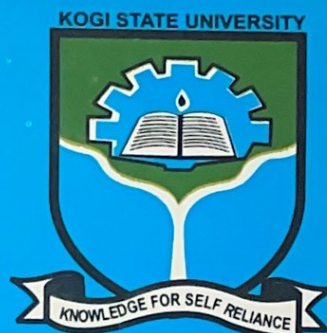




# KOGI STATE UNIVERSITY

## BI-ANNUAL JOURNAL OF PUBLIC LAW (KSU BJPL), VOL 6, NO 1, 2014

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## REFLECTIONS ON THE LEGAL REGIME AND PRACTICE OF RESPONSIBILITY TO PROTECT (R2P) UNDER INTERNATIONAL LAW IN THE AFRICAN REGION

Abdulrauf Lukman Adebisi \*

### ABSTRACT

*There have been several debates by academics and policy makers regarding the concept of Responsibility to Protect (R2P) under international law. Some of these debates is as regard the scope of the concept and its exact legal status in international law. Others are on the issue of whether or not R2P is merely a 'repackaging' of the concept of humanitarian intervention. The concept of humanitarian intervention has been met with severe criticism largely due to its politicization by the Permanent members of the United Nations Security Council. This has made it ineffective in preventing human rights violations in the territory of another state. The emergence of R2P is largely credited to the apparent lapses of humanitarian intervention. Yet, some contend that R2P and humanitarian intervention are one and the same thing. This paper examines various issues regarding the concept of R2P and focuses particularly on the African region. It analyses the exact status of R2P under international law and the extent of its application in African regional legal instruments and crisis situations. Finally, an assessment of the practice of R2P in Africa is carried out.*

**Keywords:** Responsibility to protect (R2P), humanitarian intervention, international law, African region.

### I. INTRODUCTION

The concept of humanitarian intervention brought about unresolved controversies and complications especially regarding the express violation of the UN charter on territorial sovereignty of independent states. The practice of humanitarian intervention recorded numerous cases of abuse by intervening states because it had no predefined criteria or guidelines. These issues with humanitarian intervention brought about the new concept of R2P. Thus unlike humanitarian intervention which is the right of state to intervene in another state for the purpose of ending gross violation of human rights, the notion of R2P gives states the role of responsibility to protect the fundamental human rights of people in the face of gross violation of human rights.<sup>1</sup>

### II. EMERGENCE OF THE CONCEPT OF RESPONSIBILITY TO PROTECT

The history of the concept of R2P sounds almost like a fairy tale. There were controversies in trying to reach a consensus by the international community on whether there exists a right to intervene for human rights protection in international law and whether such right is contained in UN Charter or as a customary right. There was also the need to find another approach to humanitarian intervention which entails resolving the inherent tensions between state sovereignty and human rights protection.<sup>2</sup> The North Atlantic Treaty Organisation's (NATO) unauthorized intervention in Kosovo and non-intervention in Rwanda, to prevent the genocide, brought these controversies to a brink. The then UN Secretary General, Kofi Annan, made compelling pleas to the international community to try to find, once and for all, a new consensus on how to approach these issues so as to forge unite the basic questions of principles and process involved.<sup>3</sup> As a

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<sup>1</sup> This concept has much similarity with Grotius concept of 'Just wars'.

<sup>2</sup> Deqiang C, "Humanitarian Intervention---From a right to intervene to a responsibility to protect". <<http://gdoshisha.files.wordpress.com/2011/06/dr-chi.pdf>> accessed on 23 April 2014 page 7

<sup>3</sup> Report of the International Commission on Intervention and State Sovereignty, *the Responsibility to Protect*, December 2001

response to this compelling plea, the International Commission on Intervention and State Sovereignty (ICISS) was established in September 2000.<sup>4</sup> The Commission developed the concept of R2P in its 2001 report.<sup>5</sup> The central theme was:

the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe—from mass murder and rape, from starvation— but that when they are unwilling or unable to do so, that Responsibility must be borne by the broader community of states.<sup>6</sup>

Since its emergence, the concept of responsibility to protect gained prominence within a very short period of time<sup>7</sup> among the international community though its status in international law still remains highly controversial.<sup>8</sup> In its report *A More Secure World: Our Shared Responsibility*, the UN High-Level Panel on Threats, Challenges and Change stated that:

there is a growing acceptance that while sovereign governments have the primary responsibility to protect their own citizens from such catastrophes, when they are unable or unwilling to do so, that responsibility should be taken up by the wider international community— with it spanning a continuum involving prevention, response to violence, if necessary, and rebuilding shattered societies.<sup>9</sup>

The High-Level Panel even treated R2P as an emerging norm.<sup>10</sup> In another report titled *Larger Freedom: Towards Development, Security and Human Rights for All*, the UN Secretary-General also refers to the idea of an emerging norm of a collective responsibility to protect.<sup>11</sup> R2P was therefore incorporated into the Outcome Document of the 2005 World Summit which contains two paragraphs (para.138 and 139) on the responsibility to protect.<sup>12</sup> In resolution 1674, the Security Council made its first express reference to the concept, “reaffirming the provisions of para.138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity”<sup>13</sup>. Quite recently, the concept of R2P became a key word in the Wikipedia Free Encyclopedia,<sup>14</sup> which is defined as a recently developed concept in international relations that aims at providing a legal and ethical basis for Humanitarian Intervention.<sup>15</sup>

<sup>4</sup> Ibid

<sup>5</sup> Deqiang C, “Humanitarian Intervention---From a right to intervene to a responsibility to protect”, <<http://gdoshisha.files.wordpress.com/2011/06/dr-chi.pdf>> accessed on 23 April 2014 page 7

<sup>6</sup> International Commission On Intervention And State Sovereignty, *The Responsibility To Protect*, at VIII (2001), available at <http://www.iciss.ca/report-en.asp> accessed 23 April 2014.

<sup>7</sup> Stahn C, describes this concept as partly “Old Wine in New Bottles”, saying “the responsibility to protect is not a completely novel idea. Some of the allegedly emerging elements of the concept have surfaced in the past.” see: Stahn C, “Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?” *American Journal of International Law*, Vol.101.No.1(Jan.2007)102.

