

The Responsibility to Rebuild in International Law: A Panacea for Responsibility to Protect?

by

Love Stephen Babajide

Diploma in Law (Paralegal)., University of Benin; 2012

LL.B., Benson Idahosa University, Benin City; 2017

B.L., Nigerian Law School, Kano; 2018

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We acknowledge with respect the Lekwungen peoples on whose traditional territory the
university stands and the Songhees, Esquimalt and WSÁNEĆ peoples whose historical
relationships with the land continue to this day

Supervisory Committee

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Supervisory Committee:

Prof. Susan Breau, (Faculty of Law)

Supervisor

Dr. A. Claire Cutler, (Political Science)

Outside Member

Abstract

This thesis considers the issue of the Responsibility to Rebuild in International Law. It posits that the R2R must be re-elevated to significance as a conceptual, normative, and functional element of Responsibility to Protect (R2P), with its institutional homes in the United Nation's framework and the Secretary-General's function adequately articulated. In most instances, the 2009 three-pillar R2P framework functions effectively, but it has the flaw of burying and overlooking the critical value of the initial ICISS third pillar, the responsibility to rebuild and reconstruct war-ravaged communities' threshold of viability and self-sufficiency. This thesis draws some crucial insight from the significant international interventions of the twenty-first century and recalling the scope in which R2P was first conceived to illustrate the unique characteristics of its contribution to global politics or international policy. This thesis addresses the question of who should rebuild after a war. The 'Belligerents Rebuild Thesis,' which suggests that those who have been engaged in the battle - including the victor, just belligerent, unjust aggressor, or humanitarian intervener - should be charged with the responsibility of rebuilding, is held by many leading proponents of the importance of jus post-Bellum for Just War Theory. On the other hand, this thesis argues that there is a mutual, international responsibility to rebuild that should be delegated solely based on the agent's capacity to rebuild rather than the belligerents.

Keywords: R2P - Responsibility to Rebuild, Humanitarian Interveners, ICISS, Belligerents, Jus post-Bellum, Just War Theory.

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DEDICATION

I dedicate the successful completion of this thesis to the great grand architect of the universe. Also, to my family and friends, I could not have done this without you. Thank you all for your support.

CHAPTER ONE: INTRODUCTION

1.1 Identification of the Research Theme

This research posits that in the Responsibility to Protect (R2P) literature, the rebuilding responsibilities have been widely ignored and that since the principle was coined as a reaction to the mass human rights violations, it has done so little to reduce human rights violations and as such much more emphasis should be placed on the post-conflict period to ensure that the intervened states do not slide back into conflicts. This research argues that the rebuilding aspect should not be a forgotten responsibility under R2P and that it is equally vital in averting possible conflicts in the future that might occasion massive human rights violations. In buttressing the above argument, it is essential to point out that the R2P supporters, such as Canada and Sweden, stressed the importance of prevention while staying quiet on rebuilding obligations.¹ Similarly, the United States emphasized preventative measures while showing indirect support for R2P without expressly contributing to international responsibilities. Although scholars like Cristina Badescu have argued that the world has slowly moved away from the principle of humanitarian intervention and now is adopting R2P, this research paper asserts that there has not been a political will from the major world powers, even some of the African states, to implement R2P effectively. Put differently, the conspicuous omission of the responsibility to rebuild in the World Summit Outcome Document demonstrates how the world pays little attention to post-conflict societies.

Even though significant barriers to putting the Responsibility to Protect into effect exist, the principle has altered the humanitarian intervention discussion parameters. Not only has it made it increasingly difficult for states to disregard their protection obligations under international law, but it has also made international inaction in the face of gross human rights violations more contentious². If the responsibility to react to human rights violations in other states has become an influential idea, the question that comes to mind is the related principle of the Responsibility to Rebuild? In addressing this, this research will argue that if we agree that interventions to stop massacres are inadequate to fulfil protection responsibilities, asking this question is crucial³.

¹ International Coalition for the Responsibility to Protect, “State-by-State Positions on the Responsibility to Protect,” (Accessed 21st January 2021).

² Simon Chesterman, “‘Leading from Behind’: The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention After Libya”, *Ethics and International Affairs* 25, no. 3 (2011): 2.

³ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001).

However, owing to the controversial existence of the reactive pillar, the prevention and rebuilding elements of the protection principle have received less attention. Although Alex Bellamy⁴ and others have started to resolve this gap in terms of preventive responsibilities, the concept of the responsibility to rebuild has received comparatively little attention.

Early debates on R2P were almost entirely based on reactive responsibility. This void in the research has been addressed to some extent⁵. The role of hypothesizing the Responsibility to Rebuild, on the other hand, has been pursued mainly by “just war” academics. Theorists of *jus post bellum*⁶ have started questioning whether intervening powers have rebuilding responsibilities in interventions and regime change operations. Most of the research has been guided by the widely shared, if not unanimously held, belief among just war scholars that the outcome of an intervention is crucial to the intervention’s justice. The issue of who should be responsible for rebuilding after conflicts, occupations, and regime change operations has sparked heated discussion. For example, regarding the Pottery Barn concept of “you ruin it, you own it,” Jean Bethke Elshtain makes a philosophical argument for the intervener’s responsibility to rebuild⁷. From a different view, James Pattison⁸ contends that the collective international burden for rebuilding war-torn or conflict-ridden nations should be shared by those better prepared to do so.

In most cases, the U.N. and other specialized state-building organizations will oversee rebuilding. On the other hand, others do not see a rational connection between a just intervention and the process of rebuilding. The premise here is that if a just war intervention is carried out to shield civilians from human rights violations, those who carry it out owe nothing more to the people who are being protected⁹. Just war researchers have contributed to our interpretation of the ethics of ending violence by posing a series of questions regarding the roles of agents in the wake of conflicts, policy change campaigns, and humanitarian interventions.

⁴ Alex Bellamy, “Conflict Prevention and the Responsibility to Protect”, *Global Governance* 14, no. 2 (2008): 13.

⁵ *Ibid.*

⁶ Brian Orend, “Jus Post Bellum”, *Journal of Social Philosophy* 31, no. 1 (2000): 117-137; Jean Bethke Elshtain, “The Ethics of Fleeing: What America Still Owes Iraq”, *World Affairs* 170, no. 4 (2008): 91-98; Gary J. Bass, “Jus Post Bellum”, *Philosophy and Public Affairs* 32, no. 4 (2004): 384-412.

⁷ Jean Bethke Elshtain: *The Ethics of Fleeing: What America Still Owes Iraq*; *World Affairs* Vol. 170, No. 4 (SPRING 2008), pp. 91-98 (8 pages).

⁸ James Pattison, “Jus Post Bellum and the Responsibility to Rebuild”, *British Journal of Political Science* 45, no. 3 (2015): 635.

⁹ Paul Robinson, “Is There an Obligation to Rebuild?” in Alice MacLachlan and Allen Speight, eds., *Justice, Responsibility and Reconciliation in the Wake of Conflict* (Dordrecht: Springer, 2013), p.106.

Given this, this research seeks to make a significant contribution to our understanding of the less examined aspect of the Responsibility to Protect norm: The Responsibility to Rebuild. The concerns that drive this research are how the Responsibility to Rebuild is perceived, interpreted, and operationalized by humanitarian intervention entities. This research is focused on three situations where the R2P initiative has already been carried out: Libya, Kosovo, and Iraq. Since the cases serve as a snapshot of the concept's operationalization rather than a body of generalizable proof, they serve as a good starting point for investigating the consequences of protection measures.

The lack of comprehensive research on the subject has been made even more critical by developments in Libya, where an initiative named the Responsibility to Protect was initiated in 2011. As will be discussed in Chapter three of this work, Libya has made no progress toward political stability or consolidated autonomy four years into the international disengagement-driven reconstruction phase. Instead of ushering in a new era of peace in Libya, Muammar Gaddafi's overthrow has culminated in more bloodshed. Going further, the degree to which the obligation to rebuild has been taken seriously can be seen in the situations of Kosovo, Libya, and Iraq. In the first instance, the international community has made unprecedented attempts to rebuild an economy and a country that had historically been subjected to injustice, inequality, and civil unrest. As discussed in the subsequent chapter, the rebuilding operation must have the requisite expertise to empower the beneficiaries to begin rebuilding activities after the international assistance stops. In the case of Kosovo, the rebuilding efforts were fruitful to some degree, but the final achievement was lost because it was not possible to include the beneficiaries of this assistance directly. Only after the declaration of independence was the Kosovar population able (and forced) to take charge of their destiny. These incidents highlighted the importance of seeing the challenge of rebuilding as a collaborative effort rather than a unilateral one. However, in the case of Libya, the international community has largely struggled to participate in reconstruction efforts in the country after the military intervention, which was technically successful. As a result, Libya is on the verge of becoming a failed state. The military intervention in Kosovo and the commitment to rebuild afterward was a real test of the responsibility to rebuild in its entirety. However, it failed to protect human rights as expected, which can be attributed to financial constraints from the rebuilding agents and the failure to emphasize other non-physical structures. In the case of Iraq, it is noted that the indiscriminate shooting of demonstrators came just two years after another bloody military

struggle in Iraq came to an end. The so-called Islamic State of Iraq and the Levant (ISIL) militarily occupied large swaths of land in Iraq and Syria in 2014 and waged a concerted series of massacres throughout northern Iraq. ISIL soldiers committed widespread violations during the conflict, including executions, sexual exploitation, torture, and forcible relocation, which could be classified as war crimes, crimes against humanity, or genocide. Thus, it is safe to argue that there cannot be rebuilding without peace, and it is clear from the above that Iraq has not witnessed the peace era, unlike Kosovo, because of the ongoing crisis. Hence, the Iraqi government needs to implement a code of ethics for security forces based on fundamental human rights respect.

Consequently, the experience in Kosovo, Iraq, and now Libya shows us that the international community must rebuild the societies and states destroyed by wars. The responsibility of rebuilding involves a process where institutions that existed before are being rebuilt, but it can also include creating institutions that never existed before an intervention took place. Such design can be done when it is imperative to restore a state to a peaceful state and avoid a future relapse. Susan Breau defines the responsibility to rebuild as ‘an action to identify and support structures that will strengthen and solidify peace to avoid a relapse into conflict.’¹⁰ It is against this backdrop that this study posits that if the United Nations is to truly commit to its pledge of ‘never again’ as espoused in Chandler’s work, then it must have in unequivocal terms the responsibility to rebuild as part of its plan to maintain peace and security in the world.

As earlier stated, rebuilding responsibilities have been generally ignored in the R2P literature. However, Albrecht Schnabel’s¹¹ discussion of the definition is an exception. The third aspect of R2P, according to Schnabel, had no role in the concept’s development because it offered a vaguer and fluid collection of obligations than prevention and reaction. According to Schnabel, this was not in the interventionists’ best interests. The experiences of the past decade’s peacebuilding and state-building missions - that half-hearted or short-term commitment is unlikely to result in long-term peace - have led to a tendency to prioritize the rebuilding aspect of R2P. This is an apparent piece of the puzzle as to why the Responsibility to Rebuild has not gained momentum in public

¹⁰ Susan Carolyn Breau, *The Responsibility to Protect in International Law: An Emerging Paradigm Shift* (London; New York: Routledge, Taylor & Francis Group, 2016), 233.

¹¹ Albrecht Schnabel, “The Responsibility to Rebuild”, in W. Andy Knight and Frazer Egerton, eds., *Routledge Handbook on the Responsibility to Protect* (Abingdon: Routledge, 2012), pp. 50-63.

debates. On the other hand, Schnabel only reveals half of the story: governments operate within normative systems and are influenced by popular beliefs of what actions to take.

Therefore, understanding why principles like the Responsibility to Rebuild have fallen out of favour necessitates an emphasis on state priorities and recognizing evolving norms surrounding rebuilding projects. This research will analyze the principle as a continuum encapsulating three elements, to wit, prevent, react, and rebuild. Based on these principles and the recent application of the responsibility to protect, the research then seeks to contribute to the existing literature on the subject. Unlike most of the literature that has interrogated the ‘prevent’ and ‘react’ responsibilities to make concluding observations on the applicability of the principle, this research shall go a step further and assess the ‘rebuild’ responsibility. In this analysis, this research attempts to contribute to our awareness and existing knowledge of the concept of the Responsibility to Rebuild by tracing the evolution of the concept and its operational definitions in the light of recent protection interventions. I will begin by tracing the concept’s development.

a. The Concept of Responsibility to Protect

The Responsibility to Rebuild evolution is best viewed in the light of the Responsibility to Protect. The Kosovo intervention in 1999 paved the way for R2P.¹² Concerns were raised over the limited use of humanitarian interventions during the illegal and fiercely disputed intervention in Kosovo.¹³ As a result, U.N. Secretary-General Kofi Annan has called for an international agreement on new humanitarian action and sovereignty criteria. The International Commission on Intervention and State Sovereignty (ICISS) was founded in 2000 by the Canadian government, owing to Foreign Minister Lloyd Axworthy's initiative and creativity.¹⁴ It was established to resolve the international community’s lack of preparedness and reaction to atrocity crimes. The International Commission on Intervention and State Sovereignty’s (ICISS) report was published in 2001, and it was titled: The Responsibility to Protect (hereafter referred to as the report).¹⁵ The ICISS report further emphasizes that while states cannot protect their people, the blame for preventing genocides must be shared by the international community, as shown in Rwanda and Srebrenica. The ICISS report

¹² Michael Newman, “Revisiting the ‘Responsibility to Protect,’” *Political Quarterly* 80, no. 1 (2009): 93.

¹³ *Ibid.*, pp. 93-94.

¹⁴ Gareth Evans, *The Responsibility to Protect*, 38.

¹⁵ Alex J. Bellamy, *Responsibility to Protect* (Cambridge: Polity Press, 2009), 51; Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Washington D.C: The Brookings Institution, 2008), 31.

arrived after the World Trade Center and Pentagon were attacked on September 11, 2001, and the United States-led war against terror mainly had clouded the debate on humanitarian intervention, which the report aimed to reignite¹⁶. Even though the report addressed concerns that were central to the debate around humanitarian intervention in the 1990s, such as to cause, legitimate authority, and the balance between the preservation of collective liberty (human rights) and Sovereignty, it also sparked a new debate centred on the Responsibility to Protect (R2P) framework. The ICISS was founded in response to a challenge posed by Kofi Annan, the previous Secretary-General of the United Nations (U.N.):

“How do we answer to a Rwanda, a Srebrenica - to gross and systematic violations of human rights that offend every principle of our shared humanity?”¹⁷

By forming a commission to address when state sovereignty would yield security against the most blatant breaches of humanitarian and international law, Canada played a critical role in establishing the R2P doctrine. The role of Canada in promoting the conceptualization of the Responsibility to Protect was not a one-of-a-kind achievement. Instead, Canada decided to take the lead on these topics that deserve some recognition. The R2P leadership project is an outstanding example of how a middle power can exert leverage and clout in foreign policy debates and normative trends.¹⁸ It must be noted that the report’s main point was that, as states refuse to defend their people from massacres and crimes against humanity, the international community has the sole responsibility to protect them, and that military intervention should be used only as a last option. The ICISS established a distinct spectrum of obligations that included everything from prevention to reaction and rebuilding. According to the research, the preventive process involves resolving the roots of internal conflict. In contrast, the “reactive” cornerstone pointed to the need to respond in the face of “compelling human need” if the state concerned refused or could not do so.¹⁹ According to the report, in exceptional situations, this may lead to military intervention.

¹⁶ Gareth Evans, *The Responsibility to Protect*, 44; D. O. Quinn, “The Responsibility to Protect” (MA diss., Canadian Forces College, 2007), 50.

¹⁷ Kofi Annan, Millennium Report of the Secretary General of the United Nations (New York: United Nations Department of Public Information, 2000), 48.

¹⁸ “Canada’s role in the conceptual impetus of R2P and current contributions”, (10 June 2010), online: *rabble.ca* <<https://rabble.ca/blogs/bloggers/marcgionet/2010/06/canada%E2%80%99s-role-conceptual-impetus-r2p-current-contributions>>. (Accessed 21st January 2021).

¹⁹ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, p. 29.

The Responsibility to Rebuild, which asserted the post-protection intervention requirement to help rebuild and conflict resolution and sustainable development activities, was the principle's final component. The reasoning for the matrix of responsibilities was that reaction alone is likely to be inefficient; reliable protection of the civilian population necessitates the prevention and rebuilding components. In this way, the three foundations formed in the ICISS report were inextricably interconnected and regarded as more significant than the sum of its parts. While the Secretary-General endorsed the commission's vision,²⁰ a handful of states voiced concerns about the concept. R2P was used as a justification for intervention by developing countries. These issues were embodied throughout the U.N. World Summit Outcome Document's conceptual framework of R2P in 2005; while member states shared their dedication to the Responsibility to Protect, state obligations were given priority over international protection obligations.

b. The Evolution of the Responsibility to Rebuild Concept

Rebuilding war-torn states is a phenomenon with a far longer history than R2P. The Marshall Plan is sometimes confused as the forerunner of what is now known as state-building. The Boer War, according to Andrew Williams²¹, was the very first confrontation, accompanied by a concerted endeavour by an external actor, Great Britain, to rebuild the war-torn state. Along with their agenda of encouraging English settlement in the Boer republics, the British aimed to overhaul administrative institutions and industry.²² During the interwar period, Austria underwent an intergovernmental rebuilding campaign, with the League of Nations undertaking a significant economic rebuilding initiative. The country's economy had been devastated by war, and the League devised a scheme to reform Austria's economy by transforming it into a colony to improve Austria's status as a financial hub that could boost economic development in Europe.²³ The reconstruction of Germany and Japan by the United States two decades later included a similar protectorate-style transition of power to the occupying force. The U.S. goal was to ensure accelerated economic growth and democratization in Europe, not just to relieve poverty but also to achieve geopolitical and economic policy objectives.

²⁰ Kofi Annan, "In Larger Freedom: Towards Development, Security and Human Rights for All", UN Doc. A/59/2005, 21 March 2005.

²¹ Andrew J. Williams, "Reconstruction Before the Marshall Plan", *Review of International Studies* 31, no. 3 (2005): 541.

²² *Ibid.*, 541.

²³ *Ibid.*, 546.

During the Cold War, postwar communities' participation was increasingly seen through the lens of superpower rivalry. The end of the Cold War allowed for the deployment of U.N. peacekeepers to conflict areas and creating what is now known as peacebuilding.²⁴ According to the 1992 study *An Agenda for Peace*, “peace-building” is described as “the identifying and support mechanisms that will help to reinforce and solidify peace to prevent relapse into violence”.²⁵ Unlike earlier reconstruction efforts, which tended to restore the status quo,²⁶ the latest post-Cold War peacebuilding missions sought to transform it. The effort to solve the underlying causes of violence, whether vulnerability or social inequality, has been crucial to peacebuilding missions. In the aftermath of September 11, the human protection emphasis that underpins peacebuilding started to be overwhelmed by an insistence on improving state capability.²⁷ The strongest guarantors of peace are an efficient government and legitimate organizational systems. This implied a greater emphasis on “state-building” and “good governance” in post-conflict nations. As state failure and instability became significant causes of violence, state-building missions were entangled with counterterrorism operations.

Since the ICISS was more involved with responsibilities after protection interventions than with conflict and post-conflict states in general, the concept of Responsibility to Rebuild is better appreciated against this conceptual backdrop. The ICISS aimed to portray rebuilding as an obligation rather than a right that could only be exercised while a state's national interests were at stake.²⁸ Although states' obligations in the circumstances deemed occupations are codified in international law, the commission proposed a series of suggestions about the international community's responsibilities in the aftermath of protection interventions.²⁹ Rebuilding was to be viewed as a prescriptive (obligatory) rather than a permissive (right) standard. It must be noted that the 2001 ICISS report outlined a series of goals for the rebuilding phase in this regard. The commission argued that one of the most important aspects of a successful rebuilding strategy is security. It envisioned international actors playing a part in addressing urgent challenges, such as

²⁴ Outi Keranen, “What Happened to the Responsibility to Rebuild?” (2016) 22:3 *Glob Gov Rev Multilateralism Int Organ* 331–348, online: <https://brill.com/view/journals/gg/22/3/article-p331_3.xml>. (Accessed 21st January 2021).

²⁵ UN Secretary-General's report, *An Agenda for Peace*, UN Doc. AJAH211- S/24111 (17 June 1992), par. 21.

²⁶ Francis Fukuyama, ed., *Nation-building: Beyond Afghanistan and Iraq* (Baltimore: Johns Hopkins University Press, 2006), p. 4.

²⁷ Meera Sabaratnam, “The Liberal Peace? An Intellectual History of Conflict Management, 1990-2010”, in Susanna Campbell et al., eds., *A Liberal Peace?* (London: Zed Books, 2011) pp. 13-3.

²⁸ *Supra* note 24 at 334.

²⁹ *Ibid*

maintaining order and relatively long rebuilding projects. The commission stresses justice and reconciliation as equally essential priorities for the rebuilding phase. Judicial restructuring is critical for realizing the state's long-term ability to safeguard its people's interests. Finally, in the rebuilding phase, development is the third priority; economic growth, job creation, and stable wages are identified as core elements deterring a relapse to conflict.³⁰ The report established a temporal link between intervention and rebuilding: the rebuilding process is regarded as a follow-up to the use of military force for security purposes. This means that rebuilding is just a part of the strategy toolbox under exceptional circumstances, such as when armed force is used as a last option.³¹ In terms of the agents who could carry out these obligations, the commission described the U.N. as a central player in the R2R rebuilding stage. Despite being extremely vulnerable to the negative impacts of an externally enforced rebuilding process and emphasizing the importance of local authorities as allies, the report made a case for long-term postintervention commitment to promoting peace and long-term stability³². According to the commission, a hasty departure or a lack of a rebuilding plan will be reckless and may weaken the Responsibility to Protect concept's legitimacy.³³ Following the commission's report's release, the Secretary-General and the 2004 High-level Panel on Threats, Challenges, and Change endorsed the concept of an international responsibility to rebuild. The report articulated a view of states' mutual responsibility for each other's welfare and supported the concept of a continuum of protection obligations, spanning from prevention and reaction to rebuilding.³⁴

Around the same time, states were much more hesitant about the international obligation to rebuild. This was obvious in the 2005 U.N. World Summit Outcome Document's exclusion of the Responsibility to Rebuild portion of R2P. The ICISS's concept of a continuum of international obligations before, after, and after humanitarian disasters gave way to the focus on preventative action as the primary international obligation during the discussions on the scope and terminology of the R2P paragraphs. Although some governments, such as those of Mexico, Chile, and New Zealand, referred to the sequential nature of international obligations as proposed in the ICISS

³⁰ *Ibid.*

³¹ Schnabel also makes this point. Schnabel, "The Responsibility to Rebuild", p. 53.

³² International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, p. 42.

³³ *Ibid.*, pp. 40,41.

³⁴ *A More Secure World: Our Shared Responsibility*, Report of the High-level Panel on Threats, Challenges and Change (New York: UN, 2004), pars. 201-203.

report, many governments' positions had moved toward stressing prevention as the primary international responsibility³⁵. China, Russia, and the Non-Aligned Movement (Egypt, Iran, India, Iraq, Cuba, among others) all expressed a radical departure from rebuilding obligations and toward prevention³⁶. Skeptics of the R2P principle, such as Pakistan, claim that "much greater focus is needed to avoid the eruption of conflicts... the UN SG (Secretary-General) and this Council have a strong right to insist on a reconciliatory position in inter-state confrontations"³⁷. Also, in internal cases, however, a constructive and early position should be followed with discretion³⁸. Pakistan has made a case for development aid, fairer free-trade conditions, and debt relief as a means for developing countries to fulfil their security obligations³⁹. As earlier canvassed, proponents, such as Canada and Sweden, stressed the importance of prevention while staying quiet on rebuilding obligations⁴⁰. In a similar vein, the U.S. called for an emphasis on preventative measures while voicing indirect support for R2P without directly contributing to international obligations⁴¹.

The Secretary-2009 General's report "Implementing the Responsibility to Protect" expressed the emphasis on preventative responsibilities. Three pillars, consisting of the state's protection responsibilities (Pillar I), international assistance and capacity building (Pillar II), and prompt and decisive response (Pillar III), have been replaced for the sequential stages of R2P. This research contends that Pillar II is the most critical for explaining how the Responsibility to Rebuild framework evolved; it aimed to put together all preventative and rebuilding tasks under the banner of international aid and capacity development. The Pillar II contributions to foreign players cover tactical operations such as strategic aid to states struggling to deal with armed insurrection and institutional initiatives aid for governance reform. These tasks were divided across a variety of international development and human rights players, namely international financial institutions,

³⁵ International Coalition for the Responsibility to Protect, "State-by-State Positions on the Responsibility to Protect", www.responsibilitytoprotect.org/files/Chart_R2P_11August.pdf, (Accessed 21st January 2021).

³⁶ *Supra* note 24.

³⁷ *Ibid.*

³⁸ "Statement by Ambassador Munir Akram, Permanent Representative of Pakistan to the UN in the Open Debate of the Security Council on Protection of Civilians in Armed Conflict, New York, 9 December 2005," www.pakun.org/statements/Security_Council/2005/1_2092005-01.php, (Accessed 5th February 2021).

³⁹ "Non-Aligned Movement Statement on Responsibility to Protect, New York, Non- Aligned Movement, April 2005", www.iilj.org/courses/documents/Developing-CountryStatementsonR2P.pdf, (Accessed 5th February 2021).

⁴⁰ *Supra* note 35

⁴¹ Expressed, for instance, in the statements by the US government in the Security Council Open Debate on the Protection of Civilians in Armed Conflict on 28 June 2006 and 4 December 2006, excerpts available at www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/2378-security-council-open-debates-on-the-protection-of-civilians, (Accessed on 11th February 2021).

the United Nations High Commissioner for Refugees, and the United Nations Children’s Fund (UNICEF);⁴² regional bodies, such as the Organization for Security and Cooperation in Europe (OSCE);⁴³ and, finally, donor governments⁴⁴. This reorganization of R2P made it possible to separate rebuilding from the reactive aspect of the principle and combine it with preventative activities.

Whereas the Pillar II promises outlined in the 2009 report were both broad and abstract, concentrating mainly on preventative steps, more comprehensive examples of Pillar II tasks can be found in the Secretary General's subsequent reports. In his 2012 report, the Secretary-General concluded that Pillar II practises should ensure that states can fulfil their Pillar I obligations and mitigate the potential need for Pillar III action, arguing that R2P is a process of creating responsible sovereigns⁴⁵. The 2014 report expands on the Pillar II commitments more recently⁴⁶. The report's central theme is strengthening states’ ability to fulfil their protection obligations. Pillar II is based on five values, according to the report: national ownership; collective responsibility to create resistance by both domestic and foreign actors; do no harm by ensuring that foreign aid does not contribute to the creation of circumstances contributing to atrocity crimes; prioritization of prevention; and, ultimately, versatility in resolving underlying causes of conflict⁴⁷.

The incremental downplaying of international obligations under Pillar II favouring a more statist perception of Pillar II commitments is noteworthy in these follow-up reports. In addition to the 2014 report, the most precise articulation of this can be found in the 2011 report on the role of regional organizations in enforcing R2P, which puts rebuilding obligations firmly in the hands of domestic authorities. Chapter four of this thesis will assert that the African Union (A.U.) is the only regional or international organization that has enshrined the concept of the “responsibility to protect” (R2P) in its Constitutive Act, giving it the authority to intervene in a member state on humanitarian and human rights grounds.

⁴² UN Secretary-General’s report, “Implementing the Responsibility to Protect”, UN Doc. A/63/677 (12 January 2009), pars. 30, 33.

⁴³ *Ibid.*, par. 37.

⁴⁴ *Ibid.*, par. 47.

⁴⁵ UN Secretary-General’s report, “Responsibility to Protect: Timely and Decisive Response”, UN Doc. A/66/874 (25 July 2012), par. 15.

⁴⁶ UN Secretary-General’s report, “Fulfilling Our Collective Responsibility: International Assistance and the Responsibility to Protect”, UN Doc. A/68/947 (11 July 2014).

⁴⁷ *Supra* note 24.

1.2 Statement of Research Problem

The main challenge stemming from recent international involvement in post-conflict situations has been ‘to establish security and transfer of responsibility to local institutions in ways compatible with the principles of ownership, accountability and economic sustainability’⁴⁸. R2P, as constituted in the World Summit Outcome Document, does not have an institutional framework for protecting human rights after military intervention⁴⁹. According to Gore, R2P has been manipulated by states to justify unlawful interventions into countries where they have vested interests⁵⁰.

After the 1990s atrocities, the International Community responded by adopting the R2P to ensure that the world does not experience massive and systematic human rights violations. The U.N. Security Council authorized the NATO-led forces to intervene in Libya in 2011, and some scholars have described the aftermath as a Mini-Iraq crisis. This research work identifies that while the U.N. adopted the concept of R2P, it did not lay the framework upon which there would be reconstruction after military intervention. The R2P principle has failed because its application in Libya disorganized the country, making the situation worse than it was under Gaddafi.

This research asserts establishing a framework that examines the possibility of having the principle of R2P succeed by successfully retaining and implementing the element of rebuilding in its original form by the ICISS. Therefore, there is a need to have intervening states commit by providing skills and resources to the intervened state and facilitating the rebuilding process, as this will guarantee continued human rights protection after the intervention.

1.3 Research Questions and Hypothesis

The main question of this research is whether the United Nations should use the original concept as coined by ICISS, thus including the responsibility to rebuild when sanctioning a military intervention. In answering this central question, this research paper will seek to address the following subsequent questions:

- a. Whether there exists a difference between the R2P principle and the principle of

⁴⁸ J Honey ‘Humanitarian Intervention: More harm than good?’ (2017) LinkedIn, available at: <https://www.linkedin.com/pulse/humanitarian-intervention-more-harm-than-good-james-honey> (Accessed on 11th February 2021).

⁴⁹ S Gore ‘Does the R2P Principle represent a positive step for human rights?’ (2014) E-International relations students. <http://www.e-ir.info/2014/02/22/> (Accessed on 11th February 2021).

⁵⁰ *Ibid*

humanitarian intervention.

- b.** Whether the international community must ensure that Peace is restored in the intervened state once the coercive force has been used.
- c.** Whether the impasse at the international arena on the use of the responsibility to protect can be cured through a commitment by the interveners to help the intervened state rebuild itself.

The research paper shall proceed with the hypothesis that since the principle was coined as a reaction to the mass human rights violations, it has done so little to reduce human rights violations, and as such, much more emphasis should be placed on the post-conflict period to ensure that the intervened states do not slide back into conflicts.

1.4 Research Methodology

This research adopts a doctrinal approach where it shall critically analyze the existing legal texts. This will also include reviewing qualitative and quantitative information gathered from books, reports, journals, human rights instruments, and other relevant materials. It looked at the role of humanitarian intervention in international law using international law as a primary source, including the United Nations Charter and international conventions and agreements. Also, the research reviewed the related literature of legal and political science academics and undertook an in-depth survey of secondary sources. The research looked at the ICISS reports and applicable international law instruments, reports to the United Nations Secretary-General, and documents from Amnesty International, Human Rights Watch, and the United Nations Human rights Office.

1.5 Research Boundaries

The research is classified as public international law, which is the core jurisdiction. It will be limited to the responsibility to rebuild, which covers a wide variety of topics such as justice and reconciliation, social and economic science, good governance, and the rebuilding commission's function. This research will not delve deep into the two other elements of the principle of the responsibility to protect, wit, and responsibility to react and prevent. Although it is inevitable to comprehensively deal with this subject without referring to the realpolitik surrounding it, such references shall be minimal.

1.6 Thesis Structure/Organization of Chapters

Based on these principles and the recent application of the responsibility to protect, this research seeks to contribute to knowledge and the existing literature on the subject. Unlike most of the literature that has interrogated the “*prevent and react responsibilities*” to make concluding observations on the applicability of the principle, this research paper shall go a step further and assess the “*rebuild responsibility*”. This research advances an argument premised on the fact that if the justice system is rebuilt, then there is a possibility that a state that has just come from the ruins of war or massive human rights violations will be able to handle the human rights issues and offer justice to the victims and its population.

In making this contribution, the overall structure takes the form of five chapters. The first chapter has helped to present and contextualise the thesis to explain the research’s reach and emphasis. This chapter attempts to contribute to our awareness and existing knowledge of the concept of the Responsibility to Rebuild by tracing the evolution of the concept and its operational definitions in the light of recent protection interventions as well as an explanation of the statement of research problems, research question and hypothesis, research methodology, and the scope and limitations of the thesis.

Chapter two shall discuss the normative framework of the responsibility to rebuild. This research agrees with Evans's argument on the responsibility to rebuild and asserts that, protection of human rights in a post-conflict state might call upon the rebuilding agent to build entirely new structures. The rebuilding agent should concentrate its efforts on three main areas: security and protection, justice and peace, economic growth, and sustainable development. This chapter then discusses who bears the duty to rebuild, the right to rebuild, assigning the duty to rebuild, and looking at ICISS and Sovereignty as a responsibility. By putting the R2P proposed by ICISS into perspective, this chapter will also discuss the humanitarian intervention and the responsibility to rebuild.

Chapter three discusses the responsibility to rebuild through the prism of Kosovo, Libya, and Iraq. Using three case studies, this chapter will discuss the need to have the international community collaborate with other agents to rebuild the intervened state to achieve the ultimate protection of human rights. The two situations in Kosovo and Iraq have raised questions on the legitimacy of the intervention since the U.N. Security Council had not sanctioned such interventions. While this question may be necessary for a debate of humanitarian intervention versus Sovereignty, it cannot

negate the fact that there were mass human rights violations, and after the interventions, there was also a need to rebuild.

Chapter four looks at the Responsibility to Protect (R2P) under The African Union: Does it have the element of Rebuilding? This chapter will discuss the responsibility to protect and critique the concept for lacking the third leg, which is the responsibility to rebuild. Unlike in the UN Charter under Article 2 (7) that prohibits a state's interference into the internal affairs of another state based on the principle of Sovereignty, and before the World Summit outcome document in 2005 that endorsed the principle of R2P, the African Union through its Constitutive Act allows the organization to intervene in member states to prevent crimes against humanity. This chapter also notes that the overall architecture of Peace and security in Africa centers on the interactions among the A.U., the PSC, and several other elements established to maintain peace in Africa. It also addresses the A.U. and the R2P (from Non-intervention to Non-indifference), the legality of forcible regional implementation of R2P under international law and the reconstruction framework A.U. and a peace intervention.

The last chapter will encapsulate the synopsis of the study and offers recommendations. It draws inspiration from the ICISS report and existing literature on the responsibility to rebuild while making recommendations. It is important to note that two types of post-conflict interventions will be discussed in this study. The interventions that are consent-based, such as the ones pursued by A.U., and those that are non-consensual such as those pursued by the U.N. and NATO forces. Based on these discussions, the study does not seek to find one straight jacket on the responsibility to rebuild, but instead, it suggests that the protection of civilians from human rights abuses should be the epicentre of any form of post-conflict intervention.

CHAPTER TWO:

NORMATIVE FRAMEWORK OF THE RESPONSIBILITY TO REBUILD

2.0 Introduction:

The question of who should rebuild after a war is addressed in this chapter. The ‘Belligerents Rebuild Thesis’, which suggests that those who have been engaged in the battle - including the victor, just belligerent, unjust aggressor, or humanitarian intervener - should be charged with the responsibility of rebuilding, is held by many leading proponents of the importance of jus post bellum for Just War Theory. This research, on the other hand, argues that there is a mutual, international responsibility to rebuild that should be delegated solely based on the agent’s capacity to rebuild rather than the belligerents. In addition, this research states that, contrary to popular belief, considerations of jus post bellum play no normative part in the justification of war. This chapter also points out that the element of the responsibility to protect – the responsibility to rebuild – will, if practical, forestall conflict from reoccurring.⁵¹ Unlike the responsibility to prevent, which remains undeveloped, the international community has embraced the responsibility to assist in peacebuilding, which includes helping rebuild the institutions and infrastructures of states that have been involved in civil war or international conflict to ‘build ties of peaceful mutual benefit among countries ‘previously at war’ and to address the most profound causes of the conflict including economic misery, social bias and political repression.⁵²

Going further, this chapter shall discuss the normative framework of the responsibility to rebuild. This research agrees with Evans’ argument on the responsibility to rebuild and asserts that, protection of human rights in a post-conflict state might call upon the rebuilding agent to build entirely new structures. The rebuilding agent should concentrate its efforts on three main areas: security and protection, justice and peace, economic growth, and sustainable development. This chapter then discusses who bears the duty to rebuild, the right to rebuild, assigning the duty to rebuild, and looking at ICISS and Sovereignty as a responsibility. By putting the R2P proposed by ICISS into perspective, this chapter will also discuss the humanitarian intervention and the responsibility to rebuild.

⁵¹ *Supra* note 10 at 233.

⁵² B. Boutros-Ghali, *An Agenda for Peace: Preventive Diplomacy, Peacemaking, and Peacekeeping: Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992* (New York: United Nations, 1992); UN Doc. A/47/277-S/24111, 17th of June 1992, para. 15.

To prevent a return to war while laying a solid base for growth, post-conflict communities have unique requirements. The United Nations (U.N.) has traditionally been unable to step beyond initial stability, infrastructure rehabilitation, and the re-establishment of local government structures to have a more particular aim of establishing an independent framework of the state that can execute expeditious economic growth/development and societal transformation.⁵³ Bosnia, East Timor, Afghanistan, and Iraq are examples of countries coming out of protracted conflicts that have left their people deeply traumatized, in a state of economic destabilization, demolished infrastructure, caused a strain on their political establishments, and in some instances, dismemberment of their communities because of the conflict.⁵⁴ It is important to note that the records of intercontinental missions in these regions confirm significant gaps in the preparation, funding, and implementation capacities for the vital civilian elements of such complex nation-building missions.

