

KWAME NKRUMAH UNIVERSITY OF SCIENCE AND TECHNOLOGY, KUMASI

COLLEGE OF HUMANITIES AND SOCIAL SCIENCES

FACULTY OF LAW

LLM



RESEARCH TOPIC:

**RESPONSIBILITY TO PROTECT AND THE AFRICAN UNION'S PEACE AND
SECURITY ARCHITECTURE: A CASE STUDY OF LIBYA**

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KWAME NKRUMAH UNIVERSITY OF SCIENCE AND TECHNOLOGY, KUMASI

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**THIS THESIS/ DISSERTATION IS SUBMITTED TO THE KWAME NKRUMAH
UNIVERSITY OF SCIENCE AND TECHNOLOGY IN PARTIAL FULFILMENT OF
THE REQUIREMENT FOR THE AWARD OF
MASTER OF LAWS DEGREE**

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DECLARATION

I hereby declare that this submission is my own work towards the Masters of Laws (LL.M) and that, to the best of my knowledge, it contains no material previously published by another person or material which has been accepted for the award of any other degree of the University, except where due acknowledgement has been made in the text.

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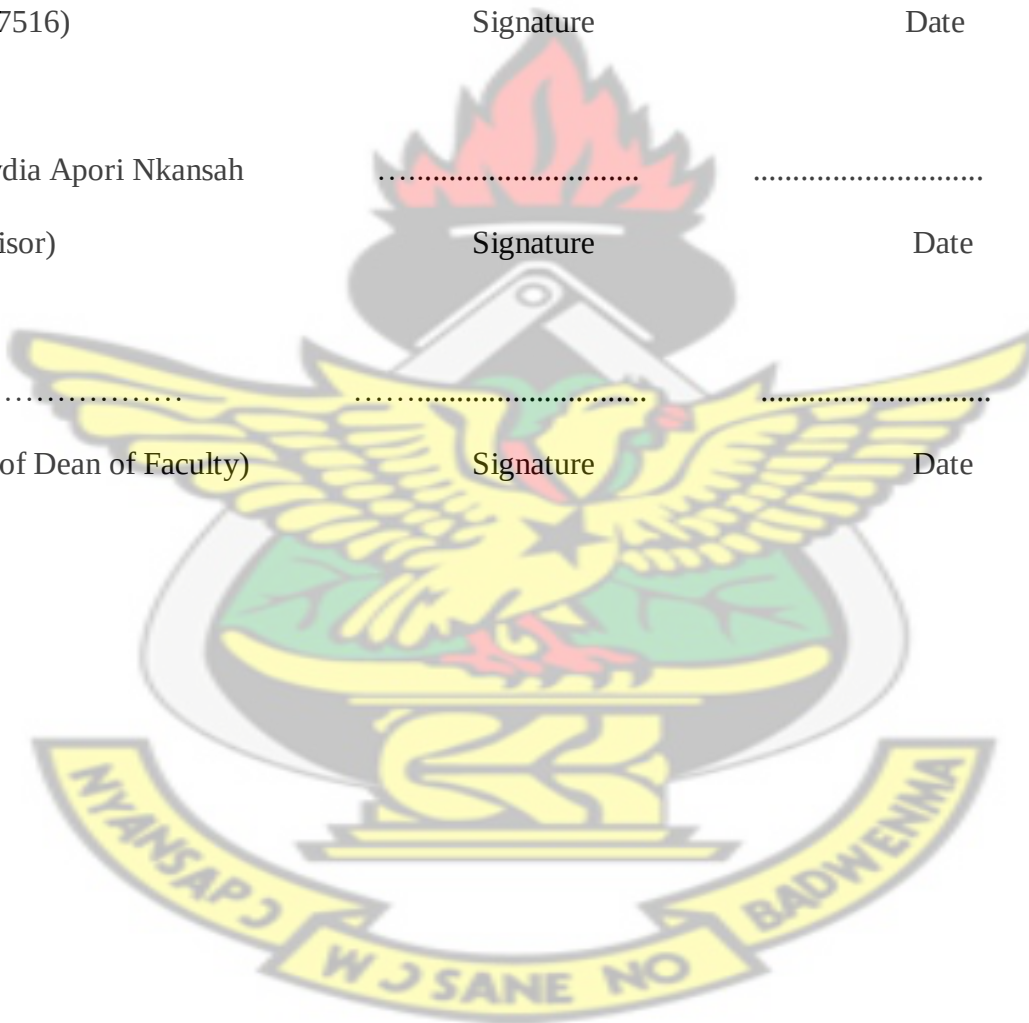
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DEDICATION

I dedicate this work to God Almighty for giving me the strength to complete this project. I also dedicate this work to my family for their immense love and support.

KNUST



ACKNOWLEDGEMENTS

My profound gratitude goes to the Lord Almighty and Prof. Lydia Apori Nkansah, my supervisor for believing in me and always being there to guide me throughout the project period. I am also grateful to my friends and colleagues for their moral and academic support.

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ABSTRACT

The African Union as a regional organization has enshrined the principle of responsibility to protect in its Constitutive Act through Article 4(h). This article enables the African Union to intervene into the affairs of member states in order to prevent the violation of human rights. The Ezulwini consensus further supports article 4(h). The African Peace and Security Architecture was established to assist the Africa Union in its implementation of article 4(h) and to help maintain peace in the continent. However, during the 2011 Libyan Civil war, The North Atlantic Treaty Organization intervened in the Libyan crisis and sidelined the African Union. This article seeks to assess the effectiveness of the African Peace and Security Architecture and the challenges that the African Union faced in excising its responsibility to protect during the Libyan crisis. The study established that the African Union intervention was not effective which therefore brought about the involvement of NATO in Libya during the crisis in that country. The reasons for The African Unions ineffectiveness include the lack of capacity in terms of human resource and logistical needs, lack of political will on the part of African States to interfere in Gadaffi's affairs, lack of agreement among African states on how to approach and deal with the crisis in Libya. This study has implications for the African Union as a continental body and its member states in that they have to do all that is necessary to make Article 4(h) if its constitutive Act implementable in order to protect the human rights of citizens in times of grave circumstances.

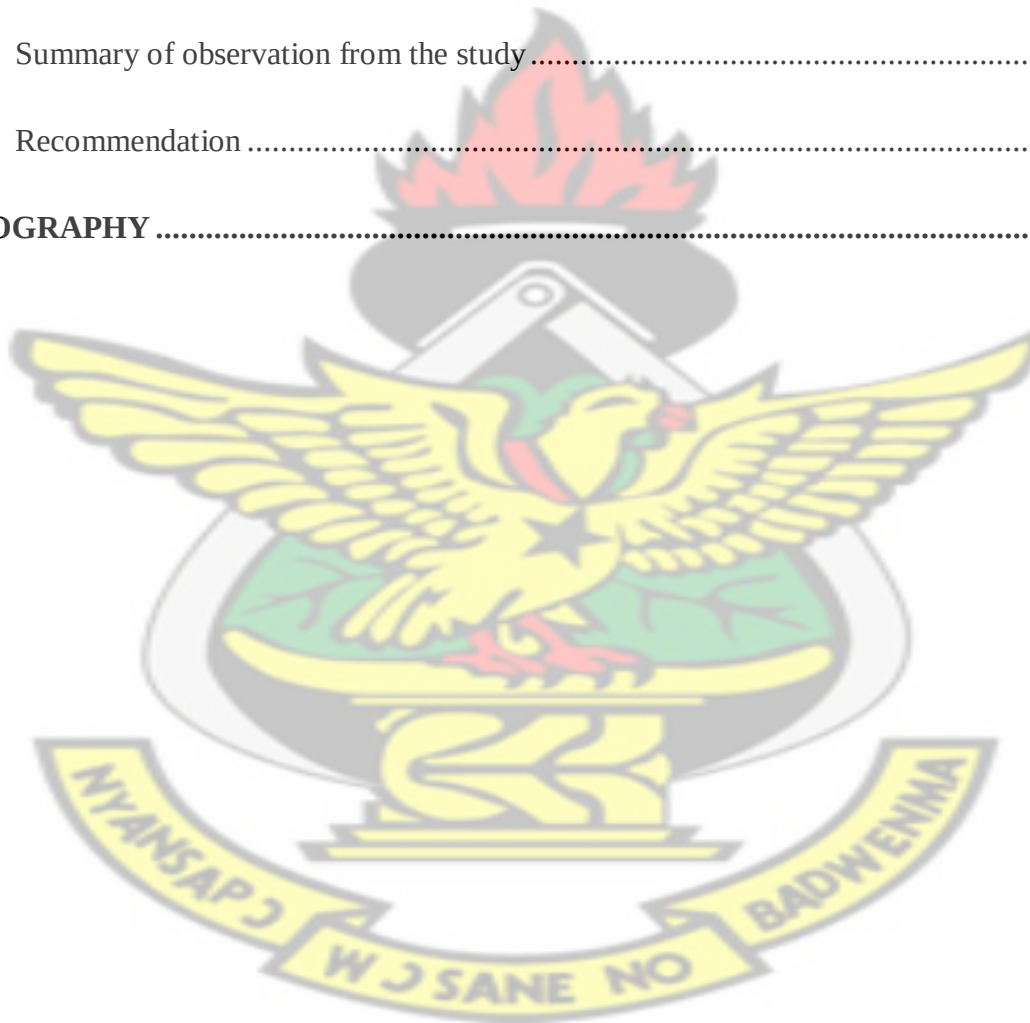
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CHAPTER ONE

INTRODUCTION

1.1. Background of study

The League of Nations (referred to as the League) was established after World War I by the Covenant of the League of Nations; signed on 28th April 1919; which entered into force on 10th January 1920. The objective of the League was to ensure the promotion of international co-operation and to achieve international peace and security.¹ The league in respect of its objective enjoyed remarkable successes in ending or preventing conflicts, as well as managing the aftermath of these conflicts, and rebuilding the society.² It was also instrumental in the maintenance of Austria's and Hungary's currencies around the 1920's. The league also assisted in reviving the world economy by arranging world conferences on tariffs and trade agreements among other monumental successes.³

Although the League had an excellent and noble objective, many scholars have argued that, it was flawed in upholding its objective, despite its outlined successes.⁴ Key among these failures include, the Disarmament Commission; which made little or no progress in persuading the member states to reduce armaments. Vaïsse has summarized some of these failures namely: the usage of imperfect instrument for achieving disarmament, the non-universal status of the League and the domestic hostility towards disarmament; just to mention a few.⁵ Northedge has also

¹Covenant of the League of Nations (signed 28 April 1919, entered into force 10 January 1920)

² Retrieved from; <<https://www.ssag.sk/studovna/files/League-of-Nations.-Successes-and-Failures.pdf>>(accessed 12th August 2018)

³ Ibid

⁴ Christian J. T., "The League of Nations"

⁵Vaïsse, M., "Security and Disarmament: Problems in the Development of the Disarmament Debates", (1993) 1934.

argued that, the failure of the League is due to the role it played in maintaining the status quo, during the scandalous Versailles settlement.⁶

Whereas all these are factors accountable for the failure of the League, these reasons are not exhaustive. For instance, other factors such as the infrequent meeting of the League hindered its inability to conclude on matters requiring unanimous conclusions. Also the nationalist ideological concepts of nations such as Britain and France placed some restraints on them to put their interest aside and support the League. Due to these failures, the United Nations (UN) was subsequently established in 1945 after World War II (WWII) which saw mass atrocities and was established to maintain international peace and security.⁷ The UN further adopted the Convention on the Prevention and Punishment of the Crime of Genocide⁸ to ensure that, the mass atrocities during World War II never occurs again.

By the end of the 20th century, conflict, war and violence started to take a different form. The nature of conflicts during World War I and WW II was amongst states. Nonetheless, the nature of conflicts began to manifest within states, as opposed to it happening amongst states. In such circumstances, the United Nations principle of non-interference prevented states and international organizations from interfering with matters happening within the boundaries of a sovereign state. Article 2(4) of the United Nations Charter prohibits the threat or use of force against the territorial integrity or political independence of any state. The broad prohibition of the use of force in art 2(4) of the United Nations Charter was introduced to protect the sovereign equality of Member states as a means of waging war and ensuring peace.⁹ For instance, the world witnessed grave violence and injustice against humanity in countries like Somalia, Rwanda and

⁶Northedge, F. S., *"The League of Nations: its life and times"*, (Leicester University Press 1986), 1920

⁷*"Charter of the United Nations, (adopted on 24 October 1945) 1 UNTS XVI"*

⁸ "Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948) UNTS vol. 78"

⁹ Chesterman, S., *"Just War or Just Peace"*, ("Oxford University Press 2001"), 222,

former Yugoslavia on the grounds of the United Nation's principles of state sovereignty and non-intervention.