<sup>8</sup> Deqiang C, “Humanitarian Intervention---From a right to intervene to a responsibility to protect”, <<http://gdoshisha.files.wordpress.com/2011/06/dr-chi.pdf>> accessed on 23 April 2014 page 7.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> 2005 World Summit Outcome, GA Res. 60/1, paras.1 38-39 (Oct. 24, 2005)

<sup>13</sup> See S C Res. 1674, para.4 (Apr.2 8, 2006)

<sup>14</sup> Wikipedia Free Encyclopedia, *Responsibility to Protect* (Dec. 6, 2006), at <[http://en.wikipedia.org/wiki/Responsibility\\_to\\_protect](http://en.wikipedia.org/wiki/Responsibility_to_protect)> accessed 23 May 2014.

<sup>15</sup> Carsten Stahn, “Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?” *The American Journal of International Law*, Vol.101.No.1(Jan.2007) 101.

### III. UNPACKING THE CONCEPT OF 'RESPONSIBILITY TO PROTECT'

After a comparative analysis of the four major documents which incorporates the concept of R2P,<sup>16</sup> Carsten Stahn concludes that R2P is a multifaceted concept with various elements.<sup>17</sup> This is because each of the four documents contains a slightly different perspective to R2P. The varying perspectives on the concept has been said to explain its relative success as it could be used by different bodies to promote different goals.<sup>18</sup> Amongst the four documents examined by the learned author, the most comprehensive treatment of the concept was by ICISS.<sup>19</sup> R2P was understood by the ICISS as a concept which seeks to solve the legal and policy dilemmas of humanitarian intervention due to the critical gap between the needs, distress being felt, and seen to be felt in the real world. Another important contribution of the ICISS to an understanding the rudiments of R2P is that it made a conceptual change, shifting the focus from "the right to intervene" to "the responsibility to protect."<sup>20</sup>

Unlike the right to intervene which is associated with humanitarian intervention, the concept of R2P reverses the perceptions inherent in the traditional language and introduced some new requirements. First, R2P implies an evaluation of the issues from the point of view of those seeking or needing support, rather than those who may be considering intervention. Secondly, R2P acknowledges that the primary responsibility of fundamental human rights protection rests with the state concerned,<sup>21</sup> and that it is only if the state is unable or unwilling to fulfill this responsibility, or is itself the perpetrator, that it becomes the responsibility of the international community to act in its place. Thirdly, R2P means not just the "responsibility to react" but the "responsibility to prevent" and the "responsibility to rebuild."<sup>22</sup> The responsibility to prevent embraces a firm commitment of sovereign states and international community to prevention, efforts to build a better early warning system, root cause prevention efforts and direct prevention efforts like political, diplomatic, economic, legal and threatened punishments.

The responsibility to react applies to the situations where preventive measures fails or the state concerned is unable or unwilling to redress the situation. In such situation, other coercive measures outside military intervention ought to be first considered. Military intervention shall be applied only in extreme and exceptional cases and should be conducted under six threshold criteria: right authority, just cause, right intention, last resort, proportional means and reasonable prospects.<sup>23</sup> The responsibility to rebuild means that if military intervention action is taken, there should be a genuine commitment to helping to build a durable peace and promoting good governance and sustainable development.<sup>24</sup>

<sup>16</sup> The documents are which are the report of the International Commission on Intervention and State Sovereignty, the High-Level Panel report, the Report of the Secretary-General, and the Outcome Document of the 2005 World Summit.

<sup>17</sup> Carsten Stahn, Responsibility to Protect: Political Rhetoric or Emerging Legal Norm? *The American Journal of International Law*, Vol. 101, No. 1 (Jan. 2007).

<sup>18</sup> Ibid.

<sup>19</sup> Carsten Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?' 102.

<sup>20</sup> Ibid.

<sup>21</sup> Apparently re-enforcing the provision of the charter on sovereignty of states which has been hitherto being violated under the guise of 'right to intervene' with the concept of Humanitarian Intervention

<sup>22</sup> Report of the International Commission on Intervention and State Sovereignty, *the Responsibility to Protect* December 2001.

<sup>23</sup> Deqiang C, "Humanitarian Intervention--From a right to intervene to a responsibility to protect", <<http://gdoshisha.files.wordpress.com/2011/06/dr-chi.pdf>> accessed on 23 April 2014

<sup>24</sup> Ibid, Even though, Walden Bello is of the opinion that intervention should stop and intervening state must withdraw once the situation has stabilized, and must refrain from sponsoring and propping up an alternative government and engaging in "nation-building." Bello W, 'The Crises of Humanitarian Intervention' in *Foreign Policy in Focus* available online <http://futurefastforward.com/images/stories/geopolitical/TheCrisisOfHumanitarianIntervention.pdf> accessed on 20 May 2014.

In the report of the Secretary General, Implementing the Responsibility to Protect,<sup>25</sup> a terminological framework is proposed for understanding the R2P and a three-pillar approach is outlined: Pillar one stresses that States have the primary responsibility to protect; pillar two addresses the commitment of the international community to provide assistance to States in building capacity to protect; Pillar three focuses on the responsibility of international community to take timely and decisive action to prevent and halt genocide, ethnic cleansing, war crimes and crimes against humanity when a state is manifestly failing to protect its populations.<sup>26</sup> Thus R2P is a principle which means that the international community has a responsibility to protect people of another territory from gross violation of human rights in cases where the state itself is the violator of human rights. A salient characteristic of R2P is that use of force is only permitted in exceptional cases as a last resort but then, there is a responsibility to rebuild by the international community.

#### IV. THE LEGAL STATUS OF RESPONSIBILITY TO PROTECT

It is pertinent to consider the legal status of R2P as its practice can only be justified if grounded in the law. The general contention is that R2P is simply an attempt to provide an easier acceptable legal and moral basis for Humanitarian Intervention. This is because of the intense criticism against humanitarian intervention. Some authors are of the opinion that the concept of R2P is a 'younger brother' to the humanitarian intervention.<sup>27</sup> Others see the development of R2P as a logical outgrowth of a larger trend in international legal doctrine under which individuals increasingly became a subject of or an actor in international law.<sup>28</sup> Yet, some contend that after a series of international catastrophes and Humanitarian Interventions in the 1990s and 2000s, R2P norm gradually gained widespread consensus and today stands as an important, though controversial, pillar of international law.<sup>29</sup>

The UN high-Level panel even went as far as treating R2P as an emerging norm. Thus the point was made that the inclusion of R2P in the Outcome Document is not only one of the most important outcomes of the 2005 World Summit, but a testimony to a broader systemic shift in international law. There is a growing tendency to recognize that the principle of state sovereignty finds its limits in the protection of human rights, a growing transformation of international law from a state-and governing –elite-based system of rules into a normative framework designed to protect certain human and community interests.<sup>30</sup> It is also contended the best means to legally reconcile respect for the principle of state sovereignty with the critical human rights necessity of protecting municipal populations from their own government lies in the concept of the R2P.<sup>31</sup> To further buttress the fact that R2P is now a norm under international law, a Special Adviser to the Secretary General with a focus on the R2P was appointed in 2008.<sup>32</sup> In January 2009, UN Secretary General, Ban Ki-moon issued a report titled *"Implementing the Responsibility to Protect"* which is the first comprehensive document from the UN Secretariat on the R2P, following Ban Ki-moon's stated

<sup>25</sup> Report of the International Commission on Intervention and State Sovereignty, *the Responsibility to Protect* December 2001; Kuwali D, "The African Union and the Challenges of Implementing the "Responsibility to Protect" <<http://responsibilitytoprotect.org/African%20Union%20and%20RtoP.pdf>> accessed on 23 May 2014 page 1.