Peacebuilding provides a conceptual connection between the United Nations' two major normative agendas, security, and development. The Brahimi Report provides a clear description of peacebuilding: "activities conducted on the far side of the conflict to rebuild the pillars of Peace and make available the necessary tool used for establishing something more than just the absence of war on those foundations".⁵⁵ R2P rebuilding is conceptually and operationally indistinguishable from peacebuilding in the 2001 ICISS formulation, which has a more extended pedigree dating back to S.G. Boutros Boutros- Ghali's Agenda for Peace.⁵⁶ In his *An Agenda for Peace*, Boutros Boutros-Ghali provides an excellent definition of post-conflict peacebuilding, which is the act of identifying and assisting frameworks that are capable of reinforcing Peace to refrain from relapse into conflict.⁵⁷ The Brahimi Report on peacekeeping adds substance to the term peacebuilding. All subsequent activities in this field seem to have been influenced by this expanded definition:

13. Peacebuilding is a term that portrays any action or set of actions carried out on the other side of a conflict to rebuild the foundations of Peace and provide the means to create something more than just the absence of war on those foundations. Therefore, peacebuilding involves but is not restrained to reintegrating former combatants into the

⁵³ Srinjoy Bose & Ramesh Thakur, "The UN Secretary-General and the Forgotten Third R2P Responsibility" (2016) 8:4 Global Responsibility to Protect 343.

⁵⁴ *Ibid*

⁵⁵ Report of the Panel on United Nations Peace Operations (A/55/305-s/2000/809, 21st of August 2000), para. 13.

⁵⁶ *Supra* note. 52 at para. 21.

⁵⁷ *Ibid*.

civilian society, reinforcing the rule of law (for instance, via training and remoulding of local police and judicial and penal reform); improving respect for fundamental human rights by monitoring, educating, and investigating of past and existing abuses; providing all forms of assistance for democratic development (including electoral assistance and media freedom support); and fostering conflict resolution and mediation strategies); and promoting conflict resolution and reconciliation techniques.⁵⁸

2.1 Rebuilding Framework/Elements

ICISS understood the responsibility to rebuild as a commitment to building a sense of long-standing peace, advancing an appropriate state of politics/governance and, feasible growth and development.⁵⁹ It is essential to posit that an R2P intervention will either contribute to the prohibition or put to a standstill the commission of human rights violations and atrocities. All necessary steps must be adhered to ensure the consolidation of peace and building institutions/establishments focused on preventing a repetition of armed confrontation or conflicts amongst erstwhile warring groups. The restoration and development of effective, efficient, and appropriate governmental establishments that have the requisite capability of conveying the necessary goods and services, guaranteeing the security of the people, exercising monopoly authority over the appropriate use of force, and mediating between warring parties expediting economic advancement should be the underlying strategic vision informing all peacebuilding missions. Demobilized belligerents must be gainfully reintegrated into the economy and culture; constructive involvement and inclusion in the democratic process must be ensured; integration of refugees and internally displaced persons must be ensured; human rights policies must be enacted with institutional and judicial mechanisms to administer them, and demobilized belligerents must be gainfully reintegrated into the economy and society.

The rebuilding agent should concentrate its efforts on three major areas: protection and security, justice and reconciliation, economic growth, and sustainable development.⁶⁰ Security and protection ensure that a State emerging from conflict can protect its citizens from any form of retaliatory attacks from formerly oppressed groups. On the other hand, justice and reconciliation

⁵⁸ The Panel on United Nations Peace Operations, chaired by Lakhdar *Brahimi*, reported to the UN Secretary-General on 17 August 2000: UN Doc. A/55/305 (Brahimi Report).

⁵⁹ ICISS, Responsibility to Protect, para. 5.1.

⁶⁰ G.S Kirenge, "An assessment of African Union's application of the responsibility to protect doctrine" unpublished master's thesis, *United States International University Africa* (2007) 18.

are meant to bring the perpetrators of former crimes into justice. Lastly, economic growth and development are to rebuild, among others, the intervened state's infrastructure. Effective rebuilding does not depend on the speed of reconstruction but the efficiency of the process, which means that the rebuilding agents might be forced to stay in the intervened state longer than anticipated to an effective rebuilding process. Furthermore, while international actors in post-conflict situations have the necessary tools to provide a stable atmosphere and begin the process of reconstruction, the overarching responsibility for their future rests with local actors and peoples. Locals are an essential source of peacebuilding expertise and a key influencer in the development of peacebuilding methodologies.

2.1.1 Security and Protection

In a nation that is coming out of a civil war or any form of war, the likelihood of revenge killings and having a high rate of insecurity is very high.⁶¹ Therefore, the rebuilding agents should ensure that they provide security and ensure that the local forces are trained on maintaining security without evoking the animosities that existed when the intervened state plunged into conflict. This would mean that the warring parties should reconcile those with firearms to surrender to the rightful authorities and communities to be integrated into the administrative system.⁶²

During the rebuilding process, Gareth Evans identifies three key security concerns: peacekeeping in favour of nation-building, DDR (Disarmament, Demobilization, and Reintegration), and security sector restructuring.⁶³ The success of other rebuilding measures and the ultimate protection of human rights is predicated on security, and failure in security will lead to a total collapse of the entire rebuilding process. The ICISS calls for “basic security” and the defence of everyone among the general population.⁶⁴ In making provision for safety, the intervening state is minded that quite often, in the aftermath of a conflict, cases of “revenge killings” and “reverse ethnic cleansing” can arise as it is possible for those who were victims to “target groups associated with their former oppressors”.⁶⁵ In carrying out the responsibility of rebuilding, intervening states ensure they made an adequate plan for such a “contingency”.⁶⁶ To put it another way, the

⁶¹ ICISS Report, paras 5.8

⁶² *Ibid*

⁶³ *Supra* note 15 at 151.

⁶⁴ International Commission on Intervention and State Sovereignty. (Dec. 2001) “The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty.” Ont., Ca. International Development and Research Centre, Para 5.

⁶⁵ International Commission on Intervention and State Sovereignty. (Dec. 2001), Para 5 See N. 14 above.

⁶⁶ *Ibid*.

responsibility to rebuild must be an integral part of efforts to assume the roles of mitigating and responding to disasters. In this way, when considering the appropriate response to human suffering or the possibility of human suffering, all three responsibilities remain in focus.

The ICISS further warns that in taking safety measures, it is essential to consider that “disarmament, demobilization and reintegration” of the “local security forces” is among the most challenging tasks following the end of a conflict.⁶⁷ The military presence will not be considered complete until reintegration takes place.⁶⁸ In providing security, it is imperative to consider that law and order are required for rebuilding. Until “demobilized soldiers” are reintegrated and procuring pay, they will most likely turn to “organized violence or armed political resistance”. The military will also be required to act as police, as the rule of law is now in shambles in certain areas. If the post-conflict situation has subsided, a civilian police force may be established. In the end, the ICISS asserted that:

“Just as an escape strategy (not equivalent leave schedule) for intervening troops has been a key element of pre-intervention preparation for both political and military personnel. There is a power in the thinking that without such a technique, there may be tremendous dangers in mounting any military intercession whatsoever, as an impromptu, not to mention accelerate, an exit could have cataclysmic, or in any event alarming, ramifications for the country, as well as serve to subvert even the intervention's positive viewpoints”.⁶⁹

a. *Peacekeeping*

A beginning stage in the peacebuilding and peacekeeping relationship is previous Secretary-General Boutros-Ghali's Agenda for Peace, which sequentially sequenced peace endeavours starting with preventive tact. In this sequence, if the U.N. could not prevent a conflict, it would help arrange a truce and nonaggression treaty (peacemaking) and deploy a mission to help execute these treaties (peacekeeping). When the fighting stopped, peacebuilding exercises were initiated - supporting elections, reconciliation, reconstructing state frameworks, and incapacitating soldiers to unite the Peace and forestall a backslide into vicious conflict. Peacekeeping was perceived as dealing with a conflict by situating peacekeepers between the warring parties, making moves to deescalate pressures, and building trust in a truce or nonaggression treaty. Then again,

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

peacebuilding was perceived as conflict resolution since it was aimed at addressing the root causes of the conflict, and in this approach, eliminating the reasons why the conflict happened initially been. This post-conflict stage comprehension of peacebuilding was built up when the U.N. Peacebuilding Architecture was set up in 2005 to keep up worldwide consideration on peace negotiations after peacekeeping missions were withdrawn. The country progressed off the agenda of the Security Council.⁷⁰

Peacekeeping missions in the post-conflict peacebuilding and rebuilding stage must perform several tasks that will give way for a safe environment necessary to restore 'good governance, the rule of law, and the conditions for economic growth development'⁷¹. Peacekeeping is meant to set the stage, making it possible for all other elements of rebuilding effective. This entails stabilizing the country in question and even incurring costs to clear any landmines that might have been left behind during a military intervention.⁷² Evans, while quoting Collier, states that it is more expensive to let conflict continue or fail to improve a situation after a military intervention than it to support a peacebuilding process.⁷³ Evans says that Collier observes that the process of peacebuilding is less costly in reducing the risk of renewed conflicts and, therefore, saves the international community a range of 18 to 75 Million U.S. Dollars.⁷⁴

According to Boutros-Ghali, there is an “obvious link” between democratic values such as the rule of law and accountability in decision-making and the achievement of genuine peace and stability.⁷⁵ This theme of the rule of law is taken up in all the subsequent reports that examine the concept of post-conflict peacebuilding. The responsibility to rebuild encompasses international legal obligations that, if satisfied, could prevent future conflict.⁷⁶ He argued that for peacemaking and peacekeeping missions to be fully sustainable, they needed to incorporate attempts to recognise and support mechanisms that would help consolidate peace and promote a sense of security and welfare. This included disarming formerly warring parties and restoring order; keeping arms in custody and possibly destroying them; repatriating refugees; providing security forces with advisory and training support; elections monitoring; promoting human rights efforts; reforming or

⁷⁰ *Ibid.*

⁷¹ *Supra* note. 63 at 151.

⁷² *Supra* note. 59 at para 2.29.

⁷³ *Supra* note. 63 at 151.

⁷⁴ *Supra* note. 63 at 152.

⁷⁵ *Supra* note. 52 at para. 59.

⁷⁶ *Supra* note 10 at 234.

strengthening governmental institutions; and fostering formal and informal political participation systems.⁷⁷ According to Christine Gray, this move is known as the “escape plan for peacekeeping operations”, and it must rely on “defining an ultimate target, not an arbitrary, self-imposed, artificial timetable that encourages belligerents to outwait external interventions”.⁷⁸ The peacebuilding agencies must be ready to perform tasks ordinarily fall under law-keeping agencies' purview and ensure stability is realized in a war-torn country. This would include making sure that the refugees and Internally Displaced Persons (IDPs) are willing to return home.⁷⁹

b. Disarmament, Demobilisation, and Reintegration (DDR)

Internationally recognized mechanisms for post-conflict communities may help a state fulfill its responsibilities and commitments while also allowing individuals to exercise their fundamental human rights. Disarmament, Demobilization, and Reintegration (DDR) is a globally recognized mechanism for post-conflict recovery. According to the United Nations Secretary-General, it is critical that DDR projects are aligned with the broader peace, recovery, and growth structures.⁸⁰ DDR entails projects aimed at eliminating weapons from those specifically involved in the conflict, advancing demilitarisation, and assisting in social and economic reintegration. Transitional justice can include or be supplemented by DDR.⁸¹ Transitional justice refers to the processes and procedures to deal with past abuses and breaches to promote transparency, serve equity & justice, and accomplish reconciliation.⁸² The United Nations Integrated Disarmament, Demobilization, and Reintegration Standards (IDDRS) recognize that DDR projects are targeted explicitly at ex-combatants (both non-state and state actors), while transitional justice efforts are more broadly focused on victims and society⁸³. According to the UN OHCHR, when “absolutely connected, DDR and transitional justice will emphatically reinforce other”.⁸⁴

⁷⁷ *Supra* note. 52 at para. 55.

⁷⁸ Christine Gray, *International Law and the Use of Force*, 3rd edition (Oxford: Oxford University Press, 2008), p. 275.

⁷⁹ James Pattison, “Jus post bellum and the Responsibility to Rebuild” (2013) *British Journal of Political Science* 3.

⁸⁰ UN GA, Disarmament, demobilization, and reintegration, Report of the Secretary-General, UN Doc. A/60/705 (2006) para 9(a).

⁸¹ Integrated Disarmament Demobilization and Reintegration Standards (2006) Section 1.10, p.2.

⁸² UN, Guidance Note of the Secretary-General, “United Nations Approach to Transitional Justice” (2010) p.2. Regarding Transitional Justice and Human Rights, see UN, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, Analytical study on human rights and transitional justice, UN Doc. A/HRC/12/18 (2009).

⁸³ Integrated Disarmament Demobilization and Reintegration Standards (2009) Section 6.20, p.3.

⁸⁴ UN GA, Report of the United Nations High Commissioner for Human Rights on human rights and transitional justice, UN Doc. A/HRC/18/23 (2011) p.15.

This vital part of the peacebuilding process aims to ‘interrupt the conflict cycle and facilitate the transition of the armed groups into the national forces or back into civilians.’⁸⁵ A failure to effectively execute this mandate has often made it difficult for the peacekeeping missions to stagnate in the first stage of rebuilding a state. A classic example is Somalia, where the African Union Mission is still trying to stabilize a country thrown into disarray in 1990; more of this shall be discussed in chapter four. The United Nations and NATO forces have also not been immune to this difficulty; the Libya case that was perceived by many as a success story for the Responsibility to Protect seems to have fallen into this first pit of the peacebuilding process. As shall be discussed in chapter three, the rebels who were helped by the NATO forces to topple the Gadhafi regime have become their enemies, thus plunging the country into further conflicts with severe human rights violation cases.

Disarmament aims to collect and destroy existing weapons and ensure that new weapons are not formed or acquired by armed groups.⁸⁶ According to Evans, consent is an essential element in this process, and no amount of external force can successfully disarm the armed groups if such groups are unwilling to disarm themselves.⁸⁷ He further notes that the task of demobilizing should be handled with extreme care lest a security bomb is created, and the situation becomes worse.⁸⁸ He points out the case of Iraq where he says that a ‘wholesale’ demobilisation of the Iraq army was not well calculated as many soldiers were left without any form of income and or any form of honour.⁸⁹ From the preceding, if the exercise of demobilization is not handled with care, it can create more harm than good. The rebuilding agents are therefore required to consider the interests of the armed forces of a defunct regime. If those forces were not involved in the commission of atrocities, then they should be reintegrated into a force that is to be reconstituted afresh.

As mentioned earlier, the process of rebuilding and reconstruction is costly. The process of reintegration is perhaps the costliest in the disarmament, demobilization, and reintegration process⁹⁰. The United Nations Security Council, on the other hand, has recognized DDR as a critical component in guiding society toward long-term and sustainable peace and development to

⁸⁵ AP Asbjorn “Peace, Human Rights and Development: Their interrelationship”. (1980) *18 Security Dialogue* 315.

⁸⁶ *Ibid.*

⁸⁷ *Supra* note 15 at 150.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ Teresa Whitfield, “Friends Indeed: The United Nations, Groups of Friends and the Resolution of Conflict”. (Washington DC: US Institute of Peace Press, 2007).

transition out of violence and back to normalcy’.⁹¹ The U.N Security Council has also stated that DDR plays a vital role in post-conflict stabilization and rehabilitation and the ‘recovery and development phase’.⁹² According to the United Nations General Assembly, DDR is also essential in mitigating the risk of a conflict reoccurring. The Final Report of the Stockholm Initiative on DDR (SIDDR(F.R.)) recognizes that DDR is “only one of several components of peace negotiations”.⁹³

c. Security Sector Reform (SSR)

The ICISS report further emphasizes the international community’s duty to deter violence and then help society rebuild after the action. According to the report, intervention forces must provide necessary security and support to all members of society in the short term to fulfill their responsibility to rebuild and effectively avoid the re-emergence of violence. They must, moreover, strive for a long-term, sustainable, and inclusive devolution of this obligation to regional actors. The report calls security sector reform (SSR) a “significant protection challenge”. is an integral part of this succession of responsibilities⁹⁴. Several core programming goals for sustainable and democratic SSR are articulated in recent documents from the Organisation for Economic Co-operation and Development's Development Assistance Committee (OECD-DAC) and the United Nations⁹⁵.

A dysfunctional security system is a threat to the population of a country and the contingent that is entrusted with the protection responsibility in a post-conflict or post-intervention country.⁹⁶ Security reform entails transforming all the security institutions such as the police, military, intelligence service, and even the defence ministry⁹⁷. The OECD’s Development Assistance Committee describes the Security Sector Reform as:⁹⁸

⁹¹ UN SC, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General Security Council, UN Doc. S/2004/616 (2004) p.11.

⁹² Integrated Disarmament Demobilization and Reintegration Standards (2006) Section 1.10, p.1.

⁹³ Stockholm Initiative on Disarmament Demobilization Reintegration, Final Report, (2007) p. 21.

⁹⁴ *Ibid.* Chapter VII: 65.

⁹⁵ Kristiana Powell, Security Sector Reform and the Protection of Civilians in Burundi: Accomplishments, Dilemmas, and Ideas for International Engagement, (July 2007), p.2. CENAP/NSI Working Paper <http://www.nsi-ins.ca/wp-content/uploads/2012/10/2007-Security-Sector-Reform-and-the-Protection-of-Civilians-in-Burundi-Accomplishments-Dilemmas-and-Ideas-for-International-Engagement.pdf>, Accessed on 22nd April 2020.

⁹⁶ D. Kocak “Security Sector Reconstruction in a Post-conflict Country: Lessons from Timor to Leste”. (2003) *Working Paper Series No. 61, Collaborative Research Centre 5*.

⁹⁷ H. Hanggi ‘Conceptualising Security Sector Reform and Reconstruction’, in B Allan and H Hanggi (eds) *Reform and Reconstruction of the Security Sector*. Munster 8.

⁹⁸ *Ibid.*

A term used to describe the evolution of the security system encompasses all actors, their roles, responsibilities, and actions coordinated to regulate and manage the system by democratic norms and acceptable governance standards, thus leading to a stable environment.

The international community should professionally handle the military forces while the police personnel should be drawn from the civilians, and the process should be as transparent and fair as possible.⁹⁹

2.1.2 Justice and Reconciliation between the Parties

In terms of justice and peace, the ICISS has found that in many areas where armed combat occurs, there is either no functioning judiciary or law enforcement unit, or if there is, it is dismantled before and after the conflict. If there is some chance of promoting and preserving civil rights, both the courts and law enforcement must be reinstated as soon as possible¹⁰⁰. To this end, intervening countries should develop a “standard penal code” that can be applied in “any situation where there is no appropriate existing body of law,” and the application should be implemented at the outset of the intervention process to ensure that the law protects minorities and that the military is free to take appropriate measures against those who carry out violations.¹⁰¹

Peacekeepers have been found guilty of violating human rights. In cases where there are transitional occupations and jurisdictions, such as Kosovo and East Timor, concerns about detention procedures, private property rights, and reparation for injuries caused by States or foreign organizations have emerged. In Kosovo, for example, victims of cluster munitions which caused the death of children playing in March 2000, long after the cessation of hostilities, were not compensated; in 2001, people were left in detention for more than seven months without a court order,¹⁰² and land rights on individual housing went uninvestigated for more than five years before 2004.¹⁰³

⁹⁹ *Supra* note. 63; BA Krisetya, “Assessing the responsibility to rebuild component in post-Gadhafi Libya” (2016) 2 Journal of International Relations 48. Strengthening of security is meant to ensure that the power vacuum created during an intervention does not become an impediment to a smooth political transition.

¹⁰⁰ International Commission on Intervention and State Sovereignty. (Dec. 2001) “The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty.” Ont., Ca.: International Development and Research Centre, Para 5.

¹⁰¹ *Ibid.*

¹⁰² *Saramati v. France, Germany, and Norway* (Application no. 78166/01).

¹⁰³ *Gajic v. Germany* (Application No. 31446/02), Decision of 28. August 2007.

These are standard examples of how judicial oversight is essential for international confidence-building, but they also demonstrate how difficult it is to gain such control in peace operations. In the receiving State, issuing States enjoy sovereign immunity. They will have a general interest in making a thorough inquiry and resolving the harm quickly. On the other hand, transparency would be challenging to achieve unless professional organs are in place, and solid international collaboration on the issue can be assured. Since national courts and tribunals of sending States are rarely authorized to act in receiving States during peace operations, international courts may be a viable option. However, this would necessitate international arbitration, which is not currently applicable under the constitution.. Proposals for redress¹⁰⁴ had to be formulated before the peacekeeping mission and arrived too late. While efforts to ensure judicial oversight by military commissions were commendable, they remained unfinished.¹⁰⁵ In the event of wrongful actions perpetrated by peacekeepers or foreign administrators operating under its jurisdiction, the United Nations can propose creating an international court or commission to adjudicate reparations. So far, no such events have been seen.¹⁰⁶

In 2007 during his visit to Sudan, the former U.N. Secretary-General Ban Ki-Moon stated that ‘justice is an important part of the building and sustaining peace, a culture of tolerance, and a tradition of unpunished past abuses, will only erode the peace’.¹⁰⁷ The Commission noted that for an intervention to gain credibility both locally and internationally, the interveners must ensure that

¹⁰⁴ European Commission for Democracy through Law (Venice Commission), *Opinion on human rights in Kosovo: Possible Establishment of Review Mechanisms*, adopted by the Commission at its 60th Plenary Session (Venice, 8-9 October 2004), CDL-AD (2004) 033, para. 63, [http:// www.venice.coe.int/docs/2004/CDL-AD\(2004\)033-e.pdf](http://www.venice.coe.int/docs/2004/CDL-AD(2004)033-e.pdf).

¹⁰⁵ As explained by A.E. Wall, ‘Civilian Detentions in Iraq’, in M. Schmitt and J. Pejic (eds.), *International Law and Armed Conflict: Exploring the Faultlines*, International Humanitarian Law Series, vol. 15, (Leiden, Boston: Martinus Nijhoff Publishers, 2007), pp. 425-8, 431-4.

¹⁰⁶ See the Hague District Court, *Judgment in the Incidental Proceedings in the case between the Foundation Mothers of Srebrenica et al. v. the Netherlands and the United Nations*, case no. 295247, judgment of 10 July 2008. On March 30, 2010, the Hague Court of Appeal ruled that putting the United Nations before a Dutch court is unlikely. On July 1, 2010, the Supreme Court of the Netherlands issued a writ of cassation. The Netherlands was held responsible for the killings of three Bosnian Muslim men killed by Serbian forces during the Srebrenica Massacre in July 1995, according to a ruling released by the Hague District Court on July 5, 2011. The three people had found shelter at the UN compound run by the Dutch but were expelled by the Dutch after Serb forces requested their expulsion. The bodies of two of the men were discovered in 2007 and 2009, but the one was never found. Since the Dutch soldiers had already observed several slayings and beatings of other male citizens by Serb forces, the court concluded that the Dutch troops should have expected that the three people would be injured or killed if they were removed. See <http://www.rechtspraak.nl> and <http://www.vandiepen.com>.

¹⁰⁷ Jamie Pring, “From transitional justice to dealing with the past: The role of norms in international peace mediation”. (2017) Swiss Peace. Available at: http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Essentials/SP_Essential_1704-3.pdf (Accessed on 25 April 2020).

the perpetrators of human rights violations must be brought to justice after the intervention. The process should not be flawed and biased because once the justice system becomes selective, there is a likelihood of brewing sharp divisions in the country that may lead to a civil war. The Commission acknowledged several areas in the justice system that should be considered in the post-intervention peacebuilding process.¹⁰⁸ It is significant to express that when society crumbles because of a civil war; it takes external actors to restore such a situation to a state of normalcy; the dilemma between justice and peace has always been there.¹⁰⁹ It is argued that the debate between the two is predicated on the view that it is impractical to have the two achieved simultaneously in a porous society that is rising from a conflict.¹¹⁰ This skepticism cannot be washed away, especially when appraising the work of the African Union in the peacebuilding process, as shall be discussed in chapter four. However, transitional justice scholars have avoided the entanglement of this dichotomy and argued that both peace and justice could be achieved if the premium is placed on the correct elements of justice. It calls for a broader conceptualization of justice and reconciliation premised on three main key areas: ‘establishing a culture of accountability, the rule of law and reconciliation’.¹¹¹

Returning migrants and their rightful entitlements are other issues in rebuilding a justice system and encouraging reconciliation. It is necessary to take the necessary steps to ensure that these classes are not mistreated. The ICISS noted that in Croatia, prevalent was the discriminatory treatment of members of the public. Similar errors cannot be repeated because they are detrimental to the reconstruction process. According to the report, “facilitating returns” entails dismantling administrative and procedural obstacles to return, ending the tradition of impunity for proven or accused war criminals, and enacting non-discriminatory property legislation.

2.1.3 Economic Growth and Sustainable Development

The former U.N. Secretary-General, Kofi Annan, was the first to relate economic development to preventing conflict and rebuilding after conflict. In his 1998 paper, *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa*, he first explored the essence

¹⁰⁸ ICISS Report, Para. 5.14.

¹⁰⁹ Baumgartner et al, “Dealing with the past and peace mediation”. (2010) 3 *Politorbis* 75.

¹¹⁰ O Spring, “New forms of intervention in world politics: opening address”, *Irish Studies in International Affairs*, Vol 5 (1994) p. 3.

¹¹¹ Baumgartner et al, “A conceptual framework for dealing with past peace”. (2012) *Swiss Peace* 25.

and justification of post-conflict peacebuilding.¹¹² According to Annan, post-conflict peacebuilding refers to measures taken during a conflict to maintain peace. This consolidation would necessitate more than political and military intervention, but he built on Boutros Ghali's categories. He concluded that addressing the numerous causes that contributed to the violence necessitated an integral peacebuilding effort. This will include establishing or reforming national institutions, overseeing elections, advancing fundamental freedoms (human rights), establishing reintegration and recovery services, and restoring development conditions.¹¹³ In 1999, the Brahimi Report on United Nations Peace Operations agreed with Annan, recommending that the U.N. develop the capacity to contribute to peacebuilding, both preventative and post-conflict, in a "truly integrated manner".¹¹⁴ In a specific feature of the study, Brahimi recognized social and economic roots of conflict by stating that funding for the war against corruption, the introduction of humanitarian demining programs, a focus on human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) education and management, and action against other diseases were all necessary complements to successful peacebuilding.¹¹⁵

Furthermore, "return sustainability" is an issue that must be addressed if repatriation is to be effective in the long run".¹¹⁶ The ICISS elucidated that the concept of return sustainability involves cultivating sufficient social and economic environments for those returnees. This includes taking appropriate steps to make provisions for education, health, and "basic services" and is linked to general reformation.¹¹⁷ It is also required of the intervening state to ensure the elimination of corruption, promote and support good governance, and secure long-term "economic regeneration of the country".¹¹⁸

The ICISS defines development as the "final peacebuilding responsibility" and notes that it is reasonable to do so to foster "economic growth" and "creation of markets and sustainable development".¹¹⁹ The ICISS emphasized the importance of promoting economic growth, putting

¹¹² Kofi Annan, *The Causes of Conflict and the Promotion of Peace and Sustainable Development in Africa*, Statement by the International Committee of the Red Cross (ICRC) New York, 9 October 1998.

¹¹³ *Supra* note 10 at 235.

¹¹⁴ Brahimi Report, para. 6.

¹¹⁵ International Commission on Intervention and State Sovereignty. (Dec. 2001), Para 5 See N. 25.

¹¹⁶ *Ibid*

¹¹⁷ *Ibid*

¹¹⁸ *Ibid*

¹¹⁹ *Ibid*

the spotlight on the fact that it is intricately tied to law and order. Also, it has grave implications for the country's rehabilitation in general. To this end, the ICISS stated:

“Rather than extending long or punitive prohibitions, the occupiers must find a justification to end whatever discriminatory economic measures they might have implemented against the nation before or during the invasion as soon as possible”.¹²⁰

Intervening countries are also responsible for ensuring that “development responsibilities” are transferred to “local leadership” as soon as possible and legally.¹²¹ The idea is to build a development mechanism, manage it as effectively and efficiently as possible so that it has a long-term impact, and then relinquish it to the hands of the nation in question. This strategy is critical for the restoration responsibility because it gives people a sense of optimism about their country's future and development.¹²² The ICISS seeks to require that intervening states improve the governance and socio-economic conditions of the targeted state and seeks to impose upon the intervening state a duty to do so.

Economic growth and development directly affect the country's law and order, but it also implies its overall recovery¹²³. This constitutes a reconstruction of the destroyed infrastructure, and as discussed above, it will include the construction of new infrastructure that will facilitate an efficient rebuilding process. Evans cautions against having an exit timetable when deciding to intervene in a country where there are massive human rights violations and calls for an exit strategy instead.¹²⁴ Collier posits that economic growth is the right exit strategy for an intervention in the same vein, answering allay questions and doubts about the intervention itself.¹²⁵ However, it is essential to note that full economic development and sustainable development are dependent on political stability and until such is achieved, it is difficult for the intervened state to bounce back to its pre-liberation stage.

¹²⁰ *Ibid*

¹²¹ *Ibid*

¹²² *Ibid*

¹²³ Louis Aucoin, “Building the Rule of Law and Establishing Accountability for Atrocities in the Aftermath of Conflict” (2007) 18.

¹²⁴ *Supra* note. 63 at 152.

¹²⁵ P. Collier Wars, guns, and votes (New York: Harper 2009) 52.

2.2 Duty to Rebuild.

The question that emerges is: why is it necessary to delegate the responsibility for rebuilding? Also, to be claimable, responsibilities must be delegated to duty-bearers.¹²⁶ Unless specific duty-bearers are identified and delegated, the uncertainty may prevent them from acting because they are unaware of their responsibilities. Conversely, because of the uncertainty, duty-bearers can deceitfully delay carrying out their responsibilities. Therefore, as Gheciu and Welsh point out, “the lack of accountability around the responsibility to rebuild still leads to a transfer of responsibility, allowing states and international organizations to shirk their commitments”.¹²⁷

According to May,¹²⁸ one of the most challenging issues in the after-intervention debate is whether the ‘just’ and ‘unjust’ sides of the war must rebuild. Different schools of thought suggest different duty-bearers. Many foremost supporters of the pertinence of jus post bellum for Just War Theory support what Pattison calls the “Belligerent Rebuild Thesis”.¹²⁹ According to the Belligerents Rebuild Thesis, the warring party must rebuild. This is often said in the sense of unjust aggressors (in terms of jus ad bellum) – that is, unjust aggressors may heal from wars to repair the damage they have caused. This point was often made in the aftermath of the 2003 Iraq War. For example, former U.S. Secretary of State Colin Powell is said to have said, “You broke it, you own it”.¹³⁰

Similarly, Gary Bass, a leading proponent of the Belligerents Rebuild Thesis, claims that unjust ad bellum aggressors must bear rebuilding costs. Since “costs of economic regeneration must be borne by someone, after all, he claims, it may as well be the aggressors’”.¹³¹ Pattison rejects this view and argues that there is pro tanto, collective, international responsibility to rebuild.¹³² The application of R2P connotes a shift of responsibilities to the international community based on the

¹²⁶ Miller, David. 2001. Distributing Responsibilities. *Journal of Political Philosophy* 9 (4):453–71. 2009. The Responsibility to Protect Human Rights. In *Legitimacy, Justice, and Public International Law*, edited by Lukas Meyer, 232–51. Cambridge: Cambridge University Press; Tan, Kok-Chor. 2006. The Duty to Protect. In *NOMOS XLVII: Humanitarian Intervention*, edited by Terry Nardin and Melissa S. Williams, 84–116. New York: New York University Press.

¹²⁷ Gheciu, Alexandra, and Jennifer M. Welsh. 2009. The Imperative to Rebuild: Assessing the Normative Case for Post-conflict Reconstruction. *Ethics & International Affairs* 23 (2):121-46.

¹²⁸ M Wählisch, ‘Conflict Termination from a Human Rights Perspective: State Transitions, Power-Sharing, and the Definition of the ‘Post’ in L May Jus Post Bellum, Grotius and Meionexia’ in C Stahn et al (eds.), *Jus Post Bellum: Mapping the Normative Foundations* (2014) Oxford University Press 25.

¹²⁹ James Pattison “Jus post bellum and the Responsibility to Rebuild” (Cambridge: Cambridge University Press, 2013) 636.

¹³⁰ *Supra* note 128 at 124.

¹³¹ Bass, Gary J. 2004. Jus Post Bellum. *Philosophy & Public Affairs* 32 (4):408; Also see, Rodin, David. 2011. Ending War. *Ethics & International Affairs* 25 (3): 359–69. Rodin argues that the US and its allies were obligated to remain in Iraq and Afghanistan.

¹³² *Supra* note 130 at 636.

failure of a state to protect its population from human rights violations.¹³³ This shift triggers all the three pillars of R2P proposed by ICISS, making it imperative for the international community to rebuild when it resorts to intervention.¹³⁴ Because there exists no outright framework on duty to rebuild, intervening states have always exited prematurely after intervention leaving the intervened state in a more devastating situation. Miller, therefore, posits that there is a need for the international community to set out a framework on duty to rebuild clearly.¹³⁵

The Belligerents Rebuild Thesis, on the other hand, is not limited to *ad bellum* unjust aggressors. It should be extended to all winners, regardless of how just their fight was in terms of *jus ad bellum* ideals (for example, the victorious belligerents must rebuild and ensure that the defeated belligerent's fundamental needs are met). In cases of effective humanitarian action against 'genocidal nations', Bass believes that the interveners are responsible for rebuilding by punishing war crimes, reforming the state's schooling infrastructure, and imposing more democratic political structures¹³⁶. What are the responsibilities of interveners? According to Bass, if an intervener fails to rebuild a defeated belligerent in such cases, it raises concerns about whether the initial war was, in fact, a situation of just humanitarian intervention.¹³⁷

This research paper focuses on rebuilding after an intervention, whether it is done by consent from the intervened state or by force. Just as there is a duty to rebuild, there is a corresponding right to rebuild.¹³⁸ To establish responsible for rebuilding, the two issues of right and duty to rebuild must be considered.¹³⁹

2.3 Assigning the Duty to Rebuild

As canvassed earlier, there is an international obligation to rebuild. However, how does this assist in determining who can rebuild? To determine who must rebuild – and which body will do so justly – two key questions must be addressed: (i) who has the right to rebuild, and (ii) who must rebuild.

¹³³ Carsten Stahn, Jennifer S Easterday & Jens Iverson, "Jus Post Bellum Mapping the Normative Foundations" 610.

¹³⁴ *Ibid.*

¹³⁵ Miller, David. 2001. Distributing Responsibilities. *Journal of Political Philosophy* 9 (4):453–71. —. 2009. The Responsibility to Protect Human Rights. In *Legitimacy, Justice, and Public International Law*, edited by Lukas Meyer, 232–51. Cambridge: Cambridge University Press.

¹³⁶ *Supra* note 132 at 412.

¹³⁷ *Supra* note 132 at 401.

¹³⁸ *Supra* note 79 at 15.

¹³⁹ *Ibid.*

(i) ***The Right to Rebuild***

We ought to know who has the authority to rebuild, and if an agent would not have the authority, their presence in the rebuilding process will be illegal. Consider this scenario: If Tajikistan were to rebuild post-conflict Afghanistan, its meagre finances would undoubtedly render it inefficient, worsening Afghanistan's human rights situation. Tajikistan seems to be denied the right to rebuild in this situation. As a result, before we can decide who can rebuild, we need to figure out which agents have the right to do so. It is beyond the scope of this thesis to present a fully fledged account of the principles of the right to rebuild. As a result, in a similar way to John Lango's application of Just War Theory ideas to other domains, this study briefly sketches several relevant principles – drawing on the literature on *jus ad bellum*, humanitarian action, peacebuilding, and *jus post bellum*.¹⁴⁰

The first principle is that there needs to be just cause for rebuilding. The national community that could be affected by the rebuilding must be devoid of just institutions. There is no reasonable need to rebuild a political party that has just institutions or is in the process of establishing them.¹⁴¹ The political community's right to self-determination will be jeopardized if these institutions are rebuilt. Thus, for an agent's involvement in the rebuilding process to be justified, such an agent should have a right to rebuild.¹⁴² The rebuilding should be justified and have a likelihood of being reasonably practical.

The second required factor is that the rebuilding can be enough to accommodate increased demand. This criterion can be understood narrowly to suggest that rebuilders would be more likely than non-rebuilders to promote fundamental human rights over time (primarily through establishing and promoting only political institutions). As previously said, a rebuilders is not permitted to rebuild if doing so would exacerbate the situation. This has unforeseen implications, such as impacts on international relations and societal self-determination in the long run. There are a variety of factors that contribute to a rebuilders's efficiency, including being legitimate by local actors, having adequate resources, restructuring experience, U.N. authority, devolving power to local actors, and,

¹⁴⁰ Lango, John 2007. Generalizing and Temporalizing Just War Principles: Illustrated by the Principle of Just Cause. In *Rethinking the Just War Tradition*, edited by Michael Brough, John Lango, and Harry van der Linden, 75–95. Albany: SUNY Press. Lango. 2009. Military Operations by Armed UN Peace-keeping Missions: An Application of Generalised Just War Principles. in *The Moral Dimension of Asymmetrical Warfare: Counterterrorism, Western Values, and Military Ethics* edited by Th. A. van Baarda and D.E.M. Verweij, 115–33. Leiden: Martinus Nijhoff.

