THE INTERFACE BETWEEN THE AFRICAN UNION RIGHT OF INTERVENTION
AND HUMAN RIGHTS PROTECTION: CASE STUDY OF SOMALIA

BY

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DECLARATION

I, the undersigned, declare that this is my original work and has not been submitted to any other college, institution or university other than United States International University – Africa in Nairobi, Kenya for academic credit. All material obtained herein from other sources is duly acknowledged.

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I would also like to thank my friends Tshepo Morabane and Winnie Makokha for their peer reviews and offering great arguments that helped structure this thesis. I am grateful to Ambassador Simon Nabukwesi from the Foreign Service Institute for helping me on matters policy and conflict.

Last but not least I would like to thank my family, my mother and brothers who have been a great support system.
DEDICATION

I dedicate this to all the victims of war in Somalia, to the ones whose rights have been severely ignored and know no peace. This is hope in Africa’s unity towards achieving peace and stability in the continent.

“Seek ye first the United Africa, and peace, prosperity and prestige shall be added onto you.”

ABSTRACT

This study looks at the establishment of the AU as a supranational legal entity with significant powers of intervention in domestic crisis situations and how, the constitution of the AU offers an alternative framework for organizing apolitical community.

For over two decades Somalia has been in constant turmoil, and in turn caused the displacement of her people, loss of lives and also affected her stability as a nation. The instability in Somalia led to the breeding of terror cells. The AU intervened in 2005 through African Union Mission in Somalia (AMISOM), to bring peace in the nation. The intervention was under the auspices of article 4 (h) of the Constitutive Act of the African Union. This research aims to determine that the exercise of the AU’s right of intervention, will eventually lead to Human Rights protection.

The AU intervention in Somalia is looked at against the backdrop of the principle of Responsibility to Protect (R2P). This R2P principle mainly determined sovereignty as a responsibility as well as guide states during exercising intervention. This principle also asserts that states are also responsible to assist where other states cannot solve their crises alone. The R2P principle was the conceptual framework for this study. The information was gathered through desktop research, from reading various articles on AU intervention and the Somali crisis.

As a result the study established that the AU has the chief responsibility for establishing and initiating the continent’s peace and security architecture. The AU Constitutive Act enshrines the right to intervene. The AU has adopted the interventionist stance and has embraced the policy of non-indifference towards war crimes and crimes against humanity in Africa.
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LIST OF ACRONYMS

AIAI  Al Itihaad Al Islamiya
AfriMAP  Africa Governance Monitoring and Advocacy Project
AMIB  African Union Mission in Burundi
AMIS  African Union Mission in Sudan
AMISOM  African Union Mission in Somalia
AMU  African Maghreb Union
APSA  African Peace and Security Architecture
ASEAN  Association of South East Asian States
ASF  African Standby Force
AU  African Union
AUGA  African Union General Assembly
AUPSC  African Union Peace and Security Council
CAR  Central African Republic
CCP-AU  Centre for Citizens’ Participation in the African Union
CEWS  Continental Early Warning Systems
CNN  Cable News Network
DRC  Democratic Republic of Congo
ECASS  Economic Community of Central African States
ECOMOG  Economic Community of West African States Monitoring Group
ECOWAS  Economic Community of West African States
ENDF  Ethiopian National Defense Force
EU  European Union
ICC  International Criminal Court
ICISS  International Commission on Intervention and State Sovereignty
ICRC  International Commission of the Red Cross
ICU  Islamic Courts Union
IDP  Internally Displaced Person
IGAD  Inter Governmental Authority on Development
IHL  International Humanitarian Law
JEM  Justice Equality Movement
KDF  Kenya Defense Forces
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>NATO</td>
<td>North Alliance Treaty Organization</td>
</tr>
<tr>
<td>NFLA</td>
<td>Northern Frontier Liberation Army</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
</tr>
<tr>
<td>OAU</td>
<td>Organization of African Unity</td>
</tr>
<tr>
<td>R2P</td>
<td>Responsibility to Protect</td>
</tr>
<tr>
<td>RECS</td>
<td>Regional Economic Systems</td>
</tr>
<tr>
<td>SADC</td>
<td>Southern African Development Community</td>
</tr>
<tr>
<td>SLM</td>
<td>Sudan Liberation Movement</td>
</tr>
<tr>
<td>SPM</td>
<td>Somali Patriotic Movement</td>
</tr>
<tr>
<td>SNF</td>
<td>Somali National Front</td>
</tr>
<tr>
<td>TFG</td>
<td>Transitional Federal Government</td>
</tr>
<tr>
<td>TNG</td>
<td>Transitional National Government</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNAMID</td>
<td>African Union – United Nations Mission in Darfur</td>
</tr>
<tr>
<td>UNAMIS</td>
<td>United Nations Mission in Sudan</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Program</td>
</tr>
<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
</tr>
<tr>
<td>UNHCR</td>
<td>United Nations High Commission for Refugees</td>
</tr>
<tr>
<td>UNITAF</td>
<td>United Nations Task Force</td>
</tr>
<tr>
<td>UNOSOM</td>
<td>United Nations Mission in Somalia</td>
</tr>
<tr>
<td>UNSG</td>
<td>United Nations Secretary General</td>
</tr>
<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
</tr>
<tr>
<td>US</td>
<td>United States</td>
</tr>
<tr>
<td>USC</td>
<td>United Somali Congress</td>
</tr>
<tr>
<td>USSR</td>
<td>Soviet Union</td>
</tr>
<tr>
<td>WSLF</td>
<td>Western Somali Liberation Front</td>
</tr>
</tbody>
</table>
CHAPTER 1

INTRODUCTION

1.1 Background to the Study

The Organization of African Unity (OAU) was established in 1963 in Addis Ababa, Ethiopia with the aim of promoting the political and economic betterment of Africa and its people. It was formed during a period where pan-Africanism had prevailed and most African states were on the road towards gaining self-autonomy. One of its aims was combating colonialism and defending the sovereignty of African states. The OAU forbade interference in the international affairs of states as per Article 3 (2) of the charter of the OAU. It did not have the structural mechanisms to contain peace in the continent and had limited functions and therefore a new organization was set up to replace it. The African Union (AU) was created in 2001 and it was officially launched at the Durban summit in 2002 (African-Union, 2008).

During the Somali conflict of 1991, the OAU and its mechanisms for peace and security on the African continent were undergoing major reforms. The African region was practically deserted by major actors in the international community after the end of the Cold War (Koko, 2007). The responsibility of handling the conflicts in Africa fell on the shoulders of the regional actors (Koko, 2007). This was coupled by the ‘Somali syndrome’ a phrase coined by international actors to mean the indifference displayed by the major actors toward the intractability of the Somali conflict which involved a majority of African leaders who developed aggressiveness towards the external actors (Koko, 2007, p. 9). The cases in point include the 1993 fate incurred by the American troops in the streets of Mogadishu that became instrumental to the withdrawal of the troops from Somalia and UN abandonment of Somalia (Koko, 2007). The OAU was well
known for ignoring the suffering and oppression of African people in its member states. In effect, the OAU embraced the policy of non-intervention and non-interference in the affairs of member states (Murithi, 2009, p. 94). The AU came in to improve on the shortcomings of the OAU through implementing a policy of non-indifference, which required the generation and sustaining of a political will to address crisis situations (AU, 2000, Art.iv (h)). The AU Commission issued the Strategic Plan and Vision of 2004 to 2007; it included programmes to speed up integration of the continent (AU, 2004). It reiterates the importance of intervening to promote peace and security as a necessary prerequisite for governance and development (Murithi, 2009, p. 94).

The OAU Declaration on a Mechanism for Conflict, Prevention, Management and Resolution adopted in 1993 was one of the initiatives to provide mechanisms for anticipation and prevention of conflicts, peacemaking and peace building (OAU, 1993). However, the declaration failed to match institutional capacities needed for its realization (Weber, 2014). AU declared its policy stand of non-indifference to the root causes of conflict in Africa as opposed to OAU’s policy of non-interference in the quest to find African solutions to African problems (Dersso, 2012).

The AU therefore exercised its mandate by intervening in its member states to ensure peace. In Tunisia where the Arab Spring began was saved from the impact of violent conflict when Zine El Abidine Ben Ali the then Tunisian president fled the country on 14th January 2011 in the wake of the conflagration (ISIS, 2011).3 In Egypt where the Arab Spring followed, the country was spared a destabilizing conflict when Hosni Mubarak was removed from power on 11th February 2011 after eighteen days of popular protests (ISIS, 2011).4 In Libya, Muammar Gaddafi the then leader of the country chose to use military force to slow the popular protest where the Arab Spring took center stage next. In these scenarios in the three countries: Tunisia, Egypt and Libya,
the AU had one policy pattern: rotating around contradictory condemnation of the excessive use of force; the need to respect and avoid further loss of life; political stakeholders to work together towards democratic transition of the people to attain freedom and popular objectives denied to them by tyrannical rulers (ISIS, 2011).5

In January 2005, the AU Assembly championed the request of the member states of Intergovernmental Authority on Development (IGAD) to deploy an African mission to Somalia (Koko, 2007). Subsequently, the deployment of the forces to Somalia was delayed partly because the opponents of The Transitional Federal Government (TFG) were against the peacekeeping mission in the country. The AU stood by the actions of IGAD before committing direct support to the Somali conflict. Several initiatives were started by IGAD to facilitate peace in Somalia. The initiatives were the Guelleh Initiative held by President Ismail Omar Guelleh of Djibouti was endorsed by African regional governments, Arab League states, the United States (US) and the European Union (EU). It suggested involving leaders of a devastated civil society, “including intellectuals, artists and mothers” in political negotiations (LosAngelesTimes, 1999), which resulted in the formation of a transnational assembly and Transitional National Government (TNG) headed by Sahad Hassan and was to involve all sectors of Somali; and the Nairobi Conference of January 2004, where the outcome led to the faction leaders creating the TFG of Somalia (Koko, 2007, p. 9).6 The situation was not abated and In March, 2007 the AU unveiled an operation in Somalia to stabilize the conflict in the country which was initially executed by Ugandan troops. Somalia represents a test case for AU peacekeeping (Koko, 2007).
Table 0-1: Personnel Contributed by Countries.

<table>
<thead>
<tr>
<th>Contributing Countries</th>
<th>Number of Troops</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uganda</td>
<td>6,223</td>
</tr>
<tr>
<td>Burundi</td>
<td>5,432</td>
</tr>
<tr>
<td>Kenya</td>
<td>4,652</td>
</tr>
<tr>
<td>Djibouti</td>
<td>960</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>850</td>
</tr>
<tr>
<td><strong>Total Troops</strong></td>
<td><strong>18,117</strong></td>
</tr>
</tbody>
</table>

(AMISOM, 2013)

The UN was reluctant to set a mission in the country which was declared a failed state by most UN states, a state with no peace to keep (Allen, 1997). Earlier, the UN had established the United Nations Operation in Somalia I (UNOSOM I) which was deployed in 1992 and (UNOSOM II) which replaced United Nations Task Force (UNITAF) in 1993, but the missions were pulled out of the country in 1995 (Francis et al, 2005). The African Union Mission in Somalia (AMISOM) was created by African Union’s Peace and Security Council (AUPSC) which has the responsibility to evaluate a potential crisis situation and send fact finding missions to affected areas and authorize and legitimize African Union’s intervention in crisis situations (Koko, 2007, p. 11). It was established on 19th January 2007, as a regional peacekeeping mission operated by the AU with the approval of the United Nations Security Council (UNSC), resolution 1744 of 2007 that authorized the establishment of AMISOM, within six months, tasked with protecting the TFG, and the enforcement of an arms embargo in Somalia (UNSC, 2007). The AUPSC also includes a post-conflict reconstruction unit; the protocol to the AUPSC has its guiding principle on “the right of the Union to intervene in a Member State
pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, in accordance with Article 4(h) of the Constitutive Act (AU, 2000).10

AMISOM’s mandate was initially for six months, whose aim was to support a national reconciliation congress (UNSC, 2007). The council authorized the AU to take all necessary measures to carry out support for dialogue and reconciliation by assisting with free movement, safe passage and protection of all those involved in a national reconciliation process involving all stakeholders, including political leaders, clan leaders, religious leaders and representatives of the civil society (UNSC, 2007).

At the onset, some African countries came forward to contribute troops to the mission including Ghana, Nigeria, Malawi, Uganda and Burundi, however only Burundi and Uganda raised eleven thousand six hundred and fifty five (11,655) troops for the mission. Ghana and Nigeria were apprehensive towards joining the mission, they complained that the mission was substandard whereas Malawi failed to contribute to the mission due to internal politics in the country where the president lost his majority in parliament and therefore could not convince anyone that it was in the country’s interest to participate in AMISOM (Kasaija, 2010).

Article 4(h) of the Constitutive Act of the AU provides that member states have embraced “the right of the union to intervene in another member state, pursuant to a decision of the Assembly during instances of grave circumstances such as war crimes, genocide and crimes against humanity.” Article 4(j) asserts the right of member states to requests intervention from the AU in order to restore peace and security (AU, 2000). Article 7 (e) of the Protocol of Peace and Security Council points out that the Council can recommend to the Assembly of Heads of State
intervention on behalf of the AU, in a member state in respect to serious circumstances namely war crimes, genocide and crimes against humanity as defined in the international conventions and instruments, with the adherence to this principles the African Union has the responsibility to protect (AU, 2000).

The AU adopted these principles when it intervened in Somalia. The country was in a volatile state and the matter needed to be contained if not completely suppressed before it spread to another state. The African union applied the provisions of the constitutive act so as to work towards a resolution.

The central thesis of this study is to examine the relationship between the African Union’s right of intervention and Human Rights protection. This study will look at regional actors’ involvements towards promoting peace in relation to the principle of responsibility to protect. It will draw from AMISOM experiences and whether the situation in Somalia warranted the application of the right of intervention.

1.2 Statement of the Problem

The African Union constitutive act was amended to put an end to the atrocities happening against the African people. The conflict in Somalia led to the loss of lives and refugee influx in neighboring countries. Despite all these, it was ignored by the international community. The AU shifted to a policy of non-indifference from the OAU’s policy of non-interference which came in to form a connection between its right of intervention and protection of human rights.

The African Union Non- Aggression and Common Defense Pact of 2005 emphasizes a broad approach towards human security which incorporates the individual’s social, political, economic,
military, environmental and cultural requirements, Article (2) (c) of the pact in seeking to determine the appropriate need and time of intervention states that,

In pursuance of these objectives, this Pact seeks to define a framework under which the Union may intervene or authorize intervention, in preventing or addressing situations of aggression, in conformity with the Constitutive Act, the Protocol and the Common African Defense and Security Policy (African Union, 2005).

Ignoring these offences would mean that human rights violations would be on the rise in the African continent. The AU is an organization whose goal is to propel a united continent towards peace and prosperity. Somalia being considered a failed state meant that most countries wanted to reduce if not entirely stop their relation with the country, on the other hand Somalia’s stability is pertinent to the African continent. Looking at Somalia’s geo-politics; its location makes it easier to access Africa through the East. Its volatility also makes it easier for her to harbor terror groups and organizations, and terrorism is a world pandemic in its own right.

A clear depiction of how unstable states create an environment suitable for terrorism to thrive is through the terror attacks in the neighboring state Kenya by the al shaabab who sought refuge in Somalia. Containing peace and security is not only crucial for that state, but for the greater global community. A country being sovereign not only means that it has the responsibility over her people but also to ensure that the actions within its jurisdiction do not in turn affect other countries.

1.3 Objective of the Study

1.3.1 General Objective

The general objective of this study explores the nexus between African Union’s principle of intervention and human rights protection in Somalia.
1.3.2 Specific Objective

The study will however seek specifically to:

1. Identify the reasons as to why the international community considers Somalia a failed state.
2. Evaluate the responses taken by the African Union in upholding human rights protection and the concept of non-indifference in Somalia.
3. Determine whether AMISOM can effectively spearhead lasting peace in Somalia.

1.4 Research Questions

The general question that this study seeks to answer is; to what extent is the African Union’s principle of intervention is helpful in protecting Human Rights in Somalia?

The study seeks to answer the following specific questions:

1. Why Somalia is considered a failed state by the international community?
2. How does the AU protect human rights and implement the concept of non-indifference in Somalia?
3. To what extent can AMISOM effectively spearhead lasting peace in Somalia?

1.5 Justification of the Study

Humanitarian Intervention brings about a lot of contention due to ethical, political and legal concerns. Most of the issues studied in relation to humanitarian intervention are mainly related to legitimacy and legality, and also with reference to the CNN effect issues of moral outrage are also looked into. Discussions dealing with the norms of humanitarian intervention and recently
responsibility to protect have been looked into by authors and researchers, questions concerning
the nexus between intervention and human rights protection are yet to be sufficiently answered.

This research seeks to answer whether the AU can sufficiently protect human rights in the
continent while looking at AMISOM. It will also seek to determine whether human rights
protection and state sovereignty are mutually exclusive events or they can they can occur at the
same time with reference to the state collapse in Somalia, as well as investigate why all the
ttempts to arrive at a peaceful Somalia, have not been successful.

As indicated previously, the conflict led to the collapse of the central government in 1991,
followed by years of unresolved conflict. Attention is also paid to the root causes of the conflict.
This study then investigates the connection between the intervention by the AU in Somalia and
human rights protection. It will also provide recommendations on what can be done to ensure
ultimate peace in the country especially with the rise of terrorism.

This research can serve as a useful resource for the Kenyan government policy formulation on
conflict resolution in Somalia, given the centrality of conflict resolution in the country’s foreign
policy priorities. It is also an integral part of the consolidation of the *AU Agenda 2063*, which is
critical to the peace pillar of the Kenyan policy framework. The research will furthermore
contribute to the body of knowledge on conflict resolution processes in Somalia. In addition,
challenges and opportunities, presented to the mediators, by the peculiarities of the Somali
political, social and economic system will be identified and discussed in this study. Lessons
learned from AMISOM can serve as a resource for future diplomatic interventions in conflict
resolution and management.

