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An Assessment of African Union's Effectiveness in Monitoring and Implementation of Responsibility to Protect (R2P)

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Abstract: *This study is a bold attempt to examine the effectiveness of the African Union in monitoring and implementation of "Responsibility to Protect (R2P or R to P)". The paper observes that the adoption and implementation of the concept of R2P by the African Union stems from three main factors: multiplicity of internal conflicts leading to obvious humanitarian disaster, which the existing provisions of Organization of African Unity (OAU) could not contain; the resolve to imbibe the principle of African solution to Africa's problems (ASAP); and failure of the larger international community to support or undertake a genuine multilateral peacekeeping or peace enforcement in Africa in spite of the human tragedy trailing these conflicts. Being the foremost organization to incorporate the "responsibility to protect" as a legal norm in its charter (AU Constitutive Act), the AU tends to have jettisoned its earlier doctrine of non-interference in order to intervene for humanitarian protection purposes. Using the humanitarian interventions in Darfur, Libya, Burundi and Kenya conflicts, as test cases, the paper x-rays the functionality and effectiveness of R2P in stemming the tide of humanitarian tragedy, its weaknesses and limitations. The paper concludes with prognosis for effective implementation of R2P in African continent in order to prevent human carnage resulting from internal crisis, conflicts and civil wars.*

Keywords: Monitoring, Effectiveness, Implementation of R2P, Assessment, Africa Union

I. INTRODUCTION

The growing willingness of the UN Security Council since the end of the Cold War to authorize forceful and sometimes coercive actions inside refractory or weak States; and failure of the UN since after the Cold War to contain the intensity and frequency of destructive ethnic and internal civil strife, particularly in regions of Eastern Europe (i.e. Bosnia) and Africa (Somalia and Rwanda), motivated the obvious need to propose a broadly accepted new norm to guide the international response to atrocities associated with those internecine conflicts. Many considered the NATO bombing to end ethnic cleansing in Kosovo, as morally legitimate but an illegality under international law.

Thus, through the 1990's, the UN was deeply divided between those who insisted on "right of humanitarian intervention" and those who viewed such a doctrine as an "indefensible infringement" of State sovereignty. Following this debate, the then Secretary'- General, Kofi Annan warned that the UN risked discrediting itself if it failed to respond to catastrophes such as Rwanda and Srebrenica, and therefore, challenged member States to agree on a framework for action (Annan, 1999). In the ensuing debate, the 2001 report of the International Commission on Intervention and State Sovereignty formulated the alternative principle of "the responsibility to protect", which focuses on the responsibility of all States to protect people in danger against the "right" of outsiders to intervene. The High-level Panel on Threats, Challenges and Change endorsed the concept and then approved by the Secretary-General. Subsequently, the Heads of State and Government gathered in the Assembly for the UN's sixtieth anniversary voted unanimously to accept the principle of "responsibility to protect" (Serrano, 2011).

Peace-keeping experts note three requirements for a successful operation; a defined mandate and peace plan, stable funding and troops, and a Commitment to fulfilling the operation's mandate (Stephanie 2006). This paper takes a critical assessment of African Union roles in monitoring and implementation of Responsibility to Protect.

This study is structured into four sections for ease of discussion and proper analysis. It examines: (1) the background of African Union's (AU) responsibility to protect; (2) the provisions of R2P in the Constitutive Act of the AU; (3) the monitoring and implementation of R2P in Darfur, Libya, Burundi and Kenya conflicts; and (4) the critical assessment of success and failure of AU's R2P operations and concluding remarks.

II. THEORETICAL PERSPECTIVE

In view of the relevance of theoretical framework of evaluating African union and the challenges of monitoring and implementing R2P in Africa, the paper anchored on Liberal intergovernmentalism. Integovermentalism appeared as a response to criticism on neo -functionalism. It was developed in the mid-1960s and initially proposed by Stanley Hoffmann. The main argument of intergovermentalism is that states are the main actors in international cooperation and that they act both unitary and rational. In his work "Obstinate or obsolete: The Fate of the Nation State and the case of Western

Europe" Hoffmann (1966) introduced the new approach by criticizing Haas neo- functionalism on several grounds.