¹⁴¹ *Supra* note 130 at 652

¹⁴² *Supra* note 79 at 14

as the ICISS suggests, a “post-intervention strategy to help ensure that the circumstances that triggered the military intervention do not repeat themselves”.¹⁴³

In addition to these two necessary conditions, some contributing factors are essential in establishing that a rebuilders has the right to rebuild. For a future rebuilders to have the right to rebuild, it must first meet a certain level of justifiability. A potential rebuilders can exceed this threshold if they do well on any or more of these criteria. As a result, these contributory factors are not generally fundamental (especially in the extraordinary case when a prospective rebuilders will work effectively at rebuilding without fulfilling these conditions, which can help it achieve the threshold). They may, however, influence the permissibility of a potential rebuilders in general. The most morally crucial contributing factor is the need for rebuilders to represent the means, policies, and ambitions of those in the rebuilding community. If, for example, members of the political class do not want their community rebuilt by the agent in any manner, they should respect their decision¹⁴⁴. To satisfy this requirement, rebuilders will frequently need to include locals in the decision-making phase actively and use 'hybrid' peacebuilding strategies.¹⁴⁵

Costs for the rebuilding process should also be borne by agents liable for rebuilding, and any other innocent actor can only be required to bear a reasonable cost.¹⁴⁶ This means that the cost of rebuilding should be shared amongst the agents without necessarily burdening the citizens of one agent with the cost of rebuilding the intervened state.¹⁴⁷

(ii) *Assigning the Duty to Rebuild*

Who must rebuild? Any future duty-bearer must first have the right to rebuild; it must fulfill the requisite criteria and do well on any contributing factors for its rebuilding to be permissible. There are many options for assigning the rebuilding responsibility to those who follow this criterion. In

¹⁴³ ICISS 2001, 39.

¹⁴⁴ A fuller defense of this factor than is possible here would need accounts of whose opinions of those in the political community should be taken into consideration (for example, should those who are responsible for the conflict be included?), how conflicting views should be weighed (for example, is majoritarianism acceptable?), how conflicts with other values should be responded to and how potential rebuilders might be representative.

¹⁴⁵ See, further, ICISS 2001, 44. It is also worth noting that some of the critiques of liberal peacebuilding and the call for a hybrid approach to peacebuilding seem to stem from the concern that rebuilders are not sufficiently reflective of this factor. That is, rebuilders do not adequately reflect the opinions of those in the relevant political community by, for instance, involving them significantly in decision making.

¹⁴⁶ *Supra* note 79 at 11.

¹⁴⁷ *Ibid.*

general, David Miller proposes four possible methods of allocating responsibilities: (a) causal obligation, (b) moral obligation, (c) capability, and (d) society.¹⁴⁸

a. Causal responsibility:

The first way of assigning the rebuilding responsibility is by causal responsibility, suggesting that the belligerents should be assigned the duty. In addition to the belligerents, other agents, such as those who funded the war or other groups that sparked the war, may share causal responsibility. However, it seems to be incorrect to believe that those who started the war should rebuild. Assume Kurdistan secedes (rightfully) from Turkey, resulting in a conflict between Turkey and Iraq as Iraq continues to protect Kurdistan. It appears to be an error to entrust Kurdistan with the rebuilding of Turkey or Iraq solely because it seceded. With its scarce capital, Kurdistan may not be the right location for it. “Backward-looking theories of causal accountability contribute imperfectly to the forward-looking challenge of solving a situation”, according to Gheciu and Welsh, since “the actor who places another actor at risk is not the correct one to solve the dilemma”.

b. Moral Responsibility:

Another way to delegate the rebuilding burden is to focus it on moral responsibility for the war, culpable or minimally responsible for the unjust war being charged with rebuilding. However, as we have seen, this position also seems to be morally problematic. Many responsible for injustice should have reparative obligations and, at the very least, may pay for the rebuilding, but this does not imply that they should rebuild. They do not have the legal authority to rebuild.¹⁴⁹

Agents that bear the reparative duties have a moral responsibility to rebuild if they also have a right to rebuild, as discussed above.¹⁵⁰ The moral responsibility alone does not suffice for an agent to bear the responsibility; effectiveness is equally important. In as much as these factors are essential in determining who bears the responsibility to rebuild, the question of capacity is the most crucial factor of all.¹⁵¹ The U.N. seems to be better placed to have the capacity to rebuild

¹⁴⁸ Miller, David. 2001. Distributing Responsibilities. *Journal of Political Philosophy* 9 (4):453–71. — 2009. The Responsibility to Protect Human Rights. In *Legitimacy, Justice, and Public International Law*, edited by Lukas Meyer, 232–51. Cambridge: Cambridge University Press.

¹⁴⁹ Moreover, as argued above, it is questionable even whether moral responsibility is helpful for determining who should pay to rebuild since tracing culpability may be extremely difficult and noncompliance with reparative duties can be expected.

¹⁵⁰ *Supra* note 79 at 24.

¹⁵¹ *Ibid.*

most justifiably, and in 2005, it set up a Peace Building Commission (PBC), a coordinating forum for dealing with post-conflict situations.¹⁵²

c. Capacity (or, more precisely, moral justifiability):

The third – and safest – the choice is to enlist the assistance of a professional rebuilders. The potential rebuilders who is most likely to excel based on the principles mentioned in the previous section should be given the task of rebuilding. As such, it should be the responsibility of the future rebuilders, whose rebuilding is more morally justifiable, as indicated by these standards. The rebuilders's possible capacity would have a significant effect on how justifiable an agent's rebuilding is. To that point, the most competent rebuilders can always be the one who rebuilds for those with the right to do so.

d. Community:

Society is a fourth way to delegate responsibility for rebuilding. Some political communities might have unique bonds, implying that those with these specialties are responsible for rebuilding. However, when it comes to rebuilding after the conflict, this method of assigning responsibilities is unconvincing, and specialties do not seem to have any ethical value.

2.4 The ICISS and Sovereignty as Responsibility

According to the conventional Westphalian conceptualization, sovereignty stresses territorial law and locates “supreme legal and political authority with territorially delimited states”.¹⁵³ Sovereignty is described as the “legitimate authority to absolute, unqualified, and supreme rule over a defined territory”.¹⁵⁴ It is selective to the degree that no monarch or state “reserved the privilege to mediate in the sovereign undertakings of different countries”; unqualified in so far as that within the regional limits of their states, rulers delighted in unfit authority over their residents; lastly, it is preeminent in the sense that there is no constitutional or legal authority above the state.¹⁵⁵ As previously mentioned, the ICISS suggested a reconceptualization of Sovereignty, adding a fourth dimension to it and envisioning a threefold responsibility of states, borrowing

¹⁵² Dieter Fleck, “The legal status of personnel involved in United Nations peace operations” (2013) 95:891–892 *Int Rev Red Cross* 613–636, online: <https://www.cambridge.org/core/product/identifier/S1816383114000290/type/journal_article>. (Accessed on 12th May 2020).

¹⁵³ Anthony McGrew, “Globalization and Global Politics,” in *The Globalization of World Politics: An Introduction to International Relations*, 3rd ed., edited by John Baylis and Steve Smith (Oxford: Oxford University Press, 2005), 30.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

Deng and Cohen's terminology.¹⁵⁶ This reconceptualization does not mean a change or dissipation of state sovereignty, but rather a necessary shift “from sovereignty as authority to sovereignty as responsibility in both internal and external roles”.¹⁵⁷

In terms of states' threefold responsibilities, the study asserts that states are first and foremost responsible for securing and preserving the life and safety of their people, as well as supporting their wellbeing.¹⁵⁸ Second, it informs us that central governments are accountable not only to their citizens on a domestic level but also to the international community through the United Nations, and that, in the end, states are responsible and accountable for their actions; in other words, “they are responsible for their acts of commission or omission”. The report's central claim is:

With State sovereignty comes responsibility, and the primary responsibility is to protect its people, and this responsibility first lies with the state itself. When civilization causes substantial damage due to civil conflict, insurrection, repression, or state failure, and the state in question is unable or unwilling to stop or prevent it, the principle of non-intervention gives way to the international responsibility to protect.

In response to the last section of the last sentence, the report explains that when a state is either unwilling or unable to fulfil this responsibility, the state experiences an abrogation of Sovereignty. The international group of states takes on the responsibility of protecting one another.¹⁵⁹

2.5 Humanitarian Intervention and The Responsibility to Rebuild

Hugo Grotius' writings in the 16th century laid the groundwork for the concept of the global power of intervening when a state fails to meet its citizens' obligations.¹⁶⁰ In a scenario where the target state is repressing its people, Grotius proposed that a foreign state might aid citizens of another state engaging in legal opposition to this kind of repression.¹⁶¹ However, humanitarian intervention was first mentioned in foreign legal literature after 1840, and two interventions stand out as being primarily responsible for this.¹⁶² The first was a British, French, and Russian intervention in Greece

¹⁵⁶ ICISS, *The Responsibility to Protect*, 13; Grono, Nick. “Darfur: The International Community's Failure to Protect”. *African Affairs* 105 (2006): 623; Williams, Paul D., and Alex J. Bellamy. “The Responsibility to Protect and the Crisis in Darfur”. *Security Dialogue* 35 (2005): 28.

¹⁵⁷ ICISS, *The Responsibility to Protect*, 13.

¹⁵⁸ *Ibid.*

¹⁵⁹ Badescu, Cristina G., and Linnea Bergholm. “The Responsibility to Protect and the Conflict in Darfur: The Big LetDown”. *Security Dialogue* 40 (2009): 141; Lee Feinstein and Anne-Marie Slaughter, “A Duty to Prevent”, *Foreign Affairs* 83 (2004): 141.

¹⁶⁰ Quinn, D.O. “The Responsibility to Protect.” M.A. diss., Canadian Forces College, 2007; 6.

¹⁶¹ *Ibid.*

¹⁶² ICISS, *Research Bibliography, Background*, 16

in 1827 to prevent Turkish killings and the repression of citizens linked to rebels, while the second was a French intervention in Syria in 1860 to defend Maronite Christians.¹⁶³ Between 1827 and 1906, European powers launched five “major threats” against the Ottoman Empire, and by the second decade of the twentieth century, the case for intervention had broadened to include “the welfare of foreign-born nationals”.¹⁶⁴

There is no settled agreement as to what constitutes humanitarian intervention. This is because of the existing disagreements over whether the action is limited to instances without consent from the host state or when authorization solely is emanating from the U.N. Security Council.¹⁶⁵ To the critics of humanitarian intervention, the theory is an oxymoron that serves as a basis for limited military activity without formal sanctions and an exercise that only produces ambiguous outcomes.¹⁶⁶

The ICISS report sought to reconcile sovereignty with the need to shield people from grave human rights abuses, stressing humanitarian action over R2P's protection and rebuilding aspects.¹⁶⁷ This research paper posits that the point of departure between R2P and humanitarian intervention is responsible for rebuilding. Pattison argues that humanitarian intervention is part of the more important principle of the R2P. The Commission's report was more palatable to most third-world countries because of its ability to address both the pre-intervention, intervention, and post-intervention periods.¹⁶⁸ It can then be argued that the rebuilding responsibility was set to fill in the gap that existed in the principle of humanitarian intervention by ensuring that human rights protection remained a priority even after intervening in a state. The Commission underscores the need to have a continuum of measures to respond to mass human rights violations, including prevention, reaction, and rebuilding.¹⁶⁹

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

¹⁶⁵ C.G Badescu, *Humanitarian Intervention and the Responsibility to Protect: Security and Human rights* (2011).

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

¹⁶⁸ T.G Weis et al 'The Responsibility to Protect: Challenges and opportunities in light of the Libyan intervention.' (2011) e –International Relations, available at <https://www.files.ethz.ch/isn/181082/R2P.pdf> (Accessed on 12 May 2020).

¹⁶⁹ The responsibility to rebuild is therefore an important aspect of R2P especially when the international community resorts to military intervention.

2.6 Conclusion

The International Commission on Intervention and State Sovereignty created, proposed, and advocated the Responsibility to Protect (R2P) principle, including the Responsibility to Rebuild. The responsibility to rebuild presupposes the existence of working structures that were destroyed during the war. However, as mentioned above, Evans also argues that this responsibility extends to building new structures that never existed before. This chapter opines that it is challenging to rebuild a world that has been scarred and ripped apart by conflict and terror. Distrustful state institutions and a tormented and traumatized populace are faced with the daunting task of (re)building a peaceful and prosperous post-war community. Material damage is relatively easy to repair if supplies are available where and for as long as needed. It will only be a matter of time before critical infrastructure is repaired, highways, roads, and schools are reconstructed, and farmland is cleared of mines if fighting does not return. Rebuilding state systems and organizations, on the other hand, is a much more challenging task. Government agencies at all levels, from local to national, must be re-established, staffed with qualified and trustworthy individuals, and funding for a period by international actors if possible. Security agencies and other public utilities must be rebuilt or built from the ground up, mainly if they were directly involved in violence before and during the war. Armed non-state entities and statutory powers, and intelligence agencies must be vetted and retrained before being absorbed into post-war security institutions. Disarmed and demobilized individuals must be reintegrated into everyday life.

Going further, this chapter enunciates that healthy, efficient, and responsible political and security sector governance should preferably continue with new leaders who have not been corrupted by war. Participation, the rule of law, fairness, responsiveness, consensus focus, efficacy and performance, and responsibility are all values that can drive good governance. It is essential to establish and maintain peaceful mechanisms for national dialogue and conflict resolution. Also, disarmament, demobilization, and reintegration (DDR) projects, as well as transitional justice programmes, must be directed by – and preferably as an integral part of – a long-term security sector reform plan to ensure that the brutality and abuses suffered explicitly or indirectly by the actions of the state and its security agencies are not replicated.

Dropping the Responsibility to Rebuild from R2P rhetoric may make it less unappealing and more appropriate to adhere to the R2P agenda, which is understandable from some member states'

viewpoints. Both prevention and reaction will benefit from a fog of ambiguity and non-commitment, which is more challenging to extend to rebuilding tasks that are far more evident and clearer to those eager and able to help. Although most of this chapter will concentrate on conflict and post-conflict situations within the framework of R2P, the changing dedication to reconstruction in an R2P context is possibly a result of – and could have implications for – commitments to broader post-conflict peacebuilding and reconstruction agendas.

This chapter also addressed why it is necessary to delegate the responsibility for rebuilding, assigning the duty to rebuild. It opines that to determine who must rebuild – and which body will do so justly – two key questions must be addressed: (i) who has the right to rebuild, and (ii) who must rebuild. It also discusses the four possible methods of allocating responsibilities: (a) causal obligation, (b) moral obligation, (c) capability, and (d) society.

The U.N. should, therefore, facilitate the rebuilding process in an intervened state, and this does not preclude, in any way, states that have the capacity and are willing to help in the rebuilding process. The rebuilding agents should also ensure that they enable the local leaders by actively engaging them in the rebuilding process; this is important for transferring the project to the local authorities. Hence, activities for rebuilding cannot be imposed; instead, they must be focused on consensus and ultimately encourage the local population to carry out these activities on their dime. The rebuilding operation must have the requisite expertise to empower the beneficiaries to begin rebuilding activities after the international assistance stops.

The responsibility to rebuild does not encourage inordinate control over territories without an exit strategy, neither is it a process that makes the beneficiaries dependent on the rebuilding agents. If the beneficiaries are made entirely dependent on the rebuilding actors without active engagement, the propensity of sliding back to conflict is very high. This caution shall be demonstrated in chapter three when discussing the rebuilding process of Kosovo.

CHAPTER THREE
**THE RESPONSIBILITY TO REBUILD THROUGH THE PRISM OF KOSOVO, LIBYA,
AND IRAQ**

3.0 Introduction:

This chapter argues that the world has slowly moved away from the principle of humanitarian intervention and now is adopting R2P; it asserts that there has not been a political will from the major world powers or even some African states to implement R2P effectively. Put differently, the conspicuous omission of the responsibility to rebuild in the World Summit Outcome Document demonstrates how the world pays little attention to post-conflict societies. This chapter discusses the responsibility to rebuild through the prism of Kosovo, Libya, and Iraq. Using three case studies, this chapter will discuss the need to have the international community collaborate with other agents to rebuild the intervened state to achieve the ultimate protection of human rights. Using three case studies, wit, Kosovo, Libya, and Iraq, this chapter will discuss the need to have the international community collaborate with other agents to rebuild the intervened state to achieve ultimate protection of human rights. The two situations in Kosovo and Iraq have raised questions on the legitimacy of the intervention since the U.N. Security Council had not sanctioned such interventions. While this question may be necessary for a debate of humanitarian intervention versus sovereignty, it cannot negate the fact that there were mass human rights violations, and after the interventions, there was also a need to rebuild.

The theoretical development about the responsibility to rebuild in international law discloses an apparent move towards a statistical understanding of the rebuilding stage of the responsibility to protect (R2P); what was first considered a segment of the broader international protection responsibility is presently seen as a national responsibility of states. This recalibration of the responsibility to rebuild emanates from the notions' connection with the "reactive" component of the R2P and the shifts within the broader normative environment. Statist understanding of the element of responsibility to rebuild has demonstrated itself firmly in the reconceptualization of the broader international responsibility to rebuild as a slim responsibility to render assistance in constructing the capability of states subjected to protection intervention. At the same time, they emphasize the domestic possession of the rebuilding process in the wake of protection intervention. In paragraph 138 of the World Summit Outcome Document, the Member States

unequivocally accounted for the primary role of the State. The States unanimously came into an agreement that:

*Any state bears responsibility for preventing genocide, war crimes, ethnic cleansing, and crimes against humanity among its people. This responsibility encompasses the prohibition of the crimes mentioned above and abstaining from acts of provocation that may incite them. We, therefore, agree to this responsibility and will be guided by it.*¹⁷⁰

According to the United Nations Secretary-General, this solemn pledge was “remarkable for its continuity, clarity, and lack of caveats”.¹⁷¹ He maintained that the R2P’s “first pillar” was based on “long-standing international law commitments”. Although these first pillar responsibilities are well established in international law, and the four crimes related to R2P (war crimes, genocide, crimes against humanity and ethnic cleansing) are expressly prohibited, the precise nature of the acts constituting these four crimes and the scope of the State’s responsibility to prevent them and protect vulnerable populations is more explicit about genocide and war crimes than about crimes against humanity and ethnic cleansing¹⁷².

The Convention on the Prevention and Punishment of the Crime of Genocide, which the United Nations General Assembly unanimously adopted on December 9, 1948 Resolution 260, codifies states legal responsibility for the crime of genocide¹⁷³. There are approximately 138 State Parties to the Convention, widely regarded as *jus cogens* and thus a component of international customary law¹⁷⁴. The prohibition of genocide, the precise definition of the offence, and the articulation of the obligation to deter genocide and prosecute offenders are three points of concern for our purposes in the Convention. Article 1 of the Convention expressly prohibits genocide and

¹⁷⁰ United Nations, “2005 United Nations World Summit” in Yearbook of the United Nations (UN, 2005) 45.

¹⁷¹ Ban Ki-moon, *Implementing the Responsibility to Protect*, on RtoP at the United Nations: An Educational Tool by The International Coalition for the Responsibility to Protect; <http://www.responsibilitytoprotect.org/Sept%202014%20UN%20and%20RtoP.pdf#:~:text=United%20Nations%20%28UN%29%20Secretary-General%20Ban%20Ki-moon%20established%20the,war%20crimes%2C%20crimes%20against%20humanity%20and%20ethnic%20cleansing.> (Accessed 22nd August 2020) para. 13.

¹⁷² Paragraph 138 of the 2005 World Summit Outcome Document

¹⁷³ Convention on the Prevention and Punishment of the Crime of Genocide; *United Nations Audiovisual Library of International Law*. Accessed 22nd August 2020.

¹⁷⁴ Caroline Fournet, *The Crime of Destruction, and the Law of Genocide: Their Impact on Collective Memory* (Aldershot: Ashgate, 2007), p. 99 and Jan Wouters and Sten Verhoeven, ‘The Prohibition of Genocide as a Norm of *jus cogens* and Its Implications for the Enforcement of the Law of Genocide’. *International Criminal Law Review* 5/3 (2005), p. 405.

establishes the duty of states to deter and prosecute perpetrators actively¹⁷⁵. Meanwhile, Article 2 of the Rome Statute of the International Criminal Court (ICC) contains the authoritative definition of genocide that the International Criminal Tribunals have since adopted for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY). While some have questioned this term for being overly narrow in its application to just eliminating political, cultural, racial, and religious communities, it is widely acknowledged as authoritative.¹⁷⁶ The regime's precise scope for preventing genocide and punishing offenders remains a point of contention. In *Bosnia v Serbia*, the International Court of Justice ruled that the duty under Article 1 deter genocide allows states to use all reasonable means at their disposal.¹⁷⁷

In contemporary armed conflicts (international or non-international), most casualties are the civilian population. The civilian population are progressively becoming victims of intentional attacks as well as other egregious human rights infringements by the belligerents or parties to the conflict who can be either state and non-state groups, notwithstanding the existence of rigorous legal regulations such as international humanitarian law, of international human rights law and refugee law designed to protect the civilian population from the impact of conflicts. The absence of adherence to those standards and the United Nations Security Council's inability to take adequate steps to safeguard the people in several situations reflects the critical issues concerning preserving the rights of people affected by armed conflicts worldwide. Even when an external intervener interferes to end the mass human rights violations, the situation is not any better. The intervener probably achieves a reprieve, but if there is no commitment to reconstruct the already destroyed infrastructure and systems, human rights will continue being trumped.

¹⁷⁵ William Schabas, *Genocide in International Law: The Crimes of Crimes* (Cambridge: Cambridge University Press, 2000), p. 2.

¹⁷⁶ On the criticism see Martin Shaw, *what is Genocide?* (Cambridge: Polity, 2007). On its status see Wouters and Verhoeven, *The Prohibition of Genocide as a Norm of Ius Cogens and Its Implications for the Enforcement of the Law of Genocide*, p. 403.

¹⁷⁷ Mark Gibney, 'Genocide and State Responsibility'. *Human Rights Law Review* 7/4 (2007), p. 772 and Marko Milanovic, 'State Responsibility for Genocide: A Follow-Up'. *European Journal of International Law* 18/4 (2007), p. 686.

3.1 Kosovo

3.1.1 Brief Historical Background

The history of Kosovo, a territory of approximately 10,836 square kilometres, can be described as quite complicated if being retold in a few lines. Kosovo's people are predominantly Muslim Albanians with little minorities of Bosniaks, Romas, Serbs and Turks.¹⁷⁸ Both the Kosovo Albanians and Serbs assert a claim in this territory which dates to centuries. They both claimed that history gives them pre-eminence over others.¹⁷⁹ Irrespective of which of them came first, the Albanian and Slavic Peoples have coexisted/lived together in the territory of Kosovo for hundreds of years.¹⁸⁰ The Serbs was in active possession of Kosovo until the fourteenth century when the Ottoman Empire defeated the Serbs in a historic battle of Kosovo. To the Serbs, this battle was an emblematic rallying point for Serbian nationalism.¹⁸¹ Serbia regained control of Kosovo from the Ottoman Empire in 1912.¹⁸² and integrated into the newly formed Kingdom of Serbs, Croats, and Slovenes.¹⁸³

The Kingdom of Yugoslavia was established in 1919, and about 10,000 rebels took up arms against the Kingdom's central government in response to the lack of recognition of their fundamental human rights. The suppression of this revolution resulted in heinous human rights abuses and massacres against Kosovo Albanians and the arming of Serbian civilians, and the detention of Kosovo Albanian women and children in detention centers in central Serbia¹⁸⁴. Until the emergence of World War II, most of the lands owned by Kosovo Albanians were seized and reallocated to the states. During World War II, the Axis Powers took possession of Yugoslavia,

¹⁷⁸ Marie-Janine Calic, Kosovo in the Twentieth Century: A Historical Account, in Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, And International Citizenship 19, 23 (Albrecht Schnabel & Ramesh Thakur eds., 2000).

¹⁷⁹ International law seems to favor claims of self determination made by indigenous people based on a "first people" entitlement rationale. See generally Richard Falk, The Rights of Peoples (In Particular Indigenous Peoples), in The Rights of Peoples 17 (James Crawford ed., 1988). This area of self-determination law, while potentially favorable, is probably not relevant here because of the lack of credible historical evidence for either side, Albanian or Serb. Both sides' historical claims have largely been reduced to myth. See Marie-Janine Calic, Kosovo in the Twentieth Century: A Historical Account, In Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, And International Citizenship at 22-23 (Albrecht Schnabel & Ramesh Thakur eds., 2000).

¹⁸⁰ Noel Malcolm, Kosovo: A Short History xxvii (1998). Malcolm wrote this historical account of Kosovo one year before the NATO bombing campaign began in 1999.

¹⁸¹ See Matjaz Klemencic & Mitja Zagar, The Former Yugoslavia's Diverse Peoples (2004), p. 23.

¹⁸² See Hajredin Kuci, *The Legal and Political Grounds for, and the Influence of the Actual Situation on, the Demand of the Albanians of Kosovo for Independence*, 80 (Chi.-Kent L. Rev. 2005). 331, 333.

¹⁸³ See Malcolm, *supra* note 180, at 264. The Federation, as it more formally developed in 1945, also included the Federal Republics of Croatia, Slovenia, Bosnia and Herzegovina, Macedonia, and Montenegro. See Klemencic & Zagar, at 197.

¹⁸⁴ *Supra* note 180 at pp. 273-6.

Kosovo was divided between Albania, Germany (controlled by Italy), and Bulgaria. Throughout this period, most of the Serbian places of worship and monasteries were ruined.

Furthermore, many Albanians in Serbia cooperated with the Nazis to oppose the Serbs. Yugoslavia became a socialist nation in 1945, and the government succeeded in concealing ethnic tensions by adopting the use of force, harassment, and mass relocation of Serbs from Kosovo. The Yugoslavia Constitution of 1946 stipulated that Kosovo would be an independent area within Serbia and the distinct Serbian Republic constitution. Kosovo will oversee its own economic and cultural growth and protect its citizens' rights.¹⁸⁵ Yugoslavia enacted a new constitution in 1963, declaring Kosovo an Autonomous Province and reducing its federal powers. Kosovo Albanians also became more visible in the economic market, government bureaucracy, and municipal police forces during the 1970s.¹⁸⁶ Yugoslavia ratified a new constitution in 1974, granting the Autonomous Province independent status almost equal to Yugoslavia's other six republics. Consequently, Kosovo adopted its constitution, nominated a delegate to the revolving federal presidency, and elected members of the national parliament.¹⁸⁷

After the death of Yugoslav communist tyrant Josip Broz Tito ("Tito") in 1981, racial and religious tensions resurfaced. President Slobodan Milosevic visited Kosovo in 1987, giving a speech in which he called for the "defence of the Serbs sacred rights".¹⁸⁸ Milosevic's message to Kosovo Serbs was: "No one should dare to beat you".¹⁸⁹ He was obsessed with Kosovo, and his policy was that everything must be done to keep Kosovo. Throughout the history of a struggle for autonomous rule of Kosovo, power shifted from Kosovo Albanians to Serbs and back again. Complete Serbian control over the region was re-established in 1989, and this takeover afforded the Albanians the reason for establishing their parallel State in Kosovo. Concurrently, as the Serbs were reintegrating Kosovo within the Serbian legal structure, the Kosovo Albanians announced Kosovo as a republic within Yugoslavia in 1990 and a sovereign state in 1991. For about a decade, most Albanians were

¹⁸⁵ *Ibid.*, pp. 315-7.

¹⁸⁶ *Ibid.*, p. 326.

¹⁸⁷ Paul R. Williams, "Earned Sovereignty: The Road to Resolving the Conflict over Kosovo's Final Status" (2003). *Articles in Law Reviews & Other Academic Journals*. 1819. https://digitalcommons.wcl.american.edu/facsch_lawrev/1819 p. 396.

¹⁸⁸ Noel Malcolm, *Kosovo: A Short History*, p. 346.

¹⁸⁹ Matthew McAllester, *Beyond the Mountains of the Damned: The War inside Kosovo*, p. 57.

devoted to the nonviolent fight for independence, but in 1998, they slowly switched their support to armed struggle¹⁹⁰.

The 1991 E.C. Conference on Yugoslavia aimed at a peaceful resolution of the conflicting aspirations of the peoples of Yugoslavia. The issue of Kosovo was scarcely mentioned at this conference, as it was at the preceding London Conference.¹⁹¹ The war in Bosnia and Herzegovina has captured the world's attention. The General Framework Agreement for Peace in Bosnia and Herzegovina did not address the Kosovo issue when signed in 1995. The results saddened the Kosovo Albanians, and as a result, they began to abandon nonviolent resistance tactics. The Kosovo Liberation Army (KLA) was eventually established because of this.¹⁹² By 1997, the KLA began hit-and-run attacks. Yugoslav troops retaliated by launching large-scale, indiscriminate offensive attacks. In central and western Kosovo, a massive military war erupted in 1998 between the KLA, regular Yugoslav Military units, regular Serbian police, and three specialist police forces of the National Security Service Ministry Interior the Republic of Serbia.¹⁹³ About 200,000 Kosovo Albanians were forced to abandon their villages and seek refuge in the forests and hills by these units. Combat erupted in the Drenica area in February and March 1998. According to reports of human rights organizations, the entire family clans of KLA activists were killed. 85 Kosovo Albanians are said to have been executed, the majority of whom were civilians.¹⁹⁴ This led to the U.N. Security Council resolution 1160 of March 31, 1998. However, the situation continuously deteriorated while other international actors, such as the Contact Group (which consisted of France Foreign Minister, Germany, Italy, the Russian Federation, the U.K, the United States of America (USA) and the European Union (E.U.) attempted to get the war to a peaceful conclusion. In Resolution 1199 of September 23, 1998, the U.N. Security Council declared that the situation amounted to endangering the peace in the region, required the FRY, among other things, to enforce a ceasefire, withdraw forces deployed in Kosovo and allow complete access for humanitarian relief workers.¹⁹⁵

¹⁹⁰ *Federal Republic of Yugoslavia: Abuses against Serbs and Roma in the New Kosovo*, <http://www.hrw.org/reports/1999/kosov2/>.

¹⁹¹ 18th October 1991 Peace Conference on Yugoslavia, Carrington Draft Paper, "Arrangements for a General Settlement", UN Doc. S/23169, Annex VI, Document No. 50 a.

¹⁹² Stefan Troebst, 'The Kosovo Conflict' (1999) SIPRI Yearbook at 50.

¹⁹³ *Ibid.*, at. 47.

¹⁹⁴ October 1998, Human Rights Watch: FRY: Humanitarian Law Violations in Kosovo, Extracts, Document No. 48.

¹⁹⁵ UN Security Council Resolution 1199 (1998); Document No. 89.

The Kosovo Liberation Army (KLA) was accountable for the grave human rights breaches in 1998, comprising kidnapping and killing Serbs and ethnic Albanians deemed collaborators with the State. The brutal confrontations in 1998 came to a head in 1999, when Serbian security forces committed crimes against humanity in the massacre of forty civilians in Racak, prompting the United States and Europe to respond with humanitarian aid, economic sanctions, and official announcements, all aimed at bringing an end to the atrocities.¹⁹⁶ As mentioned in the previous paragraph, Serbian operations in Kosovo are classified as a threat to international peace and stability by Resolution 1199. A transatlantic goal was to prevent Milosevic from completing an ethnic cleansing scheme and seizing full control of the area.

3.1.2 Human Rights Violations in Kosovo

This section is essential for this paper because as a discussion of reconstruction is being advanced, it is necessary to note that before the civil war, Kosovo's judicial system suffered from inequality in ethnic demographics¹⁹⁷. The condition of human rights in the Former Yugoslavia worsened, increasing tension in the country. Among other human rights abuses, there was rampant corruption, intimidation of the media by public officials, and mistreatment of the Albanians¹⁹⁸. Because of politically driven appointments and removals during Kosovo's diminished regional control from 1989 onwards, the Kosovo Albanians became vastly underrepresented and marginalized in the judiciary in the 1990s.¹⁹⁹

The Serbian government committed human rights violations against Kosovo's Albanians, including the Racak Massacre, which prompted the international community to intervene.²⁰⁰ However, accounting for the Serbian government's almost decade-long streak of abuse-free behaviour remains a point of contention. Overall, Kosovo seems to meet the most basic legal condition of unilateral secession. After several months of NATO-led bombardment, the violations of human rights finally came to an end. The NATO military presence, which has remained in the territory as a peacekeeping force since Milosevic signed the deal to remove Serbia's military presence in exchange for the termination of the bombing campaign, is directly responsible for the

¹⁹⁶ *Yugoslav Government War Crimes in Racak*, <http://www.hrw.org/press/1999/jan/yugo0129.htm>.

¹⁹⁷ Martine Durocher 'United Nations Mission to Kosovo: A Violation of the Right to Life?' (2016) *Criminal Law Forum* 395.

¹⁹⁸ Hansjorg Strohmeyer 'Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor' (2001) 95 *American Journal of International Law* 46, 49.

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid* at 35.

long-term stability of the ceasefire. There is no scientific tool for predicting what might have happened if NATO had withdrawn its troops until Serbia began its military operations.

Following a period of severe human rights violations, the international community decided to respond. In March 1998, the U.N. Security Council passed resolution 1160. It demanded an arms embargo on former Yugoslavia, including Kosovo, and the suspension of hostilities and terrorist attacks. It also condemned the Serbian police's disproportionate use of force against civilians and all KLA acts of terrorism.²⁰¹ The Council gave further warnings that should there be no constructive progress towards the peaceful settlement of the issue in Kosovo, it would sanction more action and measures.²⁰² Albeit the resolution, the conflict did not stop, and six months later, the Council passed resolution 1199.²⁰³ Unlike the earlier resolution that did not directly mention the humanitarian violations in Kosovo, resolution 1199 contained bolder language. It expressed the Council's concern over the humanitarian crisis in Kosovo, which according to the U.N. Secretary-General, had led to the displacement of over 230,000 people from their homes.²⁰⁴ The Council ordered that the Federal Republic of Yugoslavia (FRY) and the leadership of Kosovo Albanians "take urgent measures to strengthen the humanitarian situation and avert the humanitarian disaster" by the resolution. The Council did not sanction any military action in Kosovo, despite the latter resolution's strong humanitarian language.

3.1.3 The NATO Intervention

There has been disunity among the Security Council regarding whether humanitarian intervention is justifiable by the principle of the responsibility to protect, particularly as it pertains to unilateral interventions.²⁰⁵ The responsibility to protect has certainly been outlined as the most challenging

²⁰¹ UN Security Council, Security Council resolution 1160 (1998) (On the letters from the United Kingdom (S/1998/223) and the United States (S/1998/272), 31 March 1998, S/RES/1160 (1998), available at: <http://www.refworld.org/docid/3b00f1622c.html> (Accessed 22nd August 2020); UN 'Security Council imposes arms embargo on federal republic of Yugoslavia, pending action to resolve Kosovo crisis,' (1998) Press release Security Council/6496, available at: <https://www.un.org/press/en/1998/19980331.SC6496.html> (Accessed on 24th August 2020). In a vote of 14 to 0 where China abstained stating that the UN should have given the parties to the conflict an opportunity to hold political talks and the resolution would do more than good as it will not help the parties move to negotiations.

²⁰² *Ibid*

²⁰³ UN Security Council, Security Council resolution 1199 (1998) (The situation in Kosovo), 23rd September 1998, S/RES/1199 (1998), available at: <http://www.refworld.org/docid/3b00f14f40.html> (Accessed 22nd August 2020)

²⁰⁴ *Ibid*

²⁰⁵ In this Note, unilateral action refers to both interventions undertaken by collective security arrangements, such as NATO, and individual state action.

and substantive discussions in the Security Council”.²⁰⁶ This dissension has been evident in various conflicts over the past two decades. Numerous interventions have been justified on humanitarian grounds, either by the Security Council or through unilateral actions.²⁰⁷

Tensions arose among diverse cultural groups of the former Federal Republic of Yugoslavia (FRY), which escalated into a civil war in the late 1990s.²⁰⁸ As the state crumbled, the United Nations cannot stop ethnic cleansing, mass bloodshed, and heinous war crimes from sweeping the area²⁰⁹. Kosovo, a tiny part of the FRY, was dragged into a tumultuous political situation.²¹⁰ The situation in Kosovo was identified as a threat to international peace and security in the resolution, but the Security Council could not reach an agreement about how to proceed.²¹¹ However, the condition of human rights in Kosovo was worsening. The NATO states, cautious of the U.N.’s failure in preventing the slaughter in Srebrenica, were growing restless. The U.S President, Bill Clinton, referred to human rights issues in 46% of several hundreds of comments that he made justifying the intervention in Kosovo. Following the unsuccessful peace efforts, NATO started discussing a restricted air campaign against Serbian forces accused of terrifying and intimidating the civilian population.²¹² Germany, France, and the United Kingdom preferred to obtain Security Council authorization to use force before launching airstrikes. At the same time, the U.S. argued that NATO had the legal authority to use the force of its own.²¹³ As a result, NATO’s activity in Kosovo, which began without UNSC support in March 1999, was highly contentious. Using their veto power, France, the United Kingdom, and the United States refused to resolve Russia and China. The intervention caused a schism within the U.N. Security Council's permanent members. The controversy was on how to view the UN Charter, and how to reconcile the Charter's human

²⁰⁶ Theresa Reinold, *Sovereignty and The Responsibility to Protect: The Power of Norms and the Norms of the Powerful*, at 61 (2013).

