INTERNATIONAL NORM "RESPONSIBILITY TO PROTECT" IN EASTERN AFRICA

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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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This research study is submitted for examination with my approval as University Supervisor:

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DEDICATION

To my entire family particularly my wife Jemimah, and my three kids (Odupoi, Seneyia and Nemayian) for their entire support.

ACKNOWLEDGEMENTS

I thank God, for His grace and mercy that has sustained me through my entire educational process. I also wish to express my sincere gratitude to my foster father Rudi Hackl who has been a great source of inspiration in my life, to my other relatives and friends for their support and encouragement. May the mercy of God be with your all.

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LIST OF ABBREVIATIONS

AU   African Union

CEG   Capability-Expectations

EU   European Union

R2P   Responsibility to Protect

SC   Security Council

TABLE OF CONTENTS

ABSTRACT

Responsibility to Protect seeks to bridge two ambivalent concepts of state sovereignty and adherence to human rights and morality in the sphere of international relations. This study examines the evolution of the principle to protect as an international norm by highlighting specific situations in Eastern Africa region. It evaluates prior UN and US humanitarian interventions in the Eastern African region in the early 1990s in a bid to illuminate the significant issues and experience that is of importance to the current intervention by international community intervention in Kenya. This is even more significant with the addition of freedom of expression as a key right under the R2P principle as it is consistent with the moral, legal, and consequentialist arguments in favor of the international norm of right to protect. The study established the existence of the responsibility to protect within East Africa Community. The study examined four intervention cases and found that states' responses to humanitarian crises have not dramatically changed before and after R2P was adopted; of particular concern were: the Kenyan post-election violence of 2007/2008 which has mostly been characterized by violence at various stages from pre-election, during elections and post-election; the civil war in the South Sudan region of Sudan which has been raging since 2003; the 1994 genocide in Rwanda as well as the anarchy and dysfunction state of Somalia lacking functional state institutions that can maintain the peace and rule of law, has been neglected by the international community and continues to titter on the brink of genocide and . In conclusion, the study addressed the moral justification of the use of hard power as well as challenges facing responsibility to protect using the intervention of South Sudan, Somalia, Rwanda and Kenya case studies. 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 the morals issues of responsibility to protect.

CHAPTER ONE
INTRODUCTION TO THE STUDY

1.1 Background of the Study

'Responsibility to protect' is defined as deploying a country's military force against another country, with a public aim to end the violation of human rights which is being directed towards its citizens."[1] This term came to be used for the first time in 2001 in the report of the Canadian-supported International Commission on Intervention and State Sovereignty (ICISS), entitled *The Responsibility to Protect*. The other meaning of responsibility to protect is the event where the armed forces of a certain state or international organization enter another state in order to protect citizens from mistreatment or the abuse of their human rights.

ICISS was created to deal with the issue of, in what circumstances does protection from human rights violations, crimes against humanity and ethnic cleansing supersede sovereignty? Kofi Annan, Former Secretary-General to the UN poses the following question; "if we cannot intervene in a war situation due to sovereignty, how are we supposed to deal with a Rwanda, Srebrenica to total and systematic violations of human rights that demean our very existence as human beings?[2] There must be interventions in war torn countries e.g. in north and south Iraq after the Gulf War, and in Somalia, Haiti, Liberia, Rwanda, Bosnia, Kosovo, Sierra Leone and lately in Libya, in order to safeguard specific vulnerable groups in the population.

Responsibility to protect raises some of the most interesting debates in international relations: it asks questions about the priorities of international justice and order, it

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[1] Marjanovic, (2012)
[2] Annan, (2000).

inspires debate about the use of military force, and it has as its case studies some of the worst acts of human brutality in recent times. Yet much of the literature on Responsibility to protect is dominated by one of two things: either ethical debates surrounding its moral legitimacy and the conditions for legitimate intervention, or the analysis of why states have or have not intervened in a particular case. What is missing is a holistic approach to Responsibility to protect intervention which incorporates the theoretical debates with the practice of this type of intervention[3].

Outlined in the ICISS are three elements of responsibility to protect namely; responsibility to prevent, react and rebuild. Of all the elements, the commission holds that responsibility to prevent is supreme to the rest. This is because this element can only be implemented by the sovereign states together with the local communities living in those states. In this regard, the international community only intervenes when need arises, just to offer support to the local efforts. Prevention is primarily done so that there will be no need for intervention in future.[4] In order for prevention to be effective, the ICISS report cites that knowledge of the delicateness of the issue at hand and the risks that accompany it usually referred to as 'early warning' must be known. In addition, it is important to understand the policy measures that have been put in place in order to make a difference,[5] finally political will to apply the measures must be in existence.

The element of obligation to act on situations of compulsory human protection is implied in responsibility to protect. Put explicitly, it is about preventive measures; if they fail, coercive measures should be applied and in the worst-case scenario, military action.[6]The

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[3] Scott, (2005)
[4] ICISS, (2005).
[5]Ibid
[6]Fennimore, (1996)

obligation to rebuild is the third concept. It is essential because a big number of countries that come out of war relapse into war in first five years. In the ICISS, the obligation to rebuild analyses the responsibilities of the international community after the intervention as well as the limits that have to be taken into account.[7]

This study gives a historical account of the evolution of the norm of intervention. It will use current theories of norm dynamics to assess how a norm of Responsibility to protect has come about and why. The study will focus on four cases: intervention in Somalia in 1992, intervention in Rwanda in 1994, the post-election violence in Kenya and ongoing international involvement in Darfur[8].

1.2 Statement of the Research Problem

Eastern African states are plagued with historical account of the evolution of the norm of Responsibility to protect. Kenyan obligation to protect was triggered by the disputed presidential election held on 2007, experienced post-election violence, a humanitarian crisis, economy was disrupted and harbored questions on how its future would be politically. South Sudan has been in civil war since 2003, UN officials placed the death toll at 300,000, to date, the UN-AU Mission in Darfur is operating within limited resources to protect civilians and ensure humanitarian aid is operational and trying to establish roots for peaceful existence.[9] On the other hand, 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.

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[7]Florini, (1996)
[8] Ibid
[9] Bellamy, (2006)

Eastern Africa states have always experienced skewed distribution of resources and power. Sovereignty has become the only in many countries the sole defense although it should be seen as going deeper than this i.e. being more than international relations. It is deemed as recognizing the total worth and dignity of a nation, preserving their identities and national freedom, and affirming peoples' right to decide on what they want their life to be like and their destiny. The research therefore provides in totality a different perspective of the legal issues involved and challenges the very existence of a right of responsibility to protect. The research will therefore critically examine the reasons provided by states in justifying their actions and finally, we will try and reconcile both foundations of present day international society: not intervening and respecting individuals' rights. Its holistic framework offers guidelines not only for responding to massive violations of human rights, but also for preventing such tragedies and for rebuilding conflict-ridden societies.

The study will examine the legal questions surrounding responsibility to protect and also include the ethical issues involved around obligation to protect. It will further point out the limitations encountered while in coming up with a criterion for intervening and ends with exploring the effect of the debate on the events of international systems.

1.3 Objective of the Study

   i.   Examine the international norms regarding responsibility to protect, and its implication

  ii.   Determine the influence of agents of intervention and responsibility to protect in the international arena

 iii.   Investigate the effectiveness of responsibility to protect Eastern African states.

1.4 Literature Review

The literature review part of the study comprises of Responsibility to protect and the right to protect need to be put into this context of primary norm, secondary norm and identity in order to understand why Eastern Africa 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, responsibility to protect has always been confused with the idea of right to protect. It first deals with responsibility to protect 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 some selected case study.

1.4.1 Responsibility to Protect

Mason and Wheeler do not agree with noninterventionists: they do not indicate that if a practice of responsibility to protect has proper regulation and is constrained may not be permitted morally, or would make the world we are in worse, even though sometimes intervention brings about wellbeing for all involved. Therefore instead of discouraging obligation to protect, from a consequentialist perspective, it will be supported.[10]Holzgrefe observes that scholars in the legal profession scholars who make a case for responsibility to protect through military intervention "make a case for three arguments intended to reconcile responsibility to protect interventions with the UN's *jus ad bellum* regime."[11]

Firstly, some legal scholars like Andrew Mason and Nicholas Wheeler, in their article on *Realist Objections to Responsibility to Protect Intervention* as well *as* Newman &Weissbrodt posit that article 2(4) of the UN Charter does not completely discourage the use of force. It is there to discourage forceful intervention with the aim of violating the

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Mason & Wheeler, (1996)
[11]Holzgrefe, "The Humanitarian Intervention Debate," 37.

territorial boundaries or interfering with the political independence of a country. According to Teson, in a situation where the integrity of a nations' territory is not interfered with and there is no interference with the state of that nations politics then it will be against the regulation to use force according to article 24.[12]

On the same note, Holzgrefe argues that the realists in the legal profession have made a case that favorstheR2P while interpreting the Charter's statement which forbids use of force "in any other way that is conflicting with the intents of the UN." They argue that this statement "allows unauthorized R2P when the Security Council has failed to live up to its main role of protection of human rights."[13]In the same breath, he observes that the system of security of the UN which is built on an agreement involving the permanent members of the Security Council has failed to operate the way it was supposed to.

Riesman reasons out that a section of the organized reasoning for the theory of Article 2(4) has disappeared.[14] Consistent with this view, "if the Security Council is not able to end significant violations of human rights, nations may do this unauthorized."[15] It is fundamental to notice that Holzgrefe justifies this by asserting that the legal viability of this view relies greatly on the international community's present view of interventions.

1.4.2 Norm of Responsibility to Protect

Finnemore posits that with reference to R2P, the character of international order after the Cold war continues to be. In the period that the Cold War lasted, the "spheres-of-influence" was the mode of operation. This was basically sanctioned by the strong states which did not interfere with the internal affairs of the weaker states in assessing the

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[12]UN Charter, Article 39
[13]Reisman, (1985)
[14]Ibid
[15]Holzgrefe, "The Humanitarian Intervention Debate," 40.

magnitude of the threat they posed. As competition between the two super powers continued, there was a pact to the effect that there would be non-interference on how states treated their citizens internally."[16]After all, scholars seem to agree that at that time, intervention by any other state would be seen as a gross violation of sovereignty.[17]Finnemore disagrees that this is not the issue: "nations that mistreat the nationals in significant organized ways at the moment are seen as safety threats considering that social tension and increase of refugees destabilizes the neighbors and that aggressive habits within the country is considered as a show of the ability to react violently externally." It's not vivid that the flow of refugees across the boarders can be considered a humanitarian problem that may make it to be viewed as threat to the peace and security of the region. Looking at the case when UN intervened in the conflict in Rwanda and Somali it only stated the "threat to global security and peace" but the refugees moving through the boarders was not indicated as their reason for intervention. Somalia, UN mission once aided safeguard supplies of charity food & subordinates. In Rwanda, the UNSC 929 decision of June 94 (after about one million Tutsis & a few Hutus had been killed) was focused on ensuring that the mass killing ends and that the millions of internally displaced citizens were assisted as required. The advantage of the UN movement in both case is that it developed conditions in which the refugees could get help and at the same time ensured that those who were displaced internally returned to their homes."[18]This however does not come out clearly that refugees crossing their country's border is necessary in order for humanitarian disasters to be regarded as threats to international peace and security.

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[16] Newman & Weissbrodt (1996)
[17] Article 7 of the UN Charter; ICISS, (2001).
[18]*Uniting for Peace Resolution* Res 377 (V) of 3 November 1950

Shaw and Fennimore hold that inside the unfolding principle of responsibility to defend the "lawfulness of intervention for humanitarian purposes presently depends on situation of the Security Council authorization." The significance of multilateralism improved after Cold War. With regard to this idea the ICISS International Committee on Intervention and State Sovereignty 2001 report said the most suitable organ for authorizing military action to protect humanity was the UNSC.[19] The aim is not to determine possible choices to the Security Council as a different center of command, but to ensure it performs better. Inside the UN, an assertion of threat to global peace and stability added to multilateralism has been accepted globally to a large extent leveled an extent of authorization within international community, as depicted through the clear instance of invading the borders by Iraq into Kuwait in 1991. Then USA actively searched for a multilateral response via UN, to the outright going against the global law by Iraq. Finnemore indicates that "even in cases where aggression is outright and violations were not in contest, Washington still needed to engage in a multilateral force through UN thereby pointing to the greater need for multilateralism. [20] Mandle indicates that the challenge of intermediations "can regularly be eased when using military force allowed by a reputable organ (such as the UN security Council) or an ally, however it's exacerbated when using force is from a usual adversary or when the intentions of the international vigor are questionable."[21] Nevertheless, some scholars do not agree with multilateral idea and the UN Security Council.