This research considers the political aspects of humanitarian intervention in Africa, including the
relevant parts of the extensive literature on humanitarian intervention and the growing literature
on different aspects of R2P, this thesis aims at making a contribution to the body of scholarly works also by exploring whether state sovereignty can be devoid of human rights especially in the African context and by studying R2P application in Africa. It will compare article 4(h) of the Constitutive Act of the AU in theory and the practice applied by the Union.

**1.6 Scope of the Study**

This study will focus on the situation within the territorial bounds of Somalia, taking a brief look at the Somali state and why it is considered a failed state despite several attempts to restore peace in the country. It will put an emphasis on AU’s involvement in Somalia through AMISOM.

**1.7 Literature Review**

Much has been written on the subject of the conflict in Somalia, intervention, state sovereignty and human rights protection in Africa. The bulk of these writings are in form of official documents, reports, journals and conference reports.

Other authors like Gergen (1990) believe that the media has effect on the development of conflict and its internationalization; he talks about *THE CNN* factor where events happening in one part of the world are transmitted instantaneously to other parts of the world (Gergen, 1990). He clearly points out how easy it is for the international community to be informed when a conflict is going on in one place and the severity of the conflict especially where human rights violations are concerned and can prompt demand for action including intervention.

Keohane, in support of sovereignty writes that “the state remains the principal unit of protection and collective action in the contemporary world (Keohane, 2008).” By and large the state is the main actor in international politics. Suffice it to say, states don’t all have similar capabilities, as
highlighted by Sorenson (2001); “We also have to accept that states are differentiated both in their capacities and in legal status; despite the legal fiction of sovereignty, states are not all equal. One person’s double standard as another’s recognition of reality.”

Mutisi (2011) states that African Regional governments are ideally suited to intervene in conflicts within the continent since they stand to be affected on the security front if they do not intervene. She further supports the above statement by stating that failed intervention in UNOSOM I & II left a political vacuum in Somalia which led them to suffering under the hands of different factions (Mutisi, 2011, p. 53). This shows that the author is in support of intervention, however also believes in African solutions to African problems. She basically means that African constructed policies are better suited to solve the crises in the continent. Michelle Griffin and Jones (2001) evaluate some of the UN peacekeeping operations and with reference to Rwanda and Somalia in the 1990s; they suggest that Africa should empower her regional organizations to keep peace.

According to Murithi (2012) The African Union mandate and Peace and Security Council is supported by the establishment of the African Stand-by Force, which was intended to conduct peace operations in co-operation with the United Nations and sub-regional African organizations such as Economic Community of West African States (ECOWAS), Southern African Development Cooperation (SADC), African Maghreb Union (AMU), Economic Community of Central African States (ECASS). In support of this Segel (2008) writes that the African Union’s peace and security framework is responsible for deploying an African stand-by brigade at continental and sub-regional regional levels. The authors are describing the authority of the African Union to engage in intervention through the AUPSC.
Kabia (2009) also supports humanitarian intervention, stating that for human protection purposes it can be regarded as an acceptable breach of International Law. It emphasizes the need for complimenting the short term aim of saving lives with the long term goals of building lasting peace through institutionalization of democratic values and the Rule of Law. Despite his assertion, he also states drawing from the Economic Community of West African States Cease Fire Monitoring Group (ECOMOG) experience that due to lack of an effective humanitarian policy, a coherent political plan and a well thought out peace building and exit strategy the humanitarian goals of ECOMOG mission in Liberia, Sierra Leone and Guinea Bissau were undermined also resulting in a flawed peace process and wayward peace building programs (Kabia, 2009, p. 5). Therefore intervention should include a clear structure of how the process will be tackled, and sustainable outcomes.

Kabia (2009) has pointed out that there needs to be a policy that will ensure sustainability of the solutions arrived at after intervention. Therefore a lot of authors are touching on intervention at the time, but they are not pointing out what happens after the fact when a mission is considered successful, and are also not pointing out what needs to be done when a mission is considered unsuccessful. As highlighted by Murithi “if the AU is to succeed the different factions will have to come to a sustainable political agreement, without which territorial conflict will continue unabated (Murithi, 2009, p. 101)."

Holzgrefe (2003) eludes that most interventions after the cold war were not absolutely humanitarian oriented but were driven to a large extent by a states’ national interest, he defines humanitarian intervention as,

… A threat or use of force across state borders by a state (or a group of states) aimed at preventing or ending widespread and grave violations of fundamental human rights of
individuals other than its citizens without the permission of the state within that territory force is applied (Holzgrefe, 2003, p. 8).

Robert Jackson and Sorensen (2010), drawing their beliefs from neo-classical realists also state that states intervene to pursue national interests which are connected to matters security and wealth; and use it to preserve similar interests, they quote Morgenthau “Politics is a struggle for power over men… the modes of acquiring; maintaining and demonstrating it determine the technique of political actions.” (Jackson & Sorensen, 2010, p. 66) Morgenthau (1967) a proponent of realism also states, “Intervene we must where our national interest requires it and where our power gives us a chance to succeed. The choice of these occasions will be determined … by a careful calculation of the interests involved and the power available (Morgenthau, 1967)” Intervention is clearly not a process that is done purely to protect human rights, interests also prompt states to intervene in certain matters as well as avoid other matters. Deng et al. (1996) in defining sovereignty as a responsibility and in support of intervention, states,

While challenges fall within the domestic jurisdiction and therefore national sovereignty, neighboring states and indeed the international community, cannot be indifferent to conditions in a given country, especially when the consequences of state performance affect their own situations and interests (Deng et al., 1996).

El-Affendi (2009) alludes to the fact that intervention within the African region is contingent to state interests, he states “as long as leaders of the countries are serving global strategic interests they will not be subjected to critical scrutiny, there is a trade-off here.” Bereketeab (2009) also insists that there is a conflict between human rights and democratization in the region and one is given priority at the expense of the other, ultimately the entire region suffers, since both objectives are not arrived at, at the same time.

Noyes and Smith (1988) assert that the law of ‘multiple state responsibility’ is still in its early stages and therefore does not describe the consequences of ‘multiple state responsibility.’ They go on to state that “Judicial or arbitral decisions addressing a state’s assertions that other states
share responsibility are essentially unknown (Noyes & Smith, 1988).” In as much as states can intervene, through Responsibility to Protect, the legal framework is yet to be advanced to cater to the consequences after the fact.

Woodward (2013) writes that the situation in the horn of Africa has never changed, therefore according to him; conflict in Somalia does not surprise the international community. He draws the history of the conflict from the Cold War era. He believes that it has been perpetuated by issues of underdevelopment and drought and famine in the area. Thomas (1998) also ties some of the problems in the African state to the Cold War and the Sino-Soviet rivalry, since the conflicts were being aided by the West. Olonisakin (1998) is of the view that the states that paid little attention to issues of human rights during the Cold War have shifted to be more vocal and involved in monitoring the violations after the war ended.

According to Coleman (2006) the root cause of the prolonged conflict is attributed to the existence of imbalance of power between parties. He states that the more powerful parties exploit, control or abuse the less powerful. To add to this Dweck and Ehrlinger (2006) state that prejudice is the main cause of long-lasting conflicts. This is portrayed through the clan rivalries in Somalia, which also leads to a state of egalitarianism. In line with this, Osman (2007) is of the view that inequality and exclusion are the root causes of the Somali conflict, which is manifested in the conflict between the ruling clans and the nomads on the one hand, and the outsiders and the sedentary clans on the other hand. Despite the difference in views by the above scholars on the reasons leading towards intractable conflicts, their perceptions are similar in that they view social, political and economic segregation as the latent causes of unyielding conflicts.

The authors have covered aspects of intervention and reasons of the Somali conflict. They have however not sufficiently provided a link between military intervention and human rights
protection especially in the context of AMISOM. The Somali situation has not been fully addressed taking into account the terror situation in the country. Pointed out is how intervention is to be handled when dealing with non-state actors, what measures are to be taken, especially in the rise of terrorism. It is also not clear when it comes to determine the point where intervention meets human rights protection and not merely its application by states to pursue interests.¹²

1.8 Hypothesis

This research will test the following hypothesis;


1.9 Conceptual Framework: Responsibility to Protect

The international community since the 1990s has faced a series of humanitarian crises. In some cases like Somalia and Sierra Leone the UN sanctioned military intervention for human protection purposes in various forms and to various degrees of success, while in places like Kosovo non-sanctioned intervention occurred however in other states like Rwanda no adequate intervention took place, and atrocities proceeded effectively without interdiction.¹³ These series of intervention practices led to a debate between intervention and sovereignty. Kofi Annan who was the UN Secretary General during that period, in his report explicitly summoned a “moral duty” of the Security Council to act in place of the international community when faced with crimes against humanity (Annan, 2000).

Article 39 of the UN Charter states that the UNSC shall determine the existence of any threat to peace or act of aggression and shall make recommendations and decide measures to be taken. Article 41 states that the UNSC shall decide on measures not involving the use of armed force
and article 42 continuing from article 41 states that should the measures prove inadequate, the UNSC may take such action by air, sea or/and forces as may be necessary to maintain or restore peace and security (U.N, 1945). These articles of the charter of the United Nations clearly show that the UN was taking up a duty to intervene in matters that would result in human rights protection.

The International Commission on Intervention and State sovereignty (ICISS) was set up by the Canadian Government to assess the right of human intervention (2001). The ICISS in 2001, proposed the notion of R2P, a responsibility by the states and international community to protect civilians from human rights violations (Waltz, 2000).14 “Responsibility to Protect is a recently developed concept in International Relations. It aims to provide a legal and ethical basis for humanitarian intervention (Koko, 2007).”

The responsibility to protect embraced three responsibilities which are; the responsibility to prevent by addressing the root cause of conflicts and other man made crises that put the populations at risk; The responsibility to react by responding to situations where necessary using coercive measures such as sanctions, military prevention and international prosecution; the responsibility to rebuild by providing assistance with recovery, reconciliation, reconstruction, and addressing the causes of the harm the intervention was designed to avert or halt (ICISS, 2001: IX). Of the three responsibilities under R2P, humanitarian intervention falls only under the responsibility to react, it is always considered as a last resort to be employed during extreme situations. This includes the use of coercive measures ranging from imposition of sanctions up to the use of force. “The responsibility to protect means that human protection operations will be different from both the traditional operational concepts for waging war and for UN peacekeeping operations (ICISS, 2001, p. 66).” It should be noted that, using of forceful means is not
considered as the only resort to apply responsibility to react “As a matter of first principles, in the case of reaction just as with prevention, less intrusive and coercive measures should always be considered before more coercive and intrusive ones are applied (ICISS, 2001, p. 29).” The responsibility to react also includes the imposition of sanctions on states as a preferred first reaction. Hence, humanitarian intervention is to be considered “in extreme cases,”, either when there is a failure or an inability to prevent mass scale of atrocities and/or when the sanctions implemented fail to stop them.

The R2P doctrine goes beyond monitoring the act of humanitarian intervention and merely stopping mass atrocities to preventing them from taking place in the first place (Annan, 2001). R2P conceptualizes state sovereignty as a responsibility by the governing instruments towards their people instead of a right to perform any act within the territorial boundaries. The Report of the ICISS establishes the central tenet of R2P as follows: sovereign states are responsible towards their citizens for their protection “from avoidable catastrophe — from mass murder and rape, from starvation— but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states (ICISS, 2001, p. viii).” The report also outlines two basic principles,

1. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.

2. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect (ICISS, 2001, p. xi).
It is clear that R2P attempts to change the perception of state sovereignty from a principle which traditionally implies that states are “untouchable” in their internal affairs into one that holds states responsible for the protection of their peoples from grave violations of human rights. It also brings a new dynamic to state responsibility involving the international community taking responsibility concerning humanitarian cases as well as the need to take action at the international level.

The Commission considers also collective intervention by a regional or sub-regional organization “within its defining boundaries” as a solution towards application of R2P (ICISS, 2001, p. 53). For intervention to be lawful it has to satisfy the criteria of just cause, which are determined in the report;

- to stop large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale “ethnic cleansing,” actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape (ICISS, 2001, p. 32).

The criteria to be satisfied fall under the composition of the Genocide convention.

Intervention should also fulfill the right intention, which is basically the aim of the intervention. Accordingly, stopping the atrocities and ending human suffering have to be the main objectives. In this regard, objectives such as changing the state’s regime, assisting self-determination, or occupation cannot be accepted as justifiable causes (ICISS, 2001, p. 35). The ICISS set a threshold to ensure right intention: The first is the collective or multilateral character of the intervention undertaken; by and large unilateral interventions are not encouraged. The second is the consideration of “whether, and to what extent, the intervention is actually supported by the people for whose benefit the intervention is intended (ICISS, 2001, p. 36).” Thirdly is “to look to whether, and to what extent, the opinion of other countries in the region has been taken into
account and is supportive (ICISS, 2001, p. 36).” This purports that it is important to look at the views of and obtain the support of neighboring countries prior to intervention since it indicates their consent for the act undertaken. Fourthly is fulfilling the aspect of the last resort criterion which is outlined all through the report. The Report states that military intervention must be the last remedy to be adopted due to the exhaustion of diplomatic and peaceful means and as a result of the failure to successfully implement the responsibility to prevent (ICISS, 2001, p. 36). That notwithstanding military intervention should be applied with proportional means. This includes the scale, duration and intensity of the military force. They have to be commensurate with the ends and in line with the magnitude of the original provocation (ICISS, 2001, p. 37).

The R2P principle was endorsed in 2005 by more than 150 heads of states in the 2005 world summit outcome document. According to the outcome document, there are three pillars to the Responsibility to Protect;

(i) The state carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing and their incitement.

(ii) The international community has a responsibility to encourage and assist states in fulfilling this responsibility.

(iii) The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations (UnitedNations, 2005).

By and large sovereignty no longer protects states from interference; it’s a charge of responsibility that holds states accountable for the welfare of their people as stated by the Genocide Convention (1948). The central tenet of R2P is that sovereignty, the defining feature of a state, entails responsibilities as well as physical and political jurisdiction (UNA-UK, 2014).
Paragraphs 138 and 139 of the ICISS report also point out the individual and collective responsibilities and the threshold for action for protecting populations at risk of mass atrocities (ICISS, 2001). These paragraphs link the scope of prevention and protection to four crimes which are genocide, major war crimes, crimes against humanity and ethnic cleansing; the obligations are premised on state responsibility (Serrano, 2011; UnitedNations, 2005).

R2P was first conceived by the ICISS as a tool to reconcile sovereignty and Human Rights (Weiss & Hubert, 2001). However, R2P is yet to be a legally binding norm, it asserts its authority as from its international normative landscape (Serrano, 2011). The principal is not legally binding to states but acts as a *de facto* rule to be applied when it comes to intervention and sovereignty, drawing its authority from internationally accepted customs. This is because R2P like Human Rights is aspired universally (Serrano, 2011).

Whether it was successful practice of “R2P in Kenya in early 2008, or the flawed R2P by France of Cyclone Nargo in Burma in May 2008, they represent the political relevance of the R2P norm in real time politics (Badescu & Weiss, 2010). The authors come to the conclusion that despite the reasons behind exercising R2P and the situations that prompted the actions by states or organizations the whole premise behind R2P is still fulfilled by other actors.

**1.10 Research Methodology**

The purpose of this study will be to examine the nexus between the African Union’s right of intervention and Human Rights protection by looking at the African Union Mission in Somalia. The study will mainly employ a qualitative-analytical approach. The study will use a descriptive approach to look at the case study of the African Union in Somalia.
Data will be gathered from both the primary and secondary sources, which will be subject to further analysis. Desk research is therefore preferred since much of the information can be found in the Library. Literature will cover the issues on conflict, peacekeeping, intervention and human rights, with a focus on Somalia. The data will come from books, journal articles, newspapers, periodicals, conference papers, unpublished reports and the web.

1.11 Structure of the Thesis

Chapter One
This chapter is an introduction to the thesis. It points out the importance of the study, looking at the relevant issues that need to be discussed. It also provides the research questions and objectives used to guide this study. It gives a literature review on books and journal articles that have been written concerning intervention and the African Union giving a list of authors, who have written on the topic and their views on the topic. This chapter includes a conceptual framework on the Responsibility to protect principle. The chapter outlines the research methodology used to conduct the thesis.

Chapter Two
This Chapter presents a brief overview on the instability in Africa, after the cold-war, with emphasis on Somalia. It investigates the history of the Somali conflict, and its trajectory since independence to present. Analyzing the solutions applied in Somalia by various actors. It also studies the reasons that led to Somalia being a failed state.

Chapter Three
This chapter reviews the intervention principle alongside sovereignty and African states. It is a brief evaluation on whether the AU has effectively observed the principle of non-indifference
while giving an analysis of various AU interventions and their successes or failures. It also scrutinizes the R2P principle in the African context in tandem with Article 4(h) of the Constitutive Act of the African Union.

**Chapter Four**

This chapter is an overview of AMISOM, and its structure. It also evaluates the various mandates it has had since its formation. It gives the challenges that have been faced by AMISOM as well as analyze its mandate alongside human rights protection. This then leads to the conclusion whether African Union Mission in Somalia is a feasible response towards promoting Human Rights protection.

