justifiable for humanitarian intervention in Somalia.
- (iii) To examine and analyze the nexus between the right to protect and state sovereignty in Somalia.
- (iv) To establish regional implication and challenges of humanitarian intervention and propose sustainable strategies.

1.4. Justification of the Study

The existing humanitarian intervention strategies have not addressed the problems experienced in Somalia. Somalia remains one of the most unstable, anarchic countries on the African continent and in the entire world. Second, Somalia has a long record of failed interventions from the United States and Ethiopia. Despite the efforts of non- governmental organizations, aid from foreign governments, pressure from international organizations and resources pouring into Somalia, the results have been meagre and no improvements have been made. Therefore, the insights will be provided by this study and as to why this is the case and the recommendations made to unravel the misery of right to protect doctrine. Future interaction of this research will identify the missing link in the humanitarian intervention in Somalia. Moreover, the relevance of this research study is to find out two conjunctive issues. These are whether or not the right to protect norm is just a hollow norm. This research study is relevant from a scientific perspective as it will give an insight in the establishment of one of the most important humanitarian intervention principles and explain why the norm of right to protect based on the objectives of this study is so important for other cases in the future. The Somalia case which has seen clan-based warlords, Islamist militants and is neighbouring all battling for control, will prove to be an important influence on the establishment of the right to protect norm and will help outline the foundations and purpose of the objectives of the study which will offer solutions to the problems being experienced in Somalia. This study will in effect help policy makers to understand the context in which humanitarian intervention principles operate and that the right to protect is a constant variable in humanitarian fundamental rights environment, and thus this understanding will contribute towards designing more appropriate strategies to ensure that lasting peace is achieved in Somalia.

1.5. Literature Review

The literature review part of the study will comprise of two sections. The first section will deal with humanitarian intervention and sovereignty of a state, the second section will review the literature on the right to protect as an emerging norm and finally review the literature on the selected case study, Somalia.

As the occupation of Somalia ensues, there are arguments on both sides of the spectrum, some arguing that the invasion of Somalia is ethical and morally justifiable on the grounds of just war theory, and that the Kenyan government acted morally, and others concluding that Kenya's decision was immoral and unethical to intervene with military force in Somalia. This section will review the proponents of the invasion who conclude that the Somali occupation by the Kenyan Government is indeed a morally justifiable action under neorealism and just war theory respectively. The decision for Kenya to intervene in Somalia on some accounts was a very lengthy and strategic decision and the government had coordinated the preparation for the intervention for months prior to the actual invasion into Somalia in October 2011.³

Humanitarian intervention and the right to protect need to be put into this context of primary norm, secondary norm and identity in order to understand why Somalia behave the way it does. There is a consensus amongst many writers that right to protect is an emerging norm at least as far as scholarly writing is concerned. Essentially, humanitarian intervention has become conflated with the idea of right to protect. Heinze puts the fact right when he argues that humanitarian intervention and its status as an "international norm" have been overstated by

³ Gettleman, J., Kenyan Motives in Somalia Predate Recent Abductions. *The New York Times*. October 26. http://www.nytimes.com/2011/10/27/world/africa/kenya-planned-somalia-incursion-far-in-advance.html?_r=0 (accessed on August 16, 2012), 2011.

scholars and advocates but not state or institutional practice.⁴ Johnson on his part agrees with this and says that limitations of sovereignty as argued by right to protect is a continuing practice but not indicative of a new norm.⁵ Heinze on the other hand doubts the current or future legality of humanitarian intervention and does not view NATO's 1999 intervention in Kosovo as precedent-forming in this regard.⁶ The adoption of right to protect at the 2005 World Summit unanimously and its reaffirmation by the United Nations Security Council may have made others to endorse it as the new international norm or as an emerging norm.

1.5.1. Humanitarian Intervention

The international system has been constructed on the basis of the doctrine of sovereignty, and its twin entailments, territorial integrity and non-interference in the domestic affairs of other states. However after 1945, international society was re-constructed on the basis of an unequal compromise between power and security. Under it, the use of force, other than in self-defence, was to be sanctioned on the authority of the Security Council and only then when the Council determined that a threat to international peace and security existed and that all alternative means of settlement had been exhausted. Under the Genocide Convention,⁷ there was also provision for a reference to the Security Council, presumably in the expectation although this interpretation has never been tested that it would rule that genocide, although carried out within the borders of a state, could nonetheless justify action under Chapter VII of the Charter.⁸

⁴ Heinze E., "Waging Humanitarian War," *The Ethics, Law, and Politics of Humanitarian Intervention*, Albany, SUNY Press, p. 156, 2009.

⁵ Ayoob, M., "Third World Perspectives on Humanitarian Intervention and International Administration", *Global Governance* Vol.10. Issue No. 1.. p. 101, 2004.

⁶ Heinze, E., "Waging Humanitarian War," *The Ethics, Law, and Politics of Humanitarian Intervention*, Albany, SUNY Press, p. 156, 2009.

⁷ Convention on the Prevention and Punishment of Crime of Genocide, Adopted by Article 260 (III) A of the UN General Assembly on 9th December, 1948.

⁸ Wheeler, J., "Saving Strangers:" *Humanitarian Intervention in International Society*, (Oxford: Oxford University Press, pp., 21-40, 2002.

The development of Humanitarian Intervention and the adoption of the charter during the OAU's time on human and peoples' rights in 1986 has motivated the establishment of this principle. Although article 4(g) of the AU Constitutive Act provides for 'non-interference in internal affairs of member states', the act also moves away from the notion by each member state as a separate inviolable entity by giving itself a right to intervene in grave circumstances, namely; war crimes, genocide and crimes against humanity.⁹ It also gives a right to member states to request for intervention from the Union in order to restore peace and security.¹⁰

The school of thought that favours forceful intervention propagated by natural law proponents and modern human rights activists is also backed by UN Charter.¹¹ In Africa, there are fears that with the anarchic nature of the international system in which some African leaders who still have territorial ambitions and suffer from egoism and hegemonic complexes may be tempted to invade their neighbours. Furthermore despite the praise of article 4(h) there are fears from some quarters that the article alone may not mean much. Kuwali investigates the issue of what conditions should prevail before AU's intervention under article 4(h) of its Constitutive Act. The present article in its form seems to suggest that intervention will occur on the commission of war crimes, genocide and crimes against humanity. This is a reactive agenda and therefore is not in line with the preventive agenda for protection of human rights and bring to an end the human suffering.

The debate on the issue of sovereignty and intervention has been previously made by the English school through the debate between Pluralism and Solidarism.¹² According to pluralists, the society is made up of pluralists who are actors and the constitution is the best guarantor of their

⁹ AU Constitutive Act, article 4(h).

¹⁰ Ibid, article 4(j).

¹¹ UN Charter, Chapter VII.

¹² Bull, H., "The Grotian Conception of International Society", 1966, in M. Wight and H. Butterfield (eds.), *Diplomatic Investigations: Essays in the Theory of International Politics* (London: Allen and Unwin, 1966).

protection. They argue that international society allows each state actor to develop its own way of life and pluralism therefore rests on the component unit's rights to exist. Pluralists note that states often disagree on substantive issues such as redistributive justice but agree that they are bound by the rules of sovereignty and non-intervention. For the national communities to promote their diverse ends with minimal outside interference, pluralists have established legal and moral frameworks. They doubt the legitimacy and efficacy of humanitarian intervention. This was clearly brought forth during the Organization of African Unity (OAU) inability to intervene in many internal conflicts in Africa despite human rights violations. Pluralists argue that human rights are not universal and any attempt to do so raises issues of cultural bias. Sovereignty is therefore the only protection for smaller states against the strong ones.¹³

The pluralists' argument is not entirely true in that although there is need to protect weaker states from being overrun by strong or powerful states; recent developments indicate that there are universally accepted fundamental rights. These rights are entitlements by virtue of one being a human being. Right to life is one of the examples; therefore crimes such as genocide and terrorism which target a particular group of people, war crimes and crimes against humanity are not acceptable. Furthermore the so called internal conflicts are not entirely internal because of universal human rights, the idea that all conflicts have internal sources, the involvement of exogenous third parties, the media, refugees, humanitarian aid and modern technologies.¹⁴ All these necessitate humanitarian intervention. Pluralists' argument promotes dictatorial and oppressive acts by those wielding power and instruments to oppress the way Siad Barre did while in power in Somalia.

¹³ Bellamy, A., "Humanitarian Responsibilities and Interventionist Claims", *International Society in Review of International Studies*, vol. 29, no. 3, pp, 323. Jul. 2003.

¹⁴ Wall, J., "Mediation: An Analysis, Review and Proposed Research", *Journal of Conflict Resolution*, vol. 25, pp. 157-80., 1981.

In contrast, the solidarist's conception of international society holds that diverse communities can and do reach agreement about substantive moral standards and that international society has moral agency to uphold those standards.¹⁵ The use of force in such a society will be considered legitimate only if it is an 'act of law enforcement'. Solidarists therefore claim that there is an agreement in the international society about what constitutes supreme humanitarian emergency and legitimate act of intervention. This evidence is found in the sophisticated contemporary human rights regime which includes agreed standards of humane behaviour, accepted methods of governmental and non-governmental surveillance and increasing acknowledgement of universal culpabilities. The Rome statute which set up the International Criminal Court (ICC) was signed by many countries indicating that there is a universally accepted humane behaviour.¹⁶

Operation Provide Comfort during the Gulf War according to Solidarists was sanctioned by UN Security Council and not a strong nation interfering with sovereignty of a weaker state as others may have alleged.¹⁷ According to them, human suffering could constitute threat to international security and therefore requires collective armed intervention just like in Bosnia, Somalia and Rwanda. In this regard, sovereignty is not a veil where human right abusers can hide behind instead; state authorities are responsible for protecting its citizens. Solidarists therefore argue that extreme violation of human rights form the basis for legitimate exception to the rule of non-intervention.

According to Solidarists approach, Somalia breakdown in governance, violation of human rights through lawless killings are evidence enough to warrant intervention. According to them, the sanctioning of humanitarian intervention by UN Security Council was justifiable. This was so

¹⁵ Brown, C., "Moral Agency and International Society", *Ethics and International Affairs*, vol. 15, no. 2, 2008.

¹⁶ ICISS, *Responsibility to Protect*, Ottawa: International Development Research Centre, 2001.

¹⁷ Rodley, N., 'Collective Intervention to Protect Human Rights', in Nigel Rodley (ed.), *To Loose the Bands of Wickedness*, London: Brassey's, p. 32, 2007.

due to human suffering which has created a threat to international security. It can be argued that the piracy perpetrated by Somalis who endeavour to make a living and the refugee menace that has affected several states including Kenya, USA to Canada is a clear case of internationalization of conflict and therefore the need to address it. Humanitarian intervention according to Solidarists serves as a solution in alleviating human suffering.

The English debate is primarily concerned with three issues; one is the extent to which there is agreement on what constitutes a supreme humanitarian emergency, secondly is whether there is legitimate right of intervention in situations of supreme humanitarian emergency and lastly the problem of how states and militaries should conduct themselves when intervening. Despite these pertinent issues, this school faces several challenges. Dunne, Hanson and Hill argue that the problem of the English debate to intervention is caused by over-emphasis on the notion of sovereign consent.¹⁸ According to Dunne and Wheeler, English School's concern with binary oppositions such as human rights or sovereignty; intervention or non-intervention is overcome by constructivist thought which point towards imminent possibilities beyond such oppositions. Ayooob suggests that international society should find new ways of legitimizing intervention that is more transparent and accountable than the UN Security Council decision-making.¹⁹ These shortcomings raise the need to look for other theories that can explain the key dilemmas at the heart of the theory and practice of humanitarian intervention. Constructivist approach which is an off-shoot of realism theory is a preferred thought.

Constructivist approach offers a better understanding as compared to the English School. It argues that the identity, interests and values of actors are constructed by social structures they

¹⁸ Dunne, T., & et al, "The New Humanitarian Interventionism" in M. Hanson and W. Tow (eds), *International Relations in the New Century: An Australian Perspective*, (Melbourne: Oxford University Press, pp. 56-78, 2001.

¹⁹ Ayooob, M., "Humanitarian Intervention and State Sovereignty", *International Journal of Human Rights*, vol. 6, no. 1, p. 90-92, 2002.

inhabit.²⁰ It investigates ways that structures construct identities and interests and hence shape practice in humanitarian intervention. Constructivism casts doubt on the foundation of pluralist-solidarist debate for example pluralists claim that international society is a practical association based on a mutual recognition that allows states share a mutually constitutive relationship with international society and that different types of states have constructed different types of international society. Therefore the idea that an international society allows diverse units to pursue divergent paths falls apart if one accepts that membership of the society influences the identity of its members. Constructivist thought therefore offers a better understanding to humanitarian intervention in regard to sovereignty of states. Although the constructivists approach to humanitarian approach focuses on the structural conflict which accounts for a majority of violence as compared to the military violence, there is need to also address the issue of humanitarian intervention as it touches into the heart of all states.

1.5.2. The Right to Protect

After the traumatic experiences of organized violence in Rwanda, Kosovo, Bosnia and Somalia, International Commission on Intervention and State Sovereignty (ICISS) presented a report that was supported by the then UN Secretary General Kofi Annan in 2001, which report stressed on indivisibility of human security including human rights, dignity, and defined sovereignty as responsibility.²¹ This is an interventionist doctrine that seeks to prevent or at least reduce human disaster of the magnitude of genocide. According to Annan,²² all states have a right to protect their own people and eventually that of the whole human race to protect fellow humans from extreme abuse. This expression is in tandem with the Africa's normative shift from non-

²⁰ Rues-Smit, C., "Constructivism" in S. Burchill et al (eds), *Theories of International Relation*, 2nd ed, (London: Macmillan, p. 100-120, 2001.

²¹ ICISS, "Responsibility to Protect," International Development Research Centre, Ottawa, p. 45, 2001.

²² Annan, K., Address to Stockholm International Forum on 26 January 2004, http://www.un.org/News/ossg/sg/stories/statements_search_full.asp?statID=51 accessed on 18 October 2013.

interference in internal affairs of other states as espoused in the OAU charter²³ to collective right of intervention in the so called ‘internal affairs’ of member states as stipulated in the AU constitutive act.²⁴ This normative shift by Africa was acknowledged during the World Summit in 2005 and UN General Assembly adopted the ICISS report with very few dissenting voices.²⁵

According to Macfarlane and others,²⁶ the launch of right to protect has failed in the political goal of consolidating the consensus on conditions for humanitarian intervention going by the happenings of the 1990s. They start by examining the reactive nature of the ICISS and use current events in Syria and Egypt to assess the prospects of future Humanitarian intervention. Macfarlane and others looked at the academic and policy reactions considering the 11 September 2001 and war in Afghanistan events and they conclude that in the two cases, the right to protect survived but was grievously threatened by the war in Iraq.

Right to protect uses the just war framework to guide those contemplating on military intervention to save human lives. It proposes several criterions to include ‘right intention’, ‘right authority’, ‘last resort’, ‘proportional means’ and ‘reasonable prospects’.²⁷ ICISS report states that the intention of using the military is to avert or stop human suffering while UN Security Council is the sole authority although failure to which the UN General Assembly or regional organizations under Chapter VIII of the UN Charter is used. Military intervention should only be used as a last resort while the scale of operation should be proportionate to humanitarian objective. The operation must have reasonable chances of success.

²³ Article 3(2) of the OAU Charter.

²⁴ Article 4h of the AU Constitutive Act.

²⁵ 2005 World Summit Outcome, GA Res. 60/1 paras. 138-39, 24 October, 2005.

²⁶ Macfarlane, S., & et al., “The Responsibility to Protect,” *Is Anyone Interested in Humanitarian Intervention?* Third Quarterly, vol. 25, no. 5, p. 977, 2004.

²⁷ Ibid; also ICISS, *Responsibility to Protect*, Op. Cit. and G. Evans, “The Responsibility to Protect: Rethinking Humanitarian Intervention” *American Society of International Law*, vol. 98, March-April., p.83, 2004.

Right to protect allows the permanent members of the Security Council (P-5) to decide where military intervention is to take place. P-5 members are explicitly excluded from having right to protect applied to them or areas in which they have their geostrategic interests. This is on the assumption that they would veto any decision seen to be against their interests. Dove argues that for this reason right to protect is designed for the weak and not the powerful.²⁸ Member states have a long history of supporting dictators who abuse human rights; they are suppliers of arms in conflict areas, and stirrup conflicts in some instances undermining popular governments. In conclusion, the military dimension of right to protect is selective rather than universally applied.

Halliday argues that right to protect would be embraced in a perfect world only that the current setup of the UN is not the case. He suggests that UN Charter and international law must be applied equally to all the members and this will happen only if the UN Security Council has been reformed with full representation from the South, add power to the General Assembly and when UN represents peace, rights, justice and life in itself for all human beings equally.²⁹ Bennis on her part asserts that right to protect is grounded in profound double standards because of the USA dominion and the undemocratic power wielded by the five permanent members of the Security Council. She argues that unless right to protect is applied in areas considered ‘off-limits’ such as Israeli occupation of Palestine it will be bound to fail.³⁰

While examining whether right to protect is a political rhetoric or an emerging legal norm is of the opinion that right to protect may gradually replace the doctrine of humanitarian intervention in the course of 21st century. However through the examination of five propositions made by ICISS, High-Level Panel Report, report of the UN Secretary General and the Outcome

²⁸ Dove, F., “The Responsibility to Protect”, *The Development Dialogue*, No. 53, p.79-80, November 2009.

²⁹ Halliday, D., “Genuine Humanitarian Intervention,” Or Right to Protect, Montreal, p.78-99, 2012.

³⁰Bennis, P. “The Responsibility to Protect-Who gets Protection? How can it happen?” *The Development Dialogue*, No. 53, November 2009.

Document of 2005 World Summit, they remain uncertain from a normative point of view or lack of support.³¹ Stahn's finding from the four documents is that they embody different visions of right to protect and therefore explain part of its success. The propositions from the most accepted to the least accepted are; the state has a duty to protect citizens on its territory, states failing the duty to protect have a weak sovereignty defence, foreign entities may intervene non-forcibly, foreign states may intervene forcibly and foreign entities have a positive duty to act in order to safeguard their geostrategic interests respectively. He further indicates that the core tenet of right to protect entailing the fundamental rights to protect enjoys a broader support amongst states, UN and the civil society.³²

Welsh, Thielking and Macfarlane enumerate several operational challenges of right to protect as argued out by the ICISS report. They note that ICISS is at pains to distinguish between military interventions for humanitarian purpose and for the sake of national strategic interests from traditional war-fighting.³³ According to ICISS, the difference is that the aim is to protect populations unlike in the traditional war-fighting which seeks to defeat the enemy militarily. Taking the Kosovo case, it is very clear that in practice, this line is very blurred in that at times it may involve attacking the most valued things by the offending regime. Another challenge is the statement that clear and unambiguous mandate is an important requirement for an operation to protect.³⁴ Clarity of the mandate is very difficult to achieve in the Security Council as ambiguity is as a result of consensus. Another challenge identified by Welsh and others is that of unified

³¹ Stahn, C., "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?", *American Journal of International Law*, vol. 101, No. 1, , p. 99-120, January 2007.

³² Ibid, p. 121, 2007.

³³ Welsh, J., & et al., "The Responsibility to Protect: Assessing the Report of the International Commission on Intervention and State Sovereignty", *International Journal*, vol. 57, No. 4, pp. 489-512, autumn 2002.

³⁴ Ibid, p. 506, 2002.

command. While noting that this is important for the success of an operation, some states are unwilling to put their forces under those of other states and to take orders from them.³⁵

The debate on intervention for human protection will not go away any time soon as long as human nature remain fallible and the frequency of state failure and internal conflicts continue being high. The argument about the ‘right to intervene’ must be changed to ‘right to protect’.³⁶

This change has three major advantages; One is evaluating the issues from those who need support rather than from those considering intervention; Secondly is that the formulation gives a primary right to the state only if it fails to protect its own people should the international community take the right to act in its place; Lastly is that ‘right to protect’ goes beyond mere reaction but also embraces ‘right to prevent’ and ‘right to rebuild’. Evans and Sahnoun argue that state sovereignty implies double responsibility: externally to respect sovereignty for other states and internally to respect the dignity and basic rights of people within the state. However they are quick to conclude that the principle of sovereignty as right cannot be said to be customary international law yet but it should be regarded as a de facto emerging norm.³⁷

The ICISS for meeting its three objectives which are extensive consultation, official sanctioning of a new language with which to talk of humanitarian intervention based on responsibility rather than right and going beyond just responsibility but also prevention and rebuilding. There are four criteria that would legitimize humanitarian intervention: just cause; last resort; proportional use of force and high probability of achieving humanitarian success. ICISS³⁸ is more ambitious and gives six principles for the ‘right to protect’: right cause; right intention; right authority; last

³⁵ Ibid, p. 507

³⁶ Evans, G., & Sahnoun, M., “The Responsibility to Protect”, in *Foreign Affairs*, vol. 81, no. 6, November-, p. 99-110, December 2002.

³⁷ Ibid, pp 111, December, 2002.

³⁸ ICISS, *Right to Protect*, Op. Cit., 2002.

resort; proportionate means; and reasonable prospect. Welsh³⁹ underscore the challenges associated with the ICISS principles. On just cause, she states that if large scale and systematic human rights abuses justifies right to protect, then there is a possibility that rebels desiring outside help may instigate mass killings. On proportionality to legitimize action and the West preference for strategic air campaigns, opponents may put civilians near military targets to test determination. On the ‘proper authority’, the Security Council that is vested with maintaining international peace and security is viewed as unrepresentative and cannot reflect ‘international will’. Furthermore the permanent members with their veto powers are likely to veto any progress going by their political interests. General Assembly on the other hand is merely to make recommendations. It has to be borne in mind that unilateral action can be more timely and effective especially if undertaken by a regional power as compared to the bureaucratic processes of UN if lives are to be saved.

The right to protect faces both conceptual and political challenges in that in terms of tools, it is much broader than humanitarian intervention. Humanitarian intervention lacked important pillar of international assistance in helping the state meet core protection rights. This is essential for right to protect which envisages wider instruments such as prevention, protection, capacity-building and rebuilding that do not entail coercive action. Some individuals have overstretched the spectrum of right to protect and want to include issues such as cyclone disasters. It should not be so since if the scope is not kept narrow it could lead to interference of domestic issues of weaker states by stronger states. Since the UN has elaborate programs for advancing human rights such as early warning and conflict prevention; protection of civilians in armed conflict

³⁹ Welsh, J., “From Right to Responsibility: *Humanitarian Intervention and International Society*”, Op. Cit, p. 514-517, 2009.

including sexual violence; peacekeeping and peace-building and capacity-building, there is a bureaucratic resistance to adding new right to protect perspectives to the existing ones.

1.5.3. Background of the Current Violence and Humanitarian Crisis in Somalia

The situation in Somalia most certainly represents a situation envisioned under the right to protect concept. There is massive humanitarian suffering and strong evidence of war crimes and crimes against humanity. President Sharif recently visited the United States, and during his visit he unequivocally stated that Somalia is not receiving adequate assistance from the international community. In April 2009 there was a donor conference in Brussels which netted \$213 million in aid pledges. However, several months later only a fraction of the promised aid had made its way to Somalia. The international community did not seem ready to assist Somalia and even U.S. support had been lacking.⁴⁰ The lack of response from the international community to the profound humanitarian crisis in Somalia is striking for several reasons. First, the situation in Somalia certainly qualifies as a scenario envisioned under right to protect doctrine. The basic principle as stated by ICISS is that when a population is suffering serious harm as a result of internal war, insurgency, repression, or state failure, and the state is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international right to protect.⁴¹ Somalia has been a failed state with an ongoing civil war for nearly twenty three years, and over half the population needs humanitarian aid to survive. Furthermore, armed groups are at times halting or severely impeding the delivery of this aid to civilian populations. Second, if the international community led by Kenya and AMISOM intensify their acts to alleviate the suffering in Somalia it would be much simpler from a theoretical perspective. Somalia has not had a government that is able to govern or even control large portions of its territory for many years. The TFG would

⁴⁰ Wairagala, W., "Fighting and Drought Worsen Somalia's Humanitarian Crisis," *The Lancet*. 374, 2009.