<sup>26</sup> Ibid.

<sup>27</sup> Waal A, 'No Such Thing as Humanitarian Intervention: Why We Need to Rethink How to Realize the "Responsibility to Protect" in Wartime' in *Harvard International Review* 2007 available online in <http://www.justiceafrica.org/2007/03/25/no-such-thing-as-humanitarian-intervention/> accessed on 20 May 2014

<sup>28</sup> Magnuson W, "the Responsibility to Protect and Decline of Sovereignty: Free Speech Protection under International Law", 43 *Vanderbilt Journal Transnational law* .255 cited in Deqiang C, "Humanitarian Intervention---From a right to intervene to a responsibility to protect", <<http://gdoshisha.files.wordpress.com/2011/06/dr-chi.pdf>> accessed on 23 April 2014 page 10

<sup>29</sup> Ibid, meaning the concept has become acceptable as a norm under customary international law.

<sup>30</sup> Carsten Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?', 102

<sup>31</sup> Joyner C.C, "the Responsibility to Protect: Humanitarian concern and the Lawfulness of Armed Intervention", 47 *Vanderbilt Journal Transnational law*.693.

<sup>32</sup> Deqiang C, "Humanitarian Intervention---From a right to intervene to a responsibility to protect", <<http://gdoshisha.files.wordpress.com/2011/06/dr-chi.pdf>> accessed on 23 April 2014.

commitment to turn the concept into policy.<sup>33</sup> The UN General Assembly adopted its first resolution on the R2P on 14 September 2009.<sup>34</sup>

Nevertheless, this paper adopts the view of Carsten Stahn,<sup>35</sup> and submits that from a strictly positivist perspective, it is doubtful if the concept of R2P is really an emerging legal norm under international law.<sup>36</sup> None of the four documents<sup>37</sup> contains R2P can be regarded as a binding source of international law based on the classic sources of international law set forth in Article 38 of the Statute of the International Court of Justice.<sup>38</sup> It also does not qualify as a customary international law because of the divergent state perceptions of this notion.<sup>39</sup> Contemporary understanding lends some weight to resolutions adopted by the General Assembly<sup>40</sup> and occasionally even to reports issued by the UN secretary-general and certain expert bodies, in particular when combined with more traditional sources (treaties or state practice). However, even this broader conception of the formation of law, which takes into account the origin and conditions of adoption of certain documents,<sup>41</sup> fails to offer conclusive guidance in this regard.<sup>42</sup>

In the 2005 World Summit, several states (Algeria, Belarus, Cuba, Egypt, Iran, Russia and Venezuela) expressed reservations about including the R2P in the Outcome Document. Some delegations argued that the concept was too vague and open to abuse. Others doubted that it was compatible with the Charter, noting that there is no shared responsibility in international law outside the responsibility of a state to protect its own citizens and the institutional mandate of the United Nations to safeguard international peace and security. Still others questioned the legal nature of the R2P and sought to frame this idea in terms of a moral principle. Even the United States said that it would not accept that either the United Nations as a whole, or the Security Council, or individual states, have an obligation to intervene under international law.<sup>43</sup>

The debates on the legal status of R2P continued even after the 2005 World Summit. Although in Resolution 1674 on the Protection of Civilians in Armed Conflict, and Resolution 1706 authorizing the

<sup>33</sup> Ibid at 8.

<sup>34</sup> <[www.responsibilitytoprotect.org](http://www.responsibilitytoprotect.org)> accessed on 23 April 2014.

<sup>35</sup> Carsten Stahn, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?"

<sup>36</sup> Ibid.

<sup>37</sup> The report of the International Commission on Intervention and State Sovereignty, the High-Level Panel report, the Report of the Secretary-General, and the Outcome Document of the 2005 World Summit.

<sup>38</sup> Article 38(1) of the Statute of ICJ provides that 1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;  
b. international custom, as evidence of a general practice accepted as law;  
c. the general principles of law recognized by civilized nations;  
d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Article 59 further provides that

"The decision of the Court has no binding force except between the parties and in respect of that particular case". Statute of ICJ <<http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>> accessed on 28 May 2014; see also Shaw M.N, *International Law*, (Cambridge University Press, Cambridge 2003) 65-119. Gardiner R.K, *International Law* (Pearson Longman, London 2003) 1-128; Umozurike U.O, *Introduction to International Law* (Spectrum Books Limited, Ibadan 2005) 15-27; Ladan M.T, *Materials and Cases on Public International Law* (Ahmadu Bello University Press Limited, Zaria 2008) 10-28.

<sup>39</sup> For rules to become custom, there must be, in the words of the ICJ, "a constant and uniform usage" (The Asylum Case, 1950, ICJ Rep. 266 at 266-7). States must act under the impression that the action is obligatory in law. This is usually called *opinio juris*. Umozurike U.O, *Introduction to International Law* 17-18.

<sup>40</sup> Off course it should be noted that resolutions of the General assembly do not have legal effects. Gardiner R.K, *International Law* 111.

<sup>41</sup> e.g., adoption by consensus, the composition of the respective body.

<sup>42</sup> Carsten Stahn, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?" 101.