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[19]The Continental Shelf Cases, ICJ Report 3 (1969)
[20] Wheeler (2000)
[21]Newman & Weissbrodt (1996)

1.4.3 Responsibility to Protect in the East Africa

The need to build a more effective system for the protection of vulnerable populations in Africa could hardly be clearer or more urgent. The Project Ploughshares 2005 *Armed Conflicts Report* states that, of the 32 intra- and inter-state armed conflicts ongoing in 2004, 14, or close to 50 per cent, were in Africa. The East is among the most conflictive and insecure areas of the world. In Eastern Africa, it is estimated that there are over 30 fierce clashes right now in progress in the IGAD territory, a largest portion of which are peaceful in nature and four which are specific as 'extreme'.[22]The progressing battle to complete the scourge of disorder and warlords in Somalia, together with the as yet happening human instances of human tragedies in Northern Uganda &the Darfur district of Sudan, are however the most prominent cases of the dangers confronted by the communities within the region. It is now typical although very appalling perception that regular citizens and especially women and children, bear the brunt of anguish and misfortune connected with such clashes.[23] Clashes in Eastern Africa, are still characterized by the enlistment and utilization of children soldiers, the unpredictable utilization of landmines and small arms, across the board and orderly misuse of global humanitarian law, and vast scale constrained dislodging. Without a doubt, the African Union hold that the continent is as of now residence to 3 million refugees and no less than 20 million uprooted people. The immediate effect of clashes on individuals and groups in Africa, and especially on the most powerless, could barely be misrepresented.

In spite of the conditions emerging from armed clashes are the source of danger to the people's security and that of their society in their location, it would be erroneous to

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[22]Kwakwa (1994)
[23]Bohman and Lutz-Bachman, (1997).

compare the security of defenseless people with the need to anticipate and react to war and other ills committed against them. The mainland experienced 186 overthrows somewhere Between 1956 & 2001, the continent has had 186 coups, 50% of which happened in the 1980s and 1990s.[24][25]In cases of failed states, his has been occasioned by partisan judiciaries, gross abuse of human rights coupled with a trend of non-punishment of law breakers. This has led to occasions where the victims are experiencing impending collapse of their societies, mostly the state is unable to secure those people or sometimes it is the aggressor. During the eleventh anniversary of the Rwandan genocide, one need not emphasize that in such scenarios, the neighboring states and the world at large has not responded.[26]Although over the years there has been clamour for dealing with the root causes, this has not happened in many cases and therefore the same conditions keep causing fresh violence. These are issues have to do with being left out economically and politically, as development only favours some areas, incapable leadership, arms that are easily acquired and these have never been adequately addressed. Furthermore, there are emerging threats to stability and development in the continent e.g. environmental degradation and communicable disease.[27]

Endeavors to keep the conflicts at bay, including crisis diplomacy and imposing sanctions have always been inefficient. Furthermore, when a situation gets to the point of being disastrous, intervention has not been possible due to the existence of non-interference policy from both the African and international community.[28]

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[24]Marjanovic, (2012).
[25]Ibid.
[26]Newman &Weissbrodt (1996).
[27] Ibid
[28]Newman &Weissbrodt (1996)

1.4.4 Intervention in East Africa: challenges of principle and practice

Where forceful intervention has been prompted as in Somalia, there has been mixed results. Critics have always felt that such an invasion violates the sovereignty of the nation which is the only protection that the weak states have from the strong states especially in the light of Africa's colonial history.[29]

Others feel that in Eastern Africa states, unless there is proper control over all the territorial boundaries and challenge of their legitimacy by their people, the term sovereignty will remain a term in law rather than a practicality. These critics always question why intervention has been selective. Further they wonder why help has arrived a little too late in the day when humanitarian crises have already happened or why military interventions have been favored as opposed to other solutions.[30] These issues point to an unwillingness to comprehend and unearth the deep rooted systematic issues that give rise to conflict. At times when these interventions have arrived, in order to protect humanity, it has happened too late in the day. This has been occasioned by the intricacies of putting together and giving mandate to a complex mission which consumes a lot of time.

Bringing together the military and civilians to work towards has always become troublesome raising moral and operational issues for both actors. Other non-military skills so important to complex activities, for instance human rights observers, have been hard to incorporate adequately. Monetary difficulties have additionally been hard to solve. Military interventions are essentially very expensive affairs, and the available resources are hardly enough for post war activities e.g. reconstruction meant to avert future wars and establish long term peace. Where the major military powers have no

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[29] Article 1(1) of the UN Charter
[30] Marjanovic, Marko, (2012).

apparent interests, it has been hard to convince them to send military forces and equipment. Poorer countries have had to bear the brunt of sustaining those missions.

Forces training have conventionally inclined towards UN missions or waring other than towards the diligence necessary in a crisis. It is also evident that even when deployment has been done, they have been hindered by lack of political goodwill and consequent effectiveness in life saving.[31]The complexities in conflict zones need to be approached in a more inclusive and urgent way as suggested by the actors in Africa and the international community. The world triviality and political paralysis is addressed by the International Commission on Intervention and State Sovereignty. In Africa, various sub regional bodies are mandated with ensuring peace and stability in Africa by rapidly responding to emerging crises.

1.4.5 The Emergence of the Concept of Responsibility to Protect

The doctrine of R2P has become a norm in a short span of time. The UN adopted the doctrine in 2005 and endorsed by the SC in 2006 by resolution 1674. The operationalization of R2P has not been without challenges, however, the current UN secretary General Ban Ki-Moon has established the weaknesses hindering the operationalization of R2P as a basis of Secretary-Generalship.[32]The doctrine is also a working language in the global sphere in dealing with humanitarian crises. The performance of Sudan's government was evaluated on the basis of R2P by Jodie Williams and established that the government of Sudan immensely failed in its responsibility of protecting its citizenry.

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[31]Newman &Weissbrodt (1996)
[32]Newman &Weissbrodt (1996)

In international relations, sovereignty as a concept is a dilemma, it is not clear whether it is a right or responsibility. Conventionally, it is a right that has existed since the Westphalia in 1648. The claim that internal affairs of a nation are its own and should not be interfered with unless the affairs threaten the affairs of another country or triggers alliance obligations. Traditional sovereignty is illustrated at the end of World War 1 when the US secretary of state Robert Lansing declined to take action against leaders from Australia, Turkey and Germany citing crime against humanity. By saying that "the essence of sovereignty is the absence of responsibility".[33] In so concluding, it can be inferred that then, sovereign leaders were immune from prosecution.

Citizens' wellbeing achieved through a state ensuring protection and well-being by provision of needed political good and services would result in responsible sovereignty.[34]When a state fails to provide these to its citizenry, the international community has responsibility to react.

Responsibility to protect and state sovereignty remained a dilemma for a long time till the year 2000 when the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS) was set up to resolve the dilemma. The ICISS's outlined three pillars of R2P; they included prevent, react, and rebuild.[35] Four significant contributions to the contest of intervention are credited to R2P; the first is its ability triggering a discourse of R2P of people in crisis, second, bringing to fore an understanding of sovereignty in which protection and not control is the focus of states,

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[33]Nardin, (2002).
[34] Croft, (1997).
[35]ICISS; IDRC, (2001).

third, creating a framework for R2P, lastly, coercive action is only justified if it is legal and legitimate.[36]

The proponents of R2P found it imperative to persuade the global south to buy the idea of R2P, particularly in Africa that had suffered most conflicts.[37]The Constitutive Act of the AU transformed conflict management framework in Africa.[38]R2P was officially endorsed by all heads of states in the 2005 world summit chaired by Koffi Annan. The original R2P of the ICISS was restructured and separated in two parts; the first outlining the responsibility of the state to protect those within their borders and the second delineates a case in which a third-party state fails to protect its citizenry from the threats of mass atrocities.[39]

In the 1990s there was a notion that human beings matter more than sovereignty was highly regarded across the global political system. But the outset of the new millennium was a new dawn to sovereignty. Weiss, Crahan & Goering puts it more clear by alluding that the political will to R2P has since evaporated.[40]

The central theme of ICISS in 2001 while introducing the doctrine of R2P was the emphasis of a state to protect its citizenry from avoidable catastrophe, and that when states are unwilling to offer this protection, then the international community has a responsibility to protect such individuals.[41]

The concept of R2P was furthered in 2004 by a high level panel of the UN, which in a report titled A More Secure World in which just as the 2001 development emphasized the

[36]Evans, (2008).
[37]Sarkin, (2009)
[38]Williams, (2007).
[39]Hehir, (2008)
[40]Thomas and Hubert (2001).
[41]ICISS, the responsibility to protect, at VIII (2001).

need for international community to play the big brother role by offering protection to vulnerable civilians in the event that the states is deemed unwilling to offer this protection.[42]

The concept of responsibility to protect has risen quickly from an idea to allegedly legal norm raising some suspicions from a positivist perspective. Successful implementation of the principle of responsibility to protect is still elusive as certain issues remain unresolved: First, the concept of responsibility put forward is not one that entails liability. There are no mechanisms developed to hold governments, or individuals, liable for a failure to protect civilians at risk, and the document is thus silent on the fundamental question of how to deal with violations of the principle to protect. Second, there is the problem of duty allocation: who has to contribute how much to an intervention. Third, R2P is mainly concerned with the responsibility to intervene at the level of *ad bellum*, the responsibility to protect the civilian population at the level of *in bello* remains ambiguous in many respects

1.5 Theoretical framework

1.5.1 Just war theory
The Just War Theory (JWT) was proposed by Catholic Bishops,[43]but has attracted non-theologian discourse in explaining the consequences of armed conflict.[44]Well embedded in the just in war theory are some principles of the concept responsibility to protect. The protection of non-combatants has been addressed in connection to both *jus ad bellum* and *jus in bello*.

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[42] UN Doc. (2004).
[43]Bohman and Bachman (1997).
[44]Fixdal and Smith. (1998)

In St. Ambrose's' lies the endorsement of the protection of the innocent. Later, the protection of the innocent was explicitly formulated as a *jus ad bellum* criterion and more specifically as one of the just causes for resorting to lethal force by authors such as Fransisco de Vitoria and Fransisco Suarez. The commitment to the protection of non-combatants can also be detected in the *jus in bello* criteria and thus the criteria addressing how soldiers should conduct themselves in war. Principles of civilian protection in the just in war theory are that: First, the *jus in bello* criterion of discrimination says that parties to an armed conflict distinguish at all times between combatants and non-combatants, and it prohibits soldiers to apply direct, intended armed force against non-combatants.

Those who plan and decide upon an attack have the responsibility to consider potential side-effect harm that may follow from their decisions. Moral responsibility for unintended effects of attack also fall on those who carry out the attack: they have a responsibility to abort the attack if it becomes clear to them that disproportionate harm to civilians will follow. Second, protection may also be seen as the long-term indirect outcome of traditional war fighting through the defeat of an enemy.

Second, protection may also be seen as the long-term indirect outcome of traditional war fighting through the defeat of an enemy. Formulated as a negative duty, and in the indirect sense just sketched, protection is not really a new task for the soldier. Michael Walzer suggests that, while protection is a *part of* soldiering, 'the "reason" for soldiering is victory, and the "reason" for victory is the protection of one's own people, not of other people'.[45] Since Walzer conceives of the responsibility to civilians mainly as a kind of

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[45]Michael (2004).

agency responsibility, he seems to restrict responsibility and blameworthiness to cases where soldiers directly or indirectly inflict harm through their actions.

Despite the Just war dialogue existing since time immemorial, responsibility to protect only came to light post-Cold War season.[46]Sustained discussion on the doctrine of R2P began in 1999 during the Kosovo intervention. The discourse of R2P has attracted interest from scholars in different disciplines including international relations, political science, and philosophy among others. Moreover, transformations in the international sphere in 2000s have given the discourse more credence. It must however be pointed that the subject has been surpassed by fight against terrorism, even though the doctrine remains relevant in the global political system.[47]

1.6 Research hypotheses

i.   The norm regarding responsibility to protect on the norms of humanitarian intervention in Eastern Africa.

ii. There is significant influence of norms of responsibility to protection behavior in the international arena.

iii. The impact of intervention and responsibility to protects in the region Eastern Africa

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[46]Richard (1973).
[47]Kenneth, (2005.