⁴¹ ICISS Report, p. 56-68, 2002.

most likely welcome international involvement to assist them in taking control of Somali territory, and the debate over sovereignty would be unnecessary.

The international community has previously intervened in Somalia and more recent intervention was by Kenya, Ethiopia, Rwanda, and Burundi in 2011. In 2005 the Intergovernmental Authority on Development (IGAD) proposed the IGAD Support Mission in Somalia (IGASOM). However, the idea for IGASOM did not gain much traction until the following year when the Islamic Courts Union (ICU) took control of Mogadishu and began consolidating power within Somalia. Several countries in the region and the international community perceived the ICU as a threat to their vital national interests because of the ICU's fundamentalist Islamic views. Ethiopian troops invaded Somalia in August 2006 to form a buffer zone between ICU forces and eastern Ethiopia, and IGASOM was approved by the AU in September 2006 and by the UN Security Council in December 2006. It was extremely difficult to raise funds and troop contributions for an IGAD sponsored mission, so in January 2007 the AU Peace and Security Council proposed an AU Mission that would be supported by the UN.⁴² The AU Mission in Somalia (AMISOM) was mandated to provide assistance to the TFG in their efforts to bring stabilizations to Somalia, to facilitate the provision of humanitarian assistance, and to help create conditions for long-term stabilizations and reconstruction. Specifically, AMISOM would provide protection to key TFG personnel and infrastructure to enable them to carry out their government functions and help to re-establish training programs for Somali security forces.⁴³ UN Security Council Resolution 1744 approved the AU Mission under a Chapter VII mandate. Resolution 1744 also requested that the UN Secretary General send an assessment mission to look into the possibility of a United

⁴² Paul W., "Into the Mogadishu Maelstrom: The African Union Mission in Somalia." *International Peacekeeping*, 2009.

⁴³ African Union, "AMISOM Mandate," African Union Mission in Somalia, http://www.africaunion.org/root/AU/AUC/Departments/PSC/AMISOM/AMISOM_Mandat.htm, 2011.

Nations peacekeeping operation following the deployment of an AU Mission.⁴⁴ Despite approval by the international community and the region, AMISOM had difficulty obtaining the necessary resources to fulfill its mandate. The envisioned troop strength for AMISOM was 8000. However, the AU could not get pledges from its member states for that number of troops. In total, the AU was able to obtain pledges for about sixty percent of the needed troops, and by April 2009 there were 4300 deployed troops, all of which were from Uganda and Burundi. In 2007 the UN Secretariat also declined to deploy an assessment mission to Somalia to determine the feasibility of an UN follow-on mission saying that the deployment of UN peacekeepers to Somalia was neither realistic nor viable. The UN became serious about the possibility of deploying a multinational peacekeeping force after the Djibouti Agreement was signed in August 2008. The agreement called for a cessation of hostilities between the government and various armed factions and the withdrawal of Ethiopian troops. However, it quickly became clear that the international community had no real interest in committing resources for such a force. Fifty countries were approached about the possibility of supporting a multinational force, and of these only 14 responded with two pledging financial resources and no countries offering troops.⁴⁵ In sum, AMISOM was created and deployed with little hope of receiving the resources needed to fulfill its mandate. AU peacekeepers were thrust into a severely unstable and violent situation without adequate support, and the international community failed to live up to its commitment to muster a follow-on UN force that might have had the capacity to make a tangible difference in helping to stabilize Somalia and bring relief to the civilian populations. In addition, the deployment of AU peacekeepers was clearly directly tied to the ICU seizing power in

⁴⁴ United Nations, “Security Council Authorizes six-month African Union Mission in Somalia, Unanimously Adopting Resolution 1744 (2007)”, UN Security Council, <http://www.un.org/News/Press/docs/2007/sc8960.doc.htm>, 2007.

⁴⁵ United Nations, “Security Council Authorizes six-month African Union Mission in Somalia, Unanimously Adopting Resolution 1744”, UN Security Council, <http://www.un.org/News/Press/docs/2007/sc8960.doc.htm>, 2007.

Mogadishu. Somalia became a national security concern for many countries, most notably Ethiopia, and this was the catalyst for serious discussions about IGASOM and subsequently AMISOM. Peacekeeping troops often used unnecessary force when responding to attacks from the ICU and as a result were not trusted by local populations.⁴⁶ Ultimately, the deployment of AMISOM led to increased insecurity because the mission did not have adequate resources to fulfill its mandate and were not trusted by the populations because of the politics behind their deployment and the tactics of peacekeepers on the ground. Eventually, Kenya Defence Forces literally intervened through the operation codenamed '*Operation Linda Nchi*'. This case study which is the major concern of this study will highlight both the strengths and weaknesses of right to protect and particular weaknesses.

1.6. Research Gap

It is apparent from the existing literature that a lot has been written about humanitarian intervention and the right to protect. Moreover, a lot has also been written about the case studies of the humanitarian intervention not only in Africa but the world. However this review has demonstrated that nothing has been written on normative shift from international humanitarian intervention and right to protect and its application to tackling internal conflicts in Somalia.

1.7. Theoretical Framework

The study seeks to employ just war theory as a vehicle to analyze the morality of the Kenyan intervention because the components of just war theory clearly outline the morality of war by defining the prerequisites for deciding to intervene, parameters for behavior while in war, and appropriate actions at the conclusion of war. If utilized appropriately, just war theory can provide

⁴⁶ Paul W., "Into the Mogadishu Maelstrom", London, 2009.

clear standards and norms for proceeding with armed interventions and war. Just war is a widely accepted theory and basis from which to derive moral and ethical guidelines for states in regard to interventions. Coady of the United Institute of Peace refers to just-war theory stating that this tradition has been criticized in various ways, but suitably understood it provides a reasonable apparatus for tackling the questions of war and intervention.⁴⁷

Through a critical analysis of just war theory, the morality of Kenya's decision will be investigated. Due to the recent nature of events, this can serve as a framework on how decisions humanitarian intervention should be implemented. The study will also take a critical look on opposing views of just-war theory. It will assess how other opposing views may view the Kenyan intervention and some of the probable challenges that the Kenyan's may face as a result of its decision to intervene in Somalia.

1.7.1. Just War Theory

Just War theory has three essential components: *jus ad bellum* (prior to engaging in war), *jus in bello* (whilst in war), and *jus post bellum* (after the conclusion of the war). The *jus ad bellum* portion dictates that the intervening nation has just cause and reason to override the sovereignty of another state and intervene. The *jus in bello* aspect of Just War Theory mandates that after the decision to go to war has been made, the war must be fought ethically and morally.

Michael Walzer, a contemporary Just War Theory expert, argues that Just War Theory is a dynamic theory that allows states and leaders an opportunity to truly measure the morality of decisions to go to intervene militarily, which is why perhaps the ancient theory still serves as an asset to decision making in regards to wars and interventions. Michael Walzer notes:

⁴⁷ Coady, T., "The Ethics of Armed Humanitarian Intervention." *United States Institute of Peace*, Publication. Washington, DC, p. 1-47, 2002.

And here, I think, is the deepest cause of the theory's contemporary triumph: there are now reasons of states for fighting justly. One might almost say that justice has become a military necessity.⁴⁸

Walzer also argues that the framework of Just War Theory allows for actors to incorporate justice and a holistic approach when making decisions to enter into and conduct war. Not only does it allow for this, but the structure of just war theory in many ways forces leaders to think critically about justice and closely examine scenarios in their entirety to ensure that decisions regarding war are taken seriously. Walzer reiterates this point that the right to protect still needs to be defended, that is decisions about when and how to fight require constant scrutiny, exactly as they always have.⁴⁹ Using the framework and structure of Just War Theory, the unique and specific characteristics of the Kenyan decision will be assessed.

1.7.1.1. *Jus Ad Bellum* (Prior to Engaging in War).

As a matter of fact, one of the first and most crucial components of just war theory is *jus ad bellum*. This is a fundamental component of just war theory as a whole because it addresses one of the most important aspects of just war: ample cause and proper intentions. Policy and decision makers must address these points and answer them before claiming just cause and declaring that there is legitimate *jus ad bellum*. In the case of the Kenyan intervention, much can be said regarding the *jus ad bellum* piece of the just war theory philosophy. The major question at hand when approaching the *jus ad bellum* aspect of the Kenyan intervention begs the question of whether the intentions of the Kenyan government were proper, whether there was just cause for the intervention and if the military action was proportionate in regard to the conflict or issue itself and whether the Kenyans' interests were truly altruistic or more self-concerned in nature.

⁴⁸ Walzer, M., *Just and Unjust Wars*. 3rd ed. Perseus Books Group, New York, pp. 935, 2002

⁴⁹ Ibid, p. 936, 2002.

Within the *jus ad bellum* philosophy lie several subcomponents that comprise the overall theory. The author of the article, Paradox of Just War notes that it is important, in this beginning stage, to ensure that there is public declaration.⁵⁰ This essentially warns the opposition of the decision to go to war beforehand. Calhoun argues that this is critical because it ensures a sense of transparency and that, tension is not merely due to a breakdown in communication.⁵¹ Kenya's intervention in Somalia is an interesting one because the notion of state is somewhat absent in Somalia. There is no stable, central government; therefore, theoretically Kenya would have no viable authority to warn. Essentially, the government is comprised of a weak TFG that lacks control of the country, the terrorist group Al-Shabaab and clan factions. Even so, Kenyans are obliged to give warning, as per just war theory. In addition to giving proper warning, as an intervening state, Kenya was morally obliged to closely examine whether there is reasonable prospect for success of humanitarian intervention.⁵² This aspect of *jus ad bellum* takes into consideration the value of adequate planning and organization and encourages states to assess whether the intervention or war can actually be successful. Given the prior history of humanitarian interventions in Somalia by the United States and Ethiopia, it is very likely that the Kenyans acknowledged the shortcomings of previous interventions and intervened strategically to defeat the clans and the Al-Shabaab and restore regional peace and stability.

Also crucial in the *jus ad bellum* stage is the acknowledgement that the intervention is truly a last resort and is fought with appropriate proportionality.⁵³ In the case of Somalia, it is without question that the intervention was indeed necessary and very much the most viable option for Kenya to make. In addition, given the magnitude of the issues such as terrorism and piracy which

⁵⁰ Calhoun, L., The Metaethical Paradox of Just War Theory. *Ethical Theory and Moral Practice* 4 no. 1 (Spring): 41-58. <<http://www.jstor.org/stable/27504167>> (accessed October 16, 2013), p. 47, 2011.

⁵¹ Ibid, p. 47-48, 2011.

⁵² Ibid, p. 47-48, 2011.

⁵³ Calhoun, L., The Metaethical Paradox of Just War Theory. *Ethical Theory and Moral Practice* 4 no. 1 (Spring): 41-58. <<http://www.jstor.org/stable/27504167>> (accessed October 16, 2013), p. 48-50, 2011.

have great risks and implications, it was absolutely necessary to intervene with military forces as an attempt to gain control of the Somali crisis and address imminent life-threatening issues such as famine and starvation, terrorism and piracy among others. While it may be difficult to get to the full truth regarding the intention of the Kenyan government, it is possible to address likely and conceivable reasons that may have been precursors to the Kenyan invasion in Somalia. There is no question that the current state of despair in Somalia is on the world's radar and has had undesirable affects on its neighbor, Kenya and the entire region. The world has become increasingly aware of the growing threats of Somali violence and piracy that have affected the Horn and world as a whole as many of the issues have had significant consequences to neighbors and nations around the world. Mohamed Sahnoun, author of, *Somalia: The Missed Opportunities*, notes that apart from their impact on the local population, such conflicts might present a serious threat to peace and security in entire regions of the world.⁵⁴ Some of these issues have included terrorism, piracy, famine, food security issues and the overall breakdown of Somali society and heightened refugee and immigration tensions due to increasingly poor living conditions and violence in Somalia. These issues will be addressed, as they are likely precursors for Kenya's decision to intervene in Somalia. Therefore the ultimate goal of just war is peace that achieves a greater measure of justice, the "delightfulness of peace," in Augustine's phrase, "peace dear to the hearts of humankind." In conducting a just war, there should be evident traces of that peace borne along by the two major principles of discrimination, or targeting only legitimate war targets, here noncombatant immunity, and proportionality, a way of restraining the scope and intensity of warfare in order to minimize its destructiveness, to remind human beings there is another possibility.⁵⁵

⁵⁴ Sahnoun, M., *Somalia: The Missed Opportunities*. Washington: The United Institute of Peace, 2011.

⁵⁵ Dyson, W., "The City of God against the Pagans," Cambridge University Press, Chapter 19, New York, 2008.

1.8. Hypotheses of the Study

- (i) The normative change from humanitarian intervention to right to protect is efficient and effective measure for managing conflicts.
- (ii) Humanitarian Intervention through the use of force is ineffective in protection of human rights.
- (iii) Humanitarian Intervention and the right to protect norm attacks sovereignty of States and attracts external interventions.

1.9. Research Methodology

The study seeks to get secondary data for analysis from humanitarian organization websites working in Somalia, government documents and journals, periodicals, newspaper article, books and internet sources. Humanitarian organizations working in Somalia and government documents consisting mainly of public documents including declarations, decisions and statements and official publications will form the platform for data analysis. The study therefore, employed a qualitative approach to explore the existing security arrangements in the EAC region and challenges faced in developing a regional security strategy.

Secondary data will be collected from various books on humanitarian intervention, treaties, declarations and policy instruments, Journals, previous research papers, magazines, newspapers and articles on the subject matter. Underlying this is the fact that the policy makers are deemed to be the core actors in the region's security issues and can therefore, provide up-to-date information.

Similarly, brief interviews will be conducted where two groups will be targeted. These are scholars on the relevant field of humanitarian and government officials. Both the structured and

unstructured questions will be prepared and it will be in the form of open ended and thus will be set and directed to the identified respondents. The questions will include the success or failure of humanitarian intervention, humanitarian intervention – sovereignty and territorial integrity dilemma, the need to involve international organizations such as UN and the use of force in total disregard of the UN statute, the place and impact of social structures, actors, moral issues and emerging issues to warrant for right to protection. The open ended questions will allow for flexibility and therefore facilitate collection of more information, however, the area of study is basically within the Somalia. This poses another challenge with regard to getting quality responses if the instruments are not properly applied. Therefore telephone and internet services will be used to make a follow-up where needful and resources permitting for and clarification from the participants.

The third source will comprise humanitarian organization working in Somalia and government documents which will be obtained from relevant ministries and international organizations such as Oxfam international, IRC through their websites. Besides which, majority of the data will be obtained through secondary sources comprising of journals, periodicals, newspaper articles, books as well as from appropriate internet sources.

Data collected from other electronic will serve as a supplement to and verification of the other written sources and as a source in which written documents cannot alternatively provide. However, sources from identified respondents are preferred for several because published materials on the subject matter are limited and biased to European countries during the WWII and therefore may not be relevant and adequate for the subject matter. On the other hand, interviews are flexible to the extent that information may be collected and background information of the respondents collected in case further interviews are to be carried. Lastly, some

of the diplomats who are involved in negotiating and developing the normative shift towards humanitarian intervention through AMISOM and UN are readily available in Kenya.

The collection analysis of data will be guided by the research objectives. Collected information will be verified before subjecting it to the theoretical framework and analyzed through analytical and logical arguments through the use of qualitative approaches.

1.10. Scope and Limitation of the Study

This study is based on Humanitarian intervention in Somalia. It takes into account and studies the two interventions of 1992 and 2011 respectively in view of breaching the existing gap on the subject matter. The literature on humanitarian intervention are plenty but with a lot of gaps. The duration of research is short and only rely in a very complex economic, political and social fabric within and without. Due to the time constraint in this research, Somalia will be taken into account as a case study. It is arguably important to limit the study to the subject matter for convenience and for better understanding of the subject matter. Secondly, the literature review does not give a wider scope to make generalizations on humanitarian intervention in Somalia. Also the issue of cost will limit the scope of the study.

1.11. Definition of Key Terms

| | |
|---------|--|
| Act | A primary legislation by an international body, national or subnational parliament. Before an Act becomes a law, an Act is technically a bill. In order for an act to become law a legislature must vote on a bill. If the bill is voted in the bill then becomes an Act, thus becoming a law. |
| Charter | A grant of authority or rights, stating that the granter formally recognizes the prerogative of the recipient to exercise the rights specified. It is implicit that |

the granter retains superiority or sovereignty, and that the recipient admits a limited status within the relationship, and it is within that sense that charters were historically granted, and that sense is retained in modern usage of the term.

- Clan A group of people united by actual or perceived kinship and descent and with similar interests.
- Conflict A state of open, often prolonged fighting a battle or war.
- Constructivism The claim that significant aspects of international relations are historically and socially constructed, rather than inevitable consequences of human nature or other essential characteristics of world politics.
- Crisis An event that is, or is expected to lead to, an unstable and dangerous situation affecting a group, community, or the whole society.
- Doctrine A codification of beliefs or a body of principles presented for acceptance as by a religious, political. It can also be said to be an official government or international bodies like UN policy in foreign affairs and military strategy.
- Foreign Policy Are strategies chosen by the state to safeguard its national interests and to achieve its goals within international milieu. The approaches are strategically employed to interact with other countries.
- Intervention An attempt to reduce suffering within a state through armed conflict.
- Military An organization authorized by its greater society to use lethal force usually including use of weapons in defending its country by combating actual or perceived threats.

| | |
|-------------|---|
| Norm | Group-held beliefs about how members should behave in a given context. Sociologists describe norms as informal understandings and expectations that govern society's behaviours. |
| Piracy | A typical act of robbery or criminal violence at sea.it includes acts committed on land, in the air, or in other major bodies of water or on a shore |
| Pluralists | A person who acknowledges diversity. Often considered by proponents of modern democracy to be the interests of its citizens and so political pluralism is one of its most important features. |
| Protect | defend or to shield from damage or injury. |
| Radicalism | Political principles focused on altering social structures through revolutionary means and changing value systems in fundamental ways. |
| Rights | Legal, social and ethical principles of freedom or entitlements, that is, are the fundamental normative rules about what is allowed of people or owed to people. |
| Solidarists | A sociopolitical thought which is loosely applied to a leading social philosophy operative during and within the French Third Republic prior to the First World War. |

1.12. Chapter Outline

Chapter One introduces the study, statement of the problem, research objectives and highlights the hypothesis to guide the study, literature review, and methodology to be applied in the study.

Chapter Two examines humanitarian intervention and the right to protect and provides a highlight of the underlying issues and also a historical context of the humanitarian intervention frameworks. This chapter therefore, provides the bridge between chapters two and three.

Chapter Three highlights the Kenya's geostrategic interests that motivated its intervention in Somalia.

Chapter Four deals with right to protect. The chapter therefore, comprehensively examines the underlying impediments to the use of force as a measure of last resort strategy together with the opposing views to just war theory and possible challenges. It also discusses the key findings and critical analysis of humanitarian intervention, right to protect within the context of state sovereignty.

Chapter Five anchors a recapitulation of the four core objectives and the three working hypotheses with a view to determining the extent to which the study has fulfilled its tasks. The chapter also anchors the conclusion and finally provides research based recommendations.

CHAPTER TWO

HUMANITARIAN INTERVENTION AND THE RIGHT TO PROTECT IN SOMALIA: THE UNDERLYING ISSUES

2.0. Introduction

Any government derives true legitimacy only from the willing consent of the governed and the first obligation of government is to provide security for its people. A government that cannot protect its people from external threats has failed in its primary responsibility, while a government that itself threatens the lives and security of its citizens forfeits any claim to legitimacy.

Walzer writes that humanitarian intervention is justified when it is a response to act that shock the moral conscience of mankind. Since a state cannot attack and kill citizens of other states legitimately, it doesn't follow that they can do so within their own borders either.⁵⁶ The question is not whether a state can kill with impunity, but the point at which external intervention is justified. Even so, the decision to intervene to protect human lives provokes endless debate and delays while innocent people die.

A humanitarian intervention has been defined as the use of military force against another state when the chief publicly declared aim of that military action is ending human-rights violations being perpetrated by the state against which it is directed.⁵⁷ This definition may be too narrow as it precludes non-military forms of intervention such as humanitarian aid and international sanctions in another state, without the agreement of that state, to address a threat of humanitarian

⁵⁶ Walzer, M., *Just and Unjust Wars*. 3rd Ed., Perseus Books Group, New York, pp. 112, 1977.

⁵⁷ James, P., *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* Oxford: Oxford University Press, p. 23-25, 2010

disaster, particularly those caused by grave and large-scale violations of fundamental human rights.

In the midst of Somalia's decades of conflict, al-Shabaab, a Somalia-based terrorist group with al-Qaeda links, has become particularly noticeable not only nationally but also regionally. Foreign intervention, therefore, is no new phenomenon in Somalia. Yet, when on 16 October 2011, Kenyan troops entered Somalia.

The conflict in Somalia is a long-standing one, which has had a profound regional impact. The main conflicts in Somalia include inter-clan clashes and rivalry for power, warlords trying to assert their control over various regions in the country, piracy off the Somali coast, acts of terrorism perpetuated mostly by al-Shabaab and border conflicts with neighbouring states, particularly Ethiopia and Kenya. Although conflict in Somalia started prior to 1991, the toppling of military dictator Mohamed Siad Barre in 1991 and the subsequent collapse of central order accelerated civil unrest, resulting in the country experiencing over two decades of conflict. During the lengthy conflict, thousands of lives were lost, property was destroyed and people were forced to flee their homes and seek refuge in other countries, while others became internally displaced persons (IDPs) living in Somalia. In 2012, a reported 1,017,649 Somali refugees were being hosted in other countries, mainly in Djibouti, Eritrea, Ethiopia, Kenya, Tanzania, Uganda and Yemen, while approximately 1.4 million people were internally displaced and settled in Somaliland and the south-central regions of the country.⁵⁸ It is also worth noting that Somalia has come to the end of its transitional process and has ushered in a new government and parliament with a new constitution. This progress has raised hope in many regional actors that a stable post-transition government will bring an end to insecurity in the country.

⁵⁸ International Crisis Group., The Kenyan military intervention in Somalia. *Africa Report No 184*, 15 February. Available from: <<http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/kenya/184%20-%20The%20Kenyan%20Military%20Intervention%20in%20Somalia>> (Accessed 18 September, 2013), 2012.

As the occupation of Somalia ensues, there are arguments on both sides of the spectrum, some arguing that the invasion of Somalia is ethical and morally justifiable on the grounds of just war theory, and that the Kenyan government has acted morally, and others concluding that Kenya's decision was immoral and unethical to intervene with military force in Somalia. This chapter will therefore address the proponents of the invasion who conclude that the Somali occupation by the Kenyan Government is indeed a morally justifiable action under just war theory.

The decision for Kenya to intervene in Somalia on some accounts was a very lengthy and strategic decision and the government had coordinated the preparation for the intervention for months prior to the actual invasion into Somalia in October 2011.⁵⁹

2.1. Early Interventions

Somalia's dysfunction and absent government deem it to be a failed state. Without a basic functioning government, Somalia is known to be essentially anarchic. Though far away, the effects of a Somalia failed state have serious and imminent implications for the global community and the global community has recognized these issues for the two several decades.