²⁰⁷ See S.C. Res. 940, U.N. Doc. S/RES/940 (Jul. 31, 1994); S.C. Res. 794, U.N. Doc. S/RES/794 (Dec. 3, 1992); S.C. Res. 688, U.N. Doc. S/RES/688 (Apr. 5, 1991).

²⁰⁸ For a more detailed history of the conflict, see generally Marie-Janine Calic, *Kosovo in the Twentieth Century: A Historical Account*, in *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, And International Citizenship* 19 (Albrecht Schnabel & Ramesh Thakur eds., 2000).

²⁰⁹ Albrecht Schnabel & Ramesh Thakur, *Kosovo, the Changing Contours of World Politics, and the Challenge of World Order*, in *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, And International Citizenship*, supra note 41, at 1, 2–7.

²¹⁰ *Ibid.*

²¹¹ Tim Judah, *Kosovo: War and Revenge 182–85* (2000) (describing the conflicting positions of the permanent five Security Council members before NATO initiated its bombing campaign).

²¹² *Supra* note 211 at 121.

²¹³ For a discussion of the positions of the permanent five Security Council members (the P5) and other states in the Kosovo debate, see generally *Kosovo and the Challenge Of Humanitarian Intervention: Selective Indignation, Collective Action, And International Citizenship*, *Supra* note 41, at 83–148.

rights values on the one hand, and the policy of non-interference in a sovereign nation's domestic relations and the prohibition on the use of force without the appropriate authorization from the UNSC on the other.²¹⁴

The United States and Britain endorsed the intervention as a humanitarian requirement to stop further human rights infringements, protecting the civilian population in wartime, and eventual genocide. Genocide prevention is frequently included as part of the norms of *jus cogens*, but so is the prohibition of force.²¹⁵ Germany argued that the intervention had no legal basis. However, if the prohibition on the use of force Article 2(4) of the United Nations Charter was violated, it could be justifiable on moral grounds. Consequently, Slovenia posits that the Security Council had the fundamental but not the sole duty of maintaining international peace and security.²¹⁶

It must be noted that Russia and China severely condemned NATO's military attacks. Russian authorities, arguably, pushed NATO powers into independent action. Behind closed doors, Russian ambassadors allegedly assured NATO foreign ministers that it would be vetoed if it is taken to the U.N., and if not, it will be denounced²¹⁷. In public, Russian officers chastised NATO's campaign, claiming that "execution elements were ruled out of the draft resolution, and it does not include any clause that would expressly or implicitly authorize the immediate use of force"²¹⁸. A draft resolution that described NATO activities as a gross violation of the United Nations Charter,²¹⁹ presented by Russia to the Security Council, was thwarted by twelve votes to three.²²⁰ China equally criticized NATO action and maintained the position that "when the sovereignty of a nation is in a state of peril, it will be difficult for human rights to be efficiently guarded. Sovereign equality, reciprocal respect for state sovereignty and non-intervention in the domestic affairs of others are essential standards that regulate foreign affairs today".²²¹

²¹⁴ Nicholas J. Wheeler 'The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society' in Jennifer M. Welsh, 43

²¹⁵ Recent Developments in International Law, <http://juscogens.typepad.com/> (Accessed on 28th August 2020).

²¹⁶ Nicholas J. Wheeler, *Saving Strangers: International Intervention in Humanitarian Conflict*, pp. 277-8.

²¹⁷ *Supra* note 211 at 183.

²¹⁸ U.N. SCOR, 53d Sess., 3937th mtg. at 11, U.N. Doc. S/PV.3937 (Oct. 24, 1998).

²¹⁹ S.C. Res. 328, U.N. Doc. S/1999/328 (Mar. 26, 1999); Press Release, Security Council, Security Council Rejects Demand for Cessation of Use of Force Against Federal Republic of Yugoslavia, U.N. Press Release SC/6659 (Mar. 26, 1999).

²²⁰ U.N. Press Release SC/6659, China, Namibia, and Russia voted for the Resolution. Argentina, Bahrain, Brazil, Canada, France, Gabon, Gambia, Malaysia, the Netherlands, Slovenia, the United Kingdom, and the United States rejected the resolution.

²²¹ U.N. GAOR, 54th Sess., 8th plen. mtg. at 16, U.N. Doc. A/54/PV.8 (Sept. 22, 1999).

Following the cessation of NATO activity, the United Nations established the Independent International Commission on Kosovo to investigate the intervention²²². Explicitly justified by the coalition on humanitarian grounds, some regarded the operation as *'legitimate but illegal'*²²³. This additionally established that “the intervention had been justified because all tactful ways had been explored and since the intervention had the impact of emancipating a vast majority of the inhabitants of Kosovo from a long-term subjugation under Serbian control”.²²⁴ To adequately react to a subsequent crisis, the Commission enjoined the international community to operate through the U.N. and bridge the gap between legality and legitimacy.²²⁵

Conclusively, it is safe to state that the intervention of NATO in Kosovo in 1999 was conducted with humanitarian grounds being part of various considerations facilitating the armed action. About the fact that the United Nations would not expressly sanction the intervention in a *de jure* sense, NATO's war was legitimated by previous UNSC Resolutions. It benefited more when it is evident to almost all international observers that FRY forces were responsible for severe violations of the Albanian people's human rights in Kosovo. The activity of NATO in Kosovo gave significant momentum to discussions centred on the character, reason, and significance of such actions in the post-cold war European security environment. Interventions motivated by ethical concerns disclose significant conflicts in the global structure. As noted by Nicholas Wheeler, ‘humanitarian interference reveals disputes among order and fairness at its starkest’.²²⁶ The NATO members who take the measures to rationalize the intervention in Kosovo clearly show the contradictions and disappointments of striving to uphold several human rights standards while breaching others which pertains to the legitimacy or otherwise of the use of the military. Indeed, it was this intervention that resulted in the creation of the International Commission on Intervention and State Sovereignty and the resulting report “The Responsibility to Protect”.

²²² The Independent International Commission on Kosovo, *The Kosovo Report-Conflict, International Response, Lessons Learned* (OUP 2000) 4

²²³ *Ibid.*

²²⁴ *Ibid.*

²²⁵ *Ibid.* at 10–11.

²²⁶ N. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford, Oxford University Press, 2000), p. 11.

3.1.4 Rebuilding Kosovo: International Collaboration

Civil unrest and humanitarian eventualities are common facts in numerous communities. During the post-cold war period, the need to ensure the termination of intrastate conflicts and instill a long duration of peace has now attained the status of priority on the schedule of international actors. The United Nations Secretary-General Boutros Boutros-Ghali's Agenda for Peace in 1992 established the basis for the notion of post-conflict peacebuilding to undertake extensive work in recognizing and supporting structures that will aim at consolidating peace and advancing a feeling of trust and welfare between the populace.²²⁷

This research paper contributes to international law by filling a void in the existing literature on post-conflict rebuilding. As discussed in Chapter 2, post-conflict peacebuilding is the multi-dimensional process of reconstructing a post-conflict society's political, social, and economic dimensions. This comprises giving recourse to the underlying causes of conflict and restoration of social, political, and economic framework in the community with the primary aim of establishing an excellent governmental administration, a constitutional state, socio-economic justice. Building more critical state institutions, promoting greater civic involvement, undertaking economic reforms, deepening civil society, and respecting ethnic identities are necessary components of peacebuilding.²²⁸ This part carries out a thorough qualitative study of how these various international/regional establishments (U.N., E.U., NATO, and OSCE) worked together in assisting Kosovo in recovering. These international stakeholders were all on the same page and had corresponding morals, principles, and vital obligations in averting conflicts, tackling the crisis, conflict resolution, post-conflict reconstruction, advancing democracy and human rights, and creating an institutional framework. The United Nations, the European Union, NATO, and the OSCE's attempts to rebuild Kosovo are in line with the theme of Chapter VIII of the UN Charter, which calls for the constructive participation of regional bodies in ensuring international peace and security.²²⁹ Furthermore, the United Nations Resolution 1244 (1999) demands that the European

²²⁷ *Supra* note. 52 at para. 21.

²²⁷ *Ibid.*

²²⁸ Michael W. Doyle and Nicholas Sambanis, *International Peacebuilding: A Theoretical and Quantitative Analysis* (2000): *American Political Science Review*.

²²⁹ UN Charter, Chapter VIII: Regional Arrangements, <http://www.un.org/aboutun/charter/chapter8.shtml>. (Accessed on 28th August 2020).

Union and other international organizations “promote an exhaustive approach towards the region's economic sustainability due to the Kosovo conflict”.²³⁰

Consequently, the subsequent section compares the goals of the U.N., NATO, E.U and the OSCE missions in Kosovo and assesses the organizational learning and development of their activities. It analyzes how these individual organizations recognize emerging menace, diagnosing security concerns, and address these problems in Kosovo.

a. The Mission of the United Nations (U.N.) in Kosovo

The U.N. Interim Administration Mission in Kosovo (UNMIK) managed Kosovo since the end of the military actions in 1999. Subject to the U.N Security Council (UNSC) Resolution 1244, UNMIK was created on June 10, 1999, with a comprehensive and unparalleled mandate in its nature and structural intricacy. UNMIK's extensive mandate incorporated the creation of a transitional civilian government, fostering the formation of significant independence and self-determination in Kosovo, encouraging the rebuilding of infrastructure, observing civil law and order, fostering human rights guaranteeing the safe return of fugitives and displaced people back to their homes.²³¹ UNMIK was also allocated the power to organize humanitarian aid and efforts to rebuild all international organizations.

The UNMIK initially had four pillars: Civil Authority, Humanitarian Aid, Democratization and Institutional Framework, and Rebuilding and Economic Sustainability. On each of these pillars, a Deputy Special Representative (DSR) was appointed. UNMIK oversaw handling the first pillar - Civil Authority. Initially, the second element, Humanitarian Aid, was within the responsibility of the UNHCR. The initial second pillar of the operation was targeted at supporting the triumphant return of the fugitives to Kosovo. The Mission was completed immediately to a considerable degree; the Humanitarian Aid was progressively eliminated in May 2001 and was substituted by Police and Justice pillar. This second new pillar was under the direct supervision of the U.N. OSCE supervised the Democratization and Institutional Framework pillar right from the inception of the operation, and the E.U. oversaw the Rebuilding and Economic Sustainability element. Also, military protection was provided by NATO.

²³⁰ UN Security Council Resolution 1244 (1999), <http://www.unmikonline.org/misc/N9917289.pdf>, (Accessed on 28th August 2020).

²³¹ S/RES/1244, *Resolution on the Establishment of UNMIK and KFOR*, 10th June 1999.

In 2000 and 2002, metropolitan elections were held for Kosovo's Provisional Institutions of Self-Government (PISG), to which UNMIK logically moved administrative and authoritative obligations. PISG included an Assembly, a President, a Government, and Courts. This established the fourth period of the execution of the UNSC 1244, which is the stage before the last and the fifth stage – the goal of the situation with Kosovo. Subsequently, UNMIK moved back from an administrative role to a monitoring and support role. Nonetheless, Serbs in Kosovo boycotted the 2000 elections, and just 20% of Serbs took part/voted in the 2002 elections.²³²

Furthermore, UNMIK followed an arrangement of “guidelines before status”, intended to accomplish some advancement in gathering different inward benchmarks before the globally disruptive status issue would be tended to. In April 2002, UNMIK set up the “Principles for Kosovo” on eight areas for the setup of Kosovo establishments. The eight areas were: a functional democratic framework, law and order, freedom of movement, sustainable returns, and the rights of societies and their affiliates, economy, property rights (comprising cultural assets). The objective of the principles was to establish a more liberal multiracial community, enhance the class of government sector performance, and advance excellent governmental administration.²³³ Inside these eight areas, 109 objectives are distinguished and introduced to the Security Council in December 2003 in the “Standards for Kosovo report”. This report, thus, was actualized through the Kosovo Standards Implementation Plan (KSIP), which was concluded in March 2004. The SRSG reports routinely to the U.N. Security Council and gives a “specialized evaluation” on actualizing the “Kosovo Standards”.

In 2006, UNMIK went through a critical change, and its column structure was generally deserted, with just the OSCE and E.U structures remaining. Since its establishment, UNMIK has made a global police power and a legal framework. In addition to establishing an operational civil administration including police, making popularity based political climate-conscious fundamental liberties (human rights), repatriating over one million refugees rebuilding the infrastructure and the economic life of Kosovo, it was UNMIK’s critical assignment to encourage a political cycle prompting an exact status of the then Serbian territory.

²³² Mark Baskin, “Building Local Democracy under Conditions of Uncertainty in Kosovo”, summary of his speech at EES noon discussion on January 21, 2004.

²³³ UNMIK, Kosovo Standards Implementation Plan, <http://operationkosovo.kentlaw.edu/symposium/resources/KSIP%20final%20draft%2031%20March%202004b.htm> (2004).

b. EULEX Mission in Kosovo

In April 2006, the European Union Planning Team for Kosovo (EUPT) was set up to prepare for future E.U. crisis management activities in a constitutional state and other aspects, including combatting corruption and organized crime, fortifying multiethnic establishments in Kosovo. EULEX's main goal was to help Kosovo's legal authorities, especially in policing, courts, and customs. It also worked to investigate and prosecute war crimes offences and locate individuals who had gone missing. It was operational in Kosovo areas, mainly by Kosovar Albanians and in the Serb-populated north. The EULEX mission always stresses that its objective is to help the Kosovo judicial systems and the law enforcement bodies develop and fortify an autonomous multiethnic justice system, police force, and customs service.²³⁴ The top priorities of the EULEX mission were to address pressing concerns regarding minority community welfare, corruption, and the fight against organized crime. EULEX implemented a "Programmatic Approach" to improve transparency and statistically evaluate its performance.²³⁵

c. OSCE Mission in Kosovo

The OSCE underlines the standards of global conduct and internal political norms. Just like the E.U., OSCE deployed spectators or intermediaries as well as addressing rights of minorities and transboundary ethnic tension in Europe. Following the commencement of the UNMIK, the OSCE leads pillar III - Democratization and Institutional Framework, under the operational structure of the UNMIK. It has overseen the institution- and democracy-building and establishing human rights and the rule of law in Kosovo. It promotes peace, security, and stability in the regional context by its broad range of activities in conflict resolution. The OSCE collaborates intimately with the U.N. under Chapter VIII of the UN Charter. Since the endorsement of UNSC Resolution 1244, the OSCE Mission in Kosovo has been answerable for administering democratization, establishing institutions, and securing fundamental liberties (human rights). In 1999, OSCE set up the legal framework in Kosovo and checked it to guarantee consistency with global human rights principles. In 1999, the OSCE started its endeavours to help build up the media by setting up the public assistance telecaster, Radio Television Kosovo.²³⁶ The OSCE has been very methodical in planning and overseeing four elections in Kosovo since 2001. The elections were UNMIK's sole

²³⁴ EULEX Mission website, http://www.eulex-kosovo.eu/home/docs/JointActionEULEX_EN.pdf.

²³⁵ The EULEX Programmatic Approach, <http://www.eulexkosovo.eu/strategy/EULEX%20Programmatic%20Approach.pdf>.

²³⁶ UNMIK Factsheet 2008, http://www.unmikonline.org/docs/2008/Fact_Sheet_July_2008.pdf, p. 1.

responsibility and had been delegated to the OSCE. This necessitates the Mission's proactive monitoring of election planning and actions, as well as intervening as needed to deter or correct any alleged wrongdoing or violation of electoral laws. The Central Election Commission (CEC) and its Secretariat were formed with the assistance of the OSCE (CECS). The OSCE was also in charge of educating new police officers on the importance of upholding human rights and democratic policing principles. OSCE went further to establish the Kosovo Police Service School institution, which later developed into the Kosovo Centre for Public Safety Education and Development. During the handing over process of the training and management of the centre, OSCE supported human rights and advanced the human rights education program. Furthermore, through the legal framework and security sector oversight, the OSCE offered a detailed review of human rights accountability in the justice and police sectors.

d. KFOR Mission in Kosovo

NATO changed itself to the prerequisites of the new period and accepted post-conflict reconstruction and stabilization as one of its new objectives in the outcome of the Cold War. A far-reaching approach to NATO tasks to improve its stabilization and rebuilding capacities in post-conflict zones by consolidating military abilities with regular citizens was accepted in the Riga and Bucharest Summits.²³⁷ While the E.U. is improving its autonomous military capacities, NATO is upgrading its regular citizen reconstruction abilities. This is causing a possible strain on the NATO-EU connection.²³⁸

According to the United Nations Security Council Resolution 1244, NATO's Kosovo Force (KFOR) has overseen establishing and maintaining that affair of security in Kosovo since 1999, monitoring and implementing compliance with the Military Technical Agreement's conditions and the UCK²³⁹. KFOR began with 50,000 peacekeeping troops and was eventually left with 16,000 on the ground²⁴⁰. The function of NATO regarding stabilization and reconstruction emerged because of the legitimate need and refined in practical terms. After the conflict in 1999, aside from NATO, international organizations were not present with insufficient force. In this force vacuum,

²³⁷ Oya Dursun-Ozkanca, *Rebuilding Kosovo: Cooperation or Competition Between the EU and NATO?* Paper prepared for delivery at the 2009 EUSA Eleventh Biennial International Conference, Marriott Marina Del Rey, Los Angeles, CA, April 23 - 25, 2009. http://aei.pitt.edu/33053/1/dursun-ozkanca_oya.pdf

²³⁸ *Ibid.*

²³⁹ Kosovo Force, Official Website, <http://www.nato.int/kfor/kfor/objectives.htm>.

²⁴⁰ *Ibid.*

KFOR “had no real option except to play out a few non-military personnel undertakings, from policing obligations to running power plants”. These were then continuously moved to either UNMIK or Kosovar specialists, even though KFOR kept supporting them as necessary. KFOR was and kept on being answerable for giving a protected climate to crafted by the worldwide local area in Kosovo. It continued to aid in security reforms, external defence, the protection of enclaves and religious sites, and supporting police forces if the latter could not correctly respond to internal security threats.

On June 12, 2008, NATO consented to begin executing its new undertakings in Kosovo, i.e., aid the resignation of the Kosovo Protection Corps (KPC) and the foundation of the Kosovo Security Force (KSF), just as the non-military personnel design to manage the KSF. These undertakings are executed in close coordination and conference with the significant neighbourhood and worldwide powers. NATO administered the KPC and direct its disintegration. Under the UNMIK, the KPC was regarded as an interim post-conflict programme. It aimed to provide emergency relief services, conduct a rescue mission, provide capacity for humanitarian assistance in remote areas, assist with demining, and make a significant contribution to the rebuilding of infrastructure and communities. Summarily, the rebuilding process was based on four pillars for which different international organizations were responsible.²⁴¹

- a. Humanitarian affairs had the United Nations High Commissioner for Refugees (UNHCR),
- b. The United Nations oversaw the interim civil administration,
- c. The institutional framework was regulated by the Organization for Security and Cooperation in Europe (OSCE) and
- d. The European Union oversaw reconstruction.

Hilpod argues that this division of labour that the Security Council-mandated Resolution 1244 of 1999 became an experiment of the epochal dimension of the international community’s bid to rebuild a war-torn society from scratch.²⁴² In as much as the preventive aspect of R2P was hailed as a success, the rebuilding element has been said to have failed, albeit with the

²⁴¹ P Hilpod ‘Jus postbellum and the responsibility to rebuild- identifying the contours of an ever more important aspect of R2P.’ (2015) 6 *Journal of International Humanitarian Legal Studies* 294.

²⁴² UN Security Council, Security Council resolution 1244 (1999) (on the deployment of international civil and security presences in Kosovo), 10 June 1999, S/RES/1244 (1999), available at: <http://www.refworld.org/docid/3b00f27216.html> (Accessed 26th August 2020).

concerted efforts by various international actors.²⁴³ The international community put in extraordinary measures for the reconstruction of Kosovo, and most importantly, there was a division of labour and cost-sharing among the rebuilding agents.²⁴⁴ These rather sophisticated measures failed to reconstruct a society that had been completely crippled by oppression, discrimination, and civil unrest because Kosovo was not prepared to take responsibility from the building agents.

That is why the operation in Kosovo is said to have been successful to a certain extent, but the international community failed to put a cherry on the cake. They did not actively engage the beneficiary of the rebuilding exercise, and therefore, by the time the international community was exiting, Kosovo was ill-prepared.²⁴⁵ Hilpod further states that Kosovo was only ready to take up the responsibility of rebuilding after the declaration of independence in 2008.²⁴⁶

3.2 Background to the Humanitarian Crisis in Libya

The international community's focus has been drawn to the Libyan crisis, which has been called a textbook example of where a fast and decisive reaction is needed to maintain order in the face of imminent massacres. In February 2011, people launched political protests calling for Muammar Gaddafi's 41-year rule to come to an end. Protestors consider themselves the victims of mass atrocities²⁴⁷ perpetrated by government security agencies. Demonstrations that erupted in Tripoli's capital spread rapidly across the region, culminating in Benghazi, which became the opposition's stronghold and was subjected to shocking repression and brutality. Gaddafi deployed the national Army to quell the uprising.²⁴⁸ By declaring to the people of Benghazi that his troops would offer "no mercy" to rebels, the Libyan leader made it clear that he intends to continue committing gross human rights abuses²⁴⁹ to rebels. Gaddafi's cruel intention was evident in his powerful televised speech on February 22, 2011, in which he used terminology suggestive of the Rwandan genocide

²⁴³ UN 'Security Council presidential statement offers full support for start of political process to determine Kosovo's future status,' (2005) Security Council Press Release SC/8533.

²⁴⁴ *Supra* note 241 at 302.

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

²⁴⁷ Andrew Johnson & Susie Measure, Gaddafi: What now for Libya dictator, and where does Britain stand? <https://www.independent.co.uk/news/world/africa/gaddafi-what-now-for-libyarsquos-dictator-and-where-does-britain-stand-2220131.html>.

²⁴⁸ Nick Meo, Libya protests: 140 'massacred' as Gaddafi sends in snipers to crush dissent; The Telegraphy: <https://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8335934/Libya-protests-140-massacred-as-Gaddafi-sends-in-snipers-to-crush-dissent.html>.

²⁴⁹ CBS News: Qaddafi vows "no mercy" as U.N eyes action. <https://www.cbsnews.com/news/qaddafi-vows-no-mercy-as-un-eyes-action/>.

and declared that he would rather die a martyr than back down. Gaddafi encouraged his supporters to attack the demonstrators, referring to them as “cockroaches”, and to clean up Libya one house at a time until they surrendered completely. General Muammar Qaddafi retaliated with violence, killing hundreds of protesters.²⁵⁰ The demonstrations turned into revolt on February 20, 2011, and rebel forces took control of many Libyan towns, including Benghazi.²⁵¹ The Security Council passed Resolution 1973, which set up a restricted air space over Libyan airspace and obliged the Member States to “find a way” to protect the Libyan civilian population because General Gaddafi attempted to target them.²⁵² The international community and regional and sub-regional bodies responded to the Libyan government’s provocation by taking several economic, political, and military measures to protect the citizens.

The Gaddafi regime had a notorious track record when it came to human rights violations. The Human Rights Watch (HRW) and Amnesty International, for example, have documented a long list of human rights abuses, including those opposing the regime’s widespread repression. Democratic activists were imprisoned after being acquitted by judges or forcefully disappeared, and freedom of speech, union, and assembly was severely limited. Independent political activity was prohibited. In Libya, the question of impunity was also an oversensitive one. In June 1996, a riot broke out in Abu Salim Jail, and security personnel reportedly killed 1200 inmates to reclaim power under uncertain circumstances²⁵³. Despite the establishment of an official committee to investigate the killings in 2005, no report on the outcomes of the committee has been released. The specific number and personalities of the multitude of detainees executed stay obscure, and no legal proceeding at any point began.²⁵⁴ In February 2011, peaceful protests the government began in Benghazi, Libya’s second-largest city (670.000 residents), after two human rights activists, the founders of the “Abu Salim families’ organizing committee”, called for a rally to demand

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

²⁵² S.C. Res. 1973, ¶ 8, U.N. Doc. S/RES/1973 (Mar. 17, 2011). Russia and China abstained from voting on the resolution. Press Release, Security Council, Security Council Approves “No-Fly Zone” over Libya, authorizing “All Necessary Measures” to Protect Civilians, by Vote of 10 in Favor with 5 Abstentions, U.N. Press Release SC/10200 (Mar. 17, 2011).

²⁵³ Human Rights Watch: Libya: June 1996 Killings at Abu Salim Prison; [Libya: June 1996 Killings at Abu Salim Prison | Human Rights Watch \(hrw.org\)](https://www.hrw.org/report/2006/06/06/libya-june-1996-killings-at-abu-salim-prison), Accessed on 2nd September 2020.

²⁵⁴ Human Rights Watch (HRW) ‘Libya: Rights at Risk’(2 September 2008) 6 http://www.hrw.org/sites/default/files/reports/libya_rights_risk_090808.pdf Accessed 2nd September 2020; Amnesty International, ‘Amnesty International Report 2011- The State of the World’s Human Rights (London, Amnesty International, 2011).

“accountability for the 1996 killings of over 1,000 prisoners in 1999 at Abu Salim prison and more influential civil and fundamental human rights freedom in Libya”.²⁵⁵ Protesters called for a “Day of Rage” on February 17, 2011. This was also the start of the anti-government movement's violent suppression escalating dramatically. With the demonstration wave moving to neighbouring towns, the repression is intensifying, and military and police forces firing live bullets at demonstrators, the death toll skyrocketed.²⁵⁶

Confronted with Gaddafi's apparent plan to slaughter the city's inhabitants, international involvement in reaction to the Libyan government's manifest failure to uphold its Responsibility to Protect was apparent. The warning signs of mass atrocities were seen by civil society, regional, and foreign actors. Instead of sitting and doing nothing as more civilians were killed and being subjected to mass viciousness, these actors critically made a move to forestall these heinous crimes and human rights violations. Hence, there was a need for the international community to invoke the R2P principle when Gaddafi called upon his supporters to target the protesting ‘cockroaches’ and ‘clean house to house’, which was akin to the genocidal language used in Rwanda²⁵⁷. Kristeya argues that Libya provided the real test of the responsibility to protect²⁵⁸. Evidence pointed towards a government indiscriminately attacking its civilians where 233 deaths were reported by February 20, 2011²⁵⁹. The Special Advisers on Genocide Prevention and the Responsibility to Protect articulated Libya's situation, urging the Libyan government to fulfil its responsibility to protect the Libyan people from grave human rights abuses and calling for an urgent end to the bloodshed²⁶⁰. The Human Rights Council (HRC) adopted a resolution calling for the suspension of Libya from the HRC, the government of Libya to protect and stop the human rights violations in the country,

²⁵⁵ Remarks by Fahti Terbil, Lybian lawyer, representing the Youth in the Lybian National Transitional Council (NTC), is one of the two members of Abu Salim families’ organising committee arrested on 15 February 2011, Amnesty International ‘Libya must end protest crackdown’(Amnesty International 16 February 2011) <http://www.amnesty.org/en/news-and-updates/libya-urged-end-protest-crackdown2011-02-16> Accessed on 2nd September 2020.

²⁵⁶ Information regarding the chronology of the events in Libya is available on the guardian.co.uk, Garry Blight, Sheila Pulham and Paul Torpey ‘Arab spring: an interactive timeline of Middle East protests’(20 October 2011) <http://www.guardian.co.uk/world/interactive/2011/mar/22/middle-east-protestinteractive-timeline> Accessed 24th September 2020; Amnesty International ‘Libyan protester shot dead by security forces (Amnesty International 17 February 2011) <http://www.amnesty.org/en/news-andupdates/libyan-protester-shot-dead-security-forces-2011-02-17> Accessed 4th September 2020.

²⁵⁷ Susan Breau ‘The Responsibility to Protect in International Law: An Emerging Paradigm Shift’ (2016) 229.

²⁵⁸ BA Kristeya ‘Assessing the responsibility to rebuild components in post-Gaddafi Libya’ (2016) 47 Journal of International Relations 47.

²⁵⁹ *Supra* note 257 at 230.

²⁶⁰ *Ibid.*

and for an International Commission of Inquiry to be established which would investigate the human rights violations in Libya²⁶¹.

After the failure by the Libyan government to stop the human rights violations and when the non-military measures were not bearing any fruits, the United Nations Security Council passed resolution 1973, which authorized the use of any ‘necessary means to stop the human rights violations in Libya’,²⁶² it also allowed the NATO forces to declare the Libyan airspace a no-fly zone.²⁶³ A two-phased military operation was initiated with Operation Odyssey Dawn conducted by the U.S. forces and was meant to neutralize the Libyan air defences. The second one was Operation Unified Protector, led by the NATO forces and was supposed to protect the civilian population.²⁶⁴

3.2.1 Libyan Crisis: Initial Responses

a. Civil Society: Crisis Requires an Immediate Response Under the R2P Framework

Early in the crisis, the high death toll was a foreshadowing of the Gaddafi forces' violence to come, and it attracted immediate interest from non - governmental organizations, states, and regional organizations. Human Rights Watch reported on February 20, 2011, that the death toll had risen to at least 233 in four days and that government forces were targeting civilians indiscriminately. Civil society organizations started criticizing the use of disproportionate force against protesters as early as February 16, 2011 and called on the Libyan government to release those detained ahead of planned demonstrations.²⁶⁵ Civil society organizations worldwide have pointed to the Responsibility to Protect by publications calling for action and op-eds. Many civil society groups, stressing the need to retain the responsibility to protect people from gross human rights abuses, called on the Libyan Government to put an end to brutality and, in the face of its evident reluctance, called for immediate action by regional actors, individual governments and United Nations institutions to protect Libyans.

²⁶¹ UN ‘General Assembly suspends Libya from Human Rights Council,’ (2011) General Assembly Press Release, available at www.un.org/press/en/2011/ga11050.doc.htm (Accessed on 4th September 2020).

²⁶² UN Security Council ‘Security Council Resolution 1973 (2011) on the situation in the Libyan Arab Jamahiriya,’ (2011) S/RES/1973(2011), available at: <http://www.refworld.org/docid/4d885fc42.html> (Accessed on 4th September 2020).

²⁶³ *Ibid.*

²⁶⁴ *Supra* note 257.

²⁶⁵ International Coalition for the Responsibility to Protect; <http://responsibilitytoprotect.org/index.php/crises/crisis-in-libya> (Accessed on 4th September 2020).

b. Regional Organizations: Calls for Action Help Stimulate International Response

The League of Arab States, criticism and demands for action in response to the violence on February 22, 2011, the Organization of the Islamic Conference (OIC) on February 22, 2011, and the African Union (A.U.) on February 23, 2011, were critical in prompting the international community to take more stringent steps to protect civilians. However, there was widespread condemnation, with regional and sub-regional organizations advocating for various international community responses in response to Gaddafi's threat to his citizens. The African Union (A.U.) consistently worked to find a peaceful solution and expressly rejected any external military response. On March 25, 2011, the African Union implemented a Roadmap for Peace, which called for an effective truce and democratic reforms. The A.U. has announced that it is prepared to implement a monitoring system as required by the roadmap. Although the National Transitional Council (NTC) quickly opposed²⁶⁶ the roadmap because it did not ask for Gaddafi's departure, the A.U. continued to focus on a diplomatic settlement for the remainder of the war. The NTC described the roadmap as "obsolete", claiming that it did not consider the human rights abuses already committed by Gaddafi's armies. The A.U. refused to accept NATO airstrikes approved by the Security Council due to its unwavering support for a peaceful solution²⁶⁷. Later, the A.U. was chastised²⁶⁸ for its sluggish and ineffective reaction to the Libyan crisis. The African Union later dismissed the International Criminal Court's (ICC) arrest warrants for Gaddafi and others, claiming that they significantly hampered attempts to pursue a diplomatic solution to the crisis²⁶⁹. The NTC was recognized as Libya's legitimate governing body on September 20, 2011, even though the NTC has been in power since 2011²⁷⁰

²⁶⁶ Aljazeera News: Libyan rebels reject African Union Roadmap; <https://www.aljazeera.com/news/2011/04/12/libyan-rebels-reject-african-union-road-map/> (Accessed on 4th September 2020).

²⁶⁷ The Guardian News: Libya Resolution: UN Security Council Air Strikes Vote - As it Happened, <https://www.theguardian.com/world/2011/mar/17/libya-united-nations-air-strikes-live> (Accessed on 4th September 2020).

²⁶⁸ Mwangusi S. Kimenyi, Libya and Ivory Coast Crises Point to Needed Reform of the African Union (The Brookings Press: 2011) <https://www.brookings.edu/opinions/libya-and-ivory-coast-crises-point-to-needed-reform-of-the-african-union/>, (Accessed on 4th September 2020).

²⁶⁹ The New York Times: African Union Opposes Warrant for Qaddafi; <https://www.nytimes.com/2011/07/03/world/africa/03african.html>, (Accessed on 4th September 2020).

²⁷⁰ Andres R. Martinez and Franz Wild, African Union Recognizes Libya's NTC as Governing Authority; <https://www.bloomberg.com/news/articles/2011-09-20/african-union-recognizes-national-transitional-council-as-libya-authority>, (Accessed on 4th September 2020).

The African Court on Human and People's Rights released its first decision against a state on March 31, 2011, finding the Gaddafi government to be responsible for "a situation of grave seriousness and urgency as well as a chance of irreparable damage to individuals". The Court imposed "provisional sanctions" on Libya, requiring the government to stop all actions that end in the loss of life or a violation of people's bodily integrity, as well as summoning the government to appear before the Court. Even though a Libyan government lawyer appeared before the Court on June 8, 2011, the lawsuit was eventually dismissed after the Applicant (the African Commission on Human and Peoples' Rights) declined to answer to the Libyan government's request to dismiss the case, leading the Court to believe that the Applicant will no longer prosecute the matter. In contrast, on March 7 and March 12, 2011, the Gulf Cooperation Council and the League of Arab States also called on the Security Council to establish a no-fly zone over Libya. The OIC Secretary-General welcomed the no-fly zone mandated by the Security Council in Resolution 1973 passed on March 17, 2011, during the Organization of Islamic Conference's second emergency meeting in Libya on March 19. By March 10, 2011, the European Union (E.U.) had imposed sanctions, an arms embargo, travel bans on Gaddafi and his family, and seized Libya's sovereign wealth fund central bank's reserves.

c. United Nations: Condemnation and Non-military Measures Leads to No-fly-zone

Many United Nations (U.N.) bodies were soon engulfed by the conflict and criticized Gaddafi's brutal assaults on civilians. The Special Advisers on the Prevention of Genocide and the Responsibility to Protect released a press release on Libya's situation on February 22, 2011. They recalled the Libyan Government's responsibility for protecting its citizens and called for an immediate stop to the bloodshed. Three days later, the Human Rights Council (HRC) adopted Resolution S-152, which urged the Libyan government to uphold its commitment to protect and end-all breaches of human rights and set up an international investigation committee to suspend Libya from the Council by the General Assembly. Libya was unanimously revoked on March 1 as a member of the Council because of the response of the General Assembly. On June 1, 2011, the International Commission of Inquiry announced to the Human Rights Council that since the conflict started, the Libyan Government and opposition parties had committed crimes against humanity and war crimes against the people.

The United Nations Security Council reacted to concerns from the Arab League, African Union, Organization of the Islamic Conference, Human Rights Council, and adopted Resolution 1970 (unanimously) on February 26, 2011. The Council's first reference to the R2P framework since a 2006 Resolution on the Situation in Darfur was in Resolution 1970,²⁷¹ which reaffirmed Libya's responsibility to protect. The Gaddafi family and leading government figures were subjected to an arms embargo and travel restriction, and their properties were seized. The matter was appealed to the International Criminal Court for an investigation into charges of crimes against humanity. On 21st May 2014, the Appeals Chamber of the International Criminal Court (ICC) delivered its judgment confirming the decision of the ICC Pre-Trial Chamber I declaring admissible the case against Saif Al-Islam Gaddafi²⁷². On March 17, 2011, the Council adopted Resolution 1973 after the non-military interventions approved in Res. 1970 failed to stop Gaddafi from expressing explicit intent to attack the people of Benghazi and suspend the mass violence against protesters. Russia, India, China, Germany, and Brazil were the only countries that did not vote. In cooperation with the Security Council, the resolution created a no-fly zone to protect Libyan civilians and allowing the Member States to take all practicable steps to protect civilians and civilian populated areas under attack. Shortly after the meeting, Ban Ki-moon released a statement welcoming the Council's historic decision and noting that Resolution 1973 “affirms, clearly and strongly, the international community's commitment to fulfilling its duty to defend civilian civilians from government aggression”.

d. Member States: Widespread Unilateral Diplomatic and Economic Measures

Individual nations, including the United Kingdom, United States, Switzerland, Australia, and Canada, reacted quickly to the humanitarian crisis by freezing assets and imposing travel bans and prohibitions. Early on, the United Kingdom and France pushed for recognition of Libya's unified resistance group and led demands for a no-fly zone if it was supported regionally and legally. On March 29, 2011, leaders from 35 governments and non-governmental organizations²⁷³ gathered in

²⁷¹ <http://unscr.com/en/resolutions/1970>. The United Nations Security Council Resolution 1970 was a measure adopted unanimously by the UN Security Council on 26th February 2011. It condemned the use of lethal force by the government of Muammar Gaddafi against protesters participating in the Libyan Civil War and imposed a series of international sanctions in response.

²⁷² The Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi, ICC-01/-01/11

²⁷³ France 24 News: New Libya Contact Group to provide ‘Political Direction’; <https://www.france24.com/en/20110329-london-creation-libyan-contact-group-post-gaddafi-un-african-union-arab-league>, (Accessed on 9th September 2020).

