



HÖGSKOLAN
DALARNA

Department of History

African Studies
Supervisor: Professor Negash
Fall 2010

“The Evolution of a Responsibility to Protect in Africa”

- The African Unions Emerging Peace and Security
Regime

By: Veronica Hjältn

Table of Contents

List of abbreviations	4
Executive summary and disposition of paper	5
1. Introduction	10
1.1 Background	10
1.2 The objective of the thesis and the research questions	11
1.3 Theory and Methodology	13
1.4 Material	15
2. Humanitarian interventions in International law and relations	17
2.1 What is Humanitarian Interventions?	17
2.1.1 Regime change as a humanitarian intervention?	18
2.1.2 What are the criterions for humanitarian interventions?	20
2.2 Theoretical background on humanitarian interventions and the R2P in international law	22
2.2.1 Positivists	23
2.2.2 Naturalists	25
2.2.3 Pragmatists	26
2.3 Humanitarian Intervention and the R2P in relation to state sovereignty	28
2.3.1 Scope of sovereignty in Africa	29
2.3.2 Erosion of state sovereignty?	31
2.4 The legitimate use of force in international law	33
2.5 Challenges to Humanitarian Interventions	34
2.6 Possible consequences of a new customary law and its challenges	35
3. Humanitarian interventions and the evolution of the responsibility to protect	38
3.1 The failure of humanitarian interventions in Africa	38
3.1.1 Somali intervention	40
3.1.2 African conflicts during the late 1990s and early 21 st century	43
3.2 The emergence of human security and its implications for international law and relations	46
3.3 The responsibility to protect	47

3.3.1 Towards a Right to intervention in Africa	50
4. The structure and scope of the AU	53
4.1 AU aim and jurisdiction	53
4.2 Structure of the AU	55
4.2.1 Sub-regional organization	58
4.2.2 Reliance on regional hegemony	61
4.3 Donors	65
4.3.1 UN	66
4.3.2 EU	67
4.3.3 G8	70
4.3.4 Canada	70
4.4 AU missions	73
4.4.1 AMIB	73
4.4.2 AMIS	76
5. Summary and conclusions	81
6. Bibliography	89
6.1 Books	89
6.2 Articles	90
6.3 Protocols and websites	95
Endnotes	97

List of Abbreviations

AFRICOM	United States Africa Command
AMIB	African Union Mission in Burundi
AMIS	African union Mission in Sudan
AMISOM	African Union Mission in Somalia
APF	African Peace Facility (fund established by EU)
ASF	African Standby Force
AU	African Union
CEWS	Continental Early Warning System
CIDA	Canadian International Development Agency
DRC	The Democratic Republic of Congo
ECOMOG	Economic Community of West African States Monitoring Group
ECOWAS	Economic Community of West African States
EU	European Union
G8	Group of 8, a forum for 8 large economies
HCFA	Humanitarian Ceasefire Agreement
ICISS	International Commission on Intervention and State Sovereignty
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
NPFL	National Patriotic Front of Liberia
OAU	Organization for African Unity
ONUB	United Nations Operation in Burundi
PSC	Peace and Security Council (AU)
R2P	Responsibility to protect
SADC	Southern African Development Community
SC	Security Council (UN)
UN	United Nation
UNAMID	United Nations/African Unions Hybrid Operations in Darfur
UNITAF	United Task Force (Somalia)
US	United States of America

Executive summary and disposition of the paper

The thesis focuses on, and tries to evaluate, the role that the African Union (AU) plays in protecting the peace and security on the African continent. The thesis takes an interdisciplinary approach to the topic by both utilizing international relations and international law theories. The two disciplines are combined in an attempt to understand the evolution of the AU's commitment to the pragmatist doctrine: responsibility to protect.

The paper begins with establishing the definition of humanitarian interventions as well as outlining some criteria that needs to be met in order for an intervention to be regarded as humanitarian.

What follows is a presentation of the most common lines of thought that make up the interventionist discourse, namely: positivists, naturalists and pragmatists from international law and realists and constructivists in international relations. These perspectives will provide the theoretical backbone of the thesis.

The positivists consider the law to be supreme leaving no room for humanitarian interventions as current international law does not provide a framework for such actions. Naturalists on the other hand are more concerned with the principles behind laws and use this point of departure to argue that international law does provide a foundation for intervention. They think laws should be interpreted in accordance with the specific context that each case represents. One of their motivations is that the United Nations (UN) charter can never predict all possible situations and developments and thus needs to be continuously reinterpreted in light of the current and unique circumstances with which it is presented to. Pragmatists, the third group coming from the international law discipline, are less concerned with legality as with the development of practical solutions to current problems. They are focussing on developing a framework in which humanitarian interventions can take place. It becomes obvious from the discussion in the thesis that the debate has shifted from one discussing the legality of interventions to one concerned with the realities we currently live in whereby interventions do take place. This leads to a discussion about customary law, which concerns the practices of states, as a possible indicator for advancement towards a right to intervention. The discussion will cover the potential challenges

that a right to intervention will present to international law as well as dealing with the context with which such a custom arose, if it has arisen. What will be central to contemplate is whether or not humanitarian interventions really can be considered to be part of customary law considering that only a hand full of states has the means and capacity needed to undertake interventions.

Also, even if one could reach consensus over the issue of legality, international law provides little information on how to implement law enforcement in regard to humanitarian interventions. This could potentially lead to states abusing their ability to undertake interventions, especially in light of the dominance of realist aspirations in international relations. Realists voice the belief that interventions continues to be driven primarily by state interests rather than the upholding of humanitarian interests. Constructivists on the other hand believe that not only politics of power motivates state's actions but also ideas such as the common value of all people and as such the right to have basic human rights protected. Whereas a constructivist approach to international relations could verify the status and existence of interventions carried out on the basis of humanitarian concerns, realist theory disputes such a position.

After establishing the theoretical framework of the thesis, the paper continues by focusing on the ongoing debate surrounding humanitarian interventions. While acknowledging the disputable character of human rights as accepted in the West, the position of the author assume there are certain human rights that are central to all human beings and that, when these are violated, trigger a humanitarian crisis.

The paper then moves on to a discussion concerning state sovereignty and the possible erosion of state dominance in international relations. Recent developments, such as globalization, has had an impact on and spurred the idea of a change taking place in the notion of state sovereignty. In light of this I discuss if, and in what cases, humanitarian intervention can be considered to be a violation of state sovereignty. The discussion initiates from an international law perspective whereby lawyers use different articles from the UN charter, the supreme body for international law, to support their claims. The discussion then moves on to an inclusion of international relations perspectives. It is establishes that a frequently voiced argument is that the motivations behind an intervention might not be strictly humanitarian but political as well.

For this reason, an important criterion that should be met prior to intervening is that all other options available to solve the conflict have been exhausted.

After laying down this foundation I set out to illustrate why, and how, the AU came to develop its current charter. The charter is considered to be the first international law document to cover the responsibility to protect as it allows the AU to interfere in the internal affairs of its member states. The responsibility to protect doctrine was evolved around the notion of a need to arrive at a consensus in regard to the right to intervene in the face of humanitarian emergencies. With the ending of the Cold War, a new need arose to be able to carry out interventions for humanitarian reasons. A part of the post-Cold War shift in UN behaviour has been to support local solutions to local problems. Hereby the UN acts in collaboration with regional organizations, such as the AU, to achieve the shared aspirations to maintain international peace and security without getting directly involved on the ground. In the 1990s the notion of Human Security also arose which intensified the debate regarding humanitarian intervention. These influences culminated in the responsibility to protect which takes a more holistic and long-term approach to interventions by including an awareness of the need to address the root causes of the crisis in order to prevent future resurrections of conflicts. The doctrine also acknowledges the responsibility of the international community and the intervening parties to actively participate in the rebuilding of the post-conflict state. This requires sustained and well planned support to ensure the development of a stable society.

The Organization of African Unity (OAU) was unable to respond to the many crises taking place in Africa in the 1990s as it strictly adhered to a principle of nonintervention in order to protect state sovereignty. At the same time, the UN was slow and/or reluctant to act and commit personal to the crises on the African continent. Without any actors being willing or able to effectively deal with the crises raging in Africa, the need for a new body to fill the gap grew resulting in the creation of the AU. The AU charter presents an ambitious framework for mantling the task of establishing a new peace and security regime on the region. Still, many people expressed worries about the AU's ability to implement the charter, based on the trend towards peer protection in Africa where the elites protect, rather than confront, each other.

In order to answer my main thesis questions, I examine two interventions, the AU Mission in Burundi and the AU Mission in Sudan. These were headed by the African Union but still carried out in collaboration with the UN. What became evident is that the AU is committed to implementing the responsibility to protect and its missions are as such very ambitious. But many of the AU's members are struggling, both ideologically and practically, to uphold the foundations on which legitimate intervention rests, such as the protection of human rights and good governance. The fact that many members are also among the poorest countries in the world adds to the challenges facing the AU and its missions. A lack of human and material resources leads to a situation where few countries are willing, or able, to support a long-term commitment to humanitarian interventions. Bad planning and unclear mandates also limit the effectiveness of the interventions. This leaves the AU strongly dependent on regional powerbrokers such as Nigeria and South Africa, which in itself creates new problems in regard to the motivations behind interventions. The current AU charter does not provide sufficient checks and balances to ensure that national interests are not furthered through humanitarian interventions.

The lack of resources within the AU also generates worries over what pressure foreign nations and other international actors apply through donor funding. It is impossible for the principle of 'local solutions for local problems' to gain ground while this donor conditionality exists. The more influential donors, the UN, European Union, G8 and Canada, will be examined.

It appears that while international law at present is heavily influenced by pragmatist considerations, international relations are still predominantly guided by realist aspirations. Therefore, nations, by and large, remains to act based on national interest and not on the basis of humanitarian concerns as provisioned in the responsibility to protect. The measures taken by the AU towards the comprehensive adoption and implementation of the R2P responds both to the policy favored by the international community of local solutions to local problems as well as representing a determination to prevent large-scale conflicts to unravel undeterred in the face of international unwillingness to act promptly and decisively to conflicts on the continent. Meanwhile, many problems, ranging from the division of labor between the AU and the UN to funding and the availability of resources continue to exist.

But it should be kept in mind that the faith and future of the AU peace and security regime is not established since it is still a work in progress that will continue to evolve. The direction that these developments will take depends on a wide variety of factors, many of which are beyond the immediate control of the AU.

1. Introduction

1.1 Background

Humanitarian interventions are not a new phenomenon, but became increasingly more frequent in the 1990s following the end of the Cold War, only to almost disappear again in the mid 2000s even though one could argue that there were plenty of instances when a humanitarian intervention should have been plausible.

A split was created between the people who condemn these interventions as illegal. They considered interventions to constitute a dangerous development that threatens national sovereignty and can come to create an international climate that accept the preemptive use of violence on the basis of vague justifications of humanitarian interventions. On the other there were those that recognize that although international law does not specifically cover the concept of humanitarian interventions, there are acts in the UN Charter that could be interpreted to justify such interventions in order to protect humanity along with the peace and stability of the world. There were others that further stated that humanitarian interventions were not covered by international law but that they should be. These pragmatists also started a movement towards the development of a new set of laws and institutions specifically created to deal with such interventions. Their efforts eventually culminated in the ICISS report that developed the notion of a responsibility to protect that came to replace the concept of humanitarian interventions while still resting on the same set of premises. The pragmatists also conclude that aside from there being a need and desire to expand international law to incorporate humanitarian interventions, that due to interventions like those in Somalia, Kosovo, Bosnia and Haiti in the last couple of years, humanitarian interventions already have become a part of international customary law.

While recognizing the importance of the humanitarian interventions debate, I will focus the study on the double standard of these interventions by looking at examples from the African continent where there has been a severe lack of swift interventions although the continent have been witness to some of the most horrid human emergencies of the past and current centuries. It is within this framework that the development of a responsibility to protect in Africa can be understood. I would argue that the failure of the international community to act timely and

efficiently to crisis on the African continent prompted the African Union to develop a charter that allowed for intervention in domestic affairs of members states.

The creation of the Constitutive Act appeared to prove the AUs devotion to humanitarian interventions, at the same time as the UN started to delegate the responsibility of maintaining peace and order to regional organization, indicated that a shift had been allowed to occur in which it became acceptable for military interventions to be carried out by a coalition of the willing. In this new system of implementation of international order that has been allowed to emerge, question still arise as to what responsibility the UN has to ensure that regional operations will be conducted efficiently as the UN structure still is the traditional authority on international security. Apart from UN, although often being regarded as the collective representation of the international community, there are also today several other organizations (such as EU and NATO) that are powerful international actors, along with individual states (such as US and Canada) and NGOs, that all have a stake as well as a responsibility as contributors of financial aid and resources to various regional operations in Africa.

The real question is if these states and organizations are prepared to put their national interest aside and make sacrifices to further the cause of a responsibility to protect in Africa without conditional constraints. Doubt can be indicated for instance by the low numbers of peacekeepers available to dispatch by the UN to alleviate and prevent suffering in active conflicts.

1.2 The objective of the thesis and the research questions

Considering that I have a theoretical background in both international law and international relations it felt important to utilize my relative advantage and familiarity with these two areas of study. I therefore attempt to approach the concept of humanitarian interventions, and the developing norm of a responsibility to protect in Africa, from an interdisciplinary approach. The thesis aim is to first explore the normative shift in international relations after the end of the Cold War and the consequences that this shift had in the transformation in international law, specifically customary law. After having established the context in which humanitarian interventions purposes evolved, I will continue the study by exploring the legal aspects of

humanitarian interventions as well as the competing approaches to international law. Considering that there has been plenty of research regarding the legal aspects of humanitarian interventions, I decided to focus the study on the concept of a right to intervene, which later became the responsibility to protect, which was the outcome of the debates over the legality of humanitarian interventions.

Considering that I have a regional interest and focus on the African continent it felt natural to center the discussion over a responsibility to protect in the context of the African Union, which was the first organization that developed a charter which included provisions for the enforcement of the responsibility to protect. The second part of the study, therefore, will entail a deeper investigation of the potential of implementation of the responsibility to protect by the AU. The research will problematize the existing international law framework in which UN Security Council (SC) is to serve as the ultimate authority in the sanction of intervention even though the organization has frequently displayed selectiveness when responding to international crisis. The unwillingness and inability of UN to swiftly and determinedly react to African conflicts has as a result shaped the Constitutive Act of the AU. The AU has been made a collaborator to the UN in the implementation of regional peace and security as well as an agent in the shaping of international customary law. I will try to determine the validity of the existing AU peace and security regime while critically analyzing the independence with which the AU can act while being dependent on foreign aid as the member states to the organization encompasses some of the poorest nations of the world.

The doctrine of responsibility to protect involves several aspects but the analysis in this thesis will focus on the military, and thus, the humanitarian interventions' aspect of the doctrine.

The general research question that has motivated this study has been:

How committed are AU to the responsibility to protect and what are the prospects for a successful implementation of that doctrine?

Correlated to the first inquiry is also the question:

Is it desirable to have UN forfeit its responsibility to international peace and order to regional, and sub-regional, organizations or will it potentially lead to the erosion of international law and order?

While conducting the research, several secondary questions arose. Some will be explored in the paper while others had to be put aside to be looked into at a later point. But of interest, and which I try to approach, are questions such as:

Will AU be able to independently conduct regional interventions or will they be influenced by international actors as it is dependent on international aid which more often than not is condition based?

I also believe that one should not ignore to explore the possible consequences that can follow the allowance of a pragmatist and naturalist approach to international law where interventions on humanitarian justifications are accepted. While it could serve to diminish human suffering, it will most likely also lead to tensions between sovereignty and human security. We need to ask ourselves if it:

Is it desirable to have states police other states with military means and what are the prospects for abuse of such an approach to international law?

1.3 Theory and Methodology

There is, and has been, a continuously ongoing discussion between positivists and pragmatists in international law and between pluralists/realists and constructivists in international relations' theory for and against humanitarian intervention. While realists believe in the dominance of the state, the supremacy of national security and states as the sole actors in international relations,¹ pluralists deem all organized groups as potential political actors that can influence international affairs.² In line with the realist theory is also believed that humanitarian interventions always will

¹ Donnelly, Jack, *Realism and International Relations* (Cambridge: Cambridge University Press, 2000), 7

² Welsh, Jennifer M., "Taking Consequences Seriously: Objections to Humanitarian Interventions" in Jennifer M. Welsh ed. *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), 64

be motivated primarily by national interest,³ whereas constructivists believe that there can be humanitarian motives behind interventions.⁴ There is also great differences between a positivist reading of international law in which the focus is on the law itself and not its possible interpretations while pragmatists is less concerned with protecting the sanctity of the law and instead believes that it is the outcome of how its implemented that is of interest.

It becomes evident that there are several different approaches and lenses through which you can interpret humanitarian interventions and I will look at some of these dichotomies. It is likewise obvious that there is a symbiosis and reciprocity between the normative shifts that occur and the conduct of international actors. Actors' behavior are largely shaped and influenced by the current context in which they operate since the prevailing discourses influence actors. At the same time, the behavior and reasoning of actors also serve to influence and change the discourse over time. The main purpose of the study is to conduct an interdisciplinary study based primarily around the pragmatist perceptions of international law (which moves the humanitarian intervention debate from a sphere of legal or illegal to attempt to establish frameworks for interventions that meets current realities) as well as the constructivist perceptions of international relations (in which relations between states are not shaped by national interests and concern but by the ideas of human security) in order to see how these influenced and plays out in the African framework of a responsibility to protect.

The methodology used is qualitative as the thesis is an empirical study in which both primary and secondary sources have been used as to establish the conditions necessary to analyze the body of the text to answer the research questions specified above.

Since I did not have the necessary space to thoroughly explore all cases of humanitarian interventions, or even the crises that have taken place in Africa since 1990 in which a potential humanitarian intervention option could have been explored, I will instead attempt to describe the overall context and the overarching themes of interests that are relevant to my study.

³ Donnelly, 7

⁴ Amneus, Diana, *Responsibility to Protect by Military Means: Emerging Norms on Humanitarian Intervention?* (Stockholm: US-AB Universitetsservice, 2008), 41

In order to evaluate AU operations as to address my research questions, I will look more closely at two of the more extensive, and terminated, AU mission that have been conducted at present, AMIB and AMIS. The intent is not to go over the entirety of these operations in detail, as they were lengthy operations, but try to comprehensively highlight areas and points of relevance to the thesis.

1.4 Material

I have selected the sources with great care and the intention have been to rely on newly published research when available in order to be as updated as possible in current debates while leaning on relevant primary sources, regardless of age, when applicable.

It should be noted that the interests for humanitarian interventions dwindled after 9/11, and the initiation of the war on terror, as international relations again reverted back to a more realist position. As such, much of the sources relating to the initial discussion regarding humanitarian interventions in international law are from the first half of the late 1990s and early 21st century. It should also be added that the debate over humanitarian interventions largely was transformed into the debate over the responsibility to protect after the initiation of the war on terror. Because ICISS and its collaborators viewed the term humanitarian interventions with suspicion as it carried too much links to interventions that had been labeled humanitarian but only dubiously could be regarded as such. Therefore it was considered that a new term be developed that encompassed the new and evolving notion of humanitarian interventions, culminating in the responsibility to protect.

There is relatively plenty sources available on the topic of AU and its Constitutive Act. But the peace and security structure envisioned in the Act has not fully been implemented. As such, I can only discuss the situation based on current realities while keeping in mind that there is still much work to be done. Therefore much of the operations conducted so far can be regarded as test rounds providing experiences that can be incorporated towards the aim of improving potential

flaws. Still there are some evident conclusions that can be drawn from the study of AU and the operations it has conducted so far.

When it comes to the international law aspect of humanitarian interventions and the responsibility to protect, I have primarily based the analysis around the UN Charter as well as the ICISS report including the regional round-table discussions that followed from that report.

When exploring the African context, I have relied most heavily on various articles published by the African Security Review. Two of the more influential authors to the journal, whose several articles I have used, are Jakkie Cilliers and Kathryn Sturman. While having produced some articles individually, they have also collaborated on most of the articles. Both are very influential researchers that are from, and educated, in Africa. Kathryn Sturman is currently head of the governance of Africa's resources programme⁵ while Jakkie Cilliers was the cofounder for the Institute for Defense Policy which later became the Institute for Security Studies where he has served as executive director for several years.⁶ I therefore judge them as valuable and reliable sources to my thesis.

I have primarily relied on some of the reports published by FOI (Totalförsvarets forskningsinstitut) when exploring the AU capacity for implementing the responsibility to protect regionally. FOI is a Swedish defense research institute that has carried out in-depth analyses of the missions that so far have been undertaken by the AU.