Following the end of Colonial rule in Somalia, the United States became increasingly concerned about the role of the Soviet Union in the Horn of Africa, and in 1973 Henry Kissinger, then Secretary of State, sent a memo to the Secretary of Defense and Central Intelligence Agency, directing a study to obtain more information about pressing issues that could potentially threaten American interests and activities.⁶⁰ The crisis in Somalia has received significant regional and international attention over the years, with a variety of actors intervening in a bid to help restore

⁵⁹ Gettleman, J., "Kenyan Motives in Somalia Predate Recent Abductions." *The New York Times*. October 26. http://www.nytimes.com/2011/10/27/world/africa/kenya-planned-somalia-incursion-far-in-advance.html?_r=0 (accessed on October 16, 2013), 2011.

⁶⁰ Kissinger, H., *Henry Kissinger to Secretary of State, Secretary of Defense and Director of Central Intelligence*. May 24. U.S. Department of State Office of the Historian. (Accessed January, 2014). <<http://history.state.gov/historicaldocuments/frus1969-76ve06/d89>>, 1973.

stability. Amongst the most notable interventions are the various United Nations (UN) operations which were launched periodically from 1992 to 1995. The first United Nations Operation in Somalia (UNOSOM I). Its main mandate was to monitor a ceasefire between belligerent warlords in the capital, Mogadishu and protect relief workers operating within Somalia following a humanitarian crisis caused by famine in the country.⁶¹ This UN operation, however, failed to meet its mandate. This failure necessitated the formation of the Unified Task Force (UNITAF), the result of collaboration between UNOSOM I and the United States (US), in December 1992.

2.1.1. What Went Wrong in Somalia that Led the UN and US to Intervene?

The fall of modern-day Somalia began as the Siad Barre regime began to crumble in the late 1980s and early 1990s. Siad Barre installed a military regime and was ruthless in persecuting political opponents or anyone who criticized his regime, including the Issaq insurgency, which supported the Somalia Nationalist Movement (SNM), whose ultimate goal was to oust the Barre regime.⁶²

UNITAF was mandated to establish a safe environment for the delivery of humanitarian assistance to civilians and to protect food deliveries from warlord attacks. This operation, which ran until 1993, was also referred to as Operation Restore Hope. The operation formed the basis for Somali resentment of the US as the country was viewed as having sided with one faction of

⁶¹ Norris, J., & Bronwyn B., “Twenty Years of Collapse and Counting,” *The Cost of a Failing Somalia*. Washington: The Center for American Progress and the One Earth Future Foundation, 2011.

⁶² Rutherford, K., “Humanitarianism Under Fire:” *The US and UN Intervention in Somalia*. Sterling: pp 5, Kumarian Press, 2008.

the warring parties over the other during the operation.⁶³ In 1993, UNITAF was replaced by UNOSOM II, which operated until 1995 when it was withdrawn from Somalia.⁶⁴

In 2006, neighbouring Ethiopia invaded Somalia, sending in its troops at the behest of then president of the Transitional Federal Government (TFG) Abdullahi Yusuf Ahmed, who called upon his eastern neighbours to help fight the Union of Islamic Courts (UIC)⁶⁵ that was considered a challenge to the government's operations in the capital.⁶⁶ This intervention was widely viewed as one aimed at achieving regime change and the imposition of a Somali government which would be friendly to Ethiopia.

In assessing Somalia and the many issues that Somalia faces, piracy is one of the most critical issues on the forefront. The piracy issue in Somalia threatens Somalia, its surrounding neighbours, as well as the entire international community, so much so that it directly affected the U.S. foreign policy, security of its citizens.⁶⁷ Comparatively, the ongoing threats posed by the Al-Shabaab has equally caught the attention of the United States and other international actors as well.

However, the most serious involvement of Somalia in international criminal activity is, by far, piracy. Pirate attacks in the waters off Somalia, and off the Horn of Africa, including those on U.S. flag vessels, have brought renewed international attention to the long-standing problem on maritime piracy.⁶⁸

⁶³ Mirbagheri, F., "War and Peace in Islam:?" *A Critique of Islamic/ist Political Discourses*. New York: Palgrave Macmillan, 2012.

⁶⁴ Ibid, p.56, 2012.

⁶⁵ Ibid, 2012.

⁶⁶ Ibid, 2012.

⁶⁷ Clayton, J., "West Could Not Find Tougher Place to Go Nation- Building." *The Times London*, London, (accessed January 2, 2014), 2012.

⁶⁸ Norris, J. & Bronwyn B., "Twenty Years of Collapse and Counting:" *The Cost of a Failing Somalia*. Washington: The Center for American Progress and the One Earth Future Foundation, p. 23-45, 2011.

Somalia's piracy has become such an economic drain that it has been referred to as Somalia's pirate economy. This economy has grown over the years to include ransoms and has truly become a great source of revenue for bandits and criminals, but at the cost of the international community. In addressing the piracy issue in Somalia, it is important to recognize it as a layer among the several layers of issues that indicate a larger more complicated situation.

As with many of the issues that Somalia faces concern food security, piracy and terrorism, much of it can be attributed to an overall breakdown of society, lack of infrastructure, and essentially no effective government or central authority to enforce the rule of law, regulation and stability. Somalia has some of the highest malnutrition rates in the world.⁶⁹ Rising food costs and continuing insecurity in parts of southern Somalia are affecting nutritional status of vulnerable people – a situation that is worsening amid the risk of escalation of terror attacks. In addition to its threat to international interests, piracy threatens the overall wellbeing of Somalis. For example, there have been instances of ships unable to distribute food to Somalia.⁷⁰ This ultimately puts the wellbeing of Somalis who are in need of aid and food at risk.

Much of what seems to be driving piracy as an occupation is the opportunity to thrive and profit from ransoms from kidnapping crews and passengers on ships. Ultimately, it can be understood that while Operation Lindi Nchi was a Kenyan operation and intervention, the U.S. too has much at stake, and it is definitely in the interest of the United States to ensure the smoothness of the Kenyan intervention and assist as appropriate.

⁶⁹ Clayton, J., "West Could Not Find Tougher Place to Go Nation- Building." *The Times London*. February 29 (accessed October 15, 2012), pp. 67, 2012.

⁷⁰ Middleton, R., "More than Just Pirates: Closing the Space for Somali Pirates Through a Comprehensive Approach." In *The International Response to Somali Piracy: Challenges and Opportunities*, edited by Bibi & Frans Paul Van der Putten, 13-30. Leiden: Koninklijke Brill NV, 2010.

Another key issue is about humanitarian assistance programs. Both the U.S. and Kenya have been committed to assisting Somalia with its humanitarian crisis, spending millions of Dollars and Shillings towards the cause. The money spent in Somalia is significant and imposes a burden on U.S. and Kenyan tax payers. Since AMISOM's creation, the U.S. has provided approximately \$458 million for logistics support, equipment, and pre-deployment training for its forces, as well as \$85 million to build the capacity of the NSF. In what is a conservative estimate the international community, including the Somali diaspora, has collectively spent just over \$55 billion responding to Somalia since 1991.⁷¹ On the other hand, It is estimated that Linda Nchi is costing the government at least 210 million (\$2.8 million) per month in personnel costs alone in a year of a record Kenya Shillings. 236 billion (\$3.1 billion) budget deficit.⁷² While humanitarian assistance funds in Somalia are a nice gesture from the both governments, it would be more effective and helpful in the long run, if a proactive strategy is developed and a solution in the never-ending Somalia crisis is achieved. Part of this solution include a real diplomatic presence in Somalia to aid in many of the humanitarian efforts. In conclusion, it is enough to conclude that with no central government in place and crime rampant, it is difficult to implement effective aid programs in Somalia.

2.1.2. The United States and the United Nations Decide to Intervene

To better understand the United Nations and United States intervention in Somalia, it is best to describe them as two separate interventions with two separate missions: United Nations Operation in Somalia I (UNOSOM I) and United Nations Operation in Somalia II (UNOSOM

⁷¹ Norris, J., & Bronwyn B., "Twenty Years of Collapse and Counting:" *The Cost of a Failing Somalia*. The Center for American Progress and the One Earth Future Foundation, Washington, 2011.

⁷² Tristan, M., "Kenya:" *Where all Somalis are Suspects*, Global Post, pp 23-24, 2011.

II).⁷³ The first mission was rather expedient, and consisted of delivering food and supplies to Somalis who were affected by the famine and widespread violence that ensued from the civil unrest. The second mission (essentially an expansion of UNOSOM I, it followed shortly thereafter) was more bold and encompassing. The second mission was aimed at strengthening peacekeeping and installing some of the institutions and governance that were virtually destroyed by the civil unrest and violent fighting after the fall of the Barre regime.

This move set a precedent in humanitarian intervention and was one of the most groundbreaking decisions to date, in that it lacked permission or authorization by the Somali people. The U.S. intervention was unique in the annals of international relations because it was the first time that the United Nations had authorized a single-state military intervention without an invitation or consent of the regional actors such as the then Organisation of African Unity (OAU).⁷⁴ The United States fulfilled its rather simple and humble goal by delivering supplies. U.S. forces were met with open arms in Somalia and were generally seen as a positive presence and were able to mediate some of the security threats that were preventing the distribution of aid rather quickly, so the troops were sent home and the mission was completed in 1993.⁷⁵

After the United Nations Operation in Somalia II was launched, the United States left, and peace indicators improved drastically. Mogadishu, the capital was under control and famine and hunger issues were at bay.⁷⁶ In response to the improved conditions, the United Nations passed resolution 814, which essentially began the second phase of the operation (UNOSOM II), and

⁷³ Rutherford, K., "Humanitarianism under Fire:" *The US and UN Intervention in Somalia*. Sterling: Kumarian Press, p. 56, 2008.

⁷⁴ Amstutz, M., "International Ethics:" *Concepts, Theories and Cases in Global Politics*. 3rd ed. Lanham: Rowman & Littlefield Publishers, Inc, 2008.

⁷⁵ Ibid, p. 170, 2008.

⁷⁶ Augelli, E., & Craig N., "Lessons of Somalia for Future Multilateral Humanitarian Assistance Operations." *Global Governance* 1 no 3 (Fall): 339-65. <<http://www.jstor.org/stable/27800119>> (accessed on October 12, 2013), 2005.

more importantly allowed UN forces to utilize force as a means of keeping the peace.⁷⁷ This set the tone for the future of UNOSOM II, and what some might say as the ultimate failure and catastrophe of the UNOSOM II venture.

By the end of 1993, the world was once more made aware of the growing chaos in Somalia, and the United States offered troops once again to deal with the situation and aid in the peacekeeping efforts.⁷⁸

2.2. Mistakes, Lessons Learned and Ethical Dilemmas

One of the most important lessons from the failed intervention was that it is absolutely crucial for states, Kenya in particular, to plan around the *just post bellum* restoration and have strong plans in place in regards to strategy and possible obstacles. This was one of the failures that ultimately proved to be a detriment to the United States and the United Nations. There was a lack of planning on how much effort such an intervention would require, and how much involvement it would take to restore peace and achieve a successful *jus post bellum*.

The international intervention in Somalia was remarkably complicated. Initial involvement was intended to create a stable environment for effectively providing humanitarian relief to vulnerable populations. But it evolved stealthily toward creating a workable governing system and rehabilitating the destroyed social and economic infrastructures, including creating an indigenous police force and judicial system, while at the same time trying to induce a secure environment.⁷⁹

⁷⁷ Ibid, pp 341, 2005.

⁷⁸ Augelli, E., & Craig N., "Lessons of Somalia for Future Multilateral Humanitarian Assistance Operations," *Global Governance* 1 no 3 (Fall): pp 342. <<http://www.jstor.org/stable/27800119>> (accessed on October 12, 2013), 2005.

⁷⁹ Rutherford, K., "Humanitarianism under Fire:" *The US and UN Intervention in Somalia*. Sterling: Kumarian Press, xvii, 2008.

The UN and U.S. intervention in Somalia raised a very important question about the morality of the UN and U.S. entering Somalia, using force to enforce peacekeeping and provide humanitarian assistance. The issues that arose between pacifism and realism opposing views on humanitarian intervention concept regarded peacekeeping as an institution that evolved in the grey zone between pacific settlement and military enforcement.⁸⁰ This means that while pacifism suggests that war and the use of force is never an option, realism not only suggests that it is moral and acceptable, but also proposes that there are no limitations to war whatsoever, and that morality does not constrain war, hence justifying the use of force by the GoK owing the atrocities caused by the Al-Shabaab.⁸¹ There is a very fine line between assisting states with peacekeeping efforts and using force as a means to help them with peacekeeping efforts. In some ways, an armed peacekeeping effort is an oxymoron and very contradictory in nature as it exposes the contraindications of the terms peacekeeping and armed. This continues to be one of the most central questions in debates regarding humanitarian intervention, not only in Somalia but in other conflict-ridden areas as well.

Another ethical issue that was raised by the intervention was: how much do self-interested motives detract from the morality of a decision and is this a relevant question? In the case of UN/US intervention in Somalia, there were red flags early on regarding the questionability of the intervention and decision to use force in Somalia. While the U.N.'s motives could be questioned, it appears that the U.S. motives for intervening in Somalia were actually mostly altruistic in nature, as it really had no other significant motives for entering then. It begs the issue of whether or not this is moral or immoral and to what extent.

⁸⁰ Thakur, R., "From Peacekeeping to Peace Enforcement: The UN Operation in Somalia." *The Journal of Modern African Studies* 32, no. 3 (Fall): 387-410. <<http://www.jstor.org/stable/161981>> (accessed October 12, 2013), 2004.

⁸¹ Amstutz, M., "International Ethics." *Concepts, Theories and Cases in Global Politics*. 3rd ed. Lanham: Rowman & Littlefield Publishers, Inc. p. 113, 2008.

2.3. Somalia /U.S. Current State of Relations

Having recognized the mistakes and dilemmas of the past, it seems the key to address the crisis in Somalia and developing a sound policy towards Somalia, is to take a more proactive approach rather than a more reactive based policy towards Somalia. However, the use of such an approach is not always the case; particularly among leadership in foreign policy and diplomacy. Such sentiment is acknowledged in a Center for American Progress report regarding the financial consequences of a failed Somali state.

Knowing and recognizing this shortfall is the first step in addressing this issue and developing a more proactive approach to conflict management, and to Somalia specifically. This in turn will create a better return on investment for Kenya and better outcomes for the people of Somalia too. Despite previous efforts, Somalia continues to lack a central government, stability and overall functionality as a state. Upto date, neither the TFG with AMOSOM's support, nor insurgents in Mogadishu are able to consolidate control over contested territory. These realities have created a diplomacy headache for the Government of Kenya and other members of the international community and have endangered Kenya's interests on multiple levels. The main implications for the Kenya include: a threat to Kenya national security, and threats to trade and economic interests.

2.4. Somalia/Kenya relations

Unlike the tense relations between Somalia and Ethiopia following Ethiopia's intervention in 2006, Kenya's bilateral relations with Somalia have been guided for the most part by its core foreign policy principles, including the quest to be a good neighbour. This approach, until recently, has worked for the two countries as Kenya played a significant role in the Somali peace process. Kenya hosted the Somali peace talks (2002 - 2004) and provided a base from which the

TFG operated until it moved to Mogadishu in 2005. This is not to say that relations between the two states have always been smooth. Kenya and Somalia were involved in a cross-border dispute known as the *Shifita Wars* between 1963 and 1967. In this dispute, ethnic Somalis in Kenya's North Eastern Province attempted to secede.⁸² In this recent military intervention in Somalia, however, Kenya has demonstrated that international relations aside, state interests will always be pursued first.

2.5. The United States' Role in the October 2011 Kenyan Intervention

The Kenyan decision to intervene seems to have been one that was made without significant U.S. involvement and influence. But, the ultimate truth is unknown as there have been several contradictory accounts concerning the United States' contribution and connection to the Kenyan operation. It is without question that the United States would be slightly hesitant to endorse and support Kenya's decision to act swiftly considering the outcome of the previous interventions in 1991 and 1992 and the lessons learned from that experience.

Despite conflicting accounts, it does appear as though the United States has assisted in certain areas and has played a more covert and undercover role; a sharp contrast from the US/UN intervention in the 1990's.⁸³ In July of 2012, the *Los Angeles Times* reported that the United States has been training African troops to aid in the Kenyan intervention in Somalia.⁸⁴ The U.S. has been quietly equipping and training thousands of African soldiers to wage a widening proxy war against the Shabaab, the al Qaeda ally that has imposed a harsh form of Islamic rule on

⁸² Adar, G., "Kenya-Somalia relations." *Kenyan foreign policy behaviour towards Somalia, 1963-2008*. Africa Today, 41 (4), pp. 75-76, 2009.

⁸³ *The New York Times*, United States Offers Rewards in Hunt for Somali Militants. June 8. <http://www.lexisnexis.com/lncui2api._T15336358038&treeMax=true&treeWidth=0&csi=6742&docNo=9 (accessed on January 16, 2014), 2012.

⁸⁴ Cloud, S., "The U.S. Fights a Proxy War in Somalia; Washington Quietly Equips and Trains Thousands of African Soldiers to Battle an Ally of Al Qaeda." *The Los Angeles Times*. July 29 (accessed October 14, 2013), 2012.

southern Somalia and sparked alarm in Washington as foreign militants join its ranks.⁸⁵ From the onset, it was quite unclear what role the United States was playing in the intervention, as many suspected that it would be nearly impossible for the Kenyans to be able to take such an undertaking on their own.

In addition to supporting the effort with armed forces, the United States has also contributed to the effort in other direct ways by supplying African forces surveillance drones, ammunition, small arms, armored personnel carriers, night-vision goggles, communications gear, medical equipment and other sophisticated aid and training, documents show.⁸⁶ In addition to helping to build the military capacity for regional forces to aid in the intervention effort, the United States is also providing financial incentives for turning in Al Shabaab members and leaders.⁸⁷ These are the concerted efforts to help the United States safeguard its foreign policy, heighten the security across the world and help minimise the impact of terror and probably stem out terrorism which has threatened the international relations. All these are part of humanitarian intervention efforts.

At the onset of the entry into Somalia, Kenya advanced the argument of the country's right to self-defence as embodied in Article 51 of the UN Charter,⁸⁸ which clearly recognises the inherent right of individual or collective self-defence in the wake of an armed attack against a member of the UN. The use of this particular article as the legal justification for Kenya's invasion raised a lot of questions regarding what constituted an armed attack against the Somalian state and whether such actions necessitated an invasion of this magnitude. Furthermore, some have argued that Kenya did not follow the right procedure required in pursuit of the right to self-defence as the country did not report its intended actions to the UN Security

⁸⁵ Ibid, pp 21-23, 2012.

⁸⁶ Ibid, pp 24-26, 2012.

⁸⁷ Gettleman, J., "Kenyan Motives in Somalia Predate Recent Abductions." *The New York Times*, New York, 2011.

⁸⁸ *The Kenyan Military Intervention in Somalia.*, Publication. No.184. Nairobi, United Kingdom: International Crisis Group, 2012.

Council (UNSC).⁸⁹ However, even after news of the invasion surfaced, the UNSC remained silent, despite the fact that it was not informed of Kenya's intentions to intervene in Somalia.

Kenya's intervention was launched 'to protect its territorial integrity from foreign aggression'⁹⁰. This implied that the KDF would move in and advance as far into Somalia as possible in pursuit of al-Shabaab militia. The move marked Kenya's largest military operation since its independence in 1963. At the onset, around 2,400 KDF personnel were deployed.⁹¹ The intervention was done in haste and more importantly, it was launched in the absence of consultations with the then TFG of Somalia.⁹²

2.6. Kenya's Goals in Intervening in Somalia

There are some indications that Kenya's assertion, that frequent kidnappings and killings by al-Shabaab were the main reason for its intervention in Somalia, might have provided a convenient excuse to explore deeper national interests. Kenya's professed reasons aside, there are other key issues that arise from an analysis of Kenya's potential gains from launching the intervention paving the way for oil exploration in the Northern Corridor.

Oil is emerging as a key resource of interest in East Africa. Kenya is one of a number of countries in the region that have discovered oil deposits in their territory. Apart from the Oil deposits that has already been discovered in Turkana, oil explorations are also on-going along the country's coast. Reportedly, some of the areas where exploration is continuing lie in

⁸⁹ Hull, C. & Svensson, E. "African Union Mission in Somalia (AMISOM)." *Exemplifying African Union Peacekeeping Challenges*. Swedish Defence Research Agency. Stockholm, Sweden. 2012.

⁹⁰ Fry, M., "Who's Backing Al Shabaab? - Al Qaeda, Eritrea? *Africa News*.<http://www.lexisnexis.com/hottopic/academic>, (accessed on September 16, 2013). 2011.

⁹¹ Gathii, T., "Kenya's Piracy Prosecutions," *Journal of International Law* 104, No. 3 (Summer): 416-36. <<http://www.jstor.org/stable/10.5305/amerjintelaw.104.3.0416>> (accessed October 12, 2013), 2012.

⁹² *Ibid*, p. 416-436, 2012.

Somalia's waters, implying that the advance into Somalia might have been aimed at securing these sites to ensure Kenya's smooth and uninterrupted exploration.⁹³

2.6.1. Garnering Voter Support

The intervention was also linked to the Kenya elections that was held in March 2013. The move could have been aimed at rallying up support for the government and politicians who have shown their ability to defend the country and its citizens.⁹⁴ Moreover, at regional level, Kenya geared at demonstrating its military capability and ability to effectively address a major regional security threat.⁹⁵ The AU Mission in Somalia (AMISOM), deployed in the country in March 2007, is dominated by Uganda which contributes the highest number of troops to the mission. Ethiopia has influence in Galgaduud, Hiraan, Bakool, and Gedo areas next to its border with Somalia. By mounting an invasion, Kenya sought to gain influence in Lower and Middle Juba as well as parts of the Gedo regions of Somalia.⁹⁶ These are more likely the reasons which drove Kenya's intervention in Somalia.

2.6.2. Counter-Terrorism through Military Intervention

The lack of stability in Somalia has made it a safe haven for terrorist groups to operate their networks both regionally and internationally. Al-Shabaab are blamed by the Ethiopian, TFG and AMISOM forces for the deterioration of security, the spillover of conflict to neighbouring countries, more particularly including Kenya, and the grave humanitarian situation which persists in large parts of Somalia. Kenya, however, had emerged as a target for terrorist attacks

⁹³ Ibid, p. 416-436, 2012.

⁹⁴ Menkhaus, K., "After the Kenyan Intervention in Somalia," *The Center for American Progress and the Enough Project*, Publication. Washington, 2012.

⁹⁵ Mirbagheri, F., "War and Peace in Islam," *A Critique of Islamic/ist Political Discourses*. New York: Palgrave Macmillan, 2012.

⁹⁶ "Xenophobia, "Fear Follow Nairobi Blasts." *UN Integrated Regional Information Networks (Nairobi)*. October 28. <<http://www.lexisnexis.com/hotttopics/lncademic>> (accessed on October 16, 2013), 2011.

well before the emergence of Al-Shabaab. The 7 August 1998 bombing of the American Embassy in Kenya, which killed 213 people and left 4,000 others wounded,⁹⁷ played a major role in raising the government's and citizens' awareness on the issue of terrorism as a clear threat to the country. Since then, Kenya has been making renewed strides to curtail terrorism and its networks in the country, including the recent publishing of the Prevention of Terrorism Bill.⁹⁸ It is against this backdrop that Kenya was convinced that the spread of al-Shabaab militias into Kenya necessitated a strong response, due to fears of repeat major terrorist attacks like the al-Qaeda-claimed bombing of 1998. The main aim of such a measure is brought forth by the need to protect civilians from attack. Piracy has impeded the delivery of shipments and increased shipping expenses to over 7 billion a year in global trade. On their other side of the coin, the terrorists also believed that they were protecting their fishing grounds and exacting justice and compensation for the marine resources stolen. Counter terrorism through military action therefore is one of the major measures to secure this vital corridor to allow the continuity of shipment to and from Kenyan, Indian coast lines.