<sup>43</sup> Carsten Stahn, Responsibility to Protect: Political Rhetoric or Emerging Legal Norm? *The American Journal of International Law*, Vol.101.No.1(Jan.2007)

deployment of UN peacekeeping troops in Darfur, the Security Council made references to the Responsibility to Protect, it cannot be said with certainty that R2P has evolved into a binding norm as the Security Council appears to be inconsistent.<sup>44</sup> In January 2007, China and Russia vetoed a resolution on the situation in Burma, arguing that Burma did not pose a threat to international peace and security in the region, and the internal affairs of the state did not have a place within the Security Council. Another example of resistance by Security Council members to apply R2P in specific situations was in the adoption of UN Security Council Resolution 1769, which authorized the deployment of a hybrid UN-AU force for Darfur.<sup>45</sup> In addition, opposition from outside the Council came during the General Assembly's 5th Committee bi-annual budget debate, where the Committee declined funding for the office of the new Special Adviser on Responsibility to Protect because some members argued that the R2P had actually never been accepted as a norm during the World Summit.<sup>46</sup>

In 2009 General Assembly debate on the Responsibility to Protect, the participating state delegates weighed whether the multifaceted and controversial concept provided sufficient legal grounds for collective intervention in national affairs.<sup>47</sup> There is still division among states as to the legal status of responsibility to protect. States like Nicaragua<sup>48</sup>, Iceland<sup>49</sup>, Sudan<sup>50</sup>, Iran<sup>51</sup>, expressed their doubts and concerns. Some states, including Venezuela, Cuba, and Nicaragua, argued that R2P lacked legitimacy and could be in conflict with the principles of the UN Charter.<sup>52</sup> All these controversies has made R2P and its place very uncertain. What remains certain is that it has been invoked a number of times in human rights crises situation especially in Africa. It is therefore imperative to investigate the legal status of R2P in Africa.

## V. RESPONSIBILITY TO PROTECT IN AFRICA

The last two decades in Africa were characterized by intrastate armed conflicts and civil unrest leading to deaths, injuries, and large scale displacement of persons. These conflicts and wars are not totally unconnected with challenges of poverty, bad governance and weak states in the region.<sup>53</sup>

After the 1994 genocide in Rwanda, many heads of states and government resolved to never again allow a lack of political will to prevent the protection of civilians from genocide and mass atrocities.<sup>54</sup> An International Panel of Eminent Personalities, which investigated the genocide and surrounding events, condemned neighboring countries, the Organization of African Unity (OAU), the United Nations and the

<sup>44</sup> Ibid

<sup>45</sup> Deqiang C, "Humanitarian Intervention---From a right to intervene to a responsibility to protect", <<http://gdoshisha.files.wordpress.com/2011/06/dr-chi.pdf>> accessed on 23 April 2014 page 12

<sup>46</sup> <[www.responsibilitytoprotect.org/](http://www.responsibilitytoprotect.org/)> accessed on 28 May 2014

<sup>47</sup> Deqiang C, "Humanitarian Intervention---From a right to intervene to a responsibility to protect", <<http://gdoshisha.files.wordpress.com/2011/06/dr-chi.pdf>> accessed on 23 April 2014 13

<sup>48</sup> Nicaragua's representative pointed out: at the present stage, it (the responsibility to protect) was easy to manipulate and could become a right to intervene.

<sup>49</sup> Iceland's delegate stressed that must be seen as a means of reinforcing legality in international affairs and shoring up respect for the international system embodied in the United Nations; the concept should not become a license for illegitimate or arbitrary interference and aggression.

<sup>50</sup> Sudan's delegate said that giving the council the privilege of executing Responsibility to Protect would be tantamount to giving a wolf the responsibility to adopt a lamb

<sup>51</sup> Iran's delegate emphasized that it should not be misused, or indeed abused, to erode the principle of sovereignty, undermine the territorial integrity and political independence of states, or intervene in their internal affairs.

<sup>52</sup> Deqiang C, "Humanitarian Intervention---From a right to intervene to a responsibility to protect", <<http://gdoshisha.files.wordpress.com/2011/06/dr-chi.pdf>> accessed on 23 April 2014 page 13

<sup>53</sup> Ekiyor T, "ECOWAS Conflict Prevention Framework (ECPF) A new approach to an old challenge" WACSI OpEd Vol. 01/06/08 <<http://responsibilitytoprotect.org/ECOWAS%20ECPF%20Ekiyor.pdf>> accessed on 13 April 2014

<sup>54</sup> Rwandan President Paul Kagame at the world summit in 2005 said "Never again should the international community's response be left wanting. Let us resolve to take collective action in a timely and decisive manner. Let us also commit to put in place early warning mechanisms and ensure that preventive interventions are the rule rather than the exception."

international community at large for their failure to act. Since 1994, African regional organizations have thus sought to incorporate preventive and reactive measures to genocide and mass atrocities which may be said to be in tandem with the general principles of R2P.<sup>55</sup>

#### a. African Union (AU) and Responsibility to Protect

While the 2005 World Summit Outcome Document was a historic step by 2000, African states had already enshrined principles echoing the R2P into law.<sup>56</sup> The founding document of the AU, the Constitutive Act signed by Member States in 2000, represents the switch from the 'non-interference' approach of the OAU to the 'non-indifference' approach of the AU.<sup>57</sup> The core objectives of the Union are stated in the AU Constitutive Act as the promotion of peace, security and stability<sup>58</sup> and the promotion and protection of "human and peoples' rights."<sup>59</sup> It also identifies the "respect for democratic principles, human rights, the rule of law and good governance"<sup>60</sup>, the "respect for the sanctity of human life"<sup>61</sup> and "condemnation and rejection of impunity of unconstitutional change of government"<sup>62</sup> among the central values. Most importantly, after re-stating the non-interference principle,<sup>63</sup> the Constitutive Act in Article 4 (h) provides that "right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity."

The new concept of R2P in Africa is embedded within the peace and security structure of the AU.<sup>64</sup> Acting under this norm, the AU intervened in crises in Burundi and Darfur region of Sudan in 2003. It appears Article 4(h) has the same thresholds for intervention as R2P, although it does not use the mild term "ethnic cleansing". It is however submitted that R2P and Article 4(h) differ in some aspects. The notable differences between the formulation of R2P and Article 4(h) are that: (a) the implementation of R2P is "through the Security Council" whereas the AU Constitutive Act is silent on the authorization of the Security Council; (b) R2P can be triggered when the target state is "manifestly unable or unwilling" to protect its citizens, whereas the AU can intervene with or without the consent of the target member state; (c) while R2P is a political commitment, Article 4(h) is a legal obligation.<sup>65</sup>

Equally significant, in March 2005 at its 7th Extra Ordinary Summit of the Heads of States and Government of the African Union, African governments endorsed the R2P in a report known as "Ezulwini Consensus." The report recognizes the authority of the Security Council to authorize the use of force in situations of genocide, crimes against humanity, war crimes and ethnic cleansing and insists that in such cases regional organizations in areas of proximity to conflicts should be empowered to take action.<sup>66</sup>