1.7 Justification of the study

1.7.1 Academic Justification

This research is relevant from a scientific perspective. There is a lot written about the Responsibility to Protect norm, but there is not much written about the influence of the implication of the norm on paper and in practice. The research question will give an inside in the establishment of one of the most important principles and explain why this norm of Responsibility to Protect, it is so important for other cases in the future Not only at the international community but also at the national level. This study also examines various shortcomings of Responsibility to Protect and how the doctrine can be modified to enhance its protection capacity.

Furthermore, this study is also inspired by the changes taking place in the world today. The end of the Cold War in the last decade has focused attention on international law, especially in areas that hitherto seemed to elude legal control. Momentous events of recent years, such as the war on terrorism, have shown the tremendous potential for developing and applying international law even in areas that have presented the greatest challenge, such as the use of force.

This study will therefore fill the identified gap in responsibility to protect in Eastern Africa. The study will no doubt augment existing literature and bring to the fore new insights particularly on responsibility to protect in Eastern Africa. The study will also become an entry point for other researchers interested in further analyzing responsibility to protect. It will also suggest areas of further research.

1.7.2 Policy Justification

Concerning the impact of the Responsibility to protect norm in practice. The Responsibility to protect norm is a norm that was established out of practice. The several horrible violent conflicts at the end of the twentieth century, which led to unspeakable human rights atrocities and innocent civilians being killed, made clear that the international community should act.

Under the doctrine of R2P, military intervention is employed when everything else has failed to end a crisis. Taking Rwanda to illustrate the consequences of failure of employing R2P.it is argued that the genocide would have been brought to a halt had the international community intervened in good time. This Research will traditionally play a significant role in helping governments formulate appropriate and sustainable policies. It affords this primarily through understanding and creating effective means of responsibility to protect" in Eastern Africa.

1.8 Research methodology

The research design that will be used in this study is descriptive survey method. This method will be preferred because it allows for prudent comparison of the research findings.[48] The qualitative design chosen for this research is theory grounded, or natural inquiry. Grounded theory research unfolds and emerges empirically from the data and is more responsive to contextual values rather than researcher values. Descriptive Statistics in the view of Cooper and Schindler discover and measure causality between variables. This paper employed a descriptive approach because of its many benefits. Random sampling was employed because of its suitability in the context. Qualitative methods

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[48] Cooper and Schindler, (2000)

were used in gathering data for the study because of its ability to explore, describe and explain elements of the research process. Since the study sought to examine the norm life of a doctrine, it was considered exploratory. However, historical approaches have been employed in the past to examine norm development because development of a norm are historical, the development of apartheid thinking is one such example of historical development of a norm.[49] Research on norms in the developing stages are scanty, this study adds to the field of examination of a norm in development process because it considers R2P as a developing norm.

Prediction of the development path of a norm is not simple and cannot be achieved through use of historical perspective, in which case historical approach would not have been suffice in the present research because the underlying factors that inform the development path of a norm are essential in establishing the useful normative framework that is responsive to the current international political system. It is through such a framework informs the practical operationalization of a norm in the current situations.

The paper is presented in sections that gives chronological history of events and how the events are interlinked and provides a structure that helps in the analysis of the events and classifying them in the order of influence. The approached is described as abduction by Finnemore, and he posits that that it is neither a deduction nor induction process but a combination of both. Deductive approach derives hypotheses that shape the initial design of inquiry. However, deductive approach is criticized for its limitation in explanatory power. Deductive approach on the other hand are augmented by the inductive arguments to create an understanding of events and thereby help in the analysis of similar

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[49]Klotz, (1995).

events.[50]The deductive approach is advantageous for the present study as suggested by Finnemore. Induction only would not suffice in an study that is exploratory in design, combination of both is thus a good approach because of the flexibility that it affords a researcher.[51]

This approach was thus effective for this study because it helped in understanding the development path of R2P. Units of analysis in this was international organizations, and the staff of these organizations. By use of documentation, official reports, academic papers, speeches the study was able to gather secondary data all of which helped in the discourse analysis that was relevant for this study.

1.9 Chapter outline

Chapter 1: Introduction – A brief background of the research opportunity and the proposed objectives of the study are presented here, the methodology of the research is also introduced in this chapter.

Chapter 2: Norms on behavior in the international arena. This outlines international norm, status of responsibility to protect as a norm and the norm of responsibility to protect and its implication will be presented.

Chapter 3: A presentation on agents of responsibility to protect in the international arena were highlighted in this chapter.

Chapter four: A critical analysis of international norms "responsibility to protect" in Eastern Africa this was dedicated to the examining the burying of the norm of R2P.

Chapter five Chapter five conclusions, summary of findings and recommendations.

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[50]Finnemore, (2003).
[51]Ibid

CHAPTER TWO

NORM ON RESPONSIBILITY TO PROTECT IN THE INTERNATIONAL ARENA

2.1 Introduction

The Responsibility to Protect (R2P) and Responsibility While Protecting (RwP) are a post-Cold War concepts stemming from the evolving character of the international state structure and the globalized nature of good governance.[52] In this section, the study examines the ever-changing discourse of R2P and RwP by reviewing a variety of scholarly literature and humanitarian reports from Africa and elsewhere. Of particular concern, will be the concept (RwP& R2P) interact with international peace and security frameworks such as state sovereignty, protection of civilians and peace keeping operations/missions.

2.2 The Responsibility to Protect

First and foremost, it is important to note that R2P is a preventive mechanism in situation or where mass population are at risk of international crimes. This includes Genocide, ethnic cleansing, war crimes or crimes against humanity. It is a direct opposite of humanitarian action primarily meant to alleviate wide scale human suffering.[53]R2P also differs with Humanitarian intervention since it envisages and allows the use of military force even without the authority of the United Nation's Security Council (UNSC) should all other non-coercive initiatives fail. Closely linked to this is the fact that R4P is

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[52]Brockmeier, *et al* (2016).
[53] ibid

anchored in international law, specifically the laws of armed conflict, human rights, peace and security, and the law on national sovereignty.[54]

It is also important to note that the R2P can only be invoked in reference to very specific criminal circumstances of Crimes against Humanity, Ethnic Cleansing, Genocide and War Crimes. Apart from Ethnic Cleansing, the rest of the crimes cited are clearly defined in international law and codified under International Criminal Court's (ICC) Rome Statute. Ethnic cleansing on the other hand is not defined under international law, but under the UN. It defines it as a systematic policy of violence or terror-inducing acts, targeting the civilian population of one ethnic or religious entity by another ethnic/religious entity, with the intention of removing it from a particular geographic area.[55]

In a nut-shell, R2P is premised on its most basic element; the responsibility to preserve humanity. It is borne out of a belief in the universality of shared human values, core of which is the sanctity of human life. It recalibrates the concept of state sovereignty by emphasizing of 'state responsibility' to its citizens and the international community. as opposed to exclusive 'state control' of within its borders.[56] In R2P discourse, the state sovereignty is not absolute. It is the responsibility of the state to citizens, populations at risk or victims that is of priority, not the sovereignty rights of a state.

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[54] Ibid
[55] Thakur and Chandra, (2011).
[56] ibid

2.3 Norm of Responsibility to Protect

Scholars such as Brockmeier, Sarah; Stuenkel, Oliver; Tourinho and Marcos argue that in the legal framework of R2P, is subject to UNSC authority.[57] Since the end of Cold War, the significance of multilateralism in military action has become norm. Indeed, with regard to UN frameworks, a multilateral finding of or an identification of a situation as an international threat to peace and security is often regarded as a hallmark of legitimacy in the eyes of the within international community as illustrated by an obvious case of territorial breach of Iraq into Kuwait in 1991[58]. To most proponents, the important task is not to devise a new centre for authority outside the UNSC, but rather to enhance its efficiency. In this case, there was relentlessly search for multilateral action by the US as it engaged the international community at the UN in response to the Iraq's violation of international law. Underscoring the essence of multilateralism, the International Committee on Intervention and State Sovereignty (ICISS) in its 2001 report concluded the UNSC is the most appropriate source to authorize military intervention within the R2P framework.[59]

The intervention in Somalia, by the UN mission was mainly in support and protects humanitarian food relief lines and aid workers.[60] In the Rwandese situation, almost one million Tutsis and moderate Hutus murdered before UNSC in Resolution 929 of June 1994, authorized its mission to end acts of genocide to pave way for provision of aid to an internally displaced population of one and a half million people. This intervention had

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[57]ibid:
[58] ibid
[59]Thakur and Chandram, (2011).
[60] ibid

the immediate benefit of facilitating conducive conditions for the return of refugees and internally displaced population.[61]

Bellamy asserts that at this point, most observers concluded that the UNSC only intervened on the strength of transboundary effects of the genocide as opposed to the genocide itself. The same conclusions can be made with regard to the Somali situation in 1992.[62] In both cases, US efforts to set up a multilateral intervention force despite undisputed cases of aggression and apparent violations is cited by Finnermore as evidence of the significance of multilateralism at the time.[63]Others like Mandle, have argued that when the use of military intervention force is perceived to be from a legitimate authority such as the UNSC or a long standing ally, most of the initial difficulties can be overcome unlike cases when the intervention is from an adversary or a foreign power whose intention is unclear.[64] Not all scholars however share this view regarding the legitimacy of the UNSC.

Other than in self-defense, Henry Shue is critical of the notion that the UNSC is a legitimate authority to sanction the military intervention in situations that may warrant the invocation of the R2P principle.[65] She charges that UNSC with its outdated and at times unyielding, nuclear armed five-member veto wielding power; is undemocratic and unrepresentative of the current global power balance. She points out that Russia is a dictatorship while Britain and France are deluded by their past imperial glory but hardly with the population or economies worth of a modern power[66].

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[61]ibid
[62] Bellamy, (2009).
[63]Finnemore, (2003).
[64] Mandle, (2010)
[65]Shue, (2002)
[66] ibid

2.4 Responsibility to Protect in practice

2.4.1 Central African Republic (CAR) 2013

The Central African Republic (CAR) provides one of the most current situation for R2P debate. In December of 2012, Fancois Bozize then CAR president was toppled by a weak coalition of opposition forces called Séléka.[67] Their resentment of his rule stemmed from perceived marginalization of the region. They were on the verge of storming the capital city Bangui after capturing all the other important towns when Chad intervened. Under the auspices of the Economic Community of Central Africa (ECCAS), the rebels were persuaded to start negotiations with the Bozize government which gave rise to the January 2013 Libreville Agreement.[68] The warring groups agreed to a three-year power sharing administration.

The situation in CAR is considered as an illustration of case R2P since both sides of were reported to have committed mass atrocities. Jan Bellamy, the UN Deputy Secretary General stated argued that the situation in CAR was a test for international solidarity and the responsibility to the people of CAR. Consequently, the UNSC passed Resolution 2017 of December 2014 highlighting the basic responsibility of NTC to protect civilians in the CAR.[69] The resolution authorized the AU and French contingent to restore security, enforce an arms embargo, protect civilians and set-up a commission of inquiry under Chapter VII of the UN Charter.

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[67] "ICC opens CAR 'war crimes' preliminary investigation". *BBC News*. 14th may 2013
[68] Bellamy and Alex, (2015).
[69] ibid

One constraint in AU initiated intervention in armed conflicts in African is that it is severely hampered by inadequate resources. In this case, despite the AU's African-led International Support Mission for CAR (MICA) being the first to intervene, it's impact was limited. The International Contact Group initially urged the rebels to respect the principle of the Libreville Agreement.[70]Noting that MISCA was unable to adequately tackle the growing insecurity, French President François Hollande changed the initial position from disengagement to military contribution by 20 November 2013.The initial force was reinforced about one thousand French troops over a six-month period.

Officially, the UN placed CAR on the global agenda through the adoption of UN Resolution 2012 of 10th October 2013 that broadened and strengthened the mandate of its Integrated Peace Building Office in the Central African Republic (BINUCA). Soon after, France deployed its peace keeping contingent under MISCA as authorized in UN Resolution 2027 which gave it the mandate to restore security and protect the civil population. In the meantime, the International Criminal Court (ICC) Prosecutor began preliminary investigation into allegations of war crimes.