2.6.3. Piracy Issues and Considerations

Worldwide, it is known that Somalia is a major center of piracy. Piracy in Somali has been an ongoing issue and one that has not received the necessary attention and resources that are needed to address the issue. Off the coast of Somalia, ships have been attacked and innocent passengers have been attacked, and often killed. This is a transnational issue as pirates have attacked 151 ships in 2011, compared to 127 ships in the year 2010, and vessels from many countries around the world, including ships belonging to the United States and other countries as well, but only 25

⁹⁷ Ibid, 2011.

⁹⁸ Ibid, 2011.

successful hijacks compared to 47 in 2010. By the year 2012, the pirates were still holding 10 vessels and 159 hostages.⁹⁹

In the book, *The International Response to Somali Piracy*, one of the major highlights about piracy in Somalia is the lack of infrastructure and rule of law to enforce regulations and try offenders. Another issue with enforcing laws is many of them are unclear and even if found guilty, the prison system is sub-par and could not accommodate prisoners and provide proper living conditions for offenders.¹⁰⁰

Kenya has appeared to have tried to gain control of the lawlessness and lack of enforcement of rule of law regarding piracy, as it has been attempting to try suspected pirates for their crimes in Kenya.¹⁰¹ However, this has brought about other serious issues and concerns regarding judicial authority and jurisdictional uncertainties.

The article, "Kenya's Piracy Prosecutions," highlights the frustrations that the Kenyan government has faced in trying to prosecute piracy cases in Kenya.¹⁰² Due to the international and multi-jurisdictional nature of piracy, it is quite unclear about which country has jurisdiction, where pirates should be tried. As evidenced in Kenya, part of the controversy stems from the element that they are perceived of as assuming a right or task that others feel is not appropriate. Kenyan courts' assumption of jurisdiction over non-Kenyan pirates captured on the high seas by foreign forces may be seen in light of this new trend regarding international law. This trend may

⁹⁹ Dagne T., "Somalia Redux," *A More hands of Approach*, Washington, 2009.

¹⁰⁰ Guilfoyle, D., "The Legal Challenges in Fighting Piracy." In *The International Response to Somali Piracy: Challenges and Opportunities*, edited by Ginkel and Putten, pp. 145-47. Leiden: Koninklijke Brill NV, 2010.

¹⁰¹ Gathii, T., "Kenya's Piracy Prosecutions," *Journal of International Law* 104, no. 3 (Summer): 416-36. <<http://www.jstor.org/stable/10.5305/amerjintelaw.104.3.0416>> (accessed October 12, 2013), p. 419.2010.

¹⁰² Thujo, J., "Kenya's Piracy Prosecutions," *American Journal of International Law*, Loyola University, Chicago, No. 104, p. 416-436, 2010.

have laid the foundation for Kenyan courts to invoke customary international law to justify their assumption of such jurisdiction and make decision to intervene militarily.

This will likely continue to be a reoccurring theme in piracy prosecution moving forward, and will ultimately need to be addressed by the international community as a whole. The United Nations has in many times indicated the need for some sort of boundary or international law framework for which to handle piracy or sea matters, but much is still left to be discussed and agreed upon in the international community, as has been demonstrated by the Kenyan trials of international pirates.¹⁰³

In addition to the obvious dangers and consequences of piracy in Somalia, it is important to highlight piracy's effect on food security and famine in Somalia. A significant amount of aid has been diverted and citizen's welfare is risked due to attacks and forced detours to avoid the Al-Shabaab.¹⁰⁴ There are also legitimate concerns about providing direct or indirect aid to terrorists through aid. United States for example imposed restrictions on the delivery of aid fearing that it would be diverted to Al Shabaab.¹⁰⁵

The above-demonstrated points fall in accordance with the *jus ad bellum* requirements. The Kenyan government had several legitimate reasons for why an intervention was necessary; both on an altruistic and self-interest level. On an altruistic level, Kenya had many reasons to use military intervention and intervene on a humanitarian level. As aforementioned, Somalia suffers from many humanitarian failures and has poor indicators in development and has suffered from food security and famine issues for the last several decades. Interestingly, on a more national-interest, self-interest perspective, Kenya also has legitimate cause for entering into war with

¹⁰³ Ibid, p. 416-436, 2010.

¹⁰⁴ Norris, J., & Bronwyn B., *Twenty Years of Collapse and Counting: The Cost of a Failing Somalia*. Washington: The Center for American Progress and the One Earth Future Foundation, p. 123, 2011.

¹⁰⁵ Ibid, pp 9. 2011.

Somalia and intervening with military force. Somalia has become a terrorist playground threatening the security of Kenyans and Kenyan economic interests, Somalia's increasingly growing instability has led to an undesirable increase of Somali refugees in Kenya and a drain on Kenyan resources and infrastructure, and last but not least, Somalia's downfall is just an overall threat to the Kenyan well-being. For this case there and more importantly, Kenya's immediate and essential goal was and is the establishment of a more friendly Somali political order in the remote pastoral areas along Kenyan-Somali border. This is the only objective Kenya's openly divided government appears to agree on. For the United States and other countries, including Kenya second priority, ousting Shabaab from the seaport of Kismayo would be an optimal counterterrorism outcome as well, and which they actually succeeded, though at times over the past two months some Kenyan officials have expressed ambivalence about this goal, while some U.S. officials entertained doubts about the Kenyan offensive from the outset.¹⁰⁶ But for most Somalis the pivotal issue will be not so much driving Shabaab out as which groups will subsequently gain control of Kismayo whenever and however Kismayo falls to an anti-Shabaab force. This is the danger, as Kismayo has been a chronically contested city since 1991.

In accordance with Just War Theory, Kenya does not have any obligations to fulfill the *jus ad bellum* requirement with purely altruistic intentions. Though it may be admirable of Kenya, it is not necessarily required or mandatory. In the case of Kenya it appears that there were two motives. There were motives of altruism in the sense that Somalia's citizens were living under dire, extreme circumstances. At the same time, being Somalia's neighbour and having been directly impacted by Somalia's failures, it was also in Kenya's national self-interest to pursue an intervention in Somalia. Now that Kenya's motives is fully understood some of the precursors to

¹⁰⁶ Ibid, pp 11, 2011.

the Kenyan decision, this study is able to delve into the Kenyans' thoughts about the intervention itself and the goals and objectives the Kenyans hoped would result from the intervention.

2.6.4. Necessity of Creating a Buffer Zone

It would appear that Kenya with international support, had planned to move into the Somalia conflict years prior to October 2011. This planned intervention was aimed at creating a buffer zone in the Juba area in southern Somalia, which is close to the border with Kenya.¹⁰⁷ The core aim of Kenya's intervention is the creation of this buffer zone. The border between Kenya and Somalia stretches approximately 682km, with the Juba and Gedo regions in southern Somalia being closest to Kenya. Kenya's early plans, however, were never pushed through due to external influences and concerns that influential Somali political actors from the Juba and Gedo regions had not been properly briefed and included in discussions to take over the interim administration of the region once it was out of al-Shabaab control. Some analysts argue that through the stabilization of the Juba region, the Government of Kenya expected to counter the direct threat of al-Shabaab militias who have long controlled the area in question and derived financial profit from the collection of customs revenue from charcoal exports and commercial imports through the port of Kismayo.¹⁰⁸ While there are many flashpoints for conflict in the area, over control of trade routes, water and pasture, political representation, and other issues, interests in stability dominate both sides of the border. The painstaking work to forge durable community peace in this remote region, which in the 1990s was considered one of the most dangerous in all of Kenya, has been a remarkable achievement. From 2008 to 2011, Shabaab authorities who controlled the border areas of Somalia had to defer to local demands that they not upset working relations across the border, which guaranteed unimpeded trade and access to schools and health

¹⁰⁷ *The Kenyan Military Intervention in Somalia*. Publication. No.184. Nairobi, United Kingdom: International Crisis Group, pp 23-25, 2012.

¹⁰⁸ *Ibid*, pp 26, 2012.

care posts on both sides of the border. Military buildups in 2011 by Kenya, Ethiopia, and their proxies drew hardline Shabaab figures to the border area and have upset these arrangements. The Kenyan military offensive could help clear out those hardliners. Importantly, Kenya need not eliminate Shabaab entirely from its border areas; it only needs to create conditions in which local communities can reassert their influence over and hence moderate the actions of whatever residual Shabaab units remain in the border areas. The result is likely to be a string of cross-border village, town, and district arrangements mainly managed by Somalis.

A critically important detail in this regard is Kenya's own major political reforms, which include a process of decentralization that could give newly established counties a high degree of self-rule. In the past, district commissioners in Kenya's border areas played an important role partnering with local communities in cross-border diplomacy. But those district commissioners were appointed by the central government and did not come from the Somali Kenyan population. They thus acted on behalf of the central government. Now county governors have actually been elected by the local population and their cross-border diplomacy could be reshaped as a result, in ways that are difficult to predict. If they engage in cross-border diplomacy that reflects local clan rather than national priorities, local peacebuilding along the border could be complicated and compromised.

In essence, Kenya wanted to keep al Shabaab at arms' length from its border. It has already experimented with the idea of carving out a buffer zone inside Somalia. Earlier this year, it has succeeded in the formation of an autonomous region called Jubaland, or Azania, providing money and supplies to a hastily cobbled-together local governing authority under the leadership

of a former Somali defense minister. This initiative never really got off the ground so this time round Kenya took the lead role rather than relying so heavily on local partners.¹⁰⁹

2.6.5. Quelling the Terrorists Threats

As mentioned in the introduction, Somali has been a failed state for the last few decades. It is a failed state in the sense that it had become very weak to the extent where social and political structures had collapsed to the point where the interim governments put in place had no control at all. Developmental indicators are dismal, violence is rampant and despite the years and dollars that have been dedicated to the region, it continues to be one of the most abysmal areas in the world and a growing cause for concern in the international community due to a growing threat of terrorism, increased piracy, kidnapping of aid workers, and famine. More recently, A-Shabaab militia's long shadow has been looming over Kenya, not because of its confessed link to the Westgate Mall terror attack in September 2013 but also subsequent threats to turn Kenya' towns into 'rivers of blood'. In what could paint the place of Kenya on the international terrorism map, the US agents also struck Libya and arrested Abu Anas al-libi, who has been on its top wanted list since 1998 terrorist attack in Nairobi and Tanzania.

The terrorism threat in Somalia continues to grow and be a source of angst and worry in the international community and a possible demonstrative cause for *jus ad bellum* as coined by just war theory. The Al Shabaab, an insurgency military group in Somalia, has been linked to Al-Qaeda.¹¹⁰ A 2010 Council on Foreign Relations article highlighted the threat of terrorism in Somalia due to its lawlessness and anarchy, such that its porous borders mean that individuals can enter without visas, and once inside the country, enjoy an almost complete lack of law

¹⁰⁹ Richard D., "Kenya's Military Operation in Somalia," Center for Strategic and International Studies in Washington, D.C., 2011.

¹¹⁰ Cohn, J., "Terrorism Havens: Somalia," *Council on Foreign Relations*, June. <http://www.cfr.org/somalia/terrorism-havens-somalia/p2> (accessed September 17, 2013), 2010.

enforcement. These aspects make Somalia a desirable haven for transnational terrorists, something that Al-Qaeda has tried to capitalize on before, and is trying again now.¹¹¹

Somalia has seen an evolution in regard to in-country terrorist groups and their growing power and influence. There is a heavy presence of Al-Qaeda in Somalia.¹¹² The Al-Qaeda-sponsored 1998 terrorist attacks against the Kenyan and Tanzanian embassies were one of the deadliest in African history and provided a clear signal to world leaders that the threat of terrorism in Africa is real and is one that must be addressed. The terrorist group, Al Qaeda was not only a part of the attack, but were the masterminds behind it noting its Somali connections were instrumental in planning and executing the twin attacks, which together killed 225 and wounded over 4,000.¹¹³ Other terrorist attacks include the attacks against a luxury hotel in 2002 in Kenya, and another attack in 2010 in Uganda sponsored by the Somali based terror group, Al Shabaab for supporting the regional peacekeeping mechanism, of terrorism in Africa is real and is one that must and had to be addressed through military intervention. The main threat that exists with terrorism in Somalia is the lack of order and law that make it a perfect breeding ground for terrorists and transnational groups. These items together brew a perfect storm which neighboring Kenya, Ethiopia and Uganda cannot avoid or ignore, as it posed a direct threat to their national security.

In the 1990s and early 2000s, the largest and the most influential terrorist group in Somalia was known as the al-Itihaad al Islaami (AIAI).¹¹⁴ The AIAI's main objective was to create an Islamic state within the Somalia region and was responsible for many terrorist attacks in neighboring countries, such as Ethiopia. In addition to Ethiopia bearing the brunt of the looming terrorist

¹¹¹ Ibid, p. 2, 2010.

¹¹² Clayton, J., "West Could Not Find Tougher Place to Go Nation- Building," *The Times London*. February 29 (accessed October 15, 2013), 2012.

¹¹³ Akolo, J., "Kenya vows to defend its territory," *KBC News*, 15 October. Available from: <<http://www.kbc.co.ke/news.asp?nid=72938>> [Accessed 13 October 2013], 2012.

¹¹⁴ International Crisis Group.. *The Kenyan military intervention in Somalia*. op cit., 2012.

threat, Kenya too has dealt with its share of numerous terrorist threats stemming from Somali terrorists.

After the 9/11 terrorist attacks at the World Trade Center in New York City, failed states and areas known as “safe havens” have been targeted and seen as threats to national and global security. The lack of success in addressing the anarchy and potential breeding ground for terrorists in Somalia has it that nowhere has the crisis of state collapse been as profound and prolonged-and as misunderstood-as in Somalia, which has gone without any functioning central government since January 1991. Numerous external attempts have been made to revive a central state; all have failed.¹¹⁵

These several failed attempts have led to a sense of apathy towards Somalia from many nations and many nations around the world have either simply forgotten about Somalia or chosen to ignore the increasingly dire situation. Kenya’s military intervention has attracted a number of countries which have since changed the perception and are now willing to help solve the decade old crisis. On the other hand, terrorists and interstate groups have taken note and are beginning to take advantage of the “safe haven” that Somalia can provide rogue groups. The threat of terrorism is ever-growing in Kenya also, due to the influx of Somali refugees, some of whom have allegiance with the Al-Shabaab and are becoming increasingly autonomous and becoming a center of Shabaab recruitment and fund-raising.¹¹⁶

2.6.6. The Refugee Crisis in Kenya

The refugee crisis in Kenya is serious and quite possibly one of the triggers for the armed intervention and even the United States has acknowledged the burden placed on Kenya. This

¹¹⁵ Menkhaus, K., “After the Kenyan Intervention in Somalia,” *The Center for American Progress and the Enough Project*, Publication. Washington, p. 8, 2012.

¹¹⁶ Ibid, pp 9-11, 2012.

literally to unprecedented Somalia's refugee crisis.¹¹⁷ It is likely that this had a significant impact on Kenya's decision to intervene. It is in Kenya's interest to have a stable neighbor that is able to accommodate its own citizens and not be a burden to its neighboring countries, as Somalia has been to the Horn.

2.7. *Jus in Bello* (whilst in war).

The *Jus in Bello* aspect of the Just War Theory addresses how nations and states that initiate military intervention, in this case Kenya, should act while in war. The *Jus in Bello* piece of the theory regulates and provides an ethical framework for judging whether actions whilst in war are ethical or unethical. One of the fundamental aspects of the *Jus in Bello* theory is that the actions taken by Kenya as a state initiating the war is in actual sense proportional and non-combatants are immune from attack.¹¹⁸

The Kenyan intervention in Somalia is a relatively new conflict, and little is known in regard to its war practices. As the intervention progresses, whether it has complied with *jus in Bello* will become much clearer and measurable. The involvement in Somalia was partly motivated by a desire to inoculate North Eastern Province from the chaos across its border, ease a huge refugee burden and curtail the radical influence of Al-Shabaab, but the unintended consequences may prove destabilizing. The venture could reopen old wounds, foment new inter-clan discord, radicalize Kenyan Somalis and undermine recent social, economic and political advances. The North Eastern Province is now the soft underbelly in the war against Al-Shabaab. New evidence suggests the radical Islamist movement is intent on destabilizing the province, and part of its

¹¹⁷ Downie, R., "Why did Kenya invade Somalia?" Available from: <http://globalpublicsquare.blogs.cnn.com/2011/11/05/why-did-kenya-invade_Somalia/> [Accessed 18 October 2013], 2012.

¹¹⁸ Calhoun, L., "The Metaethical Paradox of Just War Theory." *Ethical Theory and Moral Practice* 4 no. 1 (Spring): 41-58. <<http://www.jstor.org/stable/27504167>> (accessed September 16, 2013). 2001.

strategy is to outflank the KDF and wage a low-intensity guerrilla campaign there and in other areas behind Kenyan lines. A string of deadly grenade attacks in Garissa and elsewhere, initially dismissed as the work of local malcontents, now is seen to have a pattern.¹¹⁹ Most of the venues targeted have been bars frequented by government and security officials and poorly-defended government outposts. Furthermore, the intervention taps into deep-seated Kenyan fears of Somali encroachment and corresponding Somali qualms that Kenya seeks to assert control over territory that was once part of colonial Kenya. Al-Shabaab is trying to exploit Kenyan-Somali grievances against Nairobi and making pan-Somali appeals, although without much apparent success to date. For Kenya's venture to have a positive outcome, its leadership will need to define its goals and exit strategy more clearly, as well as work effectively with international partners to facilitate reconciliation and the development of effective local government mechanisms in the areas of Somalia where its forces are active, as part of a larger commitment to ending Somalia's conflicts and restoring stability to the region.

2.8. *Jus Post Bellum* (After the Conclusion of the War)

The *jus post bellum* portion of the just war theory is the last stage of the morality metric. During the *jus post bellum* stage, the intervening state is required to provide a restoration of a just order.¹²⁰ During the *jus post bellum* stage, Kenya will be required to help Somalia ensure that a solid, effective government is installed, the breakdown in society has been overcome, and overall order is imparted. Given the failures of previous interventions held in Somalia, the success or failure of Kenya's ability to complete *jus post bellum* will be one of the most telling ways to ultimately determine if the intervention was fully moral.

¹¹⁹ Menkhaus, K., "After the Kenyan Intervention in Somalia." *The Center for American Progress and the Enough Project*, Publication. Washington, p. 78, 2012.

¹²⁰ Amstutz, M., "International Ethics," *Concepts, Theories and Cases in Global Politics*. 3rd ed. Lanham: Rowman & Littlefield Publishers, Inc, 2008.

Somalia has been invaded on numerous occasions, with none of the incursions resulting in *jus post bellum* successfully. What seems to be a common theme is: intervening forces enter, there is a stalemate, and the intervening forces decide to leave. This is likely why, for the last two decades, Somalia has been at a standstill politically, economically and developmentally. Only time will tell if the Kenyans are successful in fully completing the *jus post bellum* stage of moral and just war. The implementation of new order is now in top gear and with the help of international communities, Kenya is expected to fulfill its *jus post bellum* objective. It is in Kenya's interests if only to ease the influx of Somali refugees. For the sake of Somalis, the East African region and the international community at large, it is in the best interest of everyone if the just post bellum stage is fulfilled in its entirety to prevent further regression of the Somali state and repeated failed interventions.

2.9. Chapter Summary – The Right Intention for Intervention

The right intention, contrary to the just-case intention, for going to war is an aspect which cannot normally be substantiated with any legally useful evidence, and as such is excluded from international law as a requirement.¹²¹ Stated simply, any intervening state or institution must have only the intentions of the stated objective at heart, rather than ulterior motives such as economic or territorial acquisition. In the Somalian case, a good example of this would be that of Kenya's continuing strategic interests within its borders and the entire HoA. In review of the Kenya's case, the security threats caused by the non-state actors, the Al-Shabaab called for serious consideration not for ulterior motives but to try and solve the grave violation of fundamental human rights. Israeli economic interests are much in evidence in Kenya, such as the WestGate shopping Mall. US has of recent strengthened the ties through the entire region of east

¹²¹ Khadiagala, G., "Eastern Africa," *Security and the legacy of fragility*. New York: International Peace Institute, 2011.

Africa for the good of its economic and strategic interests owing the new findings of oil and natural gas all along the coast of East Africa. For these reasons therefore, Kenya has benefited from the support of such partners to solve its real problems i.e. to weed out the Al-Shabaab terror group.

Given the Kenya invasion in 2011 to pursue the Al-Shabaab mainly on security concerns within its borders which directly affects its economy, increased alarm about chronic instability within and without borders of Somalia, and the aforesaid pressing concerns, it stands to reason that Kenya did not have other options within its disposal but to take a leading role in humanitarian intervention through the use of hard power under the aegis of Right to Protect.¹²² In order for some semblance of right intention to be assured in a deployment to Somalia, other neighbouring leading countries such as Uganda, Burundi and Ethiopia took central role in securing part of the Somalia through AU approval. The current criterion is ultimately justified for Kenya even though it seems outdated in modern international law.

Moreover, it is fundamental for Kenya to literally understand that the elimination of al-Shabaab from Somalia is not going to mean the end of the threat of terrorism within its own borders. However, at this point it is important for Somalia to focus on national rebuilding and restructuring and for Kenya and other neighbours in the region to support the new administrative government in achieving this during and after the military intervention. The stability and development of Somalia will help create an environment where both Kenya and Somalia can co-exist peacefully as neighbours, resulting in more peaceful relations in the region irrespective of the war. Furthermore, tourism is critical to Kenya and hence a stable Somalia would be in its strategic priorities. Kenya has built itself into a regional economic powerhouse, and a serious

¹²² International Crisis Group., The Kenyan military intervention in Somalia. op cit., 2012.

threat to that prosperity would have to be countered at all costs. In this connection therefore, Kenya is determined to keep Al-Shabaab at arm's length from its border by carving out a buffer zone inside Somalia, Jubaland.

In analyzing the factors that influence humanitarian intervention by use of hard power, the chapter has established that there was moral justification to the fact that the atrocities committed by the dreaded militia greatly influenced the humanitarian intervention in pursuit of right to protect. The moral and ethical and to some extent legal arguments provide the broad scope for taking action. Sovereignty in and of itself should, at the very least, no longer shield perpetrators from punitive measures. Measures such as sanctions have been useful in putting pressure on rogue states but not the case in Somalia. Nevertheless, the coercive military was justified because the other measures had systemically failed. This was glaringly exemplified in Somalia, where repeated failed efforts (soft power) were made to deal with the disaster without fighting against its perpetrators, the Al-Shabaab. The study therefore qualifies its hypothetical point of view that normative change from humanitarian intervention to right to protect is efficient and effective measure for managing conflicts of Somalia's nature. Considering the fact that the intervention in Somalia was undertaken due to pressing issues aforementioned in the chapter, the selectivity of intervention is likely to occur in the future, meaning that states would not intervene in humanitarian crises if their concerns if there is room for diplomatic solutions and national interests are not at stake. In other words, realism continues to enjoy greater explanatory power for humanitarian intervention than liberalism.