As a result of the international community's inability to assist troubled nations in putting an end to violence and mass atrocities, Kofi Annan who formerly served as the United Nations Secretary General expressed that the idea of sovereignty had to be reassessed.¹⁰ Ensuing from this was the long stimulated debate amongst the international community over how they should react effectively when citizens rights are grossly violated. A new approach was adopted as a result of the protracted debate on the need for state intervention thus giving rise to the principle of responsibility to protect.

The expression 'responsibility to protect' was first presented in the report of the International Commission on Intervention and State Sovereignty (ICISS).¹¹ The report highlighted that, sovereignty does not only give a state the right to control its affairs, it also conferred on the State primary responsibility of protecting the people within its borders...it proposed that when a state fails to protect its people either through lack of ability or a lack of willingness, the responsibility shifts to the broader international community. This responsibility entails the responsibility to protect people against war crimes, crimes against humanity and preventing genocide and ethnic cleansing. It is only when these measures prove inadequate that military force is used.¹²

This principle of noninterference has led to the gross violation of human rights among some African states leading to the formation of the African Union on 26th May 2001 to succeed the Organisation of African Unity. The African Union adopted the principle of responsibility to

¹⁰ Kofi Annan, "Two Concepts of Sovereignty", (The Economist, 1999)

¹¹ "The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty", ("Ottawa: The International Development Research Centre, 2001").

¹² "World Summit Outcome Document (16 September 2005) UN Doc A/60/L."

protect in its Constitutive Act¹³ through Article 4(h) of the Act, which gives its members the right to intervene in the affairs of member states under grave circumstances such as war crimes, genocide and crimes against humanity. Africans therefore accepted the principle of responsibility to protect before it was widely accepted by the World leaders at the 2005 World Summit. The African Peace and Security Architecture was also formed following the transformation of the Organization of African Unity to African Union as a wider architecture for advancing peace and security in the continent.

Following popular movements that overturned the rulers of Tunisia and Egypt, a series of protests in Libya which started in February 2011, escalated into a civil war. The people of Libya were protesting for the protection of their universal rights, for greater political freedom, a representative government, for justice and opportunity. The leader of Libya, Muammar Gaddafi and his supporters unleashed a merciless campaign of violence against the Libyan people thereby violating their rights. Eventually the protests evolved into a widespread uprising against the regime of Muammar Gaddafi as he had ruled for over forty years. Colonel Muammar Gaddafi issued a series of threats to the protestors some of which were very disturbing and were seen as a potential cause of further human rights violation.

The Constitutive Act of the African Union has developed what, in theory appears to be a comprehensive and elaborate peace and security legal and institutional framework for the continent in order to achieve its objective of maintaining peace and security. The African Union decided to take a diplomatic route in solving the Libyan crisis thus formulating a road map that was supposed to aid in ending the atrocities in Libya. However, Libya's opposition Transitional National Council rejected the African Union's proposal to negotiate a way out from the country's deepening crisis.

¹³ “Constitutive Act of the African Union, (1 July 2000)”

The African Union has the legal right to intervene through military action in African Countries in cases where mass atrocities and gross human right violations take place and this is further supported by the Ezulwini consensus. However, the Union per its discretion decided not to do so which led to a North Atlantic Treaty Organization led intervention which further sidelined the African Union. It is against this background that the researcher seeks to determine whether the principle of responsibility to protect was implemented effectively during the 2011 Libyan Civil war.

1.2.Problem statement

The Principle of responsibility to protect is enshrined in the African Unions Constitutive Act through Article 4(h) which establishes the right of the African Union to intervene in a member state to prevent grave violations of human rights. Article 4(h) is also supported by the Ezulwini Consensus which is a consensus adopted by the African Union that proposes a reformation on the United Nations concept of the use of force and establishes that it is necessary for the United Nations Security Council to empower regional organizations that are in close proximity to the conflict zone so that they can take prompt action in times of crisis. However, during the 2011 Libyan Civil War the North Atlantic Treaty Organization led the intervention in Libya. The African Union has a Peace and Security Architecture for the implementation of the responsibility to protect when the need arises. This notwithstanding, during the civil unrest in Mali, Niger and Central African Republic, the efforts of the African Union were not effective. With the conflict in Libya the African Union adopted a road map with the purpose of ending the violence and mass atrocities which did not end the atrocities as expected, leading to North Atlantic Treaty Organizations which raised misgivings about North Atlantic Treaty Organization. Accordingly it is imperative to examine how the African Unions Intervention fared within the context of North

Atlantic Treaty Organization. The problem however The African Union had a legal right to implement article 4(h) and the Ezulwini Consensus but chose not to do so. It is not clear what the impediments are for the effective implementation of responsibility to protect. Utilizing Libya as a case study this research seeks to determine the reasons why the African Union could swiftly effectively intervene.

1.3.Objective of study

The aim of the study is to determine the role of the African Union (AU) in resolving the Libya conflict and to what extent the union implemented the principle of responsibility to protect during the 2011 Libyan Civil war. Specifically, the study seeks to:

1. Analyze the role of African Union in implementing the principles of responsibility to protect
2. To ascertain how the African Union has incorporated Responsibility to Protect in its body polity and how same was utilized in responding to the Libyan civil unrest
3. To identify the challenges African Union faced in excising its responsibility to protect in the Libya civil war.

1.4.Research question

1. How has the African Union incorporated Responsibility to Protect in its body polity and what mechanisms have been put in place for its implementation?
2. How did the African Union implement Responsibility to Protect during the Libyan Civil War?
3. What are the challenges; if any did the African Union face in its intervention in Libya?

1.5. Justification and Significance of study

Since the aim of the study is to determine the role of the African Union in resolving the Libyan conflict and to what extent the union implemented Responsibility to Protect and the underlying challenges during the 2011 Libyan Civil war, the study will serve as a relevant consideration for international organizations and political actors in incorporating Responsibility to Protect in future conflict resolution whilst circumventing the various known challenges. The observations made in this study will present the lessons learnt from the Libyan civil war and will serve as a guide in strengthening and reforming where necessary the principles of responsibility to protect for future interventions. Apart from this, the study will also contribute to the body of knowledge in this area with the observations and conclusions that will be made.

1.6. Research Methodology

1.6.1 Introduction

This section discusses the methodology adopted for the study which is the interdisciplinary research paradigm. Interdisciplinary research refers to the approach of legal scholarship based on information and methodology beyond the boundaries of law.¹⁴ This research method was employed because the concept of responsibility to protect is not purely legal and therefore cannot be studied from only law and legal materials.

1.6.2 Theoretical Method of Enquiry

Traditionally, legal research is embedded in the doctrinal research method otherwise known as black letter law approach. This method adapts the policy-based legal reasoning which considers the society at large and justifies the results that will help the economy or achieve a greater good.

¹⁴ Lydia Nkansah, Victor Chimbwanda, "Interdisciplinary Approach to Legal Scholarship: A Blend from the Qualitative Paradigm", Asian Journal of Legal Education 3(1)55-71, accessed 20th October 2016.

This approach was propounded and made an academic idea by Langdell in 1870s. He believed that the principles of law could be inferred from judicial opinions so that the relevant training for students of the law was in reading and comparing opinions and the relevant knowledge of what those opinions contained.¹⁵ This point of view has been revealed to be flawed. Posner, in his article addressed the decline of law as an autonomous discipline, stating many reasons for this phenomenon. One of the major reasons is the fact that legal knowledge on its own cannot be relied upon to provide definitive solutions to legal problems because different legal thinkers, for example, arrive at different conclusions on a matter. Another reason is the introduction of other disciplines in addition to law. These disciplines such as Economics and Philosophy are complementary to law and have to be studied hand-in-hand. Also, the increase in the scientific and other exact modes of inquiry have made the strict use of legal thinking and analysis seem old-fashioned and archaic. These reasons, among others, gave birth to the use of the interdisciplinary approach.

Interdisciplinary research employs methods taken from other disciplines to generate empirical data that answers research questions.¹⁶ This research method involves a combination of both the doctrinal approach and the qualitative research method (legal and non-legal sources) which will widen the scope of the study of 'responsibility to protect' in the African Union's Framework. The suitable research method for the researcher is the interdisciplinary approach because of the topic of study. Currently, Responsibility to Protect has not assumed purely legal status though some aspects of it are embedded in existing international law, for example, the responsibilities of states when faced with the crime of genocide as stipulated in the genocide convention and the

¹⁵ R Posner, "The Decline of Law as an autonomous discipline: 1962-1987", Heinonline 100 Harv. L. Rev. 761 1986-1987

¹⁶ Lydia Nkansah, Victor Chimbwanda, "Interdisciplinary Approach to Legal Scholarship: A Blend from the Qualitative Paradigm", Asian Journal of Legal Education p.14 accessed 20th October 2016

rules enumerated in the Geneva Convention and additional protocols are important to war crimes.

1.6.2.2 The Design

The research design involves a mixed method of doctrinal legal research with a qualitative approach. The doctrinal will consist of documents such as articles, books, publications, newspaper articles, legislations, various online databases and search engines including J-STOR, SSRN, Emerald Insight, Google scholar, etc.

The qualitative will be based on purposively collecting documentary materials that addresses the issue being studied namely, Responsibility to Protect in Libya by the African Union and its peace and security architecture. The qualitative approach is used to explain, explore, discover and clarify situations, feelings, perceptions, attitudes, values, beliefs and experiences of a group of people.¹⁷

This approach helps the researcher to gain some insight and understanding into the situation in Libya.

1.7.Scope and limitation of study

The research aims to look at the practicality of the implementation of the principle of Responsibility to Protect by the African Union during the Libyan crisis. The researcher intends to look at the tenets and scope of Responsibility to Protect, the legal or legislative framework, the elements and pillars. The study also will ascertain role of the African Union from the manifestation of its responsibility in managing the Libya conflict, and why its roadmap did not work this situation. More time would have been required for a research of this nature in order to

¹⁷ Ranjit Kumar, 'RESEARCH METHODOLOGY a step-by-step guide for beginners', (3rd Edn SAGE Publications Inc,2011)

obtain the views of people, however that was not possible because of the time and financial constraint. However efforts were made to cover all the salient aspects of the study through available data.

1.8.Organizational Study

Chapter One opens the discussion on the general introduction of the study. It also discusses the problem identified by the researcher, the research question, research objectives, the overview of methodology, and the scope and limitations of the research.

Chapter Two discusses the review of literatures on the area. It also discusses the tenet and scope of Responsibility to Protect, the legal or legislative framework, the elements and pillars of the Responsibility to Protect and the idea of sovereignty.

Chapter three opens the discussion on the African Unions law and policy on Responsibility to Protect and the African Peace and Security Architecture.

Chapter four discusses the Libyan civil war of 2011, the international community's approach to the war and African Unions roadmap and why it did not work during the Libyan crisis.

Finally, Chapter Five is the concluding part of the study makes some observations and recommendations for future research.

CHAPTER TWO

INTERVENTION AND THE RESPONSIBILITY TO PROTECT IN PERSPECTIVE

2.1. Introduction

The chapter presents a review of existing literatures on Humanitarian intervention, Military intervention and Responsibility to Protect. The review entails the review of publications in Journals, books and Legal Instruments on the various topics identified. This is intended to generate the understanding of the concept of both humanitarian intervention and military intervention and the principle of Responsibility to Protect within the Africa Union (AU) and global settings.

2.2. Humanitarian Intervention

Literature has expressed the difficulty in defining the concept of intervention. Nikoghosyan¹⁸ has observed that, humanitarian intervention is not war of aggression since it does not have the general goal to conquer the nation, or its territory: the whole or part, neither does it seek to subordinate its economy, as it is obtained during traditional wars.

Murphy on the other hand is of the view that, Humanitarian Intervention in itself is broad and describes a wide range of activities of governmental and non-governmental actors, seeking to improve the status of individuals and contribute to their wellbeing.¹⁹ Murphy's definition of Humanitarian Intervention is a threat or use of force by a state, group of states or international

¹⁸Hovhannes N., "Back to the Theory of Humanitarian Interventions", (The Centre for Strategic and International Studies, CSIS2010)),23

¹⁹ MurphyS., "Humanitarian Intervention: The United Nations in an Evolving World Order", ("PHILADELPHIA: University of Pennsylvania Press1996")

organization primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights.²⁰

Bordacheva Russian scholar argues that “intervention in any form is more of an attempt of fundamental influence on the internal affairs of another state, without its consent.”²¹ He is of the view that intervention involves a bold violation of state sovereignty, while the terms peacekeeping and humanitarian intervention characterize these actions to maintain international peace and security instead of waging war thus making it controversial.