<sup>55</sup> <[http://www.responsibilitytoprotect.org/index.php/africa#additional\\_regional\\_instruments](http://www.responsibilitytoprotect.org/index.php/africa#additional_regional_instruments)> accessed on 23 May 2014

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Article 3(f) of the AU Constitutive Act 2000

<sup>59</sup> Article 3(h) of the AU Constitutive Act 2000

<sup>60</sup> Article 4(m) of the AU Constitutive Act 2000

<sup>61</sup> Article 4(o) of the AU Constitutive Act 2000

<sup>62</sup> Article 4(q) of the AU Constitutive Act 2000

<sup>63</sup> Article 4(g) of the AU Constitutive Act 2000 provides that the Union shall function in accordance with the principle of "non-interference by any Member State in the internal affairs of another"

<sup>64</sup> Ibid.

<sup>65</sup> Even though arguments from some quarters are of the view that R2P is more than a mere political doctrine because it has some elements of legal backing being endorsed by the world's leaders sitting at the 2005 World Summit level in the UN General Assembly. <[http://www.responsibilitytoprotect.org/index.php/africa#additional\\_regional\\_instruments](http://www.responsibilitytoprotect.org/index.php/africa#additional_regional_instruments)> accessed on 23 May 2014

<sup>66</sup> <[http://www.responsibilitytoprotect.org/index.php/africa#additional\\_regional\\_instruments](http://www.responsibilitytoprotect.org/index.php/africa#additional_regional_instruments)> accessed on 23 May 2014.

## VI. OTHER REGIONAL INSTRUMENTS

### a. Southern African Development Community (SADC)<sup>67</sup>

The SADC Treaty contains several provisions relevant to R2P. Article 5 provides that the promotion and defense of peace and security is a core objective of the Community.<sup>68</sup> Article 4 requires that Member States act in accordance with the principles of human rights, democracy and the rule of law;<sup>69</sup> and, with particular resonance for, Article 21 urges the Community to cooperate beyond their collective borders in the areas of politics, diplomacy, international relations and peace and security.<sup>70</sup> SADC has a Protocol on Politics, Defense and Security Cooperation, which allows the Community's Organ on Politics, Defense and Security to intervene in situations of intra/interstate conflicts.<sup>71</sup>

### b. The East African Community (EAC)<sup>72</sup>

The EAC, in its Treaty, upholds the "recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights". The EAC presented, in April 2008, its second draft Protocol on Peace and Security, in which the Partner States re-affirm their faith in the purposes and principles of, among others, the Constitutive Act of the African Union. Also, in Article 5, the Protocol specifically mentions that Partner States shall establish an EAC Early Warning System in order to facilitate the anticipation and early responses to prevent, contain and manage conflict and crisis situations. Moreover, the 2006-2010 Development Strategy provided that the development of strategies and programs aimed at the promotion and protection of human rights in East Africa is a core objective.

### c. The International Conference of the Great Lakes (ICGLR)<sup>73</sup>

The International Conference of the Great Lakes Region (ICGLR), in its agreement<sup>74</sup> deals with aspects of R2P's three stages of responsibilities (prevent, react, rebuild) in at least five of its ten Protocols, including its Protocol on Non-Aggression and Mutual Defence, which explicitly acknowledges Member States' responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and in its Protocol on the Prevention and Punishment of the Crime of Genocide, War Crimes and Crimes Against Humanity.

<sup>67</sup> The Southern African Development Community (SADC) started as Frontline States whose objective was political liberation of Southern Africa. SADC was preceded by the Southern African Development Coordination Conference (SADCC), which was formed in Lusaka, Zambia on April 01, 1980 with the adoption of the Lusaka Declaration (Southern Africa: Towards Economic Liberation). SADC's official website <<http://www.sadc.int/english/about-sadc/>> accessed on 1 August 2014.

<sup>68</sup> Article 5(c) Declaration and Treaty of SADC of 1992, <<http://www.sadc.int/index/browse/page/119#article5>> accessed on 28 May 2014.

<sup>69</sup> Article 4(c).

<sup>70</sup> Article 21(g).

<sup>71</sup> <[http://www.responsibilitytoprotect.org/index.php/africa#additional\\_regional\\_instruments](http://www.responsibilitytoprotect.org/index.php/africa#additional_regional_instruments)> accessed on 23 May 2014.

<sup>72</sup> The East African Community (EAC) is the regional intergovernmental organisation of the Republics of Kenya, Uganda, the United Republic of Tanzania, Republic of Rwanda and Republic of Burundi with its headquarters in Arusha, Tanzania. It seeks to widen and deepen Economic, Political, Social and Culture integration in order to improve the quality of life of the people of East Africa through increased competitiveness, value added production, trade and investments. <[http://www.eac.int/index.php?option=com\\_content&view=article&id=1:welcome-to-eac&catid=34:body-text-area&Itemid=53](http://www.eac.int/index.php?option=com_content&view=article&id=1:welcome-to-eac&catid=34:body-text-area&Itemid=53)> accessed on 1 August 2014.

<sup>73</sup> The International Conference on the Great Lakes Region (ICGLR) was set up against the back drop of the war in DR-Congo (2002-2006), with the assistance of the African Union, UN and bilateral donors. Its aim is to implement the Pact on Security, Stability and Development (PACT), signed in December 2006 by eleven heads of states from Angola, Burundi, Central Africa Republic (CAR), Democratic Republic of Congo (DRC), Kenya, Rwanda, Republic of Congo, Sudan, Uganda, Tanzania and Zambia. <<http://www.norad.no/en/tools-and-publications/publications/publication?key=131851>> accessed on 1 August 2014.

<sup>74</sup> Pact on Security, Stability and Development in the Great Lakes Region.

d. **Economic Community of West African States (ECOWAS)**<sup>75</sup>

ECOWAS has structures, protocols and instruments to address issues of peace and security in the region, including the ECOWAS Commission, the Community Parliament and Court of Justice.