During the 1990s, scholars were facing the renaming of the EC to the EU and both a widening and deepening of issues being dealt with at the European level. This led Andrew Moravasik to further develop the idea of inter-governmnetalism and to adopt it to the developments that took place in the integration process. The theorist suggests that national governments control the level and speed of European integration.

It proposed the logic of diversity, which set limits to the degree which the spillover process can limit the freedom of action of the Governments.…. the logic of diversity implies that one vital issues losses are not compensated by gains on other issues (Hoffman, 1966). Any increase in power at supranational level, he argues, results from a direct decision by government. According to the theory, integration, driven by national governments, was often based on the domestic political and economic issues of the day. The theory rejects the idea that supranational organizations are on equal level (in terms of political influence) as national level.

Intergovernmentalism advocates cooperation through bargaining among independent nations. The theory assumes that nation states during negotiations create international (even supranational) institutions in order to prevent unwanted consequences, tackle unforeseen outcomes, and reduce future transaction costs of cooperation. Although such a shift of competence to a higher level than the national is similar to the above neo-functionalist model, Moravesik and Schimelfening argue that the motives behind it are different. Instead of shifting loyalties and power leading to the creation of supranational organizations, nation states interests in security that own (future) benefits play the most important role. States establish rules for distribution of gains according to the pre-existing bargain and reduce the costs of coordinating their activities, monitoring the behavior of others and mutually sanctioning non-compliance (2009 p72).

The theory of governmentalism has been equally subjected to some criticism. In general, three different types were identified in Michel (2012) study as followings;

Firstly, constructivist theorists claim that intergovernmentalism fails to take into account the role that values and identities play in the integration process. It is the assumption of the states as rational actors that is generally contested.

Another point of criticism concerning the assumptions is what Moravesik and Schimmelfenning consider one of its strengths: through multi-causal, intergovermentalism simple (…) the aspiration to parsimony differentiate governmentalism from some theoretical concepts like multilevel governance (2009:68).

Finally, one of the main aspects that lead to criticism is the way the theory has been tested, which also related to its assumptions, stating that integration can be explained by nation states forming preferences and bargaining in anarchy, intergovernmentalism only looks at the "big steps" of integration, the treaty- making negotiations.

III. CONCEPTUALIZATION: THE RESPONSIBILITY TO PROTECT

The concept of responsibility to protect (R2P or R to P) is a multi-layered principle aimed at providing protection and assistance to population in danger. It tends to draw the attention of the international community to take serious measures in preventing and halting mass atrocities such as genocide, major war crimes, crimes against humanity and ethnic cleansing.

R2P is built around the principle that States, with the aid of the international community, must act to prevent mass atrocities. Equally central is the idea that concerned external organs (external to the state) should come to the aid of conflict ridden (chaotic) States to prevent gross abuses through what the United Nations (UN) characterizes as "diplomatic, humanitarian and the peaceful means". This could include strengthening State capacity through economic assistance, rule-of-law reform, the building of political institutions etc., or, when violence has begun or seems imminent, through direct acts of mediation.

It is only when the above means has become unsuccessful that the international community, acting through the Security Council, regional and sub-regional organizations / institutions (such as the African Union) should turn to more coercive measures. These should include such non-consensual measures such as economic sanctions or the threat of sanctions, arms embargoes, or threat to refer perpetrators to international criminal prosecution. Lastly, should peaceful means be inadequate and the State is manifestly failing to protect its population, then-and only-then should the international institutions such as Security Council or other regional organizations consider the use of military force. The UN's 2005 World Summit Outcome Document explicitly limits the application and scope of the norm to four types of mass atrocities; genocide; ethnic cleansing; war crimes and crimes against humanity. In other words, the intervention under R2P does not apply to many grave threats to human security such as climate change or disease or harmful or even ruinous state policies, such as suspension of civil liberties, mass corruption and coup d'état. Other human rights instruments, legal frameworks and institutions are better suited to address these pressing issues (United Nations, 2008)

The R2P consists of three core elements; the responsibility to respond to an actual or apprehend human catastrophe, the responsibility to prevent and the responsibility to rebuild after the event (Vlavonou, 2014).