2.4.2 Syria and Yemen (2011-2016)

The current situation in Syria is a serious indictment of the international community's inability to act in a collective manner to bring to an end what undoubtedly will go down in history one of the most serious tragedy of the 21st Century. With over 270,000 people dead, 4.8 million refugees and approximately 6.6 million internally displaced persons; the Syrian conflict does not have an end in sight. Despite the concerted efforts by International Syria Support Group (ISSG), the UN, European Union, the Arab League

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[70]ibid

and host of other countries' efforts to normalize the situation. The UNSC remains hopelessly deadlocked to implement any measure that would guarantee the protection of civilians and facilitate the delivery of humanitarian aid.

Various UNSC draft resolutions that sought authority to use of military force under the R2P framework were vetoed by Russia and China keen to prop up the Syrian regime of Bashir Al Assad. This is unfortunate as various reputable organizations; including the UN own Human Rights Commission, which has documented evidence of large-scale massacres, war crimes and gross violations of international law, as a matter of state policy perpetrated by the Syrian regime and other militia groups that support it. The only resolution (UN Security Council Resolution 2254 of 2011) gathered sufficient backing by all members in the UNSC calling for the cessation of hostilities and increased humanitarian aid to the affected.[71] Towards this end, UN Human Rights Commission has adopted at least 16 different resolutions and reports in order to prompt the cessation of atrocities taking place in Syria. Indeed, the United Nations Office on Human Rights (UNOHR) Commission of Inquiry report found that the Syrian government and its allied militia had committed the crimes against humanity of extermination, murder, rape and other forms of sexual violence, torture, imprisonment and enforced disappearance and other inhuman acts. This is a serious failure to deliver on its primary mandate of ensuring threats to international peace and securities are promptly addressed to protect the vulnerable and prevent a further escalation.[72] As of this point, a myriad of state and non-state actors are militarily involved in the Syrian conflict, with some (Russia, Iran and

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[71]Brockmeier, Sarah; Stuenkel, Oliver; Tourinho, Marcos (2016-01-02). "The Impact of the Libya Intervention Debates on Norms of Protection". *Global Society* **30** (1): 113–133.
[72] ibid

Hezbollah) supporting the regime while (US and its Middle East allies) seek regime change. Quite ironically, both sides justify their involvement in the conflict under the R2P and claim to be fighting Daesh/IS, a terrorist religious fundamentalist group that seeks the establishment of a Muslim state or caliph.[73]

The same situation seems to be replicating within the same region, Yemen. There have been widespread atrocities targeting the civilian population but no credible response on from the UNSC or international community. There is fear and understandably so, that the conflict is likely to assume a dangerous ethnic, sectarian or regional dimension in an already politically unstable region. The conflicts main actors are Iranian backed, Shiite Muslims called the Houthi who seek to end the Saudi backed Sunni administration of president Saleh. In fact, were it not for Saudi Arabian intervention, the rebels were on the verge of victory as they control a vast territory in Yemen including the country's capital Sanaa.[74] There is mounting causalities on both sides with over 3,200 civilian deaths since March 2015. The violence has also led to 2.4 million Yemeni civilians being forcibly displaced leaving 82 percent, equivalent to 21.2 million of its people requiring humanitarian assistance. Yemen is in state of collapse as Saudi air strikes destroy vital infrastructure, hospitals and target humanitarian aid workers. There is also the spectre of armed criminal gangs exacerbating the general state of insecurity in the country leading to more human suffering. In the face of failure by Yemen government to protect its citizenry, there is a strong case for intervention within the R2P framework.[75]

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[73] ibid
[74] ibid
[75] ibid

2.4.3 Ivory Coast 2011

In response to serious incidences of violence after the March 20th 2011 election in Ivory Coast, the UNSC resolved unanimously to condemn ex-president Laurent Gbagb supports for gross violation of human rights in Resolution number 1975. It reminded the then Gbagbo administration of its responsibility to protect its citizens and called for a peaceful transition to president-elect Alassan Quattara. The UN established the United Nation Operation in Ivory Coast (UNOCI) and mandated it to use all the necessary force to safeguard life and property. UNOCI immediately commenced operations in April 2011, Gbagbo's rein ended with his arrest by forces loyal to President Quattara. By November 2011, he was transferred to the International Criminal Court where he faces crimes against humanity charges as an indirect co-perpetrator in rape, persecution, murder and other inhuman acts. The crucial nature of UNOCI in Ivory Coast peace process was reemphasized with the renewal of its mandate for a further one year in on 26 July 2012.[76]

2.5 Impact of Responsibility to Protect States

The history of R2P on the global scale can be traced to 1947, just after the World War II. It was inspired by the need to avoid another mass murder as it happened during the Holocaust. The General Assembly, of the newly established United Nations, adopted the Genocide Convention, which prohibited the crime of genocide, created a universal responsibility to prevent that crime, and required the punishment of perpetrators.[77] The term R2P only came in use in the year 2001, a product of long-standing efforts to identify

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[76] ibid
[77] Power, (2002).

and define crimes that have 'shocked the conscience of mankind' and to protect populations from them.

Former UN Secretary General Kofi Annan argued that though the R2P was initially a political concept, it is now based on existing international law. The history of the principle's emergence is therefore anchored in international law. That states had a responsibility to take positive action to prevent genocide when they have prior knowledge about its likely commission and the capacity to influence the suspected would-be perpetrators. In Bosnia vs. Serbia (2007) for instance, the International Court of Justice (ICJ) found that states have a legal responsibility to do what they can, within existing law, to prevent genocide.[78]

The history of perpetration of genocide crimes is particularly troubling. Genocide in Rwanda and Srebrenica; mass killing and ethnic cleansing in Angola, Bosnia, Burundi, Croatia, East Timor, Kosovo, Liberia, Sierra Leone, Zaire/DRC; state repression in northern and southern Iraq; and acute state fragility and civil war leading to mass human suffering in Somalia exposed the hollowness of legal responsibilities in the face of governments and armed groups willing and able to use mass civilian suffering to achieve their objectives.[79] Thus, in the 1990s, the gap between the international legal responsibilities and actual lived experience became glaringly obvious

UN peacekeepers did not protect civilian populations in glaring genocide fields of Rwanda and could not act to enforce UNSC mandated 'safe zones' in Bosnia. US unilateral intervention in Mogadishu in 1992 resulted in a failure that also ended the UN

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[78] ibid
[79] ibid

peace keeping mandate in Somalia. Down south, political and diplomatic strategies were insufficient to stop Angola's slide back into war, while East Timor's independence vote degenerated into mass violence that greeted.[80]The international community was initially ill-prepared to respond.

The tragedies discussed above laid bare the inadequacies of the International community or its fabled legal mechanism's capacity to protect mass populations at risk. It also gave rise to an unprecedented displacement and refugee crisis that haunts even previously politically stable regions (European Union). The 20 million displaced populations are particularly susceptible as they cannot be accorded the protections of International Refugee Law since they had not crossed international borders.[81]

Under the R2P, populations at the frontline of disasters; natural or manmade have equal opportunity to access humanitarian aid services. This includes those grappling with armed conflict, natural disasters and poverty. Traditional approaches to distribution of humanitarian aid are no longer tenable as observance of neutrality without regard to existing political environment is no longer practical. Civilians given food, housing and medical relief by humanitarians only to be killed or displaced again by armed conflicts in a phenomenon once label 'well fed dead'. Indeed, Aid workers sometimes exacerbate the situation by mistakenly offering relief services to perpetrators of genocides and other inhuman crimes.[82]

For instance, in DRC and Rwanda aid organizations such as Oxfam and CARE International espoused 'protection' as a key core value even in cases where it unwittingly

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[80]ibid
[81] ibid
[82] ibid

ended providing shelter to armed combatants. They averred that protection of people from egregious crimes should be at the heart of humanitarian practice. Graca Machel in a landmark report argued for the protection of children in armed conflicts even with their continued deployment as child soldiers in 1996.[83]

2.6   Conclusion and Chapter Summary

The protection of mass populations of the vulnerable in the face of mass atrocities has been a normative concern for a while now overriding long-held suppositions about the inviolability of state sovereignty and its attendant non-intervention stance. However, the UNSC since 2005 has adopted many peace keeping resolutions with a growing military engagement for protection of civilians as its core mandate.[84] It is now common for the international community to even engage interventionist in multilateral action outside auspices of the UNSC, but in what is commonly referred to as 'coalitions of the willing'.[85]

In the Libyan case for instance, governments that would otherwise show callous disregard for human suffering were moved to intervene both diplomatic and militarily after brutal suppression of popular protests by Col. Quaddaffi's leadership in Libya. Consequently, a decade after R2P was adopted by the UN, the practical experience of R2P are unrelated to its activism nor the political impact of the 2005 World Summit outcome document but rather is representative of its normative political evolution as a preventive framework for the genocide and other wide scale crimes.   The

[83]Machel, (1996).
[84] ibid
[85]Bellamy and Alex, (2015).

operationalization of R2P is manifested in peace keeping missions, international criminal

justice, humanitarian action and the advocacy for universal upholding of human rights.

CHAPTER THREE

AGENTS OF INTERVENTIONS AND THEIR RESPONSIBILITY TO PROTECT

3.1 Introduction

The conception of legitimacy outlined above to assess the agents of intervention and see who exactly has the right and/or duty to intervene. To do this, I will assess the track record of interveners to see how they measure up to the conception of legitimacy that I have developed. An intervener's track record is only partially useful, however. An intervener may have been effective in the past because it has acted only in more straightforward cases, so it might not be similarly effective in the future. Therefore, it is also important to consider the institutional characteristics of the intervener to assess whether its track record is likely to be repeated.

The current agents of R2P's legitimacy are doubted by some scholars like Finnemore by arguing that unless reformed, the current agents cannot be legitimate.[86] If Finnemore's assertions are anything to go by, then no intervention should be approved until new and satisfactory agents are developed. However, we should be alive to the fact that despite Finnemore's position, full legitimacy is not necessary for an intervening agent for the intervention to be warranted as much as full legitimacy is ideal. A sufficient degree of legitimacy is essential for an intervener. Given that a large number of the responsibility to protect previously undertaken have had some degree of success as defined in Chapter Two (and are likely to continue to do so), a number of the current agents of responsibility

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[86]Finnemore, (1996).

to protect are likely to possess some degree of legitimacy.[87] Whether this is sufficient for an adequate degree of legitimacy largely depends on the other morally relevant factors, but, overall, we should expect a number of current interveners to meet the threshold required for an adequate degree of legitimacy. Hence, a number of interveners are likely to possess the *right* to intervene. A further concern is who, amongst these, is the *most* legitimate agent of responsibility to protect who has the *duty* to intervene.

In what follows, I consider the five main potential interveners in descending order of legitimacy: (1) NATO; (2) states and coalitions of the willing; (3) the UN; (4) regional and sub regional organizations, and (5) PMCs. This ranking can be only approximate at best. Given the degree to which circumstances can affect an intervener's effectiveness (as well as other factors, such as its local external representativeness), interveners that are generally less legitimate may, in specific cases, be more legitimate, and therefore sometimes be the preferred choice.

3.2 States and coalitions of the willing

R2P has somewhat an uneven track record, but overall, it seems effective. On one hand, it can be argued that previous intervention efforts by nations may not have been effective, for instance, the 1992 US-led mission in Somalia; the 1994 French intervention in Rwanda was ill timed and only facilitated uncontrolled migration of murder squad (*interahamwe*) to the DRC; lastly another R2P failure was yet again with the French in Côte d'Ivoire that aimed at stopping a growing violence but instead worsened the situation. On the other, there are evidence to suggest success in some interventions, for instance, the 1971 East Pakistan by India halted the oppression of the Bengalis by the

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[87] Hehir and Conca (1995).