London to address Libya's deteriorating condition. The conference participants decided that Gaddafi's government had lost authority and needed to be held accountable for its use of force, so they established a diplomatic contact committee to provide "leadership and general political guidance to the international movement to help Libya in tight cooperation with the United Nations, Arab League, OIC, and E.U".

Members of the Libyan government, Army, tribal leaders, and military units defected²⁷⁴ and joined the opposition across the country, particularly after the Libyan government began bombarding civilians with airstrikes on February 22, 2011. On February 26, 2011, former Justice Minister Mustafa Abdul Jalil, the first government official to sever relations with Gaddafi, established a provisional opposition government, later known as the National Transitional Council (NTC). The Contact Group, the League of Arab States, the United Nations General Assembly, and the African Union recognized the NTC as Libya's governing body on August 25, 2011, August 27, 2011, and September 16, 2011.²⁷⁵

e. ICC: rapid preliminary investigation leads to an open case in Libya

Following the United Nations Security Council's adoption of Resolution 1970, referring the Libyan crisis to the International Criminal Court, Prosecutor Luis Moreno-Ocampo decided, reasonably fast, on March 2, 2011, to launch an investigation after a thorough examination of available evidence. On April 6, 2011, the International Criminal Court (ICC) reported allegations that civilians had been shot in their homes, that protesters had been repressed with live fire, that heavy artillery had been used against people in funeral processions, and that snipers had been stationed to murder those leaving mosques after prayers. Prosecutor Moreno-Ocampo reported on June 8, 2011, that the Libyan government had used rape and sexual assault as weapons of war and intimidation against those who opposed the government. On June 27, 2011, the prosecutor released three arrest warrants for Gaddafi, his son Saif Al-Islam Gaddafi, and Gaddafi's Head of Military

²⁷⁴ France 24: Rebels fend off attack by Gaddafi forces in east Libya; <https://www.france24.com/en/20110302-gaddafi-forces-seize-eastern-town-rebels-brega-violent-clashes-libya>. (Accessed on 9th September 2020).

²⁷⁵ International Coalition for the Responsibility to Protect; <http://responsibilitytoprotect.org/index.php/crises/crisis-in-libya>. (Accessed on 9th September 2020).

Intelligence, Abdullah Al-Senussi, for crimes against humanity against the Libyan people, for killing and persecuting civilians²⁷⁶ under Article 7(1)(a) and 7(1)(h) of the Rome Statute.

3.2.2 Libya Post-Gaddafi

On October 23, 2011, Libyans rejoiced when the National Transitional Council (NTC) proclaimed the country free. Shortly after, the NTC declared a provisional government, which was tasked with the difficult task of restoring peace, order, and normalcy and arranging Parliamentary elections. Despite the revolution's early success, the condition in Libya soon worsened as the various militias and opposition factions that had fought against Gaddafi quickly seized control²⁷⁷ of the dictator's vast arsenal of arms gained during his four-decade rule. The transitional government was unable to gain control of Gaddafi's arsenal²⁷⁸ In February 2014, an independent report to the United Nations Security Council concluded that non-state militant groups appeared to possess most arms.²⁷⁹ Moreover, the militias had arms given to them²⁸⁰ by foreign governments during the revolt, such as France²⁸¹ and Qatar.²⁸² Militias and militant rebel groups declined to disarm and be accepted into the military because they were awash in arms. Libya has become a “powerful and tempting source of arms in the area”, according to a U.N. Panel of Experts, sparking tensions in the Sahel-Sahara region and beyond, in addition to the national security consequences of this proliferation.²⁸³

²⁷⁶ Black, Ian; Smith, David (27th June 2011). “War Crimes Court Issues Gaddafi arrest Warrant”. *The Guardian*.

²⁷⁷ The Star Vancouver: Gadhafi’s vanished arsenal stoking Sahara unrest, experts say by Olivia Ward (Foreign Affairs Reporter); https://www.thestar.com/news/world/2013/01/18/gadhafis_vanished_arsenal_stoking_sahara_unrest_experts_say.html. (Accessed on 9th September 2020).

²⁷⁸ Foreign Policy in Focus: Libya: A Cautionary Tale by Jesse Franzblau; <https://fpif.org/libya-cautionary-tale/>. (Accessed on 9th September 2020).

²⁷⁹ United Nations Security Council (S/2013/99), Final report of the Panel of Experts established pursuant to resolution 1973 (2011) concerning Libya; https://www.un.org/ga/search/view_doc.asp?symbol=S/2013/99. (Accessed on 9th September 2020).

²⁸⁰ Foreign Policy in Focus: Libya: A Cautionary Tale by Jesse Franzblau; <https://fpif.org/libya-cautionary-tale/>. (Accessed on 15th September 2020).

²⁸¹ BBC News: Libya conflict: France air-dropped arms to rebels; <https://www.bbc.com/news/world-africa-13955751>

²⁸² The Guardian: Libyan rebels receiving anti-tank weapons from Qatar; <https://www.theguardian.com/world/2011/apr/14/libya-rebels-weapons-qatar>. (Accessed on 15th September 2020).

²⁸³ The National News: Libya’s guns free-for-all fuels region’s turmoil; <https://www.thenationalnews.com/world/libya-s-guns-free-for-all-fuels-region-s-turmoil-1.320072>. (Accessed on 15th September 2020).

As the revolt ended, the different forces that had previously worked together in their fight against Gaddafi began to turn against one another. The NTC opted to place militias on its payroll instead of pursuing disarmament, demobilization, and reintegration policies, resulting in the rise of paramilitary groups that gradually used their influence to promote national, ideological, or criminal goals.²⁸⁴ As a result, the provisional government and successively elected governments could not exert meaningful power over the numerous rebel factions, and the country steadily descended into lawlessness²⁸⁵ slowly became predominant the country. Human Rights Watch observed a worsening security situation as many militant groups of varying goals and allegiances competed to control the country's territories and wealth. The government's failure to monitor them became evident when armed extremists, accused²⁸⁶ of being associated with Ansar al-Sharia, Libya's most extremist Islamist militia, targeted²⁸⁷ the U.S. Embassy Benghazi on September 11, 2012, killing Ambassador Christopher Stevens and three (3) other U.S. officials. In September 2013, the militias seized over²⁸⁸ significant oil reserves and terminals in Libya and stripped the government of a crucial source of income and authority. Numerous militia groups also brutalized²⁸⁹ civilians and committed crimes against humanity²⁹⁰. In March 2014, Human Rights Watch warned²⁹¹ that government institutions in the country, particularly the judicial system, were at risk of collapse. As a result, on August 27, 2014, the Libyan ambassador to the United Nations warned the Security Council that Libya is now on the brink of "a full-blown civil war".

²⁸⁴ Frederic Wehrey; Ending Libya's Civil War: Reconciling Politics, Rebuilding Securities. (Carnegie Endowment for International Peace, 2014); <https://carnegieendowment.org/2014/09/24/ending-libya-s-civil-war-reconciling-politics-rebuilding-security/hpv4>. (Accessed on 15th September 2020).

²⁸⁵ Human Rights Watch: World Report 2014: Libya; <https://www.hrw.org/world-report/2014/country-chapters/libya?page=1>. (Accessed on 15th September 2020).

²⁸⁶ Terrorism, Research & Analysis Consortium: Ansar al-Sharia in Libya (ASL); <https://www.trackingterrorism.org/group/ansar-al-sharia-libya-asl>. (Accessed on 15th September 2020).

²⁸⁷ CNN News: Benghazi Mission Attack Fast Facts; <https://www.cnn.com/2013/09/10/world/benghazi-consulate-attack-fast-facts/>. (Accessed on 15th September 2020).

²⁸⁸ BBC News: Why gunmen have turned off Libya's oil taps; <https://www.bbc.com/news/world-africa-24051371>. (Accessed on 27th September 2020).

²⁸⁹ Daniel Donovan, Armed to the Teeth: The Security Problem with Libya and its Weapons Cache (Foreign Policy Association, 2014); <https://foreignpolicyblogs.com/2014/03/31/armed-to-the-teeth-the-security-problem-with-libya-and-its-weapons-cache/>. (Accessed on 27th September 2020).

²⁹⁰ Human Rights Watch; Libya: Spiraling Militia Attacks May Be War Crimes; <https://www.hrw.org/news/2014/09/08/libya-spiraling-militia-attacks-may-be-war-crimes>. (Accessed on 27th September 2020).

²⁹¹ Human Rights Watch; Libya: Government Institutions at Risk of Collapse; <https://www.hrw.org/news/2014/03/07/libya-government-institutions-risk-collapse>. (Accessed on 27th September 2020).

Following the August 2012 elections, the National Transitional Council (NTC) handed over²⁹² power to the General National Congress (GNC). As the first constitutionally elected parliamentary body since the end of the revolution, the GNC was commissioned to draw up a permanent constitution and appoint the cabinet to oversee the country before the elections at the end of 2013. However, the Islamist-controlled GNC was unable to meet its 18-month deadline for coming up with a draft constitution and thus stretched its term to December 2014.²⁹³ The decisions of the GNC sparked demonstrations from those in Libya who criticized the democratic transformation of the government. The crisis rapidly worsened when General Khalifa Haftar, a former member of Gaddafi's Army turned guerrilla, assembled an armed force named the “Libyan National Army” (LNA). On May 16, 2014, the group conducted a campaign called “Operation Libyan Dignity” against the Islamist militias and the GNC in May 2014. On May 19, 2014, Haftar’s party became broader as the former Libyan Army Special Forces pledged assistance to the LNA. The conflict prompted the GNC to hold new elections on June 25, 2014. The outcome of these elections threw Libya into an ever-deeper turmoil.

Islamist parties were defeated in recent elections by more mainstream and federalist representatives. Islamist militias suffered defeats, while General Haftar gained support²⁹⁴ for the newly elected Libyan Parliament (also known as the House of Representatives), which succeeded²⁹⁵ the Islamist GNC. In August 2014, the House of Representatives had to flee to the eastern port city of Tobrouk to avoid the violence between opposing militant groups in the capital of Tripoli. The war in Tripoli started when a group²⁹⁶ of Islamist forces from Misrata, organized under the banner of “Libyan Dawn”, refused to recognize the election results and began a

²⁹² RS News: NTC to Transfer Power to Newly Elected Libyan Assembly by Yasir Zeb. August 8; <https://www.researchsnipers.com/ntc-to-transfer-power-to-newly-elected-libyan-assembly-august-8/>. (Accessed on 27th September 2020).

²⁹³ *Ibid.*

²⁹⁴ Carnegie Endowment for International Peace: Libya’s Legitimacy Crisis by Frederic Wehrey and Wolfram Lacher; <https://carnegieendowment.org/2014/10/06/libya-s-legitimacy-crisis/hr9j>. (Accessed on 27th September 2020).

²⁹⁵ Temehu: Libyan House of Representatives; <https://www.temehu.com/house-of-representatives.htm>. (Accessed on 27th September 2020).

²⁹⁶ The Guardian: Libyan Capital under Islamist Control after Tripoli airport Seized; <https://www.theguardian.com/world/2014/aug/24/libya-capital-under-islamist-control-tripoli-airport-seized-operation-dawn>. (Accessed on 27th September 2020).

takeover²⁹⁷ of Tripoli International Airport re-establish²⁹⁸ the GNC as the governing regime. On August 23, 2014, the Libyan Dawn alliance successfully took possession of Tripoli Airport after a five-week battle.²⁹⁹ It has announced the return of the GNC as the ruling body of Libya.³⁰⁰ Consequently, this led to two competing governments: the GNC, backed by the Islamist alliance “Libyan Dawn” in Tripoli, and the formally elected House of Representatives in Tobruk, funded by the “Operation Dignity” of Khalifa Haftar.

Libya is in its 10th year of insecurity and warfare due to the collapse of the Gaddafi regime in 2011. In 2019, war accelerations in both the south and the nation’s capital, Tripoli, saw battling to move into more populated metropolitan zones.³⁰¹ The war displaced 250,000 civilians, resulting in at least 430 civilian casualties.³⁰² The Libyan Arab Armed Forces (LAAF), formerly known as the Libyan National Army, were forced out of Tripoli by the Government of National Accord (GNA) on June 4, 2020, with Turkish support following the intense clash.³⁰³ As a result, the GNA discovered mass graves in areas recaptured from the LAAF and unified urban forces in the Tarhuna and Tripoli areas.³⁰⁴ More than 200 people’s bodies have been exhumed from 12 mass graves so far.³⁰⁵ The U.N. Panel of Experts on Libya has recorded gross violations of the U.N. arms embargo, calling it “totally pointless”. According to the Panel, Chad, Jordan, Sudan, Turkey, and the United Arab Emirates were found to have given arms, technical assistance, or mercenaries to different parties in the dispute.³⁰⁶

²⁹⁷ CBC News: Libya’s main Airport under Siege, seven (7) dead; <https://www.cbc.ca/news/world/libya-s-main-airport-under-siege-7-dead-1.2705733>. (Accessed on 27th September 2020).

²⁹⁸ Aljazeera News: Libya Government Resigns to allow New Cabinet; <https://www.aljazeera.com/news/2014/08/29/libya-government-resigns-to-allow-new-cabinet/>. (Accessed on 27th September 2020).

²⁹⁹ The Guardian: Libyan Capital under Islamist Control after Tripoli airport Seized; <https://www.theguardian.com/world/2014/aug/24/libya-capital-under-islamist-control-tripoli-airport-seized-operation-dawn>. (Accessed on 27th September 2020).

³⁰⁰ *Ibid.*

³⁰¹ OCHA: Libya Humanitarian Needs Overview 2020 (January 2020); <https://reliefweb.int/report/libya/libya-humanitarian-needs-overview-2020-january-2020>. (Accessed on 27th September 2020).

³⁰² Global Centre for Responsibility to Protect on Libya; <https://www.globalr2p.org/countries/libya/>. (Accessed on 27th September 2020).

³⁰³ *Ibid*

³⁰⁴ The Guardian: Eight Mass Graves found in area retaken from Libyan Rebel General; <https://www.theguardian.com/world/2020/jun/11/eight-mass-graves-found-in-area-retaken-from-libyan-rebel-general>. (Accessed on 27th September 2020).

³⁰⁵ *Supra* note 302.

³⁰⁶ AP News: Experts - Libya rivals UAE, Russia, Turkey violate UN embargo; <https://apnews.com/article/turkey-north-africa-qatar-libya-united-arab-emirates-20a2ad9c585f40ec291585dbf8e9ed22>. (Accessed on 27th September 2020).

3.2.3 International and Regional Responses to Post-Conflict Crisis

a. *The Security Council*

Libya's Parliament called on the U.N. Security Council to “immediately intervene to protect civilians and state agencies” due to the escalating conflict³⁰⁷. On the other hand, the Member States have expressed a need for “peaceful and inclusive dialogue within the context of a democratic process”, rejecting any external intervention.³⁰⁸ In the Libyan town of Ghadames on September 29, 2014, an UN-mediated dialogue³⁰⁹ aimed at resolving the crisis began.

S.C. collectively passed Resolution 2174³¹⁰ in reaction to the crisis, condemning the use of violence and calling on those involved to be kept accountable. Also, the resolution expanded the sanctions regime defined in Resolution 1970 to include those responsible for the ongoing conflict. S.C. reaffirmed its willingness to use “punitive measures, including asset freezes and travel bans against persons and organizations that endanger Libya's peace and security” on October 2, 2014,³¹¹ The United Nations Security Council (UNSC) placed punitive sanctions on six people suspected of smuggling in Libya on June 7, 2018.³¹² The UNSC extended the weapons embargo for another year on June 5, 2020. The European Council conducted a military campaign to implement the embargo on April 4, 2020.³¹³ On September 21, the European Council placed

³⁰⁷ Ahmed Elumami, Ayman Al-Warfalli: Libya’s Parliament calls for U.N. aid to quell militia fighting; [Libya's parliament calls for U.N. aid to quell militia fighting \(yahoo.com\)](#), Accessed on 27th September 2020.

³⁰⁸ UNSMIL: United Nations Security Council Press Statement on Libya - 02 October 2014; <https://unsmil.unmissions.org/united-nations-security-council-press-statement-libya-02-october-2014>, (Accessed on 27th September 2020).

³⁰⁹ UN News: Libya: UN envoy hails start of political dialogue aimed at resolving ongoing crisis; <https://news.un.org/en/story/2014/09/479702-libya-un-envoy-hails-start-political-dialogue-aimed-resolving-ongoing-crisis#.VDLxTBbuqW4>, (Accessed on 27th September 2020).

³¹⁰ United Nations: Security Council, Adopting Resolution 2174 (2014), Calls for Immediate Ceasefire in Libya, Inclusive Political Dialogue, Prior Notice for Weapons Transfers; <https://www.un.org/press/en/2014/sc11537.doc.htm#:~:text=Unanimously%20adopting%20resolution%202174%20%282014%29%20under%20the%20Charter%E2%80%99s,civilians%20and%20civilian%20institutions%2C%20and%20called%20for%20accountability>, (Accessed on 27th September 2020).

³¹¹ UN News: Libya: Security Council calls meeting of political parties step towards peace; <https://news.un.org/en/story/2014/10/480132-libya-security-council-calls-meeting-political-parties-step-towards-peace#.VDLr8RbuqW4>, (Accessed on 27th September 2020).

³¹² UN News: As Security Council imposes Sanctions on Six Human Traffickers in Libya, UN Chief calls for more Accountability. <https://news.un.org/en/story/2018/06/1011751>, (Accessed on 27th September 2020).

³¹³ *Ibid.*

targeted sanctions on persons and organizations responsible for human rights violations and violations of the arms embargo.³¹⁴

b. Regional Actors

Regional players have also been active in the conflict, with some taking sides, creating hopes of a proxy war³¹⁵ between competing Arab states. On the one side, Egypt and the United Arab Emirates governments are accused of carrying out airstrikes³¹⁶ against Islamist rebels on behalf of the elected government. On the other hand, the governments of Turkey and Qatar are said to be supporting³¹⁷ the Islamist groups. Egypt³¹⁸ also provided Libyan pro-government forces with military training and support to the said group. On the other hand, Algeria has formulated a mechanism for addressing the crisis by holding a national conference involving opposing political parties. Egypt and Sudan³¹⁹ vowed support for Libya's military in its war against armed militias on October 19, 2014. Sudan's commitments are surprising, considering reports that it has historically supported³²⁰ Islamist militias. The presence of international players could further exacerbate the issue, making it more difficult to find a diplomatic settlement in the immediate future. The Carnegie Endowment for International Peace published a report on September 24, 2014, cautioning against taking sides and encouraging foreign parties to avoid arming and financing militant groups in the region. Instead, opposing sides should be encouraged³²¹ to work together in a democratic forum to overcome their differences.

³¹⁴ *Ibid.*

³¹⁵ Aljazeera News: Libya air strikes: escalation of proxy war? <https://www.aljazeera.com/program/episode/2014/8/26/libya-air-strikes-escalation-of-proxy-war/>. (Accessed on 27th September 2020).

³¹⁶ The New York Times: Arab Nations Strike in Libya, Surprising U.S. by David D. Kirkpatrick and Eric Schmitt; https://www.nytimes.com/2014/08/26/world/africa/egypt-and-united-arab-emirates-said-to-have-secretly-carried-out-libya-airstrikes.html?_r=1, (Accessed on 27th September 2020).

³¹⁷ *Ibid.*

³¹⁸ Al-Monitor: Algeria pushes for national dialogue in Libya; <https://www.al-monitor.com/pulse/originals/2014/09/algeria-reject-foreign-intervention-libya.html>, (Accessed on 27th September 2020).

³¹⁹ Aljazeera News: Sisi and Bashir to aid Libya against militias; <https://www.aljazeera.com/news/2014/10/19/sisi-and-bashir-to-aid-libya-against-militias/>. (Accessed on 27th September 2020).

³²⁰ Sudan Tribune: Libyan renegade general accuses Sudan of aiding “Islamist terrorists”; <https://sudantribune.com/spip.php?article51352>. (Accessed on 27th September 2020).

³²¹ *Ibid.*

c. International Criminal Court

Major Mahmoud Mustafa Busayf Al-Werfalli was arrested on August 15, 2017, by Pre-Trial Chamber I. He was a Libyan National Army Commander (LNA). In seven cases involving thirty-three (33) civilians in Benghazi and the surrounding regions, he was convicted of personally committing and directing the execution of murder as a war crime. The alleged wrongdoings reportedly happened between June 3, 2016, and July 17, 2017.

3.2.4 Libya and the Responsibility to Rebuild

The UN-authorized NATO military intervention in Libya, which ushered in the demise of the Gaddafi regime, has been celebrated as a successful “first apparent test” of the Responsibility to Protect (R2P) concept. There is proof that crucial R2P norms are entwined with international community activity in Libya. However, it is also important to stress that the R2P has only been appropriated in a marginal and limited way so far. The International Commission on Interference and State Sovereignty (ICISS) report of 2001 discussed the obligations to prevent and react, two of the three phases of the R2P. The third phase of the R2P – “responsibility to rebuild”, is still a challenge. The degree to which the R2P is a “win” in Libya, according to others, is primarily determined by how this aspect of the R2P is applied.

While resolution 1973 recognized the responsibility to protect as the impetus for the military action against Libya, like the 2005 World Outcome Document, it did not mention the commitment to rebuild. The U.N. embraced the preventing and reacting responsibilities outlined in the ICISS report but failed to adopt the rebuilding aspect.³²² Libya was a test case for the application of the third pillar of the R2P. Libya’s revolt, despite its initial success, failed to bring permanent peace and deter renewed conflict. The crisis in Libya demonstrates that the Responsibility to Protect should not cease until the war ends. Instead, it is an ongoing process that necessitates post-conflict capacity-building to deter atrocities from occurring again. As a result, it necessitates a determination to rebuild the state after the war has ended. Military intervention's ultimate peacebuilding duty should be to promote inclusive stability and long-term economic development. Intervening parties must stop all repressive financial steps they might have taken against the country before, during or after the intervention and not extend punitive sanctions.³²³ After the

³²² *Supra* note 258 at 49.

³²³ ICISS, 2001: 42-43.

intervention, Libya was in dire need of economic growth and development, which was ignored by the international community. This tier has a far-reaching effect on protecting human rights, as the Commission notes in its report.³²⁴ The declaration on the Right to Development (DRD) recognizes human rights as ‘both a condition and objective of development’.³²⁵ This declaration signifies the importance attached to development in the current world, and as such, should not be wished away by the international community while protecting human rights using R2P. As discussed in Chapter two, economic development should serve as an exit strategy in situations of military intervention.³²⁶

As illustrated in Ban Ki-moon’s 2012 report on the³²⁷ “The Responsibility to Protect: Timely and Decisive Response”, he posits that this process might entail “building the institutions, laws, policies and behaviours to reduce the risk of the reoccurrence of atrocity crimes”. Otherwise, the State would be unable to fulfil its long-term commitments to protect civilians. Libya’s post-revolutionary government never established the capacity to sustain long-term peace and security in the country. As a result, the Libyan experience serves as a stark reminder that failure to improve the state’s capacity to maintain its “responsibility to protect” adversely affects the country’s long-term progress.

Therefore, the United Nations Security Council should enforce punitive sanctions on all persons and organizations deliberately attempting to derail the Libyan peace process. This is because there would not be an effective rebuilding without the existence of peace and security. To achieve this, armed groups must honour the ceasefire and adhere to their international humanitarian law commitments (IHL). The arms embargo must be upheld, and all United Nations member states must implement the ceasefire. Over a significant period, every one of those answerable for mass monstrosities in Libya ought to be considered responsible for their wrongdoings. Following Gaddafi’s ouster, Libya relapsed into civil war, demonstrating that R2P cannot guarantee adequate and long-term human security against mass atrocity crimes unless intervening States are expected to fulfil rebuilding measures to prevent relapse.

³²⁴ ICISS, 4.1

³²⁵ *Ibid.*

³²⁶ Paul Collier Wars, guns, and votes (2009) New York: Harper 52.

³²⁷ UN: Responsibility to protect: timely and decisive response Report of the Secretary-General; http://www.responsibilitytoprotect.org/UNSG%20Report_timely%20and%20decisive%20response%281%29.pdf. (Accessed on 27th September 2020).

3.3 The Case of Iraq

To get a deeper understanding of the Iraq crisis, it is valid, to begin with, a rundown of the events and circumstances that contributed to its invasion in 2003. It all began on August 2, 1990, with Iraq's invasion and annexation of Kuwait. This was the country's first act of violence since World War II ended in 1945. As the United Nations' principal institution for jointly responding to international peace and stability threats, such an incident demanded an urgent response from the U.N. Security Council (UNSC).³²⁸ This caused the United Nations Security Council to pass Resolution 660 on August 2, 1990, condemning the invasion and noting that the Council was shocked by Kuwait's Iraqi invasion and found this a violation of international peace and security.³²⁹

Iraq failed to comply with UNSC resolution 660 (1990), triggering the implementation of several subsequent related resolutions, which included a trade ban, a financial and asset freeze, and other steps.³³⁰ However, the Security Council concluded that Iraq had not met with Resolution 660 (1990) within two months of imposing the embargo. The United Nations Security Council passed Resolution 678 (1990) on November 29, 1990, requiring all member states to “use all appropriate means” to eject Iraq from Kuwait and restore international peace and security.³³¹

A coalition of international powers was established, and an authorized military operation was carried out, which was able to drive the Iraqi Army out of Kuwait and convince Iraq to agree to a ceasefire and terms of peace set by the United Nations Security Council in Resolution 687 of April 3, 1991.³³² Iraq has vowed to hand over and dismantle all its Weapons of Mass Destruction (WMD) and delivery systems as part of the agreement and never manufacture, buy, or store those weapons again.³³³ Iraq has been subjected to an unparalleled system of trade sanctions, financial

³²⁸ *Ibid.*

³²⁹ UN Security Council Resolution 660 (1990) ‘The situation between Iraq and Kuwait’, New York, United Nations Security Council, August 2, 1990, <http://daccess-ddsny.un.org/doc/RESOLUTION/GEN/NR0/575/10/IMG/NR057510.pdf?OpenElement> p1. Accessed on November 2nd, 2020.

³³⁰ Kim Boo Foo, Implementing UN Security Council Resolutions 660 – 678: The Singapore Experience; *Singapore Journal of Legal Studies*, pp. 56-78, 1992.

³³¹ City of London: UN Security Council Authorization of the Use of Force to Expel Iraq from Kuwait; Security Council Resolution 678 (1990), 29 November 1990. <http://www.staff.city.ac.uk/p.willetts/IRAQ/SC-678.HTM>

³³² UN Peacemaker: Security Council Resolution 687: Iraq-Kuwait; <https://peacemaker.un.org/iraqkoweit-resolution687>

³³³ Iraq's Weapons of Mass Destruction: The Assessment of the British Government. <http://fas.org/nuke/guide/iraq/iraqdossier.pdf>

compensation, and on-site checks for the demolition of its WMDs and associated installations and materials following the adoption of U.N. Security Council Resolution 687 on April 3, 1991, nicknamed the “mother of all resolutions”.³³⁴ It also provided frameworks for authentication and control to ensure that Iraq did not acquire those capabilities in the future.³³⁵ The UNSC formulated and approved all of this, and it was all carried out under its close supervision.

Following Iraq’s withdrawal from Kuwait in February 1991, the United Nations Security Council (UNSC) passed Resolution 687 (1991) to strip Iraq of its WMD and long-range missile capability. The United Nations Special Commission for the Inspection and Removal of Iraqi Weapons of Mass Destruction (UNSCOM) was formed for this reason and operated from 1991 to 1998. It was replaced by the U.N. Mentoring, Verification, and Inspection Committee (UNMOVIC), which served until June 2007, when it was disbanded³³⁶ Iraq has been disarmed after more than a decade of inspections, disarmament, compensation, and economic sanctions. It was no longer a danger to international peace and security, according to U.N. mission reports. As mentioned, several times by the UNSC members, the Iraqi government directed the sanctions to comply with international law standards. The United Nations Security Council’s economic sanctions on Iraq in 1990 can be described as the harshest imposed on any nation’s history. It imposed restrictions on Saddam Hussein's removal from Kuwait, prohibiting Baghdad from taking in any supplies to rebuild its damaged infrastructure or deteriorating buildings. Around 2003, Iraq was described as a skeleton of a country.³³⁷

The U.S. intrusion aggravated a terrible circumstance. What was not obliterated by the conflict was plundered by hordes of wild groups? U.S. authorities considered this famous frenzy a natural by-product of democratic transition. To some, Iraq was a monster reptile required to shed its old undemocratic skin and grow another, a new, democratic one; thus, a stable socio-political vital transformation would happen.³³⁸ For the accompanying eight years, a revolt exacerbated the pace of infrastructural annihilation and ended new development. More assets were spent on settlements, security firms, and logistics contractors than we are accustomed to restoring the nation's

³³⁴ *Ibid.*

³³⁵ *Ibid.*

³³⁶ *Ibid.*

³³⁷ Abbas Kadhim, *Rebuilding Iraq: Prospects and Challenges* (The Cairo Review of Global Affairs); <https://www.thecairoreview.com/essays/rebuilding-iraq-prospects-and-challenges/> Accessed on November 2nd, 2020

³³⁸ *Ibid.*

infrastructure.³³⁹ The Iraqi governments that slowly assumed responsibility after a short time of U.S. management were no more excellent. Regardless of \$800 billion in income since 2003, no genuine reconstruction endeavours were made anywhere in the nation. Besides what was paid for keeping a monstrous public area and security-related expenses, billions of dollars were lost to waste, fraud, and poor management under a methodological lack of transparency and responsibility.³⁴⁰

In June 2014, Iraq was confronted with a new security problem that led to the self-proclaimed Islamic State in Iraq and Syria (ISIS) seizing control of Mosul, the city with the second-highest population in Iraq, the surrounding Nineveh Province, and the city of Fallujah.³⁴¹ ISIS also took control of Tikrit, the administrative center of the Salah ad-Din Governorate,³⁴² to capture Baghdad, Iraq's capital city.³⁴³ Within weeks, ISIS built a foothold in six provinces, and its motto (“Staying and Expanding”) became a sequence of gains measured in square kilometres. On October 1, 2019, two years after the deadly 2014 military conflict in Iraq ended, a nationwide rally against unemployment, poverty, low public services, corruption, and the government’s sectarian quota-based structure erupted in Iraq.³⁴⁴ During the reason for stifling the protests, Iraqi security powers used unbalanced and lethal force, which resulted in the death of about 600 people, as reported by Amnesty International.³⁴⁵ Likewise, the Iraq High Commission for Human Rights demonstrated that it had recorded more than 15,000 genuine injuries.³⁴⁶ According to the United Nations Assistance Mission for Iraq (UNAMI), Iraqi officials have committed violations of human rights and atrocities, including the systematic targeting of civilian civilians and the use of tear gas and stun grenades.³⁴⁷ Also, the Security forces arbitrarily arrested and detained over 3000 protestors,

³³⁹ *Ibid.*

³⁴⁰ *Ibid.*

³⁴¹ Suadad Al-Salhy and Tim Arango: “Sunni Militants Drive Iraqi Army Out of Mosul”, *The New York Times* (10th June 2014); <https://www.nytimes.com/2014/06/11/world/middleeast/militants-in-mosul.html> (Accessed on November 2nd 2020).

³⁴² Aljazeera News: Iraq city of Tikrit falls to ISIL fighters (12th June 2014); <https://www.aljazeera.com/news/2014/6/12/iraq-city-of-tikrit-falls-to-isil-fighters>, (Accessed on November 2nd 2020).

³⁴³ abc NEWS, Colleen Curry; A Simple and Useful Guide to Understanding the Conflict in Iraq, (13th June 2014); <https://app.abcnews.go.com/International/simple-guide-understanding-conflict-iraq/story?id=24113794>, (Accessed on November 4th 2020).

³⁴⁴ Global Centre for Responsibility to Protect; Iraq: More than 600 people killed during anti-government protests from October 2019 to February 2020. <https://www.global2p.org/countries/iraq/>. (Accessed on November 4th, 2020).

³⁴⁵ *Ibid.*

³⁴⁶ *Ibid.*

³⁴⁷ *Ibid.*

many of whom were subjected to ill-treatment or brutality,³⁴⁸ which violates the tenets of human rights and international law standards. Iraqi political and tribal leaders were outraged by the police brutality, leading Prime Minister Adel Abdul Mahdi to resign from office on November 29.³⁴⁹

On April 9, President Barham Salih appointed Mustafa al-Kadimi, Iraq's intelligence chief, as the new prime minister-designate. During his first week in office, he directed Iraqi courts to release anti-government demonstrators who had been arrested after the mass protests of 2019, and he promised amnesty and compensation to the families of those killed by disproportionate force.³⁵⁰ Anti-government demonstrations have raged across southern Iraq since July 2020. Targeted killings of demonstrators in Basra, allegedly carried out by militias aligned with the Popular Mobilization Forces (PMF), sparked new demonstrations in August.³⁵¹

ISIL soldiers committed widespread abuses during the conflict, including executions, sexual exploitation, torture, and forcible relocation, classified as war crimes, crimes against humanity, or genocide.³⁵² Hundreds of civilians were killed in anti-ISIL coalition airstrikes, and ISF, PMF, and Peshmerga members carried out forced evictions and targeted killings of Sunni civilians in formerly ISIL-controlled areas.³⁵³

In response to the mass atrocities, the U.N. Security Council approved the formation of the U.N. Investigative Team to Promote Transparency for Crimes Committed by Da'esh/ISIL (UNITAD) on September 21, 2017, to help domestic accountability efforts and gather information about alleged ISIL atrocities in Iraq.³⁵⁴ UNITAD has identified 160 ISIL-affiliated people who may be considered criminally responsible for mass crimes and has excavated 17 mass graves in and around Kojo, Sinjar. UNITAD has collected over two million cell phone data records that refer to the dates and locations of massacres committed against the Yazidi group in Sinjar in 2014.³⁵⁵

³⁴⁸ OCHA: Human Rights Violations and Abuses in the Context of Demonstrations in Iraq October 2019 to April 2020 (EN/AR/KU). <https://reliefweb.int/report/iraq/human-rights-violations-and-abuses-context-demonstrations-iraq-october-2019-april-2020>. (Accessed on November 4th, 2020).

³⁴⁹ *Supra* note 344.

³⁵⁰ *Supra* note 344.

³⁵¹ *Ibid.*

³⁵² *Ibid.*

³⁵³ *Ibid.*

³⁵⁴ *Ibid.*

³⁵⁵ *Ibid.*

Since October 2019, the UNAMI Director-General, the U.N. Secretary-General, the U.N. High Commissioner for Human Rights, and six U.N. Special Rapporteurs have all issued statements condemning the unlawful killing of demonstrators, asking Iraqi authorities to stop violence, and demanding transparency.³⁵⁶ Therefore, the Iraqi government must introduce a code of ethics for security forces based on fundamental human rights respect. Iraqi authorities must promptly address.³⁵⁷ UNAMI has reported militias, unnamed third parties' massacres, forced disappearances, and illegal imprisonment of demonstrators.³⁵⁸ At this juncture, it is safe to canvass that there cannot be rebuilding without peace, and it is clear from the above that Iraq has not witnessed the peace era, unlike Kosovo, because of the ongoing crisis. Hence, for an effective rebuilding to occur, there must first be the existence of peace and security.

3.4 Reconstruction and Reconciliation of Iraq

As brutality and slaughter weaponize fears, doubt, and estrangement, it will take more than the progression of time to mend the scars and standardize broken social relations. The Iraqi government, international community, and non-governmental institutions can assume fundamental parts in conquering formidable post-conflict difficulties and prepare for social reintegration. It is pertinent to state that after the unilateral invasion of Iraq by a coalition led by the United States, the United Nations Assistance Mission for Iraq (UNAMI), a political mission, was established by Security Council Resolution 1500.³⁵⁹ Unfortunately, the United Nations Headquarters' attack in Baghdad, which killed 22 people, including the United Nations Special Representative for Iraq, Sergio Vieira de Mello, marred this first mission.³⁶⁰ It had only been five days since the Mission had been founded. A month after, a second bombing occurred, resulting in the evacuation of 600 UN personnel.³⁶¹

³⁵⁶ *Ibid.*

³⁵⁷ *Ibid.*

³⁵⁸ OCHA: Human Rights Special Report - Demonstrations in Iraq: 3rd update, 23 May 2020: Abductions, torture and enforced disappearances in the context of ongoing demonstrations in Iraq (EN/AR/KU), <https://reliefweb.int/report/iraq/human-rights-special-report-demonstrations-iraq-3rd-update-23-may-2020-abductions>, (Accessed on November 4th 2020).

³⁵⁹ UN Doc. S/Res/1500, 14th August 2003.

³⁶⁰ See www.un.org/en/memorial/baghdad2003.asp, (Accessed on November 4th, 2020).

³⁶¹ BBC News, Iraq Profile: Timeline, available at www.bbc.co.uk/news/world-middle-east-4546763, Accessed 2nd September 2020.