⁵ South African Institute of International Affairs <http://www.saiia.org.za/expertise-directory/kathryn-sturman.html>

⁶ Institute for Security Studies http://www.iss.co.za/show_personnel.php?office=1 retrieved

2 Humanitarian interventions in International law and relations

2.1 What is Humanitarian Interventions?

There is not an agreed upon definition for humanitarian intervention since it is not per se mentioned in the international law framework. The definitions are many in which some have broad scope as to include sanctions, boycotts and other non military interventions that might put pressure on a state to bring to an end the humanitarian crisis⁷ while other approaches are narrower and only focusing on military intervention. There are also variations in the justification for humanitarian interventions ranging from only appeals to ethics and morals, to attempts at enforcing international human rights law. Regardless of the definition and the following justification, the notion of humanitarian interventions is based on a desire to prevent and undermine instances in which large-scale abuses to human life are occurring.

Bertil Dunner explains that justifications for humanitarian interventions usually have its roots in moral and ethical arguments and he believes that “a war is a just war if it is waged in defense of human rights. Humanitarian interventions, is therefore ethically justified in appropriate cases.”⁸ This description appears ambiguous and leaves space for subjective interpretations over what might be regarded as appropriate cases while also assuming that there is a commonly shared and agreed upon notion of what constitutes morals and ethics. At the same time, the universality of human rights is also often called into question as they are accused of having a western bias without all human rights being equally applicable or relevant to all countries and people of the world⁹. Although there are valid objections to the universality of all human rights, I would still argue that there exist fundamental needs that all human beings share and are dependent upon to survive regardless of where in the world you are from which in extension means that being deprived of these would possible lead to create an instance of humanitarian crisis. Striving for the fulfillment of these basic human rights to all people is therefore an aspiration worth maintaining.

⁷ Newman, Michael, *Humanitarian Intervention :Confronting the Contradictions* (London: C. Hurst & Co. Ltd, 2009), 3-4

⁸ Dunnder, Bertil, “Violence for Human Rights”from *The International Journal of Human Rights* 5 (2). (Summer 2001), 49

9

Meijer, Martha, *Dealing With Human Rights: Asian And Western Views On The Value Of Human Rights* (Sterling: Kumarian Press, 2001), introduktion

A more concrete definition is provided by J.L Holzgrefe who states that humanitarian intervention refer to “the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.”¹⁰ What becomes obvious in the definition by Holzger is the fact that it is actors outside of the target state in question, that intervenes without the consent of the government, or ruling fraction, of that state. Such an intervention would thus represent a breach of the traditional concept of state sovereignty. Jennifer M. Welsh establishes that there is not always a tension between state sovereignty and humanitarian interventions present as there have been instances when there have been no acknowledge government that could give consent as was the case in the intervention in Somalia¹¹ or when indirect consent has been given by a government that has realized its inability to prevent ongoing human suffering as was the case in Burundi¹². The above definition by Holzefer is not without its problems and raises questions in regard to what constitutes “widespread and grave violations” but it is represents most widely agreed upon definition of the concept.

2.1.1 Regime change as a humanitarian intervention?

During the Cold War when the containment of communism was the primary aim of all western political incentives, the support for so called “friendly dictators” was the norm. At the time, interventions for regime change was reserved for countries that were aligned with the Soviet Union while there were no moral incentives to spread liberal democracies amongst the friendly dictators that proved usable for western aspirations. The disregard for humanitarian considerations and the fear of what a precedence for politically driven interventions could set became obvious as the French representative Jacques Leprette stated in the Security Council in 1979, in response to the Vietnamese intervention in Cambodia that overthrew the dictatorship of

¹⁰ Holzgrefe, J.L., ”The Humanitarian intervention debate” in J.L Holzgrefe and Robert O. Keohane ed., *Humanitarian Intervention: ethical, legal and political dilemmas* (Cambridge: Cambridge University Press, 2003), 18

¹¹ Welsh, Jennifer M., “Introduction” in Jennifer M. Welsh ed. *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), 3

¹² Powell, Kristina, *The African Unions Emerging Peace and Security Regime: Opportunities and Challenges for Delivering on the Responsibility to Protect* (Pretoria:Institute for Security Studies, 2005), 4

Pol Pot and the Khmer Rouge,¹³ that “the idea that the existence of a detestable regime justifies foreign intervention and legitimizes its forcible overthrow is extremely dangerous [since] in the long run it would endanger the very existence of an international order by making the survival of every regime dependent on its neighbor’s judgment.”¹⁴ Yet 20 years later the Cold War had ended, Francis Fukuyama declared the end of history and immediately the rules of the international game appeared to be different. As such, humanitarian concerns appeared to take the fore. Friendly dictators had served their purpose and now represented a thing of the past that in the new order were eligible to be subjects of regime change often based on ambiguous calls for humanitarian justifications as was the case with the US intervention in Iraq 2003.

Interventions to protect democracy are starting to become more common but debates flair about whether or not they can be perceived and labeled as humanitarian interventions. One of the prominent arguments for intervention in both Kosovo and Haiti was the need to protect democracy. Cornish states that NATO, after the fall of the Soviet Union, has adopted maintaining the democratic order in the area as one of its main goals. The Alliance clearly indicated in response to Kosovo that it will “defend the basic values of the Atlantic community: liberty, democracy, human rights and the rule of law.”¹⁵ At the same time as democracy and freedom is starting to become integrated in the aims of humanitarian interventions, as is the case with Iraqi Freedom from 2003, most legal scholars have agreed and established that armed intervention to protect human rights should interfere as little as possible with the independence and social structure of the targeted country. This is outlined by Terry who states that interventions are to have “minimal effect on authority structures, minimal interference with self-determination.”¹⁶ This would indicate that intervention on behalf of instituting or protecting democracy is unlawful. Those that justify interventions that are undertaken with the purpose to cause regime change for the consequent spread of liberal democracy as humanitarian interventions¹⁷ are usually adherers to the premise developed by Kant in *Perpetual Peace* that liberal states do not fight wars against

¹³ Ibid., 22-24

¹⁴ Ibid., 33

¹⁵ Cornish, Paul, “Kosovo: Moral War or Moral Hazard?” from *Defense Studies* 1 (2). (Summer 2002): 111

¹⁶ Terry, James, “Rethinking Humanitarian Intervention After Kosovo: Legal Reality and Political Pragmatism” from *The Army Lawyer* (August 2004): 40

¹⁷ Rawls, John, *The Law of peoples: With “the Idea of Public Reason Revisited”* (United States: First Harvard University Press, 2002), 64-67

one another¹⁸. The logic that follows is that the more states that adopt a liberal democracy, the fewer instances there will be where large scale human suffering will occur. I believe that interventions for humanitarian reasons should not be blurred with interventions that are undertaken with primarily political incentives. This does not mean that I do not support democratization as a potential peace-making approach in the rebuilding and structuring of post conflict societies, but that the allowance of interventions for the purpose of regime change might set a dangerous precedence in which military interventions are undertaken without humanitarian consideration which by definition would exclude them from being humanitarian. One of the many criticisms of humanitarian interventions is that they represent imperial endeavors carried out by the powerful states against weaker states¹⁹. A definition of humanitarian intervention that accept the notion of regime change would than possibly serve to further enhance the belief that humanitarian interventions represent imperial aspirations and implications as the more powerful nations exercise their military superiority against weaker states with the aim to influence their domestic political situation.

Although there are instances in which regime change might be the only way to end the widespread and grave violations of human rights, such as when Tanzanian forces entered Uganda and overthrew the dictator Idi Amin,²⁰ regime change for the sake of installing democratic governments can understandably be interpreted as imperial meddling especially if no humanitarian crisis is present.

2.1.2 What are the criteria for humanitarian interventions?

Most people agree that since genocide is prohibited under humanitarian law, this is one instance in which it might be justifiable for armed intervention. Frederik Harhoff establishes in his article that some of the preconditions for humanitarian intervention are that there is a “massive, or large-scale, and outrageous violation of international humanitarian standards committed against civilians during an internal conflict in a state.”²¹ Wheeler also explains that it is desirable to

¹⁸ Newman, 123

¹⁹ Pilger, John “‘Humanitarian intervention’ is the Latest Brand Name for Imperialism as it Begins a Return to Respectability” from *NewStatesman* (June 1999): 1

²⁰ Newman, 33-35

²¹ Harhoff, Frederik, “Unauthorized Humanitarian Interventions-Armed Violence in the Name of Humanity?” from *Nordic Journal of International Law* (2001), 71

ensure that the vast majority of the international community supports such an intervention in order to gather support instead of opposition to the intervention which may lead to condemnation of the operation.²² Apart from this premise regarding genocide, which has universal recognition under customary law, most lawyers agree that interventions need to be based on attaining justice, and not political aspirations. Terry points out that nations involved in the intervention can only “target humanitarian abuses, addressing other political objectives or interests take an intervention out of the humanitarian category.”²³ As the UN Charter clearly tries to limit the use of force, Terry also concludes that rules connected to the just war theory, especially the rule of proportionality, applies to humanitarian interventions as well.²⁴ This means that the minimal amount of force needed should be employed to prevent further abuse. This will also limit the amount of damage inflicted to the infrastructure and the economy of the country which might have devastating effects for the future of the state.

One of the most important criterions according to Harhoff is that armed intervention only takes place as a last resort after diplomacy and political attempts to bring the abuses to an end by peaceful means have failed.²⁵ This means that the state is either unable or unwilling to end the abuses by themselves and which would make foreign involvement necessary. This would make the intervention truly humanitarian as the aim is to end abuses. If, on the other hand, a state act in either self-defense or on the request by the state in which there are violations, it would seem that the intervention moves from the realm of being motivated by humanitarian desires and into a more political sphere motivated by state-interests. Harhoff concludes that “the prominence of political or political aims behind an armed intervention is likely to disqualify the action from being labeled a humanitarian intervention if the humanitarian purpose is either absent or only rudimentary.”²⁶

What becomes apparent from all these criterions is that there are instances, specifically regarding the weakening of state sovereignty in which humanitarian interventions is justifiable. If the state is unable to end violations and chose to invite outside forces to intervene, the international

²² Wheeler, Nicholas. “Decision-Making Rules and Procedures for Humanitarian Intervention” from *The International Journal of Human Rights* 6 (1). (Spring 2002), 127

²³ Terry, 37

²⁴ Ibid., 37

²⁵ Harhoff, 71

²⁶ Ibid., 71

community have a responsibility to act in order to protect human rights and restore peace and stability to the area. This makes the intervention in Somalia more legitimate than the interventions in Haiti or Kosovo, as Somalia was a failed state without a government that had the capabilities to address the widespread abuses taking place inside its borders. This establishes that the international community had an obligation to act in the case of Somalia.

2.2 Theoretical background on humanitarian interventions and the R2P in international law

International law lawyers, as well as individual states and actors, all view the legality of humanitarian interventions differently and use a different set of laws to support their claims. What becomes interesting is that the proponents and opponents to humanitarian interventions and R2P largely use the same set of statutes and articles to support their respective arguments. Henry Carey points out in his article, "Naturalism vs. Positivism: Debates over Coercive Protection of Human Rights in Haiti, Bosnia and Kosovo" that all groups draw support for their perspectives from the UN Charter and sometimes the same article is used but interpreted in different ways²⁷ (25-26). While there used to be arguments either for or against these interventions, there are today a movement recognizing that although the legality of humanitarian intervention is ambiguous, there should be a framework created that allows the international community to deal with situations in which humanitarian interventions are needed and justified. This group of people realizes that although the use of force needs to be limited, the protection of human rights and the elimination of gross violations of humanitarian law, should be addressed at all cost, and even justifies the use of violent means. There are three predominant philosophies in regard to humanitarian interventions: Positivists, Naturalists and Pragmatists and each group needs to be addressed in order to evaluate their arguments.

²⁷ Carey, Henry, "U.S. Domestic Politics and the Emerging Humanitarian Intervention Policy: Haiti, Bosnia, and Kosovo" from *World Affairs* 164 (2). (Fall 2001), 25-26

2.2.1 Positivists

Positivists argue that legal rules and consent among states is what creates the basis for international law, and these are to be found in treaties. Therefore, “the UN Charter should be treated as a constitution that establishes the primary rules and the secondary rules based on them that establishes particular policies and principles including, but not requiring, concepts of justice and other issues of substance.”²⁸ Because of this, the positivists do not think that treaties can be loosely interpreted. Also, customary law is not something that can be altered by states without having been observed to be followed by the vast majority of state practices since such practices and interpretations undermines international law and threatens its existence. Since laws are more important than the interpretations of them, “consent for actions against prevailing interpretations of legal doctrines must be unambiguous for law to deviate from claimed fundamental principles.”²⁹ This also means that to positivists, treaties and written rules is of more importance than customary practices of states. Still it is concluded that “whenever there is doubt about the existence of customary law, positivists give the benefit of the doubt to establish rules based on actual experience, rather than abstract principles, policies or prerogatives.”³⁰

Positivists view treaties, and especially the UN Charter, as most important in the creation and interpretation of international law. They agree that the viability of use of force is severely limited as the purpose of the Charter is to ensure that use of violence is minimized. As such, they agree that there are no international laws in existence today that legitimizes humanitarian interventions. They even conclude that there is no mention of, or even rules applicable, to a concept such as humanitarian interventions. Carey outlines three UN Charter articles that are most widely cited to establish the illegality of humanitarian interventions:

Article 39 of Charter VIIⁱⁱ outlines in which situations member states to the UN can use coercion or when the UN SC can sanction such involvements to restore peace, or prevent aggression. The article deals with aggression between states, and does not mention situations in which a country is targeting its own citizens. Therefore, positivists conclude that the article does not apply to humanitarian interventions.

²⁸ Ibid., 37

²⁹ Ibid., 38

³⁰ Ibid., 40

Positivists also argue that unilateral interventions are illegal if they have not been warranted by the SC, or if the involvement is not an immediate response to an armed attack which threatens the security of the country which would allow for response under article 51 of the UN Charter since it would be an act of self-defense. Article 2 paragraph 4 specifically establishes that use of force, or even threat of force, cannot be used against the territorial integrity of a state, political independence of a state, or in a manner inconsistent with the UN framework. Therefore, humanitarian interventions, even if consented to by the SC, constitutes a violation of state sovereignty.

The positivists also disregard the argument that in cases in which the SC is unable to act due to deadlocks created by vetoes, member states or regional organizations would have the right to act independent of the SC, as was the case of the NATO led intervention in Kosovo. Article 53 of the UN Charter regulates regional organizations ability to undertake interventions and also needs to be authorization by the SC.³¹ The Charter was created with the aim to suppress aggression, and even though respect for human rights is expressed in article 1 paragraph 3,ⁱⁱⁱ there is no mentioning of humanitarian interventions in the UN Charter.³²

The positivists recognize humanitarian interventions as illegal in international law but it does not mean that they do not think that human rights violations need to be prosecuted. They believe that the correct approach to dealing with human rights abuses is through less coercive means, by universal condemnation of the violating state alongside economic sanctions, embargoes and extended involvement by NGOs in order to record abuses. Most positivists agree that more firm actions needs to be taken in regard to mass killings labeled as genocide, which has *jus cogens* in international law, and allows for more decisive involvement by the international community. *Jus cogens* represents and includes “the international legal norms that override all other rules in international law, including treaties.”³³

³¹ Carey, 38-39

³² Carey, 40

³³ Newman, 16

2.2.2 Naturalists

Most naturalists think that achieving justice should be the basis, and aim, of international law. They believe that literal interpretation of law documents is less relevant than what could be achieved if laws were interpreted to apply to a situation. Treaties are used to establish guidelines for interpretations, but naturalists are less concerned with the actual analysis of the texts themselves. This also means that consequences of an action is more important than intent, which means that if there is a situation in which human rights are being abused, it is less important who or how interventions are undertaken, and more important that the violations are ended. Because of this, Carey points out that the naturalists, unlike the positivists, think that in situations in which the SC cannot reach an agreement for actions, articles that restrict regional organizations or member states rights to get involved can be ignored in order to save lives.³⁴ They support this argument with the reasoning that there are numerous other articles to be found in the UN Charter, like article 1 paragraph 3, which promotes the protection of human rights.

While positivists want to keep law treaties separate from political interests to the greatest extent possible, law documents often receive a political interpretation by naturalists as justice is perceived in less of a legal sense and instead in a more political sense. This becomes apparent to Carey as he points out that “they [naturalists] flexibly interpret the UN Charter as a constitution, on the basis of principles or policies, not rigid adherence to rules.”³⁵ Since the Charter cannot possibly anticipate circumstances and developments in the international community, it is desirable for naturalists that laws can be interpreted less rigid so it can apply to newly developed situations.

Another support for humanitarian interventions by naturalists, is the argument that human rights abuses is an act of aggression and might very well constitute a threat to peace. The UN Charter establishes that such threats need to be addressed. Carey also argues that the articles used by positivists to establish the illegality of humanitarian interventions, article 2 paragraph 4, article 39 and 53, does not really address humanitarian interventions as they are not mentioned specifically in these articles. While it is pointed out in other UN articles, the need to protect human rights.³⁶ It

³⁴ Ibid., 41

³⁵ Ibid., 41

³⁶ Ibid., 43

becomes evident that while positivist wants to protect international law and order by preventing states and organizations to act outside the legal framework, naturalists are more concerned with results and evaluate the efficiency of international law in terms of consequences of the interventions.

2.2.3 Pragmatists

The pragmatists are less involved in the discussion about the legality or illegality of humanitarian interventions. They are more concerned with the development of a framework that will establish when, and how, humanitarian interventions can be used as they see a great need for such legislation. In the article “Rethinking Humanitarian Intervention After Kosovo: Legal Reality and Political Pragmatism” it is stated that “the international system, having identified contemporary human values, has adopted and declared them to be fundamental law. That law is not based on consent; at least it does not honor or accept dissent, and it binds particular states regardless of their objection.”³⁷ It is the infringement and violation of state sovereignty that is at the heart of the discussion of humanitarian interventions. Sovereignty has usually been the focus for the establishment of international law but this is starting to change due to the interdependence created by globalization. This has largely created a development led by groups of nations and actors that wants to establish rules for interventions in internal affairs of other states to protect world peace.

Most proponents of the establishment of new legislation for humanitarian interventions regard the UN Charter as outdated and in the need of revision. They also recognize that the SC is not the right institution in which a decision about humanitarian interventions should be taken, as it is subject to too many restrictions and frictions between the member states making it inefficient in its decision making. Terry points out that pragmatic legal scholars that want to incorporate humanitarian interventions think that a “significant credibility gap exists between a strict noninterventionist policy and fulfillment of the principles of the U.N Charter.”³⁸ He further explains that these scholars recognize that the Charter has two aims being: maintaining peace and

³⁷ Terry, 36

³⁸ Ibid., 38

protecting human rights. They point to article 2 paragraph 4, in which both principles is addressed as it prohibits the use of force and actions “that in any other manner is inconsistency with the purpose of the United Nations.”³⁹ This last part is interpreted to refer to the violation of human right norms. Pragmatists see a need for humanitarian interventions since they are not adequately addressed in international law at this time. They view it desirable to establish, not just criterion for when to intervene, but also to make decision-making regarding such interventions, legitimate and transparent. To do so Nicholas Wheeler argues in his article “Decision-Making Rules and Procedures for Humanitarian Intervention” that “the existing mechanisms of SC authorization is lacking credentials” and therefore legal scholars like Mohammed Ayoub “proposes to rectify this deficiency by creating a Humanitarian Council which would be more representative of the UN membership.”⁴⁰ No such council exist at the moment, and that there is no guarantee that the establishment of such an institution would be able to deal with the matters of humanitarian interventions any more successfully than the already existing international institutions. Since the matter at heart has to do with sovereignty and use of force, it will be equally problematic regardless which institution that makes the final decisions on the issue.

It is also based on this article that the pragmatists conclude, just like the naturalists did, that it is justified for regional institutions and member states to intervene to protect the vision of the UN Charter if the SC proves unable to act. Here they also refers to the “fifty-four member UN Economic and Social Council, established in article 61 and addressed in articles 61-72,^{iv} provides the means to address the humanitarian objectives set forth in articles 55-60^v and to make recommendations to the General Assembly or to the SC for actions.”⁴¹

Pragmatists argue that if every mean possible has been exhausted by the UN and its member states in accordance with its Charter, other methods needs and should be used to end human rights abuses. If sanctions and embargoes prove inefficient, another approach should be taken, and if aggression is the only viable method that remains, it needs to be used even though it constitutes a risk to international order since gross human rights abuses also present a risk to international peace and order.

³⁹ Ibid., 38

⁴⁰ Wheeler, 127

⁴¹ Terry, 39

2.3 Humanitarian Intervention and the R2P in relation to state sovereignty

The infringement on state sovereignty, and the possible abuse of a legal framework that accept interventions on behalf of human rights protection, are the core issues causing discussions in regard to humanitarian intervention alongside considerations regarding what can be interpreted as appropriate use of force.