Pakistani;[88]in 1979 Tanzania effectively intervened in Uganda to oust Idi Amin from power; in 1979, French successfully intervened in the Central Africa Republic and effectively ousted emperor Bokassa; the US, UK and France coalition's fly zone embargo in Iraq in the interest of the Kurds in 1991; the protection of East Timorese by Australia 1999 intervention from Indonesian army, among others.[89]

From the foregoing, one can argue that the intervention success rate is more than the unsuccessful incidences. As to whether the scenario will remain, is something this study cannot establish. The size of the intervening state can be indicative of whether there will be success or not. Military power of the intervening nation is thus a function of probable success. It must be noted though that success of these powerful nations is not guaranteed by the mere fact that they have military power, local resistance that is anticipated must also be factored. For example, powerful as US may be, it has been argued that it may not have legitimacy to intervene after the Iraq war.[90]Local opposition is eminent in US's future interventions, something that can affect the rate of success. On the same vein, colonial powers may face local resistance from their former colonies as was the case with the French in Ivory Coast.[91]Lack of resources may also affect the effectiveness of non-Western states in intervention missions for lack of military might.[92]Nearly all states are highly selective interveners, choosing to stand by on many occasions. As with NATO, this does not necessarily undermine the legitimacy of a state's responsibility to protect. What it does mean, however, is that, on many occasions, no state is willing to undertake

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[88] Wheeler and Nicholas, (2000).
[89]Williams (2002).
[90]Daniele (1995).
[91]Finnemore, (1996).
[92] Ibid

responsibility to protect. Next best options must thus be sought.[93]

3.3 North Atlantic Treaty Organization-NATO

Of the past interventions, NATO can be claimed to be the most effective and legitimate. Its success was witnessed in Kosovo and Bosnia. The level of its military power could be another reason for its success. In the Bosnian case, NATO succeeded in coercing Bosnian Serbs into a peace agreement, while in Kosovo, its intervention suppressed the extent of ethnic cleansing even though it initially exacerbated the situation. NATO's success in these interventions were by not by chance, but rather out of its commitment to rapid resolution to humanitarian crisis and desire for long term peace and stability in their missions.

As Terry Terriff asserts, NATO's post-conflict reconstruction efforts in the Balkans demonstrate its desire to stabilize these regions in order to provide democracy, rule of law, and human rights.[94] Even if NATO's interventions tend to be ultimately due to political, rather than responsibility to protect, motivations, this is not necessarily problematic, given the rejection of the importance of an intervener's motives. It follows that NATO decision-making is likely to be responsive to the opinions of citizens within the alliance.[95]

As to whether NATO employs the doctrine of R2P in its intervention is not clear, criticisms emerged in it Kosovo intervention for not using ground troops and usage of airpower. Something that led to death of many civilians than would have happened if a

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[93] Ibid
[94] Terry, (2004).
[95] In this context, NATO is also likely to be consistent with the Resources Argument because the US, which contributes the most towards NATO interventions, usually has the most control in NATO's decision-making.

different and a none risky approach had been employed that even involved employment of ground troops.[96] On the other hand, Stromseth claims that NATO made great efforts to conform to the law of armed conflict in the Kosovo campaign.[97] Moreover, even if NATO's faithfulness to the principles of *jus in bello*was doubtful in Kosovo, Terriff expects NATO to undertake any future responsibility to protect as humanely as possible, with a minimum number of civilian casualties.[98]

Despite the lauded successes of NATO, it is not without challenges; there is disagreement over its potential membership particularly concerning Ukraine and Georgia. On this front its unity and course is put to question.[99] The other challenge is the inability of the International Security Afghanistan Force (ISAF)to secure requisite troops. There have been reluctance from some NATO members (Germany and Italy) in contributing troops generally and particularly to the south Taliban strongholds.[100]NATO's commitment to future R2P interventions.[101]Putting this into context, the claims are justified considering that over 60,000 NATO troops have been subjected to harsh conditions in Afghanistan.[102]Notwithstanding the aforementioned challenges, NATO is still the most legitimate R2P agent considering its past effectiveness.

Legitimacy is dependent on the likelihood of the intervener to succeed in stopping the humanitarian crisis, as such NATO still remains the most likely legitimate R2P agent considering the financial ability and political will that it currently enjoys. NATO is

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[96]Human Rights Watch's (2008).
[97]Jane (2003).
[98]Terry (2004.
[99] Evans, (2008).
[100]Craig (2009).
[101] Wheeler and Nicholas, (2000).
[102] NATO (2009).

generally a defense organization despite its acquired broader notion of security and widening of the geographical scope of its mandate, a thing that informs the decisions it makes.[103]

3.4 The UN

The UN interventions are authorized by the Security Council; the UN has many potential interveners including NATO states. The organization's past interventions have been criticized and casted doubts in its ability to execute R2P. The achievements of UN's interventions are mixed. For instance, over 230,000 died in Bosnia despite the UNPROFOR mission.[104]In Rwanda again, UNMIR was not able to prevent the genocide of Tutsi and the UNAMSIL intervention in Sierra Leone that could not halt the RUF atrocities.

The UN's methodology of operationalization of intervention is cited for its lack of success in its previous missions. Another reason for its failure is said to be the overreliance on ad hoc army instead of having a standby force.[105]The ad hoc contribution faces challenges of the unwillingness of member states to contribute troops resulting in the missions not having sufficient troops. For instance, UNAMID in Darfur was unable to raise the required number of troops, particularly, states from the west have been reluctant to contribute troops despite level of expertise.[106]

Most of times when troops first get to missions, they normally lack sufficient equipment.

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[103]ibid.
[104]Gerardo and Kumar, (2013).
[105]Taylor, (2007).
[106]Alex and Williams, (2009).

The troops frequently lack standardized equipment and training.[107] Undefined line of authority impedes the process as the command to be followed is not clear, another challenge the officers face is integration with other troops.[108] In addition to these problems of ineffectiveness, assertions of Kinloch-Pichat suggests that indiscipline immoral behavior of the UN troops in peacekeeping missions echo reasons given for the ineffectiveness of UN interventions.[109] The difficulty of legally sanctioning those involved in violations of human rights exacerbates these problems.[110] Hence, faithfulness of UN troops to *jus in bello* is questioned.

The foregoing challenges notwithstanding, immense improvement to peacekeeping operations have been made with the current UN Secretary General Ban Ki Moon who has enhanced the operations of the Department of Peacekeeping Operations (DPKO). The DPKO makes a point of highlighting that holding personnel accountable is a 'major priority' and it argues that a strategy to address sexual exploitation and abuse by UN personnel.[111]

Whereas ineffectiveness has been highlighted in the foregoing examples, it must be noted that there is a degree of effectiveness of the UN interventions, for instance, the provision of humanitarian aid to over 4 million victims thereby frustrating the goals of Milosevic's administration.[112]Another example relates to the Martha Finnemore's protection of

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[107]Stephen (2004).
[108]Ibid
[109] Ibid
[110] Ibid
[111]UN (2008*b*). *Fact Sheet: United Nations Peacekeeping*. Available at <http://www.un.org/Depts/dpko/factsheet.pdf> (accessed 15/11/09).
[112]Ismene and Kosek (2005).

civilians in Rwanda. [113]The Sierra Leone's case is the other example of effectiveness that ended up establishing a war crimes tribunal.

By and large, the ineffectiveness of the UN can be attributed to reliance on ad hoc troops and resource gap. While the UN is not the most effective in interventions, it has attained considerable success. With the recent developments, it is expected that future involvement of the UN in R2P will be successful. As a matter of fact, the UN remains the most legitimate intervener in humanitarian crises.

3.5 Regional and sub regional organizations

Varied results have been attained by different regional interventions. The challenge often cited for lack of effectiveness is the fact the regional bodies do not own the infrastructure that can guarantees successful humanitarian intervention. The regional bodies have depended on sub-regional organization intervention.[114]

The EU is by far the most capable regional organization and is the only regional organization able to intervene beyond its borders. The Helsinki Headline Goal, adopted in 1999, requires the EU to develop a 60,000-strong military force, to be deployable within sixty days and sustainable for at least one year in the field.[115] The EU scaled back these proposals, however, to the less ambitious 'battlegroups' concept, which became operational in January 2007. In 2003, the EU intervened in Bunia (in DR Congo) in response to growing international concern, but deployed its force (Operation Artemis) only for a short space of time. Similarly, the EU mission in Chad and the Central African

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[113]Finnemore, (1996).
[114] Diehl, (2005).
[115]Olsen & Rasmussen (2002)

Republic (EUFOR Tchad/RCA) in 2008 provided some civilian protection, but it was too small (around 3,000 troops) and lacked the mandate to provide widespread protection to the threatened population.[116]

African Union is a massive improvement compared to the Organization of African Unity but relies mostly on support from outside. The African Union Mission in Somalia (AMISOM) is a perfect example of overreliance on external funding, AMISOM faces logistical and financial difficulty in operationalizing its mandate.[117] At the same time, the Darfur mission is reported to be seriously under resourced leading to its inability to stop the *Janjaweed* raids. African solutions to problems in Africa are inadequate as suggested by Pau Williams by alluding that under the doctrine of R2P, African problems ceases to be African but rather global.[118]

In Africa, ECOWAS, is the closest adopter of the doctrine of R2P even though its effectiveness in the previous interventions are questionable. Its ECOMOG intervention in Liberia successfully managed to restore law and order. However, there were allegation of peacekeepers involvement in criminal activities by abusing civilians and allegedly providing arms to factions believed to be supporting Charles Tailor.[119] The actions of the AU suggests it is financially constrained and thus unable to intervene successfully.[120]

Other regional organizations have more limited capacity still. Some even have the principle of nonintervention enshrined in their constitutions. An example is the Association of Southeast Asian Nations (ASEAN), which explicitly rejects the notion of

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[116]Germain, Nicolas& Virginie (2008)
[117] Center on International Cooperation (2015)
[118] Williams 2008
[119]Binaifer (2014)
[120]UN, (2008)

intervention to protect people against large-scale abuses of human rights and lacks the provision even for peacekeeping (Emmers 2004: 145).[121]

At the moment, therefore, regional organizations have limited legitimacy. They do not have the military capability to undertake a major intervention, which limits the prospective effectiveness, and ultimately the legitimacy, of any future intervention by a regional organization in response to a large-scale humanitarian crisis.[122] Nonetheless, regional and sub regional organizations are often more willing to intervene, given their geographical proximity to the humanitarian crisis, which means that they have a stake in local stability. If they had more resources to undertake responsibility to protect, they might be want to intervene frequently.

3.6 Military Intervention

In a R2P context, mass atrocities are tackled by the Mass Atrocity Response Operations (MARO). International military power can be utilized in a bid to prevent continuation of crisis instead of coercive military intervention. Short-term as well as long term efforts in quelling a crisis are commonly referred to as preventive measures, international community can be involved in both.[123]

When directions provided are vague and incomplete, problems would emerge in military operations. Depending on the military situation, action will be taken by proactive leaders while cautious leaders without adequate direction may not act.[124]

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[121]Washington Post, (2004).
[122] Ibid
[123] Singer, (2014)
[124]Finnemore, (1996).

The challenge of distinguishing between "prevention" and "response" is eminent because of the overlap between the two words. Further, organizing preventive efforts is challenging because of the complexity of factors at play including the varied interests of the many actors. Taking all these interests into consideration may necessitate neglect of long-term preventive structural strategies because of the need to address urgent needs.[125]Another challenge arises in distinguishing between mass atrocities and preventive efforts from wider goals. For instance, preventive efforts may be confused with development programs. It argues that prevention of mass atrocities may be well executed by proper management of diversity.[126]

3.7 Private military companies

Hiring of private military companies is sometimes employed as a last option.[127] PMCs have been increasingly become part of the military landscape as many of the traditional functions of the regular military have been outsourced.[128]Private military companies were effectively utilized in Iraq, where the widely estimated 20,000-plus contractors have been involved in several roles, from providing logistics to protecting key officials. In fact, PMCs have already played significant roles in several previous responsibilities to protect.[129] For instance, in 2007 Pacific Architect Engineers, Inc. were charged with a responsibility to provide UNAMID a camp site in Darfur. DynCorp a private military company was employed in East Timor, to provided helicopters and satellite communications. Executive Outcomes another private military company were assigned

[125] Singer (2014).
[126] Ibid
[127]Bellamy, Williams, & Griffin (2004); Brooks (2000); Brooks & Chorev (2008); Bures (2005); the Foreign Affairs Committee (2002); the Foreign Commonwealth Office's Green Paper (2002); Gantz (2003); Ghebali (2006; O'Hanlon & Singer (2004); Singer (2003); and Spearin (2005).
[128]Chesterman & Lehnardt's, (2007).
[129] Singer, (2014)

duty by Sierra Leone government and effectively brought the advances of the RUF's siege of Freetown to halt.

PMCs have three potential roles in R2P[130], bolstering an intervener's capacity by providing supportive services, they could also be involved in combat, for example they could be used when a mission has insufficient troops, they could as well be charged with the responsibility of protecting key officials.[131] Lastly, PMCs can possible undertake R2P by themselves. This happens when they are hired by states or an international body to intervene in crisis resolution and rebuilding. There is no evidence that PMCs have been hired in the past to intervene in their respect.[132]These might have been occasioned by the normative concerns that will arise if PMCs are engaged in this way.