CHAPTER THREE

KENYA'S GEOSTRATEGIC INTERESTS THAT LED TO MILITARY INTERVENTION IN SOMALIA

3.0. Introduction

Kenya's military approach to Somalia was long overdue and despite a shaky and expensive start, it is broadly considered to have been successful to date. Al-Shabaab has been severely weakened, the key port of Kismayo has been liberated and held, and Kenya has gained influence in a key area of strategic importance to its economy. Furthermore, while there has been a string of small-scale attacks on Kenyan soil, the expected blowback has not materialized (so far). The concern, therefore, is why does Kenya not seem to convert its material resources into political influence and act as a pivotal state in the region or at least show such willingness as others in the region seem to? In fact, occasionally Kenya seems to follow some of these countries, leading some to argue that Kenya's Foreign Policy strategies are a passive object of other countries, more so the intra-regional geo-strategic interests. Perhaps a radical departure was the incursion into Somalia to wage war on Al-Shabaab.¹²³ This was the unique decision the country has taken since independence to advance its national geostrategic interests. Nairobi seemed, for once, to be militarizing its Foreign Policy, signaling a sense of policy shift and a desire to align its security interests with its economic clout. In addition to U.S. involvement in Kenyan intervention in Somalia, and the state of Israel also have close ties with the government in Nairobi. Israeli economic interests are much in evidence in Kenya where tourism hotels and other businesses such as the Westgate shopping mall are owned by capitalists who are citizens of the Zionist state.

¹²³ Fengler, Wolfgang.. "What will 2013 look like for Kenya's economy?" blogs.worldbank.org, January 9th. <<http://blogs.worldbank.org/african/what-will-2013-look-like-for-kenya-s-economy>>, 2013

Developments in Kenya and throughout the entire region of East Africa must be viewed within the context of U.S. economic and strategic interests in partnership with its NATO allies and the state of Israel which eventually works to the advantage of Kenyan Economy. In recent years' new findings of oil and natural gas all along the coast of East Africa is of course a source of imperialist interests in the region.¹²⁴

At the same time flotillas of U.S. and European Union warships have been occupying the Gulf of Aden off the coast of Somalia for several years under the guise of fighting piracy. Underlying this occupation of the Gulf of Aden is the vast economic resources that are transported through this waterway which is one of the most lucrative in the world. With the region becoming a hydrocarbon province and a new frontier for oil and gas opportunities, it is apparent that there may potentially be game-changing scenarios in regional geopolitics and the question is; how should Kenya exercise its symbolic, economic, diplomatic and other methods of power, to make itself regionally and globally competitive based on its vision 2030?¹²⁵

Kenya as a country that has designs on being an important regional and continental player, needs strategic thinking around its foreign relations. While Kenya has outlined its Foreign Policy orientation towards several basic and universally recognized norms, it has however developed a clear national strategic narrative about its core geostrategic interests and an overarching strategy to pursue them by all means. Initially, Kenya's plan to enter Somalia was opposed by Washington and even Kampala. Ethiopia's premier Meles Zenawi was quoted in WikiLeaks doubting Kenya's tactical capacity to wrestle Al-Shabaab from her stronghold in Somalia's southern prefectures. Zenawi's misgivings were based on Ethiopia's failed 2006 military incursion into Somalia, and on Addis Ababa's fears that the support Kenya gives to transitional

¹²⁴ *The Kenyan Military Intervention in Somalia*. Publication. No.184. Nairobi, United Kingdom: International Crisis Group, pp 45-77, 2012.

¹²⁵ *Ibid*, p.79, 2012.

government forces in Jubaland may shift to the Oromo National Liberation Front (ONLF), a self-determination movement operating in Ethiopia's Ogaden region. Ethiopia has vast security interests in Somalia, some of which have led it into direct confrontation with Somalia (e.g. armed conflicts in 1964, 1977 and the intervention in 2006 and 2012). As important for understanding Ethiopia's strategic interest in Somalia is the Somali inhabited region of Ogaden. External mediation was therefore much needed to overcome this security dilemma. Ethiopia's motive for engagement in Somalia is mainly one of geopolitical self-interest rather than any deep benevolence towards Somalia. As the geopolitical landscape is reconfigured, such unilateral action risks undermining each-others interests.

Though the Jubaland Initiative evolved largely out of the public eye, it was not entirely a secret and a strategic mission. Its contents were the subject of diplomatic discussions in Washington, Addis Ababa, Kampala, Nairobi and even Mogadishu; discussions that turned up in U.S. diplomatic cables released by Wikileaks. What was not known was the timing, and just how events on the ground would propel Kenya's strategic Jubaland Initiative to become one piece in a coordinated international response to Somalia's instability.¹²⁶

Despite Zenawi's initial doubt, Kenyan officials prevailed upon the Ethiopian leader to remember the two countries' long-standing difficulties with their common neighbour. In 1964, Ethiopia and Kenya signed a binding defense pact solely in response to Somalia's claims to vast regions of the two countries. This pact has continuously been renewed in the last 40 years to reflect the changing tumultuous realities in the Horn of African region.

¹²⁶ McConnell, T., "Kenya troops aim to carve 'buffer zone' out of Somalia," *Global Post News*, 15 November. Available from: <<http://www.globalpost.com/dispatch/news/regions/africa/111115/kenya-jubaland>> (Accessed on 11 December 2013), 2011

Sources said Ethiopia's change of heart emanated out of envy and a bruised ego. As international support coalesced around the on-going military response, Kenya had positioned itself to gain a foothold in Somalia, and Nairobi was fast becoming Africa's preferred recipient of Washington's military aid in order to protect its foreign policy and eventually achieve the geostrategic goals. But because Somalia is very well geographically positioned, it has taken advantage of its position to plunder ships that come anywhere near the East African coast. Somalia boasts the longest coastline in Africa, with a strategic opening to the Gulf of Aden shipping route. The country also has a robust telecommunications industry; a growing livestock trade and money transfer companies that handle more than \$1 billion in remittance cash every year. This has in turn adversely impacted on the Kenyan economy/security as well as other East African economies and their securities, which are striving to have access to the sea to maintain robust trade relations with other Asiatic countries for the maintenance of a flourishing economy.

Kenya's Foreign Policy and geostrategic interests in the past reflected domestic issues and agendas and due to its inward looking nature, it did not as such enhance Kenya's image in the international arena. This was unlike neighbouring Tanzania whose Foreign Policy reflected a robust regional engagement and also a pan African outlook especially in regard to support to liberation struggles in Southern Africa and South Africa in particular. Kenya's disinterest in regional strategic thinking was often disguised as non-interference in the internal affairs of other states. In the wake of Kenya's incursion into Somalia, it has been argued that Kenya had shed its image and policy of non-interference for a more assertive approach to regional interests.¹²⁷ However, the incursion into Somalia does not necessarily represent a departure from the principle of good neighbourliness, but that the objective of national interests had exceeded the possibility of Kenya's soft power and non-interference in the internal affairs of its neighbours.

¹²⁷ International Crisis Group, The Kenyan Military Intervention in Somalia, [Africa Report](#), No. 184, February 2012.

Kenya has previously never been properly faced with sufficient challenge from outside of its international borders to require military force unlike its other east African neighbours some of who appear less powerful but have been more proactive militarily in the region.

In another line of thinking the governments in the region that have come to power through prolonged military struggles have had major problems demobilizing soldiers within their ranks and therefore, resort to military adventure as a way of postponing the challenge of demobilization. This may partly explain Uganda's involvement in the overthrow of the Habyarimana government in Rwanda and its military adventures in the Democratic Republic of Congo (DRC), Rwanda's involvement in the DRC and the conflicts between Ethiopia and Eritrea, and South Sudan-Sudan. Kenya has severally resisted the opportunity for similar adventures and cited a stand-off between Kenya and Uganda where Uganda's Idd Amin claimed that Uganda's international borders extended inside Kenya to a place called Naivasha.¹²⁸ This however did not degenerate into military confrontation because Kenya was not disposed towards adventurism or any national geostrategic interests. To illustrate further the differences in Foreign Policy approaches between Kenya and its neighbours as in the case of Kenya and Uganda's responses to the Sudan -South Sudan conflict differs considerably. While both countries were in solidarity with the Sudan People's Liberation Movement (SPLM) during the north-south conflict, Uganda supported SPLM more openly unlike Kenya which disguised its support in order to maintain engagement and relations with Khartoum because of economic interests, oil. This made it possible for Kenya to play the role of hosting the Comprehensive Peace Agreement (CPA) negotiations thus enabling to maintain strong trading ties in away Uganda could not. As to whether those who have engaged in military adventures in the region are ipso facto more influential remains debatable.

¹²⁸ Kamau, W., "Kenya and the war on terrorism," *Review of African Political Economy*, 33(107), pp. 133-141. 2006.

In the past, Kenya has not had many challenges that called for greater flexing of its muscles. National geostrategic interests had in the recent past significantly changed with Kenya's jostling for eminence as a leader in regional frontier markets, tourism and also because of Kenya's price of neighbouring failed state. This has resulted in Kenya's robust engagement in the region because of the changing geostrategic opportunities and interests. Kenya's intervention in Somalia followed a number of happenings that fuelled umbrage from sections of Kenyans. These included the recurrent raids by Ethiopian armed groups in Turkana with substantial slaughter of Kenyans and livestock theft over the past year, the standoff with Uganda over the Migingo Island in Lake Victoria, and with the last straw being the cross border abductions of foreigners both in Lamu and in Dadaab refugee camp, Kenya was forced to react with more robust approach to safeguard its economic interests and secure the ground to enable domestic and bilateral trade engagements to foster economic growth.¹²⁹ Thus a combination of developments forced a shift of policy in Nairobi. With the East and Horn of Africa region developing into a prospective hydrocarbon province, Kenya aspires to be the hub for the international investments in natural gas and petroleum resources. As a result, Kenya has been positioning herself to play a leadership role and this explains her intentions to open up of a second international seaport at Lamu and develop a number of infrastructure projects linking the Lamu port to South Sudan and Ethiopia. The disruptive pressures from Somalia have posed a direct challenge to law enforcement in Kenya and to its trade routes. The growing brazenness by extremist groups had increased fears of what impact it may breed among sections of Kenyan Muslims. Positioning herself as a lead frontier economy with new found resource endowment and rising investor attention, Kenya requires guaranteed peace at home and in its neighbourhood. Dealing with Al-Shabaab has, therefore, become more than involving in neighbours' business. It is imperative for Kenya's

¹²⁹ Ibid, pp. 24, 2011.

domestic stability and long-term investor confidence. The growing importance of regional stability to Kenya's economic projections has seen off the traditional route of benign disinterest and pacific posturing that characterized her regional behavior. The era of innocence had gone and Kenya had realized that leadership will sometimes have to be offered with a force of arms, hard power. The existence of a Kenyan Foreign Policy is characterized by summing up its key objectives as the protection of Kenya's sovereignty and territorial integrity, enhancement of regional peace and security, promotion of sub-regional and regional integration and advancement of Kenya's economic prosperity among others. Kenya's guiding principle is always the Country's national interest.¹³⁰

Kismayo is in effect Kenya's second port and the hub of profitable trade both legal and illicit that enriches both Al-Shabaab and Kenyan elites. Historic Lamu, just 60km south of the Somali border, is a popular tourist destination, and the proposed site for a huge new port and transport corridor nearby. They are believed to be potentially large and unexploited reserves of oil off the coast of Kismayo and possibly inland as well, in both North Eastern Province and southern Somalia. All this stimulates Somali fears of Kenya's intentions in southern Somalia. Kismayo port is the economic engine of southern Somalia. Although the port (and its hinterland) are inhabited by many different clans and social groups, three major Darood clans from the region, the Marehan, Ogaden and Harti, have regularly clashed over control. It is valuable because it is the inter-port for southern Somalia, as well as parts of Kenya and Ethiopia. It has also become the keystone of a large smuggling trade, in which goods landing in Somalia are moved across the region's borders. For example, sugar is brought from Brazil or Pakistan via Dubai to Kismayo, where it is trucked to Wajir, Mandera, Dadaab and Garissa, as well as Nairobi, Mombasa and Isiolo. Of longer-term economic interest, the government plans to build just to the south a multi-

¹³⁰ International Crisis Group, The Kenyan military intervention in Somalia. op cit, pp 45, 2012.

billion-dollar port to serve all East Africa that will include pipelines, rail lines, highways, airports, an oil refinery and extra deep berths for next generation supertankers.¹³¹

3.1. The Multi-billion LAPSET Project

LAPSSET is the flagship project of a broader program called Kenya Vision 2030, which aims to transform Kenya into an industrialized nation by the year 2030. The project passes along northern Kenya near the borders of Somalia, Ethiopia and Southern Sudan. Visualized in the LAPSSET is a 32-berth state-of-the-art port at Lamu, an oil refinery, a 1,620-kilometer railway line to Southern Sudan with a branch line to Ethiopia, a 1,300-kilometer oil pipeline linking Lamu with the oil fields of Southern Sudan, and a 1,720-kilometer superhighway connecting to Ethiopia and Southern Sudan. As part of the LAPSSET project, Kenya also plans to upgrade three resort cities, with new international airports at Lamu, Isiolo and Lokichogio. When complete, the Lamu port will be the largest port on the African continent. The LAPSSET project is expected to pass through Garissa, in North Eastern Province, before continuing to Ethiopia and South Sudan. To build it, Kenya needs more than \$20 billion in foreign investment. Many Somalis suspect that Kenya's recent attempts to demarcate the borders of the two countries' offshore Exclusive Economic Zones are intended to secure rights to offshore oil deposits.¹³²

A closer look at Kenya's Jubaland Initiative supports Shill's assertions. The country's largest development project, dubbed LAPSSET (Lamu Port Southern Sudan Ethiopia Transport) Corridor, puts \$25 billion dollar into linking sleepy Lamu Island in the western Indian Ocean shelf to the oilfields of Southern Sudan, and to open up the trade route into the emerging market

¹³¹ Menkhaus, K., "After the Kenyan Intervention in Somalia." *The Center for American Progress and the Enough Project*, Publication. Washington, pp.56, 2012.

¹³² Adar, G., "Kenya-Somalia Relations," *Kenyan foreign policy behaviour towards Somalia*, Africa Today, 41 (4), pp. 75-76. 2012.

of Ethiopia. A stable autonomous Jubaland acting at the behest of Kenya guarantees the security of this multi-billion dollar undertaking, and other geo-strategic interests.¹³³

In disrupting Al Shabaab's terror links and curtailing piracy, Kenya, Ethiopia and Uganda are lashing their own economic interests to the larger anti-terrorism proxy war, with the support of the United States and the European Union. But the ultimate goal of a united Somalia, complete with a stable popularly elected central government, is not far from reality.¹³⁴

3.2. Kenya's Strategic Plan

Kenya's strategic plan 2009-2013 formed the basis of Kenya's priorities in its foreign mandate which included promoting economic development and prosperity through regional cooperation and strategic partnerships by increasing capital in-flow, harnessing existing sources of Foreign Direct Investments (FDI) while attracting new sources and enhancing technological advancement through appropriate and reasonable technology. For this case therefore, Kenya's future is tied to the stability and development growth of its neighbors. It achieves this by enhancing peace, security and shared regional prosperity and engaging in preventative diplomacy; combating international terrorism, organized crime and small arms proliferation; and supporting post-conflict reconstruction and development.¹³⁵

Kenya's role in the region has been robust and this is seen through the multilateral engagements with regional bodies such as chairing the International Conference of the Great Lakes Region (ICGLR) for the last three years. Kenya is also the current chair of the East African Community (EAC) and is keen to fast track the EAC integration process (Customs Union, Common Market, Monetary Union and Political Federation). Kenya, has also taken a leading role in the activities

¹³³ Ibid, pp78, 2012.

¹³⁴ Mesfin, B., "The Horn of Africa Security Complex", in *Regional Security in the Post-Cold War Horn of Africa* Addis Ababa: Institute for Security Studies, 2011.

¹³⁵ Fengler, W., "What will 2013 look like for Kenya's economy?" [blogs.worldbank.org](http://blogs.worldbank.org/africacan/what-will-2013-look-like-for-kenya-s-economy), January 9th. <<http://blogs.worldbank.org/africacan/what-will-2013-look-like-for-kenya-s-economy>>, pp56, 2013.

of the Intergovernmental Authority on Development (IGAD) to, among others, address the myriad challenges facing the sub-region particularly the Somali and South Sudan conflicts respectively. Kenya's intervention in Somalia was as a result of the increased scale of attacks inside the Kenyan territory. This significantly affected the security and safety of Kenyans and foreign nationals who forms part of Kenya's key income. The attacks posed a serious threat to the Kenya's economy and that the activities of the Al-Shabaab militants had tested Kenya's patience and stretched it too far. Kenya's intervention was a well thought out strategy on how to pursue the Al-Shabaab group inside southern Somalia to degrade their capacity to threaten Kenya's national economic interests. Kenya's second goal was to incapacitate Al-Shabaab and Al-Qaida elements in south and central Somalia in order permit the Transitional Federal Government (TFG) to establish effective control over the entire Somali territory. The strategic threats posed by the Somali conflict and extremist elements were a serious concern to Kenya and these included the fact that South and Central Somalia were a safe haven for local and international terrorists, and Al-Shabaab and Al Qaeda were recruiting to their rank and file from Kenya and the region posing a major security threat to Kenya. In addition, the continued influx of refugees to camps in Kenya was causing serious humanitarian, security and environmental challenges and the issue is compounded by the proliferation of small arms and light weapons, drugs and human trafficking.

Kenya's objectives in intervening in Somalia were realistic and achievable. *Operation Linda Nchi* succeeded in raising international attention on the situation in Somalia and also helped to displace and scatter al Shabaab from large parts of south and central Somalia and drastically reduced their capacity to attack Kenya. Piracy incidences along the Kenyan Coast, have also reduced by 30 to 40% as a result of Kenya's military activities. Kenyan troops were rehatting to AMISOM because the Somalia conflict was not just a Kenyan concern but also a regional and

international one. By joining AMISOM Kenya was responding to an appeal from African Union (AU) Peace and Security Council to create a regional synergy that would enhance effectiveness in stabilizing Somalia to guard regional economic interests.¹³⁶

The military strategy may have not been sufficient and might not be the ultimate solution to the unpredictable and volatile environment in Somalia but the strategy goes hand in hand with an overarching political strategy that will support the creation of effective governance structures at the local and regional levels to foster economic growth particularly in Kenya. The use of hard power does not necessarily mean a shift in Kenya's Foreign Policy as this may be applied concurrently with Kenya's soft power. Kenya's role in the socio-economic development of the region is clear and that it continues to assert itself through active participation in the activities of EAC, IGAD, ICGLC and the common Market for East and Southern Africa (COMESA).

3.3. Conclusion

Kenya's engagement with the world is shifting as part of a general trajectory towards more strategic, self-interested and confident policymaking. Peacekeeping in Africa in general, moreso among its immediate neighbours, is at a critical juncture, that is, it is increasingly required to respond to ever-more-complex threats with multifaceted and holistic peacekeeping, peacebuilding responses and geostrategic interests. Kenya's engagement in Somalia was perhaps an inevitable part of this general shift. While it clearly represents a break from the past, it is not illustrative of a more expansionist foreign, economic and political policies or agenda than before. However the Somalia case is deemed unique. The intervention is part of a pragmatic approach to foreign policy that was adopted by the Kibaki government (2002-13), following the more introspective and passive Moi years (1978-2002). Kenya's willingness to engage in complex future peace operations, particularly in its backyard, was almost certainly influenced by

¹³⁶ Solomon, H., & Alexander, H., "Factors Responsible for Al Shabaab's Losses in Somalia," *Combating Terrorism*, Center Sentinel, pp. 120, 2012.

economic and political transformations, and national security. As a test case, therefore, for a more robust and less risk-averse approach to maintaining regional security and economic prosperity, it is of the utmost importance to Kenya's future foreign policy trajectory. For now, the world is betting that a stable and secure Somalia will leap to economic and socio-political progress. The Nairobi Securities Exchange has so far signed a memorandum of understanding with the Somalia Stock Exchange Investment Corporation to establish the country's first stock exchange business to boost investment and trade. Somalia applied to join the East African Community, a vibrant trading bloc whose Members include Kenya, Tanzania, Uganda, Rwanda and Burundi. Since it is an important factor in the region's economic progress, it will be interesting to watch how Somalia's application to join the (East African) community evolves with time.

CHAPTER FOUR

**UNDERLYING IMPEDIMENTS TO THE USE OF FORCE AND ANALYSIS OF
OPPOSING VIEWS TO JUST WAR THEORY**

4.0. Introduction

From the analysis of the components of just war theory, it is clear that Kenya did have reason or cause to intervene in Somalia and that it did so within the confines of the just war theory metric. Kenya puts forward a variety of reasons, linked to the insecurity caused by al-Shabaab in the Horn of Africa region, to justify its military intervention in Somalia. As well as having concerns over border security, Kenya maintains that al-Shabaab's frequent kidnappings and killings of tourists in its coastal and north-eastern provinces had become a threat to trade and tourism, both of which are vital sectors of Kenya's economy. Kenya is believed to be a home to thousands of vital foreign nationals and expatriates working for multinational companies for example the US embassy, United Nations, and other international nonprofit groups. Beyond that, tens of thousands tourists come to Kenya for safaris and beach vacations every year and so most of the powerful states such as US sometimes issue travel bans. Even so, the intervention did not go without criticism and disapproval from key members of the international community and leaders of religious groups. This chapter will briefly highlight the nexus between right to protect and state sovereignty and analyse, identify and outline some of the impediments to the use of force, opposing arguments of just war theory, the incongruities between just war theory and religious teachings, pinpoint the likely challenges that the Kenyan's may encounter in the future, and explain some of the failures thus far in the Kenyan intervention.

4.1. Nexus between Right to Protect and State Sovereignty

Article 51 for instance authorizes use of force in self-defence where the attack into a State can be attributed to the State where the attack emanates from. Clearly, since Al-Shabaab was not acting on behalf of or together with the former Transitional Federal Government of Somalia, Article 51 of the UN Charter did not provide a basis for the use of force against what was essentially a non-State entity but because of the nature of the terror group, Al-Shabaab, which had actually overpowered several interim governments. Kenya had no other option but to forcefully intervene hence subjecting the Security Council's resolution in limbo. Naturally, mounting a military intervention should not be the first option when deciding on how to resolve a conflict. Intervention according to *jus ad bellum* is only permissible when all other plausible, peaceful measures have been taken.¹³⁷ Under the famous Lotus Case, it was argued that states are entitled to engage in any action that is not specifically barred by international law. In expounding this, states are allowed to use force against non-state actors, if that use of force does not in any way infringe on the sovereignty of any other state.¹³⁸

4.2. Overview of the Right to Self-defence Doctrine

Expanding the right of self-defence to include attacks by irregular forces whose conduct is not attributable to a State is inconsistent with earlier Security Council criticisms of self-defence, especially by occupying countries. Members of the Security Council for instance disapproved Israel's claim in the 1960s and 70s that the call to arms or the implementation of force was justifiable as a response to the internal domestic instability in Lebanon, and its inability to curb and prevent terrorist attacks originating from its soil to Israel. This is consistent with the

¹³⁷ Hull, C. & Svensson, E. "African Union Mission in Somalia (AMISOM). Exemplifying African Union Peacekeeping Challenges." *Swedish Defence Research Agency*. Stockholm, Sweden, 2008.

¹³⁸ *Ibid*, pp 88, 2008.

International Court of Justice's opinion in the 2005 Congo versus Uganda case. Although the court specifically declined to address the permissibility of a right to self-defence, even against large-scale attacks by irregular forces, it nevertheless found Uganda not only to have occupied parts of Congolese territory but to have used force in violation of the prohibition of the use of force contained in Article 2(4) of the Charter.¹³⁹ Since Uganda had argued that it had suffered attacks from irregular forces which it sought to forcibly repulse, therefore Congo vs. Uganda ought to be considered as affirming the prohibition of the use of force in the absence of an armed attack attributable to a State.