State sovereignty and its prominence in international relations is believed to originate from the Peace of Westphalia in 1648 which laid the basis for the creation, and aspiration, of the modern nation-state. Max Weber defined the modern state as “a compulsory political association with continuous organization whose administrative staff successfully upholds a claim to the monopoly of the legitimate use of force in enforcement of its order within a given territorial unit.”⁴² There are two different types of sovereignty: internal and external. Internal sovereignty indicates the supreme authority within a territory and its population while external sovereignty deals with the right to independence from outside authority⁴³. This appears to mean that a state has the right to do as it please inside the borders of its own state without fearing outside involvement and thus would indicate that interventions even for the sake of humanitarian concerns would not be acceptable.

Sovereignty is recognized as one of the most important pillars in international law and numerous documents, like the UN Charter, outline strict restrictions against the violation of a state’s sovereignty. For instance the UN Charter article 2 paragraph 4 states that “All members should refrain in their international relations from the threat of use of force against the territorial integrity or political independence of any state.”⁴⁴

International law was from the beginning created around the notion that the governments of states should have the right to create laws and policies that protect their citizens against outside aggression. Mednicoff asserts that “if maintaining state sovereignty remains the prime directive of the international legal system, the current legal ambiguity regarding state-led humanitarian

⁴² Winterbourne, Ava ”The New International System” in *Erosion of State Sovereignty* (May 2007):1

⁴³ Winterbourne, 1

⁴⁴ Evans, Malcolm D. *International Law Documents 7th Edition* (New York: Oxford University Press, 2006), 9

intervention could legitimize abusive state self-interested military action as well as preventing humanitarian disasters.”⁴⁵ The statement indicates the fear that international order rests on the principle of state sovereignty and that if this principle is allowed to erode, international order will likewise falter and a scenario might arise in which there is no clear regulation for between state aggression.

2.3.1 Scope of sovereignty in Africa

While sovereignty as a concept is known to be distinctly a western creation, some of the most adamant supporters of the protection of state sovereignty today are representatives of the non-western world. Professor Mohammed Ayoob does not only see humanitarian interventions as “the greatest challenge to international society” but as a “contemporary revival of imperialism.”⁴⁶ Humanitarian interventions are often accused of serving imperialist aims and proponents of this view are therefore not inclined to support interventions by powerful states in developing nations even on humanitarian claims.

James Mayall describes in the article “Humanitarian Intervention and International Society: Lessons from Africa” how African states after independence came together to protect an international order based around the conception of a “society of sovereign states”⁴⁷. With this followed the creation of the Organization for African Unity (OAU) in 1963 with which it was attempted to undermine interventions from external forces by establishing a charter for the organization that supported territorial integrity along with the policy of non-interference in the internal affairs of a member state.⁴⁸ The majority of African leaders was immediately after independence highly suspicious of all attempts at foreign intervention and therefore hoped that the establishment of the Organization for African Unity would strengthen pan-African unison. The OAU could then serve as a venue in which obstacles facing members of the organization could be handled as well as to fend off non-African meddlers. The general disposition of the

⁴⁵ Mednicoff, David. “Humane wars? International Law, Just War Theory and Contemporary Armed Humanitarian Intervention” from *Association for the Study of Law, Culture and the Humanities* (2006): 376

⁴⁶ Welsh, “Taking Consequences Seriously: Objections to Humanitarian Intervention” in Jennifer M. Welsh ed., *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), 65

⁴⁷ James Mayall “Humanitarian Intervention and International Society: Lessons from Africa” in Jennifer M. Welsh ed., *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), 120

⁴⁸ Mayall, 120-122

OAU as unwilling to get involved in the domestic affairs of its members was maintained even though several African countries experienced extreme internal disorder, arguably as a consequence of the legacies derived from the colonial experience such as artificial borders and regimes trying to rule through foreign political institutions and systems that lacked indigenous legitimacy and appeal. Jakkie Cilliers and Kathryn Sturman explains that state sovereignty, as envisioned by the UN charter article 4(1),^{vi} assume that each state has the ability and competence to preside over its territory whereas many African states in reality does not have this capability. Therefore the authors conclude that for those African states “sovereignty is a legal fiction that is not matched by governance and administrative capacity.”⁴⁹ Arguably, it is this inability to apply effective control and administration over its territories that have further enhanced the human security problems and prompted the ongoing conflicts that some African nations are subject to. It is also as a response to these problems that supporters of intervention have argued for the need for involvement by international actors. As such, if effective sovereignty existed in these states, intervention might not have been necessary. The statement seems obvious but I would suggest that sovereignty then would appear to prerequisite economic capacities and resources that many of the African states, along with several other developing states around the world, does not have. Are they then not eligible for a claim to sovereignty and if that is the case then how should these territories be administered? Or would it constitute an argument for the need to institute a system that governs the continuous interventions required to aid these states in administrating their territories? These are questions that I will be unable to address in this paper but the conclusion of Cilliers and Sturman is thought provoking as it would imply that there are several states in existence today that should not be endowed with sovereignty.

Regardless of, or possibly due to, the inability of some states to live up to the criteria that would grant them unchallenged sovereignty, the OAU member states valiantly tried to uphold a system that protected their territorial integrity. Even in the face of such grave violations of human rights, as was carried out by the Amin regime in Uganda, the Organization stood by the policy of non-intervention instead seeking a resolution to the crisis by mediation.⁵⁰ Julius Nyerere frustrated by both the lack of progress in the mediations and his efforts to expand the scoop of the charter in

⁴⁹ Cillier, Jakkie and Kathryn Sturman, “The right intervention” from *African Security Review* 11(3) (2002): 2

⁵⁰ Newman, 34-35

relation to massive violations concluded that “An African leader, so long as he is African, can kill Africans just as he pleases, and you cannot say anything. If Amin was white, we would have passed many resolutions against him. But he is black, and blackness is a licence to kill Africans”.⁵¹ The statement highlights the problematic approach of the OAU members to remain passive towards abuses carried out by another member state on the sole basis that the regime is African and as such skewing the meaning of African unity as to imply protection for repressive regimes. The disposition of the OAU and its members was without a doubt partly a result of previous experiences with exploitative outside involvement on the continent. Therefore, it can be insinuated that the fear of foreign intervention has served to maintain the importance and prominence of state sovereignty in Africa, as evident by the OAU system, although it arguably have allowed for the continued abuse of populations at the hands of regimes that were unwilling, or weak regimes that were unable, to prevent ongoing suffering. But can it really be that a state can do as it please inside its territorial borders? Could sovereignty not arguably be said to originate from subjects of the states to which the leaders therefore hold duties to maintain domestic order?

2.3.2 Erosion of state sovereignty?

Many authors have made a case for the erosion of state sovereignty in this era of globalization in which individual state borders appears to, in many respects, lose its importance. Globalization is defined as “the process whereby state-centric agencies and terms of reference are dissolved in favor of a structure of relations between different actors operating in a context which is truly global rather than merely inter-national”⁵² International organizations along with regional organizations such as the European Union is slowly starting to blur states claim to sovereignty as individual state rights are given up as power instead is ceded to supranational institutions as a means to be included and take part of potential benefits extended to members of these organizations of states.

⁵¹ Ibid, 35

⁵² Winterbaoum, 2-3

At the same time, the case for a new type of sovereignty has come into being in the quest for development of human rights known as conditional sovereignty. Conditional sovereignty means that “a state forfeits its claims of sovereignty if it fails to treat its citizens according to international standards of decency.”⁵³ This indicates that a states internal sovereignty is not supreme but originates from its subjects to which it has a duty to uphold domestic relations if it wants to maintain its external sovereignty intact.

There are also limits set on sovereignty by international legal frameworks and the International Criminal Court which seek to protect the individual against predatory states and aspires to reign superior to the laws and courts of any given state. There are legal frameworks that can be invoked to support interventions on humanitarian basis. For instance, the Convention on the Prevention and Punishment of the Crime of Genocide are ratified by most states of the world.⁵⁴ The first article of the convention states that “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”⁵⁵ Genocide, along with such crimes as slavery, war crimes, crimes against humanity and torture, are said to have universal jurisdiction meaning that these crimes are so horrendous that they pose a threat to human kind as a whole. In this respect, a state is both able and obliged to take action regardless of where in the world the crime was perpetrated or what nationality the perpetrator has.⁵⁶ The article clearly outlines that actions should be taken to prevent genocide but unfortunately, like most international law documents, there is very little reference to how to implement enforcement of the law.⁵⁷ Stephen Macedo likewise concludes that “there are no clear principles of international law to help guide the use of universal jurisdiction and to help thoughtful observers decide when its use is justified.”⁵⁸ It appears that the creation of these frameworks along with the establishment of universal jurisdiction outlines the desire based on which a universal morality is hoped to evolve. But the reality is that it still, by and large, comes to represent idealistic aspirations that lack enforcement qualities and as such often become

⁵³ Ibid, 3

⁵⁴ Shue, Henry, “Limiting Sovereignty” in Jennifer M. Welsh ed., *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), 18-19

⁵⁵ Convention on the Prevention and Punishment of the Crime of Genocide *Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948*. <http://www.hrweb.org/legal/genocide.html>

⁵⁶ Macedo, Stephen, “Introduction” in Stephen Macedo ed., *Universal Jurisdiction: National Courts and the Prosecution of Serious Crimes under International Law* (Philadelphia: University of Pennsylvania Press, 2006) , 4

⁵⁷ Shue, 19

⁵⁸ Macedo, 4

mute documents that are unable to implement. In order to retain as many ratifications as possible the phrasing of the convention leaves many loopholes for states that might breach the law or states that are unwilling to commit resources for the implementation of the law. It should also be kept in mind that only individuals in states which have agreed to and ratified these international laws and the creation of ICC can exercise these international rights, if they do not have universal jurisdiction. And as such it can be concluded that although traditional sovereignty undeniably is challenged, it has far from lost its importance as it still is the state that serve as the crucial unit of authority in most international relation matters.

2.4 The legitimate use of force in international law

What makes the concept of humanitarian interventions even more controversial is the notion of protecting and halting violence by the use of military means. This in itself appears to represent an oxymoron. Traditionally it is generally accepted that there are very few instances that warrants the use of force, especially unilateral armed intervention. The UN Charter outlines two exceptions to the prohibition of the use of force: the first one being article 51^{vii} in which force can be accepted if it is undertaken in self-defense and article 39 paragraph 42^{viii} which legitimize force authorized by the UN SC. Even though these two are the most cited and used articles to legitimize humanitarian interventions, the UN Charter have to be stretched and interpreted loosely in order for humanitarian interventions to be acceptable under the article dealing with self-defense. At the same time, the SC authorization of armed intervention in order to stop such human rights violations as genocide, is more acceptable as it is recognized as a violation to international customary law and has universal precedence. It should be recognized that the constellation of the SC have made it harder for it to act as the five constant members seldom come to a conclusive agreement for action. In the article "Humane Wars? International Law, Just War Theory and Contemporary Armed humanitarian Intervention" it is pointed out that since the end of the Cold War there have been more instances in which the SC have been able to cohesively cooperate. This have not been the case in regard to armed interventions on the premise of human rights as the breach of sovereignty have become a disputed issue creating splits in the decision-making.⁵⁹ Some even argue that if the SC is unable to handle human rights emergencies

⁵⁹ Mednicoff, 373-74

due to situations in which the Council fail to reach an agreement, “humanitarian intervention by a group of concerned states becomes critical to upholding the UN Charter principles.”⁶⁰ This is an argument that creates even more problems as there are no agreed criteria for when and how an intervention is to be undertaken, and might come to represent further threats to states sovereignty. This highlights that even though there might be an agreed upon notion of what humanitarian intervention is, there is still disputes over the criteria and framework that would legitimize armed interventions aimed to end human rights abuses.

2.5 Challenges to Humanitarian Interventions

Another problem in regard to humanitarian interventions has to do with the long-term goals. The humane interventions that have been carried out in the last couple of years have also created questions regarding the sufficiency of force to settle problems. Even though interventions might have ended human rights abuses, they seem to have done little to prevent future abuses. The intervention in Kosovo 1999 ended the ethnic cleansing of Kosovo Albanians performed by Serbs, but it brought widespread devastation and destruction. It can also arguably be questioned if root problems have been addressed as to eradicate the potential for future violence. Was the genocide in Rwanda purely spurred by ethnic tensions or did ethnic tensions come to the fore due to problems of poverty and resource deprivation which posed a threat to the survival of the entire population regardless of ethnic affiliation? As a result, questions have been raised regarding the success of these interventions and to which extent problems were really solved. John Clarke points out in his article “Revisiting the New Interventionism” that humanitarian interventions should be part of a more holistic approach to interventions that does not just end with the armed intervention, but tries to ensure that disputes will be settled, and not just ended. “The short-term imperatives of military intervention and the provision of assistance must support the long-term settlement of the crisis, including economic development and security.”⁶¹ This mean that the immediate establishment of peace have to be protected by ensuring that conflicts will receive enough attention to be solved so that peace will be maintained in the future when armed forces

⁶⁰ Terry, 38

⁶¹ Clark, John, “Revisiting the New Interventionism” from *Journal of Humanitarian Assistance* (September 2001):94

have withdrawn. The statement above also points out that incentives for further development also have to be facilitated.

Also, looking at the states in which humanitarian interventions have been carried out in the recent years it can be concluded that most of them would fall in the categories of failed states (Somalia), and what usually is called weak states (Sierra Leone, Liberia, DRC, Rwanda, Darfur) indicating that most of these states are amongst the poorer in the world⁶². As such, the destruction caused by the intervention itself should not become a challenge to the economic situation and development of the country that was the target of intervention, which undoubtedly will make governance and stability harder to achieve for the government of the country in question.

At the same time, conditions of poverty, structural violence by predatory states, unemployment and resource scarcity are aspects that threaten human existence on a daily basis in some of these countries and might very well serve as a trigger for new situations of violence. These root causes for instability must be addressed if serious action is to be taken against human rights abuses. Right to life, shelter and food are all part of basic fundamental rights which are violated in many countries throughout the world spurring emergencies that cannot be addressed with military intervention alone. These conditions will cause future humanitarian crises if not properly dealt with and intervention to halt an already ongoing crisis will not be sufficient. Instead preventive approaches should be attempted to eradicate these root causes.

2.6 Possible consequences of a new customary law and its challenges

While it is hard to determine when humanitarian interventions are admissible, it is easy to conclude that they pose a wide variety of challenges to international law that reaches beyond infringement of national sovereignty. They may be used in an abusive way by powerful states that have the military power and technology to undertake such endeavors. It has also been argued that it already has been accepted as customary law as there have been so many interventions labeled humanitarian since the end of the Cold War. What sort of precedence would vaguely defined humanitarian interventions set?

⁶² Soderlund, Walter et al. *Humanitarian Crises and Intervention: Reassessing the Impact of Mass Media* (Sterling: Kumarian Press, 2008), 4

Many of the humanitarian interventions undertaken the last couple of years have not been warranted by the SC. If this trend persists the fear is that it will result in the loss of international order and law if new institutions are not created to validate such interventions, while the SC and the UN will start to lose its influence over international order as its laws are frequently disregarded by individual states. Alex Bellamy points out in his article “Power, Rules and Argument: New Approaches to Humanitarian Intervention” that “codifying a legitimate humanitarian exception to the ban on force would prompt states to use humanitarian justifications for military acts that were in fact designed to secure their narrow national interests.”⁶³ This is something that many already argue has become the case since the start of operation Iraqi Freedom in 2003 in which US intervened militarily in Iraq on vague notions of humanitarianism and morality.

The fear of power abuse becomes more legitimate when regarded in a bigger perspective of selectiveness of interventions. It cannot be dismissed that there was no incentives from the international community to intervene to end the atrocities being committed in Rwanda in 1994 while US intervened the same year in Haiti under the guise of humanitarian intervention. This indicates that the international order is still driven by states national interest and as pointed out by John Janzekovic “even if a nations interests is directly at stake interventions will be highly selective and will cease immediately the primary imperative for intervention is removed.”⁶⁴ Another problem with the humanitarian interventions is that they are not always based on, or justified, by international laws but are most often an appeal to public morality. At the Maputo Roundtable discussion representatives concluded that “the application of the terminology restricts the debate on intervention in the sense that it creates the impression that if it is humanitarian, then it is automatically good.”⁶⁵ The appeal to morality constitutes a challenge as it makes one side good and the other evil, and may have the affect of desensitizing the public to the treatment of the actor representing the “evil” side. This division can be clearly observed in the Kosovo conflict

⁶³ Bellamy, Alex. “Power, Rules and Arguments: New Approaches to Humanitarian Intervention” from *Australian Journal of International Affairs* 57 (3). (November 2003):503

⁶⁴ Janzekovic, John. “Humanitarian Intervention” from *Social Alternatives* 24 (3). (Third Quarter 2005): 3

⁶⁵ ICISS, International Commission on Intervention and State Sovereignty. *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), 362-63

where 500 Serbs were killed. While some regard this a mass murder, Matti Koskenniemi points out that most people regarded the 500 deaths as a necessary sacrifice in order to bring peace to the Balkans and to protect human rights and order.⁶⁶ Appeals to morality also constitute a problem when it comes to the creation of a new legal framework as not all nations of the world not necessarily accept humanitarian claims that are based on Western notions of morality.

The argument that humanitarian interventions are part of international customary law is highly debatable as most states still only agrees to interventions if the abuse is labeled as genocide. At the same time, the intervening powers are most often developed nations as they have the means necessary to get involved in the affairs of another state. Less developed states does not have the possibility to undertake such interventions. Koskenniemi concludes that it is far more likely to see American intervention in places like Iraq or Somalia than it would be to see a third world nation intervene in a developed nation.⁶⁷ Due to this it can be argued that if customary law is created through state practices, the people who consider humanitarian interventions to be part of international law only look towards the practices of a handful of nations, especially UK and U.S., to determine that humanitarian interventions is a frequent enough phenomenon to be included in customary international law. This indicates that just like international law was driven by Eurocentrism in the early 1900s, it is today driven by Americanism and the will of Western states.

⁶⁶ Koskenniemi, Martti. "The Lady Doth Protest Too Much' Kosovo, and the Turn to Ethics in International Law" from *The Modern Law Review* 65 (2). (March 2002): 164

⁶⁷ Koskenniemi, 165

3 Humanitarian interventions and the evolution of the responsibility to protect

3.1 The failure of humanitarian interventions in Africa

The 1990s, as has been established previously in this paper, represented a clear paradigm shift in international relations. Newman describes how “between the Second World War and 1989 the dominant normative assumption had been in line with the mainstream interpretation of international law – that coercive intervention was incompatible with state sovereignty and therefore illegitimate.”⁶⁸ Newman goes on to establish that because of the restrictions connected to the Cold War politics there was no ability to justify an intervention even on humanitarian grounds.⁶⁹ Since the bipolar international climate was one of extreme suspicion regarding the intentions underlying any actions undertaken by the US and the Soviet Union, as well as their respective allies, there was therefore little room to address humanitarian emergencies.

The Cold War climate severely limited the ability of the UN SC to operate. This often left decisions pending or deadlocked as the two superpowers frequently were in opposition which strained the resolution process of the council. But with the fall of the Soviet Union, a unipolar system developed in which the US, at least temporarily, could act as the uncontested hegemon. Stephan Maninger even concludes that “with the US holding its position as the last remaining superpower, interventions in the 1990s largely reflected the realities of a monopolar world system, with US political will being pivotal to what constitutes 'Western interventions'.”⁷⁰ Although the statement is appealing, I would still argue that the view is somewhat simplistic and only serves to further marginalize the importance and influence that should be accorded the interventionist commitments dominating in several states in the wider international community. The developments following the end of the Cold War undoubtedly spurred the emergence of a new paradigm, a paradigm in which democracy and respect for human rights were to be central. The transformation of politics becomes evident for instance if looking at the peacekeeping spending of the UN. In 1988 the peacekeeping spending was US\$266 million, this was a figure that had

⁶⁸Newman, 38

⁶⁹Ibid., 38

⁷⁰Maninger, Stephan, “Heart of Darkness: Western Policy of Non-Interventionism in Africa” from *African Security Review* 8(6) (1999): 7

increased to US\$3.1 billion by 1993.⁷¹ The numbers clearly indicates the ability of the UN to create a consensus around the decisions to get involved. In that spirit, the beginning of the 1990s represented an era of increased optimism and transformation which in turn lead to a revived interventionism that received considerable widespread international support. But even though interventionism was the name of the game, and these often were justified on humanitarian basis, I would argue that the normative shift of the post-Cold War era still had done little to change the realist practices in international relations. State interest still came to prevail over humanitarian interests as becomes evident by the selectiveness displayed by the international community in regard to which conflicts that received attention and as such were subjected to humanitarian interventions. I will briefly look at and discuss some of the interventions, or lack of interventions, relating to the African continent.