Surprisingly, the Department of Political Affairs oversees this mission rather than the Department of Peacekeeping. Despite these deaths and the withdrawal of personnel, the Mission has been continuously operational since that time, with its task significantly enlarged in 2007 with the passing of Resolution 1770.³⁶² The mission is clear: foster “inclusive, political dialogue and national reconciliation”, assist “in the election process and the preparations for a national census”, encourage “provincial dialogue between Iraq and its neighbours”, and facilitate “human rights protection and legal and judicial reform”.³⁶³ The rebuilding of Iraq has been one of the most challenging tasks that the U.S. and the international community have faced. Iraq has become more polarized, and it is now home to the terrorist group responsible for the Commission of heinous crimes against the civilian population. Iraq has been ravaged in recent years with a cycle of wars that have resulted in one of the worst humanitarian crises in recent history.³⁶⁴

Iraqi officials reaffirmed the catchphrase that Iraqis fought ISIS on behalf of the whole world at a high human expense. As a result, it was the international community’s moral responsibility to help in Iraq’s rebuilding. On April 22, 2017, Foreign Minister Ibrahim al-Jafaari, therefore, called on the international community to contribute to the rebuilding of infrastructure in the liberated areas after eliminating “terrorism”.³⁶⁵ A conference focused on reconstruction in Kuwait in February 2018, drawing shareholders and financial backers to deliberate on efforts to rebuild the economy of Iraq and infrastructure as it arose out of a devastating conflict. Regardless of the participation of critical global benefactors and companies, the sum promised was not what the Iraqis had expected. Iraq got vows of \$30 billion, with just a little part in grants; a large portion of the responsibilities were ventures and credits. Until this point in time, large numbers of the promised reserves have not been moved. A few contributors referred to worries about undeniable degrees of corrupt governance and requested quantifiable straightforwardness and responsibility. In contrast, others made their pledges dependent on being able to oversee how their money was invested. While

³⁶² UN Doc. S/Res/1770, 10 August 2007. For all information regarding UN role in Iraq, see www.uniraq.org/index.php?lang=en, (Accessed on November 4th, 2020).

³⁶³ *Ibid.*, para. 2.

³⁶⁴ Ibrahim Dajani ‘Rebuilding Iraqi communities is a shared responsibility’ (2015) The World Bank. Available at <http://blogs.worldbank.org/arabvoices/rebuilding-iraqicomunities-shared-responsibility>, (Accessed on November 4th, 2020).

³⁶⁵ Dinar Updates: Iraq calls on the international community to contribute to the reconstruction of infrastructure in the liberated areas; <https://www.dinarupdates.com/showthread.php?48366-Iraq-calls-on-the-international-community-to-contribute-to-the-reconstruction>, (Accessed on November 4th 2020).

speaking in London at the Chatham House think tank on the future of Iraq, Laith Kubba said, “Corruption is so institutionalized in Iraq, and it requires a head-on confrontation”.³⁶⁶

The baffling result of the Kuwait gathering left the war-torn regions in an interminable condition of agony. Mosul, where ISIS declared its now-outdated caliphate, saw the most extreme conflict and sustained devastating impacts.³⁶⁷ Around eighty (80) people died while seeking refuge in the basement of one of the damaged homes, the largest neighbourhood where local families had taken refuge.³⁶⁸ Few years since the liberation, many destroyed areas have not had their debris cleared, the corpses of civilians and ISIS attackers have not been removed from the collapsed structures in many instances.³⁶⁹ To accomplish this and plan for ambitious rebuilding programmes, significant funds must be made accessible, as well as massive attempts to clear war debris such as unexploded munitions, minefields, and IEDs.³⁷⁰ The reconstruction process in Iraq needs to exceed annihilated houses, bridges, roads, and society.³⁷¹

This Chapter likewise posits that monetary difficulties are the most prominent problem. Iraq’s present incomes are under \$100 billion, drawn from oil deals. This is a dangerous financial circumstance, as oil incomes stay unsteady and decline due to creation interference or a sharp fall in costs. Regardless of whether they stay at this level, they are scarcely enough to pay the expense of working the State. As a result, Iraq would increase its annual revenue to \$500 billion by 2030 to cover reconstruction costs and create a thriving economy. While this is a driven objective, it is feasible to initiate a few areas: farming, the travel industry, exchange, transportation, and administrations. Another test is the pressing need to encourage about two million internally displaced people (IDPs) to their homes and restore their communities. Humanitarian partners report that 4.1 million of the six million people displaced by the 2014-2017 crisis need humanitarian aid and that 1.77 million in desperate need.³⁷² In 2019, 1.35 million Iraqi internally

³⁶⁶ The Guardian: Corruption will not be solved by ‘wishing it away’, Iraqi government warned; <https://www.theguardian.com/world/2019/oct/03/corruption-wont-be-solved-by-wishing-it-away-iraqi-government-warned>, (Accessed on November 4th 2020).

³⁶⁷ *Supra* note 337.

³⁶⁸ The Guardian: Shell-shocked Mosul survivors tell of intense airstrikes; (7th March 2017) <https://www.theguardian.com/world/2017/mar/26/shell-shocked-mosul-survivors-tell-of-intense-airstrikes>, (Accessed on November 4th 2020).

³⁶⁹ *Supra* note 337.

³⁷⁰ *Ibid.*

³⁷¹ *Ibid.*

³⁷² Mohammed Rwanduzy, 1.35 million Iraqi IDPs returned home in 2019: Ministry of Migration (Rudaw, 2nd January 2020); <https://www.rudaw.net/english/middleeast/iraq/010120204#:~:text=ERBIL%2C%20Kurdistan%20Region->

displaced persons (IDPs) returned home.³⁷³ Their return needs and reconstructing homes, the recovery of their urban areas, reclamation of fundamental administrations; evacuation of unexploded weapons; arrangement of occupations, and repair of societal trust. In a statement to KUNA after receiving the donation, the head of the U.N. department, Dr. Amira Al-Hassan, said the UN-Habitat was one of the U.N. organizations a mission to provide self-sustaining environmental and social assistance for cities and towns.

Any peacebuilding guide should show an achievable program of public compromise. Until this point, Iraqi pioneers have perceived compromise in its political structure yet dismissed the earnest need to achieve social reconciliation. Political arrangements among the world-class and the dispersion of undeniable level arrangements may pacify upset political elites and constituents. Nonetheless, they are incapable of constituting a long-term policy for inter-communal reconciliation. Assume that vast sections of the population are poor and have no hope for a better future. In that case, somebody will still be able to take advantage of their insecurity and anger to manoeuvre through the government's political corridors. Genuine reconciliation should start by mitigating the complaint of the Iraqi people and prevailing upon them by good governmental administration, a plenitude of economic opportunities, and law and order.

Unlike Kosovo, where there were coordinated efforts to rebuild it, Iraq did not have such a unique collaborative effort. Moreover, as Andrew Rathmell notes, the rebuilding exercise was challenging because there was no suitable environment for rebuilding.³⁷⁴ In Kosovo, there was no authority in place that the rebuilding actors could work alongside while strengthening their capabilities.³⁷⁵ This then means that the model of direct governance employed by the U.S. was not favourable in a society like that of Iraq.³⁷⁶ It led to more division in Iraq, a country that was already experiencing ideological divisions.³⁷⁷

[%201.35%20million%20Iraqi%20Internally%20Displaced,Ministry%20of%20Migration%20and%20Displaced%20announced%20on%20Wednesday.](#) (Accessed on November 4th 2020).

³⁷³ *Ibid*

³⁷⁴ Andrew Rathmell 'Planning post-conflict reconstruction in Iraq: What can we learn?' (2005) 5 *International Affairs* 81.

³⁷⁵ *Ibid.*

³⁷⁶ *Ibid.*

³⁷⁷ Hanna Batatu 'The old social classes and the revolutionary movements of Iraq'. (1978) Princeton University Press 47.

Thus, as discussed in Chapter two, ICISS insists on reconciling the society that is to be rebuilt, and such a reconciliation should go beyond high-level meetings.³⁷⁸ The U.K. and the U.S. being the major actors in the Iraq rebuilding process, have failed to create an enabling environment for rebuilding by facilitating reconciliation of the conflicting parties. As a result, the Iraqi government needs to take proactive measures toward intercommunal unity to reduce the possibility of armed conflict reoccurring. Both non-state militant groups, including the Popular Mobilization Forces (PMF), should be demobilized, and reintegrated into society. Iraq's legislature can also pass enabling laws that incorporate genocide, war crimes, and crimes against humanity into national legislation. All offenders of past human rights violations in Iraq, irrespective of connection, should be brought to justice and held accountable for crimes committed.

3.5 Conclusion

The degree to which the obligation to rebuild has been taken seriously can be seen in the situations of Kosovo, Libya, and Iraq. In the first instance, the international community has made unprecedented attempts to rebuild an economy and a country that had historically been subjected to injustice, inequality, and civil unrest. As discussed in subsequent chapters, the rebuilding operation must have the requisite expertise to empower the beneficiaries to begin rebuilding activities after the international assistance stops. In the case of Kosovo, the rebuilding efforts were fruitful to some degree, but the final achievement was lost because it was not possible to include the beneficiaries of this assistance directly. Only after the declaration of independence was the Kosovar population able (and forced) to take charge of their destiny. These incidents highlighted the importance of seeing the challenge of rebuilding as a collaborative effort rather than a unilateral one. However, in the case of Libya, the international community has largely struggled to participate in reconstruction efforts in the country after the military intervention, which was technically successful. As a result, Libya is on the verge of becoming a failed state. The military intervention in Kosovo and the commitment to rebuild afterward was a real test of the responsibility to rebuild its entirety. However, it failed to protect human rights as expected, which can be attributed to financial constraints from the rebuilding agents and the failure to emphasize other non-physical structures. The responsibility to rebuild does not consist of the physical reconstruction and creates a conducive environment for a transitional transfer of political power.

³⁷⁸ ICISS, para 5.4

In cases where a political vacuum has been made, as was the case in Libya, there is a need to reconcile the warring factions and ensure that there are institutions where an election can be conducted for a legitimate government to be put in place.

In the case of Iraq, it is noted that the indiscriminate shooting of demonstrators came just two years after another bloody military struggle in Iraq came to an end. The so-called Islamic State of Iraq and the Levant (ISIL) militarily occupied large swaths of land in Iraq and Syria in 2014 and waged a concerted series of massacres throughout northern Iraq. ISIL soldiers committed widespread violations during the conflict, including executions, sexual exploitation, torture, and forcible relocation, which could be classified as war crimes, crimes against humanity, or genocide. Hundreds of civilians were killed in anti-ISIL coalition airstrikes, and ISF, PMF, and Peshmerga members carried out forced evictions and targeted killings of Sunni civilians in formerly ISIL-controlled areas. Thus, it is safe to posit that there cannot be rebuilding without peace, and it is clear from the above that Iraq has not witnessed the peace era, unlike Kosovo, because of the ongoing crisis. Hence, the Iraqi government needs to implement a code of ethics for security forces based on fundamental human rights respect. Iraqi officials must promptly address the usage of lethal and unnecessary force against peaceful civilian demonstrators and participate in substantive security sector reform. Also, this chapter concludes that the Iraqi government should also take active measures for inter-communal unity to reduce the possibility of armed conflict reoccurring. Both non-state militant groups, like the PMF, should be demobilized and reintegrated into society. Iraq's legislature should pass laws that require genocide, war crimes, and crimes against humanity to be included in national legislation. Regardless of party, the perpetrators of past massacres in Iraq should be held responsible for their offences. All those responsible for past and current mass killings in Libya should be kept accountable.

Consequently, the experience in Kosovo, Iraq, and now Libya shows us that the international community must rebuild the societies and states destroyed by wars. The responsibility of rebuilding involves a process where institutions that existed before are being rebuilt, but it can also include creating institutions that never existed before an intervention took place. Such design can be done when it is imperative to restore a state to a peaceful state and avoid a future relapse. The success of R2P in Libya can only be attributed to the fact that the Security Council adopted two resolutions, 1970 and 1973, in Libya without any permanent member vetoing the resolutions. The

recognition of R2P by the Security Council has also been hailed as a success of R2P in Libya, but as discussed in this Chapter, R2P was not effective in protecting human rights since the rebuilding aspect was not executed. As a result, the Responsibility to Rebuild is a preventive measure that will allow civilians (such as those in Libya) to rebound from violent wars, have adequate protection, and ultimately win what is known as the “war for hearts and minds”.

This case illustrates that the Responsibility to Protect is a holistic concept: military intervention without concurrent rebuilding activities can be detrimental in the long run, particularly from a humanitarian standpoint, with the key outcome being the substitution of a despotic government by a failing State.

CHAPTER FOUR:
**THE RESPONSIBILITY TO PROTECT UNDER THE AFRICAN UNION: DOES IT
HAVE THE ELEMENT OF REBUILDING?**

4.0. Introduction

This chapter argues that the African Union (A.U.) is the only regional or international organization that has enshrined the concept of the “responsibility to protect” (R2P) in its Constitutive Act, (CA)³⁷⁹ giving it the authority to intervene in a member state on humanitarian and human rights grounds. Even though the A.U.’s CA uses the term ‘right to intervene’ rather than ‘responsibility to protect’, this chapter argues that the CA and the Peace and Security Council (PSC) Protocol are compliant with the R2P standards. Both stress the use of armed force only as a last resort, the implementation of R2P in situations of massive human rights violations and the deterrence of such crimes, and post-conflict rebuilding. It also states that, while Article 4(h) gives the A.U. the legal authority to intervene in a member state, A.U. states may be hesitant to do so. Any successful intervention requires a political will to serve as a *sine qua non*. It is political will, not sovereignty considerations, that determines whether states intervene. Nevertheless, Article 4(h), which puts legislative responsibility on A.U. states to end mass atrocity crimes, may be the driving force behind a political will. It should be noted that the political commitment of R2P, which serves as a mobilization mechanism for prompt action, strengthens this legal obligation.³⁸⁰ This chapter suggests that peace, security, and human rights are all related in a symbiotic way. As a result, Article 4(h) intervention and R2P should be part of a long-term dispute resolution and diplomatic, fiscal, and social reconstruction effort in Africa. Article 4(h) intervention and R2P should not be equated with, or seen through the lens of, armed action, but rather should rely on the full range of prevention, reactive, and rebuilding strategies. As a result, the A.U.’s task is to create a political-normative structure and operational capability that encourages a prevention-oriented culture and an environment of conformity with international obligations. Since the causes of mass atrocity offences are so nuanced, they must be discussed in a holistic and cogent way.

³⁷⁹ Constitutive Act of the African union, 1 July 2000, available at: <https://www.refworld.org/docid/4937e0142.html> (accessed 25 May 2021).

³⁸⁰ Centre for Conflict Resolution (CCR), *Africa’s Responsibility to Protect*. Somerset West (2007), 7.

This chapter will discuss A.U.'s departure from a traditional Westphalian concept of sovereignty to one that perceives sovereignty as responsibility and thus requiring A.U. to intervene in its member states to advance human rights protection. It is argued that Africa had embraced the concept of R2P even before ICISS's report in 2001.³⁸¹ But then through discussing the African Peace and Security architecture and the countries that the A.U. has intervened under the peacebuilding mandate, the chapter will explore the counters of rebuilding under the A.U. framework. The principle of the responsibility to protect in the African framework is expressly addressed in Article 4(h) of the Constitutive Act of the African Union (Constitutive Act).³⁸² It makes stipulations for the African Union's right to intervene in a Member State under the Assembly's resolution regarding grave circumstances, such as war crimes, genocide, and crimes against humanity.³⁸³ This principle, therefore, formalizes and operationalizes the responsibility to protect at the A.U. level. The Constitutive Act recognizes war crimes, genocide, and crimes against humanity as severe violations of human rights, described as grave circumstances. It must be mentioned that the principle referred to here limits the responsibility to protect, and it is therefore argued that the Constitutive Act ought to extend beyond the already established grave circumstances. In confirming the intervention principle, Article 4(j) of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (PSCA.U. Protocol)³⁸⁴ provides that the PSCA.U. shall be guided by the right of the union to intervene in a member state under a conclusion of the Assembly in regard of grave conditions, such as war crimes, genocide, and crimes against humanity, by Article 4(h) of the Constitutive Act. Since the word 'grave' is subjective, determining what constitutes 'grave conditions' is likely problematic. Though the Constitutive Act does not describe "grave circumstances", it lists international crimes that do, including war crimes, genocide, and crimes against humanity. This is arguably a rather simplistic approach since confining "grave conditions" to only a few offences limit the scope of operation of Article 4(h) of the Constitutive Act. The crimes mentioned above, which are called "grave

³⁸¹ Sabelo Gumedze, "The African Union and the responsibility to protect" (2010) *Afr Hum RIGHTS LAW J* 26.

³⁸² Adopted on 11 July 2000 and entered into force on 26 May 2001.

³⁸³ See generally AA Girmachew 'A study of the African Union's rights of intervention against genocide, crimes against humanity and war crimes' unpublished PhD thesis, University of Oslo, 2008.

³⁸⁴ The PSCA.U. Protocol entered into force on 26 December 2003 and replaced the Declaration on the Establishment within the OAU of the Mechanisms for Conflict Prevention, Management and Resolution (Cairo Declaration), while superseding the resolutions and decisions of the OAU relating to the Mechanisms for Conflict Prevention, Management and Resolution in Africa, which conflict with the PSCA.U. Protocol. See art 22 of the PSCA.U. Protocol.

situations”, are described in the International Criminal Court’s (ICC) Rome Statute of 1998. The Act is the regulating and institutional establishment of the A. U’s peacebuilding approach.³⁸⁵

This chapter also notes that the overall architecture of Peace and security in Africa centers on the interactions among the A.U., the PSC, and several other elements established to maintain peace in Africa. It also addresses the A.U. and the R2P (from Non-intervention to Non-indifference), the legality of forcible regional implementation of R2P under international law and the reconstruction framework of the A.U. and a peace intervention.

Africa has experienced a portion of the world’s most severe conflicts and civil wars. The landmass is at present at a junction where policymakers, civil society and the international community all acknowledge that the previous outrages, for example, in Rwanda or intra-state wars like Liberia, Sierra Leone, and Burundi, should fill in as an expectation to learn and adapt for forestalling repeat later. Notwithstanding, executing the tenet of R2P is demonstrating some form of difficulty.. For quite a while, this was a consecrated comprehension among the African States. Be that as it may, the Organization for African Unity (OAU) changed to the African Union (A.U.) worked on the invulnerability of the principle of sovereignty. Even though one of the A.U.’s central target is to “Protect the sovereignty, regional trustworthiness and A.U. autonomy of its Member State”, the organization, to redress the vulnerability of the OAU, grants the Union the “right to intervene” in a Member State under a determination of the Assembly in regard of grave conditions, specifically war crimes, genocide, and crimes against humanity. It is relevant to bring up that the A.U. utilizes the expression “right to intervene” and not “responsibility to protect”. The A.U. also incorporates war crimes, genocide, and crimes against humanity. The similarities even extend to the challenges shared in enforcing the A.U.’s brand of collective security and R2P. In the ongoing crisis in Sudan’s Darfur region, the A.U. and the international community have been unable to enforce the R2P doctrine, highlighting these challenges altogether. These challenges have led to questions about the viability of the canon. A.U., unlike the western powers, has insisted on an intervention

³⁸⁵ Charles Nyuykonge & Mwachofi Singo: ‘Ten years on: the African Union peacebuilding framework and the role of civil society.’ (2017) *Global Public Policy Institute* 3.

where the targeted state grants consent.³⁸⁶ This has been the case even when Africa has been home to most civil wars and violent conflicts experienced worldwide.³⁸⁷

To establish whether there is any nexus between the peace and reconstruction framework under the A.U. and the responsibility to rebuild as developed by ICISS, this chapter will discuss the A.U.'s post-conflict reconstruction framework through peacebuilding. As discussed in the previous chapters, the commitment to rebuild is often invoked when the international community or an external agent has had a military intervention in another state. It is important to note that the A.U. has had no military intervention in countries that have been engulfed with conflicts and where massive human rights violations have been occasioned. For instance, the delay of A.U. to effectively respond to a human rights crisis manifested in the 2011 Libyan crisis. By 'passing motions, establishing fact-finding missions, and assembling high-level ad hoc committees', the A.U. expressed its commitment to intervene and solve the problem³⁸⁸. Moreover, all of these steps were in effect as the time came to intervene; the A.U. took a back seat while NATO forces and other international players attempted to resolve the Libyan crisis³⁸⁹. However, critical to this research is the steps and measures, if any, that the A.U. has employed to help an intervened state reconstruct to protect human rights effectively.

4.1. The African Peace and Security Architecture (APSA)

The Organization of African Unity (OAU) was established in 1963 to provide a strategic structure for joint regional action in peace, security, stability, and regional economic integration to promote growth. However, the OAU's minimal and unreliable experience in developing a structure for regional security and integration demonstrated that most member states were more concerned with their individual and national interests than their collective ones. As a result, the OAU's technical capabilities were jeopardized. In this sense, the OAU's transition into the A.U. in 2002 reflected both a name change and a systemic change in terms of the regional organization's operational apparatus, allowing it to appropriately adapt to Africa's varied and dynamic peace and security

³⁸⁶ T Ekiyor, 'Implementing the responsibility to protect doctrine in Africa', (2007) *Friedrich Ebert Stiftung Briefing Paper* 01, 2.

³⁸⁷ *Ibid.*

³⁸⁸ WK Twinomugisha 'The African Union response to the Libyan crisis of 2011.' (2013) *A Research Report submitted to The Faculty of Management, University of The Witwatersrand*, available at: <http://wiredspace.wits.ac.za/xmlui/bitstream/handle/10539/13329/Twinomugisha%20%20Wilson%20Research%20Report.pdf?sequence=1&isAllowed=y> (Accessed on 17th November 2020).

³⁸⁹ *Ibid.*

challenges. The establishment of new organs and organizations such as the Peace and Security Council (PSC) and Commission, the Court of Justice, the Pan-African Parliament, and the Economic, Social, and Cultural Council bolstered the A.U.'s multilateral dimension.³⁹⁰ Simultaneously, it opened the way for introducing and codifying new standards, principles of policy, and methods for dealing with regional crises and emergencies. In fact, in addition to promoting regional integration, protecting member states' autonomy, national integration, and freedom, peaceful resolution of conflicts, and non-interference in member states' internal relations, the A.U. contained other values that might also contradict some of the ones listed above, such as the Union's right to interfere in a Member State under a decision of the Assembly in regard of grave conditions, such as war crimes, genocide and crimes against humanity.³⁹¹

Article 5(2) of the Constitutive Act was revised in 2002 to incorporate the Protocol creating the Peace and Security Council (PSC, hereafter referred to as the PSC Protocol). Article I of the PSC Protocol describes the organ as 'a collective security and early-warning arrangement to promote prompt and efficient response to conflict and the crisis in Africa', and responsible inter alia, for promoting peace, security, and stability in Africa, to ensure the assurance and safeguarding of life and property, the welfare of the African public and their current circumstance, just as the formation of conditions conducive to sustained development.³⁹² The Protocol confers immense powers on the PSC under Article 7, the purpose of sanctioning the modalities for Union interference in a Member state following a vote by the Assembly, as provided for in Article 4(j) of the Constitutive Act.³⁹³ The fact that the PSC acts under the standards outlined in Article 4(h) of the Act makes this provision possible. As such, it has the power to recommend to the Assembly, by Article 4(h) of the Act, activity for the benefit of the Union in a Member State in case of grave conditions such as war crimes, genocide, or crimes against humanity as specified in applicable international treaties and conventions.³⁹⁴ The PSC can be compared to Africa's version of the UN Security Council (UNSC), except that it does not have a veto. The PSC's decisions, including those of the UN

³⁹⁰ *Ibid.*

³⁹¹ T Murithi, the responsibility to protect, as enshrined in Article 4 of the Constitutive Act of the African Union, *African Security Review*, 16:3, 2007.

³⁹² Art. 3(a) Constitutive Act of the African Union.

³⁹³ *Ibid.* Art 7 (I) (f).

³⁹⁴ *Ibid.* Art 7 (e).

Security Council under Article 25 of the UN Charter, are binding on the A.U. Member States under Article 7(3) of its Protocol.³⁹⁵

The A.U.'s interactions, the PSC, and many other elements developed to preserve stability in Africa form the backbone of Africa's overall peace and security architecture. The A.U. Assembly and the PSC have direct ties: the former is the Union's highest decision-making authority, while the latter is the body in charge of collective security. That means the PSC is primarily responsible for bringing the R2P into effect. The onus, therefore, lies on the Chairperson of the A.U. to bring those matters that s/he believes are likely to jeopardize the peace and security of the continent to the PSC. However, s/he may use his/her excellent office to resolve disputes.³⁹⁶ The five pillars of this architecture are the PSC, the Panel of the Wise (preventive diplomacy and conflict resolution), the Continental Early Warning System (CEWS), the African Standby Force (ASF), and the Peace Fund, which are all stated in the Protocol.³⁹⁷ The PSC, which is at the centre of the debate on the A.U.'s true capabilities and position as a peace and security player, deserves special consideration among all these instruments and organs. Most African leaders initially viewed the PSC as a "historical watershed in Africa's progress toward resolving its tensions and creating a permanent peace and security order", with enormous potential for promoting peace and security on the continent.³⁹⁸ According to the Protocol,

The PSC has several responsibilities, including promoting peace, security, and stability in Africa, anticipating and preventing conflicts, encouraging and implementing peacebuilding and post-conflict reconstruction, consolidating peace and avoiding relapse to conflict, coordinating and harmonizing continental efforts in the prevention and combat of international terrorism, and developing a standard defence policy for the A.U. and to advance and support democratic processes, good governmental administration, the rule of

³⁹⁵ 'The Member States agree to accept and implement the decisions of the Peace and Security Council, in accordance with the Constitutive Act'.

³⁹⁶ *Ibid.* Art 10 (2) (c).

³⁹⁷ JG Porto and U Engel, The African Union's new Peace and Security Architecture: toward an evolving security regime? *African Security*, 2, 2009.

³⁹⁸ The PSC's 15 members subscribe to the concept of "equitable geographical representation and rotation", as well as the defined requirements, which include the states' ability to accept membership obligations and their good standing in terms of constitutional government and rule of law. By March 2009, the PSC had convened over 180 meetings, issued over 100 communiqués, imposed sanctions on Togo, Mauritania, Guinea, and Madagascar, and approved the deployment of peacekeeping forces in Sudan, the Comoros, and Somalia, among other nations. see P Williams, The Peace and Security Council of the African Union: evaluating an embryonic international institution, *Journal of Modern African Studies*, 47, 2009, 14.

*law, as well as protecting human rights and respect for human existence, and international customary law as a component of efforts to forestall conflicts.*³⁹⁹

To provide a holistic peace, security, and development agenda, the African Union has established numerous commissions with corresponding departments. For example, the African Union's Political Relations Commission and Department interact with various topics that fall under the conflict reduction mandate. They aim to provide consolidated programmes on humanitarian law, human rights, governance and election observation, humanitarian issues, refugees, and displaced persons. The African Peer Review Mechanism was created to facilitate the prevention of structural conflict through good governance. The New Partnership for African Development (NEPAD), which may become an A.U. initiative in the future, lays out a list of peace and stability goals to address various levels of conflict, which conform to the report's prevention-reaction-rebuilding structure.⁴⁰⁰ The Constitutive Act does not provide safety measures such as setting out the duty to rebuild or even cost implications of intervening in a member state. Africa being a host to numerous conflicts, there was a need to put in place mechanisms to help countries reconstruct themselves after a civil war or any other form of warfare. As a result, it is essential to emphasize that sufficient funding and a long-term commitment to reconciliation are needed for successful post-conflict peacebuilding in Africa. UN missions must also ensure that state agencies are working and capable of governing. Furthermore, without the presence of local actors, reconstruction within the R2P would fail. Rebuilding should not be prescriptive, and the international community should not handle moving from conflict to peace with a “one size fits all” approach.

4.2 The African Union and the Responsibility to Protect – From Non-intervention to Non-indifference?

The African Union's formation marked a watershed moment in African views on hegemony and (non)-intervention: The A.U. Constitutive Act requires the organization to comply with human right violations issues in member states which are no longer treated as subjects practically under

³⁹⁹ African Union, Statement of Commitment to Peace and Security in Africa, issued by the heads of state and government of the member states of the Peace and Security Council of the African Union, Addis Ababa: A.U., 2004, 1. See also JG Porto and U Engel, The African Union's new Peace and Security Architecture: toward an evolving security regime? *African Security*, 2, 2009, 85.

⁴⁰⁰ For a discussion of the conceptual links between NEPAD and The Responsibility to Protect see R Gossen and S Sharma, Advancing NEPAD through The Responsibility to Protect, Policy brief, The Liu Institute for Global Issues, July 2003.

the domestic authority of states, unlike its predecessor organization, which exalted conventional sovereignty norms.⁴⁰¹ The founders of the A.U. gave their organization much more interventionist powers than its precursor organization might have imagined. However, the shift from a non-interventionist defence culture to one based on the “non-indifference” doctrine is still incomplete. In early 2005, the African heads of states adopted the responsibility to protect what has popularly come to be known as the Ezulwini Consensus.⁴⁰² The consensus by the African states on sovereignty as responsibility is in tandem with the new organizational dispensation, departing from the Organization of African Unity (OAU) to the African Union (A.U.). In practice, Africa under A.U. is more pro-active and prepared to deal with the continent's peace and security challenges to contribute to international peace and security.⁴⁰³ To achieve A.U.'s objective in peace and security, as mentioned in Article 3 (c) of the Constitutive Act,⁴⁰⁴ necessary institutions were created;⁴⁰⁵ Protocol of the Establishment of the Peace and Security Council of the African Union (PSC Protocol), a Common African Defense and Security Policy (CADSP) and set up the African Peace and Security Architecture (APSA). Article 4(h) of the A.U. Act gives the Union the right to intervene in a Member State based on a resolution of the Assembly in extreme situations, such as war crimes, terrorism, or crimes against humanity, without the intervened State's permission.⁴⁰⁶ Many analysts agree that this provision embodies the humanitarian intervention theory, possibly that it concerns the deterrence of heinous international crimes.⁴⁰⁷ It is appropriate to bring up that Article 7(e) of the Protocol Relating to Establishment of the Peace and Security Council operationalizes the A.U. Constitutive Act's principle of non-indifference by empowering the Council to recommend military interventions for authorization by the A.U. Assembly in cases of

⁴⁰¹ Art. 4(h) of the African Union Constitutive Act, 2158 UNTS 3 (entered into force 26 May 2001).

⁴⁰² A.U. document Ext/EX.CL/2 (VIII) 'The Common Africa Position on the Proposed Reform of the United Nations', also referred to as the Ezulwini Consensus. p.6.

⁴⁰³ An Agenda for Peace - A/47/277-S/24111, paragraph 64 – UN Documents: Gathering a body of Global Agreements; <http://www.un-documents.net/a47-277.htm>, (Accessed on 17th November 2020).

⁴⁰⁴ A.U. vowed, inter alia, to 'promote peace, security and stability on the continent'¹ and to 'accelerate the political and socio-economic integration of the continent.

⁴⁰⁵ Pan African News Agency 'A.U. focuses post-conflict reconstruction in Africa.' (2006) Relief web. Available at: <https://reliefweb.int/report/burundi/A.U.-focuses-post-conflict-reconstruction-africa> (Accessed on 28th November 2020 at 4.

⁴⁰⁶ African Union, The Constitutive Act of the African Union, 2000, Article 4(h).

⁴⁰⁷ NJ Udombana, 'When Neutrality is a Sin: The Darfur Crisis and the Crisis of Humanitarian Intervention in Sudan' (2004) 27 *humRtsQII*49; K Kindiki, 'The Normative and Institutional Framework of the African Union Relating to the Protection of Human Rights and the Maintenance of International Peace and Security: A Critical Appraisal' (2003) 3 *AfrHRLJ* 97; K Kindiki, 'International Law on Trial the Darfur Crisis and the Responsibility to Protect' (2007) 9 *IntlCLRev* 445-473.

crimes against humanity, genocide, and war crimes.⁴⁰⁸ This is another dynamic in Africa's peace plan – a global decision-making stage for peacebuilding in addition to the guideline of non-indifference towards viciousness within the state.

The Constitutive Act enshrines the principles of national integrity (Art. 4a), non-interference by member states (Art. 4g), non-use of coercion (Art. 4e, 4f, 4i), the prohibition of unconstitutional government changes (Art. 4p), and the A.U.'s ability to intervene in member states' internal affairs in cases of severe human rights abuses (Art. 4p) (Art. 4h). Following the ratification of the A.U. Constitutive Act, African governments reaffirmed their (rhetorical) contribution to R2P in the "Ezulwini Consensus," which reiterated the UNSC's primary obligation for international peacekeeping, but also acknowledged that regional organizations might be forced to participate without prior Security Council approval in some instances.⁴⁰⁹ The Ezulwini Consensus and Art 4(h) of the A.U. Act attest to Africa's rhetorical support for R2P. Despite the absence of the terms "responsibility to protect" in the Constitutive Act, the right of intervention as described in the Act includes the same elements as R2P.⁴¹⁰ Evans argues that the intervention in Burundi, which was a peace operation that the A.U. members endorsed, demonstrated Africa's acceptance of sovereignty as a responsibility.⁴¹¹ As discussed in this chapter, there has been an attempt by the A.U. to restore normalcy in Burundi through the peacebuilding framework, and this, according to a report from a Pan African news agency, has 'consumed huge sums of money for naught'.⁴¹²

The belief that Africa should be able to come up with African solutions to African issues to deter external forces from leveraging Africa's internal vulnerabilities was a major driving force behind the founding of the OAU and its precursor, the A.U.⁴¹³ The A.U.'s evolving defence community

⁴⁰⁸ African Union (2002)

⁴⁰⁹ The Common African Position on the Proposed Reform of the United Nations: "The Ezulwini Consensus," Executive Council of the African Union, 7th Extraordinary Session, 7-8 March 2005.

⁴¹⁰ T Ekiyor 'Implementing the responsibility to protect in Africa' (2007) Friedrich Ebert Stiftung Briefing paper2.

⁴¹¹ G. Evans, 'The Responsibility to Protect: An Idea Whose Time Has Come...and Gone?', (2008) 22 *International Relations* 3, 283, 291.

⁴¹² *Supra* note 404; L Cononoly 'Politics in place of peace: the A.U.'s role in Burundi,' (2016) Global Peace Operations Review, available at: <https://peaceoperationsreview.org/thematic-essays/politics-in-place-of-peace-the-A.U.s-role-in-burundi/> (accessed on 26 October 2018). In 2015 during an election that was marred with controversy, the A.U. was supposed to send 50 human rights observers and 50 military observers to monitor the elections but that was not done. An act that is attributed to lack of resources and coordination within the A.U. institutional framework.

⁴¹³ Selassie, Haile I. "Towards African unity". *Journal of Modern African Studies* 1/3. 1963. 285; Hussein Solomon, African Solution to Africa's Problems? African Approaches to Peace, Security and Stability; *University of Free State*; https://www.researchgate.net/publication/277886206_AFRICAN_SOLUTIONS_TO_AFRICA%27S_PROBLEMS_AFRICAN_APPROACHES_TO_PEACE_SECURITY_AND_STABILITY, (Accessed on 28 November 2020).

includes the concept of African independence from Northern tutelage. The nascent regional unity of the African Union is founded on the Pan-Africanism theory, which holds that “all African people have a spiritual relationship with one another and that, having worked together in the past, they must now step together toward a new and brighter future”.⁴¹⁴ As a result, Africans are claiming a sense of Third World identity and agency, which was historically overlooked by colonial powers and is now being used as a rallying point for Africans to unite toward Western domination. On this note, as previously mentioned, the development of Africa’s security architecture is, among other things, an effort to balance Western hegemony and has significant consequences for Africa’s R2P strategy.⁴¹⁵ Due to the general African resistance to hegemonic intervention, several African governments endorse the ICISS’s plan for a code of ethics for the P-5 members of the UNSC in cases involving mass massacres. Africans despise the P-5’s veto power, which they see as a hegemonic body on which they have little influence.⁴¹⁶ The A.U.’s perspective of the relationship between R2P and the principle of non-intervention is also explained by Africa’s distrust of the UNSC: Although Art. 4(h) of the A.U. Constitutive Act provides for a right to humanitarian intervention, which at first glance seems to refute the principle of non-interference; it is essential to note that the right to intervene belongs to the A.U. alone. The theory of non-intervention continues to prevail supreme in ties between Africa and the rest of the world. As a result, Africa has established a unique understanding of R2P, which involves pruning the non-intervention tradition favouring an A.U.-only right to intervene, rather than the international community, as the ICISS suggests. According to the African understanding of R2P, the primary duty-bearers are nation-states themselves; however, if they struggle to live up to their obligations, the A.U. takes responsibility. While prior UNSC consent is preferable, it is not a prerequisite for the African Union to initiate a humanitarian intervention.⁴¹⁷

⁴¹⁴ Emerson, Richard M. 1962: Power-Dependence Relations, in: *American Sociological Review* 27: 1, 31-41. Emerson, Richard M. (1970). Pan-Africanism. In I. L. Markovitz (Ed.). *African politics and society*. New York: Free Press. P. 450; Kwame Nantambu, (1998). Pan-Africanism Versus Pan-African Nationalism: An Afrocentric Analysis. *Journal of Black Studies*. Vol. 28, No.5 (May 1998), p. 562.

⁴¹⁵ Matthias Dembinski and Theresa Reinold, The A.U. and R2P – from non-intervention to non-indifference? Peace Research Institute Frankfurt (2011), p. 9. https://www.jstor.org/stable/resrep14497.5?seq=1#metadata_info_tab_contents. (Accessed on 28 November 2020).

⁴¹⁶ *Ibid.*

⁴¹⁷ Ladnier, Jason 2003: Neighbors on Alert – Regional Views on Humanitarian Intervention. Summary Report of the Regional Responses to Internal War Program, Fund for Peace, Washington DC. p. 53

Given that Africa continues to be a continent beset by poor government, civil war, and the possibility of genocide, war crimes, and crimes against humanity, the African Union's interventionist position seemed rational. It can therefore be said that the genocide in Rwanda demonstrated to Africans that the United Nations could not be trusted to protect African civilians.