Bordachev views humanitarian intervention in three angles namely, one that is based on purely humanitarian assistance such as delivery of relief items which is referred to as “the Red Cross Approach”. The second type of intervention involves the creation of safe environments around the areas of crisis in order to secure the safe passage of humanitarian assistance. The third type of humanitarian intervention aims at providing a more comprehensive solution to the emerging humanitarian disaster and covers a wider scope by aiming to manage crisis. Bordachev mentions that this type of humanitarian intervention aims at creating new government structures and a new legal system.

Humanitarian intervention within the context of the UN can be referred to as a form of peace operation. He goes ahead to give four different types of peace keeping operations namely:

- Traditional peace keeping which refers to activities that provide conditions that are in favour of peace according to the United Nations Peace keeping.
- Multidimensional peace operations which are described as operations designed to ensure the implementation of comprehensive peace agreements and to assist in laying the foundations for sustainable peace.

²⁰ Ibid

²¹ BordachevT., “*Russian Literature*”, (1998)158

- Peace enforcement which is a way of maintaining peace through a neutral third party's involvement. It is the midpoint between peacekeeping and peacemaking where force is used to bring conflicting parties to negotiate
- Humanitarian Intervention which according to Scheffer, encompasses no forcible methods such as intervention undertaken without military force in order to alleviate mass human suffering within sovereign borders²²

According to Nikoghosyan, there are common elements that run through the various definitions of humanitarian intervention and the situations that call for intervention include the situations where human right violations occur, situations of ethnic cleansing and genocide, incidence of failed statehood and the abuse of absolute executive authority over minorities of the nation or the whole nation.

Humanitarian intervention is based on certain laws and rules. There are certain conditions that according to law warrants humanitarian intervention. There is therefore some basis supported in law for Humanitarian Intervention.

2.2.1 The legal Basis for Humanitarian Intervention

In accordance with chapter 7 of the United Nations Charter, the United Nations has the powers to maintain peace. It allows the Council to determine the existence of any threat to the peace, breach of the peace, or act of aggression and to take military and non-military action to restore international peace and security. The African Union also in its Charter establishes the right of the Union to intervene in a member state to prevent grave violations of human rights under article 4(h). The Ezulwini consensus also supports the idea of intervention in times of crisis.

²² David J. S., "Towards a Modern Doctrine of Humanitarian Intervention" (Vol.23 University of Toledo law Review1992), 253

States that are weak and are unable to meet up with their constitutional, as well as universal obligations to protect human rights give the international community a basis for intervention. Therefore according to Nikoghosyan, the failure of weak states to meet their constitutional, as well as universal (international) obligations to protect human rights, ensure good governance and sustainability causes quite a number of acute humanitarian crises and challenges because of mass and flagrant violations of those rights therefore some powers like the United States, Russia, the European Union and other states impose strong sanctions on these undemocratic states which, in turn, constitute a valid reason for interference in the domestic affairs of these states, in breach of Article 2(4) of the UN Charter.

2.2 Justification for Humanitarian Intervention

Justification for Humanitarian Intervention can be referred to as the basis for Humanitarian Intervention. There are several justifications for Humanitarian Intervention. An example is the just war doctrine which is defined as a military action or war that is considered morally and legally justifiable. The just war doctrine has a purpose of ensuring that war is morally justifiable through a series of criteria, all of which must be met for a war to be considered just. Theorists such as Sean Murphy apply the Roman norm of just war (jus ad bellum) to justify external intervention. He justified humanitarian intervention on the basis that, “it will have positive effects not only on a local or regional level but through a domino effect on an international scale”.²³

Another justification for Humanitarian Intervention is that of the protection of human rights. Where there is a threat to fundamental human rights in a state can be interfered with by the international community so as to protect the rights of individuals within the affected state. The

²³n(15)

principle of Responsibility to Protect which was stated in the final report of the ICISS provides that a “national government is responsible for preventing large-scale loss of life and ethnic cleansing within its borders however if the government is either unwilling or unable to do so the international community has a responsibility to protect the aggrieved population. The principle of Responsibility to Protect therefore relies on intervention by the international community to protect the rights of aggrieved citizens.

2.3 Responsibility to Protect; historical overview

The Balkans and Rwanda civil unrest around the 1990s brought together the international community to debate on the role of the international actors to react effectively during conflicts when citizens’ human rights are systematically or grossly violated.²⁴ At the center of the debate was whether the international community has the right to intervene in a country for humanitarian purposes.²⁵ The principle of non-interference founded on state sovereignty has been employed to prevent state actor from acting promptly to prevent conflicts on humanitarian grounds. According to Cofman and Youngs, “there will be no justification for states interference on even on humanitarian grounds since such interventions may be considered an unacceptable assault on sovereignty”.²⁶

Against this backcloth, Kofi Annan in 1999 saw the need for the international community to assist troubled nations in ending conflicts and atrocities whilst addressing the cases of Rwanda and Srebrenica in respect of the dilemma of non-intervention by international actor.²⁷ He sort to justify the grounds for international community’s response in instances of severe human rights

²⁴ Retrieved from: <<http://www.un.org/en/preventgenocide/rwanda/about/bgresponsibility.shtml>>(accessed 12th august 2018)

²⁵ Ibid

²⁶ Cofman W, T., Youngs, R., “*Europe, the United States, and Middle Eastern Democracy*”, (“The Saban Center for Middle East Policy at the Brookings Institution, Number 18, 2009), 4”

²⁷ “Kofi Annan, *Two Concepts of Sovereignty*, (The Economist, 1999)”

violations.²⁸ According to Annan, “no legal principle, not even sovereignty can ever shield crimes against humanity”.²⁹

In responding to the calls for a strengthened international framework for protecting civilians, the International Commission on Intervention and State Sovereignty (ICISS) introduced Responsibility to Protect in 2001.³⁰ The report built on the African Union’s efforts to move from non-interference into non-indifference to intervene in a country for humanitarian purposes. According to the 2012 mission statement of the United Nations, “Responsibility to protect is premised on the fact that sovereignty in itself entails a responsibility to protect all populations from mass atrocity crimes and human rights violations.”³¹

Bannon has observed that, Responsibility to Protect has seen global acceptance and progression in the international community.³² For instance, according to Bellamy, the 2005 World Summit saw the endorsement of Responsibility to Protect by the international actors in other different ways from that of the International Commission on Intervention and State Sovereignty report.³³ The United Nations world summit in 2005 addressed the key concerns in preventing genocide, war crimes, ethnic cleansing and crimes against humanity. Kofi Annan also in 2004 created a High-Level Panel, to identify the major challenges and threats to the peace and security, and to develop potential policies and institutions to address these challenges.³⁴

²⁸Annan, Kofi. “Millennium Report of the Secretary General of the United Nations New York”, (Department of Public Information, 2000)

²⁹Ibid, 48

³⁰ “The Responsibility to Protect, Report of the International Commission on Intervention and State Sovereignty” (The International Development Research Centre 2001).

³¹Mahmood M., “Responsibility to Protect or Right to Punish”, (Journal of Intervention and Stabilising 2010), 55.

³² Bannon A., “The Responsibility to Protect: The U.N. World Summit and the Question of Unilateralism,” (The Yale Law Journal 2006), 1158

³³Bellamy A.J., “Responsibility to Protect”, (Cambridge Polity Press, 2009),

³⁴Kofi Annan, Millennium Report of the Secretary General of the United Nations (New York: United Nations Department of Public Information, 2000), 48.

In the report, it was mentioned that, sovereignty not only gave a State the right to control its affairs, it also conferred on the State primary responsibility for protecting the people within its borders. It proposed that when a State fails to protect its people - either through lack of ability or a lack of willingness- the responsibility shifts to the broader international community.

2.3.Elements of Responsibility to Protect

The term Responsibility to Protect is a global commitment to protect populations from widespread and systematic atrocity crimes.³⁵ The term was “conceived in 2001 as part of the influential International Commission on Intervention and State Sovereignty (ICISS), and gained momentum during the 2005 United Nations World Summit.”³⁶ From literature, Responsibility to Protect is centered on three basic elements, namely: (1) responsibility to prevent, (2) responsibility to react and (3) responsibility to rebuild.³⁷ International Coalition for Responsibility to Protect has observed that, different pillars of the Responsibility to Protect relate to different phases of conflict which is measured according to the level of the crime, be it against humanity, ethnic cleansing, genocide or war crime.

In his 2009 Report to the General Assembly, Secretary General Ban Ki-moon noted that there are certain important features that have to be recognized in relation to Responsibility to Protect. First of all, the principle of Responsibility to Protect should be seen as an ally of sovereignty and not an adversary. This implies that, in the bid to fulfill the responsibility to protect states have to have the understanding that it is for the mutual benefit of them as it strengthens the sovereignty of each Member state of the United Nations. Secondly, responsibility to protect should remain

³⁵n(27)

³⁶ ibid

³⁷ “International Commission on Intervention and State Sovereignty (ICISS). 2001, The Responsibility to Protect: Report of International Commission on Intervention and State Sovereignty, International Development Research Centre: Ottawa”

narrow. This is to say, the principle should cover four particular crimes namely: genocide, war crimes, crimes against humanity and ethnic cleansing. He emphasized that responsibility to protect should not be made to include crimes of less significance or humanitarian disasters. Lastly, even though responsibility to protect should be narrow and cover certain specific crimes the response should be deep.

2.3.1. Responsibility to prevent

It is observed by Huisingh that, the failures of the international community to prevent the genocide in Rwanda in 1994 and in Srebrenica in 1995 as well as the 1999 North Atlantic Treaty Organization-intervention in Kosovo without United Nations Security Council (UNSC) authorization triggered a debate on humanitarian intervention and state sovereignty.³⁸ Prevention means proactive, decisive and early action to stop violence before it begins. Responsibility to Protect seeks to address the root causes and direct causes of international and national conflict.³⁹ Scholars and policy makers have consistently agreed that it is desirable to act to prevent mass atrocity crimes from being committed rather than to react after they are taking place.⁴⁰ Accordingly, responsibility to prevent is elevated to a prominent place on the Responsibility to Protect agenda.⁴¹

An emphasis on prevention is evident in the United Nations Secretary General's 2009 report on the implementation of Responsibility to Protect, which advocated the creation of a joint office for the United Nations Special Advisor on Responsibility to Protect.⁴² The responsibility of the international community to prevent goes beyond merely looking at the other way in times of

³⁸Huisingh F. "A Responsibility to Prevent? A Norm's Political and Legal Effects"

³⁹ibid

⁴⁰Ibid

⁴¹Ibid

⁴²"Early Warning, Assessment and the Responsibility to Protect; Report of the Secretary-General, UN Doc. A/64/864, 14 July 2010"

crisis, and unproductively anticipating that things will get just get better.⁴³ According to Ban Ki-moon, responsibility to prevent requires proactive and decisive measures for early action in preventing violence or conflicts even before they commence. The Responsibility to Prevent is relevant at pre-conflict phase.⁴⁴

2.3.2 Responsibility to react

Responsibility to react seeks to respond to situations where there is a compelling need for help by humans in a conflict situation. The measures used include coercive measures like sanctions and international prosecution, and in extreme cases military intervention. When it comes to military intervention the authorization of the United Nations Security Council must be sought. Responsibility to react involves an obligation to respond to situations where there is extreme threat to international peace and security by resorting to intervention in order to safeguard human lives.⁴⁵ According to Panglosse, the fear of or reluctance to launch a military intervention should not impair the international community's responsibility to react by all appropriate means to a humanitarian crisis falling into the scope of responsibility to protect.⁴⁶ Responsibility to react is relevant at conflict phase.⁴⁷

⁴³“Ban Ki-moon, Address to the Stanley Foundation Conference on Responsibility to Protect, New York, 18 January 2012”. “ Retrieved from: <<http://www.ResponsibilitytoProtect10.org>> (accessed 12th august 2018)”

⁴⁴ International Coalition for Responsibility to Protect. 2011, ‘UN Security Council fails to uphold its Responsibility to Protect in Syria’, 7 October 2011. Available at: <http://icrtopblog.org/2011/10/07/un-security-council-fails-to-uphold-its-responsibility-to-protect-in-syria/>

⁴⁵Ibid

⁴⁶PanglosseB., “*Responsibility to Protect and Responsibility to React, from Doctrine to Practice: the Military Intervention in Libya*”, (Thesis for the Master International and European Public Law 2012), 4

⁴⁷ International Coalition for Responsibility to Protect. 2011, ‘UN Security Council fails to uphold its Responsibility to Protect in Syria’, 7 October 2011. Available at: <http://icrtopblog.org/2011/10/07/un-security-council-fails-to-uphold-its-responsibility-to-protect-in-syria/>

2.3.3 Responsibility to rebuild

It is resorted to normally after a military intervention occurs. It involves full assistance with recovery, reconstruction and reconciliation which seeks to address the causes of the harm the intervention was designed to put a stop to or to prevent. The Libyan intervention has highlighted an aspect of the responsibility to protect principle that has to date been overshadowed by the debates on the use of force. Responsibility to rebuild is often associated with high cost on the international community. Accordingly, governments are always reluctant to commit to costly and often long-drawn out rebuilding missions. ICISS, 2001 has observed that, the rebuilding agenda requires that intervening military forces are obliged to prevent revenge killings, reverse ethnic cleansing among others

2.4. The pillars of the responsibility to protect

According to the UN Secretary-General's 2012 report, the principle of Responsibility to Protect rests on three pillars.⁴⁸ The first pillar refers to the primary responsibility of the state to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement.⁴⁹ The Secretary-General described this pillar as the 'bedrock' of Responsibility to Protect which derives from sovereign responsibility itself and the international legal obligations that states already have.