Conflict of interest is cited for their lack of use because they are profit driven and as such may not be well suited in R2P and as such will contravene the principle of outside *jus in bello* largely with impunity.[133] The use of PMCs also raises concerns over internal *jus in bello* and, in particular, an intervener's responsibility of care for those fighting on its behalf. For instance, seldom are the deaths of private contractors covered by the media. At the same time, political leaders care less about PMCs than they are about the regular soldiers.[134]Further, the promises made to private contractors when signing up are hardly fulfilled and thus subjecting them to high risk comparatively. For instance, Blackwater have been sued for allegedly sending an undermanned and poorly equipped detail by the

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[130]Gantz, (2003)
[131]Olsson (2007); Spearin (2008); Stoddard & DiDomenico (2008)
[132] Ibid
[133] Pattison, (2008)
[134]Krahmann, (2013)

families of four ex-employees killed in Fallujah.[135]Additionally, the effectiveness of PMCs when taking a combat role is unknown despite the potential of having the required military power, they may not have all the qualities necessary for effective intervention.

3.8 Hybrid solutions

The use of hybrid solutions that includes the use of many interveners together has been on the rise. Such operations can be executed in three different ways, first way is a sequential operation that would employ different interveners succeeding one another, for instance the Australian led intervention in East Timor, the second in one in which there are parallel operations where interveners operate separately in the same crisis. Hybrid operations combine to give a synergic effect and likely to be the best hope for operative R2P. Its adoption allows for intervention of NATO, the EU and the western states intervening without necessarily involving themselves in a drawn-out occupation. This kind of engagement equally fills the finance constraint gap that ensures efficient operation. Weaker actors' abilities can also be enhanced by borrowing from the capabilities of stronger actors. Literature suggests that hybrid interventions have been some of the most successful interventions. It is even argued that the most recent interventions have been hybrid and the trend will continue in the future.[136]

It has been argued however, that the use of hybrid solutions is just a way of the west circumventing their duties. Touko Piiparinen cites the objection that the reasons fronted for the benefits of hybrid solutions is just a rhetorical tool used by western states to paint a picture of playing their roles in resolving Africa's problems when the truth is the dire

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[135]USAToday (2014)
[136] Dallaire, (2007).

need of the AU to get military support from the advanced states.[137]Bellamy contends that the lack of provision of troops by the west would be more effective in saving lives.[138]Therefore, use of hybrid solutions is not a panacea even though it increases flexibility together with its synergic effect.

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[137]Piiparinen, (2012)
[138] Bellamy, & Williams (2009)

CHAPTER FOUR

**ANALYSIS OF THE EFFECT OF THE RESPONSIBILITY TO PROTECT
EASTERN AFRICAN STATES**

4.1 Introduction

Since its official introduction into the international arena in 2001, Responsibility to
Protect has been invoked by the civil society, the UN and/or other national, regional
and/or sub regional actors.[139] However, there have been variations in its application. In
some cases, the international community has reacted swiftly and effectively and
implemented the concept mostly through diplomatic measures. In other cases, the
application of the concept has not been as effective or consistent mostly due to the states
that define sovereignty as a concept that respects territorial integrity, non-interference,
and non-intervention.

The research paper employs a framework which analyzes the perceived undercurrents of
the Kenyan post-election violence of 2007/2008 which has mostly been characterized by
violence at various stages from pre-election, during elections and post-election. The civil
war in the South Sudan region which has been raging since 2003, the UN-AU Mission in
Darfur on the civilian safeguarding, guarantee humanitarian aid supply lines and restore
security and normalcy to take root in the Darfur region of Sudan.[140] As well as the
chronic human suffering in Somalia which is characterized by portends dire
consequences for its citizens. This chapter provides an analysis of the effect of
responsibility to protect Eastern Africa States.

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[139]ICRP, (2014)
[140]Bellamy, (2006)

4.2 Responsibility to Protect in Eastern Africa

In its 2001 report, the ICISS asserted that the though UN Charter vests UNSC with the primary responsibility to ensure international order and peace, it can also serve appropriate body to grant authority or confer legitimacy in circumstance that warrant intervention under the R2P initiative.[141] Specifically, report argues the UNSC has a legal and moral obligation as a premier UN peace and security organ to sanction military interventions whose main mission is to ensure human security and that such authority should be the prerequisite before any intervention. It proposes that UNSC veto wielding members should forgo or suspend its exercise in such situations unless it has a direct bearing on their interest. The report is categorical on this issue that the point of concern should not be to establish an alternative centre of authority to the UNSC, but to make its working expeditiously effective.[142]

The debate on the parameters guiding the invocation of the R2P is vast and but is aptly captured from the first, Canada commissioned ICISS report of 2001.[143] Circumstances for intervention include failure by the state to protect its civilian population in the face of wholesale human rights violations perpetrated by the state or its agencies, due inadequate capacity or when it is unwilling to safeguard them. It outlines succinct and critical evaluation of the report, its proposed instruments of implementation and the positions adopted by the various member states specifically their contribution to the last three UN General Assembly sessions prior to its adoption during the 2005 Assembly. The main

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[141] ICISS, (2001)

[142] CPPCG, G.A. Res. 260A (III), U.N. GAOR, 3d Sess., 179th plen. mtg., U.N. Doc. A/810 (1948), entered into force Jan. 12, 1951

[143] Evans, (2010)

theme throughout the discussion is the emphasis that the exercise of R2P is a 'corollary' to UNSC's core protection doctrine.

The practical inadequacy of this approach however is rooted in the deployment of the veto by the five UNSC members given their history of endemic failure to reach consensus especially when mass human populations are at risk. Even on this very issue, the five member states remained divided; with France voicing its support, Russia and China opposing it, while the US and Britain were noncommittal. This was compounded by the concerns of 'weaker' states who feel vesting UNSC with authority would be perpetuate the imperialist tendencies of the five permanent members. This debilitating ambiguity within the UNSC has hindered the ratification of the R2P Principle consigning it to a mere 'emerging norm' in pursuance of international peace and security within the sphere of International Relations.[144]

4.2.1 The Kenya Post-Election Violence 2007/2008

From December 2007 to February 2008 Kenya,[145] a hereto bastion of political stability within the volatile Eastern Africa and the Horn of Africa region was hit by widespread ethnic violence as a result of a contested election. For the first time in its history, it was on the brink of precipice; with highly divisive political environment, an economy and law and order on the verge of collapsing, and a humanitarian crisis of hundreds of thousands internally displaced persons (IDPs). The presidential election of 27th December 2007 was

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[144] ibid
[145] ICPP, (2014)

highly disputed by the opposition when the Electoral Commission of Kenya (ECK) declared the incumbent, Mwai Kibaki as having been validly elected.[146]

As a result of the violence, 1,333 Kenyans were killed and over 600,000 internally displaced persons (IDPs), while more than 110,000 private properties were destroyed between ethnic Kikuyu, Luos, and Kalenjins in the Rift Valley, Mombasa and urban informal settlements.[147] The perpetrators comprised of organized militias, rogue elements within the police force targeting civilian based on their ethnicity or political inclinations for having either supported PNU's Mwai Kibaki or Raila Odinga's ODM; as well as crimes of opportunity perpetrated by individual citizens[148]

By virtue of being a signatory to the UN's General Assembly Resolution that adopted the R2P, The government of Kenya pledged and therefore is obligated to protect its citizens from crimes specified under the R2P Principle that consist of war crimes, genocide, crimes against humanity, ethnic cleansing and genocide.[149] The government therefore is duty bound to ensure; its officials, agencies and policies do not facilitate or incite the commission of the mentioned atrocities; deter private individual or groups from committing or aiding the commission of the said crimes; Arrest and prosecute perpetrators; built capacity to prevent and ensure prompt response to the atrocities; and ensure the police and armed forces adhere to the international standards of human rights in their duties.[150]

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[146] ibid
[147]Halakhe, (2013)
[148] ibid
[149] (13 February 2010). The Responsibility to Protect and Kenya: Past Successes and Current Challenges Policy Brief. Global Center for the Responsibility to Protect.
[150] Nbogori, (Personal Interview) Personal interview

The severity of the crisis and lack of action by the government of Kenya led to a swift response by regional and international actors within the framework of the R2P.[151] This was poignantly illustrated by then French Foreign Minister's appeal in Jan of 2008 to the UN urging it to react '…in the name of Responsibility to Protect" and forestall Kenya plunge into ethnic violence.[152] The UN Secretary General, Ban Ki Moon termed the prevailing post-election violence as a security threat warranting initiation of measures under the R2P.

Efforts to peacefully resolve the crisis through mediation was first launched by the African Union with a visit from the outgoing Chairman of the African Union, (AU), President John Kufour of Ghana, the Nobel Peace Laureate Archbishop Desmond Tutu, US Assistant Secretary of State for African Affairs, Jendayi Fraser and four former heads of state - Tanzania's Benjamin Mkapa, Mozambique's Joachim Chissano, Botswana's Katumile Masire and Zambia's Kenneth Kaunda.[153]

From the foregoing, Kenya is an exemplary example in the exercise of the principle of Responsibility to Protect. The concept was applied through diplomatic and political strategies by the international community, via the panel of Eminent African Persons, which brought back under control a potentially explosive mass atrocities situation in the country. It served as a stark reminder to the protagonists that they will be held personally accountable if there was an escalation of violence characterized by crimes outlawed under the R2P principle. This laid a basis for successful mediation and negotiations that

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[151] ICRPP, (2014)
[152] Ibid
[153] ICRP, (2014)

halted violence and delivered negotiated political settlement to the crisis in the form of a power sharing government (Coalition Government).

The Kenya situation is often cited as a good example of R2P in practice, as the efforts by the Eminent African Personalities, chaperoned former UN Secretary General Kofi Annan, demonstrated the significance of impartial outside engagement to deescalate a volatile political environment when finally a power sharing deal was reached between Mwai Kibaki as President and Raila Odinga as prime minister of the republic of Kenya.[154] The case also demonstrated the significance of joint undertaking by the UN, other multilateral agencies and regional organizations in the fulfillment of UNSC's quest for international peace and security. In the absence of joint multilateral efforts, there would have been limited political incentive (pressure) for the protagonists to embrace mediation and the subsequent agreement that ended the chaos. Invoking Responsibility to Protect provided a diplomatic solution, and within forty days, mediators managed to break the gridlock by convincing the parties of the indispensability each other in governing the country.[155]

4.2.2 Responsibility to Protect in South Sudan

The civil war in the South Sudan has been raging since 2003. By April 2008, UN officials placed the death toll at 300,000, but others suggest number of people had been killed by 2005. Although not characterized by the level of inaction that defined the international response to Rwanda, the increased international consciousness of the norm of R2P can be discerned from policies adopted by states towards the ethnic cleansing, or genocide (as some have labeled it), in South Sudan. To date, the UN-AU Mission in Darfur

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[154] OryOkolloh, (2016) Personal Interview
[155] Mwema, Col., (2016)

(UNAMID) is doing all in its power and with limited resources to provide protection to civilians in South Sudan, facilitate the aid operation, and help provide an environment in which peace can take root.[156] Crucially, however, UNAMID was not agreed to by the Security Council until consent had been elicited from the South Sudan government (a protracted process that caused significant delays): UNAMID does not conduct any responsibility to protect intervention, although it is authorized to use all means necessary to protect its own personnel and civilians.[157]

A number of issues arise, each of which will be addressed in turn: the ongoing dominance of the sovereignty norm, indicated by the need to get South Sudan's consent for the deployment of not only UNAMID, but also its predecessor, the African Union Mission in Sudan (AMIS); the effect of the change in the language of the norm, brought about by the responsibility to protect doctrine; the prevailing international circumstances, which led key actors to priorities other factors, including the fragile North/South peace process and the global war on terror; the perceived legitimacy of Western norm entrepreneurs; and finally, the capability of states, both Western and African, to enact the norm.[158]

There is no doubt the South Sudan situation is deserving of an expeditious and effective international engagement granted the its longevity, the immense casualty figures, destruction of property and general human suffering it has brought to the people of South Sudan. Given the forgoing, the government of South Sudan has failed for far too long to safeguard its citizens from crimes stipulated under the R2P Principle and thus has no legal or moral backing for its initial refusal to embrace international initiatives meant to

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[156] Bellamy, (2006)
[157] UN Resolution for Darfur: An Important But Sufficient First Step Towards Protecting Civilians
[158] Personal interview with AbdullahiBoruHalakhe, (2016). Horn of Africa security analyst and expert, on *the international norm "Responsibility to Protect"* in *East Africa Community*.

end the tragedy. It is important to note that with the outbreak of new hostilities in 2015, between rival factions of the Sudan People's Liberation Movement (SPLM); one led by President Salva Kiir, and another by his former deputy Riak Machar, the level of atrocities witnessed assumed an alarming ethnic bend (between the Dinka and Nuer) a recipe for genocides elsewhere in Africa.