Likewise, it is appropriate to take a gander at the sub-regional level of analysis to understand the role R2P plays in the A.U.'s security culture. At the state level, African leaders' attitudes toward R2P are already influenced by their apprehension of neocolonialism disguised as humanitarian concerns. Many African regimes seek to maintain conventional sovereignty standards, putting regime security ahead of human security.⁴¹⁸ Furthermore, many African politicians express a need for regime stability. The A.U. is often seen as a collective preservation club for despotic leaders who nevertheless have warm feelings for one another.⁴¹⁹ As a result, a sincere contribution to R2P as part of the African security community is "doomed to be conceptual rather than realistic as long as its members are solely concerned with maintaining regime security and sole access to the nation's resources".⁴²⁰

4.3. The Legality of Forcible Regional Application of R2P under International Law

While the principle of responsibility to protect offers a normative framework for addressing the political and legal dilemmas of forceful action, regional bodies are also required to provide frameworks for putting the concept into practice. It must be borne in mind that, even though Article 4(h) preceded the emergence of R2P, there is normative overlap between them in terms of trigger crimes.⁴²¹ Despite this apparent normative alignment between the A.U. regional normative structure in Article 4(h) and the global R2P normative compact, substantial discrepancies and difficulties persist, which have harmed the relationship between the A.U. (including other African

⁴¹⁸ Ibid

⁴¹⁹ Abdulai, Emmanuel S. 2010: The Standoff between ICC and African Leaders Debate Revised, in: Oxford Transitional Justice Research. Debating International Justice in Africa, OTJR Collected Essays, 2008–2010, 9-11, online at <https://www.files.ethz.ch/isn/136004/prif107.pdf> (Accessed on 28 November 2020).

⁴²⁰ Taylor, Ian/Williams, PA.U.I D. 2008: Political Culture, State Elites and Regional Security in West Africa, in: *Journal of Contemporary African Studies* 26: 145.

⁴²¹ See Chacha Bhoke Murungu, 'International Crimes that Trigger Article 4(h) Intervention' in Dan Kuwali & Frans Viljoen (eds) *Africa and the Responsibility to Protect: Article 4(h) of the African Union Constitutive Act* (2014) pp. 166-81. See generally, John-Mark Iyi *The A.U.-ECOWAS Intervention Treaties under International Law and the Operationalization of the Responsibility to Protect: Towards a Theory of Regional Responsibility to Protect*. (2015) Springer.

Regional Economic Communities - RECs) and the UN in the adoption of R2P in Africa.⁴²² The first point of departure is that whereas Article 4(h) is a provision in the treaty of a regional body and has a legally binding character on members under international law, R2P is essentially a political commitment.⁴²³ As the operationalization of R2P was approved in Libya but not in Syria, the importance of this discrepancy and the consequences about what steps might and should be taken lawfully and by whom, became apparent.⁴²⁴ Second, while Article 4(h) grants a regional body the power to intervene in specific and limited situations, R2P encompasses a much more comprehensive range of human security alternatives, all of which are primarily governed by fundamental values derived from human rights, international humanitarian law, international law, and other sources.⁴²⁵ Finally, though R2P includes protective, reactive, and rebuilding elements, Article 4(h) was designed to be a reactive legal provision whose invocation is conditional on the inclusion of clear benchmarks of international crimes.⁴²⁶

The 2005 Outcome Document reaffirmed that the responsibility to protect should be carried out by coercion if all diplomatic measures fail and that such action can require collaboration with the appropriate regional body⁴²⁷. Under Article 52 of the UN Charter, local establishments may attempt to maintain international peace and security. Article 53(1) of the Charter provides

⁴²² The controversy over the introduction of the UN Security Council-authorized intervention in Libya in 2011 has intensified these divisions. Some people continue to question R2P as the foundation for action by the international community. See the WSOD debates and the comments made by Brazil on its Duty Thus Maintaining (RWP) concept. See Maria Luiza Ribeiro Viotti 'Responsibility While Protecting: Elements for the Development and Promotion of a Concept', annexed to the letter dated 9 November 2011, from the Permanent Representative of Brazil to the United Nations to the Secretary-General, A/66/551-S/2011/201, 1 November 2011.

⁴²³ See Carsten Stahn, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm" (2007) 101 *American Journal of International Law* 99-120 (Hereafter Stahn "Responsibility to Protect"); Max W Matthews "Tracking the Emergence of a New International Norm: The Responsibility to Protect and the Crisis in Darfur" (2008) 31 *B.C. International Comparative Law Review* 137-152; Cf. Jutta Brunnee & Stephen J Toope "The Responsibility to Protect and the Use of Force: Building Legality" (2009) 2 *Global Responsibility to Protect* 191-212 at 193 arguing that although the norm is not yet a binding norm, it is on the way to becoming one. For similar views, Alex J. Bellamy & Ruben Reike "The Responsibility to Protect and International Law" (2010) 2 *Global Responsibility to Protect* 267-286. For a fuller treatment of the status of R2P since the events in Libya and Syria, see Spencer Zifcak "The Responsibility to Protect after Libya and Syria" (2012) 13 *Melbourne Journal of International Law* 1-35; Francis Kofi Abiew "Article 4(h) Intervention: Problems and Prospects" in Dan Kuwali & Frans Viljoen (eds.) *Africa and the Responsibility to Protect: Article 4(h) of the African Union Constitutive Act* (2014) pp. 108-126 at 112. (Hereafter Abiew 'Problems and Prospects').

⁴²⁴ See Dan Kuwali, "The Responsibility to Protect: Why Libya and not Somalia?" *The African Centre for the Constructive Resolution of Disputes Policy Brief*: 016, March 2012.

⁴²⁵ Francis Kofi Abiew "Article 4(h) Intervention: Problems and Prospects" in Dan Kuwali & Frans Viljoen (eds.) at 10.

⁴²⁶ *Ibid.*

⁴²⁷ World Summit Outcome Document, *supra* note 10, para. 139.

explicitly that regional organizations may undertake enforcement action, provided they have Security Council authorization. Since international bodies may be in the conflict zone, and therefore their Member States are the most impacted by the war's adverse effects, their intervention or cooperation with the United Nations is critical.

Just because a regional organization asserts a residual right to use force to protect human life does not mean that such an assertion immediately satisfies international law requirements. It is worth remembering that the Security Council expressly and indirectly authorizes the A.U. to take disciplinary measures in a Member State. Union enforcement action, including defending human rights, can be unconstitutional under Charter rules.⁴²⁸ The move will be potentially illegal and will be a breach of UN Charter Article 2(4) if the African Union takes enforcement steps that the Security Council does not allow ahead of time or takes acts that the Security Council retroactively approves.⁴²⁹ However, if the A.U. acts based on a request from the Member State involved, it is likely to constitute a peacekeeping mission under Article 4(j) of the A.U. Act and does not entail the authorization of the Security Council. However, if the A.U. later uses armed force in that mission against a rebel organization within the Member State but not the State itself, it is also an enforcement intervention because it seeks to extract conformity with international law from the subject country. What distinguishes action regulation is the goal it aims to pursue, not the party against which it is aimed⁴³⁰ The usage of the word “enforcement action” in this chapter, involving forceful intervention in a State, is consistent with the use of the term in the Charter of the United Nations and international law⁴³¹ Execution of compliance action is maintained within the UN collective protection, meaning authorization by the Security Council, in the responsibility to

⁴²⁸ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) I UNTS XVI (UN Charter) Art 53 (I)

⁴²⁹ Abass, Ademola, “The African Union and the Responsibility to Protect: Principles and Limitations” in *Responsibility to Protect: From Principle to Practice* (Amsterdam: Pallas Publications, 2012), 229.

⁴³⁰ *Ibid*, at p.230.

⁴³¹ Chapter VII “enforcement measures” are excluded from the ban on interference in a state's domestic relations under Article 2(7) of the Charter. The Security Council has the authority under Article 42 of the Charter to sanction required “action” by air, sea, or ground forces. Furthermore, Article 53(1) of the Charter authorizes regional authorities to take “enforcement measures” with the Security Council’s approval. Compliance activity, according to the ICJ, is interference that is not focused on the territorial state's approval. *Certain Expenses of the United Nations*, Advisory Opinion, ICJ Reports 1962, 151, 170.

protect discourse.⁴³² Also, regional organizations such as the African Union (A.U.) may undertake intervention, including enforcement action where necessary.⁴³³

Even if a regional compliance action is undertaken solely to apply R2P, it would not be exempt from the UN Charter's legal requirements.⁴³⁴ The WSO Document and other related instruments give the international community some power to protect citizens from the world's most heinous crimes, but these responsibilities are taken from international documents other than the UN Charter; hence, where there is a disagreement between the two, the Charter would take precedence⁴³⁵. Some argue that because Article 103 of the UN Charter is directed to states rather than international organizations, and because the latter are not signatories to the UN Charter, their use of force (authorized by the Security Council) to enact R2P is not in conflict with Article 103. As reasonable as this argument might seem, it is difficult to see how States may jointly circumvent responsibilities that they assume under the United Nations Charter. In this event, the action will breach the Charter's Article 53(1).⁴³⁶

From a polity standpoint, the risk of the A.U. using force against the territorial sovereignty and political rights of its Member States is negligible, given the limited probability that the Union will employ armed force without the consent of the Member State concerned. However, what if it does, against all odds? The central question is whether such force violates Article 2(4) of the Charter, even though it also violates Article 53(1) of the Charter, which governs regional entities' use of force.

The continued development of the responsibility to protect into a legal principle does not mean rejection of the concept of non-intervention, nor does it constitute a violation of territorial integrity. Rather than opposing the principle of sovereignty, the responsibility to protect it is an endorsement of it.⁴³⁷ The aim of preserving international peace and defending natural persons from disasters is

⁴³² HLP Report asserts that military action may be resorted with authorization by the Security Council. See also World Summit Outcome Document at, para. 139.

⁴³³ World Summit Outcome Document, id. Regional organization's role in the maintenance of international peace and security is recognized in Chapter VIII of the UN Charter. Under Article 53(1) of the Charter, regional organizations may undertake enforcement action but with the authorization of the Security Council.

⁴³⁴ *Ibid.*

⁴³⁵ Article 103 of the UN Charter.

⁴³⁶ Article 53 (1) of the UN Charter.

⁴³⁷ D. Kuwali, *The Responsibility to Protect: Implementation of Article 4(h) Intervention* (2011), 97.

preserving state sovereignty and preventing interference within the international community.⁴³⁸ Interventions and imperialist conflicts have the potential to create economic chaos and humanitarian crises.⁴³⁹ The evolving norm does not justify forceful intervention in any situation but preferably in situations where genocide, crimes against humanity, war crimes, and ethnic cleansing are being prevented or avoided.⁴⁴⁰ An argument can be canvassed that since one of the UN's goals is to protect people from the ravages of war, the use of force to prevent massive human rights violations or to protect people does not violate Article 2(4), which is only directed toward uses of force that violate a state's territorial sovereignty or political independence. This line of reasoning has several drawbacks.

To begin with, customary international law on humanitarian intervention is at best inchoate. Furthermore, the Security Council's operations or acts authorized by the Security Council are stated in the same Charter as the means of achieving this aim. Those who contend that R2P would not threaten the target state's territorial sovereignty or constitutional freedom ignore the target state's interests and put too much emphasis on the physical nature of the state rather than its political essence.⁴⁴¹ The argument has always been flimsy since Anthony D'Amato first made it about the US military involvement in Grenada in 1983.⁴⁴² Without question, using aggression to protect civilians would jeopardize the state's territorial sovereignty and democratic freedom in any way. Thus, D'Amato's argument cannot be used for R2P; that is if it ever made any sense at all.⁴⁴³

The ICISS tried to avert this controversy by ignoring the term 'humanitarian action', allegedly because many of the people it consulted opposed to humanitarianism being militarized. 'Having this term appropriated to characterize any military operation is anathema for the humanitarian relief and assistance, according to the ICISS.⁴⁴⁴ There is something cynical about this argument. Starting in Somalia in 1994, the UN has used armed force to provide humanitarian assistance for several years. The inquiry that strikes a chord is that intervention is no longer considered

⁴³⁸ A. Peters, 'Membership in the Global Constitutional Community', in J. Klabbers et al.(eds), *The Constitutionalization of International Law* (2009), 153, 186 (Peters, *Global Constitutional Community*).

⁴³⁹ *Ibid.*

⁴⁴⁰ World Summit Outcome Document at para. 139.

⁴⁴¹ *Supra* note 429 at 231.

⁴⁴² The New York Times News: Intervention in Grenada: Right or Wrong? <https://www.nytimes.com/1983/10/30/opinion/1-interventeion-in-grenada-right-or-wrong-006775.html>. (Accessed on 28 November 2020).

⁴⁴³ *Supra* note 441.

⁴⁴⁴ ICISS Report at para 1.40

“humanitarian” because it was carried out by military force? Humanitarian organizations and personnel are unlikely to object to military protection in conflict zones, fearing that any intervention would militarise humanitarianism.

The principle of sovereignty endows the state with international and domestic responsibilities, including the responsibility to protect populations within its boundaries.⁴⁴⁵ The international community has made it a mission to protect communities from such gross abuses of human rights and humanitarian law, which are also international crimes. The term suggests that such activity be held within the UN’s national security framework, with the Security Council providing authorization, to avoid subjectivity and uncontrolled forceful interventions.⁴⁴⁶ The principle is a framework for ensuring that sovereignty accomplishes its goal of protecting the state’s population.

4.4. The Reconstruction Framework Under the African Union and Peace Interventions

The problem of armed wars in Africa and their effect on socioeconomic stability has remained a formidable mission. The African Union (A.U.) and Regional Economic Communities (RECs) have put considerable effort into promoting talks for a negotiated resolution of current conflicts and successful implementation of peace agreements, as seen in Burundi, the Central African Republic (CAR), the Democratic Republic of Congo (DRC), Comoros, Côte d’Ivoire, Sierra Leone, Liberia, Sudan, and Somalia.⁴⁴⁷ In this sense, the A.U. recognized the importance of ensuring that peace negotiations are successfully complemented by long-term post-conflict reconciliation and peacebuilding attempts to resolve the root causes of conflict. In this regard, the Executive Council urged the Commission to implement an A.U. Strategy on Post-Conflict Reconstruction and Reconciliation based on the relevant provisions of the Peace and Security Council Protocol as well as the experience gained in managing African peace processes over the years, dating back to the former Organization for African Unity (OAU) years.⁴⁴⁸ After several consultations, the African Union's Post Conflict Reconstruction and Development (PCRD) Policy was formally implemented

⁴⁴⁵ Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect: Report of the Secretary General, UN Doc A/65/877, 27 June 2011, para. 10.

⁴⁴⁶ World Summit Outcome Document at para. 139.

⁴⁴⁷ African Union Peace and Security: African Union Post-Conflict Reconstruction and Development (A.U. PCRD); <http://www.peaceA.U.org/en/page/70-post-conflict-reconstruction>. (Accessed on 28 November 2020).

⁴⁴⁸ *Ibid.*

in July 2006 to consolidate and support the continent's peacebuilding efforts.⁴⁴⁹ The A.U.'s PCRDR was created to establish a structure geared towards implementing activities that address the causes and drivers of conflict and ensure that the peace process does not relapse into violent conflict.⁴⁵⁰

It is worth noting that a significant number of the lessons learned from various peacebuilding analyses during the A.U.'s final years were incorporated into the African Post-Conflict Reconstruction Policy Framework, whose development began in 2002 when the enforcement board of the New Partnership for Africa's Development (NEPAD) concluded that Africa's peacebuilding approach would be a comprehensive scheme including (a) re-establishing security; (b) overseeing political change; (c) anchoring socioeconomic development; (d) advancing common freedoms/human rights and equity; and (e) mobilization of resources. These five dimensions are intended to be complementary and mutually reinforcing. The A.U. accepts that there is no compelling reason to put these in a sequence since it does not acknowledge the rationale that you need one component to be completely set up before the following stage takes effect, as is regularly the UN and Western case approaches to peacebuilding. It is expected in the mainstream literature that conflict prevention, conflict resolution, reconstruction, peacekeeping, and peacebuilding structure natural systems should be continued in a specific order. Like this, the actual usage of this A.U. strategy varies, starting with one conflict circumstance then onto the next.

The A.U. policy on PCRDR is intended to act as a roadmap for implementing detailed policies and initiatives that detail interventions aimed at consolidating stability and preventing relapse into war and promoting sustainable development and paving the way for growth reconstruction in conflict-affected countries regions. Given the unique characteristics of each crisis, this strategy is designed to be a versatile template that can be applied to and used to support displaced areas and countries in their efforts to rebuild, secure, and expand.

The A.U. has often resorted to peaceful methods of resolving conflicts instead of an aggressive model employed by the UN because of lack of capacity. The A.U. has conducted several peacebuilding interventions, and for purposes of this chapter, those interventions will be explored to put into perspective A.U.'s normative framework on the responsibility to rebuild and the post-

⁴⁴⁹ GD Carvalho 'Conflict prevention: What's in for A.U.?' (2017) Institute for Security Studies, available at: <https://issafrica.org/research/policy-brief/conflict-prevention-whats-in-it-for-the-A.U.> (Accessed on 28 November 2020).

⁴⁵⁰ M Barnett et al 'Peacebuilding: what is in a name?' (2007) 13 *Global governance* 35.

conflict framework, which encapsulates the elements of rebuilding that were put forth by the ICISS in its report on R2P.⁴⁵¹ Although the A.U. shifted from non-intervention to a non-indifference approach, it is yet to invoke Article 4 (h) of the Act to launch a military intervention against a member state even when massive human rights violations occur in some countries in Africa.⁴⁵² In situations like Libya, Darfur and even Burundi, the A.U. has often opted for a diplomatic way of resolving disputes.⁴⁵³ It is important to note that the African Union's peacekeeping missions are multi-disciplinary, capable of predicting, de-escalating, protecting, tracking, and promoting post-conflict development. Therefore, the African Union places importance on the post-conflict development to help a state that has experienced destruction resulting from civil wars or even military intervention by the African Union.⁴⁵⁴

Nonetheless, it should be borne in mind that the A.U. had endeavoured to be engaged with the post-conflict reconstruction process and even when it did not participate in a military intervention exercise. This initiative is of concern for this chapter and its analysis on the effectiveness of protecting human rights after a conflict. The assessment of its success or failure can be done by studying existing post-conflict reconstruction cases, and this paper uses Somalia, Sudan, and Burundi as case studies. The three cases do not have any unique difference from those of either Libya or even the Ivory Coast. However, this paper uses the three case studies because it is in them that the A.U.'s structural gap in the peacebuilding architecture has been exposed, and its ability to rebuild a post-conflict society was brought into question successfully.

4.4.1. Somalia

After the ousting of the Somali dictator in a coup that was staged by two war-lords in 1991,⁴⁵⁵ the human rights situation got worse in 1992 when a civil war intensified, which was then followed by a severe famine.⁴⁵⁶ It is estimated that over 4.5 million Somalis were on the brink of starving

⁴⁵¹ T Murithi 'The African Union's evolving role in peace operations: The African Union Mission in Burundi, the African Union Mission in Sudan and the African Union Mission in Somalia.' (2008) 17 *African Security Review* 82.

⁴⁵² D PA.U.I and Williams 'The African Union's Conflict Management Capabilities'. (2011) *Working paper, Council on Foreign Relations, International Institutions and Global Governance Program*

⁴⁵³ S Zondi 'African Union approaches to peacebuilding'. (2017) *African Centre for the Constructive Resolution of Disputes*. Available at <https://reliefweb.int/report/world/african-union-approaches-peacebuilding>, (Accessed on 28 November 2020).

⁴⁵⁴ *Ibid.*

⁴⁵⁵ The US Institute of Peace 'Restoring Hope, the real lessons of Somalia for the future of interventions. (1994) *Special Report 4*.

⁴⁵⁶ *Ibid.*

to death due to starvation because the famine was becoming unbearable by the day.⁴⁵⁷ The United Nations called the two warring leaders to cease fire and allow international humanitarian agencies to supply aid to the already affected civilians.⁴⁵⁸ The deal brokered by the UN and the two leaders did not last long. After the crisis intensified, the US sent troops to Somalia to support the UN troops already on the ground. The situation got worse when two US military helicopters were shot down, with 18 soldiers killed and 84 wounded.⁴⁵⁹ The US then withdrew its forces from Somalia, and a year later, the UN withdrew its forces as well. The government of Somalia had collapsed entirely, and the country was under the control of militias, and it became a hotbed of terrorist activities.⁴⁶⁰ A.U. then chose to intervene at a point when the situation had spanned entirely out of hand.

The OAU's idea of establishing a transitional government in Somalia with a semblance of stability was crucial to the A.U. approach since the A.U. approach requires the establishment of an administration to be at the centre of dialogue, stabilization, and the legitimization of international interventions, as well as the establishment to which peace missions' hand over the task of building peace and good governance over the long haul. Pattison proposes that there should be an authority in place upon which the responsibility to continue rebuilding is bestowed before the external agent exits.⁴⁶¹ Zondi argues that the A.U.'s peace intervention involves the restoration of institutional normalcy, emphasizing the value of brokering a political agreement that comprises a transitional governing administration.⁴⁶²

Since 2003, the African Union has assisted the Inter-Governmental authority for Development (IGAD) in achieving peace through the formation of various delicate transitional governments. In this way, the whole peacebuilding effort has appeared fragile, trapped in its early stages, and there are no reasonable prospects for the A.U. strategy to find expression in Somalia under these conditions. The United Nations Security Council Resolution 1725 of December 2006 reflected this approach to Somalia. As a result, the African Union (A.U.) formally established the African Union

⁴⁵⁷ S Rechia 'Pragmatism over principle: US intervention and burden shifting in Somalia, 1992-1993.' (2018) *Journal of Strategic Studies* 18.

⁴⁵⁸ *Ibid.*

⁴⁵⁹ *Ibid.*

⁴⁶⁰ *Ibid.*

⁴⁶¹ James Pattison 'Jus post bellum and the Responsibility to Rebuild' (2013) *British Journal of political science* 25

⁴⁶² *Ibid.*

Mission in Somalia (AMISOM) in January 2007, with the daily mandate of political consultation, constitution-building, morale-building, global collaboration, and security sector reform.⁴⁶³ Unfortunately, the mission has only helped a fragile transitional government by moving above the most fundamental political dialogue activities. It has also prioritized humanitarian relief.

On the other hand, the African Union has requested a mandate from the United Nations Security Council to give the IGAD-A.U. mission universal legal status. In 2009, the United Nations dispatched 1700 peacekeeping troops from Burundi, Ghana, Malawi, Nigeria, and Uganda to establish the Somali National Reconciliation Congress. Since then, it has mainly concentrated on safeguarding the weak transitional government and managing the security threat raised by Al-Shabaab militants' emergence.⁴⁶⁴ Unfortunately for Somalia, there has been no stable government, and because of that, the A.U.'s reconstruction process has stuck in the first phase, which is political dialogue.⁴⁶⁵ The approach by A.U. to find peace in Somalia has also been criticized as one that is aimed at protecting the transitional government as opposed to protecting civilians from human rights violations.⁴⁶⁶

According to the 2015 Peace and Security Council Report, AMISOM struggled to gain ground because Somalia lacks the necessary conditions for peace. Because of the government's powerlessness and the violence of Al-Shabaab and other state armies, national reconciliation about a new order and transitional political courses of action cannot thrive. AMISOM has become a power focused on overseeing crisis issues rather than maintaining or establishing peace in these circumstances. AMISOM acknowledges that state arrangement, reconstruction of cultural frameworks and the rebuilding of administrative processes are challenging to accomplish without compromise or conflict resolution. On the off chance that this prompts a more noteworthy spotlight on rebuilding the State, state-civil society relations, reinforcing native structures of harmony, and

⁴⁶³ Siphamandla Zondi, African Union Approaches to Peacebuilding; <https://www.accord.org.za/ajcr-issues/african-union-approaches-peacebuilding/>. (Accessed on 28 November 2020).

⁴⁶⁴ A.U. Peace and Security Council. 2015. Communiqué of the 521st meeting of the Peace and Security Council, 30 June 2015. Available from: <<http://www.peaceA.U..org/en/article>>. (Accessed on 28 November 2020).

⁴⁶⁵ S Zondi 'African Union approaches to peacebuilding.' (2017) African Centre for the Constructive Resolution of Disputes. Available at <https://reliefweb.int/report/world/african-union-approaches-peacebuilding> (Accessed on 29 November 2020).

⁴⁶⁶ NM Segui 'PSC retrospective: Appraising the role of the A.U. in Somalia' (2013) Institute Security Studies. Available at: [file:///Users/universalrightsgroup6/Downloads/APPRAISING THE ROLE OF THE African Union.pdf](file:///Users/universalrightsgroup6/Downloads/APPRAISING%20THE%20ROLE%20OF%20THE%20African%20Union.pdf) (Accessed on 30 November 2020).

securing the integrity of the territory may incite some progress towards peace and harmony in Somalia.

Despite the establishment of the Federal Government of Somalia in 2012 and progress toward elections and complete government control of the region, civilians are still vulnerable to attacks by armed militant groups, especially Al-Shabaab, and the forces fighting them.⁴⁶⁷ An estimated 2.6 million Somalis are internally displaced in Somalia because of decades of civil strife, with more than 270,000 newly displaced in 2019. About 5.2 million Somalis, or one-third of the population, need humanitarian relief, and starvation remains a danger in many countries.⁴⁶⁸ Al-Shabaab militants systematically breach International Humanitarian Law (IHL) and International Human Rights Law (IHRL), torturing prisoners, bombing hospitals and schools, killing civilians, and using civilians as human shields.⁴⁶⁹ The group continues to attack the African Union Mission in Somalia (AMISOM) and humanitarian convoys, denying civilians access to essential humanitarian aid. Al-Shabaab also recruits children, who make up more than half of their army.⁴⁷⁰ According to the United Nations Secretary-General's 2019 report on Children and Armed Conflict, child violence in Somalia has risen by 23% since 2017, with at least 1,041 children killed or maimed in 2018 Al-Shabaab recruiting over 1,865 children.⁴⁷¹

In responding to these gross violations of international law, the UN Security Council (UNSC) passed Resolution 2472 on May 31, renewing AMISOM's mandate until May 31, 2020, and lowering AMISOM's troop ceiling by 1,000 to 19,626 by February 28, 2020, in compliance with the Transition Plan⁴⁷². The United Nations Security Council (UNSC) passed Resolution 2444 on November 14, 2019, renewing the partial weapons embargo on Somalia until November 2020, declaring that the government of Somalia bears primary responsibility for protecting its citizens that the country's security forces must be reinforced.⁴⁷³

⁴⁶⁷ Somalia: Global Responsibility to Protect; *Al-Shabaab and various armed forces have perpetrated attacks against populations which may amount to war crimes and crimes against humanity.* [Somalia - Global Centre for the Responsibility to Protect \(globalr2p.org\)](https://www.globalr2p.org/) (Accessed on 7th March 12, 2021).

⁴⁶⁸ *Ibid.*

⁴⁶⁹ *Ibid.*

⁴⁷⁰ *Ibid.*

⁴⁷¹ *Ibid.*

⁴⁷² *Ibid.*

⁴⁷³ *Ibid.*

Despite recent political development, Somalia's Federal Government cannot reportedly effectively defend civilians from armed groups' attacks. Hence, international partners should continue to back efforts in Somalia to counter Al-Shabaab, strengthen national governance, and safeguard and foster human rights.

4.4.3. Sudan

Darfur has been described as a "litmus test" for both the A.U. and the UN's commitment to protecting the structure.⁴⁷⁴ Even though the Darfur crisis served as a shining illustration of a government that was both unable and unwilling to protect its citizens, the international community has been unable and unwilling to assume the residual obligation envisioned by the responsibility to protect definition.⁴⁷⁵ The implementation of robust enforcement action to protect civilians by the responsibility to protect was long overdue, as an overview of the violence in Darfur would demonstrate. The Darfur conflict started in 2003, and by the end of 2005, there had been massive and systematic atrocities, including civilian killings, displacements, community destruction, murders, and other types of sexual violence, all of which amounted to crimes against humanity.⁴⁷⁶ According to UN figures, over 300,000 people have died in Darfur since the war started in 2003, with 2.7 million people displaced.⁴⁷⁷ The African Union and the United Nations' responses have been dismissed as ineffective in deterring the atrocities. Despite systemic gross human rights violations, Abass claims that the African Union opted to send peacekeepers rather than conduct a humanitarian intervention in Darfur when the operation began in June 2004.⁴⁷⁸ According to him, the Union's subsequent activities amounted to peacekeeping instead of humanitarian intervention.⁴⁷⁹ However, Abass further argues that, in any situation, the African Union should not be compelled to take humanitarian action because it lacks such rights and that the UN, which does

⁴⁷⁴ E. McClean, 'The Responsibility to Protect: The Role of International Human Rights Law', 13 *Journal of Conflict and Security Law* (2008) 5, 142.

⁴⁷⁵ K. Kindiki, 'Intervention to Protect Civilians in Darfur: Legal Dilemmas and Policy Imperatives', 131 *Institute for Security Studies Monograph Series* (2007), 6 (Kindiki, *Intervention to Protect*).

⁴⁷⁶ International Commission of Inquiry on Darfur to the United Nations Secretary-General' (25 January 2005), 3, available at http://www.un.org/news/dh/sudan/com_inq_darfur.pdf (Accessed on 7th March 12, 2021).

⁴⁷⁷ United Nations News Centre, 'Darfur: UN-African Union Peacekeeping Force Extended as Tensions Rise' (30 July 2010) available at <http://www.un.org/apps/news/story.asp?NewsID=35493&Cr=%20Darfur&Cr1> (Accessed on 7th March 12, 2021).

⁴⁷⁸ A. Abass, 'The United Nations, the African Union and the Darfur Crisis: Of Apology and Utopia', 54 *Netherlands International Law Review* (2007) 3, 415, 420-423.

⁴⁷⁹ *Ibid*, 423.

have those powers under Chapter VII of the Charter, should have acted instead.⁴⁸⁰ This seems to indicate that the African Union could still request authorization from the Security Council to intervene forcefully under Article 53(1) of the United Nations Charter.

The striking difference between the peacebuilding process in Darfur and other situations discussed in this chapter is that there was a division of labour between the A.U. and the UN.⁴⁸¹ This investigation stems from the recognition that practical A.U. peacebuilding frameworks would have a minimal impact without sufficient financial and technological tools, international networks, and the force of international law, and therefore will not achieve the desired result. The A.U. was intended to de-escalate the conflict and engage all the rebel groups in a peaceful dialogue.⁴⁸²

In Sudan (AMIS), the African Mission established under a resolution passed by the Security Council⁴⁸³ coordinated with the United Nations Mission in Sudan (UNAMIS) closely and continuously. The goal of the mission was to reduce the impact of violence between government forces, militias, and rebel groups on civilians in Darfur and create an atmosphere conducive to political initiatives aimed at reaching peace accords among major political actors. This war in western Darfur, waged mainly by intermediary forces such as the state army and supplied outlaws, devolved into dangerous ethnic conflicts and banditry, setting native Africans against Arabic Africans. In September 2003, details about mass killings and the displacement of 2,000,000 civilians in western Darfur led the African Union to intervene through Chad's President Idris Deby. The government promised to observe a ceasefire, disarm irregular rebel groups, and provide a secure passage for humanitarian relief under the Abeche Agreement, supported by the Sudanese Liberation Movement (SLM), the most potent insurgent organization.⁴⁸⁴ In 2004, the United Nations Security Council imposed an arms embargo on Darfur and a travel ban and asset freeze on six persons.⁴⁸⁵ The International Criminal Court (ICC) released arrest warrants for three

⁴⁸⁰ *Ibid*, 425.

⁴⁸¹ T Piiparinen 'The lesson of Darfur for the future of humanitarian intervention.' (2007) 13 *Global governance* 370.

⁴⁸² *Supra* note 464.

⁴⁸³ UN Security Council, Security Council resolution 1564 (2004) [on Darfur, Sudan], 18 September 2004, S/RES/1564 (2004), available at: <http://www.refworld.org/docid/41516da44.html> (Accessed on 7th March 12, 2021).

⁴⁸⁴ Murithi, Tim 2008. The African Union's evolving role in peace operations: The African Union Mission in Burundi, the African Union Mission in Sudan, and the African Union Mission in Somalia. *African Security Review*, 17 (1), pp. 70–82.

⁴⁸⁵ Sudan: Global Responsibility to Protect; *The formation of a transitional government and the signing of a historic peace deal in Sudan reduces the threat of mass atrocities*. [Sudan - Global Centre for the Responsibility to Protect \(globalr2p.org\)](https://www.globalcenterforresponsibilitytoprotect.org/) (Accessed on 7th March 12, 2021).

Sudanese government officials, including Bashir and two anti-government militia commanders, for massacres committed in Darfur, including war crimes, crimes against humanity, and genocide, following a recommendation by the UN Security Council.⁴⁸⁶

Since March 2004, the African Union has been wholly focused on de-escalating the conflict through a series of political negotiations to ensure that all insurgents and armed factions are included in nonaggression/peace treaties. It was also engaged in confidence-building activities such as organized dialogues among the area's impacted populations. President Alpha Konare, the then-Chairperson of the A.U. Commission, became actively active in promoting dialogue with other peace envoys to lend even more weight to this crucial element for a nonaggression/peace treaty as the basis for a formal A.U. peace mission.⁴⁸⁷ The Humanitarian Ceasefire Agreement was a piecemeal agreement involving some but not all key actors in the conflict, negotiated by SLM, the Justice and Equality Movement, and the army. Finally, the A.U. guaranteed that nonaggression treaties allowed for humanitarian hallways, spectator missions, and peace emissaries to explore comprehensive agreements. Consequently, the AMIS was established with the expectation that it would actualize the A.U. peacebuilding approach.⁴⁸⁸ This approach, however, is constrained by the government's unwillingness to enthusiastically support A.U. or UN interventions, as well as the existence of numerous splinter militias operating outside of the complex peace agreements.

It is worth noting that the first three years of AMIS (April–September 2004; October 2004–March 2005; and April 2005 onwards) were marred by operational unpreparedness, lousy planning, deployment delays, inadequate funding, and strategic inadequacies. The mission's low funding meant that it was reliant on Western financial support for its necessary capabilities, undermining the pan-African ideal of self-sufficiency. The A.U.'s reliance on NATO to ship troops to Darfur in 2005 and 2007 implied that the Western military alliance had been granted legitimacy on African soil. Following that, NATO remained in Africa, playing a vital role in the Western military campaigns against the Libyan government in 2011, which resulted in Muammar Qadhafi's

⁴⁸⁶ *Ibid.*

⁴⁸⁷ *Ibid.*

⁴⁸⁸ Toga, D. 2007. The African Union mediation and the Abuja peace talks. In: De Waal, Alex ed. *War in Darfur and the search for peace*. New York, Justice Africa/Global Equity Initiative. pp. 214–244.

assassination and weakened African diplomacy.⁴⁸⁹ AMIS over time grew into a significant military contingent made up of Nigeria (3 infantry battalions), Rwanda (3 infantry battalions), South Africa (1 infantry battalion, FHQ (Force Headquarters) Reserve, one engineer company), Senegal (1 infantry battalion), Kenya (1 Military Police Detachment), and Gambia (1 FHQ company).⁴⁹⁰ In late 2007, AMIS was replaced by the UN-African Union Hybrid Operation in Darfur (UNAMID), an UN-African Union hybrid mission that strengthened this military force. This force has proven to be critical in the execution and preservation of humanitarian interventions, such as the return of refugees in certain zones, the resumption of economic exercises in certain towns, and the prevention of further conflict escalation. It also provided specialized training and capacity building for national security and law enforcement. Given the central role of government in the conflict, however, this formula was ill-advised and could not ensure better security for all civilians, peace, and good governance. UNAMID was the most profound hope for the inhabitants due to conflict than the government authority. Simultaneously, the mission transformed into peace enforcement as opposed to peacebuilding as characterized by the A.U. With peacekeepers biting the dust routinely in engagements with armed factions that keep on rotting in Darfur, UNAMID has gotten caught in the no peace no war impasse in Darfur. Nonetheless, the A.U.-UN methodology's all-encompassing nature for this situation implies that the mission is still of significant value for assisting to avoid a further meltdown of security in this region.

Despite this, UNAMID has accomplished little more than AMIS did in the preceding seven years. This is because, under UNAMID's supervision, the conditions for peacebuilding remained relatively unchanged. The public authority stayed refractory, and insurgent groups expected more critical armed confrontation than peaceful dialogue. If forestalling a weakening of the security circumstance is an accomplishment, AMIS and UNAMID have been considerably successful. Extended mediated dialogues with different actors to the conflict have also been harmed by inadequate coordination between Western actors' imposition of penalties and an arms embargo on the government authority and African actors attempting to achieve a political resolution. If penalties are to be used as a proverbial stick to aid diplomatic measures on the ground, the two

⁴⁸⁹ North Atlantic Treaty Organization (NATO) 2008. NATO supporting African Union's missions, Press Release, February 1. Available from: <<http://www.nato.int/docu/pr/2008/p08-018e.html>> (Accessed on 7th March 12, 2021); Campbell, Horace G. 2012. *NATO's failure in Libya*. Pretoria, Africa Institute of South Africa.