The refusal by the court to expand the right of self-defence to include cases involving attacks by irregular forces that cannot be attributed to a State is an acknowledgment that the acceptance of an expanded right of self-defence would need more than its judicial imprimatur owing the dynamic nature of international crimes. Indeed, while another prior important International Court of Justice opinion, Nicaragua vs. United States affirmed self-defence as an inherent right, this “must” ultimately “be regarded as limited and legitimated by law.”¹⁴⁰

4.3. The Law on the use of Force

Except in the case of self-defence or as mandated by the authority of the Security Council, Article 2(4) of the UN Charter prohibits the use of force. Article 2(4) requires that “(all) members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent

¹³⁹ UN Charter, Article 2(4), 1945.

¹⁴⁰ Sahnoun, M., “Somalia,” *The Missed Opportunities*, The United Institute of Peace, Washington, pp 100, 1994.

with the Purposes of the United Nations.”¹⁴¹ The term “war” is not included within this prohibition. Rather, all uses of force whether equated to war or lesser actions are prohibited.¹⁴²

Under Article 51 for instance, the use of force is in self-defence triggered by the existence of an armed conflict or an armed attack attributable to a State. This in essence justifies the Kenya’s decision to use force because of the existence of the dreaded terrorist group, the Al-Shabaab which has been waging terror attacks on Kenyan soil, within Somalia territory, and in Uganda. With the knowledge of a growing radicalization of youth in its soil, Kenya required urgent intervention. However, under the same Article, lesser-isolated incidents, including minor quarrels across territorial boundaries, would not suffice as an attack or armed conflict and thus do not trigger the right of self-defence.

Unfortunately, in the case of Somalia, many of the avenues of peaceful coercion open in interstate conflict, such as diplomacy, negotiations, and sanctions, simply did and do not exist and cannot be feasibly employed. This is in no small measure due to the fact that Somalia is essentially a collapsed state.¹⁴³ While the TFG, (which was previously an internationally recognized government of the Republic of Somalia until 20 August 2012, and whose tenure officially ended ushering in the Federal Government of Somalia (FGS)) does enjoy international recognition as the legitimate government of Somalia, the reality is that precious little of Somalia is effectively governed by anyone, let alone the Federal Government of Somalia.

That a state of necessity under certain circumstances may be invoked in order to preclude wrongfulness of breaching an international obligation is undoubtedly part of contemporary

¹⁴¹ UN Charter, Article 2(4), 1945.

¹⁴² Hollis, D., United Nations Convention on Law of the Sea (UNCLOS 1982). Retrieved from <http://www.eoearth.org/view/article/156775>, 2013.

¹⁴³ *The Kenyan Military Intervention in Somalia*, Publication. No.184. Nairobi, International Crisis Group, *op. cit.*, United Kingdom, pp. i–ii., 2012.

international law. The justification is, however, reserved for extraordinary cases such as the case of Kenya versus Somalia, something the International Law Commission (ILC) in part emphasized by deliberately phrasing the provision in Article 25 of the Draft Articles on state right in the negative.¹⁴⁴

When considering whether the necessity excuse can be invoked in case of use of force against terrorists, several complications arise: first, whether force can be employed with reference to necessity. Ago and the ILC found, in 1980, that limited uses of force probably were not prohibited by a peremptory norm and, hence, compatible with the necessity excuse. Indications are that today, all use of force is prohibited by a *jus cogens* norm, although this is not entirely clear. The Al-Shabaab terrorist threat would, next, have to fulfill the cumulative conditions in Draft Article 25. One problem, which has not been addressed, is the balancing of interests where the geostrategic interest behind the obligation breach must "obviously be inferior to" the interest of the state invoking necessity, this case Kenya. It can be argued that the essential geostrategic interest under threat must be very substantial indeed in order to outweigh the provisions of the Article, which Kenyan actually demonstrated to the world.

Kenya invoked Article 51 of the UN Charter as a legal basis for these actions and pledged that all measures taken in the exercise of the right of self-defence was to be reported to the Security Council. Additionally, it invoked the right to hot pursuit, although it is not clear whether it was regarded as a part of the right to self-defence or as a self-standing right. The announcement came after a number of incidents which involved the incursions of Al-Shabaab elements as deep as 120km inside Kenyan territory, and abductions of at several foreign nationals putting tourism sector at stake.

¹⁴⁴ Ibid, pp. iii, 2012.

In explaining its intentions to send its military force into Somali territory, the Government of Kenya also invoked the right to hot pursuit. The right to hot pursuit on land is highly controversial and is generally rejected. In its original form, it is an institute of the law of the sea and it is regulated by Article 111 of the UN Law of the Sea Convention. The rule entails that hot pursuit must be uninterrupted and must commence while the offending ship is within the internal waters of the offended state.¹⁴⁵ Kenya had the option to invoke this right in the abduction cases of the French and British tourists in Lamu. In these cases, the Al-Shabaab operatives took the tourists from the beach on speed boats and headed towards international waters and further to Somalia. If the Kenyan navy started its chase while the offenders were still in its territorial waters and if it caught them while on the high seas, the claim of hot pursuit would be legally valid, but it was too late for that then. In any event, the announced operations were a must to be performed by land to include incursion onto Somali territory. Based on the circumstances, hot pursuit seemed to serve the purpose and the dire need for intervention.

In conclusion, the use of force as a measure of last resort was therefore justifiable both on legal and moral grounds. The Kenyan government invoked the relevant UN Articles i.e. Article 51, thus fulfilling the quest of the study. The nexus between Kenya's right to protect and state sovereignty of Somalia manages the relationship between Somalia and other members of the international community. In the case of the then Somalia failed state a major contradiction arose when state failure had been perceived as a loss of internal sovereignty but the state's external sovereignty notionally remained unaffected. However, in practice, Somalia's sovereignty was a must to be compromised by outside actors, this case Kenya, that the issue of UN Charter sovereignty becomes problematic. This raised the issue of Kenya's responsibility to the failed

¹⁴⁵ Hollis, D., United Nations Convention on Law of the Sea (UNCLOS 1982). Retrieved from <http://www.eoearth.org/view/article/156775>, 2013.

state. The normative change from humanitarian intervention necessitated coercive measure i.e. military action, as Somalia's case was extreme. Any action can be debated in both moral and legal terms. In this context, the Right to Protect moves the argument from the "right to intervention" to one about the international community's "right to protect" to manage the unprecedented conflicts that other diplomatic measures have failed.

4.4. Opposing Views of Just War Theory

4.4.1. Pacifism and the Right to Protect

Pacifism is one of the most major arguments against the just-war theory tradition. Under the Pacifism framework, violence as a means of war is essentially never justified or acceptable as moral, even in cases of severe humanitarian crisis. The pacifist approach prohibits the threat and use of force because, in accordance with a rule-based ethic, it assumes that violence can never be a morally legitimate means to provide national security or to secure moral goods such as human rights, international justice and peace.¹⁴⁶

Under the Pacifist outline, pure pacifists would deem the armed Kenyan intervention in Somalia as unethical and immoral. This is a sharp contrast from just war theory which holds that war can be ethical under certain circumstances if specific criteria are met (*jus ad bellum*, *jus in bello* and *jus post bellum*).¹⁴⁷ However, the pacifist argument supposes that this is not moral and even if there is just cause it is absolutely immoral to engage in any violence or use force.¹⁴⁸ Under pacifism the value of nonviolence and peace is higher than any other, so nations should never use force under any circumstances.

¹⁴⁶ Amstutz, M., "International Ethics:" *Concepts, Theories and Cases in Global Politics*. 3rd ed. Lanham: Rowman & Littlefield Publishers, Inc. pp 110, 2008.

¹⁴⁷ Guilfoyle, D., "The Legal Challenges in Fighting Piracy." In *The International Response to Somali Piracy: Challenges and Opportunities*, pp 122-125, 2010.

¹⁴⁸ Ibid, pp 124, 2010.

In lieu of force, under the pacifist model states are encouraged to use non-violent measures to address conflict and crises. With violence and force out of the question, it becomes essential that diplomacy and non-violent measures are undertaken and enforced. In the case of Kenya and Somalia, pacifists would likely argue that it was immoral for Kenya to enter Somalia with the use of force, as it is not ethical to use force under the pacifism approach. As it is apparent that the Kenyan-Somali conflict is multi-layered and complicated in nature, the use of force was in offing and therefore pacifist theory could have not applied at such a critical juncture.

Even with the violent nature of piracy and the destruction that it poses to Kenyan national security and safety, under pacifism engaging in force to address this issue would be immoral. Rather, pacifists would argue that Kenyan authorities should engage in non-violent measures to address the issue which to Kenya's point of view was a far-fetched and so it needed to act promptly and intervene through the use of force owing the atrocities committed by and to weed out the dreaded and extremist group of the Al-Shabaab elements.

The main issue which this poses is that the pacifists assume that the highest priorities are life and peace and does not address how sometimes using force in extreme situations, such as Somalia, can actually preserve the very ideals that pacifists claim to defend.¹⁴⁹ Pacifism is also somewhat problematic because the pacifism structure works best when engaging two sovereign states with central and effective governments. In the case of Somalia, it has an ineffective government, and many of the issues lie with non-state actors such as terrorists, clans, pirates or rogue states that are not legitimate and are destructive to global security and or its people. Traditional means of nonviolence such as sanctions, diplomatic engagements, and other universally accepted measures under UN Charter would be inappropriate for such actors. Also, when such actors are using

¹⁴⁹ Crisis Group Interviews, diplomats, KDF officers, Nairobi, October-November, 2011.

violence as their means, it becomes increasingly difficult to preserve the notion of non-violence, as states need to defend themselves against such actors.

While Pacifists may argue that the Kenyan intervention was immoral, it would be unrealistic and ineffective for Kenya to not use force as a means to intervene in Somalia due to the nature of the threats at hand and the nature of the actors involved.

4.4.2. The Aspect of Amoral Realism

Amoral realism is a somewhat more liberal perspective on the use of force, with pacifism being more conservative and just war being in the middle between pacifism and the amoral realism perspective. While pacifism suggests that war and the use of force is never an option, amoral realism not only suggests that it is moral and acceptable, but also proposes that there are no limitations to war whatsoever, and that the notion of morality does not constrain war.¹⁵⁰ This is a somewhat extreme perception of war in comparison with the pacifist and just-war theory perspective, in the sense that it thematically suggests that the morality is silent in wartime, denying that moral limits exist on the conduct of war.¹⁵¹ The *Jus in Bello* aspect of just war theory has a direct conflict with this premise, as *Jus in Bello* proposes that there are constraints and regulations regarding wartime behavior and morality regarding such behavior.

Under the amoral realism argument, is the cynical view.¹⁵² Under the cynical view, war is allowed and there are no moral limitations because they are seen as subjective rather than objective and therefore are irrelevant because according to the realists' point of view, it is believed that overall goal and objective of war is to conquer and win regardless of the means.¹⁵³

¹⁵⁰ Amstutz, M., "International Ethics: Concepts," *Theories and Cases in Global Politics*. 3rd ed. Lanham: Rowman & Littlefield Publishers, Inc. pp 111, 2008.

¹⁵¹ Ibid, pp 111, 2008.

¹⁵² Ibid, pp 111, 2008.

¹⁵³ Ibid, pp 111, 2008.

Relating amoral realism to the Kenyan intervention, amoral realists would likely be divided over whether or not the intervention was moral and legitimate in the eyes of ethicists. Cynical amoral realists would likely view the intervention as moral because they do not believe in any moral limits on war and the use of force. If the Kenyans believed that war was in their interest, which they actually did, under the cynical perspective of amoral realism, they would be able to enter into Somalia with force without any obligations to morals or ethics. Following the belief of cynical amoral realism, the ultimate goal of the Kenyans would be to win and be successful in the intervention despite what its original intent or reasons for pursuing the intervention may have been. If the Kenyan intentions were purely altruistic and unselfish in nature, in that they were acting on behalf of the interest of Somalia and Somalia only, it may be admirable, but it would be irrelevant in determining its morality, as there are no constraints under the cynical perspective of amoral realism. If the Kenyan intentions were mixed, being somewhat altruistic and somewhat self-interested, that too would be irrelevant, as morals have no place in the decision.

4.4.3. The Perspective of the Holy War

The holy war perspective is distinguished by its affiliation with religion and the so called divine will.¹⁵⁴ This perspective too, does not have moral limitations in regards to the use of force because of its association with the divine will and ultimate prevailing of religious values and the religion overall.

If the Kenyan intervention is to be measured against the holy war position, it could be seen as immoral depending on the religious sect or group. For instance, in Somalia, it is has been widely known and understood that one of the goals of the infamous Islamic extremist groups, such as

¹⁵⁴ Amstutz, M., "International Ethics," *Concepts, Theories and Cases in Global Politics*. 3rd ed. Lanham: Rowman & Littlefield Publishers, Inc. pp 111 - 112, 2008.

the Al-Shabaab is to instill Sharia law (Islamic law) and to push Islamic values and extremism into the mainstream, general society. The Al-Shabaab is known to have coordinated many terrorist attacks in Somalia, Uganda and Kenya, piracy along the Indian Ocean and has connections to Al-Qaeda and is even connected and coordinating with terrorists in Yemen, Syria, and Mali among others. Al Hijra (Al-Shabaab affiliate in Kenya) on its part has been implicated in a series of bombings in Nairobi, Mombasa as well as the recruitment of youths in Kenya to join Al-Shabaab in Somalia. The group allegedly took part in the bombing of the Westgate Mall in Nairobi in 2013. In the view of the holy war perspective, morals in regards to the use of force and limitations on wartime behavior are irrelevant as the ultimate goal is to fight on behalf of the religion, even if undesirable deaths or destruction could occur. In this case, it is possible that the Al-Shabaab could view the Kenyan intervention as a direct threat to Islam or their goal of instilling Sharia law in Somalia. In contrast to this school of thought, Kenya believes that youth radicalization is slowly cropping to its soil and such must be countered with full force through application of hard power doctrine.

4.4.4. The Legalist Perspective and Point of View

Another method of determining ethics and morality in regard to war is the legalist paradigm.¹⁵⁵ The legalist perspective or paradigm is somewhat similar to the pacifist point of view in that intervention or invading another sovereign state is immoral and unacceptable, but not because it prioritizes peace and non-violence as an ethical priority. Rather, it prioritizes the notion of the state and states' legal right to sovereignty, and values international order within the context of conflicting nations.

¹⁵⁵ Walzer, M., *Just and Unjust Wars*, 3rd Ed., Perseus Books Group New York, pp 118, 1977.

Under the legalist perspective, Michael Walzer argues that there is a fundamental observation that is particularly salient to interventions notably interventions which are based on humanitarian reasons. Moreover, Walzer further explores legalist paradigm and notes that though states are founded for the sake of life and liberty, they cannot be challenged in the name of life and liberty by any other states.¹⁵⁶ This directly contradicts interventions based solely human rights or other humanitarian bases as far as Kenya's intervention is concerned.

The legalist paradigm also proposes that generally the use of force is only to be used in defense against other parties when they have exercised the use of force, or there is reason to believe that it is a possible threat and if it is used in any other circumstance it is viewed as criminal.¹⁵⁷ This is expressed when Walter explains that any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act.¹⁵⁸

Though it is clear that the legalist perspective values these beliefs, it does somewhat lend itself to compromise and interpretation in a way that the pacifism perspective does not. Under the legalist paradigm, states do have the right to intervene in certain instances (as in just war theory) if certain criteria are met: there is a viable threat or if aggression or force has been used against that particular state. This is demonstrated when Walzer explains that nothing but aggression can actually justify war. This is in regards to the legalist point of view.

In applying the legalist perspective to the humanitarian intervention in Kenya, it is unclear and somewhat uncertain if legalists likely would approve the intervention as being morally acceptable based on the facts that necessitated the use of force. While it is clear that acts of

¹⁵⁶ Ibid, pp 61, 1977

¹⁵⁷ Walzer, M., "*Just and Unjust Wars*," 3rd Ed., Perseus Books Group New York, pp 61, 1977.

¹⁵⁸ Ibid, pp 62, 1977.

aggression have been taken against Kenya on several occasions through scores of terrorist attacks, piracy incidents in the Indian Ocean and along Kenya's coastline among others, it is not clear whether such attacks should be attributed to the Somali state itself or to actors (terrorists or pirates) who are not necessarily state-sponsored but are able to conduct such activities due to the lack of state or governance. This is not only a complicated notion but also a dilemma that seem to be a recurring themes as far as morality and state actors are concern. Moving forward, it will be critical that players re-think and re-evaluate the diplomacy concept and even morality in a new age and time where the emphasis on the state is becoming devalued and the emphases is more on individual actors or groups are more emphasized based on the circumstances under which a state decides to intervene.

Ultimately, the legalist paradigm emphasizes the concept and notion of the state. In the case of Kenya, legalists could argue that because of the aggression of pirates or terrorists by individuals who were housed in Somalia or somewhat facilitated by the collapse of Somalia, it is therefore the Somali who is ultimately responsible and therefore deserving of intervention or the use of force. On the other hand as aforementioned, legalists could argue that the state and main government, which in this case would be the Somali TFG, cannot be held accountable for individual actors and is therefore under serving of armed interference.

4.4.5. Religion and the Just War Theory Perspective

One of the major issues between just-war theory and Islamic religion is the sense that just war theory is foreign and seen as a purely Western concept.¹⁵⁹ This would essentially discredit the metric of just-war theory as well as the credibility of the overall theory itself. In the book, War

¹⁵⁹ Mirbagheri, S., "War and Peace in Islam," *A Critique of Islamic/ist Political Discourses*. New York: Palgrave Macmillan, pp 128, 2012.

and Peace in Islam, Mirbagheri details some of the perceptions of just war in the Muslim community.¹⁶⁰

These beliefs and perceptions may essentially discredit the ultimate argument that the Kenyan intervention in Somalia was indeed moral, per the requirements and composition of just war theory. According to Mirbagheri, it is noted that not only is just-war theory closely associated with the West but it is also closely associated with Christianity and the Crusades.¹⁶¹ The Crusades, a series of wars fought between Muslims and Christians during the Middle Ages, is still a sensitive issue between Muslims and Christians today. Mirbagheri notes that the concept of just war may also hint at the notion of holy war in Christendom, reminiscent of the Crusades.¹⁶² It is quite likely that the mere association of just war with Christianity and the Crusades may completely undermine and delegitimize the credibility of just war theory and its ability to serve as a metric for just war within some in the Muslim community.

4.4.6. Key Risks and Challenges

While it appears that though the decision-making process may have taken months, once the decision was made, it was acted on immediately and the world was given relatively short notice. Most of the region, including allies, seems to have been taken by surprise.¹⁶³

There are many challenges that lie ahead for Somalia, Kenya. One of these challenges is trying to maintain a tight grip on arms control and weapons possession. Oftentimes, in crises and conflict, the offensive side places a significant amount of resources into the defense and security of its forces and troops. Though understandable and reasonable, this poses additional threats to

¹⁶⁰ Ibid, pp 129, 2012.

¹⁶¹ Ibid, pp 129, 2012.

¹⁶² Ibid, pp 129, 2012.

¹⁶³ *The Kenyan Military Intervention in Somalia*. Publication. No.184. Nairobi, International Crisis Group United Kingdom, 2012.

security because often, weapons become unaccountable and become available to rogue entities.¹⁶⁴ Rutherford describes this phenomenon during the 1991 armed intervention in Somalia by the United States noting that the flood of guns and other weapons into the hands of gunmen hired to protect international media and NGOs further heightened insecurity, not only among the Somali factions competing for contracts but also between the Somalis and the UN military force.¹⁶⁵ This threat is real and is one that needs to be thoroughly investigated and addressed as the intervention and conflict continues. The Somali, Kenyan and African Union forces will need to have a system in place to track weapons and be held accountable for missing weapons and individuals and groups who are in possession of weapons.

In addition to the threat of lack of arms control, is the threat of conflict between many of the different non-governmental entities that currently exist, and will be aiding in some of the relief efforts as a result of the current invasion. This will also likely be an important factor as the United States government has previously announced that working with local groups and non-government Organizations (NGOs) will be a part of its new Dual Track Strategy towards Somalia.

This served as a major issue during the United States and United Nations intervention in Somalia in the early 1990s. Rutherford notes that the hostility that developed as a result of NGO conflict noting that NGO hiring and firing practices also led to rising violence against NGOs, including several incidents that resulted in attacks on NGO staff, some of them fatal.¹⁶⁶ With the United States emphasizing its commitment to working with local groups and the attention that the Kenyan intervention has brought to Somalia, it can be expected that there will be an increasing

¹⁶⁴ Rutherford, K., "Humanitarianism under Fire:" *The US and UN Intervention in Somalia*, Sterling: Kumarian Press, pp 94, 2008.

¹⁶⁵ Ibid, pp 94, 2008.

¹⁶⁶ Ibid, pp 95, 2008.

number of humanitarian groups and NGOs working in Somalia. This is an important issue and one that will either have to be addressed by Kenyan and Somali leadership, so it does not exacerbate current conflict and violence in Somalia.

Another challenge and issue that will need to be addressed by Kenyan leadership is the public perception of the Somalis in-country, as there is a significant Somali population in Kenya that wants to be recognized and whose voices must not be forgotten. In August of 2012 for example, a Kenyan Newspaper reported that there has been increased xenophobia in Nairobi.¹⁶⁷ The article reported that the grenade attacks on a pub and a bus stop in Nairobi, the Kenyan capital, which resulted in one death and several injuries, have left many living in fear, while Kenyan Somalis also feel they have become terror suspects by virtue of their ethnicity.¹⁶⁸

Kenyan intervention has exacerbated food security issues and poverty in Somalia. The news story reported that the Kenya's military intervention to target Al-Shabaab in Somalia is likely to worsen the plight of millions of food- insecure civilians and could increase popular support for the Islamic extremists.¹⁶⁹ This has resulted in an even larger flow of Somali refugees fleeing to Kenya, which has already been an existing issue for Kenya in recent years. The food crisis has displaced hundreds and thousands of people, many of whom have crossed into Kenya to seek refuge in the world's largest refugee complex, Dadaab.

With the existing strains on Kenyan resources due to refugees from both South Sudan and Somalia, it is without question that as the intervention continues and more Somalis are displaced,

¹⁶⁷ Xenophobia, Fear Follow Nairobi Blasts." *UN Integrated Regional Information Networks (Nairobi)*. October 28. <<http://www.lexisnexis.com/hottopics/lnacademic>> (accessed on Jan 16, 2014), 2011.

¹⁶⁸ Xenophobia, Fear Follow Nairobi Blasts." *UN Integrated Regional Information Networks (Nairobi)*. October 28. <<http://www.lexisnexis.com/hottopics/lnacademic>> (accessed on Jan 16, 2014), 2011.

¹⁶⁹ U.S. Congress. House of Representatives. Committee on Foreign Affairs. *Assessing the Consequences of the Failed State of Somalia*. 112th Cong., 1st sess., July 7, 2011.

many may look to Kenya for shelter and safety. However, the reality is that Kenya may not be able to accommodate the refugee inflow that could result from the increased violence and famine. The Kenyan government will not have other option but to create a plan of action that aims to tackle this issue and develop a proactive approach in handling the famine crisis and continue to provide resources and supplies to Somalis, especially in more violent areas close to the Kenyan border.

Another challenge is about Shabaab terrorist reprisal attacks in Kenya. Kenya is exceptionally vulnerable to Shabaab terrorist attacks. Shabaab moves freely in and out of Kenya, where the group does business, recruits, and engages in fundraising. A major Shabaab terrorist attack in Kenya would have devastating consequences for Kenyan tourism and business. Observers have expressed alarm that Shabaab could make good on threats to take the war to Kenya, and that Kenya would be less secure as a result of its offensive into Somalia. True to their predictions, Kenya suffered one of its kind and worst terrorist attack in September at the WestGate Mall, Nairobi where more than eighty lives were lost and several injured and maimed.