It is valuable to attempt to establish the African context in the post-Cold War era. Many African states had been proxies to one of the superpowers during the Cold War serving as valuable allies as well as providing strategically advantages that would serve to tip the scale in favor of one of the two competing ideologies. This meant that the end of the Cold War diminished the importance of these former proxies in international relations leading to the loss of revenues generated by the affiliation to a superpower.⁷² The Soviet Union fell, leaving its allies to fend for itself, while the US withdrew its attention from their former proxies as they no longer served a purpose to their national interest. This left a fair share of African states without, or greatly decreased, international support and aid which they had enjoyed during the Cold War. Many already weak states became even more exposed and vulnerable, increasing the likelihood for conflicts and eruption of humanitarian crises. In the article “Heart of Darkness” it is pointed out that the situation following the end of the Cold War left the African continent marginalized leading to exasperate challenges that already faced African states.⁷³ The upheaval experienced in the post-Cold War era therefore enhanced existing problems causing several instances of prolonged conflicts on the African continent. According to Maninger, approximately 90% of all

⁷¹Othieno, Timothy and Nhamo Samasuwo “A critical analysis of Africa’s experiments with hybrid missions and security collaboration” from *African Security Review* 16(3) (September 2007): 26-27

⁷²Lt. Gueli, Richard, “Humanitarian Intervention in Africa: Towards a New Posture” *Scientia Militaria: South African Journal Of Military Studies* 32(1) (2004), 9

⁷³Maninger, 4

war related deaths in the 1990s were a cause of various conflicts in Africa.⁷⁴ He further establishes that 9 of the 10 most severe conflicts of that decade likewise played out on the African continent⁷⁵ Even though the underlying reasons for these various conflicts differed, it is very likely that the end of the Cold War served to intensify the conflicts.

It is important to note that the newly acquired faith for interventionism did not have a widespread impact on the African situation, as Africa was largely exempt from interventions on humanitarian basis. Hawkins highlighted that “Africa was largely marginalized by the Council [UN SC] and its members, who had little economic or geopolitical interest in Africa.”⁷⁶ The statement clearly suggests that there was a lack of political will and interest amongst the permanent members to the SC for engagement in the African continent even though there obviously existed acute humanitarian considerations as a result of the many ongoing conflicts. It is argued that the marginalization of Africa evolved as a result of the unexpected and unfortunate experiences that the US-led UN operation encountered in Somalia.⁷⁷

3.1.1 Somali intervention^{ix}

What originally set off the conflict in Somalia started already back in 1991 with the overthrow of the longstanding president Mohammed Siad Barre. This resulted in the collapse of the central state which threw the country into a civil war.⁷⁸ The conflict soon had created severe humanitarian emergencies. Apart from the many civilians that in various ways became victims in the war zones, the number of refugees was mounting along with the prospects for severe food shortages. Decisive actions were not taken immediately as a response to the crisis as the UN SC hesitated in its response. UN did not get actively involved until more than a year after the overthrow of the president when the humanitarian crisis was already a fact. There were then resolutions passed on arms embargoes as well as attempt to end the conflict by diplomatic

⁷⁴ Hawkins, Virgil, “Measuring UN security Council Action and inaction in the 1990s: Lessons from Africa” from African Security Review 12(2) (2003): 1

⁷⁵ Hawkins, 1

⁷⁶ Ibid., p.1

⁷⁷ Mayall, 134

⁷⁸ Newman, 53

means.⁷⁹ The decision to send troops came later, as the humanitarian crisis grew deeper without any clear prospects for a diplomatic solution insight. When US stepped up and committed to lead the military operation, troops were dispatched almost 2 years after the conflict had first erupted.⁸⁰ Action was, as such, not taken until an extensive emergency already existed. Observers conclude that the UN did too little too late.⁸¹ The fact that the conflict was allowed to rage for two years most likely served to exasperate the crisis. I would infer that, all criterions related to humanitarian intervention explicitly stated that military intervention should be explored as a last resort. Diplomatic and political avenues to resolve the conflict was indeed used and exhausted by UN before troops were sent. Although the UN could argue that they as such followed the established protocol for intervention, they still did not act with the urgency for which the situation required.

In regard to the legality of the intervention, author concludes that US led intervention in Somalia is one of the few interventions during the recent decades that legitimately should be labeled a humanitarian intervention as it lacked clear national interests.⁸² The Bush administration concluded that their intentions were purely humanitarian. The aim was to feed a starving population without “dictating political outcomes.”⁸³ At the same time, there are authors that are of a different opinion and conclude that the intervention was indeed spurred by humanitarian concerns but that it still was undertaken as a result of political and national interests. The intervention in 1993 represented the first intervention following the fall of the Soviet Union and could as such be interpreted as a display, from the side of the US, that it had the power to unilaterally undertake and lead an intervention. Some therefore contend that the intervention was still geopolitically motivated since Somalia, due to its location, provided a possible entry point of access to the Middle East.⁸⁴ Newman on the other hand maintains that the end of the Cold War had brought a renewed believe and faith in democracy and the importance of a vibrant human rights regime which put considerable stress on the US and UN to take action in relation to the humanitarian emergency that had developed in Somalia.⁸⁵ The author also express that there was a permissive international climate as well as domestic pressure from the US population which

⁷⁹ Ibid., 53

⁸⁰ Ibid., 53

⁸¹ CISS, *Background: Regional Roundtables and National Consultations*, 362

⁸² Soderlund, 60

⁸³ Ibid., 50

⁸⁴ Soderlund, 58

⁸⁵ Newman, 44

served to enhance US willingness to get involved in the conflict.⁸⁶ I believe that all perspectives are of importance and together they serve to explain why the US committed itself to a Somali intervention.

The intervention in Somalia came to an unexpected and abrupt end when in October 1993 eighteen US soldiers were killed. The bodies of the dead were mutilated all while cameras recorded the mishandling of the dead allowing it to be displayed on TV around the world.⁸⁷ This obviously changed the supportive climate of the American public which instead called for withdrawal of troops which concluded US involvement in the conflict. The sustained UN intervention was weak after US disengagement and Soderlund concludes that by mid 1994 the situation in Somalia was back to what it had been before the intervention.⁸⁸ Grueli even establishes that in the case of Somalia the situation actually got worse as a response to the failed intervention.⁸⁹ Even though the intervention did not achieve what was intended, it would come to have many consequences for both the discussion over humanitarian intervention in international law and the general discourse of interventionism as it were to be practiced in the future.

While the intervention itself could arguably be considered a failure, it is still of extreme importance in regard to the humanitarian intervention discussion. James Mayall highlights that “UNITAF established that chapter VII enforcement for humanitarian purposes is possible within existing legal and institutional arrangements”⁹⁰ which led to a unanimous decision by the UN SC to intervene in the conflict. What is of specific interest in relation to the intervention in Somalia is that it managed to generate a new customary framework which were accepting towards intervention in territories that are considered to be failed states.⁹¹ The logic behind this evolution in the legal framework was that such interventions presented no real conflict of interest since there was no government that could give its consent to the intervention.⁹² This also meant that state sovereignty was not threatened as there was no authority that had ultimate dominance over

⁸⁶Ibid.

⁸⁷Soderlund, 70

⁸⁸Ibid., 70

⁸⁹ Grueli., 12

⁹⁰Mayall, 133

⁹¹Ibid., 132

⁹² Newman, 55

the territory in question. It appears as if the community of states could accept such interventions since it did not present a threat to the prominence of sovereignty in international relations.

The Somalia intervention is also important as it is widely believed that the failure of this intervention had longstanding repercussions. The failed intervention led to the general unwillingness of the international community, and the UN, to get involved in preceding African conflicts. It therefore served as the basis for the adoption of a policy that called for African solutions to African problems. Still Mayall objects to the decisions taken by states to allow this intervention to play a central role in their future endeavors on the African continent. "Failure in Somalia did not have to mean that any external intervention was bound to fail elsewhere in Africa, but that was how it was interpreted."⁹³ The author indicates that the Somali context was of importance and provided a specific set of conditions that cannot be replicated in any other African nation since these are unique circumstances. Every conflict is a product of local contexts that will have to be approached based on the conditions at hand. As such, no general conclusion should have been drafted to rule out future involvement on an entire continent. Still, this was undoubtedly the outcome. Othenio and Samasuwo states that "since the tragedy in Somalia 1993, other entities and groupings such as the EU, G8, NATO and rich western nations have also been reluctant to send troops, particularly to Africa's hot spots."⁹⁴ Hence forth the international community have therefore been unable, or unwilling, to act timely and effectively in response conflicts in Africa.

3.1.2 African conflicts during the late 1990s and early 21st century

As mentioned above, several of the worldwide conflicts of the 1990s were to take place on the African continent. Even though the international community appeared to have lost interest in involvement in African conflicts, interventionism was still soaring high as conflicts elsewhere got much attention. As the genocide in Rwanda evolved and claimed the lives of what has been estimated to 800 000 people in just 100 days⁹⁵ the international community proved more

⁹³Mayall, 134

⁹⁴ Othenio and Samasuwo, 28

⁹⁵ BBC NEWS "Rwanda: How the Genocide Happened" (December 2008): 1
<http://news.bbc.co.uk/2/hi/africa/1288230.stm>

interested in discussing whether or not it really was a genocide instead of acting to halt the conflict. The discussions proved the dangers with a strict positivist approach to law in which too much power is granted the literal phrasing of the documents which, in this case, restricting the ability to swiftly reach a consensus over a common response. If the conflict had been labeled genocide, it would mean that an immediate response would be necessary considering that the crime of genocide has universal jurisdiction, meaning that nations has an obligation to prevent it from occurring.⁹⁶

The same year, 1994, the US undertook an intervention to restore democracy in Haiti by overthrowing the sitting regime and install what was considered to be a more democratic government.⁹⁷ These events proved not only that interventionism was still adhered to, but also, that what determined which countries would be subject to intervention was once again selected primarily as a result of political, as opposed to humanitarian, considerations.

Over the course of the late 20th and early 21st century, there were severe conflicts raging in Liberia, Sudan, Burundi, Democratic Republic of Congo, Sierra Leone, Angola⁹⁸ as well as a border dispute between Ethiopia and Eritrea.⁹⁹ These conflicts received varying levels of attention from the international community. Richard Gueli points out that “in Africa’s case, it appears that the more intense and destructive the conflict, as in the case of Burundi, Liberia, Rwanda, Somalia and DRC exemplify, the greater is the paralysis of the international community to act decisively to bring an end to the violence.”¹⁰⁰ It will have to be concluded that the UN did acknowledge many of these conflicts and eventually got involved considering that 70% of the SC’s work in the 1990s and early 2000s was dedicated to African affairs.¹⁰¹ Even though the intentions are of importance I would still argue that it is the outcome that should be considered when evaluating the success or failure of involvement. As established above, interventionism was once again primarily driven by national interests and the author concludes that because of this retreat back to realist approaches to international relations the African conflicts was usually not

⁹⁶ Macedo, 4

⁹⁷ Soderlund, 130-31

⁹⁸ Ibid., IX

⁹⁹ Hawkins, 1

¹⁰⁰ Gueli, 1-2

¹⁰¹ Hawkins p.1

prioritized which meant that even when action was taken it was usually “low-level engagement.”¹⁰² That would indicate that the support supplied was disproportionate to the size of the conflict which influenced the success and effectiveness of the involvement. Representatives at the Maputo round-table discussion establishes that even though several of the above listed conflicts did receive attention it was often at a stage when the conflicts had become large-scale after having been active for a long time. They conclude that none of these interventions were preventive but instead took place after the fact that the conflicts had produced severe humanitarian catastrophes which the UN could not dismiss.¹⁰³

Grueli explains that along with the hesitant approach taken by the UN to these conflicts, the powerful members of the UN are today keen to delegate the execution of peace missions to regional organizations.¹⁰⁴ In the case of Africa that would in the 1990s be the Organization for African Unity (OAU) which I will examine further in the following sections of the paper. The OAU adhered to a strict policy of nonintervention which instead allowed sub-regional organizations, such as ECOWAS, to take control over peace missions. This was the case in both the Liberian and Sierra Leonian conflict.¹⁰⁵ In most cases, more powerful states still provides financial support for regional interventions but are unwilling to send personnel. Some observers of this development argue that what has been allowed to develop is a new form of apartheid in which “Africans are expected to spill blood while [rich states] pay some of the bills in a macabre aristocracy of death.”¹⁰⁶ The statement clearly indicates the skepticism that the authors have towards the division of labor that has developed between the UN and regional organizations. I can see the possible dangers in allowing a structure to develop in which some people, based on their national origin, are considered to be more valuable. At the same time, I would contend that considering that the general conclusion is that there exist unwillingness on the part of nations and institutions in the international order to prevent conflicts in African states, it would be in its place to ensure that regional mechanisms were established to effectively handle these conflicts. A scenario could, evolve pertaining to the statement above, if regional organizations are underfunded and understaffed making them unable to effectively undertake peace missions.

¹⁰² Ibid p.2

¹⁰³ ICISS, *Background: Regional Roundtables and National Consultations*, 362

¹⁰⁴ Grueli, 13

¹⁰⁵ Soderlund, 21:193

¹⁰⁶ Otheino and Samasuwo, 29

3.2 The emergence of human security and its implications for international law and relations

It becomes evident from the above discussion that a normative shift occurred in international relations, and hence in the practice of some states, after the end of the Cold War. As it appeared that international relations was moving away from realist theories and instead adopting a more constructivist approach in which not only politics of power and interest motivates states actions but also ideas such as the common value of all people and as such the right to have basic human rights protected.¹⁰⁷ It was these perceptions that in the 1990s gave rise to the concept of human security as there was a need to enlarge the scope of the traditional concept of state motivated security. The human security aspect opened up the debate over international security to encompass the individual. It was also this shift towards a notion of human security that served to legitimize the desire to enhance the practice of humanitarian interventions as a means to further human security purposes.¹⁰⁸

Kofi Annan was amongst the people that endorsed and promoted the acceptance of a human security approach to international relations. He stated

“in the wake of these conflicts, a new understanding of the concept of security is evolving. Once synonymous with the defense of territory from external attack, the requirements of security today have come to embrace the protection of communities and individuals from internal violence. ... Human security, in its broadest sense, embraces far more than the absence of violent conflict. It encompasses human rights, good governance, access to education and health care and ensuring that each individual has opportunities and choices to fulfill his or her potential. Every step in this direction is also a step towards reducing poverty, achieving economic growth and preventing conflict. Freedom from want, freedom from fear, and the freedom of future generations to inherit a

¹⁰⁷ Amneus, 41

¹⁰⁸ Ibid., 42

healthy natural environment -- these are the interrelated building blocks of human – and therefore national – security.”¹⁰⁹

It becomes obvious that Kofi Annan did not consider the broadened scope of security to pose a threat or undermining national security. Instead it served as a valuable addition and complement to national security much in line with the perception of conditional sovereignty concept which also was introduced in the 1990s. It was also this aspect of human security that would come to influence, and fuel, the continued discussion over the validity and desire of humanitarian interventions. The debate eventually was to center around the establishment of a right to intervene, which later became known as the responsibility to protect.

3.3 The responsibility to protect

The selectiveness of the frequent interventions during the 1990s invoked on humanitarian basis lead to continued discussions over the motives for intervention along with the tension between sovereignty and human rights protection. A new body called International Commission on Intervention and State Sovereignty (ICISS) was created with the hope to develop a consensus in regard to the status of humanitarian interventions.¹¹⁰ The ICISS concluded that “state sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. 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.”¹¹¹ The conclusion of ICISS represented a more human-centered approach to international relations, much in line with the notion of human security. Corresponding to the appeal of human security, the principle of responsibility to protect clearly outlines that there do exist a right of humanitarian intervention and that what could in the past be considered to fall inside the domestic jurisdiction of a state might presently be subject to external intervention.

¹⁰⁹ Annan, Kofi, Chapter 3 in *Millenium Report*, 43-44 <http://www.un.org/millennium/sg/report/full.htm>

¹¹⁰ Welsh, 177

¹¹¹ ICISS, International Commission on Intervention and State Sovereignty. *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), XI

The ICISS report went further and tried to emphasize human security and the rights of the individual above the rights of the state by stating that:

“the responsibility to protect [...] focuses attention where it should be concentrated, on the human needs of those seeking protection or assistance. The emphasis in the security debate shifts, with this focus, from territorial security, and security through armaments, to security through human development with access to food and employment, and to environmental security. The fundamental components of human security – the security of people against threat to life, health, livelihood, personal safety and human dignity – can be put at risk by external aggression, but also by factors within a country, including “security” forces.”¹¹²

This statement does not just indicate the importance of a shift towards human security but also that there are other threats, apart from bodily harm, that are as serious and potent when it comes to incite a crisis and therefore also should be taken into account. The report calls for additional considerations as it concludes that instead of reacting to an ongoing crisis there should be preemptive measures taken to prevent a crisis from even evolving:

“without a genuine commitment to conflict prevention at all levels – without new energy and momentum being devoted to the task – the world will continue to witness the needless slaughter of our fellow human beings, and the reckless waste of precious resources on conflict rather than social and economic development. The time has come for all of us to take practical responsibility to prevent the needless loss of human life, and to be ready to act in the cause of prevention and not just the aftermath of disaster.”¹¹³

¹¹² ICISS, International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*, 15

¹¹³ *Ibid.*, 27

There is a clear stress on the need to adopt a long-term strategy to address underlying causes for conflict as well as establishing that all preventive measures should be explored instead of only relying on military might as a means to halt an immediate urgency. I believe that the ICISS managed well with the aim that it was set up to deal with. The challenges and criticisms extended to humanitarian intervention were effectively addressed in the report. Still, the report does not provide any substantial shift in the international legal framework.

Thomas Weiss argued that “with the possible exception of the prevention of genocide after War II, no idea has moved faster or farther in the international normative arena than The Responsibility to Protect.”¹¹⁴ The position of the author indicates the western bias and influence that the powerful states have in determining the dominant discourse considering that for instance, the Non-Aligned Movement, with 113 members, has rejected the notion of a right of humanitarian intervention. While the responsibility to protect is regarded with skepticism in many developing nations, many African states welcomed the inclusion of preventive approaches as well as post-conflict peace-building efforts.¹¹⁵ Regardless of the African position in relation to pre- and post-intervention commitments, Michel Newman states that “in all the consultations in developing countries there was unanimous opposition to the idea of unauthorized Western military interventions, and also serious concern with the issue of double standards and inconsistency.”¹¹⁶ It should be kept in mind that not only representatives of the non-western world are wary about the implications of a responsibility to protect. The author Tim Murithi is likewise worried about the whole notion of a framework supporting a responsibility to protect as he states that “because of the propensity towards military adventurism, regime change, and bringing or exporting freedom and democracy by force, vigilance is required when implementing R2P.”¹¹⁷ The statement indicates that the author does not believe that a responsibility to protect would limit the possible abuse of such a framework from the individual interests of powerful states as realists desires still dominates international relations. As such, it would appear that yet again a document

¹¹⁴ Weiss, Thomas. “Humanitarian Intervention after Kosovo: Commentary,” in Mertus, Julie and Jeffrey Helsing eds. (2006), 214

¹¹⁵ Newman, 202

¹¹⁶ Newman, 201-02

¹¹⁷ Murithi, Tim, “The Responsibility to Protect as Enshrined in Article 4 of the Constitutive Act of the African Union” from *African Security Review* 16(3) (September 2007): 23

has been produced that represents the ambitions and aspirations of its creators instead of reflecting the current realities.

3.3.1 Towards a Right to intervention in Africa

In regard to the notion of a right to intervene, African leaders adopted strategies to endorse this notion already back in 2000, before the ICISS had finished their report. As discussed above, the OAU proved largely ineffective in dealing with conflicts on the African continent. The organization was largely made up of a collection of either failed or weak states that were unable to ensure effective security and control inside its own borders or countries. They were often headed by predatory regimes that extended protection only arbitrarily to selected portions of the population. The OAU was often deadlocked as a result of member states that applied peer pressure to make certain that their territorial sovereignty were to be guarded against outside aggression. This led the OAU to remain committed to the concept of nonintervention. The OAU charter states that “the Organization had the objective of defending sovereignty, territorial integrity and independence of member states.”¹¹⁸ The member states promised to adhere to these provisions as well as “to refrain from interfering in the internal affairs of another member state or engage in subversive activities against other states.”¹¹⁹ The charter clearly outlines the priorities of the organization without providing any reference to human security or human rights protection indicating the superiority granted to the preservation of the state and the regime over the individual. Jakkie Cilliers and Kathryn Sturman explains that the OAU therefore was subjected to a system of “peer protection”¹²⁰ in which member states refrained from getting involved in the internal affairs of another member state fearing that such meddling would lead to unwanted retribution.¹²¹ As such, the OAU system would appear to have acted as more of a buffer and security for the predatory and weak regimes than a mechanism for implementing an efficient continental-wide security regime.