**Chapter Five**

This chapter is the conclusion, providing a summary and evaluating the main points while giving recommendations, on what the AU can do to improve Human Rights protection, as well as come up with sustainable solutions to avoid re-occurrence of the situation.
CHAPTER TWO

FROM NATIONALISM TO STATE COLLAPSE: A LOOK AT THE CONFLICT IN SOMALIA

INTRODUCTION
Africa was at the center of the Cold War politics between the United States and the Republic Union of Soviet Socialist (USSR). Upon the end of the Cold War; Africa was greatly affected since the conflicting states basically lost interest in her. This chapter will examine the various post-cold War internal, regional and internationalized conflicts in Africa. It will look at the origin of the conflict in Somalia, why it has lasted for long thus why it is called a failed state and the efforts that have been made before African Union Mission in Somalia (AMISOM) to end it. It will also explore the emergence of non-state actors the roles they have played in ending or even worsening the conflict.

Africa was a battleground for East-West Cold War rivalry, dividing Africa into ideological spheres of influence, with proxy wars erupting in countries like Somalia and Ethiopia. The US was capitalist, and tried to promote its agenda, while the USSR had a communist agenda. However most third world countries were embracing communism like Tanzania. The countries adopted Marxism-Leninism model, on “single party rule, state-led economic planning, the nationalization of major industries, collectivization of agriculture, the abolition or restriction of private property integrating the states into socialist movements (Thomas, 1998, p. 3).” African affairs were coupled with border disputes, irredentism and demands for secession (Thomas, 1998). After the cold-war, various African countries experienced adverse conflict that could not be reduced or stopped; some authors even termed the conflict as a ‘complex emergency.’

A complex emergency is a humanitarian disaster that occurs in a conflict zone and is complicated by, or results from, the conflicting interests of warring parties. Its causes are
seldom exclusively natural or military: in many cases a marginally subsistent population is precipitated toward disaster by the consequences of militia action or a natural occurrence such as earthquake or drought. The presence of militias and their interest in controlling and extorting the local population will impede and in some cases seriously threaten relief efforts. In addition to violence against the civilian populations, civilian installations such as hospitals, schools, refugee centers, and cultural sites will become war objectives and may be looted frequently or destroyed (Mackinlay, 1996, p. 16).

During the Cold War Era, the United States and the Soviet Union used their ideological priorities to try and influence countries. The Horn of Africa attracted a lot of attention during that period. The hegemons fought towards getting strategic advantage and to gain that they elevated military assistance in the region. One of the results of the cold war “was to increase divisiveness among the countries (Jackson, 1984, p. 225).” The situation ensured their status as the global competitors for armament, which facilitated the continuation of their conflict (Zartman, 1989).

The years between 1965 and 1968 are known for a series of conflicts which were backed by the Soviet that occurred in Algeria, Ghana and Mali, Burundi, the Central African Republic (CAR), Nigeria, Upper Volta and Zaire (Thomas, 1998). There were civil wars in countries like Mozambique and Angola which were proxy wars fought by the Soviet Union and the US. These two countries experienced decades of violence which were a consequence of political and ideological power struggles (Francis, 2006). The Soviet supplied arms to embattled governments and supported national liberation movements opposed to western interests to exert her influence in Africa (Hough, 1986).

The globalization of the conflict in the Horn of Africa directly led to its militarization, as a result the governance and ethnic relations in the region were affected by the contest between the two superpowers. The states were pursuing their objectives through the conflict in the region. Militarization is a condition where there is heightened security within a state and leads to "a steady growth in the military potential . . . usually accompanied by an increasing role for military
institutions both in national affairs, including the economic, social and political spheres, and in international affairs (SIPRI, 1982, p. 393).” This situation creates instances where the “security forces play an active role in politics; a large share of government resources is devoted to the security sector; [and] the government seeks military, rather than political, solutions to domestic and inter-state disputes (Ball, 1991, p. 199).”

The political problems in Africa did not end after independence, because of the East-West Rivalry that was mixed with African politics (Thomas, 1998). The states were weak due to low levels of political legitimacy, and according to the west they had a limited democratic political culture. The artificial boundaries that were introduced during colonialism were also a contributing factor to the unstable situation since they paid no attention to the traditional ethnic boundaries (Thomas, 1998). The formation of the OAU did not remedy the situation; instead it introduced the principle of uti possidetis (Nugent, 2004). This principle froze the African map, and maintained that the inherited colonial boundaries must be respected (Oliver, 1991). This brought about problematic states that were attempting nationalism or secession. In as much as these efforts were internal, the outside powers were involved through providing arms and technical help (Oliver, 1991). When one side intervened the other always countered their efforts. The cold war was partly fought in Africa and they got involved when it suited their geo-political and economic interests (Thomas, 1998).

2.1 Desertion by the West

The Soviet Union collapsed in 1991, leading to the end of the Cold War. The US therefore lost any interest in Africa. In Somalia for example the United States finally suspended all financial aid, which led to its collapse and created a political vacuum (Parsons, 1995). The US lost interest
in Africa (Thomas, 1998). This situation highlights how the Cold War affected conflicts in Africa and the collapse of the Soviet only exacerbated the matter (Schwab, 1978). Therefore Africa being an extension of superpower interest was marginalized at the end of the Cold War (Thomas, 1998).

After the superpowers withdrew their support from African states, a new African authoritarianism emerged which consisted of political violence aimed against demands for democracy and human rights (Thomas, 1998). Ethnic and sectarian conflicts were used by regimes to gain power. The superpowers ignored them since they no longer suited the agenda that they had during the Cold War (Thomas, 1998).

**2.2 Conflict in Africa**

Africa was confronted by a series of disputes during and after the Cold War era. The issues included border disputes, irredentism and secession demands (Thomas, 1998). Compared to any other region in the world, Africa experienced series of deadly conflicts. Statistics show that by the end of 2000, there were 11 major conflicts with more than 1,000 battle fatalities raging in Africa; above 50% of African states were battling with one form of conflict or the other; at least 13 African states had well over 100,000 Internally Displaced Persons (IDPs); more than 20% of the people were affected by conflicts; almost 11 million people were internally displaced (IDPs); over 14 million were uprooted (refugees and IDPs); and the extent of conflict was greater than in any other region in the world (DFID, 2001, p. 4)

The conflicts emerged because of various reasons, which include;

- colonial legacies, poverty, withdrawal of financial and military aid to African dictators after the Cold War, exploitation of ethnicity, corruption, political cum social exclusion, population explosion, incompetent governments, politics of democratization, unemployment, competition for scarce resources, inequality, economic decline/shock, state failure/collapse and economic dependence on natural resources (Konte, 2006).
In the Horn of Africa, the influence of the Cold War led to interstate conflict caused by issues of statehood and national identity (Harbeson, 2000). There were notable irredentist claims by Somalia. Irredentism is the recovery of a former territory, which was divided due to colonialism (Thomas, 1998). Somalia wanted to unify the Somalis that were in portions of Djibouti, Ethiopia and Kenya since the 1960s (Thomas, 1998). There was a successful secession by Eritrea from Ethiopia. It declared its independence from Ethiopia in 1993. Biafra also attempted to secede from the federal government of Nigeria, to no success. The horn of Africa was well known for conflict in Africa, especially after the end of the Cold War in 1991.

The Democratic Republic of Congo (DRC) was also a victim of conflict. The conflict started from political groupings and secession attempts by the Katanga province which polarized the country and resulted to a Civil War. The UN partly defused the conflict, however the conflict went through various stages before it came close to being abated (Turner, 2007). “The conflicts in the Congo are characterized as internal ethnic and tribal warfare, notwithstanding the involvement of combatants from several states” (Bassiouni, 2008, p. 748).

African states paid little attention to the protection of Human Rights, yet they came into existence through Human Rights laws and principles upholding the right of self-determination (Olonisakin, 1998). The leaders were trying to protect territorial integrity, through ensuring nationalism. They maintained power by undermining all forms of opposition through,

gagging the press, engaging in arbitrary arrests, detention and extra-judicial murder of political opponents and denying their citizens fundamental human rights , taking for granted their right to life, liberty, security of persons, freedom of expression, opinion and movement and the right to choose their own leaders (Ambrose, 1995, p. 5).
2.3 The Somali Conflict

To some scholars the Somali conflict has taken certain phases, which are Cold War to Civil War (1988 – 1991); State collapse, clan war and famine (1991 – 1992) and international humanitarian intervention in the 1990s (Miller, 2009). The Somali conflict can be traced up to the colonial era, the Somali state was divided up among several colonial powers. Present day Somaliland, Kenya to the British, Djibouti to the French, Ogaden province in Ethiopia to the Italians. Following her independence there was fusion of the Italian Somaliland and British Somalia, which made up the Republic of Somalia in July 1960.

2.3.1 Somali Irredentism

Following the independence of Somalia, there was a sense of nationalism. They sought to bring together all the Somalis into one nation state. The Somali Foreign Policy geared towards nationalism (Terrence, 1994). They were Somalis from Djibouti, Ogaden province in Ethiopia and North-Eastern Kenya. Through the years Somalia engaged in a low level war in the so-called ‘Somali territories’ as part of the irredentist policy; in 1977-78, military support was offered to the ethnic Somalis in the Ogaden in their war against Ethiopia. These conflicts were also fueled by the cold war. At the time Americans offered their support to Ethiopia by providing arms, the Soviets countered their influence in the Horn by supporting Somalia (Lewis, 2002). The Soviets improved the port of Berbera to serve as handling, refueling and storage facilities for their surface-to-surface missiles and provisioned Somalia with advanced weaponry and military training.

Between the years of 1963 and 1968, there was a war with Kenya, known as the Shifta war. This was an attempt to claim the territory and the Somalis in North Eastern Kenya to Somalia. The
Northern Frontier district of Kenya felt marginalized, and Somalia supported its struggle for autonomy (Nugent, 2004). There was proliferation of arms across the border of Somalia and Kenya to support the Somalis in Kenya. In August 1967, the Somali Government entered into an agreement with Kenya, which brought to an end its irredentist claims over Kenya.

Somalia irredentist claims in Ethiopia were over the Ogaden province in Ethiopia. Somali gave support to indigenous secessionist rebel movements like the Western Somali Liberation Front (WSLF). This war was also sustained by the cold war politics. In 1974 the US supported Ethiopia and the Soviet Union supported Somalia. They later switched alliances and the Soviet Union supported Ethiopia and the US Somalia. Haile Selasie the Ethiopian president, tried to counter the nationalist influence by incorporating Somali chiefs into his administration to garner support however it did little to contain the rise of nationalism (Markakis, 1990). In 1964 a full scale war broke out along the border between the two states (Nugent, 2004). Somalia lacked the military capability to maintain the war; in March 1964 they were forced to sign a peace treaty (Nugent, 2004). In 1977 Siad Barre the president of Somalia, took advantage of the turmoil caused by the Ethiopian revolution to capture Somali-occupied territory in Eastern Ethiopia (Woodward, 1998). The conflict accounted for the deaths of over 25,000 people (Brons, 2001). However they were soon defeated in 1978 by Ethiopia’s army, which was supported by the Soviet Union (Woodward, 1998).

2.3.2 Clanism

Pre-colonial Somalia comprised of nomadic groups made up of clan lines (Brons, 2001). A clan is based on lineage and includes a system of social order that traces the identity of individuals and defines the social structure (Jeng, 2012). The downfall of President Siad Barre in January
1991, who was forced out of power by the United Somali Congress (USC), resulted in a power struggle and clan clashes in many parts of Somalia (Woodward, 2013). There were ten significant militias seeking power over central and southern Somalia, like the Somali National Front (SNF) and the Somali Patriotic Movement (SPM) (Woodward, 1998). These militias identified with traditional clan leadership structures, and their leaders were described as warlords (Woodward, 1998).

Instead of political accommodation and compromise the clan rivalries were conducted through violence (Woodward, 2013). In November 1991, the most intense fighting since January broke out in the capital, Mogadishu, between two factions one supporting Interim President Ali Mahdi Mohamed and the other supporting the Chairman of the USC, General Mohamed Farah Aidid. Since then, fighting persisted in Mogadishu and spread throughout Somalia, with heavily armed elements controlling various parts of the country (Woodward, 1998). Some declared alliance with one or the other of the two factions, while others did not. The hostilities resulted in widespread death and destruction, forcing hundreds of thousands of civilians to flee their homes and causing a dire need for emergency humanitarian assistance. Almost 4.5 million people in Somalia over half of the estimated population were threatened by severe malnutrition and malnutrition-related diseases, with the most affected living in the countryside. It was estimated that perhaps 300,000 people died since November 1991, and at least 1.5 million lives were at immediate risk. Almost one million Somalis sought refuge in neighboring countries and elsewhere (Woodward, 1998). The refugees inhabited the neighboring countries like Kenya and Ethiopia even went as far as Yemen and Italy (Woodward, 2013).
The political chaos, deteriorating security situation, widespread banditry and looting, and extent of physical destruction compounded the problem and severely constrained the delivery of humanitarian supplies. Furthermore, the conflict threatened stability in the Horn of Africa region, and its continuation occasioned threats to international peace and security in the area (Woodward, 2013). Somalia became a lawless nation which also had famine to deal with. The lack of an institutional order brought out a sense of egalitarianism (Mohamoud, 2006). There was need for food aid, however armed groups were looting the food aid for themselves, as well as sell to the population who were desperate (Woodward, 2013).

2.3.3 The Emergence of Somaliland and Puntland

The northern Somali regions, British Somaliland, made substantial progress towards peace and governance. Locals in those regions formed the Somaliland administration, a secessionist self-declared state. Likewise, the North-eastern regions of the country made a successive reconciliation in those regions and formed the Puntland regional autonomy of Somalia (Mulugeta, 2009).

Following the exit of Siad Barre and clan politics, two new states emerged namely Somaliland and Puntland (Woodward, 2013).SNM with a core from the Isaaq clan family, partly contributed to the emergence of Somaliland. It succeeded in liberating Somalia against autocratic rulers by ousting Siad Barre (Woodward, 2013). Abdel Rahman Ahmed Ali was declared president of the self-proclaimed Republic of Somaliland however in 1993 he was replaced by Mohamed Ibrahim Egal. There was a civil war from 1994 to 1996 which was a result of political rivalries.

Puntland from the Majerteen and the Darod clan emerged in 1998 and a border dispute arose. It defined itself as an autonomous part of a reconstructed federal Somalia. Puntland challenged the
aims of Somaliland and also disputed Somaliland’s border claims. The international community also didn’t recognize Somaliland.

**2.4. The role of International Actors through the United Nations in the Somali Conflict**

The fall of the Somali state led to the distribution of arms and the civilian population had guns (Samatar, 1991). There was a need for emergency relief as the crisis was deepening; foreign organizations were working in Somalia to contain the situation. However the militias were looting the relief (Woodward, 1998).

In January 1992 the Under Secretary General to the UN James Jonah went to Mogadishu to assess the situation. He was tasked with the duty to facilitate the flow of aid. There were also contentions between two warlords Mohamed Aideed and Ali Mahdi, where James Jones managed to make some progress towards a ceasefire (Woodward, 1998). The United Nations Security Council issued an arms embargo against Somalia under UN Resolution 733 of January 1992.

Under Security Council Resolution 751 of 24th April 1992 a United Nations Operation in Somalia (UNOSOM) was set up. It first sent out 500 troops who arrived late and were few for the operation (Gilkes, 1994). In August 1992 the UNSC under resolution 775 deployed 3,500 security personnel to UNOSOM that were tasked to protect humanitarian relief efforts. Mohamed Sahnoun an experienced Algerian diplomat was appointed special representative of the operation. He proposed dividing the country into various zones for delivery of relief, to be supplied by different routes. The zones were to be centers of regional reconciliation which would include the local leaders such as clan elders and the warlords instead of relying on force (Sahnoun, 1994). There was also frustration that the UN was only concentrating their presence
in Mogadishu and ignoring the other zones partly due to lack of staff. The UNSG Boutros Boutros-Ghali however sought to use military means, to demonstrate the power of the UN. Later Sahnoun was replaced by an Iraqi Diplomat Ahmed Kittani. The situation was worsening and UNOSOM efforts were regarded as inadequate (Woodward, 2013).

The press coverage of the worsening situation in Somalia caused American politicians to view Somalia as a serious situation instead of a concern for national interest and this happened to be in the heat of the US elections (Woodward, 1998). The incumbent US president George Bush had experience of success during the Gulf War, and he talked about the ‘New World Order’ which according to Peter Woodward, it was a largely undefined concept (Woodward, 1998). The incoming president Bill Clinton agreed to US lead in Operation Restore Hope, which was initiated by George Bush. The Unified Task Force (UNITAF) was spearheaded by the United States; they were deployed in Mogadishu on 9 December 1992 under resolution 775 of the Security Council, it was supposed to be a short operation afterwards handover to the UN (Woodward, 1998). A further 2,400 UN peacekeepers were deployed, in comparison to the situation in Somalia the number was inadequate (Woodward, 1998). The intervention of UNITAF took place without the permission of the government state and this was also due to the fact that none of the Somali faction leaders were recognized as legitimate rulers. This took place under chapter VII of the UN Charter, where UNITAF was required to make peace of the warring parties. Article 43 (1) of the UN Charter states,

All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security (UN, 1945).
UNITAF forces were built up of 38,000 troops with ¾ being from the US. It was deployed to take control of the Southern part of Mogadishu and Kismayu and ensure that the relief could get through to the urban and rural distribution areas. The police were being trained and some were deployed as well as a few courts being opened. In January 1993, the crime situation worsened and a number of Non-Governmental Organizations (NGO) relief operations were suspended; there were ad hoc seizures of arms in Mogadishu. It was also clear that the UNITAF mandate was not clearly defined (Woodward, 1998).

United Nations resolution 814 of 26th March 1993, established UNOSOM II to succeed UNITAF (Woodward, 1998). It had a clear mandate towards disarmament (Woodward, 2013). UNOSOM II deployed 20,000 troops, which was smaller than UNITAF. Under Chapter VII of the UN Charter its mandate included peace enforcement. It worked towards monitoring all factions to ensure that they continued to respect the cessation of hostilities and if necessary they take appropriate action (Francis et al., 2005).