As evidence of this, foreign embassies have elevated security alerts for Kenya. Series of grenade attacks in Nairobi and other parts of the country being carried out by a professed Kenyan Shabaab members and recent convert to Islam, have amplified these fears. Shabaab leaders have implored their followers in Kenya to launch jihadi attacks in Kenya, a tactic that could produce lone wolf terrorism in addition to planned Shabaab attacks. The actual threat may be overstated, however, as Kenya's value to Somali interests makes it risky for Shabaab to launch a major terrorist attack there. But the danger could grow larger the longer Kenyan forces stay inside Somalia.

In another perspective, Kenyan offensive may turn out to be a tool for Shabaab recruitment. Observers have raised concerns that Kenya's military operation into Somali territory could work to Al-Shabaab's advantage, by rallying Somalis against a foreign occupation, in much the same way that Shabaab enjoyed significant popular support when Ethiopia occupied Mogadishu in 2007 and 2008. Though Somalis are exhausted from war and are devoting most of their resources to assisting relatives affected by the famine, a sustained Kenyan military presence, with inevitable reports of civilian casualties, runs the risk of generating a new wave of Somali jihadi recruits and fund-raisers for Shabaab. The ill-advised public announcement of Israeli counterterrorism support to Kenya was exactly the kind of misstep that Shabaab could parlay into propaganda to turn the Jubaland intervention into a Jihadi cause.¹⁷⁰ So far few Somalis and Somali Kenyans appear to have joined Shabaab in response to either the Kenyan or Ethiopian military offensives in southern Somalia; Shabaab appears instead to be relying more and more on forced conscription.

Complications of rehatting to an AMISOM force rather poses another dilemma. In December 2012 and after a successful hard power, Kenya succeeded in gaining African Union approval to have its forces in Somalia "rehatting" as AMISOM peacekeepers, a decision that as so far been approved by the U.N. Security Council. This highly unusual move was driven mainly by Kenyan hopes to have the expensive operation underwritten by wealthy nations, and to give the offensive greater legitimacy. Questions still lingers about how or whether the rehatting would restrict Kenyan military operations, as it would have to abide by the much narrower peacekeeping mandate of the AMISOM mission. Kenya aimed at seeking a broadening of the mandate but

¹⁷⁰ Menkhaus, K., "After the Kenyan Intervention in Somalia. Publication," *The Center for American Progress and the Enough Project*, Washington, pp. 22-25, 2012.

even if it would have not succeeded, it will likely be able to finesse an interpretation of the current mandate to continue its operations against Al-Shabaab.

4.5. Conclusion

This most recent example of state practice on the use of force will not only contribute desired objectives but also the uncertainties surrounding the legal regulation of the right to self-defense. On one side, it is one more example of a state's understanding of Article 51 according to which self-defense can be exercised against non-state entities such as Al-Shabaab within the territory of Somalia without its the consent. But the Kenyan intervention in Somalia might present a considerable challenge even for proponents of the Charter. It is apparent that the incursions of the Al-Shabaab on Kenyan territory amounted to an armed attack and such necessitated the exercise of the right to self-defense. However critics are of the view that if it is accepted that they indeed reached the required threshold of gravity, then it can be conceded that the threshold significantly dropped and that the requirement of necessity can be applied more loosely, which opens the door for even more extensive resort to unilateral force. On the other hand, this particular case might serve as an example that the gravity of cross-border non-state violence is only one among many factors that need to be addressed when assessing the necessity of the use of force in self-defense. In this particular case the inability of the TFG to prevent Al-Shabaab from crossing into the Kenyan territory certainly played a big role in Kenyan decision to invade Somalia.

Kenya had the option of informing the TFG and getting its consent for invasion but because of its weakness as a failed state, there were no windows opened for diplomatic solutions. In all likelihood, Kenya would have gotten it. Showing a strong arm in international relations might be a good move for the government with an eye on the strategic interests, but it also opens a number

of difficult questions for international law and unnecessarily brings more uncertainty into an unclear legal framework. Coincidentally, Chapter IV, Article 2 (4) of the UN charter points out that nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within domestic jurisdiction of the offended state.¹⁷¹ The principle does not rule out the application of enforcement of stiff measures such as military action in case of a breach of peace, or acts of aggression on the part of a state¹⁷² as demonstrated by the elements of the Al-Shabaab terror group. The use of force by Kenya did not only embraced the right to react, but also the right to prevent and right to help rebuild the disintegrated state of Somalia and more importantly, Kenya remains keen to pursue its own national objectives despite having joined AMISOM

¹⁷¹ UN Charter, Art. 2 (4), 1945.

¹⁷² Ibid, Chapter IV, 1945.

CHAPTER FIVE

SUMMARY FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0. Introduction

The study has explored the moral factors and arguments for the armed humanitarian intervention in Somalia in pursuit to protect and more importantly safeguard the country's strategic interests. While there are many viewpoints regarding the morality of the use of force and whether it has moral justification, it is clear that regardless of its morality, Somalia's case was wanting and still needs a path forward.

Despite the victory, Kenyan intervention has raised some questions and reinforced attention to the principles of just war theory. One of the most important themes of this study is the importance analyzing war in a holistic and well-rounded perspective, as war is a serious matter. All of the elements of just war theory i.e. *jus ad bellum*, *jus in bello* and *jus post bellum* provide a well-rounded context for evaluating the necessity of armed interventions as well as providing a baseline of exercising hard power and measurement for the morals whilst in war and post war. As the study has analyzed the *just ad bellum* portion extensively, this chapter will recapitulate the core objectives and the working hypotheses with a view to determining the extent to which the study has fulfilled its tasks as well as focusing on the importance of the *jus in bello* and *jus post bellum* aspects of the just war theory and the opportunity for the Kenya to play a defining role in Somalia's restoration for the benefit of its geostrategic interests and that of the entire region.

5.1. Summary

The general objective of this study was to examine the place of humanitarian intervention, the right to protect and whether the use of force is justified within the context of state sovereignty. The study sought to further explore this broad objectives in detail in view of arriving at optimal conclusions which are summarized as under;

5.1.1. Moral Factors that Influence Humanitarian Intervention, the Right to Protect

The ultimate aim of the study was to establish the moral factors that influence the use of hard power against the offending state. The intervention symbolizes an increasingly independent regional force in Africa and a step forward in terms of African nations attempting to solve regional crises. The study has found that despite these steps forward, it is important to note that the actions taken by Kenya in October 2011 were morally justifiable and ethical. Essentially the rationale of humanitarian intervention pulls in two directions. On one hand, from just war perspective, the inviolability of state's sovereign rights is given supremacy and for self-defence. On the other hand, intervention is justified from a more liberal approach to punish wrongs and to protect the innocent. Established therein was the fact that the deepest cause of the theory's contemporary triumph: there are now reasons of states for fighting justly. This in effect opines that justice has become a military necessity. Kenya's ideas seemingly stemmed from critical reflection on laws and customs, and based on reason as asserted by the study. More importantly, there are established standards by which everybody ought to live. Apart from strategic interests, basic human rights are universal rights. The conception of dignity provided Kenya with a reference point to determine if the transgressions that were going on at juncture required some sort of intervention. The idea of beneficence means that Kenya could afford to sit idle while injustice of mass scale was intensified by non-state actors, the Al-Shabaab. Further analysis

shows that the substantive challenge towards a normative shift has been the realist, state-centric view of international relations conceptualized as a struggle for power. It is also empirically established that a state such as Kenya have looked to safeguard their vital interests and advantages while dealing with intervention questions. It is evident that selectivity in choice of occasions for the humanitarian intervention is both inevitable and potentially justifiable. The moral arguments has provided the broad scope for taking a drastic action. It's been proved that the details of the mechanics of humanitarian intervention lie in the legal, political, and social sphere. On an altruistic level, Kenya had many reasons to use military intervention and intervene on a humanitarian level. As it had become a terrorist playground threatening the security of Kenyans and Kenyan economic interests, Somalia's instability had increasingly grown and had led to an undesirable increase of Somali refugees in Kenya and a drain on Kenyan resources and infrastructure, and last but not least, Somalia's downfall was just an overall threat to the Kenyan well-being.

5.1.2. The Use of Force as a Measure of Last Resort

Through in-depth analysis shown at what instance the use of force is justifiable both in legal circles and for self-defense and sometimes coupled with pursuit of strategic interests. The meaning of the self-defense term and the assessment of a threat may differ from one state to another. By virtue, this approach taken by Kenya seemed to be in line with an inter-state reading of the *jus ad bellum* and as a matter of principle. On the legality of the use of force, Kenya borrowed the concept from Article 51 and customary international law which entitles states to resort to force only defensively in the presence of an armed attack and to the extent necessary to repel it. The study has found that there is temporal link between the measures of self-defence and the attack against which they were directed, which alternatively can be referred to as the

requirement of immediacy. Also crucial in the *jus ad bellum* stage is the acknowledgement that the intervention was truly a “last resort” and was fought with appropriate “proportionality”

Furthermore, the study established that mounting a military intervention may be taken as the first option when deciding on how to resolve a conflict. Intervention according to *jus ad bellum* is permissible when all other plausible, peaceful measures have been taken. Unfortunately, in the case of Somalia, the study highlighted many non-existent avenues of peaceful coercion open in interstate conflict such as diplomacy, negotiations, and sanctions could not be feasibly employed. This is in no small measure due to the fact that Somalia is essentially a collapsed state. While the TFG does enjoy international recognition as the legitimate government of Somalia, the reality was that precious little of Somalia was effectively governed by anyone, let alone the TFG and consequently the use of force as a measure of last resort was the ultimate answer. This particular objective has proved beyond reasonable doubt that coercive military action is justified when other diplomatic measures such as sanctions fail. Nevertheless, the risk of not using the coercive was obvious in the case of Kenya verses Somalia.

5.1.3. The Nexus between the Right to Protect and State Sovereignty

The study has also found that there is a link between the right to protect and state sovereignty as demonstrated by Kenya. It is keen to secure its territorial integrity and safeguard its borders to foster its socio-economic cohesion within the region and the entire world. The aspect of sovereignty implies that Kenya recognized no higher authority than themselves and that there is no superior authority. This is in agreement to the UN Charter Article 2(7) that explicitly opines that nothing contained in the present charter shall authorize the UN to intervene in matters which are essentially within domestic jurisdiction of any state. By establishing the linkage, the Kenyan citizens were at liberty to determine their own future without outside interference. However state

sovereignty sometimes cannot be absolute. The principle of Right to Protect provides the basic structure for intervening in a state where the state apparatus is unwilling and unable to protect its citizens and foreign nationals in its soil. The nature, scope and magnitude provides a bridge between the right to protect and state sovereignty.

5.1.4. Implications and Challenges of Humanitarian Intervention Using Hard Power

Although the study has establish that there are implication and challenges as a result of the intervention, it has gone further by providing mitigating measures and proposed sustainable strategies. There is no question that the then state of despair in Somalia was on the world's radar and has had undesirable effects on its immediate neighbor, Kenya and the entire HoA. It is confirmed that humanitarian intervention through the use of hard power can result in short term desired results but cannot guarantee sustainable outcomes. One of these challenges is trying to maintain a tight grip on arms control and weapons possession. Kenya has further placed a significant amount of resources into the defense and security of its forces and troops thus affecting its economic growth. There is likelihood and worsening plight of millions of food-insecure civilians in Somalia and could increase popular support for the Islamic extremists. The study also identified increased xenophobia within the regional bloc. The in-depth analysis of this specific objective shows that many are living in fear for instance Kenyan and Uganda Somalis also feel they have become terror suspects by virtue of their ethnicity. Shabaab terrorist reprisal attacks in Kenya. Kenya is exceptionally vulnerable to Shabaab terrorist attacks. Al-Shabaab moves freely in and out of Kenya, where the group does business, recruits, and engages in fundraising. A major Shabaab terrorist attack in Kenya would have devastating consequences for Kenyan tourism and business as may have been recently witnessed. Observers have expressed

alarm that Al-Shabaab could make good on threats to take the war to Kenya, and that Kenya would be less secure as a result of its offensive into Somalia.

5.1.5. Review of the Working Hypotheses of the Study

The study sought to make inference about the subject matter using three hypothetical views. As an alternative hypothesis, the normative change from humanitarian intervention to right to protect was confirmed as a result of in-depth collection and analysis of information provided for the study. By analyzing just war theory and other ethical frameworks the study confidently concludes that there are sufficient grounds for believing that there is a relationship between humanitarian intervention, the right to protect, and the use of force to provide solutions which could not have been achieved through diplomatic efforts such as sanctions. The study has proved beyond reasonable doubt that hard power is efficient and effective measure for managing conflicts of Somalia's nature. The null hypotheses could not be confirmed because it is inexact and lack tangible evidence for the contrary and could not be independently established how else rogue and dysfunction states such as Somalia and non-state actors can be dealt with without using hard power. The literature available for the null hypotheses is not sufficient enough to confirm their credibility in the context of humanitarian intervention.

On the other hand, the study adopted the just war theory as a vehicle to analyze the morality of the Kenyan intervention because the components of just war theory clearly outline the morality of war by defining the prerequisites for deciding to intervene, parameters for behavior while in war, and appropriate actions at the conclusion of war. The findings after in-depth analysis shows that Kenya operated within the confines of hard power thus utilizing strategies appropriately. Just war theory provided Kenya with clear standards and norms for proceeding with armed interventions and war against the non-state actors in Somalia, the Al-Shabaab. The *jus ad bellum*

portion dictates that the intervening nation must have a just cause and reason to override the sovereignty of another state and intervene. The study in effect shows that Kenya qualified in this context to flex its muscles against the common enemy. It is important to note that “just-war” theory is almost exclusively a philosophy stemming from Western and, later, Christian theological schools of thought.

The analysis shows that military intervention is achievable, moreso when it is completely within the bounds of moral justification for the deployment of forces. More importantly, the study has clearly highlighted the importance of securing Somalia. Not only will it enable the kind of humanitarian assistance so crucial for securing the failed state and providing a framework for other democratic processes but also solve one of the international community’s biggest maritime headaches: piracy in the Gulf of Aden. Coincidentally, this has helped Kenya to secure its coastline stretching to Indian Ocean hence achieving its strategic objectives.

Using the example of the Kenyan intervention, it is the opinion of this study that the *just post bellum* aspect will be one of the most telling in determining the moral justification of the intervention and the success of the overall intervention. What would distinguish this intervention from previous interventions, especially the 1992 US intervention in Somalia as analyzed by the study would be the success of the *jus post bellum* aspect and piecing together a functional and operational Somalia. Knowing what is ostensible about Somalia and its unique characteristics and history, the study points out that through a detailed, comprehensive strategy, Kenya will eventually be able to help save Somalia from more years of turmoil, civil unrest and the chaos that has been associated with it for the last several decades thus achieving its much after-sought geostrategic objectives. Kenya is critical to its own future development and that of a stable Somalia. Nairobi’s involvement in the regional dynamics of the Jubba regions (recognizing the

sensitivity of this term, Jubba regions will hereafter be referred to “Jubbaland”, an area close to the Kenyan border) will have a decisive impact on Kenya’s national security and economy as well as Somalia’s stability.

As Somali expert Menkhaus describes it best noting that if the first decade of the new millennium bears a single enduring political lesson, it is this, according to his opinion, intervention strategies that plan the war but not the peace will fail. Indifference to or wishful thinking about the crafting of a post-intervention political order guarantees disorder, and can leave both the occupied country and the intervening power worse off than before.¹⁷³

For the Kenyan intervention to be successful and completely moral, more attention will need to be drawn to the after-effects of the intervention and long-term sustainable peacekeeping and humanitarian efforts. Jihadism has become increasingly prevalent as a result of the Kenya’s armed intervention. Moreover and as mentioned earlier, there is a growing concern on the emergency of Al Hijra in Kenya, which is the Al-Shabaab’s affiliate. Without appropriate emphasis, the intervention could possibly cause a regression in Somalia affairs and backfire against Kenya and other international players hence defeating the logic behind the use of hard power.

For Kenyan hard power to be successful in the long run, it is necessary to prioritize improving the perception of the intervention in the eyes of Somalis and Somali-Kenyans. This is an essential aspect to *Operation Linda Nchi’s* success, because the difference between previous failed interventions and the Kenya’s unique intervention is the prior lack of emphasis on the long-term and *jus post bellum* from the previous interveners. For *just post bellum* to be effective,

¹⁷³ Menkhaus, K., “A History of Mediation in Somalia,” *Interpeace Regional Office for Eastern and Central Africa*, Publication. Nairobi, Kenya, p. 3, 2009.

it is absolutely crucial that Somalis within and without are engaged in the ongoing intervention and on board. It is without question that Kenya does not have enough resources to stay and police Somalia forever, no country does as well. Thus, it is essential for Kenya to mend fences and engage Somalis and promote an organic movement of local Somalis solving Somali issues. Kenya needs to promote a sense of Somali inclusion in the intervention and promote Somali ownership for Somali problems and solutions.

Throughout the years, many different international players have intervened in Somalia, but no real progress has been made to date. For Somalia and more particularly Kenya to truly move forward and become peaceful and economically productive states respectively, Kenya must take hold of its critical concerns and develop a movement within its own people to overcome the last several decades of societal failure with the help of international actors such as AU, IGAD, and UN. Johnny Carson noted that the Somalis themselves must take the lead.¹⁷⁴ This will build a more strong and authentic platform for success and long-term acceptance by Somalis, which will ultimately be key.

However, this can only be achieved if the Kenya take heed to the sensitivities and vulnerabilities of Somalia and work on making them less destructive. For example, one of the criticisms and perceptions of the TFG is its lack of inclusiveness for all groups and it is apparent that that clan divides in Somalia have been a major factor in war and conflict. Realizing this as part of the reality, the Kenyan government has to work with Somali stakeholders to identify ways and measures of being inclusive and prioritizing the incorporation of all players and stakeholders in the decision-making process and government structure.

¹⁷⁴ Carson, J., "State Department." *A Dual Track Approach to Somalia*. Center for Strategic and International Studies. Washington: Center for Strategic and International Studies. < <http://csis.org/event/state-department-dual-track-approach-somalia> > (accessed on January 26, 2014), 2010.

Gopin, an expert on conflict resolution and author of *Holy War, Holy Peace*, identifies a phenomenon that tends to appear in intra and inter-state conflict, known as “othering and exclusion.”¹⁷⁵ Under this phenomenon, groups isolate people whom they may view as different or outsiders. The othering and exclusion can take on relatively mild forms, such as the need to separate from certain people and certain places without persecution or shunning any participation in another group’s celebrations, which involved a voluntary removal by a person or group from aspects of a surrounding culture or group.¹⁷⁶ In the case of Somalia, one can draw parallels between this notion and the current state of conflict between clans and religious extremists.

Recognizing that this is an issue is the first step and the Kenya may help facilitate this step, but Somalia will have to truly work towards defeating the notion of othering and becoming more unified and inclusive of all groups and clans. Gopin suggests that the notion of othering is extremely dangerous because it often shows itself in integral aspects of society including governance and politics. Separatist such as Al- Shabaab’s and Al-Hijra’s othering then turns into prosecutorial othering, and sometimes separate education and culture become the hotbed for political regression.¹⁷⁷

In the case of Somalia, this has been one of the major issues with governance and building a society that is inclusive of everyone. Because the idea of clanship is so closely tied to identity, the idea of “a me” versus “you” notion is entrenched in self, family, community, society and the country as a whole. Moving forward, it will be absolutely essential to properly handle this issue and in a truthful and productive manner, which will need to include the remake and makeover of Somali nationalism and identity.

¹⁷⁵ Gopin, M., “Holy War, Holy Peace,” *How Religion Can Bring Peace to the Middle East*. New York: Oxford University Press, pp.67, 2002.

¹⁷⁶ Ibid, p.67, 2002.

¹⁷⁷ Ibid, p.67, 2002.

After the successful armed intervention and for the stakeholders to achieve this, there needs to be a healing process and open dialogue to discuss grievances and how clan divides have impacted the division and lack of inclusiveness in Somali society and discuss how it can be overcome and how a path to the future can be forged without taking sides. To truly begin the peace process, the first step that Kenya will need to complete after the military incursion is to capitalize on various forms of non-traditional diplomacy efforts towards Somalia. As mentioned previously, Somalia presents a non-traditional, more contemporary diplomacy issue that is appearing in many post-colonial areas around the world in areas such as Egypt and Libya. What has been confirmed by the study is an area consumed by intra-state conflict stemming from clan and tribal conflicts, religious extremists fighting for control and the elevation of non-state actors such as Al-Shabaab who cannot be tamed by traditional, old school diplomatic efforts, especially in regards to religion.

Given that part of the issue in Somalia is Muslim extremism, Kenya will need to devise more inclusive plan of engaging more moderate religious leaders and including them in their intervention and long-term strategy in order to prevent radicalization. For Kenya to safeguard and promote the tourism sector in its soil, it has to instill long-term peace and resolution to Somalia's conflict and must understand the complex religious tensions and how this may affect the intervention and long-term stability. One contemporary tool to meet the challenges that religion and religious differences bring is the utilization of faith-based diplomacy. Faith-based diplomacy capitalizes on the opportunity to use faith and religion not as a divisive force but as chance to bring people together and find a common ground. Former Secretary of State, Madeline Albright opines that faith-based diplomacy can be a useful tool for foreign policy.¹⁷⁸ She notes

¹⁷⁸ Albright, M., "The Mighty and the Almighty," *Reflections on America, God and World Affairs*. New York: Harper Collins Publishers, pp. 78, 2006.

that the capabilities of faith-based diplomacy and the opportunity that it provides because of its known effect on people's lives and belief systems explaining that religion often impacts "how people think, feel and act."¹⁷⁹

In recognizing this, Kenya has the opportunity to be a leader in the movement to include religious dialogue and discussions in the realm of foreign policy and diplomacy in large-scale issues that could truly benefit from this more contemporary phenomenon. By engaging faith communities, Kenya can have the opportunity to have a greater reach in Somalia and perhaps avoid being seen as an outsider or foreign entity that disregards the faith that so many Somalis hold dear, but that has become politicized and used as a pawn for extremists to garner support for their cause. Gopin reaffirms this notion suggesting that continued exclusion of groups and repeated efforts to highlight separateness are dangerous, noting that exclusion and othering are a crass tool of power maintenance.¹⁸⁰ Gopin also speaks of the opportunity to possibly dismantle such negative efforts and expose the dangers of the politicizing religion stating that religious figures are generally considered part of the problem, but not part of creative solutions by most people in the public policy arena.¹⁸¹

This now brings the more modern question of, where do we go from here? The road to the answer to this question will require the imagination and efforts of multiple stakeholders, community leaders and as many people as possible. As described in this study, Somalia's issues are multi-layered and require a truly multi-layered solution. While the Kenyan intervention was in many ways necessary, the emphasis in the intervention should be placed on empowering Somalis to restore governance and government legitimacy which will ultimately secure the

¹⁷⁹ Ibid, pp. 67, 2006.

¹⁸⁰ Gopin, M., "Holy War, Holy Peace," *How Religion Can Bring Peace to the Middle East*. Reprinted version, New York: Oxford University Press, p.61, 2012.