¹¹⁸ Baimu, Evarist and Kathryn Sturman, “Amendment to the African Unions Right to Intervene: A Shift from human Security to Regime Security?” from *African Security Review* 12(2) (2003): 3

¹¹⁹ Baimu and Sturman, 3

¹²⁰ Cilliers and Sturman, “The right intervention”, 7

¹²¹ *Ibid.*, 7

In the face of the unwillingness of the international community and the western states to get involved in African conflicts which had led to the West calling for African solutions to African problems¹²², the African states realized that a new commitment to involvement needed to be made in response to severe conflicts on the continent. As such, African leaders got together to assess the Charter of the OAU with the aim to reaffirm the commitment to Pan-Africanism.¹²³ This resulted in the creation of the Constitutive Act of the African Union which was adopted by the member states to OAU in 2000.¹²⁴ It was unanimously decided that a transformation of the organization was desired which eventually led to the establishment of the African Union. On the AU website it is described how “the African Union objectives are different and more comprehensive than those of the OAU. The OAU has served its mission and was due for replacement by a structure geared towards addressing the current needs of the continent.”¹²⁵ The statement indicates the aspiration to break away from the policies of the OAU by creating a new institution committed and willing to get actively involved with the ambition to tackle problems facing its member states. The establishment of AU reflected the desire to make more alternatives available by instituting mechanisms for intervention that would replace the old system of peer protection. The inauguration of AU took place in South Africa 2002 with the leaders from 53 African nations present to witness what was hoped to be the beginning of a new era of Pan-African unity.¹²⁶

The Constitutive Act incorporates most aspects of what later would be known as the responsibility to protect, as it acknowledges the connection between security and development. Because of this the Act tries to emphasize the need for detecting and addressing conditions that could be conducive to create future conflicts and as such preventing that a situation occurs that would have required an intervention. At the same time, it also attempts to approach interventions with a long-term perspective in which there is a responsibility to ensure that the rebuilding of a post-conflict society will promote good governance and reformed political and economic structures as to make sure that circumstances that might have encouraged an armed response are

¹²² Othieno and Samasuwo, 26

¹²³ Murithi, 16

¹²⁴ African Union webpage http://www.au2002.gov.za/docs/background/oau_to_au.htm

¹²⁵ African Union webpage

¹²⁶ Ibid.

altered.¹²⁷ The AU Act is, as becomes evident, very ambitious and innovative but is it realistic in its aims? Does the organization have the resources needed to prevent conflicts to occur, as it would need to address several development aspects? Does it have the means to organize a collective security response if intervention is needed?

¹²⁷ Powell, 11

4 The structure and scope of the AU

4.1 AU aim and jurisdiction

The Constitutive Act of the AU is viewed as the first international agreement adhering to a responsibility to protect.¹²⁸ Article 4(h) of the Act establish “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect to grave circumstances, namely war crimes, genocide and crimes against humanity.”¹²⁹ It is worth to note that the article specifies the right, as oppose to the responsibility to intervene. I believe that there are some important differences between the two terms which will have consequences for the interpretation and implementation of this article. A responsibility indicates an obligation to act whereas a right only infers a possibility, and as such, a choice whether or not to react. Baimu and Sturman contends that even though the terminology have legal implications they do not believe that the details of the phrasing of the provision will be of importance since it still depends on the will of African states whether or not an intervention will materialize.¹³⁰ I agree with their conclusion in regard to the prominence of political will, but maintain that a profound legal obligation would diminish the likelihood for states to evade taking action. The Constitutive Act does specify that it will be an obligation on all member states to ensure that interventions will be implemented within 30 days if the intervention is issued as a regulation or directive while if intervention is called for in a recommendation, resolution or opinion it will not be binding for the Member states to ensure implementation.¹³¹ Regardless of how the article is phrased, it still indicates a move away from the policy of nonintervention which guided the actions, or inaction, of the OAU as it recognizes the AUs right to intervene on the basis of human security and protection.

Even more groundbreaking is the fact that the Constitutive Act also includes a venue for states that are unable to handle internal conflicts to ask for assistance from the AU as article 4(j) declares that “the right of Member States to request intervention from the Union in order to restore peace and security.”¹³² I can imagine that the vague phrasing of the act could lead to scenarios in which this clause could be abused by repressive regimes for example in the fight

¹²⁸ Powell, 1

¹²⁹ African Union Webpage

¹³⁰ Baimu and Sturman, 4

¹³¹ Powell, 13

¹³² African Union Webpage

against undesired internal opposition. The opposition would, to the regime, represent a threat to peace and security and as such could warrant an intervention to curb it in the name of restoring internal order. Author has made a similar observation stating that both [article 4(h) and 4(g)] have the ultimate aim of restoring peace and stability (or security in the wording of article 4(g)). But they could offer a useful tool for regimes facing internal or external threats.”¹³³ Considering the right to intervene, including intervention on behalf of restoring peace and security, this would indicate a right to intervene on arbitrary grounds. There is also a possibility that articles 4(h) and (g) could be used to support interventions aimed at influencing the system of government or causing regime changes in African nations. Even though there are regimes that should be subject to greater scrutiny and pressure to uphold the rights of its population, it is already established that there are no international law documents presently in existence that supports interventions for regime change. Still this provision to the Constitutive act could very well be used to change the ruling structure of a country. As established in the debate about the legality of humanitarian interventions, the acceptance of one such intervention could possible give way to a flood of similar interventions if customary law were to take form in support of such vigilance. This would then be done in the name of protecting international security but while in reality undermining international law and stability by creating precedence for the use of arbitrary aggression between states. The AU will need to develop enough mechanisms for checks and balances to prevent such abuses of the legislation.

A step towards limiting challenges arising in the area of interpretation of this act was taken already back in 2003 when the decision to establish an African Court on Justice was taken.¹³⁴ Unfortunately, the protocol for the court entered into force first in 2009¹³⁵ until which it was up to the Assembly of the Union to interpret the legal basis for intervention under this provision. The authors Baimu and Sturman expressed doubts about the ability of the Assembly to evaluate which instances that would warrant intervention on this basis since previous experiences on the African continent have indicated the likelihood for the African elite to protect each other leading to a

¹³³Baimu and Sturman, 7

¹³⁴Protocol of the Court of Justice of the African Union <http://www.african-union.org/root/au/Documents/Treaties/Text/Protocol%20to%20the%20African%20Court%20of%20Justice%20-%20Maputo.pdf>

¹³⁵Protocol of the Court of Justice of the African Union

noninterventionist stance.¹³⁶ Judging from the experience of OAU, with its peer protection system, it might be suspected that the interventions under 4(h) and (g) would be used in a manner that served to protect the regime instead of the individuals that constitute the populations. There is now in existence an institution, The African Court of Justice and Human Rights, that has the right and ability to interpret what might constitute a scenario in which stability needs to be restored. Hopefully the court will prevent the illegitimate use of the provisions in the act. Still, Author concludes that it is easier to ensure judicial legitimacy for intervention on the grounds established in 4(h) (war crimes, genocide and crimes against humanity) since these are international crimes representing a breach to both human rights law and international humanitarian law. Whereas intervention on behalf of restoring security does not have the same judicial weight as it would still need to be subject to interpretation.¹³⁷

One should bear in mind that the framework for a right to intervention was created due to the need to manage conflicts on the African continent in the face of ineffective responses from the UN and the international community. As such, these articles were created towards the aim of alleviating suffering and serve as a constructive solution towards that goal. While acknowledging the possibility for abuse of these acts, it should likewise be remembered that these provisions have the same capacity to do good as it has to be used for illegitimate purposes. Under these provisions the AU has the potential to intervene both with or without the consent of the targeted state and could as such take action against repressive regimes that are severely undermining and violating the rights of the masses of the population.

4.2 Structure of the AU

The Constitutive Act also recognizes the importance of trying to prevent and manage conflicts which entailed the need to enlarge the scope of the AU by establishing several separate institutions in order to effectively address varying aspects of conflict prevention and resolution. Jakkie Cilliers and Kathryn Sturman points out that efforts by OAU to establish conditions conducive to the further development of democracy and human rights protection on the continent

¹³⁶Baimu and Sturman, 5

¹³⁷Ibid., 6

often faltered as a result of member states propensity to act in opposition to such conditions. Often these parties experienced impunity as the OAU did not have the means, or the will, to prosecute such breaches.¹³⁸ Considering the shortcomings of OAU in regard to implementation of decisions it was of great importance to institute mechanisms for enforcement and oversight of AU decisions in order to make the organization perceived as more legitimate, transparent and as such, more effective. On the AU web-page one can read “of crucial importance in the establishment of the organs of the Union is the challenge to move away from the overly state-centric character of the OAU and its concomitant lack of civil participation. The cooperation of African NGOs, civil societies, labor unions, business organizations are essential in the process of cooperation and implementation of the Abuja Treaty.”¹³⁹ As such, the structure of the AU have been created in such a way as to broaden the scope of inclusion by attempting encompass representatives from most sectors in society. This strategy will hopefully serve to democratize the organization. It will also increase the organizations relevance for the populations on the African continent. The structural changes bring the decision-making process closer to the populations and making it more accessible than it was during the structure of OAU when only the heads of state had a say.

The two key organs of the AU is the Peace and Security Council (PSC), which is the ultimate authority on decisions relating to the prevention, management and resolution of conflicts,¹⁴⁰ and the Pan-African Parliament which aims at providing “a common platform for African peoples and their grass-roots organizations to be more involved in discussions and decision-making on the problems and challenges facing the continent”.¹⁴¹ PSC has considerable powers and has a similar role to that of the UN SC. For instance it has the ability under paragraph 7(e) of the *Protocol Relating to the Establishment of the Peace and Security Council of the African Union* to recommend to the Assembly intervention in a members state.¹⁴² The most important difference between SC and PSC is that there are no permanent members to PSC. The AU has divided Africa into five regions: North, West, Central, East and South. The PSC is made up of 15 states, five

¹³⁸ Cilliers and Sturman, “Challenges Facing the AU’S Peace and Security Council,” 99

¹³⁹ African Union Webpage

¹⁴⁰ Cilliers and Sturman, “Challenges Facing the AU’S Peace and Security Council” from *African Security Review* 13(1) (2004), 97

¹⁴¹ Pan-African Parliament <http://www.pan-africanparliament.org/>

¹⁴² *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, 9

http://www.africa-union.org/rule_prot/PROTOCOL-

[%20PEACE%20AND%20SECURITY%20COUNCIL%20OF%20THE%20AFRICAN%20UNION.pdf](http://www.africa-union.org/rule_prot/PROTOCOL-%20PEACE%20AND%20SECURITY%20COUNCIL%20OF%20THE%20AFRICAN%20UNION.pdf)

from each region, which is elected by the Assembly to serve on a three year basis.¹⁴³ In order to be considered for a position in PSC, the countries will have to meet certain criteria such as the ability and willingness to contribute both financially and militarily to AU, as well as being committed to the protection of human rights as propagated in the Constitutive Act.¹⁴⁴ Judging from the previous 15 countries that were elected into the PSC, it can be concluded that financial and military capabilities weighed higher than commitment to human rights ideals considering that countries such as Zimbabwe and Libya are amongst the 15 members.¹⁴⁵ It could be argued that the majority of African states are struggling with the political ideals and human rights criteria that are emphasized in the Act. Most of the members of the AU are similarly struggling to achieve good governance. But it is questionable how committed certain states are to the transformation of state policy to be more in line with the Act.

The PSC also serves a very important role as it is the institution that coordinates the majority of Africa's relationship and collaboration with the UN.¹⁴⁶ PSC as such is the main organ in the AU peace and security regime.

Considering the AU stand on prevention of conflicts, instead of simply reacting to an already existing emergency, the AU has set up what is called a Continental Early Warning System (CEWS). CEWS has the task of detecting possible threats to peace and security with the aim of trying to prevent the escalation of these threats into large-scale emergencies. Jakkie Cilliers explains how the concept of CEWS is closely linked to the notion of human security and it therefore relies on information from open source material instead of relying on intelligence supplied by a member state. To do so the CEWS utilize information that is made available by sub-regional organizations as well as various "research institutions and civil society organizations".¹⁴⁷ CEWS will likewise be collaborating with the UN and its agencies in extracting information aimed at prevention. The ambition is to provide a greater measure of

¹⁴³ Cilliers and Sturman "Challenges Facing the AU'S Peace and Security Council", 99

¹⁴⁴ Ibid. 99

¹⁴⁵ Security Council Report, "Meeting between the Security Council and the Peace and Security Council" (July 2010) http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.6115641/k.8AF/July_2010brMeeting_Between_the_Security_Council_and_the_AU_Peace_and_Security_Council.htm

¹⁴⁶ Cilliers and Sturman, "Challenges Facing the AU'S Peace and Security Council", 98

¹⁴⁷ Cilliers, Jakkie, "Towards A Continental Early Warning System for Africa" *Occasional paper* 120 (April 2005) , 21

transparency to the information upon which decisions for plans of action will be based. Again, the purpose is to ensure a level of involvement that will serve human security interests instead of national interests. The mission of the CEWS is to use the information gathered to alert the PSC about potential threats to peace and security on the continent as well as providing PSC with their advice as to deal with, and avert, impending problems.

To enhance AUs capability to independently implement military interventions and peace missions, it was decided that an African Standby Force (ASF) needed to be establish. Originally it was decided that it should be completed by 2010 and at that point have the capacity to “manage complex peacekeeping operations.”¹⁴⁸ Even though a continental standby force presently is operational, it is not completed as envisioned as it does not yet have developed the capacity needed to effectively undertake extensive operations.¹⁴⁹ The five regions, specified by AU, are each supposed to have an ASF brigade which is to be coordinated by the PSC.¹⁵⁰ Since there exists discrepancies between the resources of the various regions, some brigades are more evolved than others. At the same time, Marshall explains that the most severe problems facing all forces are connected to command, logistics and control.¹⁵¹ While the issue of logistics has to do with the lack of resources needed to effectively transport troops over the extensive continent, as well as providing timely humanitarian assistance, Marshall further states that the problems relating to command and control is similar for ASF as other international organizations such as EU and NATO. They organize operations around national consensus and as such cannot force their member states to provide troops.¹⁵² This will of course greatly strain the success of operations if no states feel compelled to commit personnel.

4.2.1 Sub-regional organization

The importance of regional and sub-regional organizations has already been established as they have largely come to fill the void of UN inaction in certain areas of the world. The UN has the

¹⁴⁸ Marshall, Jeffery E., “Building an Effective African Standby force to Promote African Stability, Conflict Resolution and Prosperity” *Discussion paper 16 from the Crisis States Research centre* (April 2009), 5

¹⁴⁹ Marshall, 6

¹⁵⁰ *Ibid.*, 6

¹⁵¹ *Ibid.*, 7

¹⁵² *Ibid.*, 7

right to delegate responsibility over maintenance of peace and security to these organizations as outlined under chapter VII of the UN charter.^x While it can be considered undesirable to have the UN forfeit its responsibilities to international peace and security, as it might lead to erode the power and influence of the UN as the sole institution for international law and order, it can likewise be seen as necessary to have regional actors take the lead in local conflicts.¹⁵³ Kristin Powell means that regional and sub-regional organizations have a great advantage when getting involved in conflicts that they are in proximity to since they will have extensive knowledge of the dispute while also being in a situation where they can supply unique insights and approaches to conflict resolution.¹⁵⁴ The author also suggests that proximity to the conflict might initiate a faster response as well as providing greater legitimacy for the intervention as local actors might be seen to have a greater stake in finding a swift resolution to the conflict than foreign meddlers.¹⁵⁵ Even though her conclusions are sound, the above premise prerequisites that the organizations have the adequate resources and funding needed to undertake such missions.

The UN and international community's failure to respond immediately to the conflict in Liberia in 1991 still initiated an international response but in the form of a regional operation undertaken by ECOWAS and led by Nigeria. The intervention went under the name of "Operation Liberty" and came to represent the first peacekeeping mission in which the UN formally cooperated with a sub-regional organization.¹⁵⁶ The operation only received UN support in retrospect, in line with rules for sub-regional interventions as specified in the UN Charters chapter VIII. Although the operation was groundbreaking, there are different opinions about its successfulness as well as its motives. The intervention is important since it came to represent the first operation of this kind ever undertaken with UN support. It is also seen by many as a positive development that a regional actor in Africa was willing and able to get involved in the internal affairs of a member state considering the legacy of nonintervention on the continent. Adeleke explains that "while many were concerned about the human suffering in the war, the situation was neither sufficiently grave nor strategically important enough to deserve international intervention. But for the states in the sub-region who were entrapped by their spatial proximity to the conflict, none could escape

¹⁵³ Gueli, 131

¹⁵⁴ Powell, 19

¹⁵⁵ Ibid., 19

¹⁵⁶ Soderlund, 26

its effects, and none could imagine its implications. Herein lays the justification for ECOWAS intervention in Liberia.”¹⁵⁷ The unwillingness of states from outside the continent to get involved increases the importance of regional organizations taking the lead in peacekeeping operations.

But when trying to assess the outcome of the intervention the successfulness appears more limited. The lack of resources and capacity needed to undertake an effective intervention instead served to make the ECOWAS force into one of the many fighting factions to the conflict.

Soderlund concludes that “it appears that the best ECOMOG could do was to ensure a military stalemate wherein no faction was able to gain control of the country.”¹⁵⁸ While being the first UN supported sub-regional intervention, the operations also proved to be the first ever such undertaking by ECOWAS¹⁵⁹ which meant that they had little experience to rely on when initiating the intervention. Therefore the organization went through a trial and error period when trying to figure out the best plan of action. There were also difficulties in finding a consensus amongst the member states towards how the operation was to develop. Yekutiel Gershoni states that “the prolongation of the war in Liberia was in part due to the division within ECOWAS, and the inefficiency of ECOMOG.”¹⁶⁰

Powell asserted that proximity to the conflict might increase legitimacy for the interveners, which was true for instance in the case of AU led intervention (AMIS) in Sudan¹⁶¹, while being the opposite in Liberia as the ECOWAS forces were accused of being biased while also having different motives apart from humanitarian when intervening.¹⁶² As stated above there were divisions inside ECOWAS as well as an ongoing struggle for power between two blocks in the organization: Francophone and Anglophone. Croft and Treacher argues that Nigeria saw the conflict in Liberia as a chance to assert their prominence over the organization as well as securing Liberian continued support for the Anglophone block by not being taken over by the francophone NPFL.¹⁶³ This argument also rests on the knowledge that Nigeria represented the only country in

¹⁵⁷ Adeleke, A, “The Politics of Diplomacy of Peacekeeping in West Africa: The ECOWAS Operation in Liberia” from *The Journal of Modern African Studies*, 589

¹⁵⁸ Adeleke, 26

¹⁵⁹ Soderlund, 27

¹⁶⁰ Ibid., 26-27

¹⁶¹ Powell, 44

¹⁶² Ibid., 26

¹⁶³ Croft and Treacher cited in Soderlund, 34

the organization that had the motivation as well as the required resources to lead the intervention. It is estimated that Nigeria alone spent approximately US\$8 billion on “Operation Liberty.”¹⁶⁴ Although the motives of Nigeria might have been influenced by both humanitarian and political considerations, it cannot be denied that it represented the only option for conflict prevention available to Liberia at the time. The operation was the first ever peacekeeping mission undertaken by ECOWAS and as such would undoubtedly be subject to complications. The importance of regional and sub-regional actors in African conflicts have only continued to increase over the last two decades evident by the many interventions carried out by ECOWAS, SADC in addition to the AU.

4.2.2 Reliance on regional hegemony

Because of the call for African solutions to African problems, regional and sub-regional organizations are often deemed as the better option when dealing with African conflicts. As stated in the discussion about the legitimacy of humanitarian interventions, interventions are costly and as such a situation have developed in which it is largely the states that have the power and resources needed that can conduct interventions. This is why the vast majority of international interventions are undertaken by powerful states. Is it then feasible to request intervention from states, amongst which many suffers from extreme poverty?