**VII. AN OVERVIEW OF SOME CRISES SITUATIONS WHERE R2P WAS INVOKED IN AFRICA**

Governments and the international community have often failed to prevent and end serious crimes under international law including genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>76</sup> The crisis situations listed below have led civil society, the UN and/or other national, regional and/or sub-regional actors to refer to or invoke R2P.<sup>77</sup>

a. **Crises in Dafur**

For more than seven years, the world watched in horror as thousands of Darfuri civilians were mercilessly massacred, brutally raped and violently separated from their families by government-supported janjaweed militias. As the Darfur Consortium has stated, 4.2 million Darfurians have been categorized as "war affected" and entirely dependent on international assistance, 2.5 million civilians have been torn from their homes, millions of houses and livelihoods have been destroyed.<sup>78</sup> 240,000 refugees have been hosted by Chad and the Central African Republic, and the United Nations Office for the Coordination of Humanitarian Affairs estimates that over 400,000 people have been killed.<sup>79</sup> While the government of Sudan has orchestrated a campaign of ethnic cleansing through rebels, world leaders with the power to stop the atrocities have failed to react to protect Darfuris due to conflicting geopolitical interests and a lack of political will. Because the government of Sudan has flagrantly disregarded its responsibility to protect the people of Darfur, the responsibility has fallen to the international community and regional organizations to protect Darfuri citizens from grave violations of human rights.

b. **Role of the UN and AU**

The African Union (AU) has made some efforts in the Darfur crises situation through troop deployment, but its resources are grossly inadequate. The African Union Mission in Sudan (AMIS) was an AU peacekeeping force originally founded in 2004, with a force of 150 troops, whose deployment was endorsed by the United Nations Security Council (UNSC). By mid-2005, its numbers were increased to about 7,000, but it was still not able to effectively contain the violence in Darfur.<sup>80</sup> AMIS' mandate was extended repeatedly throughout 2006, while the crisis in Darfur continued to escalate. The weak AU troops were to be reinforced by a robust UN peacekeeping mission in Darfur under 31 August 2006 UN Security Council Resolution 1706 but the failure to obtain consent of the Sudanese government prevented the force from being operationalized.<sup>81</sup> Resolution 1706 was the first to make reference in a country-specific situation to paragraphs 138-139 of the 2005 World Summit, by which governments unanimously adopted R2P. The unanimous adoption of UN

<sup>75</sup> The Economic Community of West African States (ECOWAS) is a regional group of fifteen countries, founded in 1975. Its mission is to promote economic integration in "all fields of Economic activity, particularly industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial questions, social and cultural matters

....." <[http://www.comm.ecowas.int/sec/index.php?id=about\\_a&lang=en](http://www.comm.ecowas.int/sec/index.php?id=about_a&lang=en)> accessed on 1<sup>st</sup> August 2014.

<sup>76</sup> <<http://responsibilitytoprotect.org/index.php/crises>> accessed on 23 May 2014.

<sup>77</sup> Ibid.

<sup>78</sup> <[http://www.darfurconsortium.org/darfur\\_crisis/background.html](http://www.darfurconsortium.org/darfur_crisis/background.html)> accessed on 23 May 2014

<sup>79</sup> <[http://www.darfurconsortium.org/darfur\\_crisis/background.html](http://www.darfurconsortium.org/darfur_crisis/background.html)> accessed on 23 May 2014

<sup>80</sup> <<http://responsibilitytoprotect.org/files/Resolution%201706%20Dafur%20July%202006.pdf>> accessed on 23 May 2014.

<sup>81</sup> <<http://responsibilitytoprotect.org/files/Resolution%201706%20Dafur%20July%202006.pdf>> accessed on 23 May 2014.

Security Council Resolution 1769 on 31 July 2007 later authorized the deployment of a 26,000-strong joint UN-AU force for Darfur (UNAMID)<sup>82</sup>. The Security Council extended the UNAMID mandate in 2010, and demanded an immediate end to fighting by all parties<sup>83</sup>.

### c. Response of Responsibility to Protect in the Crises

The Darfur Peace Agreement (DPA), signed in May 2006 by the government of Sudan and one faction of the Sudanese Liberation Army, did little to curb the violence, in part because it was not endorsed by key rebel factions.<sup>84</sup> In March 2007, the UN High-Level Mission released a report on the human rights situation in Darfur, using R2P as a framework to analyze the failure of Sudan to protect its population from mass atrocities and how the international community had responded. The report made clear that while the international community, acting through the UN and the AU, had intervened with diplomatic, humanitarian, human rights and development assistance, the vast majority of its recommendations remain unimplemented by the Sudanese Government, and effective protection for civilians is yet to be secured.<sup>85</sup>

On 30 April 2007, UN Security Council Resolution 1755<sup>86</sup> was passed, reaffirming the 2005 World Summit Outcome document which endorsed the Responsibility to protect, and Security Council Resolution 1674 on the Protection of Civilians. In addition to extending the mission in Southern Sudan for six months, the resolution expressed "grave concern" over the seriousness of the deteriorating humanitarian situation in Darfur, condemned attacks on civilians, called upon all parties to "put an end to the violence and atrocities in Darfur," and also asked Secretary-General Ban Ki-moon to appoint "urgently" a new special representative for the U.N. Mission in Sudan (known as UNMIS).

The unanimous adoption of UN Security Council Resolution 1769 on 31 July 2007 authorizing the deployment of a 26,000-strong joint UN-AU force for Darfur was an important step toward providing much needed protection to mistreated civilians.<sup>87</sup> However, the Sudanese government's continuous administrative harassment and diplomatic obstruction of the deployment of the UNAMID peacekeeping mission stood in the way of an already belated reaction to the needs of civilians for peace and security. The troops were initially scheduled to be deployed by the end of 2007, but only 9,000 soldiers of the proposed force, the UN's largest, had been deployed as of January 2008. The joint UN and AU peacekeeping force officially took over from the AU Mission in Sudan (AMIS) on 31 December 2007 and took almost two years to reach full deployment due to Khartoum's continued hampering and delays as well as large gaps in logistics and helicopters.