⁴⁹⁰ *Supra* note 488 at 221.

should be embraced in a coordinated manner. According to Mathew Leriche, the West's sanctions on South Sudan had become deterrents to peace by 2015.⁴⁹¹

The intercommunal conflict began to grow less than six months after Sudan's Sovereign Council, a new joint military-civilian government, was established.⁴⁹² On April 11, 2019, the Sudanese military deposed President Omar al-Bashir after months of widespread demonstrations against his government and desperate economic conditions. Thousands of protesters were arrested, and over 200 people were killed during the mass protests between December 2018 and August 2019.⁴⁹³ President Omar al-Bashir and other government officials committed crimes against humanity, war crimes, and genocide while battling rebel groups in South Kordofan, the Blue Nile, and Darfur, among other places, during his 30-year reign. The transitional government and the Sudan Revolutionary Front representatives, a grouping of rebel groups from Darfur, South Kordofan, and the Blue Nile, concluded a peace agreement on October 3 to resolve nearly two decades of war massacres⁴⁹⁴. The peace agreement seeks to end Sudanese massacres while also offering an avenue to resolve the conflict's root causes. During the 2019 demonstrations, perpetrators of mass shootings remain unpunished.

Similarly, since being accused of corruption, Bashir has not been held responsible for previous atrocity offences. At least one member of the Sovereign Council, Mohamed Hamdan "Hemedti" Dagolo, is also accused of genocide in Darfur, South Kordofan, and the Blue Nile.⁴⁹⁵ Since the beginning of 2020, Sudan has seen intercommunal violence and militia attacks against civilians, particularly in West and South Darfur. Land disputes and competition over scarce resources between herder and agricultural groups have culminated in violent battles that have killed hundreds of people and displaced tens of thousands. Despite the recent conflict in Darfur, the UN Security Council (UNSC) intends to reduce the African Union-UN Hybrid Operation in Darfur (UNAMID)

⁴⁹¹ Leriche, Matthew 2015. Sanctions can undermine peace in South Sudan. *Conflict Trends*, 4. Available at: <<https://www.accord.org.za/conflict-trends/how-the-use-of-targeted-sanctions-can-undermine-peace-in-south-sudan/>> (Accessed on 7th March 12, 2021).

⁴⁹² Sudan: Global Responsibility to Protect; *The formation of a transitional government and the signing of a historic peace deal in Sudan reduces the threat of mass atrocities*. [Sudan - Global Centre for the Responsibility to Protect \(globalr2p.org\)](#) (Accessed on 7th March 12, 2021).

⁴⁹³ *Ibid.*

⁴⁹⁴ *Ibid.*

⁴⁹⁵ *Ibid.*

and replace it with an unarmed political mission (the UN Integrated Transition Assistance Mission in Sudan, or UNITAMS) that will not be responsible for providing physical protection to people.

4.4.4. Burundi

The A.U. acquired a few peace intercessions from the OAU, the first of which was in Burundi. The OAU had been involved in the de-escalating of conflict since 1994, utilizing great offices, peace emissaries, renowned mediators in Julius Nyerere and Nelson Mandela, peacekeeping, and confidence-building measures. In 2001, the OAU successfully brought the parties to a power-sharing agreement, which resulted in establishing a three-year transitional government. When the actual A.U. was barely a year old, the A.U. got engaged in April 2003, halfway through the transition. Its main aim was to ensure that it could facilitate a peaceful political ground for development to achieve peace and stability in the long run. The Union successfully implemented the 2003 A.U. peacekeeping mission in Burundi before the General Assembly's formal endorsement of the responsibility to protect concept in 2005. Even though the peacekeeping mission was not a primary cause for implementing the evolving norm by the A.U., it is a considerable precedent in examining the follow-up practice of the A.U. in demonstrating the Union's intervention capacity. It is a critical case that should be considered in the context of a balanced analysis of whether the A.U. has effectively institutionalized the concept of responsible sovereignty, which is the central concern of the emerging norm. As a result, as Evans points out, the Burundi invasion is a perfect example of how the principle of responsibility to protect should work.⁴⁹⁶

In Burundi (AMIB), the African Union Mission, which was primarily a peacekeeping mission, was the first intervention entirely planned and carried out by African Union members.⁴⁹⁷ The African Union's approach was evident from the outset, with the establishment of the African Union Mission in Burundi (AMIB), which deployed about 3000 troops from Ethiopia, Mozambique, and South Africa to provide security for returning political activists and other refugees, as well as assist with the demobilization of armed factions and general peacekeeping. A 43-member eyewitness

⁴⁹⁶ G. Evans, 'The Responsibility to Protect: An Idea Whose Time Has Come...and Gone?', 22 *International Relations* (2008) 3,283, 291.

⁴⁹⁷ T. Murithi, 'The African Union's Evolving Role in Peace Operations: The African Union Mission in Burundi, the African Union Mission in Sudan and the African Union Mission in Somalia', 17 *African Security Review* (2008) 1, 70, 75.

group oversaw the execution of the agreements. Previous diplomats deployed political agents to assist with the transition, beginning with one government and progressing to the next through discussions with all significant ideological groups and political parties. The AMIB oversaw the December 2, 2002, ceasefire agreement between the Transitional Government of Burundi and the rebels and earlier agreements.⁴⁹⁸

An accomplished representative, Mamadou Bah, was responsible for the whole mission with a general political job to guarantee planned peacebuilding efforts. In this peacebuilding model, the specific delegate is supposed to be a peace envoy who can assist stakeholders in resolving any issues that arise, facilitate the transition of politics from acrimony to ongoing dialogue, and catalyze the constructive effect of foreign actors on the ground. As Bah clarified, the A.U. direction was that the AMIB was centred around making lasting peace and advancement instead of only hushing the firearms. For this reason, the A.U. paid attention to confidence-building measures to allow the affected nation to maintain the peace and tranquillity built. The AMIB was at the heart of this strategy, mobilizing the UN and donor agencies to help states rebuild their capacity to deliver development, combat natural disasters like drought, and promote international investment.⁴⁹⁹ Note that even before the UN took control of the peacekeeping mission and renamed it the UN Operation on Burundi, the UN played a critical role in reinforcing the AMIB (ONUB).⁵⁰⁰ With more excellent resources and a wealth of expertise in complex demobilization processes and the reintegration of armed forces, the UN has helped complete the A.U.'s efforts by demobilizing many armed people. This paved the way for a 2009 re-examination of relative regularity.

Burundi's political situation deteriorated in mid-2015. As the humanitarian situation worsened, the African Union (A.U.), the United Nations (UN), and the East African Community (EAC) considered intervening under the Responsibility to Protect (R2P) framework (R2P). Despite this,

⁴⁹⁸ See Organization of African Unity, 'Communiqué of the Eighty-Eighth Ordinary Session of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution at Ambassadorial Level' (2003) Central Organ/MEC/AMB/Comm. (LXXXVIII).

⁴⁹⁹ Siphamandla Zondi, African Union Approaches to Peacebuilding; <https://www.accord.org.za/ajcr-issues/african-union-approaches-peacebuilding/>. (Accessed on 7th March 12, 2021).

⁵⁰⁰ Murithi, Tim 2008. The African Union's evolving role in peace operations: The African Union Mission in Burundi, the African Union Mission in Sudan, and the African Union Mission in Somalia. *African Security Review*, 17 (1), p. 75.

the African Union cancelled a plan to send 5000 peacekeeping soldiers to Burundi in 2015.⁵⁰¹ Similarly, the UN failed to dispatch 228 monitoring police officers in 2016 (as authorized by UNSC Resolution 2303).⁵⁰² The inter-Burundian dialogue, mediated by the East African Community (EAC), is also sporadic, putting R2P's usefulness at risk. The nation had brutality defaced plebiscite on May 17, 2018, updating presidential service time restrictions and ethnic force dissemination framework (among different components), which may be another wellspring of conflict. This policy brief features the R2P stalemate in Burundi since 2015, mainly pointing at the intrinsic constraints of R2P. It also calls for expanded UN and A.U. participation, increased EAC support for inter-Burundian dialogue, the elimination of aid-related sanctions, and mediation by the International Criminal Court (ICC).

Burundi has been mired in political turmoil after late President Pierre Nkurunziza declared his intention to run for a third term in 2015.⁵⁰³ Around 2015 and 2017, more than 1,200 people were killed, and 10,000 were illegally arrested because of a failed coup and resulting mass demonstrations and abuse⁵⁰⁴. Since then, the ruling party's administration, the Conseil national pour la défense of la démocratie-Forces de défense de la démocratie (CNDD-FDD), has oppressed suspected government critics and civil society activists, together with its youth arm, the Imbonerakure. After April 2015, the UN Human Rights Council (HRC)-mandated Commission of Inquiry (CoI) in Burundi found extrajudicial killings and summary executions, disappearances, sexual harassment, arbitrary imprisonment, and torture had all been perpetrated.⁵⁰⁵

Burundians elected Évariste Ndayishimiye, a CNDD-FDD candidate, as their next president on May 20, 2020, and sworn in on June 8. The government increased its persecution of suspected critics, journalists, and human rights defenders in the run-up to the May elections. The Imbonerakure, in collaboration with members of the National Intelligence Service and the police, is solely responsible for such acts⁵⁰⁶. Increased authoritarianism and widespread human rights

⁵⁰¹ UN to send Police. (2016, July 30). UN to send Police force to Burundi as unrest continues. Al Jazeera. Retrieved from <https://www.aljazeera.com/news/2016/07/send-police-force-burundi-unrestcontinues-160730040757663.html> (Accessed on 7th March 12, 2021).

⁵⁰² *Ibid.*

⁵⁰³ Burundi: Global responsibility to Protect on the new government in Burundi must address structural risk factors for mass atrocities, including ending state-led repression, persecution, and impunity for past atrocities. [Burundi - Global Centre for the Responsibility to Protect \(global2p.org\)](https://www.global2p.org/). (Accessed on 7th March 12, 2021).

⁵⁰⁴ *Ibid.*

⁵⁰⁵ *Ibid.*

⁵⁰⁶ *Ibid.*

violations and abuses by state officials and the Imbonerakure, including possible crimes against humanity, marked President Nkurunziza's third term. Many saw his word as a breach of the Arusha Peace Agreement of 2000, which ended a civil war that took over 350,000 lives between 1993 and 2005⁵⁰⁷. It must be pointed out that although President Ndayishimiye's election provided an opportunity to bring peace and security to Burundi, the new government has struggled to reverse entrenched trends of animosity toward UN processes and institutions, including declaring that the UN Special Envoy for Burundi's office will be closed by the end of 2021.⁵⁰⁸

The government has failed to hold those responsible for previous crimes accountable or enact institutional changes to prevent them from occurring again. The government has failed to observe its responsibility to protect all Burundians, regardless of ethnicity, religion, or political allegiance. Responding to these human rights violations, the European Union (EU) renewed travel bans and asset freezes against four Burundians on October 29, 2020, for grave human rights abuses and incitement to violence. The UN Security Council voted on December 4 to end Burundi's mandatory reporting, despite ongoing complaints about human rights violations and abuses, as well as the need to keep offenders responsible.

While the concept of the responsibility to protect is still debated, the African Union has taken the lead by incorporating it into Article 4(h) of the Constitutive Act. This is very significant in addressing peace and security on the African continent, a continent described as 'the most threatened of all the other continents. The A.U. is the only continent with the principle of R2P as a legal norm in its binding instruments. It is, however, noteworthy that Article 4(h) of the Constitutive Act has not been acted upon, and this can be attributed to the fact that even though the heads of states expressed their desire to end mass atrocities in the continent, they are still holding onto the old concept of sovereignty as a tool is used to rule over their subjects as opposed to sovereignty as a responsibility. The peace intervention cases discussed in this chapter demonstrate the failure by the A.U. to protect civilians from more human rights abuses and establish a long-lasting peace. The A.U. still faces the problem of resources, both technical and financial, but as discussed in Chapter three and if the case in Kosovo is anything to go by, reconstructing an already destroyed country needs collaboration through the division of labour.

⁵⁰⁷ *Ibid.*

⁵⁰⁸ *Ibid.*

A.U. has tried to reconstruct countries that different agents destroyed; they should call upon those actors to rebuild the process. More should be done to improve the activity of the A.U. in a post-conflict reconstruction process. Institutional dysfunctionality was manifest in the Burundi mission and the failure to intervene later in 2015 when such an action was best poised.

4.5. Conclusion

The concept of the responsibility to protect is intended to address the legal and political challenges of intervening to prevent and stop genocide, crimes against humanity, war crimes, and ethnic cleansing. It is founded on a normative framework that establishes complementarity between preserving state sovereignty and humanitarian intervention, reducing tensions between the two fundamental principles. This chapter has addressed the African Union (A.U.) as a contributor to peace and security by exercising its responsibility to protect human rights on the continent.

In the case of Burundi, this chapter notes that Burundi has been mired in political turmoil after late President Pierre Nkurunziza declared his intention to run for a third term in 2015 and around 2015 and 2017, more than 1,200 people were killed, and 10,000 were illegally arrested because of a failed coup and resulting mass demonstrations and abuse. It, therefore, concludes that the government has failed to hold perpetrators responsible for previous crimes accountable or to enact institutional changes to prevent them from occurring again. The government is also struggling to protect all Burundians, irrespective of religion or political ideology. Hence, the government needs to put an end to its political enemies' persecution. It should also free all human rights activists, whistleblowers, and political captives, disarm and demobilize the Imbonerakure, and participate in a substantive dialogue with civil society and opposition parties. The government should conduct credible investigations into all human rights violations and abuses that have occurred since 2015 and ensure the offenders, regardless of ideology, are kept responsible. The East African Community, African Union, European Union, and United Nations should press the government to end its policy of international isolation and commit to improving human rights guarantees, reopening political space, and reforming the judiciary and security sector. Any action to lift targeted sanctions or re-establish international relations must be focused on demonstrable results in the areas of human rights and transparency.

Regarding Sudan, it was noted that President Omar al-Bashir and other government officials committed crimes against humanity, war crimes, and genocide while battling rebel groups in South

Kordofan, the Blue Nile, and Darfur, among other places, during his 30-year reign. The transitional government and the Sudan Revolutionary Front representatives, a grouping of rebel groups from Darfur, South Kordofan, and the Blue Nile, concluded a peace agreement on October 3 to resolve nearly two decades of war massacres. The peace agreement seeks to end Sudanese massacres while also offering an avenue to resolve the conflict's root causes. During the 2019 demonstrations, perpetrators of mass shootings remain unpunished. Similarly, since being accused of corruption, Bashir has not been held responsible for previous atrocity offences. At least one member of the Sovereign Council, Mohamed Hamdan “Hemedti” Dagolo, is also accused of genocide in Darfur, South Kordofan, and the Blue Nile. This chapter posits that to assist the Sovereign Council in fulfilling its responsibility to protect, sustained international support is needed. It also concludes that the drawdown of UNAMID and the transition from peacekeeping to peacebuilding should be initiated carefully by the United Nations Security Council while working closely with the transitional officials in Sudan. Any UN-authorized mission in Darfur and elsewhere should prioritize the protection of civilians. Also, the Sovereign Council should vigorously promote attempts to put former President Omar al-Bashir and other ICC indictees to justice, with the UNSC's and international community's support.

Regarding Somalia, it concludes that despite recent political development, Somalia's Federal Government cannot reportedly effectively defend civilians from armed groups' attacks. Despite diplomatic development, Somalia's Federal Government cannot reportedly effectively defend civilians from armed groups' attacks. Armed groups have regularly taken advantage of the precarious security situation to target civilians and the powers that defend them, potentially committing war crimes and crimes against humanity. Despite the African Union's training of AMISOM forces in IHL and IHRL and advice on how to mitigate civilian damage, large-scale military offensives against Al-Shabaab appear to pose a danger to civilian populations. However, irrespective of the difficulties, AMISOM remains Somalia's primary source of protection and stability. Therefore, the Federal government of Somalia and the AMISOM are responsible for protecting the people from war crimes and crimes against humanity as they go to war against the Al-Shabaab and other militant terrorist groups.

This chapter also establishes that international actors should continue to help efforts in Somalia to counter Al-Shabaab, strengthen national governance, and preserve and promote human rights. To

ensure that the conclusion of AMISOM does not jeopardize Somalia's delicate peace and security, the UNSC should continue to reassess the mission's 2021 drawdown date and track progress on Transition Plan programmes. The Federal Government of Somalia, AMISOM, and allied nations, including the US, must endeavour that their military operations against Al-Shabaab respect the tenets of IHL and IHRL to the letter. Hence, regardless of class or affiliation, all suspected war crimes, and crimes against humanity in Somalia must be thoroughly prosecuted, and the perpetrators held accountable.

CHAPTER FIVE:

CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

This chapter summarises the study's findings and offers recommendations. It draws inspiration from the ICISS report and existing literature on the responsibility to rebuild while making recommendations. It is important to note that two types of post-conflict interventions are discussed in this study. The consent-based interventions, such as the ones pursued by AU, and those that are non-consensual such as those pursued by the UN and NATO forces. Based on these discussions, the study does not seek to find one straight jacket on the responsibility to rebuild, but instead, it suggests that the protection of civilians from human rights abuses should be the epicentre of any form of post-conflict intervention. The responsibility to protect was an innovative human rights and security norm established to protect a civilian population from heinous crimes.⁵⁰⁹

As discussed in this thesis, the responsibility to protect, as coined initially by ICISS, has three pillars: the pillar of rebuilding has been the least exploited.⁵¹⁰ Much more attention has been given to the two pillars, thus leaving the responsibility to rebuild out of the main discussions of R2P. Important to note is the 2005 World Outcome Document that had in both paras. 138 and 139 the adoption of the concept of R2P that has its origin attributed to the ICISS. It is important to note that Alex Bellamy argues that R2P has become an internationally established norm and unlike the principle of humanitarian intervention, R2P enjoys an international consensus.⁵¹¹ It must be borne in mind, however, that the elements of R2P under the World Summit Outcome Document that was adopted by the General Assembly,⁵¹² are different from those proposed by ICISS in its 2001 report.⁵¹³ This is because although the ICISS report suggests an equal emphasis on conflict prevention, reaction and post-conflict rebuilding, the World Summit Outcome Document does not

⁵⁰⁹ P Hilpod 'Humanitarian Intervention: Is there a need for a legal reappraisal?' (2001) 2 European Journal of International Law 437-68.

⁵¹⁰ ICISS 'The Responsibility to protect: Report on the International Commission on Intervention and State Sovereignty.' (2001) The International Development Research Centre. Paras. 5.4.

⁵¹¹ AJ Bellamy 'The responsibility to protect turns ten.' (2015) Ethics and International Affairs, available at: <https://www.ethicsandinternationalaffairs.org/2015/responsibility-protect-turns-ten/> (Accessed on 21st March 2021).

⁵¹² UN Security Council 'Security Council Resolution 1973 (2011) on the situation in the Libyan Arab Jamahiriya,' (2011) S/RES/1973(2011), available at: <http://www.refworld.org/docid/4d885fc42.html> (Accessed on 21st March 2021); UN General Assembly '2005 World Summit outcome: resolution adopted by the General Assembly,' (2005) A/RES/60/1, available at: <http://www.refworld.org/docid/44168a910.html> (Accessed on 21st March 2021).

⁵¹³ *Supra* note 510, at XI

consider expressly such a continuum of measures.⁵¹⁴ The reason why ICISS changed the language from the traditional ‘humanitarian intervention’ to R2P, was to disintegrate a concept whose focus was on the prospective interveners and shift the focus to the civilians whose protection was important.⁵¹⁵

The contrast of some key facets of the responsibility to rebuild as described by the ICISS Report and the current situation of jus post bellum reveals that while there might be general agreement on the feasibility of the proposals made, States and the UN must also take positive measures to bring them into effect. This thesis also concludes that the constructive approach to the responsibility to rebuild would not face any compatibility issues with the current Charter framework but would instead demonstrate complete conformity with the Charter and, therefore, fulfil its purposes as specified in Article 1.⁵¹⁶ A strong legal undertaking to this end, on the other hand, would go beyond current legal commitments and hence would be voluntary.

Given the importance of such an effective policy for long-term stability and human well-being, methods for making it politically and even legally binding should be debated. Donor countries are not the only ones that demand meaningful contributions. Rather, capable UN organs, including the Security Council, international agreements, and political and military alliances already involved in peacekeeping missions should adopt a new strategy. Receiving States should be more active to expand national ownership, and consultation with national opposition parties should not be regarded as a prohibited topic.

Legal obligations do not have to begin with the development of new treaty legislation. Implementing best-practice operations to ensure respect for human rights standards seems to be a viable option for a comprehensive and persuasive post-conflict peacebuilding agenda. This is valid for operational custody restraints, adequate protection and care for internally displaced persons, and collaborative attempts to strengthen economic and social security. Best-practice established by opinion juris will evolve into customary law over time, and this mechanism may be more

⁵¹⁴ CG Badescu and L Bergholm ‘The responsibility to protect and the conflict in Darfur: The big let-down,’ (2016) SAGE 288.

⁵¹⁵ *Ibid.*

⁵¹⁶ The UN Charter.

flexible and, in the end, more permanent than a battle for treaty law, which may be impossible to obtain and, during events following ratification, may be ignored, or forgotten.

This chapter thus concludes the study with the following points:

5.1. Lack of a Commitment to Rebuild under R2P is disastrous for Human Rights protection

While the UN adopted the concept of R2P, it did not lay the framework upon which there would be reconstruction after military intervention. It was speculated that the omission of the responsibility to rebuild from the principle of R2P was due to the establishment of the Peace Building Commission by the member states as it provided for the framework and mechanism at the UN for rebuilding.⁵¹⁷ It is right to say that even though the responsibility to prevent and react seems to have been fully embraced by the international community, much needs to be done when it comes to rebuilding. The type of commitment proposed by the Commission in its report was not demonstrated in the Libyan intervention, for instance, leaving a lot to be desired on the responsibility to rebuild. Although the Libyan case was majorly one of the air campaigns, there were no mechanisms put in place by the UN or even the NATO forces to ensure that the rebel group did not perpetuate human rights violations.

While many western states were unwilling to commit to an expensive and long-term rebuilding project, most African and Asian countries perceived the notion of the responsibility to rebuild as a window to allow an international imperialist intervention⁵¹⁸. This prompted a narrower framing of R2P in the World Document, which dropped the responsibility to rebuild as discussed above. Because of this structural gap created in the R2P, the intervening forces have either left too early and left the situation worse than or failed to have a post-conflict intervention. From the countries discussed in chapter three, cases where the responsibility to rebuild have been given keen attention, have been shown. It is unfortunate that although Kosovo showed some prospects of success in

⁵¹⁷ ICR to P 'R to P and rebuilding: The role of the peacebuilding Commission'. (2009) available at: <http://www.responsibilitytoprotect.org/index.php/about-rtop/relatedthemes/2417-pbc-and-rtop> (Accessed on 21st March 2021).

⁵¹⁸ Thakur, R. (2018). Peacebuilding and the Responsibility to Rebuild. *Asian International Studies Review*, 19(2), 1-12pp. <https://doi.org/10.16934/isr.19.2.201812.1>

rebuilding, the international community never employed such extraordinary measures to rebuild subsequent cases.

5.2. The Process of Rebuilding has not been Beneficial because of the Cost Implications.

The argument of *jus post bellum* presupposes that the forces intervening in a state must bear the responsibility of rebuilding such a state.⁵¹⁹ This argument is drawn from the fact that the United States helped Germany, and Japan rebuild after World War II. This is because the USA was responsible for the bombing in the two countries with devastating effects. The economic development experienced in these countries could not have been achieved had it not the post-intervention measures that were put in place. On the other hand, the UN had to declare Austria a protectorate to achieve economic development and human rights protection.

In an article published by Lowe in the Gatestone Institute, he calls on the intervening Syrian forces to stop asking for help in rebuilding Syria and instead bears the burden alone.⁵²⁰ His sentiment demonstrates the skepticism that exists, especially when an intervention is usually perceived as marred with ulterior motives.

Money leads to yet another critical aspect of rebuilding which is a need to have a shared responsibility. As discussed in the Kosovo scenario, rebuilding is made easier if there is a division of Labour amongst the rebuilding actors. This improves efficiency and cuts on cost borne by a single state; it also allays the fear of having interventionists with an ulterior motive, as was the case of the US in Iraq.

5.3. Humanitarian Intervention without Rebuilding may only Succeed in Staging a Regime Change

Perhaps the most vital component of the rebuilding responsibility is reconciliation between the warring sections. Although the UN-sanctioned the military intervention in Libya, the longstanding critics of R2P criticized the UN for advancing a neo-imperialist intervention as a humanitarian disguise.⁵²¹ R2P, as was adopted by the UN and divided into three pillars, gave the international

⁵¹⁹ *Supra* note 510.

⁵²⁰ M Lowe 'Rebuilding Syria: The Responsibility Principle.' (2018) Gatestone Institute International Policy Council.

⁵²¹ AJ Bellamy 'The responsibility to protect and the problem of regime change'. (2011) E-International Relations. Available at: [The Responsibility to Protect and the Problem of Regime Change \(e-ir.info\)](http://www.e-ir.info), (Accessed on 21st March 2021).

community of assisting a state in protecting its population from egregious human rights violations. The heads of states then agreed that when the state fails to protect the civilian population or when the state itself is the perpetrator of such violations, the international community should use diplomatic means or any means necessary to accord the protection.

From this responsibility, Bellamy argues that sometimes leveraging a despotic leader might be necessary for adequate human rights protection. When such an action is taken, it is essential that the international community or the agents that orchestrated the ousting of a leader protect human rights, to ensure that they create a political environment where power will be handed back to the locals. In his 2005 report, Kofi Annan warned that most countries that come from a conflict relapse back to the conflict five years later.⁵²² This can be attributed to the intervening forces' inability to leave the intervened state before it is ready to continue the exercise of rebuilding on its own.

5.4. Bringing Responsibility to Rebuild Back on the Agenda

This chapter concludes that the Responsibility to Rebuild includes a responsibility to consolidate and sustain negative peace; to mitigate systemic conflict and provide the atmosphere for positive peace; and, thereby, to deter the repetition of past conflict. Despite this, there is also a lack of dedication. Failures, on the other hand, may be beneficial: opposition to an evolving standard of a need to Rebuild may, in the longer term, spark intense but important debates about the degree to which the international community of states is responsible for avoiding the repetition of mass conflict, human rights violations and, more broadly, for rebuilding post-war states. If the World Summit Outcome document had contained and explicitly stated, albeit lukewarmly backed commitment to the Responsibility to Rebuild, this healthy dialogue may not have proceeded at the same pace. In avoiding the recurrence of mass atrocity crimes and human rights violations, David Chandler argues that the United Nations started with a positive mindset of 'never again' under its watch should there be massive human rights violations in the world.⁵²³ He however cautions that lack of 'political will' from some of the powerful nations to enforce the responsibility to protect has made it difficult to avert mass human rights violations.⁵²⁴ As noted in chapter one, there seems

⁵²² UNGA 'In larger freedom: Towards development, security, and human rights for all,'(2005) Report of the Secretary-General, Addendum, Peacebuilding Commission, A/59/2005/Add.2, para.1.25

⁵²³ D Chandler 'Unravelling the paradox of the responsibility to protect' (2009) 20 Irish Studies in International Affairs 28.

⁵²⁴ *Ibid.*

to be a gap between ‘the promise and the reality as the United Nations is seen to have promised more than it can deliver. Vulnerable citizens are not guaranteed the necessary collective protection from the international community, and Alan Kuperman seems to agree with Chandler that the lack of political will has made the principle falter in practice.⁵²⁵ He further states that R2P has in the recent past not only failed in achieving its objective but has also unintentionally put more civilians’ lives at risk.⁵²⁶ The military intervention in the target state has a deleterious effect on citizens if such an intervention is not followed up by a building exercise.⁵²⁷ Bellamy and Wheeler for instance argue that the Somali humanitarian intervention in 1993 by the UN and the U.S ended in a disaster, even though some claim that it prevented citizens from dying of starvation.⁵²⁸

This thesis has addressed pertinent questions about who rebuilds what, why, and how: What must be rebuilt? What does it take to elicit inspiration, engagement, and dedication from national and foreign players to engage in rebuilding war-torn countries, with or without previous military action, and within and above strict R2P criteria? Who will help in the consolidation of rebuilding efforts after most of the foreign assistance has ended? In the various stages of rebuilding, who has which role? How do we get closer to a state, global, and international “rebuilding deal” that allows beneficiaries to keep peacebuilding agents responsible for their commitments and actions?

Also, addressed in this thesis is whether it is possible to describe R2P as a potentially paradigmatic and game-changing shift in international policymaking and norm-making? In addressing this, it is important to emphasize that one of the key reasons for the ICISS’s shift from humanitarian intervention to response to protect was the presumption that the latter would be based on human solidarity, while the former was mostly based on intervening states’ interests and privileges. Human unity, on the other hand, is predicated on a contribution to the prevention–reaction–rebuilding continuum, which is jeopardized if any of these elements are neglected.

As a result, this thesis posits that we cannot expect a structural change in the peacebuilding horizon based on the international community of states’ lukewarm support for an internationally

⁵²⁵ AJ Kuperman ‘Rethinking the Responsibility to Protect.’ <http://blogs.shu.edu/diplomacy/files/archives/> AJ Kuperman ‘Rethinking the Responsibility to Protect.’ <http://blogs.shu.edu/diplomacy/files/archives/> (Accessed on 21st March 2021).

⁵²⁶ *Ibid.*

⁵²⁷ S Chesterman ‘Just war or just peace?’ (2001) Humanitarian Intervention and International Law 219.

⁵²⁸ AJ Bellamy and NJ Wheeler ‘Humanitarian Intervention in world politics,’ (2008) 522 *The Globalization of World Politics* 14; NJ Wheeler *Saving strangers: Humanitarian intervention in international society.* (2000) Oxford University Press 174.

recognized Responsibility to Rebuild after bloodshed and mass crime. Obtaining the necessary political consensus to ensure a substantive and principled contribution to the prevention, response, and rebuilding continuum ahead of and during the 2005 World Summit would have been a significant, if not difficult, task. Despite reservations expressed in the ICISS Report and encountered during subsequent efforts to embed R2P in foreign policy practice, the original concept of R2P remains a novel, sensible, and potentially highly useful contribution to peace, prosperity, and human security.

This thesis, therefore, attempts to persuade the international community to accept and enforce all three elements of R2P – including the Responsibility to Rebuild – in principle and, finally, as a globally recognized standard.

5.5. The Process of Reconstruction under the African Framework is still a pipe dream.

As discussed in chapter four, AU's framework on R2P does not encapsulate the responsibility to rebuild. However, this responsibility is instead provided for under the peace and security architecture through the peacebuilding mechanism. Africa continues to suffer from some of the world's most heinous human rights abuses due to civil wars, but the African Union has struggled to demonstrate its authority in putting an end to these atrocities. Its failure is attributed to the lack of financial ability to deal with the numerous crisis in the continent. This explains why AU is more inclined towards an intervention based on the consent from the target state. There was a plan by AU to have a standby force by 2010 to respond to human rights violations, but eleven years later, the plan is yet to be executed. There needs to be a more elaborate commitment to the rebuilding process for it to be functional. ECOWAS has been the sub-regional bloc in Africa that seems to be proactive in applying the responsibility to protect, but it has also not been able to embark on a rebuilding exercise in countries like Ivory Coast.

5.6. Lack of Coordination between the Security agencies and the AU Heads of States.

The AU has a framework for peacebuilding, and agencies tasked with ensuring that proper actions are taken to help countries coming from a conflict are assisted in protecting human rights. Apart from the financial constraints on the AU, it also lacks coordination, and this derails efficiency. The peacebuilding framework demonstrates the good intentions of the heads of states to protect human rights in the continent, but in practice, the reality is far much less colourful.

Caution must be exercised so that the international agents that are rebuilding the intervened state do not make the local actors rely on them heavily; it must always be done to transfer that responsibility to the domestic actors who will take up the mantle of rebuilding the country and making it more robust and sustainable.

5.7. Recommendation

a. Need for a Post-intervention Cost Sharing:

The universality of human rights creates fundamental moral interests that beget moral duties and obligations on institutions and states to recognize and protect human rights.⁵²⁹ The responsibility to rebuild is to protect a population's fundamental human rights that have experienced heinous violations. This responsibility should not be left to the actors that intervened by trying to stop those violations. However, this issue calls for action on the international community or any external agent that intends to intervene in a state to protect human rights.

An excellent example of cost-sharing was highlighted in the chapter where the UN and other international agencies shared the cost of rebuilding Kosovo. This has since not been done in cases where there has been a military intervention, thus increasing the number of failed states globally. With its limited resources, the African Union has tried intervening in some countries like Burundi, Sudan, and Somalia, but the results have not been auspicious because of the financial constraints. The international community should therefore share the duty to rebuild.⁵³⁰

b. Creation of a Trust Fund.

A trust fund might seem like a more enticing and viable option in a world that is often experiencing an economic crisis. This applies to both the UN, the European Union, and the African Union. These three have demonstrated the need to use the R2P principle but can only be materialized and made effective if long-lasting peace and stability are realized. International agencies like the World Bank that have been used to advance the right to development should be central to creating trust.

⁵²⁹ B Samantha 'Justifications in International Human Rights Law: A reply to Matrias Kumm' (2014) Oxford University Press 40.

⁵³⁰ C Stahn et al 'Jus post bellum: Mapping the normative foundation'(2014) Oxford Scholarship online. Available at: <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199685899.001.0001/acprof-9780199685899-chapter-7> (Accessed on 21st March 2021).

The Commission calls for a long-time commitment by the intervening actors and uses resources in the reconstruction process. The Commission's report has been criticized for being excessively ambitious and that such ambitions cannot be achieved with the current global politics. Rebuilding has particularly been said to be impractical because of the cost implications. This paper acknowledges that such skepticism is warranted but to allay that fear and to guarantee a more robust human rights protection in the future, there needs to be a trust fund created for such an eventuality. It is essential to note that this is not supposed to substitute the need for cooperation between states, especially those with economic abilities. This should be a complementary mechanism.

c. The Responsibility to Protect in Africa: Normative Frameworks

At the United Nations, the African Union, regional economic communities, other regional bodies, and critical states, there is a need to establish a shared understanding and universal principle concerning “protection of persons” and how security activities should be carried out in a particular circumstance. When arguing for its endorsement in international platforms, Canada and other governments who advocate The Responsibility to Protect principles should more consistently frame this emerging definition as a continuum of security that connects prevention, reaction, and rebuilding goals. The definition of R2P, which encompasses a wide variety of roles ranging from crisis management to transformative peacebuilding, is more in line with African peace, security, and development objectives. Canada and other core members of the international community should support the AU in fostering its integrated conceptions of the responsibility to prevent, react, and, most importantly, rebuild among the Member States and other actors. Via bilateral policy engagement and important international platforms such as the G-8 and the UN, Canada, and other like-minded governments can help the AU promote political will around the protection sphere.

d. Assisting the African Union and other Africans in implementing R2P

The international community should encourage the African Union and other African organizations to strengthen ongoing best practices and lessons gained in peacekeeping so that the AU and the RECs do not have to “reinvent the wheel” in future crises those in Burundi or Darfur. The African Union, RECs, the United Nations, and other actors should also advocate improving the capacity of African academic institutions to provide conflict analysis and evidence-based policy advice to the African Union, RECs, the UN, and other actors. Donors, like Canada, need to strike a healthier

balance between developing African peace support operations and crisis management capacities and having adequate funding to strengthen the capacity of the AU and other African organizations for conflict prevention and post-conflict restoration, including reconciliation. To endorse this more comprehensive agenda for peace, security and development, the international community, inclusive of Canada and other contributors, should:

(i). Make strengthening the African Union's conflict-prevention capabilities a top priority for assistance. Donors could help the African Union create a Blueprint for Human Rights Protection, Conflict Prevention and Reconstruction, which, like the Blueprint for Operationalization of the ASF, lays out specific duties and deadlines for developing the AU's processes for conflict prevention and resolution.

(ii). Provide more substantial support to courts and commissions that support the African Union's peace, stability, and development agenda but are not members of the union. Canada, for example, could much reinforce ties between the AU regime and the African Commission on Human and Peoples' Rights, which is headquartered in The Gambia, although with comparatively modest funding.

(iii). Help the African Union's post-conflict reconciliation policy through the AU's new Ministerial Committee on Post-Conflict Reconstruction while also supporting the NEPAD Peace and Security Committee.

(iv). Help the African Union seek more effective ways to get conflict prevention problems to the UN Peace and Security Council's attention. Donors could provide more generous assistance to the African Union's Political Affairs Department. The Peace and Security Department has received most of the donor assistance for conflict prevention, management, and settlement to date. Although this assistance is vital, the Political Affairs Department would be critical in preventing conflict.

e. The African Union and the Regional Economic Communities

In helping the African Union and the Economic Regional Communities formalize their relations, donor countries, including Canada, will play a significant role in drawing on comparative advantages and advancing the R2P agenda in Africa without exacerbating rivalry between them. Donors should consider the following:

- (i). Ensure that bilateral and REC assistance does not jeopardize the African Union's strategic structure.
- (ii). Channel assistance to RECs with less established peace and security frameworks shows consistent promises to promote the R2P agenda and strictly comply with international law and fundamental human rights principles in their operations.
- (iii). Investigate processes that could help the AU and the RECs collaborate more effectively, such as personnel exchanges, joint preparation for planners, force commanders, and support components, joint efforts in the fields of peacemaking, peacekeeping, and peacebuilding, and joint needs evaluation missions, among others.

f. The African Union and the United Nations

Canada and other key stakeholders should lobby the UN Security Council to pass a resolution supporting the RECs, the ASF, and the African Union's other peace and security frameworks. Supporting the drafting of a Memorandum of Understanding to share assets such as intelligence, airlift, human resources, and possible financial services will also help formalize the African Union and the United Nations' relationship.

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