Although it is desired to have the AU take the lead in regional operations, it can be concluded that it has the will but not necessary the means to do so. As a result, the envisioned security structure that the AU would like to see take form has not yet fully materialized due to lack of resources. This has left AU dependent on sub-regional organizations and existing regional powers to carry out operations for conflict prevention and peace enforcement.¹⁶⁵ There have recently been conducted a great deal of research about interventions undertaken by sub-regional organizations with varying results. Powell maintains that the fact that Nigeria and South Africa are regional hegemony allows them to provide both the resources and the legitimacy needed to lead operations in the sub-regional organizations which they are dominating. At the same time she does warn

¹⁶⁴ Adeleke, 589

¹⁶⁵ Otheino and Samasuwo, 30

about the potential for the sub-regional organizations to become overly influenced by these hegemon to a point where the organizations' security agenda will be largely dictated by the interests and the domestic realities of the hegemon.¹⁶⁶ But what has become evident by studying these researches is that sub-regional organizations in Africa by and large come to rely on regional hegemon as they have the most developed resource capacity to lead operations. Mashishi who have written the article “Intervention in Africa: Assessing the Rationale Behind Sub-Regional Peacemaking Military Interventions” concludes that “the sub-regional hegemon will conduct peacemaking military intervention when, where and if it suits its interest.”¹⁶⁷ This analysis could correspond to the above discussion about Nigeria as it represents the most powerful state in ECOWAS. Berman states that although there has been a desire to decrease ECOWAS dependence on Nigeria, the organization cannot be effective without Nigerian resources and troops which became evident when attempting to undertake an operation in Guinea-Bissau without Nigerian presence.¹⁶⁸ Jakki Cilliers points out that there lacks a clear check and balance that can supervise and moderate sub-regional troops conduct while on a mission. This still needs to be addressed even though it was established already back in 2003 at the Maputo round-table discussions on the ICISS report that such mechanisms for accountability as well as a code of conduct should be developed so that inappropriate behavior and misconduct could be punished.¹⁶⁹ These mechanisms are still lacking, largely because there is not made clear in the Constitutive Act the jurisdiction and mandates that sub-regional organization has when intervening on humanitarian grounds. This discrepancy greatly undermines and inhibits the legitimacy and support that these organizations receive when intervening.

If we look at other recent interventions by sub-regional organizations in Africa, it is discovered that SADC has performed independent operations as well as aiding UN missions in Burundi, DRC and Lesotho.¹⁷⁰ South Africa is the undisputed economic power in sub-Saharan Africa and therefore has the financial and industrial capacity needed to provide regional military means.

¹⁶⁶ Powell, 20

¹⁶⁷ Mashishi, Alfred K. “Intervention in Africa: Assessing the Rationale Behind Sub-Regional Peacemaking Military Interventions” *Master thesis from the Naval Postgraduate School, Monterey, Canada* (March 2003), summary p.1

¹⁶⁸ Berman, Eric G. “African Regional Organizations’ Peace Operations: Developments and challenges” from *African Security Review* 11(4) (2002): 38

¹⁶⁹ Cilliers and Sturman “The Right Intervention”, 4

¹⁷⁰ Hull, Cecili and Maekus Derblom. “Abandoning front line trenches; Capabilities for peace and security in the SADC region” (Stockholm: FOI) (2008), 9

South Africa has the means to be influential in the region and to enforce interventions. The country benefits from having stable neighbors that can serve as trading partners as well as attracting foreign investment to the region as a whole. Therefore, it is of great importance that South Africa has the potential to serve as both role models and enforcers of peace. Hietman concludes in “Crisis Response Capability: A role for South Africa” that while the “preference must clearly be for operations conducted in cooperation with other countries and under the auspice of international bodies, there is a requirement for autonomous capability.”¹⁷¹ The author clearly propagates for the need and desire for South Africa to be able to conduct interventions amongst its neighbors, and in Africa at large, as a means to sustain peace and stability in the region both for its own interests and to limit the overall suffering of people.

While the above statement sustains the decisions reached at the Maputo round-table discussions on the ICISS report in which it was concluded that interventions should be used as a last resort and undertaken multilaterally,¹⁷² it still appears positive to opening up the right to intervention to unilateral endeavors. This is an argument that is met with great uncertainty and suspicion considering what precedence that it potentially could set for future unilateral interventions by more powerful states that has the capacity to do so towards less powerful states. At the same time, Baker and Maeresera concludes that there is a severe lack of trust amongst the members of SADC as well as few common interests which often inhibits the organizations' ability to act promptly, if at all, to crisis.¹⁷³ In the face of such differences of opinions it appears that some would favor South Africa being able to intervene without the support of the organization. I can understand the lack of trust and unwillingness of member states to surrender their sovereignty to SADC considering that the most powerful state of the organization does not only represent the current hegemon but also has an imperial legacy as colonizer of several of the states that today are parties to SADC. Is it desirable to have regional hegemons serve as the most influential states in decisions of interventions, especially if they have had imperial aspirations in the past? I can see why this could be regarded as a problem to the states which have their sovereignty compromised.

¹⁷¹ Hietman, Helmoed-Römer, “Crisis Response Capability: A role for South Africa” from *African Security Review* 11(1) (2002): 2

¹⁷² ICISS, *Background: Regional Roundtables and National Consultations*, .362

¹⁷³ Baker, Deane-Peter and Sadiki Maeresera, “SADCBRIDG Intervention in SADC Member States: Reasons to Doubt” from *African Security Review* 18(1) (March 2009): 108

It should also be stated that the regional hegemons that possess the power and ability to undertake and lead interventions are undergoing internal changes aimed at increasing transparency, good governance and support for human rights. This is done as a measure towards becoming role models that practice what they preach instead of only having the military capacity to coercively enforce their influence. While this has been said it is likewise important to point out that these changes are meeting many challenges as a consequence of a political legacy of repressive regimes.¹⁷⁴ This indicates that the states still have a long way to go to achieve their intended goals. As such, it is fair to agree with Jakkie Cilliers that establishes that “it is extremely burdensome, and arguably inappropriate, for one state to police another, when the intervening state itself does not have control or jurisdiction over its own territory. Encouraging undemocratic weak states to assist other undemocratic weak states in the provision of security, without unequivocal and significant involvement of the international community, may, over time, have unintended consequences.”¹⁷⁵ The statement indicates that a situation has been allowed, even endorsed by the international community, to develop in which the faith of interventions will be left to the whim of the most powerful state in the region, and not necessarily, the most appropriate state. This fact coupled with the conclusion by Mashishi that interventions are interests based makes interventions iffy. I would also infer that allowing the regional organizations to rely too heavily on hegemons will create severe problems if there were to arise a conflict in which the hegemon was a party to the conflict.

I will have to agree with the observation by Otheino and Samasuwo that there “is the risk of sidelining the UN in favor of hegemonic unilateral initiatives.”¹⁷⁶ A division of labor will have to be formally established to regulate the working of regional and sub-regional bodies and their responsibility towards the UN. A balance also has to be struck so that AUs ability to manage local conflicts does not further legitimize UN withdrawal in Africa.

¹⁷⁴ Otheino and Samasuwo, 30

¹⁷⁵ Cilliers and Sturman, “The Right Intervention”, 4

¹⁷⁶ Otheino and Samasuwo, 33

4.3 Donors

The most common criticism or obstacles highlighted by various authors when discussing the development of a responsibility to act, or right to intervention, in Africa are the severe lack of resources, equipment and the financial means that are needed to efficiently participate and make a difference in local peacekeeping efforts.¹⁷⁷ At the same time, it is expected of the AU and its sub-regional collaborators to take the lead in conflict resolution on the continent. It is of importance to note that the UN framework allows for regional and sub-regional interventions while also supporting a notion of a response ladder in which the UN wishes that local and regional solutions to a conflict are exhausted before the SC is to get involved. This has led Cilliers and Sturman to conclude that UN is keen to endorse, as opposed to authorize, operations by the AU.¹⁷⁸ The difference lies in the responsibility that is awarded the UN in the operation since “endorsement provides a legal framework but not necessarily responsibility for the provision of resources.”¹⁷⁹ Authorization on the other hand implies a delegation of responsibility and as such requires the provision of adequate resources to mantle the task at hand. What financial responsibilities do UN and the international community have when delegating the enforcement of peace and stability to local actors?

Considering that many African states are listed amongst the poorest nations in the world, and as such receives a lot of their budgets from international aid, it becomes quite obvious that states might not have the additional resources needed to create and maintain a continent wide peacekeeping, and conflict response, as envisioned by the AU and propagated by the UN. Therefore, donors play a vital role in the creation and maintenance of a security architecture in Africa that will be able to handle regional conflicts. What is of interest when exploring the role of donors is not just to see how much they contribute but how they contribute and if the aid is conditional or if the AU can decide how the money is to be used. The risk is that donor funds will be spent, not at the need and will of the regional actors, but instead is earmarked for certain endeavors specified by the donor country. This will limit AUs ability to funnel money into the areas that they consider to be in the greatest need of support and development. The donor

¹⁷⁷ Ekengard , Arvid 26- 28 and Powell, Kristina, 38

¹⁷⁸ Cilliers and Sturman, “The Right Intervention”, p.4

¹⁷⁹ Ibid., 4

discussion will highlight the level of independence with which AU and regional organizations can operate or expose how constrained they are by donor pressures which would indicate that the international community's call for African solutions to African problems are only used as a mantra when it suits them as they still want to maintain dominance and influence over the organization by steering how it can use the donated resources. This undermines AU's independence and legitimacy as well as compromising its ability to take action.

AU has indeed received much support from various actors in the international community in the creation of the security structure that will allow them to mantle the responsibility to protect as well as securing conflict prevention and post conflict rebuilding. Below I will look deeper into the funds that have been provided by the most influential donors to the AU.

4.3.1 UN

The PSC protocol states that “the Peace and Security Council shall cooperate and work closely with the United Nations Security Council, which has the primary responsibility for the maintenance of international peace and security.”¹⁸⁰ It has already been established that the most enduring challenges in peacekeeping is the question of resources and funding. Peace enforcement operations are expensive which means that to carry out such operations requires, either existent adequate resources to make interventions sustainable, or sustained funding. It is also stated that the AU “will call on the international community for the requisite logistical, financial and political support for its military activities” as highlighted by chapter VIII of the UN charter.¹⁸¹ It is therefore well developed and clearly stated in the PSC protocol that the AU is to function as a complement to the UN, which still is to maintain primary responsibility for international peace and security. Corresponding to this is the fact that AU action needs to be approved by UN. Although attempting to establish a division of labor between the two organizations it is not clearly specified in any document what would happen if an AU intervention would not get authorization by the UN.¹⁸² It is highlighted that UN authorization could be sought in retrospect if there is a need for swift action which leaves room for AU intervention without prior UN

¹⁸⁰Powell, 23

¹⁸¹Ibid., 23

¹⁸²Ibid., 23-24

consent.¹⁸³ I would imagine that the ambiguity of the labor division is intended so as to leave a space available in which the AU can sanction intervention if needed without UN involvement or if the UN would prove slow to react. AU and UN are to be partners in promoting peace and security. AU is than a legitimate actor in international relations that operates within the mandate of the UN charter and as a contractor to UN.

Considering the vital role that UN still is to play in the affairs of the regional actors, it is of no surprise that UN has been instrumental in the strengthening of the AU security regime. The UN has for example, with the help of several UN organs and departments, helped to draft, organize and equip the ASF.¹⁸⁴ The UN has also provided financial, logistic and intelligence support for recent AU led operations in Burundi, Somalia and Sudan.¹⁸⁵ Much of the UN support is aimed to facilitate smooth cooperation between the two organizations.

4.3.2 EU

EU is so far the international institution that has provided the most adamant support for the strengthening of the AU. The two organizations have developed a partnership on peace and security. In 2004, EU established the African Peace Facility (APF) which had been requested by the AU at the Maputo summit the year before.¹⁸⁶ The APF initially entailed funds for 250 million Euro that were used over the course of three years to support AU, or AU authorized peace operations on the continent.¹⁸⁷ In 2007 it was decided that the APF funds were to increase while also extending the scope of cooperation to include conflict prevention as well as post-conflict rebuilding.¹⁸⁸ With this latest extension the funds that have been facilitated through APF are now 740 million Euro,¹⁸⁹ indicating the continued commitment and support for AU by EU. The money provided has been earmarked for specific purposes and there are largely 3 different areas in which the EU have chosen to focus on. Substantial funds have been provided for capacity building with the aim of making African peace and security architecture functioning and reliable.

¹⁸³ Cilliers and Sturman, *The Right Intervention*, 4

¹⁸⁴ Powell, 24

¹⁸⁵ *Ibid.*, 25

¹⁸⁶ *Ibid.*, 25

¹⁸⁷ *Ibid.*, 25

¹⁸⁸ African Peace Facility (APF) http://ec.europa.eu/europeaid/where/acp/regional-cooperation/peace/index_en.htm

¹⁸⁹ APF.

To achieve the intended goals funds have been reallocated to further develop the CEWS as well as reinforcing the management of the ASF.¹⁹⁰ Pierre-Michel Joana is special advisor to EU High Representative Javier Solana for African Peacekeeping capabilities and he has explained that the support extended to the development of the CEWS has meant to put in place much of the needed hardware such as computers and communication means with which the intelligence can be gathered and analyzed.¹⁹¹ He further states that “In Ispra, Italy, the Joint Research Centre has developed a whole load of software that has been entrusted to the Africans and adjusted to allow them to study all information received and recover the indications they need.”¹⁹² The intention is that this venture will allow the CEWS to become efficient in detecting indicators of crisis at a stage where massive emergency and conflict can be averted. Also included in this category has been the development of an AU-EU dialogue in regard to improving future cooperation “on the prevention, management and resolution of conflicts in Africa.”¹⁹³

The next category, Peace Support Operations, has received approximately 600 million Euro and as such is the area where most funds have been concentrated. It is stated that “the funding of Peace Support Operations represents the core activity of the APF. EU support aims at providing sustainable and predictable funding, enabling the AU and African sub-regional organizations to plan and conduct peace support operations.”¹⁹⁴ Pierre-Michel concludes that this is the category in most urgent need of attention since AU capabilities needs to be strengthened as the peace and security department continues to be under-equipped both in terms of material and human resources.¹⁹⁵ He establishes that the lack of human resources poses the most severe obstacle since there is a great need of increasing personnel so that there are enough troops available to meet the regional demand. He therefore believes that funds needs to be funneled into the recruitment of troops as well as to provide salaries for them.¹⁹⁶

¹⁹⁰ Ibid.

¹⁹¹ Joana, Pierre-Michel, “EU/Africa: Pierre-Michel Joana Takes Stock of EU Aid to African Peacekeeping and Security Efforts” *Europe Diplomacy & Defense: The Agence Europe Bulletin on ESPD and NATO* 234 (June 2009): 2

¹⁹² Joana, 2

¹⁹³ APF

¹⁹⁴ Ibid.

¹⁹⁵ Joana, 3

¹⁹⁶ Ibid., 3

As part of this category, funds have also been used to support specific AU missions such as AMISOM in Somalia and AMIS in Sudan. Substantial funds have also been used in the training of personnel active in all levels of the AU organs, from advisors and analysts to troops and peacekeepers that are to serve on the ground.¹⁹⁷

The last category that has received EU attention is called Early Response Mechanism and supplies funds so that AU will be able to initiate conflict mediation immediately when there are signs of a potential crisis.¹⁹⁸ There has also been put aside additional funds that are earmarked for evaluation and monitoring purposes as well as technical assistance which is anticipated to increase efficiency and transparency in AU led operations.¹⁹⁹

Pierre Michel concludes that “We, Europeans, are already giving money. That is the aim of the Peace Facility. We are already financing the per diem payment of people in Somalia or who were in Sudan. But that is not enough. Such funding must be predictable. When there is a crisis, it takes six months to find enough money to send troops, which can prove too late. A system is therefore needed that will assure the African Union it will have swift access to the means for financing its operations.”²⁰⁰ He also describes that there are plenty of future projects that are being planned so it appears the EU support for the AU is to remain in the future. There has for instance been decided, after a request from AU, that NATO will assess the ASF.²⁰¹ There is no indication as to what NATO is to specifically assess and by which standards the assessment will be made.

It also becomes evident that much of UN interaction with AU is today largely facilitated and undertaken via EU. The well developed partnership between EU and AU in regard to increasing AU peace and security potential is as such acknowledged by the UN. UN appears to tap into the relationship by allowing EU to serve as advisors on AU and African projects. Pierre-Michel concludes that “We therefore now have a sort of network stretching between New York, Brussels and Addis Abeba, which works relatively well and which allows us all to be kept informed of the

¹⁹⁷ Ibid., 4

¹⁹⁸ APF

¹⁹⁹ Ibid.

²⁰⁰ Joana, 4

²⁰¹ Ibid., 3-4

standpoints that develop in these various places. This is very important as it is necessary for all this to be compatible with the work and procedures of the United Nations, mainly when it is a matter of the African Union being taken over by the United Nations or the United Nations by the African Union. It is essential for the United Nations to be involved and this is what we shall be working on in coming months.”²⁰² The statement hints at the fact that UN involvement in AU affairs could, and should, be more extensive and that it is likewise the aim of the EU to facilitate such a relationship instead of taking over those relations.

4.3.3 G8

The G8 has also committed itself to strengthen the potential and capacity of the AU peace and security infrastructure. At the summit in Kananaskis in 2002 the African Action Plan was adopted. This plan emphasize that technical and financial assistance will be provided so that African countries as well as regional organizations have the means necessary to respond to conflicts on the continent.²⁰³ Recent developments in relations to the African Action Plan has changed its aim as to only focus on military operations and have as such completely dropped other diplomatic responses to conflicts prevention and resolution. The main goal of the plan is now to train and equip the ASF as to make it operational and efficient.²⁰⁴

4.3.4 Canada

Canada is, apart from the EU, the single largest donor to AU and African nations. The Canada Fund for Africa was launched at the G8 summit of 2002 in Kananaskis. The fund, of 500 million Canadian dollars, was large in scope and focused not only on the peace and security structure of AU but also on the strengthening of good governance, health, agricultural and environmental aspects as well as trade and investment in individual African nations.²⁰⁵ The fund was to be up and running between 2002-2007 and CIDA reports that “all but one of the projects targeted by the

²⁰² Ibid., 2

²⁰³ Powell, 25

²⁰⁴ Ibid., 26

²⁰⁵ Canadian International Development Agency (CIDA) <http://www.acdi-cida.gc.ca/acdi-cida/acdi-cida.nsf/eng/MAR-619131753-NAQ>

Canada Fund for Africa, the Canada Investment Fund for Africa managed by CIDA's regional and geographic programs, have been completed.”²⁰⁶ It has been highlighted that Canadian initiatives were considered to be amongst the first that took on a primarily partner like approach²⁰⁷, while much of other donor activities are primarily donor driven and as such often perceived as paternalistic. This perception is largely a product of the fact that decisions are taken without the consent, or even the input, from representatives of the countries or areas in which the projects are concerned. This represents a great discrepancy considering that such an approach indicates a belief that the donor countries have the solutions for problems in the aid receiving nations without attempting to open up the discussion to the countries of concern. If they are not allowed to voice their opinion, funds might be earmarked for project that the donor countries perceive to be of importance. The recipient country might not be of the same opinion and would have wanted to see funds being funneled into what they considered to be a more dire area. There have been funds from Canada that has been unearmarked²⁰⁸, which is highly unusual. This approach to donor funding been very positively received by the recipient countries as they can be spent in areas that they deemed most urgent. The recipient state still has to account for where the funds have been used as to ensure transparency and prevent fraudulent use of the aid.