The second pillar refers to the international community's responsibility to assist and encourage states to fulfill their Responsibility to Protect, particularly by helping them to address the

⁴⁸UN Secretary-General's 2012 report

⁴⁹World Summit Outcome Document, para 138

underlying causes of genocide and mass atrocities, build the capacity to prevent these crimes, address problems before they escalate, and encouraging them to fulfill their commitments”.⁵⁰

The third pillar states that, “if a state fails in the protection of its population from genocide, war crimes, ethnic cleansing and crimes against humanity it is the international community’s responsibility to take timely and decisive action to protect these populations through diplomatic, humanitarian and other peaceful means. This should be on a case by case basis and where the peaceful means becomes inadequate this third pillar of the principle of responsibility to protect allows the use of forceful means to protect the population.”⁵¹ The report has stated that, these pillars are not of any sequential importance; rather, they are all placed at an equal importance. Accordingly, *“Without all three, the concept would be incomplete. All three pillars must be implemented in a manner fully consistent with the purposes, principles, and provisions of the Charter.”*⁵²

2.5. The legal status of responsibility to protect

The principle of responsibility to protect is grounded in existing international law. International Humanitarian law refers to a set of legally binding treaties, conventions and customary law. The principle of responsibility to protect in itself is not a legally binding framework. However it is grounded in existing international laws. For example, the responsibilities of states when faced with the crime of Genocide are stipulated in the Genocide Convention. This Convention holds states responsible for the prevention and punishment of the crime of genocide. States also follow. The rules enumerated in the Geneva Conventions and Additional Protocols in order to ensure respect for international humanitarian law. These rules are important to war crimes under the

⁵⁰World Summit Outcome Document, (24 October 2005) UNGA Res 60/1

⁵¹UN Charter, Chapter VII

⁵² Ibid

Principle of Responsibility to protect. Crimes against humanity do not have its own convention even though elements of the crime such as torture and slavery have their own conventions namely Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and 1926 Slavery Convention.

2.6. Duty bearers under the principle of Responsibility to Protect

Under the principle of Responsibility to Protect, states have the primary duty to protect their citizens from heinous crimes. Therefore, the state has the responsibility to protect population that is under its jurisdiction and control. States also have the secondary responsibility to assist other states to fulfill their responsibility to protect their populations. According to Ban Ki-moon, this may be done in four ways. Thus, encouraging States to meet their responsibilities under pillar one, helping them to exercise this responsibility, helping them to build their capacity to protect; and assisting States under stress before crises and conflicts break out. During the 2005 World summit it was said that, the International Community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means... to help protect populations... (and they may) take collective action... through The Security Council.⁵³. This comment suggests that states are supposed to work hand in hand to assist each other when it comes to protection of their populations and prevention of heinous crimes through the United Nations

2.7. The application of Responsibility to Protect and states failure.

The principle of Responsibility to Protect applies in situations where communities are under threat of suffering or suffering from genocide, war crimes, crimes against humanity and ethnic

⁵³ “World Summit Outcome Document, (24 October 2005) UNGA Res 60/1”

cleansing. Responsibility to protect does not apply to civil strife, conflict, or other violent situations that do not meet the threshold of these most serious of crimes. In the case where states do not prevent the commission of the crimes that fall under the principle of Responsibility to Protect and do not intervene to stop the further commissions of these crimes the state is said to have failed its responsibility to protect.

The states then have the responsibility to punish perpetrators through their domestic legal regime. If this fails to work, then international mechanisms such as the International Criminal Court bear the duty to punish. The reason for this is that, the principle of responsibility does not have a separate regime for the prosecution of perpetrators, therefore relies on existing international law for prosecution of related crimes. Organizations such as United Nations and the African Union under the authorization of the United Nations Security Council also have the responsibility to ensure peace and security in nations that have failed in their responsibility to protect.

2.8.The concept of Responsibility to protect and the African Union framework

The Organization of African Union was established on 25th May 1963. One of the main objectives of the Organization was to defend the sovereignty of African states, their territorial integrity and independence.⁵⁴ As a consequence of its policy of non-interference in the internal affairs of sovereign states, the Organization of African Unity failed to prevent conflicts, stop genocides or challenge dictators. The Organization failed to stop the civil war in Liberia, Somalia, Sierra Leone and Sudan. It also failed to stop the Rwanda genocide. On 9 July 2002, African leaders gathered in Durban, South Africa, to dissolve the Organisation of African Unity.

⁵⁴ “Charter of the Organization of African Unity, (25 May 1963) art 2”

The African Union came into force on May 26, 2001, went through a transition period and finally replaced the Organization of African Unity in July 2002.

The African Union was driven by the “never again” principle and did away with old rules that governed the relationship between African states previously especially with regards to nonintervention in the internal affairs of its members. The principle of nonintervention shifted to that of non-indifference. This new principle if implemented is supposed to ensure that crimes committed in the Rwandan civil war never happen again in the African continent.

The Constitutive Act of the African Union states that the objective of the Union shall be to promote peace, security, and stability on the continent.⁵⁵ The African Union adopted the principle of responsibility to protect in its Constitutive Act through Article 4(h) gives members of the African Union the right to intervene in the affairs of member states under grave circumstances such as war crimes, genocide and crimes against humanity.⁵⁶ The decision of the African Union to incorporate the right of intervention in that Act stemmed from concern about the Organization of African Unity’s failure to intervene in order to stop the gross and massive human rights violations witnessed in Africa in the past. The Assembly of the Union, which is composed of heads of State and government or their duly accredited representatives, is the supreme organ of the Union.⁵⁷ The General Assembly decides on intervention either on its own initiative or upon the request of a member states.⁵⁸

At the 7th Extraordinary Session of the Executive Council of the African Union in March 2005 at Ethiopia, the Ezulwini consensus was adopted by the African Union. With regards to Responsibility to Protect, the Consensus states that authorization for the use of force by the

⁵⁵ “Constitutive Act of the African Union, (1 July 2000) art 3(h)”

⁵⁶ Ibid

⁵⁷ Ibid art. 6.

⁵⁸ Ibid art 4(j)

Security Council should be in line with the conditions and criteria proposed by the Panel, but this condition should not undermine the responsibility of the international community to protect. Since the General Assembly and the Security Council are often far from the scenes of conflicts and may not be in a position to undertake effectively a proper appreciation of the nature and development of conflict situations, it is imperative that Regional Organisations, in areas of proximity to conflicts, are empowered to take actions in this regard. The African Union agrees with the Panel that the intervention of Regional Organisations should be with the approval of the Security Council; although in certain situations, such approval could be granted after the fact in circumstances requiring urgent action. In such cases, the United Nations should assume responsibility for financing such operations.

The Ezulwini consensus is an agreement that covered several areas. With respect to responsibility to protect, Africans call for a cautious approach for the United Nations to fund and support peacekeeping forces provided by regional organisations such as the African Union. The African Union also gives the basis upon which it will have residual responsibility to undertake military intervention towards Responsibility to Protect.

CHAPTER THREE

THE AFRICAN UNION'S PEACE AND SECURITY ARCHITECTURE

3.1 Introduction

The African Union as an organization has the Responsibility to Protect member states in times of crisis. The principle of Responsibility to protect as seen from the previous chapter has its basis in international law. The African Union has in place a law and policy that gives basis to the principle of Responsibility to Protect. It also has structures and mechanisms which are supposed to aid the organization to intervene in the affairs of member states in grave circumstances. These structures and mechanisms are referred to as the African Union's Peace and Security Architecture. This chapter therefore focuses its discussion on the African Union and the law and policy that governs Responsibility to Protect. The structures and mechanism that have been put in place to aid intervention in African states when the need arises are also discussed in this chapter.

3.2 The African Unions law and Policy on Responsibility to Protect

The African Union is a successor to the Organization of African Unity (OAU). The Organization of African Unity was established on May 25th 1963 in Addis Ababa with the main purpose of promoting unity and solidarity among African states.⁵⁹ One of the goals of the Organization of African Unity was to eradicate all forms of colonialism from the continent.⁶⁰ The member states of the Organization of African Unity however feared that the internal affairs of their various

⁵⁹ Art. II (1) (a) OAU Charter, accessible at <http://www.dfa.gov.za/for-relations/multilateral/treaties/oauchart.htm>

⁶⁰ Art. II (1) (d)

states will be interfered into. It is on that basis that noninterference in the internal affairs of other states became one of the principles of the organization.⁶¹

The principle of non-interference is one of the reasons that led to the gross violation of human rights. This is one of the main reasons why the African Union was formed to replace the Organization of African Unity among some African states thereby leading to the formation of the African Union on 26th May 2001 to succeed the Organization of African Unity.

3.2.1 Article 4(h) and the Ezulwini consensus

The African Union adopted the principle of Responsibility to Protect in its Constitutive Act⁶² through Article 4(h) of the Act, which gives its members the right to intervene in the affairs of member states under grave circumstances such as war crimes, genocide and crimes against humanity.⁶³ Africans therefore accepted the principle of Responsibility to Protect before it was widely accepted by the World leaders at 2005 World Summit.

The Ezulwini consensus is a position which the African Union adopted in Addis Ababa in March 2005 which proposes a reformation on the United Nations concept of the use of force. The concept proposes that authorization for the use of force by the United Nations Security Council should be in line with the conditions and criteria proposed by the United Nations. The Ezulwini Consensus proposes that the authorization for the use of force by the Security Council should be in line with the conditions and criteria proposed by the United Nations High level Panel without undermining the entire concept of responsibility to protect.

⁶¹Art. III (2) OAU Charter

⁶²constitutive Act of the African Union, (11 July 2000)

⁶³Ibid

⁶³Ibid

⁶³Constitutive Act of the African Union, 11 July 2000, 2158 U.N.T.S 3

One of the major reasons for adopting the consensus was due to the delay in the approval when it comes to issues of crisis in African countries by the United Nations Security Council. The United Nations Security Council is more often than not very far from conflict scene therefore it was argued that the Security Council is not able to make a proper assessment as to the nature of the conflicts. The consensus also says that it is necessary to empower regional organizations that are in close proximity to the conflict zone so that they can take prompt action as that will be more effective.

The Ezulwini Consensus reflects the African Unions Agreement and acceptance of the authorization of interventions by the United Nations Security Council however in situations where action must be taken promptly a regional organization like the African Union can proceed to intervene so that authorization can be granted post- intervention.

The African Union following the transformation of the Organization of African Unity to African Union established certain mechanisms to aid the union in the implementation of the concept of Responsibility to Protect through the Peace and Security Council. These mechanisms and structures are referred to as the African Peace and Security Architecture

3.3 The African Peace and Security Architecture

The constitutive Act of the African Union even though under article 4(h) gives the union the right to intervene in the affairs of member states under grave circumstances however, there is no in-depth explanation as to how the intervention will be done. The Constitutive Act only mentions that the African Union Assembly shall give directives to the Executive Council on the

management of conflicts, war and other emergency situations and the restoration of peace.⁶⁴ Due to this loophole, the Protocol Relating to the Establishment of the Peace and Security Council was adopted at the first ordinary session of the African Union Heads of State and Government in Durban, South Africa, and came into force in January 2004. The Protocol Relating to the Establishment of the Peace and Security Council gives a detailed and comprehensive peace and security architecture.