SNA through their leader Mohamed Aideed, were against UN support which was mainly in military capacity. They used SNA’s radio Mogadishu as a propaganda tool to pit the civilians against the UN (Woodward, 1998). There was a conflict on 5th June 1993, where 24 Pakistani troops and scores of Somalis were killed in a single clash. In 3rd October 1993, there was a clash between SNA and US troops, which resulted in the destruction of US Blackhawk helicopters, deaths of 18 Americans and countless Somali victims (Amnesty International, 1994). This happened despite the UN deployment of heavy weapons and helicopter gunships, the propaganda managed to turn the population against the UN (Woodward, 1998).
The US forces in UNOSOM II were strengthened, but were later pulled out in 31st March 1994 (Woodward, 1998). A majority of the time spent by the UN operation was spent through military confrontation with SNA ergo ignoring the other aspects of its work. This had the highest fatality rate recorded in the history of UN peacekeeping (Woodhouse, 1996). UNOSOM II eventually withdrew in March 1995.

2.4.1 Non-Governmental Organizations’ Involvement in the Conflict

Domestic and international NGOs, increasingly established themselves in the African continent, as the primary providers of basic needs, essential in fragmented societies and various complex emergencies (Murithi, 1998). 49 NGOs have also been involved in cases of state collapse, by taking over security proving functions of the state through food, medical and security provision (Murithi, 1998). Most NGOs institutional mandate and ethos is to provide humanitarian relief to countries that disintegrate as a consequence of wars, they have also extended their function to conflict resolution and human rights issues (Murithi, 1998). 50 Humanitarian relief and politico-military humanitarianism are complimenting each other (Lin, 1990). 51 The role of NGOs during conflict resolution and peacekeeping has not been clearly defined, leading to a mixture of roles (Murithi, 1998).

The most popular foundation of NGOs is by Henri Dunant in 1859, to take care of the wounded during the battle of Solferino. The NGO is presently known as the International Committee of the Red Cross (ICRC) (Seary, 1996). An NGO is formed when one person or a small group of people with motivation towards fulfilling an identified need establish an organization to respond to that need (Murithi, 1998). The UN Charter grants NGOs a consultative status, through Article 71,
The Economic and Social Council may make suitable arrangements for consultation with nongovernmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned (UN, 1945).

NGOs perform different duties depending on the size and individuals involved. The traditional roles of NGOs in Africa have included addressing the symptoms of conflicts through providing medical support and food for the victims of war or displaced persons and refugees (Murithi, 1998). In attempts to resolve conflict, NGOs in Africa were reluctant to use force as a means to arrive at a solution and instead sought to settle through reconciliatory means managed by external mediators (Clapham, 1996).

In Somalia Mohamed Sahnoun credits the population’s gradual return to Mogadishu to the NGOs (Sahnoun, 1994). During Operation Restore Hope, it was estimated that there forty NGOs stationed in the country (Murithi, 1998). Amnesty International an international NGO dealing with peace and human rights protection, continued to monitor the human rights situation in Somalia (Murithi, 1998). It uses its direct channels to approach the UN policy makers and governments and to raise public awareness through publishing reports and recommendations (Murithi, 1998). Amnesty International set forth human right principles to be adhered to in setting out all peacekeeping operations calling for the UN peacekeepers to be more than passive witnesses, who are impartial, properly trained and ready to uphold international law (Amnesty International, 1994).52

Despite NGOs offering solutions during conflict they have also been known to perpetuate some conflicts. To some extents they have become aligned, in their process of distribution, by conferring power to some groups and as a consequence disadvantaging the other groups (Clapham, 1996). In Somalia the armed militias’ competing for control over Mogadishu fought
over aid. The resources were used to enhance their military organizations making the already volatile situation explosive (Murithi, 1998, p. 278). In as much as providing relief and humanitarian assistance is necessary they probably reduce the incentives for the warring sides to negotiate a settlement (Ignatieff, 1995).

2.4.2 The Involvement of Neighboring States in the Somali Conflict

Kenya and Ethiopia since independence have had substantial roles in Somalia’s conflict (Eriksson, 2013). Both counties have unresolved border disputes, Ethiopia’s Ogaden region and the Northern Frontier Region in Kenya (Eriksson, 2013). The involvements were triggered by national interest and protection of their territory.

Ethiopia has a long unmarked border with Somalia in the east and they have a long hostile history over the Somali inhabited Ogaden region of eastern Ethiopia which has resulted in interstate wars between the two countries (Afyare & Abdullahi, 2006). Despite the hostility between the two countries, the Civil war that broke out in 1991 provided a new security concern for Ethiopia (Abink, 2006). In a speech to explain the Ethiopian Nation Defense Force (ENDF) invention to Somalia, the Ethiopian prime minister, Meles Zenawi, said “Ethiopian defense forces were forced to enter into war to protect the sovereignty of the nation” (Times, 2012). Internal conflicts are not free from regional and international actors with variable identities and objectives to involve (Kaldor, 2012). In some cases neighboring states are often active contributors to violence, escalation and regional instability (Brown, 1996).

Ethiopia played roles in many peace initiatives towards conflict resolutions to Somalia’s conflict. However, towards pursuing her interests Ethiopia undermined some of the efforts; for example, it challenged the Cairo peace process by recruiting and persuading two main Somalia faction
leaders to boycott the process. General Aden Gabyow and Colonel Abdullahi Yussuf withdrew the process in Cairo and flew to Addis Ababa (Afyaare & Abdullahi, 2006).

Ethiopia intervened in Somalia’s conflict to protect its national security from threats posed by actors in Somalia. The Ethiopian military invention and the war between ENDF and insurgent groups in Somalia in 2006-2009 created mass civilian displacement and humanitarian crises (Brown, 1996). Thousands of people left their homes in fear of the war seeking for refuge in neighboring countries or elsewhere in Somalia. This contributed to an already deteriorating humanitarian situation in the country. Mogadishu and other cities in Somalia were already hosting large amounts of Internally Displaced people (IDPs). Close to one million people were displaced as allied forces of ENDF and TFG engaged war with the Islamic Courts Union (ICU) and affiliated groups (Civins, 2009). The situation made it difficult for aid agencies to deliver humanitarian supplies to the needy people. An example is The World Food Program (WFP) and the US who suspended aid shipments to the country due to threats from AlShabaab and concerns about possibility of aid plundering (Mulugeta, 2009).

In efforts to pose the fight against the militant groups, the Ethiopian military in Somalia joined the AMISOM peacekeeping mission. Since Ethiopia’s national security is priority in its involvement in Somalia, the ENDF forces under AMISOM operate in the southwestern regions of Somali. Even though, ENDF operate under the mandate of AMISOM, their geographical operational area has not changed; they operate in regions close to Somalia-Ethiopia border to create a buffer zone for Ethiopia (AMISOM, 2014).

Kenya shares ethnic and geographical aspects with Somalia, dating back to the achievement of independence (Nugent, 2004). The tensions between the two countries over the Somali inhabited
region occurred right after the independence of Somalia which was seeking Somali nationalism (Woodward, 2013). The first Somali independent state declared its intention to unify the Somalia inhabited regions in the horn of Africa under one state in which the northeastern province of Kenya was included. Northern Frontier Liberation Army (NFLA), an ethnic Somalia secessionist movement, was established in the early 1960s to fight against Kenyan rule in this region (Nugent, 2004). The Somali government at the time backed up this movement and provided them moral and material support (Moller, 2009). Unlike Ethiopia, Kenya arrived to a pacific resolution of its conflict with Somalia quite early (Nugent, 2004).

Kenya accommodated the largest number of Somali refugees who fled the war in Somalia in refugee camps like Kakuma and Daadab on the Northern part of Kenya. According to United Nations High Commission for Refugees (UNHCR), while the conflict in Somalia continued Kenya hosted about a half a million Somali refugees in 2012 (UNHCR, 2012). The number of Somali refugees in Kenya also affects her in a number of aspects. Refugees are a result of internal conflict and mostly affect the neighboring countries (Brown, 1996).

Kenya has been quite neutral during the Somali conflict. It has been involved in mediation processes between internal actors and hosted several peace processes meant to reconcile conflicting parts in Somalia. There was one held 2002-2004 in under the auspices of IGAD member states and international community producing the TFG (Moller, 2009). Regardless of its role in the conflict, Kenya always experienced insecurity incidents posed by this conflict since it broke out in 1991 (Miyandazi, 2012). It experienced problems of refugee and insecurity ‘spill over’ (Brown, 1996).
The threats the Somali conflict poses against Kenya increased when *Al-Shabaab* terror organization, threatened, to destabilize Kenya. The terrorist organization carried out several attacks inside Kenya targeting tourism and other economic sources of the country. The group started to recruit Kenyan youth, Somalis in Kenya and other Muslim nationals inside Kenya. The Kenyan governments perceived this as serious security problem against its national security and interest.\(^{57}\) To protect her territory, the Kenyan government under the auspices of the then president Mwai Kibaki sent the Kenyan Defense Forces (KDF) into Somalia to fight *Al-Shabbab* and prevent their attacks against Kenya (ICG, 2012). Somalia’s conflict can be classified as what is described as “new wars”. The Recruitment of young men of different nationality by *Al-Shabaab* and involvement of Al-Qaeda indicates a new war character in this conflict. Actors in the new conflict era indoctrinate fighters through identity or ideology such as religion, political and clan identity (Kaldor, 2012).\(^{58}\)

A result of terrorism and insecurity created by *Al-Shabaab* in Kenya, many western and other countries warned their nationals against travel to Kenya (BBC, 2011). Kenya also experienced problems from the piracy in Somalia. This contributed to the already poor security situation, affecting the country socially and economically. The Somalia pirates attacked cargo ships and tourist vessels heading to Kenyan in Indian Ocean and the Gulf of Aden. In efforts to inhibit piracy activities and protect national interests, Kenyan security and law enforcement agencies launched anti-piracy operations; these efforts also put a strain on Kenya’s economic situation (*Daily Nation*, 2013, p. 6). The UNSC in resolution 1851 described piracy and armed robbery in the Somali and international waters an obstacle to peace and security in that region (UNSC, 2008).
Despite Kenya’s intervention in Somalia to fight the Al-Shabaab, the terrorist organization still remains an active and crucial threat to Kenyan internal security (Eriksson, 2013). The group carried out an attack in Westgate, a large and very popular shopping mall in Nairobi, the Kenyan capital, killing at least 72 Kenyan citizens and tourists in September 2013. Similar attacks were targeted with Mombasa, the coastal tourist and the port city of Kenya (Aljazeera, 2013). Kenya decided to increase the involvement in Somalia by integrating the Kenyan forces in Somalia with the 17,000 AMISOM peacekeeping forces operating under the mandate of the AU and UNSC (Onuoha, 2013). The AU and UNSC officially allowed KDF to join AMISOM peacekeeping forces through in UNSC resolution 2036 of February 2012. The resolution provides the legal framework, and mandates the Kenyan forces to fight Al-Shabaab in Somalia (AMISOM, 2014).

To protect its own national security, Kenya’s efforts in Somalia were towards peace and security in Kenya. Kenya argues that such an authority can create a safe and secure environment for Somali refugees living in Kenya to return and resettle in their country (Eriksson, 2013). Drawing from the Somali experience, Kenya prioritizes protection of her national security. Although the Kenyan forces now operate in Somalia under the mandate of the AU and UNSC, they are interested and critically involved in the settlement of Somalia.

Despite the different dimensions of the Somali conflict, the intervention by neighboring states such as Kenya and Ethiopia can lead the conflict to a new dimension with new identities based on regional states. The two countries in question had transnational security concern and their actions and behavior within this particular conflict is necessitated by their national security threats posed by the conflict in Somalia.
2.4.3 Terrorism a New Paradigm to the Conflict

The anarchy Somalia, offered an opportunity for other actors to inhabit it. *Al-Shabaab* which means “the youth” a terror group composed of members of age 18-30. They separated from the Islamic Courts Union (ICU) in 2003 but continued to be backed by mainly the Somali businessmen and in 2006; it controlled Mogadishu (Fergusson, 2013). They engaged in roadside bombings and other guerrilla attacks which enabled it so far to have the upper hand (Agbiboa, 2014). *Al-Shabab* originally emerged from section of *al Itihaad al Islamiya* (AIAI), a Wahhabi Islamist terrorist organization from the 1980s with the intention of replacing the regime of Siad Barre with an Islamic state (Agbiboa, 2014). The traces of AIAI in 2000 mostly young members reformed into *Al-Shabab* and were incorporated into the ICU as its radical youth militia (Agbiboa, 2014).

In December 2006 the Ethiopian invasion of Somalia catalyzed the development and radicalization of Al-Shabab. The invasion was an excuse for the Al-Shabaab to use the Somali hostility towards Ethiopia to recruit thousands of nationalist volunteers (Wise, 2011). The invasion also forced Al-Shabab to adopt guerrilla-style operational strategy as a means of resisting Ethiopian advance into the South (Menkhaus & Boucek, 2010). Despite the success of the Ethiopian invasion in pushing Al-Shabab to the south of the country, it failed to end Islamic radicalism in Somalia; it influenced a change in Al Shaabab “transforming the group from a small, relatively unimportant part of a more moderate Islamic movement into the most powerful and radical armed faction in the country” (Wise, 2011, p. 4).

In October 2008, Al-Shabab coordinated five suicide bomb attacks that hit the UN Development Programme (UNDP) compound, the Ethiopian consulate and various government offices, killing several dozen (Noor, 2008). In September 2009, *Al-Shabab* bombed the African Union
peacekeeping mission in Mogadishu, killing more than 20 people and damaging the offices of a U.S. firm that was purportedly providing support to peacekeepers (Agbiboa, 2013a). On 21 September 2013, Islamist gunmen stormed Kenya’s high-end Westgate Mall in Nairobi and fired at shoppers, killing over 80 people (Agbiboa, 2013b). The victims included foreign citizens from countries like France, Canada, the United States, the United Kingdom, Australia, New Zealand, and Ghana, among others (Mamdani, 2013). The Somali-based and Al-Qaeda-affiliated Islamist terrorist group, Al-Shabaab claimed responsibility for the horrific attack through its Twitter account (Agbiboa, 2013a). Kenya has about 4,000 troops in southern Somalia (Agbiboa, 2014). They intervened in 2011 following attacks and kidnappings in northern Kenya near the Somali border. The Kenyans were subsequently incorporated into the AMISOM force of 17,000 peacekeepers with a UN mandate to protect the weak Somali government (Onuoha, 2013). Globalization facilitated the spread of terrorism that extends across and beyond national borders blurring the distinction between domestic and transnational terrorism. Where according to Daniel Agbiboa “lies the need for countries fighting terror, like Somalia, to be assisted in strengthening their intelligence and civilian (Agbiboa, 2014).”

2.5 Somalia as a Failed State

The dynamics underlying the collapse of the Somali state into conflict can be traced back to the process of independence, subsequent social economic and political developments and Somalia’s relationship with the two super powers the Soviet Union and the United States during the cold war era (Bayne, 2001, p. 9). The collapse of Somalia was the result of a series of events that were triggered by cold-war politics, and drawn out by clan differences and war. The ousting of Siad Barre in 1991 is a notable event in Somali politics, since that is when Somalia lacked a proper government structure, leading to the worsening of the conditions and its ultimate collapse (Jeng, 2012). The
Barre regime was known for its favoritism to his clan while excluding the others. This invited widespread hate of the central government, and inter-clan hostilities which led to clan-based wars (Visman, 1998). Kinship ties were preferred to a collective national identity. Often this egalitarian nature resulted in violence and social division, and there was a struggle between state survival and clan supremacy (Jeng, 2012). It lacked the structures of a centralized institution suggesting a stateless society (Lewis, 1994). These wars even led to Somaliland declaring its independence in 1991.

The withdrawal of the American troops and UN from Somalia was a huge setback for Somalia’s attempts to restore law and order. Since then, there has been no one international front towards the resolution of Somali’s conflict. This left the country under the rule of warlords with different agendas, different clans competing for power and resources, terrorism organization and unlimited foreign and other local actors that made almost all attempts to resolve the conflict in Somalia impossible (Mulugeta, 2009).

The emergence of the ICU was also a point of concern. This brought out the shortcomings of the Transitional Federal Government (TFG) established through the Arta conference in Djibouti in 2000. The ICU was a manifestation of al-Qaeda an international terrorist group in sub-Saharan Africa. It contained the influence of warlords and other faction leaders (ICG, 2007). Despite measures to recover the situation in Somalia, no change has been made. The Transitional National Government (TNG) established through the 2003 – 2004 Nairobi peace conference, could gain territorial control beyond the Somali capital of Mogadishu (Koko, 2008).

There have been a series of events in Africa and especially Somalia that have contributed to the conflict in Somalia, and some events have even perpetuated the situation in Somalia. Despite the
attempts by the international community and regional organizations to contain the conflict, the situation is still going on and in turn prompted the intervention by the African Union after the collapse of the OAU. The next Chapter will analyze regional actors as promoters of Human Rights protection.
CHAPTER THREE

REGIONAL ORGANISATIONS AND THE RIGHT OF INTERVENTION VERSUS STATE SOVEREIGNTY

3.0 INTRODUCTION

The UN Charter and the Constitutive Act of the African Union support the intervention in cases of breaches of human rights. States are the primary actors in the international system, but with the principal of sovereignty and territorial integrity it is also their responsibility as states to ensure that the actors within their boundaries protect their citizens. “When states refer to themselves as sovereign they mean that they are all in terms of their individual constitutional schemes, independent of any large units of a kind (James, 1992).” Sovereignty even means that they have the capacity to relate in international matters and other state recognizing them ensures their legitimacy (James, 1990). It becomes a great concern where states are not able to ensure the safety and security of their citizens.