Even though the funds provided by donors are invaluable to the operations of the AU it is of importance to make sure that funds are provided for the right reason and that it will be used constructively. To highlight some deep-seated problems with the current donor regime Berman states that “despite much rhetoric from both African recipients and Western donor countries about the crucial role regional organizations are to assume, for the most part aid continues to be channelled bilaterally.”²⁰⁹ Powell concurs by concluding that such an approach contributes to an asymmetrical development of regional organizations since donor-driven initiatives often lacks coordination while also favoring some areas or nations over others.²¹⁰ Even though Canada has been pointed out as a country that have provided valuable funds as well as new and appreciated approaches to donor initiatives, it has also been responsible for adding to this asymmetrical

²⁰⁶ CIDA

²⁰⁷ Powell, 30

²⁰⁸ Powell, 27

²⁰⁹ Berman, 41

²¹⁰ Powell, 30

development. Powell states that Canada has prioritized the development of West African capacities instead of providing funding that would allow the AU to increase its capacity. Powell concludes that “while contributing to peace and security in West Africa is important, Canada needs to ensure that its regionally oriented support reinforces rather than undermines the continental-wide security architecture envisioned by the AU commission and member states. It may also signal a worrying trend whereby Canada provides substantial support for crisis response in Africa that is not also matched with meaningful and sustained political, financial and material assistance to a broader peace and security agenda.”²¹¹

Other equally worrying trends have been emerging as a result of lacking donor initiatives to meaningfully support the strengthening of African peace missions. There has therefore been created a possibility for powerful nations, such as China and the US, to advance their own foreign policy interests disguised as support for the African peace and security regime. The US led war on terror has led the US to invest resources in areas where it previously have been relatively uninterested to commit itself to. On the African continent the US in 2007 announced that a new military and security command, AFRICOM, would be established. It was motivated as a means to “strengthen US security cooperation with Africa and create new opportunities to bolster the capabilities of its African partners.”²¹² What is of interest is the fact that the US maintains that this military command center will serve to aid in areas of health, education, the promotion of good governance all of which will lead to economic growth and development.²¹³ No real answer has been provided as to how these goals will be achieved considering that the center will focus on military operations. AFRICOM has on understandably grounds been met with some resistance and suspicion as local observers fear that the center will serve to destabilize the area instead of increasing security. It appears that AFRICOM will serve as a base from which attacks will be launched against perceived terrorist threats both in the horn of Africa and the Middle East.²¹⁴ This could mean that the center will attract conflicts instead of preventing them. In the spirit of cooperation between US and Africa, the US will provide the funding, equipment and intelligence needed to facilitate operations while it is expected that the personnel will be provided by so

²¹¹ Ibid., 30

²¹² Othieno and Samasuwo, 32

²¹³ Ibid., 32

²¹⁴ Ibid., 32

called “strategic allies” from the region.²¹⁵ The solution appears to be considered a fair trade-off on the part of US while some would conclude that the practice only is in line with the proposed segregation that has been created between rich and poor nations described above where the rich provides the resources while the poor is expected to commit personnel to conflict zones. It appears that the richer nations are unwilling to risk the lives of their own citizens while still wanting to maintain a presence and influence in the conflict areas by the use of local allies.

4.4 AU missions

4.4.1 AMIB^{xi}

As has been established, there are still areas of the AU peace and security structure that needs to be developed while operations, so far, requires sustained international aid and support. Despite this the AU have proven that it is willing to exercise the mandates of interventions provided in article 4(j) of the Constitutive Act in. As such, it already back in 2003 conducted its first peacekeeping mission as it responded to the conflict and aided the peace process in Burundi in the face of international reluctance to act. The Arusha Agreement had established that UN peacekeepers where to oversee the peace process but the UN decided not to support operations in Burundi without a comprehensive ceasefire agreement.²¹⁶ The Burundian government asked for assistance from the AU and it was therefore decided that the African Mission in Burundi (AMIB) where to be deployed.²¹⁷ It is of importance to note that AMIB were only intended to last for a year after which the UN would take over the responsibility of the mission. As such, the immediate aim for AMIB was to ensure the creation of a ceasefire agreement as to facilitate the conditions on the ground that would enable UN to enter the scene. The mission received much international and regional attention since it represented a first of its kind. While the international community provided mixed reviews, regional leaders and the AU stated that AMIB “serves as a shining example and model of African solutions to continental security challenges.”²¹⁸ The statement indicated a regional appreciation for the mission and an optimistic attitude towards the mission, demonstrating that the AU operation was deemed to be of importance. It was probably

²¹⁵ Ibid., 32

²¹⁶ Powell, 34

²¹⁷ Ibid., 34

²¹⁸ Ibid., 36

empowering for the AU and its members to realize that operations could materialize without UN involvement, indicating both the separation from previous OAU policies as well as independence from international meddlers.

The force was only 3500 men strong and observers concluded that the mission was very limited in its perceived aim of increasing stability in Burundi.²¹⁹ Besides lacking personnel, there were also an insufficient budget and lack of necessary resources. The first budget that the AU provided to the UN SC was deemed to be too extensive, although the budget had been based on UN standards. UN judged it to be “too ambitious for an African mission.”²²⁰ Subsequently the budget was cut. It would later become evident that the budget set by the UN was not sufficient to sustain the intended operation consequently leading to affect AMIBs ability to get the job done as had been imagined. Aid was primarily received from EU who supplied approximately 25 million Euro to the operation.²²¹ But funds were not provided swiftly which impaired the mission and still did not cover the total costs of the operation of US\$134 million²²² all of which limited the operational performance of AMIB. It as such became evident that AU still suffered from severe economic and capacity limitations which only could be addressed with international support. It would likewise indicate that future mission would need a more proactive approach from international actors.

There were also concerns voiced due to the heavy reliance on South Africa in AMIB. South Africa took the lead in the operation while also supplying the vast amounts of troops and resources. As such, questions arose as to whether or not the operation could be considered to an AU mission.²²³ What followed was a discussion over which mandate and responsibility that were in place for the operation. While some questioned whether it was to be subjected to SADC or AU jurisdiction, I would deem it quite evident that it was sanctioned under AU mandate since AU

²¹⁹ Ibid., 37

²²⁰ Ibid., 37

²²¹ Ibid., 38

²²² Ibid., 38

²²³ Svensson, Emma for FOI “The African Mission In Burundi: Lessons learned from the African Unions First Peace Operation” (2008), 10-11

collaborated with the UN on the mission while also being evoked on the grounds of article 4(j) of the Constitutive Act of AU.

What has concerned observers is the division of labor that was introduced in this mission.

Whereas the UN did not deem it safe enough to have their peacekeepers enter Burundi, AU troops was allowed to initiate operations. I would still conclude that there was a great eagerness on the part of the AU to prove that it was committed to the new peace and security agenda that it was trying to implement which influenced their decision to act. At the same time, the agenda had been developed due to the realization that there existed a great reluctance from external actors to commit personnel to conflicts in Africa which likewise would serve as an incentive for AU operations. Still Powell concludes that “the fact that AMIB was deployed to an insecure environment with half the resources and personnel as ONUB [UN operations] risks creating a two-tiered system of international security where the lives of some peacekeepers and the people for whom they are keeping the peace are implicitly accorded less value than others.”²²⁴ While it is highly undesirable to have a situation develop in which a double standard gets institutionalized, it should not be forgotten that if AU had not responded in Burundi, the conflict would most likely have dragged on causing extensive suffering and destabilization which would threaten a substantial number of people on the continent. AU acted to ensure that progress were to be made and further suffering prevented, as such they mantled the task of increasing stability before UN would enter the scene. Pressure should be put on UN to adhere to article VIII of the charter, pertaining to the provision of adequate funds and resources to regional operations authorized by the UN. If the regional operations are not sufficiently equipped and sponsored, they are limited in their ability to succeed with the intended goal while the personnel most likely will become yet other victims to the conflict. It is the responsibility of the UN to ensure that there is a fair distribution of resources as well as an acceptable division of labor.

²²⁴ Powell, 40

4.4.2 AMIS^{xii}

As the violence was allowed to escalate in Sudan, again because of the international community's inability to decide on a decisive course of action, there were plenty of observers that called for intervention on the basis that the threshold conditions for humanitarian intervention had been met. In the face of international hesitation, the AU commission's chairperson, Aloha Oumar Konare, declared that the Sudan crisis would receive AU attention as "the first major challenge to the recently established Peace and Security Council."²²⁵ AU originally got engaged politically in the conflict by facilitating negotiations between the Sudan government and the rebel groups already in the beginning of 2004. The negotiations periodically progressed during the duration of the AMIS operation before finally breaking down. For instance there was produced a Humanitarian Ceasefire Agreement (HCFA) in April of 2004 that allowed for a 45 day ceasefire in order to allow humanitarian access and assistance to Internally Displaced Persons (IDPs) and other civilians in need of aid.²²⁶ As stated above, progress was often followed by a regression and sometimes a complete collapse in negotiations and as such the potential for a political solution appeared quite elusive.

Following the HCFA in April 2004, AU decided that an assessment mission were to take place to evaluate the situation on the ground so to formulate the prospects for future action. The Assessment mission led to the completion of a plan of action in which the PSC established that the AMIS operation was to initiate. Originally the mission was to be made up of an unspecified number of military observers. The mission mandate was very limited as the troops were to only protect themselves as well as the observers while monitoring the ceasefire.²²⁷ Over the years that AMIS was operating, the mission was to expand and enter various different phases. Even though there were preparations made, observers agree that the mission lacked sufficient planning which strained the AMIS capacity to act.²²⁸ It likewise became evident already early in the mission that there were not enough resources available to achieve the intended goals. As such suggestions

²²⁵ Ibid., 42

²²⁶ Ibid., 42-43

²²⁷ Ekengard, Arvid, for FOI "the African union Mission in Sudan (AMIS): Experiences and Lessons Learned" (2008), 17

²²⁸ Ekengard, 17-18

were made for extension of the mandate which would serve to guide the development of AMIS II which had wider directives.²²⁹ Although AMIS II received further donor aid, the funds were not sufficient. The AMIS II continued to be strained and limited in its capacity to influence developments in Sudan.

As the humanitarian crisis continued to escalate and human rights abuses mounted, new assessment mission were made upon which it again was decided to enlarge the AMIS operation. AMIS IIE was created which was now made up of over 6000 troops as well as 1600 personnel from the civilian police.²³⁰ The AMIS mission was reaped with challenges as it lacked the logistic, intelligence and resource capabilities needed and as such international aid kept the operation alive.²³¹ Even though the UN had been slow to act initially there had by this time been a change of hearts in New York. The UN was willing to deploy troops but there were widespread Sudanese resistance to such an effort. Sudanese groups opposed UN involvement while agreeing to the continued presence of AMIS.²³² The position was motivated on the grounds that AU intervention still respected Sudanese sovereignty as they were invited to participate in the conflict resolution if it would hold off international interference. It was also believed that AU was more committed to a political solution while the international intervention was believed to mean only a military endeavor.²³³ At the same time, it could be speculated as to if the Sudanese opposition to UN involvement and support for sustained AU presence in reality had more to do with the perceived inaptness of the AU mission to end atrocities. If so, AMIS did not pose a severe threat to the fighting factions and instead facilitated maintenance of the status quo.

By the end of 2006 it had been decided that AMIS would turn into a formal collaboration between UN and AU. Still it was not until summer 2007 that Khartoum accepted UN involvement. July 2007 UNSC resolution 1769 was finally passed which formally established and launched UNAMID (UN-African Mission in Darfur).²³⁴ There were plenty of UN preparations

²²⁹ Ibid., 17- 19

²³⁰ Ibid., 20

²³¹ Ibid., 22-23

²³² Othieno and Samasuwo, 36

²³³ Ibid., 36

²³⁴ Ekengard, 24

undertaken to facilitate the transformation of the AMIS mission into a hybrid cooperation. Plenty of resources, training, personnel and funds were contributed to strengthen the mandate and the capacity of the UNAMID.²³⁵ In the winter of 2007 the AMIS operation was terminated.

Evaluations of the mission diverge somewhat in their conclusion regarding the importance of AMIS presence, while generally agreeing in their structural criticism of the operation. Just like AMIB, AMIS had a very weak and ambiguous mandate which hampered its effectiveness.²³⁶ Ekengard describes how in an attempt to strengthen the mandate and increased the authority of AMIS, AMIS II extended authorization for protection of civilians. But the author concludes that this extended mandate in reality came to serve the opposite purpose as it became even more evident that AMIS lacked the resources needed to successfully add protection to civilians. He therefore establishes that “the AMIS II mandate was not achievable.”²³⁷ Also, similar to AMIB, there were overall huge capacity deficiencies which would influence the ability AMIS had to make serious headway in the resolution of the conflict.²³⁸

When it comes to the successfulness of AU efforts, it is widely recognized that the 4 year long operation did not bring about peace or even much advances towards that goal.²³⁹ The fighting continued to shed the lives and limbs of many people while also continuing the destruction of the nation. Still the presence of AU did not go entirely unnoticed as it continued relentlessly to strive for a betterment of conditions and a solution to the conflict. It also periodically managed to achieve progress in the peace negotiations and establishment of temporary ceasefires that allowed for humanitarian assistance to enter the scene. Unfortunately the effects were not lasting, and overall, violence continued to increase throughout the AMIS presence in Darfur.

What is of importance is the perceived legitimacy and willingness of the AU to undertake operations. It was envisioned that AU participation would serve to increase the organizations

²³⁵ Ibid., 24

²³⁶ Ibid., 25

²³⁷ Ibid., 26

²³⁸ Ibid., 26-28

²³⁹ Ibid., 29

respect and reputation as a possible enforcer of international law on the continent. As such, one could imagine that the operation would serve to enhance positive perceptions of the AU as they were one of the few actors that got involved, and was allowed to act, in the conflict. Considering that the AU peace and security regime in 2004 still only was at the inception and still required much work, and AMIS only was the AU's second peacekeeping operations in history, it could be expected that lessons learned would serve to increase knowledge and improve conditions for future missions based on the experiences gained in both Sudan and Burundi. Still research showed that AMIS legitimacy continued to decrease in Sudan to a point when "the strong consensus among non-Arab Darfurians was the African Union Mission, AMIS, was unable to protect people from violence –though some contingents did receive praise from local people, for instance the Rwandan forces in Kabkabiya. Not only was AMIS weak but it was increasingly seen as partisan,"²⁴⁰ Following this report serious AU attention and resources went into confidence building. Observers still concluded that while the confidence building often had a positive effect on international actors, it did fairly little to move the local consensus towards a positive opinion of the AMIS mission.²⁴¹

Even though I believe that regional and local perceptions of AU are, and should be, what matters, it cannot be denied that the perceptions of the international community is what is considered to be of real significance. It is established that the new policies of the UN calls for local solutions and responses to local problems as part of the responsibility ladder that UN has been striving to implement. Yet it cannot be denied that regional operations most often receive international criticism when undertaking independent operations. Regional representatives concluded at the Maputo round-table discussion, regarding a right to intervention, that "in cases where African states have shown a proactive willingness and initiative to resolve crises through a coalition of the willing, not of the weak, the responses from, and support of, the international community has been, at best, lukewarm."²⁴² It is very common that various international actors, both NGOs and government affiliated, actively interfere and attempt to sway interventions as to enhance their own perceived best solution to the problems. Such a reaction to regional initiatives serves to undermine local and regional incentives. At the same time, these foreign meddlers, as been

²⁴⁰ Ibid., 30

²⁴¹ Ibid., 30

²⁴² ICISS, *Background: Regional Roundtables and National Consultations*, 365

established in the debate regarding donors, most often apply conditionality to the aid provided which by definition takes away the independence of regional organizations and effectively works against the fulfillment of African solutions to African conflicts. The international community must realize the potential and responsibility it has to promote, and meaningfully support, regional initiatives. We need to take measures to develop foreign policies that aim at constructively relieving and sustaining regional initiatives instead of undermining them, especially as we appear to stay committed to a policy of minimal interventionism. With such an approach to international relations we do not have the right to discourage regional activities that are pursued with the goal to prevent humanitarian emergencies.

5. Summary and conclusions

It cannot be denied that there have been, and are, many different opinions in regard to the legality of humanitarian interventions and the desirability of the evolution towards a responsibility to protect. The R2P discussion served to enhance legitimacy for the development of a right to intervene although the same legal and ethical conundrums, which were explored above, largely remain. With the normative shift in international relations, following the end of the Cold War, more and more people were attracted to the pragmatist conclusion that there should be developed a new legal framework dealing with the specifics regarding future humanitarian interventions. The paradigm shift also gave birth to the notion of human security, which to many, appeared to go hand in hand with humanitarian interventions as interventions would be used to further human security aspirations. These considerations culminated in the development of a responsibility to protect which got relatively wide acceptance and adherence to as can be reflected in the Constitutive Act of the AU. It is still apparent that the vast majority of international lawyers regard humanitarian interventions, and R2P, as unlawful as the UN Charter was established to limit the use of force, and not promote it.

There are also widely different perceptions regarding humanitarian interventions as part of customary international law. Many say that humanitarian interventions became included in customary law already in the 1990s due to the increase in interventions since the end of the Cold War. Others believe that humanitarian interventions officially became part of customary law with the emergence of the ICISS report. But many still maintains that humanitarian interventions are not part of customary law since only a handful of nations, and organizations, have the ability to practice it, or have done so in the past decade. As such, humanitarian interventions cannot be perceived to be a widespread phenomenon available to all states on equal basis.

Discussions pursue about the legal standing of humanitarian intervention and the R2P since there exists a fear that accepting a right to intervention into international law might lead to potential abuse of the present ambiguity of the framework. Since realism still governs the vast majority international relations, the national interests of those actors that are capable to intervene militarily, will continue to determine which states will be subject to foreign interventions. This would in

turn lead to, or indicate, an erosion of effective control over international peace and order by the UN. Although flawed and in need of democratization, UN still represents the most comprehensive institution for conducting international affairs multinationally as opposed to unilaterally, or as a result of a coalition of the willing, which would potentially become the alternative.

While I think that it is established throughout the paper why it is undesired to have states police other states, it is still a common occurrence that has been practiced throughout history by states capable of doing so. As such, there is no indication that such activities are about to cease. The question is how we, the international community, decide to counter such activities. So far, there has been an active discussion which has not yielded a comprehensive and conclusive agreement over the status of interventions in international law. An unambiguous framework is needed in order to be able to enforce indiscriminatory implementation, and prosecute abuses, to such a legislation.

My biggest concern is that while international law at present is heavily influenced by pragmatist considerations, international relations are still predominantly guided by realist aspirations. Therefore, nations, by and large, remains to act based on national interest and not on the basis of humanitarian concerns as provisioned in the responsibility to protect doctrine. Most of the “humanitarian interventions” that have been carried out the past decade has been highly politicized, and as such the level of humanitarian concerns on behalf of the intervening powers is questionable. I also believe that the responsibility to protect has a very vague definition as well as an unclear standing in international law and could come to include many things beyond protection of human rights. I believe this to be problematic since I would not regard democracy building, and promotion, a legitimate justification for intervention in the affairs of another state.

The R2P, as outlined by ICISS, encompasses a long-term approach to interventions. As such, the document included an emphasis on prevention of conflicts and addressing root causes to conflict with the aim to avoid having to resort to military interventions which only should be regarded as a last alternative. The long-term approach to interventions and conflict resolution was favored by African states which already before the conclusion of the ICISS report had formulated the

Constitutive Act of the AU that included similar provisions. The Constitutive Act is therefore seen as the first international document that effectively aims at implementing the R2P. Still, the Constitutive Act was not simply a product of pragmatist aspirations but instead reflected a response to the international community's inability to respond to conflicts on the African continent.

The legal standing of the Constitutive Act is also still discussed for a variety of reasons. The ability to effectively implement an R2P by the AU is questioned since interventions still need UN approval. The AU also suffers from resource scarcity which hampers its ability to successfully respond to security emergencies. There is also a fear that the vaguely phrased framework for intervention in the Constitutive Act could be abused by repressive regimes, that are members of the AU, in the name of enforcing stability and security as provisioned in article 4(h) of the Act. While the phrasing of the act could be abused, one should bear in mind that the framework for a right to intervention was created due to the need to manage conflicts on the African continent in the face of ineffective responses from the UN and the international community. While acknowledging the possibility for abuse of these acts, it should likewise be remembered that these provisions have the capacity to do much good. Under these provisions the AU has the potential to intervene both with and without the consent of the targeted state, and could as such take action against repressive regimes that are severely undermining regional and human security.

I agree with Richard Falk's conclusion that "the renunciation of unilateral intervention does not substitute a policy of nonintervention; it involves the development of some form of collective intervention."²⁴³ I believe that this statement also reflects the position of the AU in which member states are highly suspicious of foreign interventions as a consequence of past experiences. The suspicion prevailed and colored the policy of the OAU which prioritized a peer system in which African states collectively got together to support the notion of territorial sovereignty even in the face of severe humanitarian crises. As such, The AU have gone to great measures to break away from the noninterventionist policy of the OAU by establish a peace and security structure

²⁴³ Falk, Richard. Editorial Comments: NATO's Kosovo Intervention. "Kosovo and the Law of 'Humanitarian Intervention'" from *The American Journal of International Law* 93: 825

that will work to ensure the early detection of conditions that could serve to spur conflicts as well as implementing the R2P agenda.

I believe that the measures taken by the AU towards the comprehensive adoption and implementation of the R2P responds both to the policy favored by the international community of local solutions to local problems as well as representing a determination to prevent large-scale conflicts to unravel undeterred in the face of international unwillingness to act promptly and decisively to conflicts on the continent. Several authors and observers have likewise advanced the position that it is highly desirable to enable the AU, and other sub-regional organizations, to serve as the independent enforcers of regional order in a climate where no aid can be expected to arrive promptly from the international community. It should also be remembered that the UN actively pursues a policy in which regional organizations are expected to exhaust their options for resolution before UN is to step in.