- The responsibility to prevent: this involves the responsibility to address the underlying and direct causes of internal conflict and human-made crises.
- The responsibility to react: the responsibility to respond to conflict and crises with appropriate measures, which may include sanctions, international prosecution and, in extreme cases, military intervention, whether consensual or otherwise.
- The responsibility to rebuild: responsibility to assist with post-conflict or post-crisis reconstruction and reconciliation.

The Concept of R2P and the Issue of Sovereignty

With reference to Sovereignty, R2P is couched on the grounds that sovereignty resides with the State so far it fulfills its responsibility of protecting its citizens, but may be interfered with when the State proves incapable of fulfilling its responsibility. At the same time, there has been a shift in the understanding of sovereignty, spurred both by a growing sensitivity to human rights and by a reaction to atrocities perpetrated upon citizens by their own leaders.

Furthermore, sovereignty is increasingly defined, not as a license to control those between one's borders, rather as a set of obligations towards citizens. In other words, proponents of limited sovereignty such as Kofi Annan canvassed for dual sovereignty - sovereignty of the individual as well as sovereignty of the State. Francis Deng, the Special Adviser to the former Secretary - General (Kofi Annan) of the UN speaking the minds of other proponents developed the concept of "Sovereignty as responsibility" and chief among those responsibilities, is the responsibility to protect from the most atrocious forms of abuse -people come first (UN, 2008).

It is not out of place to posit that the R2P strikes a balance between three main schools of thought on sovereignty and the cynics who argue for total abrogation of sovereignty. We argue that the R2P is tantamount to limited sovereignty as canvassed by American Chyde Eggleton who contends that sovereignty cannot be an absolute term. He was in effect proposing middle range approach - sovereignty under control with some limitations imposed by international law, international organizations and institutions (Eggleton, 1945, Brierly, 1973). Also, the American Commission which was formed during the World War II to study the organization of peace also made case for limited sovereignty (International Conciliation Pamphlet, 1941), contrary to absolute sovereignty principles as propounded by absolutist proponents such as Jean Bodin, Thomas Hobbes etc. Bodin went as far as arguing that it meant "a perpetual, humanly unlimited and unconditional right to make, interpret and execute law" (Sabine and Thorson, 1973:379), which he used to support feudal monarchs and the Pope - the spiritual and temporal leader of the Holy Roman Empire (Ojo and Sesay, 1988).

In this sense, Boutrous Ghali and Javier Perez De Cuellar have proposed that the principle of non-interference within domestic jurisdiction of States cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity... "It will only weaken if it were to carry that sovereignty ... includes the right to mass slaughter or launching of systematic campaign of decimation or forced exodus, civil strife or insurrection", hence the UN has right to stop the carnage and protect the citizens (West Africa, 1997:1919).

The concept of R 2 P is also a balance between the idealist and realist debates and propositions. In the sense that the realists maintain that States' most important concern is to manage their insecurity and promote the interests of its people. Going by the concept of R 2 P, the State sovereignty in achieving the above is well recognized as the primary function in protecting its citizens from atrocious acts; it is only when the state fails in this responsibility that international action, assistance and efforts (in the idealist conception) to promote their welfare and eliminate such atrocity comes into play (Ojo and Sesay, 1988, Kegley and Wittcopf, 1993).

In this sense, these schools of thought justify the R 2 P concept of sovereignty as a responsibility obligation and not a license. Ultimately, a major flaw of the R2P is that the intervention criteria are not really clear; neither does it set out criteria for the use of force (Bellamy, 2008). It is therefore left for the actors to interpret the situation, content and structure of intervention in a given conflict. This renders the principle of R2P to be subject to manipulation by major powers to achieve their perceived national interests.