The initial refusal and subsequent reluctant acceptance by the government of South Sudan for deployment of a UN mandated peace keeping mission-UNIMISS under the R2P framework, coupled by UNSC members' inertia to act regardless of the appalling cost to human lives is captured in the Ghana's representations at the Security Council urging it act,[159]even in the event of Sudanese refusal of UN peacekeeping mission. One bone of contention in the R2P provision is that by reinforcing the fact that South Sudan holds the primary responsibility to protect its peoples; the responsibility to protect doctrine in fact lent normative weight to arguments against intervention.[160]

For instance, the UK, despite being a key norm advocate, tried to justify its rejection of the possibility of forceful intervention with reference to the ICISS responsibility to protect framework argued that the government of South Sudan, as a primary guarantor to its peoples' safety was best placed to implement this task.[161] It was not only states who endorsed the view that Sudan held the primary responsibility to halt the atrocities in South Sudan: high-profile UN special representatives in South Sudan, Jan Pronk and Francis Deng also voiced their support for this view.

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[159] UN, (2005) Resolution for Darfur
[160] Khelef, (2016) Personal interview
[161] Gareth Evans, The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All (Washington, DC: Brookings Institution Press, 2010)

In exploring alternative explanations for the international community's reluctance to intervene under the R2P mechanism, it is hard to avoid the conclusion that the immediate historical context – both within South Sudan and internationally, was a factor in the failure of the norm. Firstly, the international community, particularly the US, UK and Norway (all significant norm advocates), had been engaged in the delicate peace process unfolding in the south of Sudan, a process that was finally providing an end to Africa's longest running Civil War. Halakhe argues that the decision to prioritize the Comprehensive Peace Agreement between the government of Sudan and the Sudanese People's Liberation Movement/Army (SPLM/A) in the south of the country can in part explain the limp response by the US to the crisis in South Sudan.[162]

The skeptics of the norm, if they had endorsed the responsibility to protect framework when it was presented to the UN in the World Summit Outcome document in 2005, may have done so only because it reinforced their view of the primacy of sovereignty and of the notion that each state should retain its responsibility for the welfare of its own citizens. Certainly, this view, and their unfailing support for the sovereignty norm, meant that responsibility to protect intervention skeptics were not about to agree to the application of the norm in light of the atrocities in South Sudan.[163] For their part, the advocates of the norm were hamstrung by their existing military commitments and by their reduced ability to advocate a norm that they had arguably abused in order to justify intervention in Iraq.[164]

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[162] Halake, (2016) Personal Interview
[163] Ibid
[164] ibid

The events of 11 September 2001 undoubtedly changed the international environment in many significant ways, and the lasting effects on the norm of responsibility to protect are still uncertain. However, South Sudan, in its role as a test case for the norm, supposedly strengthened after the universal recognition of international failure in Rwanda, shows that the short-term effects of the post-9/11 environment on the norm were considerable.

4.2.3 Responsibility to Protect in Somalia in 1992-1994

In 1991, then Somalia President Barre was forced out of office. The collapse of government led to ongoing feudal struggles and clan based civil war. The humanitarian situation rapidly deteriorated, with drought compounding the effects of war. It is estimated that over 300,000 people died as a result by 1992.[165] Due to insecurity, supply of humanitarian aid was severely hampered as warlords looted supplies; using food and the threat of starvation as a weapon and means of power. It was against this backdrop that the UN became involved in the country.[166] The height of this involvement was a US-led military intervention that initially aimed to ensure the secure distribution of food aid, but went on to try to capture General Mohamed Farah Aideed, one of the leading warlords controlling much of Mogadishu.

The disastrous outcome in Somalia has been attributed to several factors, among others, the inability of the UN, with its bureaucratic inadequacies, to fulfill its peacekeeping role in civil conflicts, the misguided notion of short, sharp military intervention to solve a complex disaster, and the mission creep that occurred with the transition from the Bush to the Clinton administrations. However, it is not the outcome, albeit tragic, that this part of

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[165]Finnemore, (1996).
[166] Abdule, (2016) Personal interview

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this research paper is concerned with the focus here is the norm of responsibility to protect and its evolution. By analyzing the decision to intervene, the degree to which the norm had emerged can be assessed and norm entrepreneurs crucial in the early stages of norm evolution can be identified. The analysis is split into two: the UN Security Council decision to authorize the use of force in Somalia, and the US decision to offer to lead the intervention.[167]

The situation in Somalia had been on the UN Security Council agenda since 1991 as it gradually descended into a major disaster, but of interest here is particularly Resolution 794 passed on 3 December 1992, which authorized the use of force under Chapter VII of the UN Charter. The resolution itself illustrates several indications about the status of the emerging norm of responsibility to protect. Of particular note is the part of the preamble of the resolution that reads '…. recognizing the unique character of the present situation in Somalia and mindful of its deteriorating, complex and extraordinary nature, requiring an immediate and exceptional response.'[168]

While those clearly against a norm of responsibility to protect were quick to affirm the dominance of sovereignty, by agreeing to Resolution 794 they were unwittingly contributing to the tentative emergence of the norm by creating a benchmark against which future action (or inaction) would be judged. By authorizing the use of force in response to an internal crisis, responsibility to protect had become a new policy option which could be considered in future cases it was no longer unthinkable for the UN to overlook state sovereignty in addressing such disasters. Security and which had explicitly

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[167] UN Security Council Resolution 794, 3 December 1992, emphasis added
[168]Berdal, (2014)

said that Security Council intervention to stop human rights abuses in Iraq would not be legal, argued in the case of Somalia that the Security Council could not remain impassive in the face of human tragedy and that it had ineluctable responsibilities to save the Somali people.[169]

Perhaps, though, it is possible to say that in the case of Somalia the US was a significant norm entrepreneur, advancing the norm in the Security Council. The evidence, however, suggests to the contrary. The US had not consistently lobbied for intervention at the UN and the US decision to contribute troops was in fact a rapid turnaround from its policy of opposing the use of force in Somalia for much of 1992. The situation in Somalia was desperate throughout 1992.[170] If Bush's humanitarian impulses had been decisive surely, he would have decided to use force at an earlier date when the responsibility to protect situation was just as catastrophic. Instead, Jon Western argues that advocacy in the US put sufficient pressure on Bush and his senior military advisers for them to consider military involvement in Somalia after months of dismissing it as an option.[171]

The second but related way in which Somalia affected the norm of responsibility to protect was the realization that intervening in disasters is a complex undertaking. Although this might seem an obvious observation, the decision by the US to intervene in Somalia was predicated on the fact that it could be a short, sharp (as well as low risk) intervention. As things began to go dramatically wrong in Somalia, policymakers realized that advocacy for responsibility to protect would involve the acceptance of a norm entailing an obligation to become involved in complicated and long-term military

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[169]Abdule, Personal interview
[170]Khalifa, Personal interview
[171] RPHI

operations. This confirms the theory on the clarity of norms. As the decision to intervene in Somalia was made by Bush, the norm of responsibility to protect was still very much emergent and vaguely defined, and the US administration was able to interpret it to suit its military agenda; responsibility to protect could mean the brief deployment of military force to ensure the distribution of assistance.[172]

4.2.4 Genocide in Rwanda in 1994

The genocide in Rwanda in 1994 has gone down in history not only for the horrific killing of 800,000 Tutsis and moderate Hutus in just 100 days, but also for the equally unbelievable response of the international community to the unfolding disaster. A civil war had been fought between the Tutsi Rwandese Patriotic Front (RPF) and the Hutu government since 1990. In August 1993, the Arusha Accords were signed, establishing a ceasefire and setting out plans for the formation of a broad-based transitional government. Two months later the Security Council authorized the United Nations Assistance Mission for Rwanda (UNAMIR) to monitor the ceasefire.[173] Several months passed as the parties failed to establish the transitional government, punctuated by bouts of violence by both sides.

However, in January 1994, the force commander of UNAMIR, Lieutenant General Roméo Dallaire, was given evidence of a more sinister development. As well as lists of Tutsis and weapons caches, the informant revealed the Interahamwe's plan to kill Belgian peacekeepers in order to provoke a UN withdrawal. This information was a chilling

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[172] ibid
[173] UN Security Council Resolution 892, 5 October 1993

prediction of what was about to unfold.[174] On 6 April, a plane carrying the moderate Hutu President Juvénal Habyarimana was shot down as it is was about to land in Kigali. Within an hour roadblocks had been set up around the city and the systematic killing of Tutsis and moderate Hutus began. The following day ten Belgian peacekeepers were captured as they tried to protect the prime minister designate and were brutally tortured and killed. In 100 days 800,000 people had been killed, a rate of killing that reached 10,000 per day at its peak,[175] yet the response of the Security Council was initially the reduction of UNAMIR, the dithering over whether to label the situation a genocide, and ultimately the authorization of an ill-equipped and under-mandated military which did not arrive until after the RPF had declared victory and stopped the killings itself.

The overwhelming impression given by the Rwanda case, and the half-hearted and after the-fact intervention, is that the norm of responsibility to protect was not sufficiently evolved and established to prompt timely action in response to the genocide in Rwanda. Capability was crucial, as those states supporting the norm were unable to put their words into action without the support of more powerful and well-resourced states. However, capability is not the end of the story. Willingness to contribute troops and resources was in fact the root cause of international inaction in Rwanda. Some governments, including the US, had the capability to rapidly deploy a force sufficient to halt the genocide, but none of these were willing to do so.[176] This can lead us to the conclusion that which states support the norm is crucial to its success, not necessarily the number, as Finnemore and Sikkink suggest in their theory of tipping points. What is hard to determine in this case,

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[174] ibid
[175] Barnett, (2002)
[176]Kisiang'ani, Personal interview

however, is whether the support of the norm by a state able and willing to commit enough troops would have led to the widespread acceptance of the norm by other states.

The events in Rwanda will remain a distinct mark of failure by the international community to act leading to the second Twentieth Century holocaust. However, it also served as a general awaking call for the international community's collective responsibility to protect vulnerable populations, particularly from governments' gone rogue. This came at a time of particular international community's skepticism of the R2P following its failed mission in Somalia. The Rwandese situt5ion however galvanized the international community's resolve to devise a normative framework of R2P initiatives to preempt a similar tragedy from recurring.[177] The discourse on the best R2P framework was common among Academic and policy makers in the late years of the 20th Century.

The Rwandese genocide thus provided an important watershed for a normative shift led by the ICISS, which firmly put R2P agenda on the global arena of international peace and security. It is within such global consciousness became the rallying call for international intervention to stop the Darfur massacres; and the subsequent indictment of President Omar al-Bashir and prosecution of his alleged co-conspirators at the International Criminal Court at Hague, Netherlands.[178]

4.3 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

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[177]Menkhaus, (2009)
[178] Ibid

short notice. Most of the region, including allies, seems to have been taken by surprise.[179] 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.[180] Though understandable and reasonable, this poses additional threats to security because often, weapons become unaccountable and become available to rogue entities.[181] 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.[182] 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 nongovernment Organizations (NGOs) will be a part of its new Dual Track

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[179] International Crisis Group United Kingdom, (2012)
[180]OryOkolloh, personal Interview.
[181] Rutherford, (2008)
[182] Ibid

Strategy towards Somalia.[183] 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.[184]

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.[185] In August of 2012 for example, a Kenyan Newspaper reported that there has been increased xenophobia in Nairobi.[186] The Newspaper reported that following a grenade attacks targeting a recreational establishment and at a busy Bus Stop in Nairobi, resulting in one death and several casualties, the Somali as a community felt they had been unjustly profiled as potential terrorists solely based on their ethnicity.

Kenya, Uganda, Somalia and Tanzania have since witnessed an escalation in Al Shabaab instigated terrorist attacks targeting military/police installations and quite often, what is considered soft targets; shopping malls, education centres, tourist resorts amongst others. This is because they are extremely vulnerable terrorist attacks mainly due their proximity to Somalia, a country with weak governance structure/institutions. This is further compounded by the uncontrolled boarder movements, presence Al Shabaab terror cells or sympathetic elements and emerging evidence that they are entrenched within the business

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[183] U.S. Congress, (2010).
[184] Rutherford, (2008)
[185] ibid
[186] UN Integration Regional Information Networks (2011)

community, which it uses for recruitment and for fundraising purposes.[187]Indeed, investigations have revealed that some of the attacks were perpetrated by Kenyans, some of who had recently converted to Islam.