There has also been asserted an aspiration to Africanize the interventions in line with the position developed at the Maputo round-table discussion where it was concluded that “participants were of the view that Africa must begin to define solutions to her problems. There was a strong feeling that in Africa people have been perceived as objects, and not actors. There has to be an awareness that people matter, and foreign actors could assist in this by facilitating issues defined by local actors. They should also practice what they preach – that is, good governance, transparency, and accountability – and should avoid imposing only their views on the management of conflicts.”²⁴⁴

While AU and its sub-regional partners have proven that they are committed to a policy of interventionism, the research has revealed the existence of many obstacles to the successful endeavor of regional operations. As evident by the two AU missions explored in this paper, the most substantial hindrance to missions is the insufficient financial, as well as, material and human resources needed to sustain operations independently from outside intervention and support. So far, all missions have been coordinated with the help of international aid that have come to guide the operations turning them into hybrid collaborations and as such limiting the potential of AU to act as the ultimate authority. While I believe that UN, as specified in the UN charter chapter VIII, should provide necessary resources to delegated operations, these should be

²⁴⁴ ICISS, *Background: Regional Roundtables and National Consultations*, 364

conditionless so an intervention policy can be worked out and derived from local incentives and positions.

The bilateral, and asymmetrical, buildup of certain preferred areas and regions of the continent by international donors also serves to undermine the mandate of the AU as it is forced to rely on these local powers for funding. This development could potentially create a situation where the national interests of these powers will be advanced before the collective interests of the remaining member states to AU. The AU consists of 53 states and the policy agenda of the organization should idealistically represent the interest and the needs of the majority, as opposed to the minority, to protect the integrity of the organization as a democratic institution.

What is of further interest to the donor discussion is the fact that international verdict of regional efforts tends to be very harsh. The criticism that is forwarded is not always constructive and aimed at improvements but instead sanctions the hijacking of regional missions turning them into foreign endeavors. This indicates a paradoxical break from the policy of local solutions to local problems that usually are favored. It should also be kept in mind that the negative perceptions advanced will influence future funding, aid and even the foreign policies that guide and encourage international relations. These misconceptions can have severe consequences as became obvious after the termination of the US led intervention in Somalia that was allowed to influence future international interactions with the entire African continent.

Observers have also hinted that there appears to be an uneven division of labor developing in the relationship between UN and the regional organizations where locals are perceived as being sacrificed and sent into dangerous situations into which UN is unwilling to send its personnel. The local staff is then to facilitate conditions that would enhance the UN willingness to enter the scene. It is therefore necessary to establish a division of labor that will formally regulate the working of regional and sub-regional bodies and their responsibility towards the UN as well as formalizing UN responsibility towards these regional actors. There is no such formal framework in existence today that serves to guide AU-UN relations. The lack of a decisive labor division undoubtedly serves to undermine effective implementation and organization of the provisions in the Constitutive Act since efforts are met with hesitation while waiting for UN directives. The

AU have been able to circumvent this obstacle somewhat since the Act does not rule out AU intervention without UN authorization, while international law requires AU to seek UN approval in retrospect. All interventions need to pass UN approval in order to be deemed legitimate and avoid prosecution for representing a breach of international law.

Since the AU is to function as a collaborator to the UN for the enforcement of the international security desired in the UN Charter, it is important to create a balance in which AU conflict management ability does not further legitimize UN retrenchment in Africa. It is undesirable to have the UN entirely forfeit its responsibilities to international peace and security, as it might lead to erode the power and influence of the UN as the highest institution for international law and order. But it can likewise be seen as necessary to have regional actors take the lead in local conflicts when international community hesitates to do so.

I conclude that there is a great eagerness on the part of the AU to prove its departure from the politics of nonintervention which steered the OAU by showing committed to the new peace and security agenda that it is trying to implement. The commitment is cemented by judging from the missions AU has participated in and currently is a party to. At the same time, the organizations' security agenda was developed due to the realization that there existed a great reluctance from external actors to commit personnel to conflicts in Africa which likewise would serve as an incentive for AU operations. AU acted to ensure that progress was to be made and further suffering prevented. As such, they mantled the task of increasing stability with the incentive to encourage UN to actively deliver on its international security responsibility.

The Constitutive Act is ambitious and tries to establish a system that will allow for the early detection and effective prevention of conditions to evolve that could turn into crisis in order to ensure that military interventions does not have to materialize. There is likewise asserted a clear desire to address root causes to conflicts also intended to undermine potential conflicts to erupt. The Act also stipulates the post-intervention responsibility to rebuild the targeted nations as to prevent future flare-ups of conflicts due to inept abilities to recuperate from the intervention and the destruction brought by the conflict. So far the security structure has not been finalized and operationalized. What becomes evident from the study is that there is a political will, but a severe

lack of resources that hampers the achievement of a successful enforcement of the responsibility to protect in Africa. There also lacks concrete checks and balances to monitor operations and conduct of regional organizations to ensure that the sometime vague phrasing of the paragraphs pertaining to intervention won't be abused. Corresponding to these conundrums is the somewhat undesired overreliance on regional hegemony that have the potential to hijack AU operations in favor of national interests.

Considering that the AU is made up of very diverse states, both in terms of politics, culture, resource and financial capacities, it is of importance to recognize the potential limitations of the organizations' ability to conduct extensive operations for several reasons:

A) many of the member states are considered poor and as such lack the material resource capacity to contribute towards AU operations. Other states lack the political will or capacity to contribute as they are considered weak and as such might not have effective control over their own territories. Other states are led by repressive regimes that might fear the development of a responsibility to protect as it might make them subject to future interventions aimed at enhancing human rights and good governance. Therefore they are sticking to the policy of nonintervention with the aim to protect national sovereignty,

B) the prominence of a few regional powers, such as Nigeria and South Africa, might hamper the objectiveness of the operations if these regional hegemony are allowed to dominate the missions and as such making them take on characteristics of unilateral, instead of multilateral, operations,

C) AU will continue to rely and depend on the funding from international donors that potentially will earmark the funds to fit into their own foreign policy agenda which effectively serves to restrict the independence of the AU.

As such, it appears that the AU peace and security regime is still very much a work in progress which faces several obstacles that needs to be addressed. The AU security structure is still not finalized as envisioned and as such there is much that could happen in the future that would lead to further improvements. So far the outcome is unpredictable and could take on various different forms depending on both regional incentives and efforts, as well as, international responses to the

process of development of the AU. This being said, I believe that the emergence of a R2P in Africa is a necessary and positive development that allows for the inclusion of local perspectives and aspirations. The AU likewise appears determined to continue to strive for the enforcement of a responsibility to protect, even though the process faces several obstacles. The AU commitment should be encouraged by the international actors as it responds to the policies formulated by the international community. As such, the faith and future of the AU peace and security regime is not predictable since there will be new developments that give rise to new challenges and questions that will need to be addressed while the AU continue to try to expand their regional influence and capacity. I will continue to monitor these developments with great interest.

6. Bibliography:

6.1 Books:

Amneus, Diana, *Responsibility to Protect by Military Means: Emerging Norms on Humanitarian Intervention?* (Stockholm: US-AB Universitetservice, 2008)

Clarke, Walter and Jeffrey Herbs ed. *Learning from Somalia: The Lessons of Armed Humanitarian Intervention* (Boulder: Westview Press, 1997)

Donnelly, Jack, *Realism and International Relations* (Cambridge: Cambridge University Press, 2000)

Evans, Malcolm D. *International Law Documents 7th Edition* (New York: Oxford University Press, 2006)

Gray, Christine. *International Law and the Use of Force* (New York, Oxford University Press, 2000)

Hoffman, Stanley. *The Ethics and Politics of Humanitarian Intervention* (Notre Dame: University of Notre Dame Press, 1996)

Keohane ed., *Humanitarian Intervention: ethical, legal and political dilemmas* (Cambridge: Cambridge University Press, 2003)

Macedo, Stephen ed., *Universal Jurisdiction: National Courts and the Prosecution of Serious Crimes under International Law* (Philadelphia: University of Pennsylvania Press, 2006)

Meijer, Martha, *Dealing With Human Rights: Asian and Western Views On the Value of Human Rights* (Sterling: Kumarian Press, 2001)

Newman, Michael, *Humanitarian Intervention: Confronting the Contradictions* (London: C.

Hurst & Co. Ltd, 2009)

Rawls, John, *The Law of peoples: With "the Idea of Public Reason Revisited"* (United States: First Harvard University Press, 2002)

Soderlund, Walter et al. *Humanitarian Crises and Intervention: Reassessing the Impact of Mass Media* (Sterling: Kumarian Press, 2008)

Weissman, Fabrice. *In the Shadow of 'Just Wars'* US, Cornell University Press, 2004

Welsh, Jennifer M. ed. *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004)

6.2 Articles:

Adeleke, A, "The Politics of Diplomacy of Peacekeeping in West Africa: The ECOWAS Operation in Liberia" from *The Journal of Modern African Studies*

Baimu, Evarist and Kathryn Sturman, "Amendment to the African Unions Right to Intervene: A Shift from human Security to Regime Security?" from *African Security Review* 12(2) (2003) retrieved from ISS August 15, 2010

Baker, Deane-Peter and Sadiki Maeresera, "SADC/BRIDG Intervention in SADC Member States: Reasons to Doubt" from *African Security Review* 18(1) (March 2009) retrieved from ISS August 15, 2010

Bellamy, Alex. "Power, Rules and Arguments: New Approaches to Humanitarian Intervention" *Australian Journal of International Affairs* 57(3) (November, 2003) retrieved from EBSCOhost March 3, 2007

Berman, Eric G. "African Regional Organizations' Peace Operations: Developments and

challenges” from *African Security Review* 11(4) (2002) retrieved from ISS August 15, 2010

Branch, Adam. “American Morality over International Law: Origins in UN Military Interventions, 1991-1995” *Constellations* 12(1) (2005) retrieved from EBSCOhost March 3, 2007

Carey, Henry. “Naturalism vs. Positivism: Debates over Coercive Protection of Human Rights in Haiti, Bosnia and Kosovo” *Civil Wars* 5(2) (Summer 2002) retrieved from EBSCOhost March 3, 2007

Carey, Henry. “U.S. Domestic Politics and the Emerging Humanitarian Intervention Policy: Haiti, Bosnia, and Kosovo” *World Affairs* 164(2) (Fall 2001) retrieved from EBSCOhost March 3, 2007

Cilliers, Jakkie, “Towards A Continental Early Warning System for Africa” *Occasional paper* 120 (April 2005)

Cilliers, Jakkie and Kathryn Sturman, “Challenges Facing the AU’S Peace and Security Council” from *African Security Review* 13(1) (2004), 97 retrieved from ISS August 15, 2010

Cillier, Jakkie and Kathryn Sturman, “The right intervention” from *African Security Review* 11(3) (2002) retrieved from ISS August 15, 2010

Clark, John. “Revisiting the New Interventionism” *Journal of Humanitarian Assistance* (September, 2001) retrieved from EBSCOhost March 3, 2007

Cornish, Paul. “Kosovo: Moral War or Moral Hazard?” *Defense Studies* 1(2) (Summer 2002) retrieved from EBSCOhost March 3, 2007

Duner, Bertil. “Violence for Human Rights” *The International Journal of Human Rights* 5(2) (Summer 2001) retrieved from EBSCOhost March 3, 2007

Ekengard, Arvid, for FOI “the African Union Mission in Sudan (AMIS): Experiences and

Lessons Learned” (2008), 17 <http://www.foi.se/upload/projects/Africa/foir2559.pdf> retrieved September 8, 2010

Falk, Richard. Editorial Comments: NATO’s Kosovo Intervention. “Kosovo and the Law of ‘Humanitarian Intervention’” *The American Journal of International Law* 93(824) retrieved from EBSCOHost March. 3 2007

Goodman, Ryan. “Humanitarian Intervention and Pretext for War” *The American Journal of International Law* 100(107) (Spring 2006) retrieved from JStor 3/19/2007

Harbour, Frances. “Moral Agency and Moral responsibility in Humanitarian Intervention” *Global Society* 18(1) (January, 2004) retrieved from EBSCOhost March 3, 2007

Harhoff, Frederik. “Unauthorized Humanitarian Interventions-Armed Violence in the Name of Humanity?” *Nordic Journal of International Law* (2001) Retrieved from EBSCOhost March 3, 2007

Heitman, Helmoed-Römer, “Crisis Response Capability: A role for South Africa” from *African Security Review* 11(1) (2002) retrieved from ISS August 15, 2010

Henkin, Louis. “Editorial Comments: NATO’s Kosovo Intervention Kosovo and the Law of ‘Humanitarian Intervention’” *American Journal of International Law* 98(824) (Fall 2004) retrieved from JStor 3/19/07

Hull, Cecili and Maekus Derblom. “Abandoning front line trenches; Capabilities for peace and security in the SADC region” (Stockholm: FOI) (2008), 9 [http://www.foa.se/upload/projects/Africa/FOI-R-2768-SE%20Hull%20and%20Derblom%20Abandoning%20Frontline%20Trenches%20\(June%202009\).pdf](http://www.foa.se/upload/projects/Africa/FOI-R-2768-SE%20Hull%20and%20Derblom%20Abandoning%20Frontline%20Trenches%20(June%202009).pdf) retrieved September 15, 2010

ICISS, International Commission on Intervention and State Sovereignty. *Background: Regional Roundtables and National Consultations* <http://www.ciise-iciss.gc.ca/pdf/Supplementary%20Volume,%20Background.pdf> retrieved September 8, 2010

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

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

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

Jaffe, Hosea, "South Africa, 1985-1994" *Africa Update* 13(1) (Winter 2006)

Janzekovic, John. "Humanitarian Intervention" *Social Alternatives* 24(3) (Third Quarter, 2005) retrieved from EBSCOhost March 3, 2007

Joana, Pierre-Michel, "EU/Africa: Pierre-Michel Joana Takes Stock of EU Aid to African Peacekeeping and Security Efforts" *Europe Diplomacy & Defense: The Agence Europe Bulletin on ESPD and NATO* 234 (June 2009)
<http://www.consilium.europa.eu/uedocs/cmsUpload/090616EDD234EN-InterviewJOANA.pdf>
retrieved September 8, 2010

Hawkins, Virgil, "Measuring UN security Council Action and inaction in the 1990s: Lessons from Africa" from *African Security Review* 12(2) (2003) retrieved from ISS August 15, 2010

Koskeniemi, Martti. "'The Lady Doth Protest Too Much' Kosovo, and the Turn to Ethics in International Law" *The Modern Law Review* 65(2) (March, 2002) retrieved from EBSCOhost March 3, 2007

Lt. Gueli, Richard, "Humanitarian Intervention in Africa: Towards a New Posture" *Scientia Militaria: South African Journal Of Military Studies* 32(1) (2004)

Maninger, Stephan, "Heart of Darkness: Western Policy of Non-Interventionism in Africa" from *African Security Review* 8(6) (1999) retrieved from ISS August 15, 2010

Marshall, Jeffery E., "Building an Effective African Standby force to Promote African Stability, Conflict Resolution and Prosperity" *Discussion paper 16 from the Crisis States Research centre* (April 2009)

Mashishi, Alfred K. "Intervention in Africa: Assessing the Rationale Behind Sub-Regional Peacemaking Military Interventions" *Master thesis from the Naval Postgraduate School, Monterey, Canada* (March 2003)

Mednicoff, David. "Humane wars? International Law, Just War Theory and Contemporary Armed Humanitarian Intervention" *Association for the Study of Law, Culture and the Humanities* (2006) retrieved from EBSCOhost March 3, 2007

Murithi, Tim, "The Responsibility to Protect as Enshrined in Article 4 of the Constitutive Act of the African Union" from *African Security Review* 16(3) (September 2007) retrieved from ISS August 15, 2010

Othieno, Timothy and Nhamo Samasuwo "A critical analysis of Africa's experiments with hybrid missions and security collaboration" from *African Security Review* 16(3) (September 2007) retrieved from ISS August 15, 2010

Pilger, John "'Humanitarian intervention' is the Latest Brand name for Imperialism as it Begins a Return to Respectability" from *NewStatesman* (June 1999)

Powell, Kristina, *The African Unions Emerging Peace and Security Regime: Opportunities and Challenges for Delivering on the Responsibility to Protect* (Pretoria: Institute for Security Studies,

2005)

Svensson, Emma for FOI “The African Mission in Burundi: Lessons learned from the African Unions First Peace Operation” (2008)

http://www.foi.se/upload/projects/Africa/FOI2561_AMIB.pdf retrieved September 8, 2010

Terry, James. “Rethinking Humanitarian Intervention After Kosovo: Legal Reality and Political Pragmatism” *The Army Lawyer* (August, 2004) retrieved from EBSCOhost March 3, 2007

Wheeler, Nicholas. “Decision-Making Rules and Procedures for Humanitarian Intervention” *The International Journal of Human Rights* 6(1). (Spring 2002) retrieved from EBSCOhost March 3, 2007

6.3 Protocols and websites:

African Peace Facility http://ec.europa.eu/europeaid/where/acp/regional-cooperation/peace/index_en.htm September 8, 2010

African Union webpage http://www.au2002.gov.za/docs/background/oau_to_au.htm September 8, 2010

Annan, Kofi. *Millenium Report*
<<http://www.un.org/millennium/sg/report/full.htm>> retrieved August 22, 2010

BBC NEWS “Rwanda: How the Genocide Happened” (December 2008)
<http://news.bbc.co.uk/2/hi/africa/1288230.stm> retrieved September 8, 2010

Canadian International Development Agency (CIDA) <http://www.acdi-cida.gc.ca/acdi-cida/acdi-cida.nsf/eng/MAR-619131753-NAQ> retrieved September 8, 2010

Convention on the Prevention and Punishment of the Crime of Genocide *Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.*

<http://www.hrweb.org/legal/genocide.html> September 8, 2010

Institute for Security Studies http://www.iss.co.za/show_personnel.php?office=1 retrieved September 15, 2010

Pan-African Parliament <http://www.pan-africanparliament.org/> retrieved September 8, 2010

Protocol of the Court of Justice of the African Union <http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20to%20the%20African%20Court%20of%20Justice%20-%20Maputo.pdf> retrieved September 8, 2010

Protocol Relating to the Establishment of the Peace and Security Council of the African Union, 9 http://www.africa-union.org/rule_prot/PROTOCOL-%20PEACE%20AND%20SECURITY%20COUNCIL%20OF%20THE%20AFRICAN%20UNION.pdf retrieved September 8, 2010

Security Council Report, "Meeting between the Security Council and the Peace and Security Council" (July 2010) http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.6115641/k.8AF/July_2010brMeeting_Between_the_Security_Council_and_the_AU_Peace_and_Security_Council.htm

South African Institute of International Affairs. <http://www.saiia.org.za/expertise-directory/kathryn-sturman.html> retrieved September 15, 2010

Winterbourne, Ava "The New International System" in *Erosion of State Sovereignty* (May 2007) http://www.associatedcontent.com/article/235968/the_erosion_of_state_sovereignty_.html retrieved August 15, 2010

ⁱFor more information about the specific details concerning the Tanzanian intervention in Uganda see Newman, Michael, *Humanitarian Intervention: Confronting the Contradictions* (London: C. Hurst & Co. Ltd, 2009)

ⁱⁱ“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security” (Evans, 14-15)

ⁱⁱⁱ“To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” (Evans, 8).

^{iv}These articles deal with the creation, function and framework under which the economic and social council operates. These articles deal predominantly with human rights and establish the right to investigate and establish recommendations for how human rights can better be observed and promoted. It also outlines the right of the council to utilize NGOs and consult other member states and Un institutions with the aim to further human rights (Evans 18-19).

^vThese articles deal with the international economic and social co-operation and states that “the creation of conditions of stability and well-being are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples ... human rights will be promoted in this objective” (Evans, 17).

^{vi} “Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations” Charter of the UN article 4(1) <http://www.un.org/en/documents/charter/chapter2.shtml>

^{vii}“ Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security” (Evans, 16).

^{viii}“Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proven inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations” (Evans, 15).

^{ix}Due to the lack of space and ability to deeply explore the causes to, and the development of the conflict, I would encourage readers that are interested in exploring the Somali case and the humanitarian intervention aspects involved further to read the books *Learning from Somalia: the lessons of armed humanitarian intervention* edited by Walter Clarke and Jeffrey Herbst and *Humanitarianism under fire: the US and Un intervention in Somalia* by Kenneth R. Rutherford.

^xChapter VIII of the Charter of UN <http://www.un.org/en/documents/charter/chapter8.shtml>

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.
2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

Article 53

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.

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

^{xi}For more comprehensive information about the AMIB operation see Svensson, Emma for FOI “The African Mission in Burundi: Lessons learned from the African Unions First Peace Operation” (2008)

^{xii}For more comprehensive information about the AMIS operation see Ekengard, Arvid, for FOI “the African Union Mission in Sudan (AMIS): Experiences and Lessons Learned” (2008)