Human Rights are not considered relative but are global. There’s universality of human rights. A country cannot declare its own aspects of human rights, especially after the Universal declaration of human rights. Countries who do not exercise their responsibility of sovereignty prompt intervention under the concept of R2P. This is to protect the human rights of those affected. The prohibition against interference in the internal affairs of a state is embedded in international law however it is mutually exclusive with sovereignty (Sahnoun, 1994).
In Africa sovereignty has brought about contention especially after independence. Most African leaders have sought to protect their territories to the detriment of the citizens within the territories. The sovereignty principle is used as a defense for their actions. Article II (C) of The Charter of the Organization of African Unity, supported sovereignty stating, that the organization shall “… their sovereignty, their territorial integrity and independence.”

Unlike the Westphalian system of sovereignty, states are now held accountable for the atrocities that happen within their states. Especially with international organizations and treaties as well as statutes that bind states. Sovereignty is a right and also a responsibility,

… the work must remain in the state. Respect for its fundamental sovereignty and integrity is crucial to any common international progress. The time of absolute and exclusive sovereignty, however has passed, its theory was never matched by reality. It is the task of the leaders of the states to understand this and to find a balance between the needs of good internal governance and the requirements of an ever more independent world (Boutros-Ghali, 1992).

3.1 Sovereignty versus Intervention

Sovereignty is defined as control within the internal boundaries of a state and external autonomy, ‘the right to rule over a delimited territory and population residing within it (Thomson, 1995).’ Sovereignty therefore has internal and external dimensions. It is a principle used to standardize the behavior of states within the international system. Sovereignty draws its roots from the 1648 treaty of Westphalia (Maogoto, 2008). The treaty came in after the 30 years’ war to determine the relationship between states, and it was largely entrenched on the respect of state territories. It is based on the right to rule. The international society is based on various norms and customary international law based on *opinion juris sive nessesitates* where sovereignty is a primary norm that is put in place to contain anarchy (Ayoob, 2002).
Regional organizations are facing a big challenge when it comes to intervening in the affairs of a sovereign state (Ayoob, 2002). States are the sole custodian of sovereign authority; it comes to contain anarchy that would emerge if states do not respect the territory of another state. This is brought about by adherence to international norms and principles like non-intervention in the international affairs of a state. This has been the foundation of international order and the rules that govern the international society, enshrined in instruments of international law, international organizations and diplomacy (Jackson, 2000). A great deal of Humanitarian intervention has been happening after the Cold War and it provides a clear contrast to the principle of non-intervention to the affairs of a state (Ayoob, 2002). Its main objective was to protect citizens from Human Rights violations. These rights are independent of their citizenship in that particular country. This brings a concern as to who defines human rights, as well as decide when would occur (Ayoob, 2002).

Humanitarian intervention has been applied in some states where the structures put in place are considered incapable of protecting their citizens (Ayoob, 2002). In the case of Somalia having faction politics, therefore there was no specific institution tasked with providing security to the citizens (Jeng, 2012). It was in state of egalitarianism and the lives of the Somali people were in the terms of Thomas Hobbes, ‘poor, nasty, brutish and short.’ Sovereignty no longer takes precedence in such instances and the international community exercises its right to intervention. This comes in to curtail states from using the sovereignty principle as a tool manipulated by the state agents in undermining the human rights of the citizens (Ayoob, 2002). “It would be extreme to suggest that sovereignty is absolute to the point of protecting the right of a state to carry out genocide, massive human rights violations and generally terrorizing the population (Petersen, 1998, p. 882).”
With human rights atrocities emerging in Africa especially after the cold war, intervention was needed to protect human rights especially in the 1990s. Through intervention state sovereignty is not absolute; it can be undermined in certain circumstances (Ayoob, 2002). Sovereignty is no longer sacrosanct (Chopra & Weiss, 1992). Sovereignty has been redefined to include responsibility (Deng et al., 1996). Responsibility is owed by the state to its citizens and the international community as well as the institutions that are known to be custodians of international norms and principles (Ayoob, 2002).69

Over the years there have been questions as to what determines that a state has not fulfilled its obligations as a sovereign entity to warrant consequences such as intervention (Lyons & Mastanduno, 1995). The international system is based on the fact that most military and political decisions are arrived to at the national level and not internationally. This is to indicate that most intentions for intervention are driven by national interest in as much as intervention is exclusively for humanitarian purposes. Uncertainty emerges because; it is not clear whether the decision to intervene is purely for the protection of the society and on behalf of the international community or whether it is driven by the national interests of a state in that country (Ayoob, 2002). States are rarely committed to provide humanitarian intervention where their national interests are not directly involved. They can intervene in such situations for purely humanitarian protection purposes, however they will not sustain it if faced with material and human loss, like in the case of U.S intervention in Somalia between 1992 and 1993 (Woodward, 1998).70 Where interventions are applied with bias and there are no uniform criteria they lose credibility (Roberts, 1993).71

Drawing from the realist school, intervention in some instances is a tool that is used by other countries to only pursue their interests. There needs to be checks applied to the use of
intervention. Using intervention arbitrarily may, undermine international order that was placed through the principle of sovereignty (Ayoob, 2002). States are the providers of domestic order and should therefore be respected, to some extent the international norm non-interference in the internal affairs of a state came in to contain the great powers from using their capability as a tool of involvement in a state’s affairs. However in situations like Somalia where there was no clear authority due to state failure, it would have been redundant to argue that the international community was violating state sovereignty. Military intervention was and is the only way which essential goods and services to the suffering population will be provided to the population alongside enforcing peace and stability (Ayoob, 2002).

There is a battle between state sovereignty and intervention.

At one level, the demand for humanitarian intervention can be seen as the claim for individuals and sub state groups for justice pitted against the state’s claim that order comes prior to justice. The corollary of the latter claim is that as the sole dispenser of domestic order the state has the right to tailor the need for justice to the requirements of order (Ayoob, 2002, pp. 98-99).

States use sovereignty as an excuse for the atrocities committed by the rulers within their boundaries, intervention comes in as a mechanism to contain the atrocities and protect human rights. With absolute sovereignty slowly diminishing, the international community is legitimizing intervention, and effecting the Responsibility to Protect (R2P), where states cannot meet the needs of their populations at risk (Deng, 1995).

To meet the threshold to warrant intervention, matters like large scale loss of life, diverse manifestations of ethnic cleansing, crimes against humanity and violations of the laws of war and situations of state collapse and the resultant exposure of the population to mass starvation and/ or civil war as provided by the 1948 Genocide convention have to be met. The intervention has to happen after proof through evidence, as a last resort, with proportional means and having
reasonable prospects of success (ICISS, 2001). These factors inhibit the abuse of intervention by states.

3.2 Regional Actors as Objects of Human Rights Protection

Regionalism is portrayed through starting and expanding regional organs around the world, such as African Union (AU), Association of South East Asian States (ASEAN), and Economic Community of West African States (ECOWAS) (Soderbaum & Heffne, 2010).

Security regionalism refers to attempts by states and other actors in a particular geographical area, a region in the making to transform a security complex with conflict-generating interstate and intrastate relations towards a security community characterized by cooperative external (inter regional) relations and internal (intra-regional) peace (Soderbaum & Heffne, 2010, p. 16).

Colonialism was a widespread issue when it came to the protection of Human Rights, during the first twenty years of the United Nations it worked on matters dealing with the right to self-determination (Karns & Mingst, 2010). Since the end of the cold war the Security Council had to deal with the large-scale humanitarian crises which demanded for intervention under Chapter VII of the UN Charter (Karns & Mingst, 2010). Inter-Governmental Organizations and Non-Governmental Organizations at both global and regional level have been tasked with monitoring human rights records of states (Karns & Mingst, 2010).

Chapter VIII of the UN Charter recognizes the role of regional organizations in solving disputes, “The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council (UN, 1945,Art 52 (3)).” Article 53(1) of the Charter provides that Regional Organizations need authorization from the UNSC it states,

The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of
the Security Council... or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state (UN, 1945).

Regional Organizations are best fit to be involved in matters within their specific region, since they are likely to have more detailed information of the conflict given their proximity to the events occurring (Kabau, 2012). Also drawing from the fact that there are certain bureaucracies that need to be fulfilled at the UN the Regional Organizations will act at a timely manner to start a sufficient course of action. The effects of mass atrocities have an effect on neighboring States through massive refugees flow; they require a cross-border response which can be facilitated by the relevant regional and sub-regional organization (UNSG, 2009). With the emergence of non-state actors like terrorists who are transnational in nature, states are better placed to act as a collective through regional organizations to ensure efficiency (UNSG, 2009).

In West Africa, the Economic Community of West African States (ECOWAS), created in 1975 to lessen the divide between the states namely francophone (French colonies), Anglophone (English colonies) and lusophone (Portuguese colonies) according to their colonial masters. The conflicts were not specific to particular state, but they always had a regional aspect, affecting the neighboring countries (Francis, 2006). ECOWAS was involved in solving conflict in West Africa especially through Economic Community of West African States Monitoring Group (ECOMOG).

3.3 Transition from the OAU to the AU

The OAU was established at a conference in Addis Ababa in 1963, representatives from 30 African states present. This was a tool of pan-africanism, led by Ghanaian President Kwame Nkrumah used in promoting African integration, especially at the height of calls for
decolonization (Francis, 2006). The OAU Charter, a key instrument for the governance in Africa; was well known for the principle “non-interference in the affairs of states,” and “Respect for the sovereignty and territorial integrity of each state and for its inalienable right to independent existence (OAU, 1963).”

Historical experiences, socio-economic concerns and developments around the world influenced the establishment of the African Union (Kioko, 2003). African leaders felt that there was the need for a new approach to solving African problems, and strengthening the institutions with necessary mandates (Kioko, 2003). There was a need to consolidate African states towards dealing with political, economic and social developments. They agreed towards the establishment of an African union in conformity with the ultimate objectives of the OAU Charter and the Treaty Establishing the African Economic Community also known as the Abuja Treaty (Kioko, 2003).

The project to start the African Union (AU) began in 1999 in Sirte, Libya when the African leaders met to review the charter of the Organization of African Unity (OAU) (Murithi, 2009). On 11th July, 2000 the AU Constitutive Act was signed in Lome, Togo and the official inauguration of the AU took place in July 2002 in Durban, South Africa (Murithi, 2009).

The African Union Constitutive Act deviated from the OAU charter and provided for a right to intervention through article 4h. This was a result of the concern that the heads of states had about the OAU’s failure to intervene during gross human rights violations witnessed in Africa such as the Rwanda Genocide in 1994. The OAU was also unable to conduct peacekeeping and peacemaking operations in member states, due to the lack of cooperation from member states. The OAU drawing from the principal of non-interference also needed consent from states to
intervene. The current state collapse in Somalia draws its origins from the OAU institutional mechanisms which did not provide for intervention,

In one particular case a team was dispatched to Somalia for discussions with the warlords there, but had to be called back whilst in transit in Nairobi, because one of the powerful warlords woke up to the fact that an Assistant Secretary General at the OAU was a Somali national who had served in a senior capacity in the government of that country (Kioko, 2003, p. 814).

The union through, Article 4 (h) of the Constitutive Act of the AU advocates for a more active role for the states to solve conflicts in the continent. The changes also included a shift from the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution to the AU Peace and Security Council (AUPSC), established in 2002 (AU, 2002). The preamble to the Protocol Relating to the Establishment of the peace and Security Council states that “no single internal factor has contributed more to the social economic decline of the continent and the suffering of the civilian population than the scourge of conflicts within and between States (AU, 2002).” The AUPSC is presently the standing organ of the AU for the prevention, management and resolution of conflicts (AU, 2015).

3.4 The African Union’s Application of Responsibility to Protect

The International Commission on Intervention and State Sovereignty was establish to assess the right of humanitarian intervention and it came up with the Responsibility to Protect (R2P). R2P was endorsed in the 2005 World Summit Outcome Document (UNGA, 2005).

The responsibility to protect embraces three responsibilities:

(i) The responsibility to prevent – addressing root and direct causes of internal conflicts and other man-made crises that put populations at risk.
(ii) The responsibility to react – responding to situations, where necessary using coercive measures such as sanctions, international prosecution and military intervention.
(iii) The responsibility to rebuild – providing assistance with recovery, reconstruction, and reconciliation and addressing the causes of the harm intervention was designed to halt or avert (ICISS, 2001, art. XI).
The principle R2P also highlights three major crimes, focuses on intervention by the international community to stop or pre-empt the commission of genocide, crimes against humanity, war crimes or ethnic cleansing (UNGA, 2005). This principle finds its basis on existing international law institutions and previous occurrences within the international community (Arbour, 2008).

Unlike the OAU the AU adopted intervention as one of its key tenets, through article 4(h) of the Constitutive Act of the African Union which affirms “the right of the Union to intervene in member state pursuant to a decision of the Assembly in respect of grave circumstances namely: war crimes, genocide, and crimes against humanity(AU, 2000). The AU also established the African Union Peace and Security Council (AUPSC) in 2004, through the Protocol Relating to the Peace and Security Council of 2002 (AU, 2002). The AUPSC is made up of fifteen members and was mandated to engage in peacemaking, peacekeeping and peace building (AU, 2002). This was very different from the Charter of the OAU which emphasized on the territorial integrity of its member states. The AU basically attained the right and the responsibility to protect (Murithi, 2009).

In March 2005, the African Union Executive Council endorsed Responsibility to Protect during the Ezulwini Consensus. Touching on collective security and the use of force, it was the obligation of states to protect their citizens it should not be used as a pretext to undermine sovereignty, independence and territorial integrity of states (AfricanUnion, 2005). It also empowered regional organizations in areas of proximity to conflict to take action when needed (AfricanUnion, 2005). The Ezulwini Consensus reiterates the ICISS report which states;

While the state whose people are directly affected has the default responsibility to protect, a residual responsibility also lies with the broader community of states. This
fallback responsibility is activated when a particular state is clearly either unwilling or unable to fulfill its responsibility to protect or is itself the actual perpetrator of crimes or atrocities; or where people living outside a particular state are directly threatened by actions taking place there (ICISS, 2001, p. 17).

The key concept from Article 4 of the 2000 Constitutive Act to the AU makes it an international treaty that enshrines an Inter-governmental organization with a right to intervene in a sovereign state to protect civilians from atrocities. Article 4 (h) of the AU Constitutive Acts states; “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity;” Article 3 (h) of the Constitutive act draws importance to protecting human and people’s rights “in accordance with the African Charter on Human and People’s Rights and other relevant instruments.” The Constitutive Act of the AU which succeeded the OAU charter explicitly shows that the African Union has a right to intervention and is also instrumental in protecting Human Rights.

The 16\textsuperscript{th} AU Summit (2011) came with the conclusion,

For the continent to make tangible steps toward areas of peace, security and economic development the emphasis should be on proactive conflict prevention, mediation, support and importantly nurturing, institutionalizing and strengthening the fundamentals of shared values.

The summit basically brought out the need for an overhaul on AU’s institutions and the values that are applied collectively.

To reiterate AU’s position on R2P it established an African Standby Force (ASF) to cooperate when necessary with the UN and sub-regional African organizations in conducting peace operations. AU continues to maintain a working relationship with the UN and other international and regional organizations such as the IGAD, ECOWAS, the ECASS, SADC, and AMU (Murithi, 2012). These steps as well as the creation of the African Court of Justice and Human Rights and the African Commission on Human and Peoples’ Rights, portray the AUs dedication
towards protection of Human Rights an important factor, despite facing political and economic challenges.\textsuperscript{80}

The African Court of Justice and Human Rights, has the jurisdiction to make final and binding decisions on human rights violations committed by the AU member states, an example is in 31\textsuperscript{st} March 2011 when the court issued its first ruling against the state of Libya, it declared that ‘massive human rights violations’ had been carried out by Libya, and called for the government to appear before the court to discuss the measures to be implemented in line with the court’s order (ICRtoP).\textsuperscript{81} The African Commission on Human and peoples’ rights has the duty of promoting and protecting human rights in Africa with reference to the AU’s Constitutive Act, \textit{Ezulwini Consensus} and the ICISS report and the World Summit Outcome document (ICRtoP).

To show the importance of the AU embracing R2P, Ambassador Said Djinnit, a commissioner for AUPSC said,

\begin{quote}
No more never again. Africans cannot … match the tragedies developing in the continent and say it is the United Nation, responsibility or somebody else’s responsibility. We have moved from the concept of non-interference to non-indifference. We cannot as Africans remain indifferent to the tragedy of our people (Powell, 2005).
\end{quote}

The African Union is tackling human security challenges, conflicts and complex humanitarian situations. Tim Murithi believes, “Realizing the ideal of Pan-Africanism means that African countries can no longer remain indifferent to the suffering and plight of their neighbors (Murithi, 2009, p. 94).” The Strategic plan 2004 – 2007 issued by the AU shows the importance of intervening to promote peace and security to ensure governance and development. The AU in its adoption of R2P conceives sovereignty as responsibility instead of authority, deviating from the traditional concept of sovereignty as a buffer with regards to domestic affairs, despite atrocities against the citizens (Stahn, 2007).\textsuperscript{82}
The AU peace operation in Burundi in 2003; the African Union Mission in Burundi (AMIB) was the first AU operation that was fully initiated, planned, and executed by its members (Murithi, 2009). The AU intervened to build peace and enable the establishment of a firm UN peace operation. This evaluates the AU in terms of self-reliance in operationalizing and implementing peace building. It was tasked with supervising the ceasefire agreements between the Transitional Government of Burundi and the rebel groups. AMIB’s mandate was to build peace in a volatile situation in which the country could go into conflict once again (Murithi, 2009). AMIB was also involved in creating conditions that would allow internally displaced persons, based in the eight Burundian provinces to return to their homes and the repatriation of the refugees in the three refugee camps in Tanzania. This AU mission was upholding a responsibility to protect.