The African Peace and Security Architecture is therefore the operational structure for the effective implementation of the decisions taken in the areas of conflict prevention, peace-making, peace support operations, as well as peace-building and post-conflict reconstruction. The Peace and Security Council is the principal organ of the African Peace and Security Architecture. This is because it is the standing decision-making organ for the prevention, management and resolution of conflicts which operates as a collective security and early warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa.⁶⁵ The Peace and Security Council is supported by African Union Commission, a Panel of the Wise, a Continental Early Warning System, an African Standby Force and a Special Fund.⁶⁶ The African Peace and Security Architecture is therefore made up of the Peace and Security Council, African Union Commission, Panel of the Wise, a Continental Early Warning System, and an African Standby Force.

⁶⁴ Constitutive Act of the African Union, (1 July 2000) art 9

⁶⁵ Protocol Relating to the Establishment of the Peace and Security Council of the African Union (9 July 2002) art 2(1)

⁶⁶ Ibid, art 2(2)

3.3.1 The Peace and Security Council

The African Union's Peace and Security Council which is a vital organ of the African Peace and Security Architecture is composed of 15 Member States out of which 10 are elected for a term of two years and the five others for a term of three years. Upon the expiry of this term, member states can apply for re-election. Some of the factors that are taken into consideration by the African Union Assembly when selecting the members of the council includes, the capacity of a potential Peace and Security Council members to contribute militarily and financially to the African Union and the regional balance within Africa. The Peace and Security Council in carrying out its objectives, assesses potential crisis situations and sends fact-finding missions to trouble spots. If it is necessary, after the fact-finding, the Peace and Security Council legitimizes African Union's intervention, pursuant to Article 4(h) of the African Union Constitutive Act, which affirms the right of the Union to intervene in a Member State with respect to crisis situations.

Specifically, the Peace and Security Council recommend to the Assembly of Heads of State, intervention, on behalf of the Union, in a Member State in respect of grave circumstances, namely, war crimes, genocide and crimes against humanity.⁶⁷ The Peace and Security Council decisions are generally guided by the principle of consensus. However, in a situation where there is failure to reach a consensus, decisions on procedural matters are by a simple majority and on substantive matters by a two-thirds majority of members eligible to vote.⁶⁸

⁶⁷Ibid, art 7(e)

⁶⁸Ibid, art 8(13)

3.3.2 The Continental Early Warning System

The need for the early detection of conflicts triggered the Peace and Security Council Protocol to introduce the concept of early warning and mechanisms of early response. The Continental Early Warning System is made up of an observation and monitoring center located within the African Unions Conflict Management Division known as The Situation Room; information is collected and analyzed by the observation and monitoring units of the Regional Mechanisms for conflict prevention, management and resolution, which are connected to the situation room. The system works with the United Nations and other international partners, academics, research centers and Non-governmental Organisations with the aim of collecting data and analyzing potential conflicts and threats to peace and security in the continent. The Chairperson of the African Union Commission uses the information that is gathered to advise the Peace and Security Council on potential conflicts and threats to peace and security in Africa and make recommendations on the way forward.

3.3.3 The African Standby Force

The African Standby Force is established by article 13 of Protocol Relating to the Establishment of the Peace and Security Council of the African Union”. It is an important feature of the African Peace and Security Architecture as it plays an essential role in enabling the Peace and Security Council to achieve its objectives. The African Standby Force is organized into five regional standby forces, previously known as regional brigades namely, The Southern African Grouping known as the Southern Africa Standby Force (SASF), The Eastern Africa Grouping known as the Eastern Africa Standby Force (EASF), the Central African Grouping known as the Central African Standby Force (CASF), the West Africa Grouping known as the ECOWAS Standby

Force (ESF) and The North African Grouping known as the North African Regional Capability (NARC). The African Standby Force was established to enable the Peace and Security Council to perform its function with regards to the deployment of peace support missions and interventions pursuant to articles 4(h) and 4(j) of the African Unions Constitutive Act.

3.3.4 The Panel of the Wise

The Panel of the Wise also referred to as (POW) is one of the most important pillars of the Peace and Security Architecture of the African Union. The panel consists of five highly respected African personalities within Africa who have played significant roles in helping to curb and prevent war and political unrest in the African society. The panel plays the role of supporting the Peace and Security Council and the Chairperson of the African Commission mainly when it comes to prevention of conflict..

The first Panel was appointed in December 2007 and composed of Ahmed Ben Bella of Algeria, who served as chair, Salim Ahmed Salim of Tanzania, Elisabeth K. Pognon of Benin, Miguel Trovoadá of Sao Tome and Principe, and Brigalia Bam of South Africa. At the July 2010 Summit in Kampala, Ben Bella and Ahmed Salim were reappointed for another term ending in December 2013 and three new members were appointed: Mary Chinery Hesse of Ghana; Kenneth Kaunda of Zambia and Marie Madeleine Kalala-Ngoy of the Democratic Republic of the Congo.⁶⁹

The current members of the panel include H.E Hifikepunye Pohamba who was president of the Republic of Namibia from 2005 to 2015, H.E Ellen Johnson Sirleaf who was elected President of Liberia in 2006, Dr. Speciosa Wandirakazibwe who was the first female Africa Union Vice

⁶⁹“Retrieved from: <<http://www.peaceau.org/en/page/29-panel-of-the-wise-pow>> (Accessed 5th June 2018)”

President, Mr. Amr Moussa who was the secretary- General of the league of Arab States from 2001 to 2011 and the Egyptian Minister of Foreign Affairs from 1991 to 2001 and Mrs. Honorine NzetBiteghe who was minister for Social affairs in Gabon. The panel meets at least three times a year to identify countries to visit and also organize annual workshops on conflict prevention and management.

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3.3.5 The African Union Commission

The African Union Commission acts as the executive administrative branch or secretariat of the African Union. It is composed of 10 Officials including a Chairperson, a Deputy Chairperson, Eight (8) Commissioners and Staff members.⁷⁰ The African Union Commission represents the Union and protects its interest under the auspices of the Assembly of Heads of State and Government as well as the Executive Committee.⁷¹ The mission of the Commission is to become an efficient and value-adding institution driving the African integration and development process in close collaboration with African Union Member States, the Regional Economic Communities and African citizens.⁷²

The chairperson of the African Union Commission (AUC) occupies an important position in the regional body.⁷³ Some of the functions of the chairperson include chairing all meetings and deliberations of the commission, undertaking measures aimed at promoting and popularizing the objectives of the AU and also include enhancing the performance of the commission and

⁷⁰ “Retrieved from: <<https://au.int/en/commission>>(Accessed 5th June 2018)”

⁷¹ Retrieved from: <<https://au.int/en/commission>>(Accessed 5th June 2018)

⁷² Retrieved from<<https://au.int/en/commission>>(Accessed 5th June 2018)

⁷³ Retrieved from<<https://www.standardmedia.co.ke/article/2001227724/functions-of-african-union-commission-chairperson>>(Accessed 5th June 2018)

promoting cooperation with other organisations for the furtherance of the objectives of the union.⁷⁴

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⁷⁴Ibid

CHAPTER FOUR

THE LIBYAN CIVIL WAR AND INTERVENTION BY THE INTERNATIONAL COMMUNITY AND THE AFRICAN UNION

4.1. Introduction

This chapter focuses on the happenings of the Libyan civil war of 2011, whilst highlighting the various roles played by the international community in protecting human lives. It also considers the African Union's and the international community's approach to intervening in the civil war. The Arab Spring which is a series of anti-government protests, uprisings and armed rebellions that spread across the Middle East in early 2011 serve as a catalyst for the 2011 Libyan civil war.

4.2. Historical overview of the Libyan Civil War

From September 1969, Colonel Muammar Gaddafi ruled Libya. His rule which was purely dictatorial lasted for over four decades. In Gaddafi's Libya, there was neither a constitution nor a political party. He formulated a theory called the Third Universal Theory which propagated that people should directly run the activities and exercise the powers of government⁷⁵. Colonel Gaddafi's reign has therefore been described as one that is devoid of any of the institutional features common even to many of the world's most undemocratic regimes.⁷⁶

The civil war started as a series of peaceful protests by its citizens in order to free themselves from the dictatorial rule of their leader Colonel Gaddafi. The protest was a ripple effect of the protests and civil uprisings which occurred in Tunisia and Egypt in North Africa popularly

⁷⁵Apuli, K P., "The Principle of African solution to African Problems' under the spotlight: The African Union (au) and the Libyan Crisis", (The Open Society Institute, African Governance Monitoring and Advocacy Project AfriMap 2011)

⁷⁶Ibid

known as the Arab Spring as a result of the oppressive nature of their leaders. The People of Libya protested strongly to Gaddafi's dictatorial regime in a peaceful manner. However Gaddafi responded to these protests in a violent and ruthless manner by using government troops to stifle the efforts of mass protesters.

The Protests started in January and quickly turned into a civil war. In the process of Gaddafi's forces' determination to stifle the efforts of the protestors, the group of people from Eastern Libya who were against Gaddafi's regime known as the rebels created a Transitional National Council(TNC) with its leader Mustafa Mohammed Abud Al Jeleil the former Minister of Justice. By February 2011, Gaddafi's forces came out victorious as they were able to have control over towns that were taken over by rebels. The victory compelled Gaddafi to seek the help of his supporters to go out and attack protesters, and deployed his troops in all tribes and regions so that they can "purify all decisions from these cockroaches", to "cleanse Libya house by house" and to execute "any Libyan who takes arms against Libya"⁷⁷. These mass killings, allegations of mass rape, use of land mines as a means of war, shelling of civilian were caused as Gaddafi and his forces violated the rights of the people of Libya some of which are alleged to be war crimes and crimes against humanity. These acts drew more attention to Libya as the international community was strongly against it.

4.3.Initial response by the international community to address the Libyan crisis

A few days after the civil unrest started, the United Nations Secretary General, The United Nations Security Council and Human Rights Council urged Libya to comply with its fundamental human rights and humanitarian law obligations in accordance with its

⁷⁷Ibid

Responsibility to Protect. The African Union also had the intention of sending a fact-finding mission to Libya thereby issuing a communique to that effect.⁷⁸ On 22 February 2011, the United Nations's High Commissioner for Human Rights, Navi Pillay, called on the authorities in Libya to stop using violence against demonstrators, which 'may amount to crimes against humanity'.⁷⁹ On the same day, the United Nations Special Adviser on genocide and the Responsibility to Protect, respectively said that Gaddafi regime's behaviour could amount to crimes against humanity and insisted that it should comply with its Responsibility to Protect the populations within its jurisdiction.⁸⁰ The next day the crisis in Libya was referred to as a human problem by the then United Nations Secretary General, Ban Ki-Moon. He also reminded the United Nations of its responsibilities and the Libyan government of its responsibility to protect its citizens during the civil unrest.

On 25th February 2011, The United Nations Human Rights Council formed a commission of inquiry whose sole purpose was to investigate the situation in Libya. Suspension of Libya from the Human Rights Council was also encouraged by the United Nations Human Rights Council. On 1ST March 2011, The United Nations General Assembly eventually suspended Libya.

Several appeals were made to the Libyan authorities to protect its citizens but these appeals were ignored therefore on 26th February 2011, the United Nations Security Council in order to affirm Libya's responsibility to its citizens passed Resolution 1970. This resolution did not only affirm the obligation Libya had to protect its citizens it also imposed sanctions against Libya and referred Colonel Gaddafi to the international Criminal Court. Despite the passing of Resolution

⁷⁸ "Security Council Press Statement on Libya, United Nations document SC/10180 AFR/2120, 22 February 2011, retrieved from; <<http://www.un.org/News/Press/docs/2011/sc10180.doc.htm>> (accessed 5th august 2018)"

⁷⁹ "Libya attacks may be crimes against humanity: UN", Reuters, 22 Feb. 2011"

⁸⁰ "UN press release, statement by the UN Secretary General Special Adviser on the Prevention of Genocide, Francis Deng, and the Special Adviser on the Responsibility to Protect, Edward Luck, on the situation in Libya, 22 Feb. 2011"

1970 Colonel Gaddafi continued to kill and violate the fundamental human rights of his people by claiming that “I was the one who created Libya and I will be the one to destroy it.” The African Union and The United Nations Peace and Security Council were deliberating as to how best to respond to the civil unrest in Libya. Eventually, the United Nations Peace and Security Council passed resolution 1973. This resolution authorized the use of force to protect the civilians in Libya as a result of the constant threat from Gaddafi’s forces to wipe away the rebels.