### d. Crises in Nigeria

In Nigeria, Political and social rivalries, religious tensions, inequitable resource allocation and increasing poverty have incited extreme and ongoing violence since the end of the military rule in 1999.<sup>88</sup> Two particular recent incidents are of importance to show the practice of R2P in Nigeria. The event of March 2010 and the events of 17-20 January 2010. On 7 March 2010, nothing less than 500 women and children were killed by Fulani gangs in Plateau state under the guise of religious differences.<sup>89</sup> State troops were

<sup>82</sup> <<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Sudan%20SRES1769.pdf>> accessed on 23 May 2014

<sup>83</sup> <[http://www.un.org/ga/search/viewm\\_doc.asp?symbol=S/RES/1935\(2010\)](http://www.un.org/ga/search/viewm_doc.asp?symbol=S/RES/1935(2010))> accessed on 23 May 2014

<sup>84</sup> <[http://www.sudantribune.com/IMG/pdf/Darfur\\_Peac\\_Agreement-2.pdf](http://www.sudantribune.com/IMG/pdf/Darfur_Peac_Agreement-2.pdf)> accessed on 23 May 2014

<sup>85</sup> <[http://www.sudantribune.com/IMG/pdf/Darfur\\_Peac\\_Agreement-2.pdf](http://www.sudantribune.com/IMG/pdf/Darfur_Peac_Agreement-2.pdf)> accessed on 23 May 2014

<sup>86</sup> <<http://responsibilitytoprotect.org/files/SC%201755.pdf>> accessed on 23 May 2014

<sup>87</sup> <<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Sudan%20SRES1769.pdf>> accessed on 23 May 2014

<sup>88</sup> <<http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-nigeria>> accessed on 23 May 2014

<sup>89</sup> Ibid

immediately deployed to the affected villages making almost 100 arrests.<sup>90</sup> Though the rapid response of the military successfully quelled the violence, the government failed to prevent the attacks despite knowledge, according to the local army commander, of warning text messages sent to Muslim civilians in the attacked villages in advance of the violence.<sup>91</sup> Moreover, the military was unable to stop attackers from reaching villages on smaller roads, despite being on duty on major roads around these sites and in Jos.<sup>92</sup> The violence in that state was so grievous that the UN Committee on the Elimination of Racial Discrimination called on Nigerian authorities to tackle the underlying causes of repeated outbreaks of deadly ethnic and religious violence near the northern city of Jos.<sup>93</sup>

Similarly, the event of January 2010 which occurred in the same town was more dastardly. The attacks in March occurred after previous mass killings, targeting primarily Muslim groups, which began on 17 January 2010 and lasted four days.<sup>94</sup> The Nigerian government responded by deploying additional military and anti-riot police units to the streets of Jos and imposed a 24-hour curfew in the city. Like the March killings, there were reports that mass incitement to violence was made possible by the transmission of hate messages through cell phones.<sup>95</sup> According to aid workers and local leaders, these clashes between Muslims and Christians, as a result of deep political divides, and violent confrontations with Nigerian troops and police left 18,000 people displaced and at least 550 dead. Reports by the Human Rights Watch have also surfaced saying that the Nigerian military and police force responded to the violence with excessive force against civilians.<sup>96</sup>

On 20 January 2010, UN Secretary General, Ban Ki-moon expressed serious concern about the renewed violence and crimes, and called on all political and religious leaders in Nigeria to work together to address the underlying causes of the recurring sectarian violence in the country.<sup>97</sup>

### VIII. THE CRISES AND RESPONSIBILITY TO PROTECT

A fundamental question in this regards is that considering the large scale of the above violence in Nigeria, has the threshold of R2P not been met for an intervention? As the World Summit Outcome Document outline,<sup>98</sup> states have the responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Nigeria is responsible to protect its populations and to prevent these crimes from occurring. Not only has the government allowed rivalries to escalate and failed to prevent the violence despite early warning signs, but it also remains to be seen whether the perpetrators of the attacks will be held accountable for their crimes. After reports that excessive force against civilians was employed by the military and police, concerns rose surrounding the government's control over its military. The Nigerian government cannot continue to simply react to outbreaks of violence. While rapid response is important, it cannot make up for failures to address the root causes of the conflict and prevent the violence. These failures suggest the need for reforms in the security sector so as to prepare the military to respond to early warning signs.

<sup>90</sup> Ibid

<sup>91</sup> <<http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-nigeria>> accessed on 23 May 2014

<sup>92</sup> Ibid,

<sup>93</sup> <<http://www.un.org/apps/news/story.asp?NewsID=34066&Cr=nigeria&Cr1=>> accessed on 23 May 2014

<sup>94</sup> Ibid

<sup>95</sup> Ibid

<sup>96</sup> <<http://www.hrw.org/en/news/2010/03/08/nigeria-investigate-massacre-step-patrols>> accessed on 23 May 2014

<sup>97</sup> <<http://www.un.org/apps/news/story.asp?NewsID=33535&Cr=nigeria&Cr1=>> Human Rights Watch called on the Nigerian government to take concrete steps to end the discriminatory policies that treat certain groups as second-class citizens and lie at the root of much of the inter-communal violence in Nigeria

<sup>98</sup> Paragraphs 138-139

Regional organizations including the African Union and ECOWAS, both of which Nigeria as a member, reacted minimally to the violence in Plateau State and the government's failure to prevent the attacks. In an Economist article, concerns were raised that this lack of response is a result of ECOWAS's heavy dependence on the large Nigerian economy.<sup>99</sup> That notwithstanding, regional organizations do have a role to play and must uphold their own responsibility to prevent and halt mass atrocities. Regional organizations are often among the first external parties to recognize early warning signs and sound the alarm to the international community. ECOWAS and the AU are also often instrumental in constructing long-term political and social solutions by facilitating mediation and addressing root causes of conflict. Without preventive action and rapid response from the regional community, the national government is less likely to be held accountable for failing to uphold its responsibility to protect and the ongoing violence will continue.

### Responsibility to Protect in Libya

Political protests demanding an end to Muammar Gaddafi's 41-year reign began on February 15, 2011 in the capital of Tripoli and spread across the North African state, ultimately descending into a civil war and humanitarian crisis.<sup>100</sup> The government of Libya responded forcefully by dispatching the national army to crush the unrest. The indiscriminate and widespread use of force by the government against the Libyan population clearly turned the situation into one where human rights violations constituted crimes against humanity, one of the crimes included in the R2P framework. This crisis generated mixed reaction. Critics are of the view that the Libya situation does not amount to actual genocide or even threat of genocide.<sup>101</sup> However, the international community, including regional organizations, swiftly responded to the deteriorating situation.