¹⁸¹ Ibid, p. 46, 2012.

region and the rest of the world. As mentioned in this study, one of the many reoccurring themes in the Somali struggle is a lack of effective and stable government. Without governance, law-abiding citizens cannot be protected and rule of law will not be available to enforce relevant laws. Rule of law and governance needs to be intact for violence and crime to be stabilized and brought down and for Al-Shabaab network to be dismantled completely. With crimes such as piracy along the coast line and kidnappings, it becomes increasingly difficult to have a functional society with successful business and economic development as people have no protection or faith that the rule of law can prosecute those who do not abide by it. It also leaves room for more chaos as it promotes a sense of instantaneous justice and lawlessness. One of the first steps towards promoting rule of law and governance is enhancing Somalia's infrastructure and ability to combat piracy and related crimes. Piracy needs to be crowded out using political and economic engagements in the areas of Somalia that host piracy operations, such as Puntland. Pirate rewards need to be decreased but instead economic alternatives need to be increased. The main aim must be to change the incentives away from piracy and toward legitimate economic activity. By targeting the crux of the piracy and kidnapping concerns, which seems to be the ransoms and financial profits, it will hopefully reduce the incidents and force such crimes out of Somalia.

It is important to recognize and distinguish that this should not be the sole responsibility of the Kenyan government. This notion of empowerment must come organically from the Somali people themselves. In a nutshell, an organic sense of empowerment will create the notion of legitimacy and acceptance from Somalis, which it is currently lacking. While achieving the objective, the process may not be easy but certainly possible. Apart from Kenya, TFG is

currently supported by Ethiopia and the United States.¹⁸² This is also a contributing factor to Somalis viewing it as foreign or external. In addition to its perceptions, it has not delivered in terms of its effectiveness and ability to govern well in Somalia. It will be critical for the Kenya to address these concerns as they are key in alleviating these perceptions, which now help terrorist and opposition groups such as the Al-Shabaab and the newly formed Al-Hijra to garner support. The lack of inclusion and heavy support from international groups has been a hindrance to the TFG. The TFG relied heavily on sustained international financial and military support but, like its predecessor, the TFG fell well short of serving as a national government. Instead power was concentrated in a narrow clan coalition, and the TFG was viewed as a client of Ethiopia.¹⁸³

For the Kenyan intervention to prosper, it must tread carefully in regard to clan divides and internal Somali politics. As described previously, Somalia's history with clan politics and clan factions is substantial. It must be taken seriously by the Kenyan government and they must be sure not to take sides or partake too closely in such matters, as they are destructive, as evidenced in the failure of the TFG. Albright, former U.S. Secretary of State, highlights the significance of this philosophy in civil disputes and noted the effect that it had on previous interventions in Somalia noting that the lesson the UN drew from that calamity was to avoid ever again taking sides in a civil war.¹⁸⁴ It is absolutely critical, and Kenya need to devise a strategy for avoiding the crossfire between clans and internal factions while preserving the integrity of the mission and addressing clan frictions as one of the major aspects holding Somalia back from peace and stability, while managing to be inclusive. This has been an ongoing issue in the current intervention and should be a priority to the Kenya in order to safeguard its strategic interests.

¹⁸² NA., "The Kenyan Military Intervention in Somalia," 2012.

¹⁸³ Menkhaus, K., "After the Kenyan Intervention in Somalia." *The Center for American Progress and the Enough Project*, Publication. Washington, p. 17, 2012.

¹⁸⁴ Madeleine, A., "The Mighty and the Almighty," *Reflections on America, God and World Affairs*. Harper Collins Publishers, New York, p. 55, 2006.

The literature review indicates that there has been a growing concern on humanitarian suffering as the extremist group take centre stage to terrorize the innocent people both within and outside Somalia. Piracy along the Kenyan coastal line and deep inside the Indian Ocean is rampant. While it may not be possible for the intervention to be seen as moral or just by everyone involved, which it is by virtue, Kenya has the opportunity to possibly shape the Horn of Africa in a new direction and possibly be the changing force in transforming Somalia from the failed state that the world knows it to be. In leading the intervention, Kenya has essentially enlisted itself to serve as the region's champion in a last-ditch effort to attain some closure to the Somali conflict. In doing so however, it will have to position itself in a manner to handle some of the controversial issues and tensions that predate this intervention and date back to centuries of mistrust and cold relations between countries in the Horn of Africa that have contributed to the crisis in Somalia, such as the relationship between Ethiopia and Somalia. Without some sort of functional and stable peace between Somalia and Ethiopia, it is doubtful that long-term peace in Somalia can be a reality and the development in the region will continue to be in limbo.

There has been a long-standing insecurity and tension between Ethiopia and Somalia that includes religious tension and differences, border disputes and overall distrust. More recently and specifically, there is still lingering anger between Ethiopia and Somalia over the failed intervention in Somalia led by Ethiopia in 2006. And prior to the 2006 intervention, there was a history of Somalia hosting Ethiopian rebel groups and Somalia doing the same.¹⁸⁵ There needs to be a truce between Horn countries and an in-depth reconciliation process that delves into some of the historic, age-old issues that continue to disrupt any hopes for peace and stability in Somalia.

¹⁸⁵ Rutherford, K., "Humanitarianism Under Fire:" *The US and UN Intervention in Somalia*. Sterling, Kumarian Press, p. 6, 2008.

Among the country's ancient nomadic communities, historic rivalries over such matters as brides, water and cattle invariably were settled by henna-bearded elders, a form of government that long pre-dated the creation of the nation state. Before the modern world intervened and provided weapons such as the ubiquitous AK47, the system provided stability in a harsh environment.¹⁸⁶

It is becoming increasingly clear that mutual distrust cannot be avoided until there is both internal reconciliation between clans and families and external reconciliation between Somalia, Ethiopia, Kenya and its other neighbors. For long-term stable peace between Horn countries, it is critical that the contentious issues be discussed and brought to the forefront. Otherwise, there will continue to be a lingering sense of distrust between countries that facilitates a dysfunctional relationship that is ultimately to the detriment to all. This will require the effort of both a grassroots and grassroots campaign involving everyone from local citizens to the governments of the respective countries. In addition to the intrastate civil eruption in Somalia, much of it is fueled internationally through proxy by neighboring countries, which exacerbates already existing civil and international strains.

It is through the sense of inclusion and transparency that a lasting solution in the horn of Africa can be achieved and implemented in the years to come. Through the identification and acknowledgement of many unresolved issues of Horn states, it is notably worthy to explore into the many predicaments of the Somali state that have been affected by the lack of peace and relations between countries in the Horn of Africa.

¹⁸⁶ Clayton, J., "West Could Not Find Tougher Place to Go Nation-Building." *The Times London*. February 29 (accessed October 15, 2013), 2012.

5.2. Conclusion

The study has addressed the moral justification of the use of hard power as well as challenges facing humanitarian intervention using the intervention led by Kenya in 2011 as a case study. Even though there are reservations for such armed intervention, it is worth noting that the decision to intervene was undertaken strategically. As far as right to protect is concern, the study has clearly highlighted three moral issues of humanitarian intervention. First, it has shown that standard accounts of the issues of humanitarian intervention which draw heavily on just war theory are in a position to capture the prospects of mission creep. The second issue is whether epistemic difficulties in assessing the intervention's long term success mean that party should either accept or reject consequentialist approaches to humanitarian intervention. Thirdly is about selectivity syndrome which opines that can either be problematic or a success depending on the initial assessment of the overall strategy of intervention. While it was morally permissible to intervene through the perspective of just war theory, there are very few competing arguments for similar interventions that needs to be addressed for it to fully pass the test of time and to be embraced by all stakeholders. Kenya intervention has so far been successful and as a result it has given Somalia the push to move in the right direction and rid itself of the abysmal reality that has prevailed for the last several decades.

The true test will rest in Kenya's ability to learn from the mistakes and failures of the previous interventions, take heed of the importance and distinctions of Somali culture and history, and incorporate these factors into an organic, Somalia- inspired peace process leading to a reconstructed Somalia built on the principles of inclusion, peace and stability. If successful in *jus post bello*, Kenya will have achieved what has been seemingly impossible. As the world observes, the Kenya's hard power is setting precedent and paving the way for the future of humanitarian interventions in conflict-ridden countries, such as Somalia.

5.3. Recommendations

The study has found that the issues of Somalia are deeply rooted and have a rich historical context. It is through the understanding of Somalia's history, and the history of the region that long-term can be delved into solutions to address the pressing concerns. With an understanding of the ethical frameworks to address the moral dilemmas of intervention and an understanding of the nature of Somalia's issues, it is the opinion of this study that the intervention led by the Kenyan government was indeed moral, in accordance with the widely accepted international norm of just war theory.

Though moral within the confines of just war theory, it is still important to note that many opposing views do not view the intervention as moral and consider it as an inappropriate overreach of government sovereignty or they may comprehend it to be immoral due to the inevitable violence and harm that it has caused. The ideas of concept of right to protect should be vigorously explored further and given a legal framework. Even though moral through the lens of just war theory, the time is ripe to measure the outcome of the *just post bellum* effort to give a full analysis on whether the intervention as a whole is moral. The intervention is definitely a milestone and great step in the right direction for both Kenya and Somalia as well as the entire horn of Africa. Given the information on hand and the nature of the conflict, I have several suggestions for paving a way forward for peace and stability in Somalia and the rest of the Horn

In a nutshell, Kenya will need to emphasize *jus post bellum* in *Operation Linda Nchi*. As demonstrated in previous interventions held by the US and UN, the strategy for post-intervention can be just as, if not more crucial than conducting the intervention itself. In the case of Somalia, there have been many interventions sponsored by regional and international stakeholders. For the Kenyan and any other intervention to be successful in Somalia, there must be a heavy emphasis

placed on the restoration of order after the intervention. If not, there is a tendency for things to regress or worsen the economic growth and compromise the national security. This will be the final, ultimate test of the success of *Operation Linda Nchi*.

5.3.1. Facilitation of Internal Peace and Reconciliation

As highlighted throughout this study, clan divides and factions have been a part of Somalia's past and continue to be a part of Somalia's present. If it continues to be a part of Somalia's future, it can serve as a destructive force. With the listing of local leaders and representation from all groups and clans, a thorough peace and reconciliation process must be launched. There is significant history and a past full of distrust and competition that is entrenched in Somalia's culture and society. The notion of "othering" is persistent in Somalia and it will need a solid restructuring and open dialogue to facilitate a more inclusive environment that replaces the notion of "me versus you" and "them". Moving forward, it will be essential for Kenya to help Somalia to take steps to address its internal factions and to build a whole Somalia; one that is inclusive of everyone and that does not rely on clan divides and factions. Given that part of the issue in Somalia is Muslim extremism, Kenya will need to devise more inclusive plan of engaging more moderate Muslims and including them in their intervention and long-term strategy. If Kenya is to instill long-term peace and resolution to Somalia's conflict, it must understand the complex religious tensions and how this may affect the intervention and long-term stability.

5.3.2. Facilitation of External Peace and Reconciliation

While Somalis may be to blame for some of the internal struggles, there is no doubt that its neighboring countries have also played a role in the sustained conflict in Somalia. With different

countries hosting their adversaries' insurgencies, it is impossible to be rid of extremism, destructive rebel groups, anarchy and instability, not even in other countries across the globe. All countries in the region, especially in the Horn of Africa, will need to commit to not supporting disruptive insurgencies such as the Al-Shabaab in Somalia and Al-Hijra in Kenya. If Somalia is trying its best to promote peace and stability, its neighbours should equally do the same. Failure to do so, Somalia will continue to circle around instability hence affecting the economic growth of the entire region since Kenya is the economic power house and entry point as its neighbours are landlocked. The international community can also play a role in enforcing this notion, as the support of terrorist groups is in violation of UN law. The international community should hold countries accountable for hosting or supporting terrorist groups and insurgencies as they not only destroy prospects for regional security but also destroy prospects for international peace and security as well.

5.3.3. Utilization of Innovative Diplomatic Tools

The study pointed out that the role of non-state actors in Somalia (Al-Shabaab) is significant because the government has been more or less absent in the last several decades. To supplement its hard power, Kenya will need to use non-traditional, diplomatic tools such as faith-based diplomacy to engage stakeholders, and facilitating conversation with clan groups and leaders. The Somalis have grown accustomed to the absence of government and centralized power. Taking into account its strategic interests, Kenya must recognize and understand that this is the reality of the Somali society, and realize that engaging all stakeholders, will be the key to restoring *jus post bellum* in Somalia thus. It has to consider developing effective policies to combat transnational terrorism. Whilst it has been made clear that the protection of the border region is at the heart of the Government of Kenya's decision to invade Somalia, more consideration needs to be placed on security efforts within Kenya. The government needs to refine current policies and explore alternative ways and means to combat transnational terrorism, especially given that al-Shabaab has resorted to launching counter-attacks and radicalizing youths on Kenyan soil. Kenya cannot ignore the retaliatory terrorist attacks that are now more prevalent within the country while fighting the enemy outside. It is important for the government to implement long-term measures to guard against threats to the country, rather than only focusing on the battlefield and offensive.

5.3.4. Engagement of the Somali Diaspora and Somali-Kenyans

As mentioned, the Somali-Kenyan population is significant, and they will be a key audience during the intervention. Many Somali-Kenyans may reside in Kenya, but pledge a special allegiance to Somalia. Kenya must realize that its actions in Somalia are going to be closely monitored and critiqued. To maintain peace and economic and security stability in its own

borders, Kenya must be sure to take heed to the Somali-Kenyan population and closely monitor any reports of xenophobia or clashes between Somali-Kenyans and other groups in Kenya.

In addition, as remittances play a key role in the Somali economy, Kenyans should play close attention to remittances and ensure that monies are not being used to support the extremist terror groups and its affiliates, that could destroy *jus in bello* and *just post bellum* efforts. Nevertheless, Al-Shabaab militia have proved to be resilient in the past and might recruit more members and re-group. Therefore, the Government of Kenya needs to develop a post-Kismayo scenario where ideally they have the go-ahead from the Somali government to support a new administration that will take control of the region as part of the government in Mogadishu. This new administration should be one that political actors from the Juba and Gedo regions have endorsed. This will ensure that the KDF hands over Kismayo quickly to the Somali people and that Kenya avoids further conflict in the country.

5.3.5. Review of Previous Interventions

The failed UN/US intervention offers an exemplary case study about what can go wrong in an intervention. Kenya should study the failures of the United Nations and the United States, and avoid making similar mistakes.

5.3.6. The US and Kenya Partnership

Perception is significant in Somali culture and identity. It is obvious that previous interventions failed because as a result of which. From the previous circumstances, it is apparent that Somalis do not tend to gravitate towards foreign intruders, and are very keen on defending their independence. The Kenya will need to adopt a way of incorporating Somalia organically into the their hard power intervention and the *jus post bellum* portion. This will likely prove to be

challenging, but it essential in obtaining Somali approval and peace in the long-term. Because the US is assisting Kenyan efforts, it will be important for both the US and Kenya not to appear that they are simply intruding for the sake of their own strategic interests or desires, but Somalia as well. The US and Kenya will fare better if they are able to lead the dialogue surrounding this possible perception; especially before the Al-Shabaab and other extremist groups such as Al-Hijra are able to influence Somalis views. The intervention has the vulnerability of becoming a politicized issue by the Al-Shabaab that is used to recruit and garner financial and political support and radicalization of the youths. It is absolutely crucial for Kenya and the US to undermine this notion by promoting local, native Somalis to be the face of the new Somalia, creating the notion that Somalis are solving Somali, local issues.

5.4. Recommendations for further Research

The study has only examined the moral argument surrounding Kenya's decision to intervene; not the *jus in bello* or *jus post bello* aspect of the intervention. As time elapses, the world will have a better understanding about the *jus in bello* and *jus post bello* successes or failures. In the meantime, more studies are needed in respect to normative change to right to protect and self-defence with regard to application of hard power against an offending state. Terrorism and the new menace of radicalization are becoming the biggest challenges in international arena. There is need to know the nexus between the factors associated to a state's strategic interests and dire need for humanitarian intervention and fight against terrorism.

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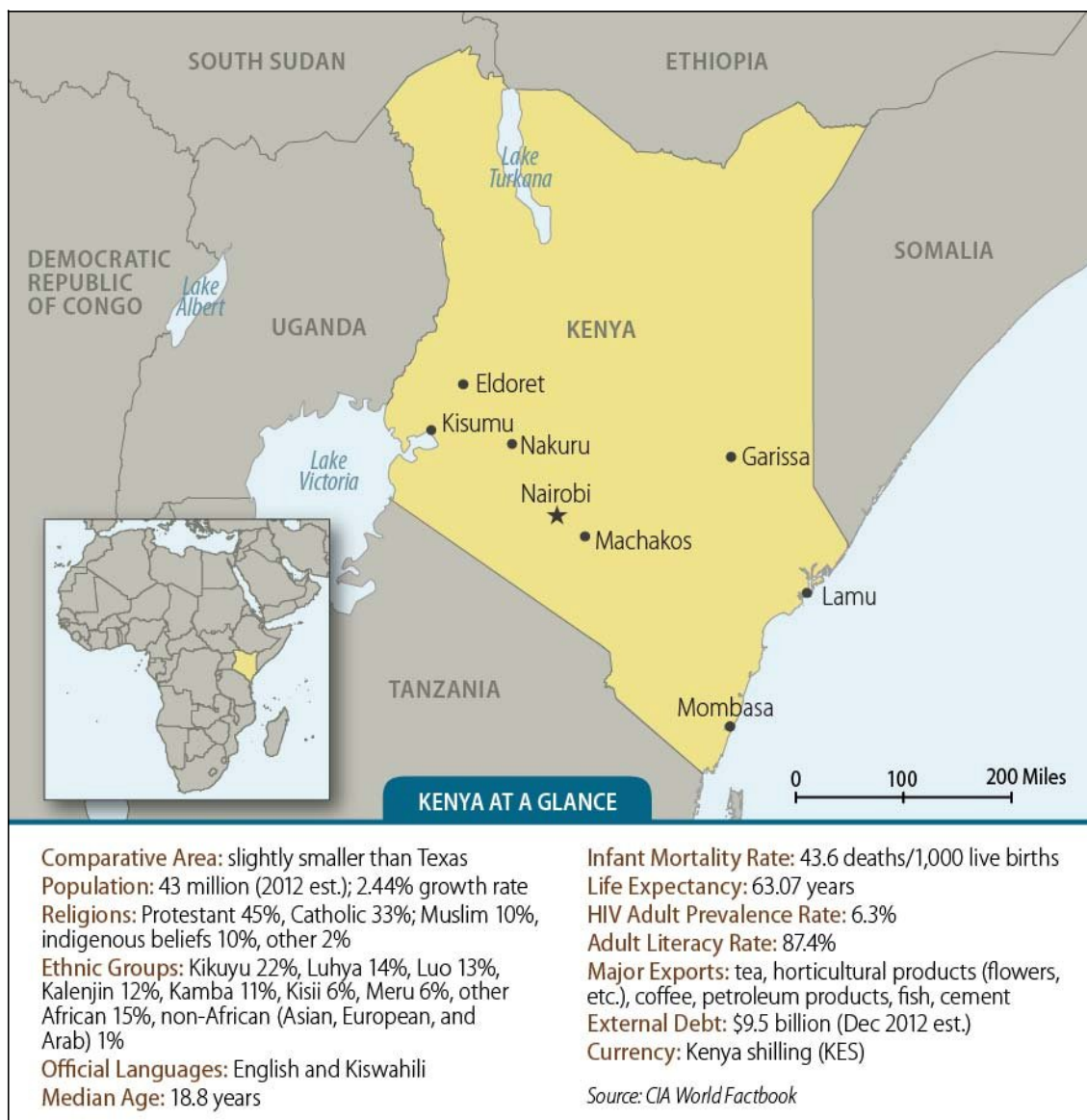
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APPENDICES

Appendix A: Kenya at a Glance



Source: CIA World Factbook, 2012.

Appendix B: Somalia Map States, Regions, and Districts.

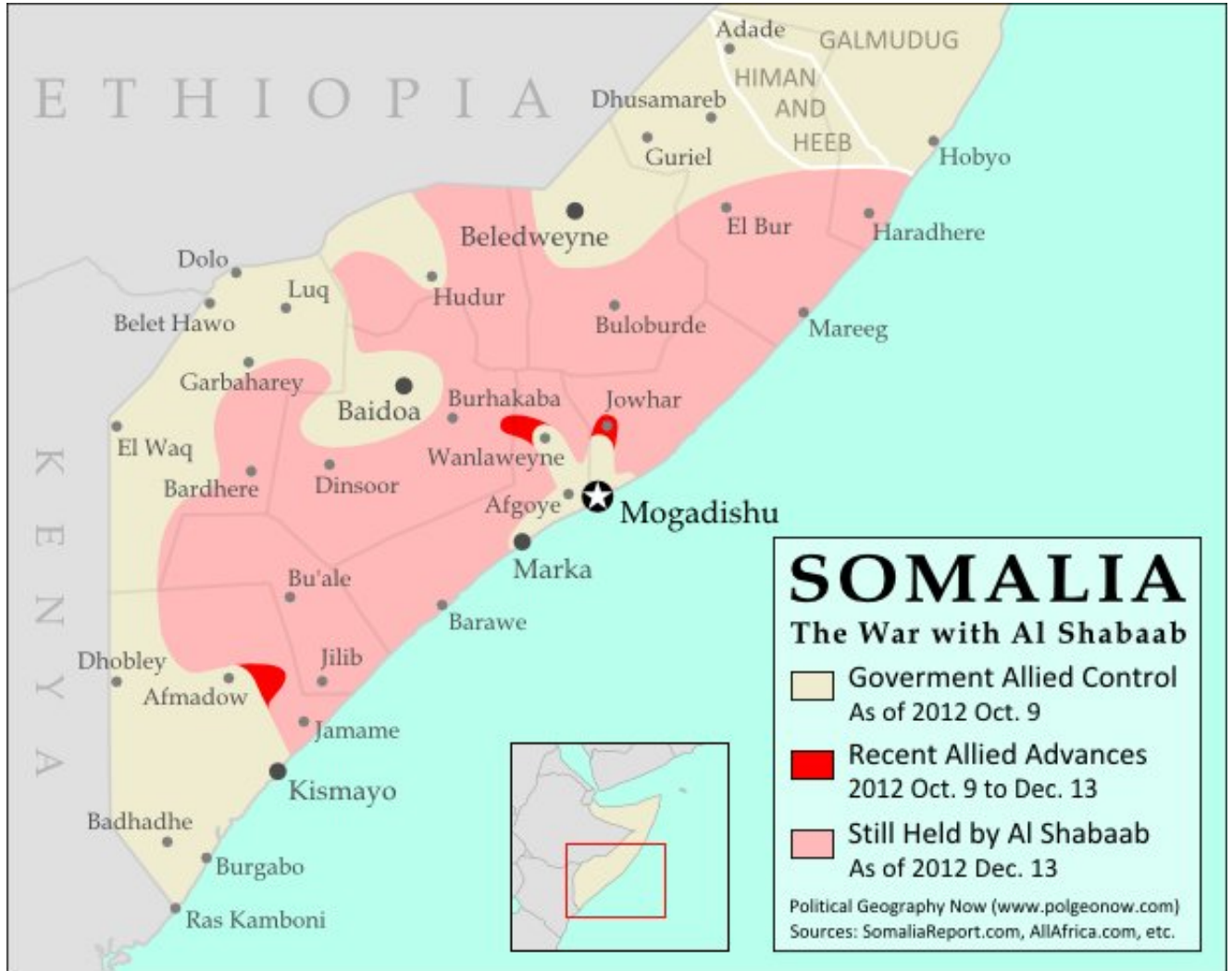


Map No. 3690 Rev. 10 UNITED NATIONS
December 2011

Department of Field Support
Cartographic Section

Source: National Counterterrorism Centre, United States, 2012.

Appendix C: Map Showing Al-Shabaab Control Areas



Source: SomaliaReport.com Courtesy of Department of Field Support Cartographic Section, United Nations, 2011.