Another success of the AU achieving R2P was through the peaceful negotiations after the Kenyan post-election violence (Kabau, 2012). The country fell into ethnic conflicts after disputed election results in December 2007. Former UNSG Kofi Annan led the mediation under the auspices of the Panel of Eminent persons. The mediation led to a successful resolution of the conflict.

The African Union has also faced some challenges while implementing R2P. In 2003, the Darfur region in Sudan fell into violent conflict between the Sudanese government a pro-government militia known as janjaweed and two rebel movements, the Sudan Liberation Movement (SLM) and the Justice equality Movement (JEM) (Mans, 2004). There was widespread atrocities against civilians, internally displaced people and refugee spillover to the neighboring countries which was tantamount to the conflict. From 2004 to 2007 the AU was involved through its African Mission in Sudan (AMIS). The AU was mandated to establish and finance a ceasefire verification commission, and in April 8, 2004 a ceasefire agreement was
arrived at, to facilitate humanitarian aid to reach affected populations for a period of forty five days (Murithi, 2009).

AMIS was not as effective since it was ill equipped and under-resourced. The situation clearly needed further assistance; on August 31, 20 the United Nations Security Council (UNSC) under resolution 1706, called for the deployment of a UN peace operation in Sudan, known as UN Mission in Sudan (UNAMIS) (UNSC, 2006). It took to “take the necessary steps to strengthen AMIS through the use of existing and additional United Nations resources with a view to transition to a United Nations operation in Darfur” (UNSC, 2006, Paragraph 11). Later on the UNSC resolution 1769 of July 31, 2007 established a joint AU-UN operation in Sudan (UNAMID) (Abbas, 2007). Security Council Resolution 1769 expressly stated that the forces would be under unified command and “in accordance with basic principles of peacekeeping (UNSC, 2007).” However it still faces challenges in Sudan, for the situation is yet to be resolved. According to the UN estimates in July 2010, an approximated 300,000 people had died in Darfur since the conflict began, with 2.7 million displaced (UN, 2010). The indictment of the Sudan president Omar Al Bashir by the International Criminal Court (ICC) is evidence that the government part8icipated in mass atrocities (ICC, 2010). The most recent extension of UNAMID was through UNSC resolution 2173 of 27th August 2014, it provided for improved protection of civilians and humanitarian workers, along with facilitation of aid and mediation activities (UNSC, 2014).

Some authors suggest that the situation in Darfur needs a more robust approach. It should be a case of peace enforcement rather than peace keeping mission which was applied. The mission was restrained by the consent required by the state (Kabau, 2012).
When it became apparent that consensual intervention and peacekeeping was not effective and appropriate for civilian protection in Darfur, the African Union, as the relevant regional organization, and in the spirit of Article 4(h) of the Constitutive Act, should have sought the more appropriate forceful intervention alternative (Kabau, 2012, p. 70).

The failures by the AU in some instances in implementing R2P act as a major setback to the Union as an institution. Some scholars have also questioned the concept, alleging that there lacks any clear consequences for the failure to implement the R2P concept as well as a lack of will to implement it (Kapur, 2009). Anne Orford on the other hand alludes to the fact that R2P represents a form of law that grants powers and jurisdiction to the international community for intervention purposes (Orford, 2011). The UN Secretary General in 2009 also pointed out R2P as a norm stating that it “is now well established in international law and practice that sovereignty does not bestow impunity on those who organize, incite or commit crimes relating to the responsibility to protect (UNSG, 2009).”

In the case of Somalia, the AU launched its mission In March 2007, known as African Union Mission in Somalia (AMISOM). It was to stabilize the dispute between the factions in the country. The AU was mainly represented by Ugandan troops (Murithi, 2009).86

To some extent The AU has demonstrated the capacity to implement R2P in some situations where peaceful negotiations or consensual interventions are adequate, like the case of Kenya and Burundi. it also failed in situations where timely and decisive forceful intervention was necessary, and may be the only viable option to protect civilians, like in the Darfur.

Therefore, despite the AU’s right of forcible intervention to stop genocide and crimes against humanity within its legal framework, traditional concepts of sovereignty and non-intervention continue to prevail within the Union’s subsequent practice. Consensual intervention, based on the sovereign right of the territorial State to invite or consent to intervention, is inadequate or inappropriate where the government is the perpetrator of the atrocities, or fails to grant the consent (Kabau, 2012, p. 91).
3.5 The AU’s Peace and Security Framework

The AU peace and security framework is commonly known as the African Peace and Security Architecture (APSA). The African Union has a Peace and Security Council (AUPSC) which is the primary institution tasked with carrying out peace operations on the continent, it is also supported by the Panel of the Wise established under article 11 of the protocol relating to the Establishment of the Peace and Security Council of the African Union, the Continental Early Warning System (CEWS), the African Standby Force (ASF) which became operational in 2010, and the Military Staff Committee (Cilliers & Malan, 2005). The AU chair, appoints a Commissioner in charge of Peace and Security to provide operational Support to the AUPSC, and also take the steps required to prevent, manage and resolve conflicts (Murithi, 2009).

The AUPSC can gauge a suspected crisis situation, send fact finding missions to trouble spots, and authorize AU intervention in internal crisis situations. Article 4 of the Protocol Relating to the Peace and Security Council of 2002 deals with matters of intervention and sovereignty, Article 4(e) of the affirms the sovereignty and territorial integrity of Member States in tandem with Article 4(f) which prohibits Member States from interfering in the domestic affairs of another State (AU, 2002). However, Article 4(j) of the Protocol reaffirms the African Union’s right of intervention in a Member State due to genocide, crimes against humanity or war crimes (AU, 2002). Article 7 (j) of the Constitutive Act ascertains “the right of Member States to request intervention from the Union in order to restore peace and security (AU, 2000).” This Article is a manifestation of the legal principle volenti fit injuria. Article 7, item (e), of the Protocol on the Peace and Security Council states that the Council can “recommend to the Assembly (of Heads of State) intervention, on behalf of the Union, in a Member State in respect
of grave circumstances, namely war crimes, genocide and crimes against humanity, as defined in relevant international conventions and instruments (AU, 2002).”

CEWS aligns itself to article 12 of the PSC protocol; it is mandated to “facilitate the anticipation and prevention of conflicts (AU, 2002).” It gathers information about potential conflicts or threats to the peace and security of Member States, whereupon it is forwarded to the AUPSC in the form of reports from the Chairperson of the AU Commission (AU, 2015).

The Panel of the Wise established under article 11 of the PSC Protocol, provides support for the AUPSC and the chairperson of the AU commission in the promotion and maintenance of peace, security and stability in Africa (AU, 2015).

The ASF through article 13 (1) and (2) of the PSC Protocol comprises of five brigades who come from each of Africa’s sub-regions; Southern, East, Central, West and North, drawing from the elements of R2P they have the capability to effect responsibility to react.90

Article 13 of the protocol , provides that ASF was established for observation and monitoring missions, intervention in a member state in respect of grave circumstances or at the request of Member State in order to restore peace and security, peace-building and post-conflict disarmament and demobilization, humanitarian assistance, and any functions mandated by the PSC and the AU assembly. The composition of the ASF is further clarified in Article 13 (1) which states that “it will be composed of standby multidisciplinary contingents, with civilian and military components in their countries of origin ready for rapid deployment (AU, 2002).”

The Indicative Work Program of the Peace and Security Council states that the AU will endeavor to be present on the ground where there is a need for a peace operation. Whether as a standalone au operation or in partnership with RECS, the UN, and other partners, the au has indicated its commitment to being active in peacemaking and peace building (Murithi, 2009, p. 95).
3.6 Conclusion

Regional Organizations are best placed to solve conflicts, due to their direct involvement in these regions. The evolution of the OAU to the AU was needed to be able to tackle conflicts that have been affecting Africa instead of waiting for the international community to intervene. The structural mechanisms for the AU were better placed to promote R2P especially through APSA. Though the AU has experienced some losses, it has also worked well as a regional body in implementing R2P. The next chapter will take a greater look at AMISOM its mandate and whether there is an opportunity for success.
CHAPTER FOUR

AMISOM’S MANDATE AND PROGRESS TOWARDS HUMAN RIGHTS RESTORATION IN SOMALIA

4.1 INTRODUCTION

The struggle for human rights restoration in Somalia has gone through various cycles, since 1992. The international community took up the responsibility after the cold war, in form of giving relief, because of the drought that affected the area. After the ousting of Siad Barre, the situation plummeted, since many factions were trying to rule, and they also affected relief operations in the country. This situation prompted further assistance through the United Nations in 1992. In January 1992 the UN Security Council (UNSC), issued an arms embargo against Somalia (UNSC, 1992). In April 1992 A United Nations Mission in Somalia was set up (UNOSOM) through Security Council Resolution 751 of 24th April 1992. Later on in August under resolution 775, 3,500 security personnel were deployed to the mission and were tasked too protect humanitarian relief efforts. However UNOSOM was unable to contain the situation.

The situation in Somalia was getting a lot of press coverage, and caused the CNN Effect which prompted the United States (US) to offer its assistance. The US led an operation known as Operation Restore Hope or the Unified Task Force (UNITAF). It began in December 1992 under resolution 775 of the Security Council, it was supposed to be a short operation and later hand over to the UN. UNOSOM II an operation to succeed UNITAF was established through United Nations resolution 814 of 26th March 1993. Its mandate was towards disarmament (Woodward, 2013). UNOSOM II eventually withdrew in March 1995 after the deaths and injuries of a
multitude of Somali nationals and UN peacekeepers who included 18 American troops and 24 Pakistani troops (Woodward, 1998).

Somalia was a collapsed state after the fall of Siad Barre since it had no specific ruler. The different attempts by the international community did not remedy the situation. The different factions wanted to rule. Somalia also split into Somaliland and Puntland, as independent states, although they are yet to be recognized by the International community.

The Organization of African Unity (OAU) was well known for its non-interference principle as per Article 3 (2) of the charter of the OAU. It played a passive role in the Somali conflict. The OAU Declaration on a Mechanism for Conflict, Prevention, Management and Resolution adopted in 1993 was one of the initiatives to provide mechanisms for anticipation and prevention of conflicts, peacemaking and peace building (OAU, 1993). It was not effective in containing the Somali conflict, the declaration failed to match institutional capacities needed for its realization (Weber, 2014).

Neighboring states that were also affected by the conflict, through refugee influx and border tensions also got involved in attempts of peace restoration. Djibouti through their president Omar Guelleh, came up with the Guelleh Initiative, sometimes known as the Arta Conference. It resulted in forming a Transitional National Government (TNG). However this did not last since it faced opposition from some faction leaders. Under the auspices of The Inter-Governmental Authority on Development (IGAD), the Nairobi Conference was held; to look for ways of complimenting the TNG. the outcome led to the faction leaders creating the Transitional Federal Government (TFG) of Somalia (Koko, 2007).
The Somali conflict also morphed itself into trans-national issues like terrorism. Terrorists easily inhabited the country due to the egalitarian nature of the country. The al-shaabab a sub group of al Qaeda has its roots in Somalia. The group has taken responsibility for the attacks that happened in the neighboring countries like Kenya. This brought out a new dynamic to the situation, the issue then became non-state actors. To protect her territory against the threat of terror, the Kenyan government sent the Kenyan defense forces (KDF) into Somalia to fight Al-Shabaab(ICG, 2012).

The Somali conflict has shifted from Somali irredentism, to clan politics, and with globalization era it is now has terror influence. The African Union came in to assist with the containment of the terror threat. It established the African Union Mission in Somalia (AMISOM), and the KDF was absorbed into it.

Peacekeeping in Somalia after UN intervention, started with regional bodies like Inter Governmental Authority on Development (IGAD), which formed the IGAD Peace Support Mission in Somalia (IGASOM) in 2005. Due to lack of funding, IGASOM couldn’t deploy successfully. It also experienced challenges with contribution of troops, since most IGAD member countries are Somalia’s immediate neighbors (Shinn, 2013a). This setbacks triggered AU intervention where AMISOM was deployed on January 19th, 2007.

### 4.2 AMISOM’S MANDATE

AMISOM was created by the African Council Union Peace and Security Council (AUPSC), on 19th January 2007. The Security Council Resolution 1744 UNSC gave AMISOM a six month mandate. The UNSC adopted Resolution 1772 in 2007, authorizing AMISOM to “take all necessary measures…to support dialogue and reconciliation”(UNSC, 2007). It was awarded the
authority to protect the Transitional Institutions of the Somali government as well as provide protection to the personnel involved. It also had the task of providing technical assistance and support towards the disarmament and stabilization efforts in Somalia.

Despite the efforts by AMISOM, the situation was not abated. AMISOM’s mandate was extended by the UNSC in 2011 to last until October 2012. This was done through a unanimous adoption of resolution 2010. The AU was requested to increase the mission to a level of 12,000 uniformed personnel, and it suggested a need to adjust AMISOM to its maximum troop strength (UNSC, 2011). In accordance to chapter VII of the UN Charter the first operative clause of resolution 2010 states;

Decides to authorize the member States of the African Union to maintain the deployment until 31 October 2012 of AMISOM, which shall be authorized to take all necessary measures to carry out its existing mandate as set out in paragraph 9 of resolution 1772 (2007), and requests the African Union to urgently increase its force strength to its mandated level of 12,000 uniformed personnel, thereby enhancing its ability to carry out its mandate (UNSC, 2011).

The mandate given to AMISOM was increased as per the needs of the needs of the mission and the situation on the ground. UNSC Resolution 2010 identified a need for the expansion of the mandate and increase in the manpower to facilitate the work of the mission. The Security Council also realized the need for a proper government in Somalia, which would ultimately contribute to peace and security in the country (UNSC, 2011).

Towards the end of the mandate the objectives of the mission were not yet realized. The Security Council in 2012 through Resolution 2036 was more specific in authorizing AMISOM “to reduce the threat posed by Al Shabaab and other armed opposition groups in order to establish conditions for effective and legitimate governance across Somalia (UNSC, 2012a).” The threat of terror in Somalia became clear. They later determined that the situation in Somalia constituted...
a threat to international peace and security in the region came up with resolution 2073 a further extension of AMISOM’s mandate to 7th March, 2013 (UNSC, 2012b). 93

In 2013 the situation was not abated, this was clear through the adoption of Security Council resolution 2125 which dealt with issues piracy in Somalia.

Recognizes that the on-going instability in Somalia is one of the underlying causes of the problem of piracy and contributes to the problem of piracy and armed robbery at sea off the coast of Somalia, while piracy, in turn, exacerbates instability by introducing large amounts of illicit cash that fuels additional crime and corruption in Somalia (UNSC, 2013). 94

This resolution also urges the regional Organizations that have the capacity to actively participate in handling the piracy issue by deploying naval forces, military forces in support of counter-piracy measures. The multi-faceted nature of the crisis in Somalia has brought needs for co-operation from different governments in Africa and even in the global region.

The crisis in Somalia was still an issue, and in 2014, the UNSC decided,


to authorize the Member States of the African Union to maintain the deployment of AMISOM, as set out in paragraph 1 of resolution 2093 (2013) until 30 November 2015, in line with the Security Council’s request to the African Union for a maximum level of 22,126 troops, which shall be authorized to take all necessary measures, in full compliance with its Member States’ obligations under international humanitarian law and human rights law, and in full respect of the sovereignty, territorial integrity, political independence and unity of Somalia, to carry out its mandate (UNSC, 2014a).

According to situation on the ground AMISOM’s mandate was extended to pursue the goals AMISOM had set out in 2007. The situation kept on changing with matters like piracy and terrorism. The instructions given as well as the measures to be taken needed to be tailored towards resolving the crises as they emerged as well as ensuring that they neither re-emerge nor spread to other countries. This becomes really crucial especially when dealing with transnational issues like terrorism and piracy.
AMISOM’s duties have been molded over the years from the year 2007 to deal with the emerging issues. In 2007 AMISOM was tasked to;

1. Support dialogue & reconciliation in Somalia, working with all stakeholders.
2. Provide protection to Transitional Federal Institutions (TFIs) & key infrastructure to enable them carry out their functions.
3. Assist in the implementation of the National Security Stabilization Programme (NSSP).
4. Provide technical assistance & other support to the disarmament and stabilization efforts.
5. Monitor the security situation in areas of operation.
6. Facilitate humanitarian operations including repatriation of refugees and Internally Displaced Persons (IDPs)
7. Protect AMISOM personnel, installations and equipment, including self defense (AMISOM, 2007).

The activities of AMISOM in Somalia had to adhere to these tasks in order to deliver the objectives geared towards promoting peace and security in Somalia. AMISOM’s approval and mandate was in line with Chapter VII of the UN Charter. This recognizes the need of intervention it as well as Chapter VIII of the UN Charter which appreciates the involvement of Regional Organizations in peace processes however with approval from the Security Council.

In 2007 AMISOM was limited to defending the relief work, itself as well as the transitional government on the ground. It was dealing with issues of drought and desertification which contributed a great deal to the instability in Somalia. The faction wars that were opposing the TFG also had to be mitigated. In 2011, the dynamics of the Somali situation changed and AMISOM had to be molded to handle the issue of terrorism with al shabaab extremist group.

The mission has also grown in size over time, Kenya Defense Forces (KDF) also joining the mission, after their intervention in Somalia in 2012.
4.2.1 An Analysis of AMISOM’s Intervention and Management of Human Rights Protection

AMISOM came in to replace Inter Governmental Authority on Development’s Mission in Somalia (IGASOM), which was slow paced in its involvement (Jeng, 2012). They were compelled to intervene after Ethiopian intervention in Somalia which was frustrating the functions of the TFG. The factional battles in Mogadishu also contributed to the need for intervention they resulted in indiscriminate killing of civilians, property destruction especially essential services like hospitals, acts of torture being committed, conscripting children into hostilities, blockade of humanitarian aid and assistance as well as the disproportionate use of heavy weaponry (HRW, 2008). The situation prompted the AU and the UN in January 2007 to deploy troops in Southern Somalia for a period of six months (Jeng, 2012). AMISOM has its statutory foundation from Article 4 (h) of the Constitutive Act of the African Union and Article 52 of the UN Charter.