Background to African Union's Responsibility to Protect Project

The emerging African Union's responsibility to protect regime has its roots in the failure of both the Organization of African Unity (OAU), its predecessor, and the larger international community to undertake much needed successful military interventions in the continent's worst" humanitarian crises such as - the 1994 Rwandan genocide, the Great Lakes region, the Democratic Republic of Congo (RDC), and the Mano River Basin Region of West Africa (Murithi, 2008).

There are several major factors that accounted for this. First, the OAU was hamstrung by its absolutist conception of the state sovereignty doctrine as a result, governments capitalized on this to commit atrocities against their own citizens without being held accountable; second, the prevalence of authoritarianism and its associated culture of impunity in Africa; third, the solidarity between and among the continent's various ruling classes that led them to defend and protect one another; fourth, the lack of political will and fifth, institutional and operational weaknesses, including the lack of a security

architecture. The larger international community on its own part was bedeviled by the problem of the primacy of-national interests which shaped and conditioned the attitudes of the dominant powers towards humanitarian crises in Africa. For instance, as reported by Rory Carroll, in the wake of Rwandan genocide, president Bill Clinton made it clear that "the United States could neither support nor undertake either a robust multilateral or unilateral military intervention because it had no economic or strategic interest in Rwanda" (Caroll, 2004).

Against this backdrop, the AU became even determined to accept its primary responsibility under the aegis of the U.N. Charter (chapters vii & viii) to promote regional peace and security. In this vein, it became imperative to design the modalities for a security architecture that would facilitate the performance of the responsibility to protect. It was also designed based on its (AU) recognition that it could not rely on the dominant powers in the international system to deal with threats to peace and stability, in effect the AU chose the path to what Said Djinnit, the AU's commissioner for peace and security refers to as "self-help" He further stated, "we have moved from the concept of non-interference to non-indifference" "we cannot as Africans remain indifferent to the tragedy of our people (Powel, 2005).

Provisions of R2P in the Constitutive Act of the African Union (AU)

According to Gino Vlavonou (2014), African nations had already enshrined the R2P though in different language before the formal adoption by UN in 2005. At some point, the R2P can be seen as part of African solution to Africa's Problems (ASAP) doctrine on the continent. The wish of African states to deal with their own crisis and protection of their citizens is noticeable even before AU. - The OAU in 1993 established a Mechanism for Conflict Prevention, Management and Resolution (MCPMR); even though the mechanism proved to be ineffective taking into account the eruption of crises in Liberia, Sierra Leone and Rwanda (Vlavonou, 2014), which the mechanism could not contain.

However, it was in the AU Constitutive Act that the concept of R2P was concretely emphasized. During its formation, the AU incorporated the "responsibility to protect" as a legal norm in its charter, thereby making the organization's Constitutive Act the first international treaty to recognize the right on the part of an international organization to intervene for humanitarian protection purposes (Powel, 2005). The legal basis for the AU's "responsibility to protect" regime is found in Article 4, Section (h) of the organization's charter: "the right of the (African) Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave crimes against humanity" (AU, 2002). Implicit in the above provisions is the understanding that sovereignty is conditional and defined in terms of a state's capacity and willingness to protect its citizens. The constitutive Act acknowledges that a state has the principal responsibility for protecting its citizens.

Operationally speaking, as an emergent U.N. - based global R2P framework, the AU's regime is anchored on three major pillars: the member states' responsibility to protect; continental and other international assistance; and timely and decisive response. Thus, first and foremost, responsibility to protect is a matter of state responsibility, because prevention and protection of populations from genocide, war crimes and crimes against humanity begins at home and is an attribute of sovereignty and state hood (UN, 2009). The continental and international assistance, along with the capacity - building element, is based on the premise that member countries would be assisted and encouraged to fulfill their responsibility to protect the populations of member states from genocide, war crimes, and crimes against humanity. The timely and decisive response pillar is based on the AU's "responsibility to use appropriate diplomatic, humanitarian, and other peaceful means in accordance with Chapters VI1 and VI11 of the UN Charter to help protect populations from genocide, war crimes, and crimes against humanity. However, as Article 4, Section 1 of the AU Charter stipulates, the organization may use military force " should peaceful means be inadequate, and state authorities are manifestly failing to protect their populations from genocide, war crimes and crimes against humanity" (Kieh,20l3).