Lynn Pascoe who was The Under-Secretary General for Political Affairs during the Libyan civil war, on 22 February 2011 gave a briefing on the Libyan Crisis. The Security Council expressed its worry concerning the crisis in Libya and condemned the use of force against the people of Libya. The Libyan authorities were called upon to protect its citizenry. The United Nations Security Council also promised to monitor the situation closely⁸¹

4.3.1. United Nations Security Council Resolution 1970

The international community realized that using diplomatic means to control the crisis in Libya was not enough therefore the United Nations Security Council Resolution 1970 was adopted on 26th February 2011 to address the crisis. The resolution was passed unanimously acting under Chapter VII⁸² of the United Nations Charter and article 41⁸³ thereby making it enforceable legally. The Resolution was proposed by France, Germany, the United Kingdom and United States.⁸⁴ The introduction of resolution 1970 expresses grave concern by the Security Council at the Libyan Crisis and condemned the violence and use of force against civilians. The Security Council also welcomed statements of condemnation of the violation of human rights and

⁸¹ SC/10180-AFR/2120, 22 Feb. 2011

⁸² “Chapter VII of the United Nations Charter sets out the UN Security Council's powers to maintain peace”

⁸³ “The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures:”

⁸⁴ “UN Security Council slaps sanctions on Libya”. Times of India. 27 February 2011”

international humanitarian law by the Arab League, the African Union, and the Secretary General of the Organization of the Islamic Conference. The Human Rights Council resolution of 25 February 2011 was welcomed and an independent international commission of inquiry dispatched to investigate all allegations of violations of international human rights law in Libya, to establish the facts and circumstances of such violations and if possible identify those responsible. The nature of the violations according to the resolution is one that may amount to crimes against humanity.⁸⁵

4.3.1.1 The implementation of Resolution 1970

The Security Council in the Resolution showed concern about the situation of the refugees whereby they are forced to flee the violence occurring in Libya. Concern was shown regarding the issue of the reports of shortages of medical supplies to treat the wounded and the safety of foreign nationals. The Security Council also recalled the Libyan government to protect its population. The Security Council demanded an immediate end to the violence and calls for steps to fulfill the legitimate demands of the population.⁸⁶ The Security Council also urged Libyan authorities to respect human rights and international humanitarian law, ensure the safety of all foreign nationals and their assets and facilitate the departure of those wishing to leave the country, ensure the safe passage of humanitarian and medical supplies and lift restrictions on media.

⁸⁵SnowAnita., retrieved from ["UN slaps sanctions on Gaddafi". *Independent Online \(South Africa\)*](#).

⁸⁶["UN slaps sanctions on Libyan regime". *Al Jazeera*](#), 27 February 2011

4.3.2. United Nations Security Council Resolution 1973

United Nations Security Council Resolution 1973 was adopted on 17th March 2011. Colonel Gaddafi and his forces exhibited behaviour that did not regard the demands made in resolution 1970 thus leading to the adoption of resolution 1973. The Resolution authorized the use of all necessary measures to protect civilians and civilian-protected areas” under threat of attack in Libya.

4.3.2.1 Implementation of Resolution 1973

The Resolution formed the legal basis for military intervention during the Libyan Civil War, demanding an immediate ceasefire and authorizing the international community to establish a no-fly zone and to use all means necessary except of foreign occupation to protect civilians.⁸⁷

The arms embargo in Resolution 1970 was reemphasized in Resolution 1973. It also imposed a ban on all Libyan-designated flights, an asset freezes on Libyan authority properties and further explains that the frozen assets should be used for societal benefit. The Security Council further goes on to create a panel of experts to monitor and promote implementation of sanctions. The deployment of ground troops was explicitly prohibited and any protection coming in from the international community was limited to air campaign. On 18 March, Muammar Gaddafi's government announced that they would comply with the resolution and implement a ceasefire.⁸⁸ However, it quickly became clear that no ceasefire had been implemented.⁸⁹ Libyan opposition forces in Benghazi cheered and fired guns and fireworks into the air as the resolution was adopted.⁹⁰ A few hours before issuing the resolution, Gaddafi warned the opposition with a

⁸⁷ Roth, Richard (18 March 2011). "U.N. Security Council approve no-fly zone in Libya". CNN.

⁸⁸ "Libya declares ceasefire". *New Statesman*.

⁸⁹ "Gadhafi blasts 'crusader' aggression after strikes". *MSNBC*.

⁹⁰ "BBC News. 18 March 2011 UN backs action against Colonel Gaddafi".

speech saying, “We are coming tonight, and there will be no mercy”.⁹¹ Western countries intervention in the Libyan crisis started when resolution 1973 was implemented.⁹² Resolution 1973 marks the first time the Security Council had authorized the use of force against the wishes of a functioning state.⁹³ The North Atlantic Treaty Organization (NATO) which is also called the North Atlantic Alliance is an intergovernmental military alliance between 29 North American and European countries.

Military Intervention by a multi-state NATO led Coalition began in Libya on 19th March 2011 with the main purpose of implementing the United Nations Security Council Resolution 1973. The reason for the adoption of resolution 1973 according to the Security Council was to cease fire in Libya and put an end to the attacks against the citizens of Libya which the Security Council said may be a crime against humanity. Military operations started with American and British naval forces. The French Airforce, British Royal Airforce and Royal Canadian Air force also launched airstrikes against Libyan army tanks and vehicles. Gaddafi's forces could not manage to shoot down any one of the planes. The official names for the interventions by the coalition members are Opération Harmattan by France; Operation Ellamy by the United Kingdom; Operation Mobile for the Canadian participation and Operation Odyssey Dawn for the United States⁹⁴. On 23rd March, North Atlantic Treaty Organization took control of the arms embargo named Operation Unified Protector. On 24th March, North Atlantic Treaty Organization agreed to take control of the no-fly zone. On 31 March 2011 North Atlantic Treaty Organization took charge of the Libyan Mission on 31 March 2011. North Atlantic Treaty Organization announced that it will end operations in Libya on 31st October 2011 following the death of

⁹¹Tharoor, Ishaan "Gaddafi Warns Benghazi Rebels: We Are Coming, And There'll Be No Mercy"

⁹² (Apuuli: 2012:1).

⁹³ Bellamy and Williams, 2012:1)

⁹⁴Gunfire, Explosions Heard in Tripoli". *CNN*. 21 March 2011.

Colonel Gaddafi. Libyans liberated themselves after over forty years under the rule of Gaddafis regime. The United Nations Secretary Bank Ki-Moon and some other member states hailed North Atlantic Treaty Organization for a good job done. Other countries like India however were in doubt of North Atlantic Treaty Organizations intervention in Libya.

4.3.2.2 Criticism of the implementation of Resolution 1973

According to Thakur, the Libyan Civil war of 2011 provided an opportunity to convert the noble sentiments and solemn promise of responsibility to protect into meaningful action⁹⁵. The United Nations Security Council passed Resolution 1973, which authorized Member States to take all necessary measures to protect civilians who were under threat of imminent attack in Libya, and also implemented a no-fly zone over the conflict areas of Libya. Although there is no explicit reference to Responsibility to Protect in the operative provisions, the preamble of the resolution states that the United Nations Security Council reiterates the responsibility of the Libyan authorities to protect the Libyan population'. Resolution 1973 was the first time the United Nations Security Council authorized intervention without host state consent.⁹⁶

Something needed to be done as the situation in Libya was becoming worse thus the swift implementation of resolution 1973. The adaptation of this Resolution by the United Nations Security Council

By adopting Resolution 1973, the United Nations Security Council sought to protect the Libyan population, one of the core principles of the Responsibility to North Atlantic Treaty Organization, as a coalition of Member States, had the authorization to act under the mandate of

⁹⁵Thakur, R., “*Libya and the Responsibility to Protect: Between Opportunistic Humanitarianism and Value-Free Pragmatism*”,(Security Challenges2011) 25

⁹⁶ Bellamy,

this resolution, and as such was the primary body enforcing its provisions.⁹⁷ In the wake of the Libyan conflict, the New York Times, describing the operation as a true alliance effort, reported North Atlantic Treaty Organizations success was swift – saving tens of thousands of Libyan lives, grounding Gaddafi’s air force, and watching Libya’s coast.⁹⁸ After resolution 1973 was passed by the United Nations, Gareth Evans wrote in a newspaper column:

Legally, morally, politically and militarily [the intervention] has only one justification: protecting to the extent possible the country’s people... When that job is done, the military’s job will be done. Any regime change is for the Libyan people themselves to achieve⁹⁹ Despite this assertion it is believed that North Atlantic Treaty Organization forces appear to be fighting not only with the intention of protecting the Libyan Population but also with the intention of changing Gaddafis regime.

North Atlantic Treaty Organization was in support of regime change because of their support of the rebels’ efforts. Not only were rebel forces trained in combat by French and British intelligence agencies and foreign military advisors but French forces also allegedly provided arms to Libyan rebels.¹⁰⁰ These actions were deemed by the Russian Foreign Minister to be a very crude violation of United Nations Security Council Resolution 1970.¹⁰¹ In March, an opinion piece in the New York Times reported that Western powers were now attacking the Libyan Army in retreat, a far cry from the United Nations mandate to establish a no-fly zone to

⁹⁷Ulfstein, G., “*The Legality of the NATO Bombing in Libya*”. (*International and Comparative Law Quarterly*,2013) 159

⁹⁸Daalder, I. and Stavardis, J. “*NATO’s Success in Libya*”,(*The New York Times*2011) (30 October)

⁹⁹ Evans, G. “*UN Targets Libya with Pinpoint Accuracy*”, (*Sydney Morning Herald*2011), (24 March)

¹⁰⁰Ulfstein, G., “*The Legality of the NATO Bombing in Libya*”,(*International and Comparative Law Quarterly*,2013) 159

¹⁰¹BBC News., “*Libya: Russia decries French arms drop to Libya rebels*”,(*BBC World News: Europe*, 2011)

protect civilians¹⁰² Kuperman asserts that the assistance North Atlantic Treaty Organization supplied to the rebels who sought to overthrow Gaddafi was at odds with United Nations Security Council intentions, and instead extended the war and magnified the harm to civilian. India's former ambassador to the United Nations, Hardeep Singh Puri, said, North Atlantic Treaty Organization instead became the armed wing of the Security Council, dedicated not to protecting civilians in Benghazi but to overthrowing the government in Tripoli.¹⁰³ Attempting to change the regime of a sovereign state change is a misapplication of the Responsibility to Protect norm and contradicts international norms of state sovereignty.

4.4.The African Unions approach to the Libya civil crisis

During the Libyan crisis, the dilemma that the African union faced was the policy to adapt in improving the situation in Libya without undermining the sovereignty of Libya and to prevent Gaddafi from taking more severe measures against civilians. The Libyan civil war was a great way to test how efficient and effective the African Peace and Security Architecture was. It so happens that the African Peace and Security Architecture has some gaps between the decision making process and the actual implementation of the decision. The African Union therefore looked inadequate to tackle the Libyan crisis.¹⁰⁴

Some Africa leaders saw the Libyan situation as a trivial issue and did not attach much importance to it. For example, President Robert Mugabe of Zimbabwe degraded it as merely a “domestic hiccup”. Some of the African leaders had also come to believe that Gaddafi had

¹⁰²Kuperman, A. J., “*A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign*”,(International Security, 2013) 105-136

¹⁰³Nuruzzaman, M., “*The ‘Responsibility to Protect’ Doctrine: Revived in Libya, Buried in Syria*”, (Insight Turkey, 2013) 57-66

become politically untenable. Most of the African states were very slow in responding to the Libyan crisis. Rwanda and Gambia however are an exception as they were more forthcoming than the other countries. South Africa, a cautious supporter of Resolution 1973 criticized the Security Council's decision to refer the situation in Libya to the international Criminal Court in Resolution 1970 which should also extend to cover any actions that may have been committed in the purported implementation of Resolution 1973.¹⁰⁵ The African Union stance on resolving the Libyan Conflict is clear in the words of Jean Ping, when he said that: "We are convinced that, in the final analysis, only a political solution will fulfill the legitimate aspirations of the Libyan people and promote lasting peace in that country. It is this belief that informs our approach since 10 March 2011, when the PSC worked out a roadmap for resolving the Libyan crisis".¹⁰⁶

The African Union was of the view that it was up to the Libyan people to solve their own problems by initiating a process of political reform. This can be deduced from the statement of the African Union High-Level Ad Hoc Committee which stated that it should be left to Libyans to choose their leaders and that international actors should refrain from taking positions or making pronouncements that can only complicate the search for a solution.¹⁰⁷ The African Union believed that democracy should not be promoted from the outside in order to ensure the best protection of civilians. The then African Union Commissioner, Jean Ping, stated that: The African Union has no other agenda in Libya than to facilitate the resolution of the crisis and a democratic transition in that country. We are all the more determined in our endeavor as the African Union Constitutive Act and a number of other relevant instruments of our Union are very clear as regards the collective commitment of Africa to promote peace, as well as

¹⁰⁵ Ibid

¹⁰⁶ Statement of Jean Ping, Rome Italy, 5 May 2012.