AMISOM’s intervention took a gradual trajectory, with its initial troops coming from Uganda, and then later joined by troops from Burundi, and this was in the shadow of Ethiopian National Defense Force (ENDF) who had monopolized intervention in Somalia prior to AMISOM. In January 2009 ENDF left Somalia in control of AMISOM (Shinn, 2013b). The forces slowly increased with contingents coming from Djibouti and Sierra Leone (Shinn, 2013b). In 2011, KDF went into Somalia through Jubaland, following attacks on foreign tourists, to get rid of al shabaab (Shinn, 2013b).

The initial mandate was to offer support for dialogue and reconciliation in Somalia, as well as provide security support to the federal institutions. It also had the duty of ensuring the facilitation of humanitarian aid. The troops who initially consisted of Ugandan troops occupied Mogadishu
International Airport so as to secure access for humanitarian assistance (Jeng, 2012). The presidential palace was also used to store armaments that were used against civilians and essential services (HRW, 2008). The security conditions in Somalia were worsening, and AMISOM was blamed by the aid agencies for curtailing the humanitarian access to Mogadishu and its satellite regions (Jeng, 2012). AMISOM’s actions were to be in cognizance with the respect of the principles and rules of international conventions such as the Geneva Convention of 1949.

The worsening of the security conditions, by the continuous hurt of the civilians, signifies some negligence on the part of the AMISOM forces, the failed to adhere to the standards set up by the rules of war, concerning civilians. It is quite ironical that the body tasked with the responsibility of protecting human rights is undermining them. Through either commission or omission they were undermining the Rome Statute (Guardian, 2007).

Over time with the introduction of new troops, the efficiency of AMISOM also improved (Jeng, 2012). In January 2008 Burundi contributed troops to the mission. They facilitated the provision of security to the transitional federal institutions, by providing vital infrastructure (Jeng, 2012). This improvement also contributed to the flow of humanitarian assistance, as well as disarmament of the militias.

In 2007 AMISOM facilitated a reconciliation conference, which had an attendance of over 2000 delegates. A follow-up meeting was held in Mogadishu in 2008, which was attended by the government, the opposition leaders and the local clan leaders (AMISOM, 2008). In 2009, another peace conference was held; it was attended by Islamic clerics, the TFG heads and faction leaders. AMISOM’s focus was to include all stakeholders in the peace building process, as well
as creating an environment that Somalis would be able to tailor their unique peace building programme (Jeng, 2012).

AMISOM’s mandate was articulated in the form of three features, military, police and the civilian, to fulfill their tasks (Nduwimana, 2013). The military component of Somalia has been complimented with the training given by the European Training Mission, since 2009 (Nduwimana, 2013). The extension of the mandate by the UNSC enabled AMISOM to expand its area of operations. In 2014, the UN requested the AU to increase the troop strength of the mission from 17,731 to a maximum of 22,126 uniformed personnel as part of overall efforts to defeat the al-Shabaab rebels in the country (UNSC, 2014a). However the military component lacked some efficient resources to conduct their work effectively like air cover (Nduwimana, 2013).

Figure 1: Structure of AMISOM (Peacock, 2011, p. 17)

The police aspect of the mission was to ensure that the rule of law was observed in Mogadishu as well as train the Somali Police Force (SPF), to provide, security to the population. It performed this through mentoring, training and advising Somali police officers on issues dealing with human rights and the management of crime (Nduwimana, 2013). By October 2013 the force had strength of 1,680, and it deployed 362 personnel. Despite the numbers AMISOM was unable to
provide sufficient responses to public outcry as well as efficiently assist the SPF in increasing the number of operational police officers in the country (AUPSC, 2013).

The mission also ensures effectiveness by training the Somali police force. With about 363 members in its police force from countries like Nigeria, Uganda, Zimbabwe, Sierra Leone, Ghana and Gambia, it is able to train up to 5,000 Somali police. By October 2013 there were approximately 18,000 troops drawn from Burundi, Djibouti, Kenya, Sierra Leone and Uganda (Nduwimana, 2013).

The civilian aspect of AMISOM, comprises of certain factors that render it important to the mission, they include; political, humanitarian and public information (Nduwimana, 2013). These aspects were monitored by units within AMISOM. The political unit’s functions, included monitoring, interpreting and reporting on political as well as other related developments in Somalia and also providing advice on political processes. The AUPSC was the arm responsible for monitoring the political decisions made to assist in the capacity of the nation’s public service. AMISOM also works with government related militias, informally tasking them with a duty to report and assisting on military duties.

The humanitarian unit of AMISOM, involved itself with major relief organs, like United Nations Children’s Fund (UNICEF), United Nations High Commissioner for Refugees (UNHCR), World Food Program (WFP) and other international Non–Governmental Organizations (NGO) and agencies involved with the crisis in Somalia (Nduwimana, 2013). They worked in a collaborative effort to ensure that information is shared, and coordinate on how relief would reach affected areas. UNHCR is mainly involved with the registration of Somali refugees crossing to other countries, and offering medical assistance where needed and looking for prospects of local
integration, resettlement or voluntary repatriation. AMISOM’s humanitarian approach also involved protecting civilians during the conflict. The UNSC through resolution 2182 stated that AMISOM needed to take a proactive approach to protect civilians. It stated through operative clause 31 of the resolution;

*Reiterates* its request and that of the African Union Peace and Security Council for AMISOM to develop further an effective approach to the protection of civilians, *notes* with concern that AMISOM has not yet established a Civilian Casualty Tracking, Analysis and Response cell (CCTARC), as requested in resolutions 2093 (2013) and 2124 (2013), and *requests* the African Union to conclude the deployment of this cell without any further delay; protect civilians during the conflict (UNSC, 2014a).105

### 4.2.2 Challenges of AMISOM

AMISOM has made some progress in Somalia; however it still faces some military and political challenges (Williams, 2012). The AU is a relatively new institution; it is under resourced and relies on funds from African governments and donors. The conflict in Somalia has been prolonged and complicated by the approaches applied by the international community over the years.

Somalia is highly fragmented along kinship lines, which approached intervention with hostility since they believed that the peacekeeping missions were aligned to a particular clan. AMISOM peacekeepers suffered the hostility from these local clans, and many of them died as a result (AMISOM, 2008). There were targeted attacks towards its forces. The Somali population is not as receptive towards intervention. They were apprehensive towards recognizing the international community as an agent of peace building in Somalia (Jeng, 2012).106

AMISOM put the reconstruction of state and political institutions ahead of cultivating peace in a war torn state (Jeng, 2012). Using the TFG as the only way to approach peace has been a great challenge. They therefore ignore all other possibilities towards approaching peace in the state.
Hence peace has been hard to arrive a, since the TFG is not fully accepted by the entire Somali population. “International law remains trapped in a version of politics that is narrowly focused on institutional practice and an understanding of the social that accepts the unity of the agents as a given (Rajagopal, 2003, p. 406).” Rajagopal alludes that most peacekeeping missions under the auspices of international law, have a set standard only involving certain political structures, hence ignoring all other possibilities that could be explored to arrive at peace.

AMISOM’s mandate was to protect the TFG, and then amended to fight the al shabaab and piracy; however it never gave an indication towards the protection of civilians. On several occasions they were guilty of harming civilians through their indiscriminate firing and targeting the same civilians mistaking them for fighters (Williams, 2012). They also failed in protecting them from al shabaab attacks. They were in clear violation of the laws of war. Even without an explicit mandate, AMISOM was still required to protect civilians under International Humanitarian Law (IHL) (Wills, 2009). It was not until May 2013 that AMISOM’s mandate was tailored to include the protection of civilians, beyond IHL prerequisites, by “deliberately using its resources to reduce civilian harm (AU, 2013, ART. 49).”

AMISOM has also had challenges with regard to its mandate. The mission was unclear, especially how to execute its orders. There was no structure as to how AMISOM would ensure that the conditions conducive for peace and stability in Somalia were created. The mandate has been revised four times, as per the extensions. With emerging threats, the mandate does not articulate how to deal with issues like terrorism. Terrorist acts are interstate, and therefore AMISOM’s structures have not been clarified on how to tackle such issues. The primary mandate is driven towards protecting the TFG. It does not include human rights protection,
especially with civilians. The mission has undermined their protection and they have been victims of several attacks from either side.

There was also lack of pure coordination in the mission. Dealing with troops from different nationalities, is pretty difficult. Most troops don’t know who to take their orders from, whereas essentially it should be from the mission lead. Most troops take orders from their country of origin, and this affects the efficiency of the mission. This also happened during United Nations Mission in Somalia II (UNOSOM II), where the American troops took their directives from the United States government, instead of the UN (Woodward, 1998). These soldiers from different nationalities have also not interacted with each other they therefore bring their own beliefs; which could be detrimental to the mission. Looking at AMISOM, where the troops got in at different times, they each go with a different agenda, from their nations.

These challenges can also be drawn from the fact that AMISOM or the AU has limited experience in peace keeping operations. It is to the detriment of peace keeping that AMISOM lacks the military resources, capacity and funding, as well the institutional capacity to manage operations in Somalia (Wiklund, 2013).This is also drawn from Darfur, where the mission was eventually combined with the UN to form a joint peacekeeping mission. The AU is also believed to have lacked the proper training curriculum that could have been given to their staff prior to their deployment (AU, 2011). This also led to the lack of enough troops to bring the mission to proper operational capacity. It also affected the protection of civilians in the country. Civilians were compromised during the intervention, since AMISOM did not apply the proper mechanisms towards civilian protection since their first mandate in 2007.

As a peacekeeping mission AMISOM has to deal with different parties on the ground and also within itself as a unit. Every party has certain objectives to warrant their participation, and it is
difficult to determine their intentions which may be at odds with the goals and mission of the operations and often times with each other (Rubinstein, Keller, & Scherger, 2008). The communities have a longer outlook and need to position themselves for survival once the mission departs. This creates a complex situation in which short-term and long-term motivations may be different with respect to each stakeholder.

The major challenge the mission is facing is the rise of terrorism and its attempts to completely rid Somali of al shabaab in order to restore peace in Somalia are waning. The al shabaab is using the presence of non-Somali troops in Somalia as leverage over the mission to create discord from the majority Somali population and use it as a means of recruiting the youth to gain followers (Kahssay, 2009). In addition to that al shabaab survives from the support of foreign terror cells like al Qaeda, will be a challenge to AMISOM who lack the jurisdiction to intervene in other continents as well as the capacity to contain the changing face of terrorism.

4.3 Conclusion

AMISOM’s final mandate ended in November 2015. Somalia is yet to be remedied. The situation keeps on being manipulated by terror and acts of piracy. It is clear that the UNSC has also been tailoring AMISOM’s mandate to suit such occurrences. However the mission is ill financed and understaffed, also lacking proper equipment. The lack of dedication by the Africa governments too contributes militarily and financially is also determined.

AMISOM fit into the definition of article 4(h) of the Constitutive Act of the AU, however, it is yet to adhere to human rights protection. Since some of the troops also undermine human rights, as well as following the rights of protecting non-combatants. It is a primarily peace enforcement mission, and its mandate is adhered to peace building. This made it difficult for the troops to
understand the approach to use. The mechanisms set up mostly worked on peace enforcement; ergo a military approach was applied. This was taken without consideration to the civilians on the ground.

The rise of *al shabaab*, has also been a major deterrence to AMISOM’s mission. It keeps on recruiting members from the Somali community. According to the UN Monitoring Group on Somalia’s July 2013 report, *al shabaab* has an estimated 5,000 persons. To counter that AMISOM slowly increased troops from Djibouti and Sierra Leone and in 2011 Kenyan forces went into Somalia to mitigate *al shabaab* attacks on tourists and Kenyan aid personnel. AMISOM also has to take into account the abuse of human rights by the terror organization, and what threshold it meets. The criteria outlined by article 4(h) of the Constitutive Act of the AU include: war crimes, genocide and crimes against humanity. It also limits itself to acts committed by state actors and does not have provisions for non-state actors. The terror groups take a different dimension by being run from different states and affect not only the citizens of that state but international ones as well. The AU lacks to institutional capacity to contain terror organizations. “The attacks on AMISOM’s three forward operating bases at Leego (June 2015), Janaale (September 2015), and El Adde (January 2016) are more reflective of AMISOM’s current vulnerabilities than *al Shabaab*’s growing strength (*TheStar*, 2016).”

Irrespective of the growth by the terror group, AMISOM’s institutional capacities are yet to match the strength of *al shabaab*. To be able to defeat terrorism they have to work within AMISOM’s framework to handle the threat of terrorism.
CHAPTER 5

CONCLUSION

The African Union (AU) intervened in Somalia almost two decades after the collapse of the Somali state, as well as after several failed attempts by the international community to salvage the matter (Jeng, 2012). Unlike the Organization of African Unity (OAU) the AU applied an interventionist approach on matters that crippled African countries. It was seen in Burundi, Darfur, Kenya and now Somalia. It has been active in supporting peace operations around the continent, even from other regional organizations.

The problems pertaining to African states cannot be solely handled by the AU as an organization. The political leaders need to be invested in the well-being of African nations and African people. This will also work towards ensuring that the policy of non-indifference is applied with necessary action, ensuring that responsibility to protect (r2p) is appropriately represented. State sovereignty and intervention need to be articulated in tandem to ensure that human rights are respected. Sovereignty should not supersede human rights, and this needs and adjustment in the legal frame work of the AU Constitutive Act.

It is clear through AU experiences that it lacks institutional capacity to make proper and timely assessments of some situations. This would be in order to determine whether they constitute, or are likely to lead to genocide, crimes against humanity or war crimes, and the basis upon which it should undertake forceful intervention.

Drawing from this recent experience in Somalia and even the Former African Union Mission in Darfur (AMID), the AU lacks the flexibility to respond appropriately to a situation that may
require its resolution. There should be no delay in exercising R2P through measures like preventive diplomacy and intervention where necessary. The AU needs to adjust itself so as to have the capacity to pre-empt such occurrences, and in the even they do happen it should be able to counter them, as well as work on post-conflict or disaster reconstruction.

The AU still considers consent from the government as important to proceed with intervention. Therefore, it does not fully apply Article 4 (h) of the Constitutive Act of the AU, which states that the AU has the right to intervene during acts of genocide, war crimes and crimes against humanity. The AU’s legal and institutional framework fails to provide a coherent and orderly relationship between sovereignty and intervention, which underpins the interpretative differences (Kindiki, 2005). The AU intervention policy did not necessarily dissociate from the Organization of African Unity (OAU) principle of non-interference. The AU has selectively intervened in the affairs of some states and ignored others. The situation in Somalia became a regional outcry due to the injustices against her people. The intervention was also facilitated by the fact that Somalia did not have a proper government structure, However the structural issues within the AU need a lot of revision to ensure that the objectives within Article 4(h) of the Constitutive Act are well arrived at.

5.1 RECOMMENDATIONS

Despite the AU’s will for R2P, the lack of political will by the states undermine this concept. Drawing from the description by article 4(H) of the constitutive act, this means that the AU has the discretion to intervene or not (Kindiki, 2003). R2P does not look at intervention as a right it looks at it as a responsibility by other states to ensure that human rights are protected irrespective of the country. Responsibility is synonymous to a duty imposed on a certain entity. In this regard Sovereignty therefore changes from being a right of a state to an obligation by a state towards its
people, human rights take precedence. Sovereignty and intervention should be geared towards the protection of the population of a State from avoidable catastrophes such as genocide and crimes against humanity, and should be advanced as a fundamental duty of the AU system. The African Union should have the capacity to intervene efficiently “on behalf of the people when their sovereign interests are no longer represented by their own government, or when there is no functioning government at all, or when minorities are subjected to extreme oppression by the government in the name of the majority (Thakur, 2006).”

In as much as immediately amending the main document that governs and directs the African Union treaties such as the Constitutive Act may be difficult; there is clear need for resolutions and declarations on sovereignty and intervention as a responsibility. They may serve as statutes on the meaning and implications of those core principles within the AU system. They can be significant instruments to reforms within the regional norms, standards of behavior and perceptions on the responsibility of sovereignty and the duty to intervene to stop or pre-empt genocide and crimes against humanity. The success of change of approach would be exhibited by an alteration in the Union’s subsequent practice in relation to intervention to stop or pre-empt genocide, crimes against humanity and war crimes. In this regard advocating for formal amendments to the existing AU legal framework, to conceptualize sovereignty and intervention as fundamental responsibilities is an option. Adoption of resolutions and declarations to that effect is another strategic way through which the civil society organizations can engage the AU for purposes of more effective civilian protection in conflict situations.

The intervention of AU through AMISOM in Somalia and also the governance through the Transitional Federal Government (TFG) brought in a new political dynamic in the country. This came in during the heat of poverty, clan rivalries, and sectarian violence. The TFG however
needs a lot of adjustments and assistance to be able to endure the challenges that would be faced, as well as promote peace and reconciliation in the country. The government needs to be able to assure sustainability in the solutions that have been arrived at. The institutional structure needs evaluation to determine whether it is malleable enough to adjust to the changes that always occur globally and nationally (Manahl, 2012).

5.2 OPPORTUNITIES

The AU should rely on Trans-national civil organizations and intergovernmental organizations to achieve its agenda in Somalia and other African countries. Africa after the end of the cold-war received pressure from International civil society, as well as the advocacy initiatives handled by them, towards responsible sovereignty and human rights protection. The influence from these organizations with the support of intergovernmental organizations greatly emphasizes the respect of international law and protection of human rights. Non-governmental organizations (NGO) play a pertinent role in encouraging states to ratify treaties and also work on monitoring the situations in states and offer an analysis on the same (Boyle & Chinkin, 2007).