As result, Kenya has suffered several devastating terrorist attacks including an attack on a university college in Garissa where 148 people died while 79 more were injured on 2 April 2015. This was preceded by another attack on one a premier shopping centre, the West Gate Shopping Mall where 80 people lost their lives and several others were injured on Saturday 21 September 2013. The terror related insecurity has led to foreign embassies reassessing their security measures; suspending operations, moving to safer zone and/or reinforcing the security of their installations.

Earlier a series of kidnapping and grenade attacks in the coastal region and the capital city, Nairobi had dealt a once vibrant tourist industry a big blow. There was a sharp drop in the number of tourist and/as Western embassies routinely issued travel advisories to their citizens intending to visit Kenya and the region at large. Fearing that Al Shabaab threatened the vital tourism industry, the Kenya government ordered its military in to Somalia, in an operation code named Operation Linda Nchi. It invoked provisions of Chapter VII, Article 51 of the UN Charter to Self-Defense, for the military incursion into Somalia to ostensibly neuter the threat posed by Al Shabaab. Later on, the Kenyan Force was merged with that from Uganda, Sierra Leone and Burundi under the UN/AU mandated to support transitional governmental structures, implement a national security

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[187]Menkhaus, (2009)

plan, train the Somali security forces, and to assist in creating a secure environment for the delivery of humanitarian aid.[188]

4.4 Emerging Issues

In essence, the R2P principle is based on the international community's resolve to never fail to act in situations that pose threat to massive human population such as genocide and other kinds of deplorable human rights violations. R2P was formally adopted in 2005, by the Heads of States and Governments Summit held at UN General Assembly headquarters in the US.[189] It is anchored in the firm conviction that governments have a duty and obligation to protect their own peoples against wide scale atrocities. It also recognizes that the wider community of nations bears an obligation to support them in this endeavor. More fundamentally though is the provision that should all of the above fail; the responsibility to guarantee a population at risk rests squarely with the wider community of nations. R2P should thus be appreciated as unequivocal pledge by all leaders around the world to populations facing mass extermination.[190]

The 2005, World Summit Outcome Document adopted by the UN categorically limits the exercise of R2P Principle on four forms of mass atrocities, namely; genocide, a crime prescribed in international law under the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG)[191]The second article of CPPCG defines genocide as intentional action aimed at destroying, wholly or partly, ethnic group, a nationality, race or religious group by either; having members of the group killed, occasioning to members of the group grievous body or/and mental harm; intentionally and collectively subjecting

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[188]United Nations Security Council*Resolution1772*. S/RES/1772(2007) page 3. (2007)
[189]Ramesh, (2002)
[190] Peters, (2011)
[191] Article I of the Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948

members to an environment aimed at destroying the physically; transferring children of one group to another; and subjecting members of a group circumstances aimed at inhibiting births.

The Convention on Genocide, in its first article tasks member states with the duty to legally sanction and forestall acts of genocide. While it is silent on the culpability of states in this crime, the International Court of Justice (ICJ) has set a precedent, asserting the responsibility to prevent binds the member states from instigating the crime of Genocide.[192]The Court held that logically, the state cannot commit or be complicit in a crime that it is explicitly tasked to punish and prevent. This means that though it is named as potential perpetrator, can equally be held liable should its agents, institutions or policy facilitate the commission of genocide.[193]

With regard to armed conflict between sovereign states and within the R2P context, the Geneva Convention's Additional Protocol I obligate states involved in armed conflict to protect civilians equally in the areas under the jurisdiction regardless of which party the belong to. This also applies to situation of internal conflicts or civil wars that are particularly common in Africa. The third article of the protocol places basic responsibilities to all state parties that must be observed in cases of internal conflicts They are particularly tasked with the duty of treating the civilian population to certain basic humane conditions under all conditions.[194]

On the other hand, ethnic cleansing though not expressly outlawed under the international law, refers to a deliberate policy of criminal acts aimed at forcibly transferring a

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[192] ICJ, (2007)
[193] Finnemore & Sikkink (1998)
[194]ibid

significant population of an ethnic group, religion or race from a geographical area it legally occupies. It is an abhorrent human rights abuse that fall under other atrocious crime such as war crimes and crimes against humanity that be extending to genocide if they are targeted at a particular community with the intend of destroying it ether partially or wholly.[195]

Individual responsibility for certain criminal acts that are in contravention of the international law are actionable under international as war crimes.[196] Humanitarian Law is a vast body of treaties and customary laws that govern the military conduct in situation of armed conflicts. It seeks to offer certain basic humanitarian safeguards to armed combatants.[197]Though the term war may be subject to wide ranging definition under the various international laws, the most applicable in this case one contained under the Rome Statute of the ICC.[198]One of the most limiting aspect in the practice of R2P principle is the lack of formal codification of crimes against humanity under international law. Most of these crimes are however recognized under international customary law and as a matter of precedents from superior courts and a variety of international tribunals with transnational jurisdiction.[199]

The Charter of the International Military Tribunal of Nuremberg went down in history as the first formalized judicial mechanism that sought to punish crimes against humanity in 1945. The International Criminal Tribunal for Rwanda (ICTR) and the ICC are the latest in a long quest to punish perpetrators of crimes against humanity. It is against this

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[195] Ibid
[196]Cassese, (2008)
[197]ibid
[198]Bothe, (2002)
[199]Bellamy &Reike, (2010).

background that the R2P principle seeks to consolidate all crimes that pose a threat to mass population under one protocol. For instance, while ethnic cleansing may not be codified under international law, it can be subsumed, that states are charged with a duty to protects both citizens and non-citizens equally under the R2P Principle. It is against this background that the study, in subsequent chapters considers ethnic cleansing as a separate crime, on the same level as crimes against humanity, genocide and war crimes.

CHAPTER FIVE

SUMMARY OF FINDING AND CONCLUSION

5.1 Introduction

The general objective of this study was to examine the place of responsibility to protect, the right to protect in Eastern Africa. The study sought to further explore this broad objective in detail in view of arriving at optimal conclusions which are summarized in this chapter. The study has explored the moral factors and arguments for the responsibility to protect 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, Eastern Africa's case is wanting and still needs a path forward.

5.2 Summary of Finding

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 examined the responsibility to protect in Eastern Africa where it looked critically on the three hypotheses. The norm regarding responsibility to protect in Eastern Africa with a view of examining the norms regarding responsibility to protect the study found that the international community has clearly come a long way in developing more robust guidelines on how to respond to humanitarian crises. Firstly, the improved linguistics has proven to be an invaluable

71

aspect in encouraging States to react even when crises occur in strategically unimportant regions.

A continued positive normative evolution of R2P is not however, set in stone. The misuse of R2P in controversial areas has been seen to threaten the credibility of the concept. The uncomfortable threats posed by international terrorism must not tempt policy makers into a rash extension of R2P. Utilizing R2P to cover proactive use of force should not be allowed as it would not only constitute a clear misapplication of R2P, but also dilute and damage its reputation. In order to protect a continued evolution of R2P, States should only invoke it in areas that have been internationally agreed upon.

The study also justified the second hypothesis that there is significant influence of responsibility to protect norms on behavior in the international arena, or the evolution of the norm in Eastern Africa. Outside the Security Council, the Non-Aligned Movement (NAM), consisting of currently 118 members and thus arguably constituting the most representative group aside from the UN.22 has noted "similarities between the new expression 'responsibility to protect', a right which it explicitly rejects. More equivocally, the Group of 77, when jointly commenting on the Secretary-General's report "In Larger Freedom", did not address the issue of a responsibility to protect. Still, a continued preoccupation with the principles of state sovereignty and non-interference is visible particularly in East Asia. Finally, the majority of African states refrained from making any individual comments on the responsibility to protect at the 2005 World Summit. A favorable response to the R2P came, by contrast, from the Americas. Ultimately, it was mainly states from Latin-America, the Western hemisphere, and sub-Saharan Africa on whose support the proponents of R2P could count at the UN World Summit in 2005.

The scale of Kenya's post-election violence in 2007/2008 stunned the world since many non-state and state actors did not expect that Kenya would go into violence conflict due to elections. The Kofi Annan mediation process unveiled the fact that the crisis in Kenya went deeper than people reacting to the disputed elections, but rather was anchored on very deep rooted unaddressed issues dating back to 1963. The International community's rapid and swift response helped turn the crisis into an opportunity for long term reforms to deter future cycles of violence in Kenya. The crisis led to an international sanctioned mediation process whose mandate was to help the parties to bring an end to violence and create an opportunity for bringing about sustainable peace in the shortest time possible.

Although the study has established 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, East Africa states and the entire HoA. It is confirmed that responsibility to protect 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.

5.3 Conclusion

The study has addressed the moral justification of the use of hard power as well as challenges facing responsibility to protect using the intervention of South Sudan, Somalia, Rwanda and Kenya as case studies. Even though there are reservations for such armed intervention, the decision to intervene was undertaken strategically. As far as right

to protect is concern, the study has clearly highlighted three morals issues of responsibility to protect.

First, it has shown that standard accounts of the issues of responsibility to protect greatly influenced by just war theory are in a position to capture the prospects of mission creep. Also, epistemic difficulties in the assessment of whether the intervention's long term success mean that party should either accept or reject consequentialist approaches to responsibility to protect. 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 application of the R2P by the international community as evidenced in the Kenyan case is indeed a challenging task. It touches on both the responsibility to prevent mass violence and the responsibility to monitor the intervention. rebuilding that still requires the international actors. Accordingly, long term challenges which are both political and economic and also that which touch on establishing institutions that can are lawful and can discharge their mandate. Further the application of R2P principle in the Kenyan post-election violence was important within the International Law realm since it exhibited that military intervention does not necessarily have to be applied, whereas diplomatic and political intervention should be promoted as the first mechanism under R2P.

The true test will rest in Rwanda's ability to learn from the mistakes and failures of the previous interventions, take heed of the importance and distinctions of 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 Eastern African hard power is setting precedent and paving the way for the future of responsibility to protect in conflict-ridden countries, such as Somalia.

5.4 Recommendations

The study has found that the issues in the Eastern Africa are deeply rooted and have a rich historical context. It is through the understanding of 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 issues, it is the opinion of this study that the intervention led by the Kenyan government was indeed moral.

R2P seeks to create a code of conduct that is clear while still lobbying for relying more on non-military interventions. The report recommends that there should be a deliberate effort to tilt the debate and jargon used while dealing with R2P. It posits that the 'right to intervene' has many challenges and should therefore be abolished and instead use 'responsibility to protect'. Under this mandate, states will be able to protect the citizens of a certain state where that state has failed to do so for its citizenry.

There is need to avert the actions and inactions of perpetrators causing electoral violence in Kenya in the last two decades. The time for Kenya to exercise some level of integrity in its electoral process is long overdue. First and foremost, Anti-corruption measures must be implemented to ensure accountability and transparency in the electoral process. Corrupt public officers must be prosecuted to serve as a deterrent to others. There is need for pragmatic electoral reforms and good governance since the underlying problem of political instability in society is substantially the lack of good governance.

There was an emphasis on pragmatism that overcame political differences during the mediation process. Shifting political questions into technical ones, the need to reserve for the future debates that could divide the people and doing what is practical instead of focusing on the big picture can all be used to assist negotiators in working as a team and ensuring that peace come before politics. In Kenya, the use of technical experts from the field of humanitarian, electoral, legal and politics was an essential part of aiding the parties to appreciating which solutions were feasible given the volatile setting in which they were functioning.

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2. Chairman Khelef Khalifa-Haki Africa on 16th September, 2016, Jamia Mosque

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4. Col (retired) Benjamin Mwema, a UN consultant on security in eastern Africa on 16th September, 2016, Diamond Hotel- Nairobi CBD

5. Commissioner Kagwiria Mbogori- Kenya human rights commission chair on 6th September, 2016 at 1st Floor, CVS Plaza, Lenana Road,

6. Dr Emmanuel Kisiang'ani Institute of Security Studies analyst on 10th September 2016 in Nairobi

7. Dr. Ludeki Chweya, Security Expert on 8th September 2016 at Kenya School of Government, Kabete

8. Executive Director Hassan Abdule Muslims for Human Rights (MUHURI)- on 16th September, 2016, Consulting House, Museum Hill

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