¹⁰⁷ PSC/PR/2(CCLXXV), 26 April 2011

democracy and the rule of law. The African Union Roadmap offers a viable basis for launching a political process led and owned by the Libyans, so that the democratization of their country is the result of their action and the consensus they would have reached. As experience has taught us on several occasions, this is critical for sustaining any democratic gain.¹⁰⁸

4.4.1 The initial response of the African Union

The African Union discussed the Libyan Situation during its 261st sitting on 23rd February 2011. The Peace and Security Council issued a *Communique* stating that the Peace and Security Council decided to urgently dispatch a mission to Libya to assess the situation on the ground. The Urgency of the dispatch has however been challenged. The Peace and Security Council's 23rd February communiqué strongly condemned the indiscriminate and excessive use of force and lethal weapons against peaceful protestors, in violation of human rights and International Humanitarian Law. The Peace and Security Council also underscored the aspirations of the people of Libya for democracy, political reform; justice and socio-economic development are legitimate.¹⁰⁹ The African Union in dealing with the Libyan Crisis took the diplomatic route. The High Level Adhoc committee which was formed to champion this mission frustrated the committee's mission as they could not get into Libya. Tension continued to grow between the African Union and North Atlantic Treaty Organizations.

The African Union's Proposal for a Framework Agreement on a Political Solution to the Crisis in Libya called for an immediate and complete cessation of hostilities, to be followed by the formation of an inclusive transitional government, the establishment of a constitutional framework and the organization of elections. A peace plan was given to The Libyan

¹⁰⁸ Ping Statement, 5 May 2011.

¹⁰⁹ African Union Peace and Security Council, *Communiqué*, 261st

Government under the reign of Jacob Zuma to the Libyan government in April. It received Gaddafi's approval, however the National Transitional Council was not convinced. The African Union continued to push for a solution to the crisis based on the African way, despite the failure to convince the Transitional National Council. The Peace and Security Council continued to pursue its African way through a negotiated settlement with Gaddafi, but was increasingly sidelined in the following months. On 10th March 2011, the Peace and Security Council discussed the crisis in Libya at a time when Gaddafi's regime forces were threatening to reclaim the rebel stronghold of Benghazi.

4.4.2 The African Union's road map for intervention

The Peace and Security Council decided to first of all establish a roadmap to outline steps to follow in order to resolve the Libya crisis. The road map was a five-point plan which called for a ceasefire and the protection of civilians, alongside the provision of humanitarian aid for Libyans and foreign workers in the country.

First of all, the plan also called for dialogue between the two sides, an inclusive transitional period and political reforms which meet the aspirations of the Libyan people.

Secondly, the PSC established an African Union High level Ad Hoc Committee on Libya comprising five heads of state and government, including the chairperson of the AU Commission. The African Union Ad Hoc committee was mandated to: engage with all the parties in Libya and to continuously assess the evolution of the situation on the ground; facilitate an inclusive dialogue among the Libyan parties on the appropriate reforms; and engage African Union's partners, in particular the League of Arab States (LAS), Organization of Islamic

Conference (OIC), the European Union (EU) and the UN to facilitate coordination of efforts and seek their support for the early resolution of the crisis.¹¹⁰

The two decisions made by the Peace and Security Council were also overtaken by the action of the UN Security Council, particularly the passing of United Nations Security Council Resolution 1973 soon after the establishment of the ad hoc Committee. Resolution 1973 imposed a no-fly zone over Libya, which meant that the ad hoc Committee could not travel to the country without the authorization of United Nations. The United Nations Security Council action sidelined African Unions intervention., the Panel of the Wise at its meeting held on 12th May 2011 expressed its deep concern at the situation in Libya and called for an immediate and complete ceasefire, and an end to all attacks on civilians.

In the Peace and Security Council's final communiqué at its 291st meeting, it refused to recognize the Transitional National Council as the legitimate authority in Libya. This was based on Article 30 of the African Union Constitutive Act which bars governments which come to power through unconstitutional means from participating in the activities of the AU. The African Union was determined to stick to its stand that all the stakeholders in Libya come together to negotiate a peaceful settlement which also meant the inclusion of people from Gaddafi's regime to be part of the new government. On 20th September 2011, the African Union recognized the Transitional National Council but that was after they had captured the Libyan capital, Tripoli.

Bellamy and Williams are of the view that, the position of the African Union's Peace and Security Council was more cautious and rather less generous to the Interim Council than that of the League of Arab States. Although it defined the situation in Libya as a serious threat to peace

¹¹⁰ "African Union, Communiqué of the 265th Meeting of the Peace and Security Council, PSC/PR/COMM. 2(CCLVX), 10 March 2011, para. 7".

and security in that country and in the region as a whole, it condemned the indiscriminate use of force and lethal weapons and the transformation of pacific demonstrations into an armed rebellion. It also emphasized its ‘strong commitment to the respect of the unity and territorial integrity of Libya, as well as its rejection of any foreign military intervention, whatever its form.’¹¹¹

The African Union was of the view that the violence in Libya posed a serious threat to the peace and security in that country and the region as a whole¹¹². Therefore on 12th March the African Union requested that the UN Security Council to impose a no-fly zone, as well as to create “safe areas” for the protection of the Libyan people. The Arab League took a similar position against the Gaddafi regime, suspending Libya’s membership in the league¹¹³ The African Union Issued a statement which was not in favour of NATO’s interpretation of the United Nations Security Council resolution therefore on 25th May 2011, therefore it called for an end to the NATO intervention. The Chairperson of the African Union Commission, Jean Ping, complained subsequently that the African Union was sidelined and ignored its international deliberations on Libya.¹¹⁴ The African Union was sidelined in international deliberations involving Libya.

Some scholars are of the view that failure of the Peace and Security Council to act without delay in the crisis set the basis upon which it came to be marginalized. Apuuli is of the opinion that “if the Peace and Security Council had immediately established the fact-finding mission; it would have been very difficult for the UNSC to ignore it in the conflict. According to Apuuli, the

¹¹¹ AU document PSC/PR/COMM. 2(CCLXV), 10 March 2011.

¹¹² Barker, Michael. 2011. “Stephen Zunes, Libya and Seemingly Moral Imperatives.” Retrieved from; <http://wagingnonviolence.org/2011/03/zunes-critiques-war-on-libya-offersnonviolent-alternatives/comment-page-1/#comment-24720>. (accessed March 31, 2018)

¹¹³ Levitt, J.I., “The Peace and Security Council of the African Union: The Known Unknowns”, 13 (Transnational Law and Contemporary Problems 2003), 109

¹¹⁴ Sturman, Kathryn “The African Union and the Arab Spring: An Exception to New Principles or Return to Old Rules?” (Istituto per Gli Studi Di Politica Internazionale I SPI 2012.), 108

marginalization of the organization in the crisis is self-inflicted because had it taken a very strong stance when the crisis broke out, it would have laid a strong basis to preclude the eventual entry of the UN in Libya”.¹¹⁵

However, from the very beginning, the organization took half-hearted measures in its reaction to the crisis which eventually resulted in it being overridden by the western powers using the United Nations Security Council to intervene in the country. Moreover, the African Union is also saddled with problems including lack of capacity (especially financial) and fissured within its ranks, which prevents it from playing a very active and meaningful role in Africa’s crises. The failure of the Peace and Security Council to immediately establish the fact finding mission paved the way for the United Nations Security Council to pull the rug from the feet of the African Union in the Libya crisis.¹¹⁶

4.4.2.1 The African Union High-Level Ad Hoc Committee on Libya

The African Union established a High-Level Ad-Hoc Committee following the 23rd February 2011 meeting of the Peace and Security Council to help to take steps to help to control the Libyan crisis. The committee was led by South African President Jacob Zuma and including Mauritania, Mali, Uganda and Congo (Brazzaville). On 10th March 2011, the committee reached the conclusion of travelling to Libya with the intention of attempting mediation between Gaddafi and his opposition. During the period with which the Committee was meeting, an international debate was going on as to how to respond to Gaddafi’s military campaign against protestors. The debate included a proposal to establish a no fly zone over Libya. The committee travelled to

¹¹⁵n(73)

¹¹⁶Ibid

Libya from 9 to 11 April 2011 sat in a meeting with Gaddafi on 10 April. The outcome of the meeting was that Gaddafi accepted the African Union roadmap on Libya including the ceasefire and deployment of an effective and credible monitoring mechanism.

On the other hand, when the Ad Hoc Committee travelled to Benghazi the next day to meet the Transitional National Council, there was no agreement as the opposition were not in favour of negotiating an end to the crisis unless Gaddafi agreed to step down. His people did not want him to have any sort of power over them anymore as they were tired of his dictatorship rule. The meeting between the committee and TNC proved unsuccessful as the opposition party was not willing to halt all hostilities. The Libyan crisis led to the criticizing of the African Union Ad Hoc Committee as an ineffective gathering of self-congratulatory African leaders who were ultimately forced to watch from the sidelines while North Atlantic Treaty Organization tried to bomb Gaddafi out of office.¹¹⁷

4.5 The Challenges the African Union faced in its implementation of the road map

The African Union as a body has a peace and security architecture which is supposed to it relied upon in times of crisis. During the Libyan civil war, the African Union from all indications had the intention of intervening in the crisis in Libya, however the means to put the intention into effect could not be realized. The then Chairman of the AU Commission, Jean Ping, at a meeting of the Contact Group, Chairman of the AU Commission, made a statement which asserted the intention of the African Union to effectively intervene in the Libyan crisis when he said that:

¹¹⁷Dembinski, M., and Theresa R., “*Libya and the Future of the Responsibility to Protect – African and European Perspectives*”, (Peace Research Institute Frankfurt PRIF 2011), 107.

“Our presence in Rome, as an invited guest at the meeting of the Contact Group, is further testimony to the commitment of the [AU] to interact and hold dialogue with its partners to speed up the resolution of the 72 Libyan crisis. At its last meeting on the situation in Libya, on 26 April, our [PSC] reiterated the need for more coordinated international action and a common vision of what the international community can and must undertake to support the quest for peace in Libya and to fulfill the legitimate aspirations of the Libyan people I hope that this meeting of the Contact Group will contribute to the attainment of this objective”.¹¹⁸

The African Union was eager to use the diplomatic route to solve the Libyan situation, however the truth of the matter is that The African Union does not have enough human and financial resources to protect civilians in Libya as was expected by Resolution 1973. There has been so much talk of African solution to African Problems, however the resources to enable Africans to solve their problems are not at their disposable hence making it difficult to effectively intervene in situations like that of Libya. This has led some commentators to conclude that the expression of interest of the African Union to lead the mediation was a little too late a face-saving exercise for an institution without political resources and the will to solve such a complex impasse.¹¹⁹

The African Union could not mount a united front when it came to how best to deal with the Libyan crisis. Three different positions on how to solve the crisis were given three positions emerged among the members to deal with the situation. The first position was that of countries like Uganda, South Africa and to an extent Kenya who accepted UN Resolution 1973 in principle but criticized the way the North Atlantic Treaty Organizations countries were

¹¹⁸statement of the Chairperson of the African Union Commission, Jean Ping, at the Meeting of the International Contact Group in on Libya, Rome, Italy, 5th May 2011”

¹¹⁹ Hengari, Alfredo T., “*The African Union Struggles to Exist on Libya, in: The Namibian*” (2011) retrieved from; <www.namibian.com.na/index.php?id=28&tx_ttnews%5Btt_news%5D=79586&no_cache=1> (accessed 12th august 2018)

conducting their operations in Libya to the countries mentioned. North Atlantic Treaty Organizations's operations were changing Gaddafi's regime. The second position supported by a country like Rwanda, supported the attacks on Libya. Of Zimbabwe, Algeria and Nigeria opposed NATO's operation in Libya and viewed it as Western Countries using the UN to get rid of the Qaddafi regime. President Mugabe accused NATO of being a "terrorist organization" fighting so hard to kill Qaddafi.