NGO’s also insist on the fulfillment of international norms and treaties, and their development in the African continent has been vital to the preservation of human rights and dignity. The role of NGO’s can be very vital to the AU’s development, where it can rely on the reports run by them to administer quality checks on the AU’s system. These reports can also be used as reference points to know what countries need improvement in protecting human rights. Organizations like the International Committee of the Red Cross (ICRC) and Human Rights watch have been quite involved in investigating adherence to International Humanitarian Law (IHL). However it noted that NGO involvement is not entirely welcome by some countries, because it is considered to undermine sovereignty and within Africa a lot of countries are passionate about absolute
sovereignty (Acharya, 2002). The Constitutive Act of the AU recognizes civil society organizations in various levels of participation within the continent; this is through Articles 3(g), 3(k) and 22.

There are some transnational African non-governmental organizations like the Centre for Citizens’ Participation in the African Union (CCP-AU), formed in 2007 with the objective of coordinating and facilitating activities of various African civil society organizations in their engagement with the African Union and the Africa Governance Monitoring and Advocacy Project (AfriMAP). AfriMAP is involved in the analysis of African States adherence to human rights protection, rule of law and good governance, in addition to seeking to complement and engage the African Union on important issues (AfriMAP).

AMISOM needs to work on maintaining good relationships with the local Somali nationals, in order to result to success. It needs to work with the locals to identify, isolate and confront al shabaab’s forces. That notwithstanding AMISOM has managed to prevent the demise of the Transitional Federal Government (TFG). The al shabaab has now been reduced to one of the many security threats affecting Somalia which include clan conflict and struggle over resources. However AMISOM is yet to contain the threat of terrorism.

For the situation in Somalia to be fully handled the political situation needs to be handled, AMISOM’s mandate was to protect the TFG and not to restructure the government. The internal government structure and policies need to come from the Somali political elites. Those in the TFG and the divisions of Somaliland and Puntland need to come up with a sustainable political solution that will guarantee the protection of the Somali nationals. The unity in governance will ensure other aspects of the Somali system are well coordinated. The Somali national army will be well facilitated and coordinated as well as furnishing an effective police force.
AMISOM and the other stakeholders involved in the Somali crisis who include the UN, EU an IGAD should prioritize a well-tailored political settlement within Somalia’s government, should be able to articulate the effective flow of information, outline legal policies and ramifications as well as come up with an adjudication framework. Suffice it to say the mandate AMISOM has is to ensure protection and does not cover post conflict reconstruction, as well as how to ensure reconciliation within the Somali community and justice for those affected. In addition to that AMISOM is yet to conclude its mandate. The dysfunctions of Somali politics, which are dysfunctional and prone to violence, are suitable environments to incubate al shabaab (Khalif & Barnes, 2016).

5.3 Conclusion
The situation in Somalia led to a series of factors that affected human rights. From 1991 when the Somali state collapsed, I brought about anarchy prompted by the egalitarian nature of clan politics in the country. This led to inter-clan conflicts, which resulted to loss of lives and destruction of property. The statelessness nature meant that the country had no proper security and legal framework to follow which made it easy for terrorism to thrive within the country and the region at large. Despite the interventions by the international community from 1992 to 1994 the situation was not abated.

Somalia was more or less disowned by the international community until the year 1998 when attempts were being made by IGAD to change the situation and assist Somalia in coming up with a Transitional National Government and later the TFG. This however did not remedy the situation, forcing the AU to militarily intervene in Somalia through AMISOM under the auspices of article 4(h) of the Constitutive Act. This mission was also supported by the UNSC. The mandate started in 2007 and has been changed to suit the situation. It started out with protecting
the TFG and later incorporated piracy as well as terrorism. AMISOM also failed to consider human rights as a factor within the framework of the mission. This was later facilitated through UNSC/Resolution 2073 of 2012. This was not timely since human rights should have been central to AMISOM’s mandate from the onset, since human rights atrocities are what prompted AU intervention in the first place.

The situation in Somalia affected the neighboring countries through the influx of refugees. This also led to the involvement of how to accommodate refugees, through resettlement, local integration and voluntary repatriation. Refugees are also subject to human rights laws in the country of asylum, in that they cannot be sent back. However they are not given similar privileges as the citizens in the country of asylum they have limited opportunities. Therefore the conflict in Somalia affected human rights in a broad dynamic, not only leading to loss of lives, but also loss of livelihoods, security as well as homes and citizenship for others.

AU intervention in Somalia was a great effort by the African community in solving its issues, albeit it still needed authorization from the UNSC. Human rights were at the forefront of the intervention and the protection of said rights was limited due to the inadequacy of the facilities and the mandate was not clear to ensure absolute protection of human rights. The African continent needs to restructure its intervention framework so as not to wholly rely on the international community for rescue missions as well as funds and equipment to facilitate the rescue missions.

The AU should be proactive in preventing violence and human rights atrocities, which would be a sustainable approach towards implementing the principle of non-indifference and the doctrine of responsibility to protect (R2P). This has been shown through article 4(h) of the Constitutive Act of the AU; however there should be a clear definition of human rights within the AU
framework, as well as measures against terrorism. Through AMISOM in Somalia the AU established a nexus between the rights of intervention under the rule of article 4(h). This is geared towards achieving the fourth aspiration of Agenda 2063 towards a peaceful and secure Africa, where it seeks to ensure that Africa shall have an entrenched and flourishing culture of human rights, democracy, gender equality, inclusion and peace.

5.4 Avenues for Further Research

There are further avenues for research when it comes to Human Rights protection and the right of intervention in Africa;

- The inefficiencies of AU intervention in Burundi portrayed through the re-occurrence of violence in 2015.
- Is the AU’s principle of non-indifference applied selectively: Case of Burundi.
ENDNOTES

1 Pan-Africanism is a doctrine that seeks to unify Africans as one community, dates back to the struggles against colonialism, slavery, racism and neo-colonialism.

2 Four summits were held in the lead up to the official launching of the African Union, the: Sirte Summit (1999), which adopted the Sirte Declaration calling for the establishment of the AU; Lomé Summit (2000), which adopted the AU Constitutive Act; Lusaka Summit (2001), which drew the road map for implementation of the AU; Durban Summit (2002), which launched the AU and convened its first Assembly of Heads of State and Government.

3 Served as president of Tunisia (1987 – 2011)


6 The Guelleh Plan of 1999 held by President Ismail Omar Guelleh of Djibouti; it called for warlords to disarm turn their factions into political parties and submits to a formal legal system. However refusal on the part of Somali land and Punt land leaders weakened and led to the collapse of the Guelleh Initiative (Koko, Whose Responsibility to Protect? Reflection on the Dynamics of an 'abandoned disorder' in Somalia, 2007). See also OthienoT. (2004), Somalia’s elections and Clan Politics: a new Opportunity or a Temporary Cease Fire, IGD Global Insight, November.

7 See resolution 746 of the UN Security Council, of March 1992 (UNOSOM I). Under resolution 814 in March 1993 (UNOSOM II), Also known as Operation Restore Hope (UNITAF).

8 The Peace and Security Council was launched in May 2004 as a standing decision-making organ for the prevention, management and resolution of conflicts.


11 See Tim Murithi (2009), p. 106. The African Union’s Transition from Non-Intervention to Non-Indifference: An Ad Hoc Approach to the Responsibility to Protect?

12 Also looking at the responsibility of states to protect their citizens, and the threshold of sovereignty to allow intervention.


14 This was the basis of NATO intervention in Libya see Kenneth Waltz, (2000). Structural Realism after Cold War. International Security Vol 25 (1).
A shift in the understanding of sovereignty from “sovereignty as control” to “sovereignty as responsibility”. (ICISS), the Responsibility to Protect, p. 14.

The state may have the right to manage affairs within its borders, but it also has the fundamental responsibility of shielding populations within those borders from these four crimes.

International norms based on state responsibility and non-indifference.

Humanitarian protection focus on preventing and halting mass atrocity crimes.


As Edward Luck, Special Adviser to the Secretary-General suggested: “It would be a misapplication of responsibility to protect principles to apply them at this point to the unfolding tragedy in Myanmar. The Outcome Document of the 2005 World Summit limited their application to four crimes and violations: genocide, crimes against humanity, war crimes and ethnic cleansing. We must focus our efforts on implementing these principles in these four cases, as there is no agreement among the Member States on applying them to other situations, no matter how disturbing and regrettable the circumstances.”

Some authors in support of R2P believe that it would be hard to maintain peace in the international community without the International and regional organizations, “it is difficult to imagine the contemporary world without international organizations which play important roles worldwide and intervene to keep peace in the international political system.” See C. Archer (2001), International Organizations, P. 111.3rd Edition. London and New York, Routledge.


The decolonization of sub-Saharan Africa from the late 1950s to the mid 1970s resulted in several proxy war confrontations between the US and the Soviet Union over dozens of newly independent states.


They were in form of proxy wars. They gave incentive to these countries, to either uphold communism or capitalism. Most of these countries were gaining independence; their stability as autonomous states was yet to be realized.

Article III of the OAU charter, called for respect of sovereignty and territorial integrity of existing states.


“No sub-region in Africa was immune from conflict” Olesegun Obasanjo ‘Preface’ in F M Deng and I. W Zatwan (eds) Conflict Resolution in Africa (Washington, DC: Brookings Institute, 1991) P. xiv


31 It was also known as Somali nationalism.

32 The colonial borders separating African states did not adhere to the traditional, ethnic or tribal boundaries.

33 See also Paul Nugent (2004), Africa since Independence, pp 92 – 100, (New York: Palgrave Macmillan)


35 The international community gave pressure to the colonial powers to leave their colonies. See Also the UN Charter, 1945, San Francisco: United Nations. Article 1 (4) “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;”


38 Some 275,000 Somalis in the Northern Frontier District of Kenya were left out of the political equation.


40 Egalitarianism is a sense where everyone feels they are equal, especially where a state lacks a particular hierarchy. This situation can lead to anarchy. See also Kwameh Appiah (2006), Cosmopolitanism: Ethics in a World of Strangers (London: Penguin) P. xviii

41 See also Peter Woodward (2013), Crisis in the Horn of Africa: Politics, Piracy and the threat of Terror, (New York; London, I.B Taurus) p. 75.

42 The press coverage also known as the CNN effect could influence how the international community reacted to human rights atrocities globally.

43 In 1991 the US led a successful rejection of Iraq’s forces from Kuwait following the illegal occupation of the previous year. America was determined to international action to address crises of whatever kind. See Peter Woodward (2013), Crisis in the Horn of Africa P. 76.


45 December 1992, the passage of UN Resolution 794, called for the establishment of a safe environment for humanitarian aid in Somalia.

46 UNITAF included military units from Australia, Belgium, Botswana, Canada, Egypt, France, Germany, Greece, India, Italy, Kuwait, Morocco, New Zealand, Nigeria, Norway, Pakistan, Saudi Arabia, Sweden, Tunisia, Turkey, United Arab Emirates, United Kingdom and Zimbabwe.


49“Government assistance to victims of war is largely dependent on NGO support. Many NGOs are distributing food and clothes and providing health services in displaced camps and refuge settlements. Some NGOs provide educational services and many projects have been established.” See Samia El Hadi in ‘Children and War in the Horn of Africa’ in Doornbos, S. Cliffe, L. Ahmed, A.G and Markakis, J. (eds) Beyond Conflict in the Horn: the Prospects for Peace, Recovery and Developments in Ethiopia, Eritrea and Sudan (James Currey: London) pp 19 – 20.


52See F. Goer, ‘Reality Check: Human Rights NGOs Confront Governments at the UN,’ in T. Weiss and L. Gordenker, NGOs, the UN and Global Governance P. 62.

53See also Brown, Michael E. 1996. The International Dimensions of Internal Conflict. Center for Science and International Affairs, John F. Canady School of Government, Havard University, Cambridge. Massachusetts

54See also P. Nugent, Africa Since Independent P. 79

55In August 1967, the Somali Government entered into an agreement with Kenya, which brought to an end its irredentist claims over Kenya.

56Local conflicts have great potential to “spill over” and create military problems for neighboring states. Internal conflict generates instability in neighboring states, creating political and economic instability.

57Recruitment of Kenyan youth could provide the terrorist organization a capacity to destabilize Kenya through “home grown” elements.

58Therefore, Al-Shabaab’s behavior in Kenya is an obvious characteristic of “new wars”.


60the approval of the United Nations Security Council (UNSC), resolution 1744 of 2007


63In respect of opinion juris, the International Court of Justice pointed out that it infers a belief that certain conduct has become obligatory due to “States concerned must therefore feel that they are conforming to what amounts to a


65 See also The Constitutive Act of the African Union article 4 (G), and Chapter I of the UN Charter.

66 “Even if Human Rights are thought to be inalienable...rights still have to be identified- that is, constructed-by human beings and codified in legal systems.” See David P. Forsythe (2000), Human Rights in International Relations (New York: Cambridge University Press) P. 3.


68 Many states argue that affairs going within their borders should not be questioned due to the principle of sovereignty; however the international communities through certain principles like Responsibility to Protect, where they can come in to contain atrocities within a given state.

69 The international community has set standards as to how a state is to act towards its citizens. Through articles that define the responsibility of states. See Chapter VII of the UN Charter.


73 The legal barriers to intervention are lowered since the state system has collapsed.

74 See also Chapter VIII of the UN charter.


76 This was to give clarity on when R2P is considered legal as well as the threshold to be met.


79 Through the non-intervention principle, the OAU Charter.

80 formed through the merger of the African Court of Justice and the African Court on Human and Peoples' Rights
In November 2007, the African Commission on Human and Peoples Rights at its 42nd Ordinary Session in Congo Brazzaville passed a Resolution on “Strengthening the Responsibility to Protect in Africa”.

81 In Libya during the Gadaffi regime


See also Christine Gray (2008), *International Law and the Use of Force* p. 55.

Article 52 of the UN Charter in fact states that “the Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.”

See table 0-1.

To ensure that it can meet this obligation the Peace and Security Council was established as the legal institution of the au mandated, where appropriate, to collaborate with the United Nations and sub-regional African organizations in conducting peace operations. See also Tim Murithi (2009) p. 93.

See also article 4 (h) of the Constitutive Act of the African Union, 2000.

It means that an otherwise illegal action is precluded from illegality where there is prior consent from the party whose rights have been infringed.


Chapter VIII of the UN Charter recognizes the role of regional organizations in solving disputes.

It also requested the African Union to increase AMISOM’s force strength from 12,000 to a maximum of 17,731 uniformed personnel, comprised of troops and personnel of formed police units.

“Decides to authorize the Member States of the African Union to maintain the deployment until 7 March 2013 of AMISOM, which shall be authorized to take all necessary measures, in compliance with applicable international humanitarian and human rights law and in full respect of the sovereignty, territorial integrity, political independence and unity of Somalia…”


IGASOM did not necessarily start operations after its proposal.

See also UNSC Resolution 1744 (2007) and AUPSC Communiqué PSC/PR/Comm (LXIX).

For a look at UN’s support on regional organizations look at Chapter VIII of the UN Charter, the principle of intervention look at Chapter VII of the Charter.

ENDF also joined AMISOM before pulling out of Somalia.

This was an independent mission by the Kenyan government.

to authorize the Member States of the African Union to maintain the deployment of AMISOM, as set out in paragraph 1 of resolution 2093 (2013) until 30 November 2015, in line with the Security Council’s request to the African Union for a maximum level of 22,126 troops, which shall be authorized to take all necessary measures, in full compliance with its Member States’ obligations under international humanitarian law and human rights law, and in full respect of the sovereignty, territorial integrity, political independence and unity of Somalia, to carry out its mandate” S/RES/2182 of 2014.

To mitigate this the UNSC through S/RES/2182 of 2014 stated, ‘Strongly urges Member States to provide helicopters to AMISOM for the authorized aviation component of up to 12 military helicopters, provided for in paragraph 6 of resolution 2036 (2012) as well as providing the enablers and force multipliers which were identified as necessary in the 2013 joint United Nations-African Union benchmarking assessment;’

The Civilian Component is committed to encouraging the launch of civil reconciliation initiatives with a view to seeking political inclusiveness and representation, Neus R. S. The Role of the African Union in Somalia: Where to go from here with the AMISOM Peace Operation? Institut Catala Internacionale, Policy Paper N08, April, 2013.

This can be done through the ambit of the Continental Early Warning Systems (CEWS). CEWS aligns itself to article 12 of the PSC protocol; it is mandated to “facilitate the anticipation and prevention of conflicts.” AU (2002). Protocol Relating to the Establishment of the Peace and Security Council of the African Union. Addis Ababa: African Union.

CCTARC was established under the authority of the African Union Peace and Security Council, pursuant to the express mandate set out in UNSCR 2036 (2012), UNSCR 2093 (2013), UNSCR 2124 (2013), UNSCR 2182 (2014) and UNSCR 2232 (2015). CCTARC captures and record reported events and incidents of civilian casualties within AMISOM area of operation through a comprehensive electronic database. For more on CCTARC, See AMISOM, http://amisom-au.org/cctarc/


IHL requires parties to a conflict to take all measures to protect civilians under their control against the effects of attacks, including avoiding locating military objectives within or near densely populated areas and removing civilians from the vicinity of military objectives. The obligation to respect IHL does not depend on reciprocity by other belligerent forces. See International Commission of the Red Cross (2005), Customary International Law. Cambridge: Cambridge University Press see also rules 22–24, Protocol I, articles 58(a-c), and 140 of the Geneva Convention 1949, and additional Protocols.

“AMISOM has been widely expected to protect civilians in [its] areas of operations, without being explicitly mandated or resourced to do so” See AU (2011). Report of the Strategic Retreat of the African Union Inter-Departmental Working Group on the Protection of Civilians, Debre Zeyit, Ethiopia: September 28–29.
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