IV. MONITORING AND IMPLEMENTATION OF R2P IN DARFUR, LIBYA, BURUNDI AND KENYA CONFLICTS

Sudan's Darfur Region:

The civil war in Darfur commenced in February 2003 which was triggered by armed attacks launched by the Sudan Liberation Army (SLMA) and the Justice and Equality Movement (JEM) against Sudanese government offices, police, and military bases on grounds of marginalization and alienation from either active participation in government or-having a fair share from the country's economic resources. Besides, there are ethnic conflicts between Arab ethnic groups and non - Arab ethnic groups, which found expression in disputes over land and land use (UNMIS, 2013).

The Sudanese government launched massive counter - offenses against the military insurgents using the state military and the state backed Janjaweed (or "devils on horseback"- an Arab militia). This resulted in genocidal massacres, forced migration and starvation of adult male non-combatants from the non- Arab ethnic groups, especially the Fur, Massalit, and Zaghawa people, in addition to large scale rape of their women (Powell, 2012). Genocidal acts against the non-Arabs in Darfur include: "bombings from airplanes, use of automatic weapons fire, stabbings, the torturing of people, the poisoning of wells, and chasing of victim population out into forbidding deserts without water or food"

(Totten, 2009). Thus, between 2003 and 2012, about" 300,000 people were killed; approximately 1.9 million people were internally displaced in camps inside Darfur, while more than 250,000 others were refugees in various neighboring countries (Ronard, 2011).

Application of AU's R2P in Darfur

The AU intervened in the Darfur conflict in 2004 amidst widespread genocide, war crimes and crimes against humanity committed by the Sudanese government and the Janjaweed, initially with peacemaking and by implication, treating the conflict as a traditional civil war involving the Sudanese government and armed resistance groups, instead of intervention to protect the citizens from "grave circumstances" - crimes against humanity, war crimes and genocide.

The first major peace agreement that the AU mediated was the Humanitarian Ceasefire Agreement, which was signed in Njamena, Chad, in April 2004 between the Sudanese government and the armed resistance groups (Straus, 2005). Two years later, in Abuja, Nigeria, the AU mediated the Darfur Peace Agreement between the Sudanese government and a faction of the Sudan Liberation Army (SLA) led by Minni Minnawi, contrary to the original plan of the AU to mediate a broader and comprehensive agreement involving all the armed resistance groups, it is noted that all the other resistance groups declined, except Minnawi's faction of the SLA.

Again, in spite of the precarious situation in Darfur, the AU took in its second peace mission attempt, continued with peacekeeping method instead of peace enforcement to stop the Sudanese government troops and the Janjaweed, from continuing their acts of genocide, war crimes, and crimes against humanity. In 2005, the AU deployed the AU Mission 1 (AMIS) in Darfur consisting of 150 military observers to monitor and verify ceasefire violations, protect civilians under imminent threat, undertake confidence- building measures among parties to the conflict, facilitate the delivery of humanitarian assistance, and assist internally displaced persons (Kieh, 2013:52).

Another implication of deployment of peacekeeping rather than enforcement intervention is that the AU peacekeepers were constrained by three critical factors:

- The imperative of getting the consent of the Sudanese government;
- The requirement that the peacekeepers would be neutral; and
- That the peacekeepers would only use force in self-defense (Howard, 2008).

In essence, the primary mandate of AMIS1 was to monitor "a crumbling" ceasefire that was being violated consistently by the Sudanese government and the various armed resistance groups, thereby relegating the issue of protection of civilians to the background.

Following the failure of AMIS 1, the AU embarked on AMIS 11 in 2005, yet adopting the peacekeeping approach which is still inappropriate given the continued genocidal acts by the militias (Kieh, 2013:53). Although some incremental changes were made to the mandate and size of the peacekeeping force, such mandate was extended to include the protection of refugee camps, and the size of the force was initially a little over 3,000 and later 7,000, it was still not sufficient to cover a region as large as Darfur. This limited size adversely affected the peacekeeping forces' capacity to protect the refugee camps besides, AMIS II, like its predecessor, was constrained by the inadequacy of weapons, equipment, logistical and intelligence gathering capabilities (Feldman, 2008).