The African Union was also very indecisive of Gaddafi's future therefore resulting in it being sidelined. The uncertainty of Gaddafi's future served as a stumbling block when it came to African Unions Mediation efforts. The African Union in its roadmap failed to make mention of the future of Gaddafi in and after the negotiation of the political solution to the crisis. The Permanent Members of the United Nations Security Council namely China, France, Russia, the United Kingdom, and the United States however were determined to see Gaddafi relinquish his power.

Colonel Gaddafi has a huge financial and ideological influence when it comes to the African Union therefore the honesty of the African Union when it came to the negotiation between the opposition and Gaddafi is questionable. Gaddafi was elected African Union Chairman in February 2009 although there was some uneasiness in some quarters¹²⁰. Gaddafi strongly advocated for the United States of Africa in order to realize his dream of a unified pan-African state rivaling the European Union and United States¹²¹. This explains why many African leaders initially sought to distance themselves from Gaddafi early on in the military campaign¹²². The African Union had very close connections with Gaddafi's government, therefore the credibility

¹²⁰retrieved from; <<http://www.nytimes.com/2009/02/03/world/africa/03africa.html>>(accessed 27 March 2018)

¹²¹retrieved from; <<http://www.nytimes.com/2011/03/16/world/africa/16mali.html>>(accessed 27 March 2018)

¹²²"The Arab Spring: Hopes and Challenges" (The Brookings Institution 2011)

of the African Union as a impartial mediator during the Libyan crisis was questionable. It is stipulated in the Financial Times stated that Gaddafi has commercial, military and political footprints across much of the continent, where he has concentrated efforts at extending Libyan influence since giving up on promoting Arab unity in the 1990s. He has channeled billions of dollars of investment into as many as 31 African states and provided backing to numerous African politicians and leaders.¹²³ A local survey in Libya revealed that about 97 per cent of Libyans did not see the African Union as a neutral mediator to resolve the Libyan crisis.¹²⁴

The Organization of African Unity revolved around the concept of non-interference while the African Union revolves around the doctrine of non-indifference. The proponents of the doctrine of non-indifference namely Salim Ahmed Salim and Alpha Oumar Konare have changed the principle of the organization in theory but found it difficult to make states practice the doctrine. Some heads of states are still committed to the former doctrine of non-interference. The AU's role in the crisis tell us about the organization's commitment to human security and Responsibility to Protect [...] the AU's security culture; and that the AU's commitment to human security is wavering when realizing human security comes at the expense of regime security – especially when the regime is one which has long played a leading role in the continental organization.¹²⁵

The African Union according to many scholars has a problem of matching words with actions. In theory a nice plan is always set and ready however when it comes to implementation of the plan there is almost always a problem. A typical example being the inability to implement the right of

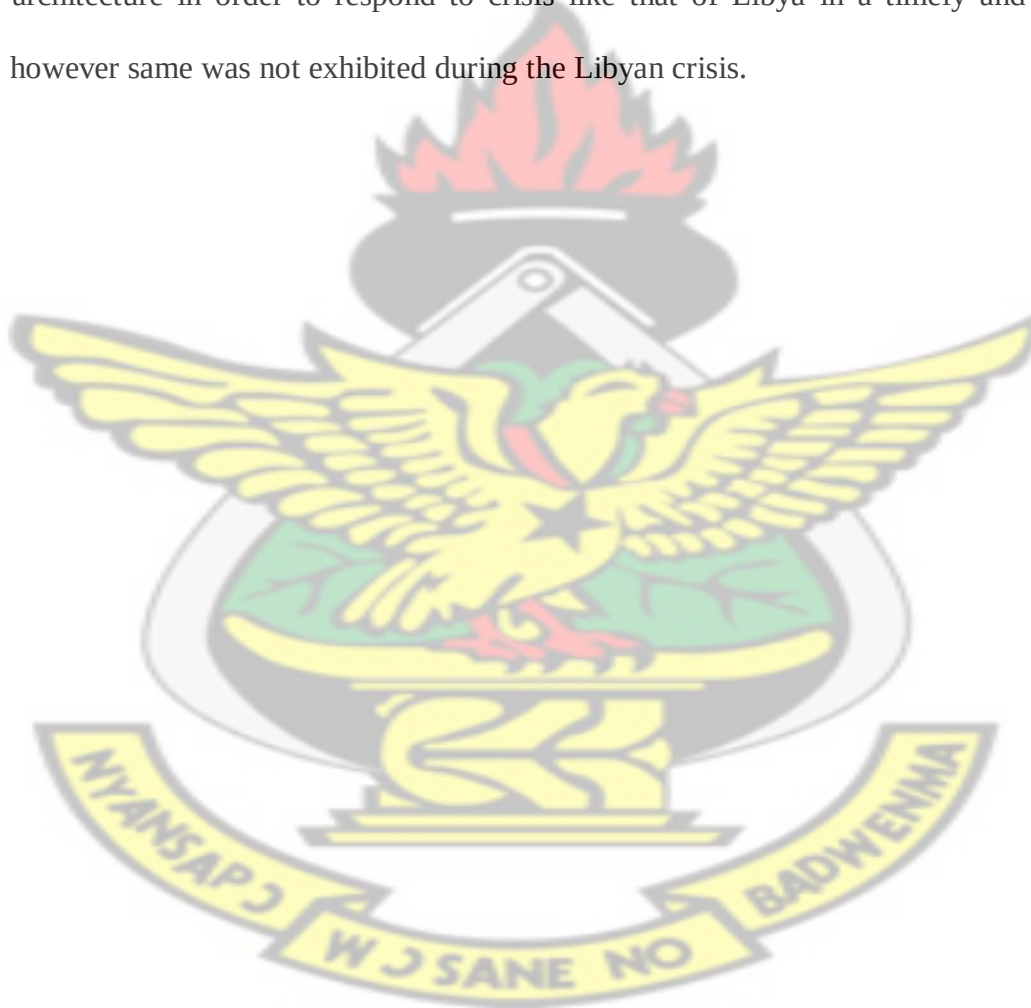
¹²³ Gaddafi calls in favours from Africa, *The Financial Times*, 27 March 2011

¹²⁴ “Eastern Libyans believe in national unity, distrust AU and Turkish mediation, survey reveals” *English.Libya.TV*.
²⁵ “retrieved from; <<http://english.libya.tv/2011/04/25/eastern-libyans-believe-in-national-unity-distrust-au-and-turkish-mediation-survey-reveals/>> (accessed 27 March 2018)”

¹²⁵ n(114).

intervention under Article 4(h) of the African Union Constitutive Act as exposed by the Libyan crisis in 2011.

In conclusion, it is clear that the African Union and its peace and security architecture have a long way to go in order to be able to effectively implement the provisions of the Constitutive Act. The Libyan civil war has clearly pointed out the reluctance that the African Union had in implementing article 4h of the Constitutive Act. The African union established a peace and security architecture in order to respond to crisis like that of Libya in a timely and decisive manner, however same was not exhibited during the Libyan crisis.



CHAPTER FIVE

OBSERVATIONS, RECOMMENDATIONS AND CONCLUSIONS

5.1.Summary of the study objectives

The objective of the study as set out in the preceding chapter is to determine the role of the African Union (AU) in resolving the Libya conflict and to ascertain the extent to which the African Union employed the Responsibility to Protect human life. Specifically, the study set out to analyze the role of AU in implementing the principles of responsibility to protect; to ascertain how the African Union has incorporated Responsibility to protect in its body polity and how same was utilized in responding to the Libyan civil unrest; and lastly to identify the challenges African Union faced in excising its responsibility to protect in the Libya civil war.

Accordingly, the study set out to find answers to the following questions;

- What is the role of African Union in ensuring effective implementation of Responsibility to Protect?
- How has the African Union incorporated Responsibility to protect in its body polity and how was same utilised in responding to Libyan civil unrest.
- What are the major challenges in enforcing Responsibility to Protect effectively in the Libya situation?

5.2.Summary of observation from the study

In 2011, the Libyan civil war has commenced as a result of series of peaceful uprising and protests by its citizens who were challenged to fight for political freedom from the dictatorial rule under Colonel Gaddafi. This uprising was the residue of the Arab Spring, a similar protest

that had occurred in neighboring countries, Tunisia and Egypt in North Africa. Gaddafi's regime witnessed a prototype of the Arab Spring uprising within its frontiers. The violent retaliating by his regime as counter to the peaceful uprising escalated several major protests which ended up in a civil war.

Some groups from Eastern Libya established the Transitional National Council (TNC) with its leader Mustafa Mohammed Abud Al Jeleil the former Minister of Justice as the rebel group and the major opposition group against Gaddafi's regime. Notwithstanding the resistance by this rebel group, Gaddafi's forces were victorious in their struggle to maintain control over towns that seized by rebels. The victory compelled Gaddafi to assemble his supporters for attack mission against his protesters in all tribes and regions so that they can purify all decisions from these cockroaches", to "cleanse Libya house by house" and "to execute any Libyan who takes arms against Libya,"¹²⁶ The blood bath atrocities largely crimes against humanity and obviously attracted more attention international community to Libya

This invariably invited the international community to intervene to protect and secure human life. The United Nations Secretary General, the United Nations Security Council and Human Rights Council urged Libya to comply with its fundamental human rights and humanitarian law obligations in accordance with its Responsibility to Protect. The African Union also had the intention of sending a fact-finding mission to Libya thereby issuing a communique to that effect.¹²⁷ In February 2011, Navi Pillay, the United Nations's High Commissioner for Human Rights, admonished the authorities in Libya end all violence against demonstrators. Upon several unfruitful attempts to intervene by the international community, the United Nations Security

¹²⁶“Defiant Gaddafi issues chilling call”, ABC (Australia), 23 Feb. 2011’

¹²⁷“See Security Council Press Statement on Libya, United Nations document SC/10180 AFR/2120, 22 February 2011, <http://www.un.org/News/Press/docs/2011/sc10180.doc.htm> (accessed 5 September 2011); and ‘Ban strongly condemns Qadhafi's actions against protesters, calls for punishment’

Council in order to affirm Libya's responsibility to its citizens passed Resolution 1970, the subsequent resolution in 1973. This resolution authorized the use of force to protect the civilians in Libya as a result of the constant threat from Gaddafi's forces to wipe away the rebels.

The Libyan civil war turned offered the African Union a great way to test the efficient and effective of African Union peace and security architecture. Nonetheless, it panned out that, African Unions peace and security architecture had some gaps between the decision making process and the actual implementation of the decision that shed more light on African Union's inefficiency to tackle the Libyan crisis. It also came out that, some Africa leaders saw the Libyan situation as a trivial and did little, close to nothing or nothing at all to intervene on the principles of responsibility to protect. For instance, the Zimbabwean president Robert Mugabe besmirched the war as merely a "domestic hiccup". Some of the African leaders had also come to believe that Gaddafi had become politically untenable, whilst other were sluggish in responding to the Libyan crisis.

Meanwhile, the Principle of Responsibility to Protect is an embodiment of the AU's Constitutive Act through Article 4(h) which is also supported by the Ezulwini Consensus. Nonetheless, the principle of responsibility was not invoked, not implemented effectively leading to a NATO- led intervention even though the concept had been in vogue. The African Union adopted a road map with the purpose of ending the violence and mass atrocities in Libya during the war however, this proved futile as more civilian's rights were being violated. The African Union had a legal right to implement article 4(h) and the Ezulwini Consensus but did the contrary.

5.3.Recommendation

Against this background the researcher, professes the following recommendation for strengthening Responsibility to Protect by the AU whilst rethinking its peace architecture;

- The African Union should look at the principles of ‘Persuasive Prevention’ for a fresh perspective to the challenge of international humanitarian interventionism in Africa from an international law perspective. This essentially will provide pro-active measures in protecting people against serious human rights violations and to preserve human lives, rather than reactive response. This according to Kuwali presents a compelling case for conflict prevention and persuasive prevention, which will deter would-be violators of the people’s rights, rather than seek to implement the difficult process of post-conflict transitional justice.
- There is also the need for revision in the AU’s Peace and Security Architecture (APSA) towards a normative legally binding instruments that can prevent acts of impunity and crimes against humanity on the continent, or enforce accountability and compliance with international human rights and humanitarian law. Thus as a minimum requirement of this normative order, the African Union can better discharge its responsibility to prevent human rights violations through the force of law.
- There also the need for common understanding of what Responsibility to Protect, and by extension Article 4(h), is and what it is not. There seem to exist a conceptual deficit in the understanding of the scope and limits of Article 4(h) and R2P given the fact that there is varied perspective in the extent to which R2P has been internalized within African states.

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