The African Union (AU), in a 10 March 2011 communiqué,<sup>102</sup> denounced the violence in Libya and called for the creation of a High-Level Committee on Libya to engage with all parties and facilitate dialogue.<sup>103</sup> The AU, however, expressly rejected any form of foreign military intervention; a position which varied from those taken by regional bodies such as the Arab League or Gulf Cooperation Council.<sup>104</sup> On 25 May 2011 the AU Assembly released its Decision on the Peaceful Resolution of the Libyan Crisis which expressed its "concern at the dangerous precedence being set by one-sided interpretations of these resolutions, in an attempt to provide a legal authority for military and other actions on the ground that are clearly outside the scope of these resolutions and at the resulting negative impact on the efforts aimed at building an international order based on legality."<sup>105</sup> The AU recalled that African states are those that bear the impact of the Libyan conflict and expressed "surprise and disappointment at the attempts to marginalize the continent."<sup>106</sup>

The Arab League took a strong position against the use of force by the Gaddafi regime, and at a meeting on March 3 suspended Libya from the League and began to consider imposing a 'no-fly zone'.<sup>107</sup> On 12 March 2011 the Arab League convened an extraordinary session and "called on the Security Council to bear its responsibilities...and to take the necessary measures to impose immediately a no-fly zone" as well as take

<sup>99</sup> <[http://www.economist.com/node/15772983?story\\_id=15772983](http://www.economist.com/node/15772983?story_id=15772983)> accessed on 23 May 2014

<sup>100</sup> <<http://www.aljazeera.com/news/africa/2011/02/201122261251456133.html>> accessed on 20th May 2014.

<sup>101</sup> Bello W, 'The Crises of Humanitarian Intervention' in *Foreign Policy in Focus* available online <http://futurefastforward.com/images/stories/geopolitical/TheCrisisOfHumanitarianIntervention.pdf> accessed on 20 May 2014.

<sup>102</sup> <[http://www.au.int/en/sites/default/files/COMMUNIQUE\\_EN\\_10\\_MARCH\\_2011\\_PSD\\_THE\\_265TH\\_MEETING\\_OF\\_THE\\_PACE\\_AND\\_SECURITY\\_COUNCIL\\_ADOPTED\\_FOLLOWING\\_DECISION\\_SITUATION\\_LIBYA.pdf](http://www.au.int/en/sites/default/files/COMMUNIQUE_EN_10_MARCH_2011_PSD_THE_265TH_MEETING_OF_THE_PACE_AND_SECURITY_COUNCIL_ADOPTED_FOLLOWING_DECISION_SITUATION_LIBYA.pdf)> accessed on 30 May 2014.

<sup>103</sup> <[http://www.au.int/en/sites/default/files/COMMUNIQUE\\_EN\\_10\\_MARCH\\_2011\\_PSD\\_THE\\_265TH\\_MEETING\\_OF\\_THE\\_PACE\\_AND\\_SECURITY\\_COUNCIL\\_ADOPTED\\_FOLLOWING\\_DECISION\\_SITUATION\\_LIBYA.pdf](http://www.au.int/en/sites/default/files/COMMUNIQUE_EN_10_MARCH_2011_PSD_THE_265TH_MEETING_OF_THE_PACE_AND_SECURITY_COUNCIL_ADOPTED_FOLLOWING_DECISION_SITUATION_LIBYA.pdf)>

<sup>104</sup> <<http://www.responsibilitytoprotect.org/index.php/middle-east>> accessed 23 May 2014.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid

<sup>107</sup> <<http://www.aljazeera.com/news/middleeast/2011/03/20113218130353466.html>> accessed on 30 May 2014.

measures to protect the population "while respecting the sovereignty and territorial integrity of neighboring States".<sup>108</sup>

The Gulf Cooperation Council, which met on 7 March 2011, also called on the "UN Security Council take all necessary measures to protect civilians, including enforcing a no-fly zone over Libya", and condemned the "crimes committed against civilians, the use of heavy arms and the recruitment of mercenaries" by the Libyan regime.<sup>109</sup>

The initial support by Middle Eastern regional organizations for the implementation of a no-fly zone quickly faded following the passage of UN Security Council Resolution 1973 and the subsequent military campaign launched by states including France and the US, which was ultimately overtaken by NATO. The Arab League spoke out against the NATO airstrikes and declared that the campaign differed greatly from the no-fly zone initially desired to protect civilians from Gaddafi's forces<sup>110</sup>. The shift in support by the Arab League and other regional organizations, highlights the concerns and debates that arose in the aftermath of Resolution 1973 and the actions of NATO Member States as to whether NATO's actions overreach the implementation of a no-fly zone, and if the military force being executed protects civilians from further crimes.<sup>111</sup>

## IX. CONCLUSION

The paper has tried to establish the fact that despite various controversies surrounding the legal status of Responsibility to Protect under international Law, there is no doubt that it is an emerging norm. This is because of number of times it has been invoked in recent time. That aside, Humanitarian Intervention and R2P have substantial difference in terms of their general nature. Humanitarian Intervention has wider scope however, it is submitted that R2P, based on the World Outcome document can only be invoked in cases of genocide, crime against humanity and other war crimes. Furthermore, unlike Humanitarian Intervention (especially in the classical sense) which uses military force to quell gross violation of Human rights, R2P has specific defined threshold including diplomatic and non-military measures, which must be exhausted before military intervention is resorted to only as a last measure. It is also further submitted that R2P has specific preventive mechanisms and early warning system embedded in its framework. In this case, it could be said that R2P is more proactive than Humanitarian Intervention. The similarity in both concepts can be seen in the fact that their main role is to prevent and end gross violation of Human Rights. Based on the examination of the situation, this paper concludes that R2P, like the concept of Humanitarian Intervention is still ineffective in managing conflict situation within the Africa region. The crises in Nigeria, Sudan and Libya have demonstrated that fact. The UN just considers and passes numerous resolutions on a particular conflict situation without adequate enforcement mechanisms. It is submitted that the concept of R2P as it is today is yet to meet up with the challenges of the 21<sup>st</sup> century.

<sup>108</sup> <[http://www.huffingtonpost.com/2011/03/12/arab-league-asks-un-for-libya-no-fly-zone\\_n\\_834975.html](http://www.huffingtonpost.com/2011/03/12/arab-league-asks-un-for-libya-no-fly-zone_n_834975.html)> accessed on 30 May 2014.

<sup>109</sup> <http://www.google.com/hostednews/afp/article/ALeqM5jRu1VXz2KOyUHoqOAAUYFhCgRCkg?docId=CNG.49104d077a72cbffea9d3689e92793.ba1> accessed on 30 May 2014.

<sup>110</sup> [http://www.washingtonpost.com/world/arab-league-condemns-broad-bombing-campaign-in-libya/2011/03/20/AB1pSg1\\_story.html](http://www.washingtonpost.com/world/arab-league-condemns-broad-bombing-campaign-in-libya/2011/03/20/AB1pSg1_story.html) accessed on 30 May 2014.

<sup>111</sup> Ibid.