The above operational deficiencies of the peacekeeping force emboldened the Janjaweed to attack its troops leading to the death of some peacekeepers (INFOPLEASE, 2005). This suggest the failure of the AMIS I and II peacekeeping operation due to the use of inappropriate peacekeeping methods in addressing acts of genocides war crimes and crime against humanity. Besides, the AU continued to derogate its responsibilities to protect regime by violating a key provision that requires the organization to use military intervention to protect the citizens of a member state who are victims of genocides, war crimes and crimes against humanity as a result of their government unwillingness to protect them as well as a case where the government is the perpetrator of these crimes.

On the contrary, instead of identifying the Sudanese government as the chief culprit in the commission of these war crimes and crimes against humanity, the AU continued to use defective peacekeeping method, which ended up exposing the citizens. The U.N and All decided to establish a hybrid force given the AU's deficiency as a result of the peacekeeping approach adopted, the Sudanese government objection to the idea delayed the hybrid force until 2008, when it was deployed (Kieh, 2013).

The Libyan Uprising and AU's Implementation of R2P Regime

The Libyan uprising has further exposed the continuing constraints of the traditional concepts of sovereignty within the African Union system. In contrast to the AU's nonintervention stance, the UN was decisive in advocating and authorizing timely forceful intervention, pursuant to the concept of R2P. The continued indiscriminate aerial bombings of both rebels and civilians seeking to overthrow Muammar Gaddafi's regime, the UN Security Council referred the matter to the International Criminal Court for investigation and possible prosecution, however, our point of departure is that, as possibilities of the enforcement of a no

fly zone were being deliberated by some of the world powers, the African Union issued a statement on 10th March 2011, rejecting "any foreign military intervention, whatever its form" (African Union, 2011).

Above all, AU's resolution was made despite its findings and knowledge that there had been "indiscriminate use of force and lethal weapons" leading to "loss of life, both civilian and military". The AU actions suggested contradiction of the provision of Article 4 (h) of the constitutive Act, which mandates the union to undertake forceful interventions in such circumstances, which constitute or was leading to crimes against humanity, even when the Council of the League of Arab states supported intervention, when it called on 12 March 2011 "for the imposition of no-fly zone-on Libyan military aviation", and protection of areas inhabited by civilians from military attacks (Kabau, 2012).

In a nutshell, it was not until after the Security Council acting under its chapter VII powers as provided under the UN charter, authorized Member States to "take all necessary measure" to protect civilians under the threat of attack (Resolution 1973 of 17 March 2011), that on 25th March 2011, the African Court on Human and Peoples' Rights (ACHPR) issued interim orders against the Libyan Government to stop any action that could result in the loss of lives or amount to violations of the protection granted to Libyans under the relevant international human rights instruments (Kabau, 2012). Even when this ruling was made by the ACHPR and was referred to the AU, pursuant to Article 29 of the protocol establishing the organ, the AU could not enforce the court orders through forceful intervention (Kabau, 2012). As a result, the AU failed to enforce its Article 4 (h) (i) of the Constitutive Act thereby reneging to play its role of responsibility to protect the citizens in Libya. By this, the AU allowed the foreign intervention primarily the North Atlantic Treaty Organization (NATO), which it was opposed to, to enforce the R2P regime, thereby losing grip of its continental (regional) role of R2P.

The AU Peacekeeping Mission in Burundi (2003) (AMIB)

The 2003 AU peacekeeping mission in Burundi was successfully implemented, although it was done prior to the formal endorsement of the R2P concept by the General Assembly in 2005. This is worth commending because it is a significant precedent in examining the AU's capacity, especially in demonstrating the Union's intervention capacity. The Burundi intervention is a perfect example of how the responsibility to protect can function (Evans, 2008). This commendable feat has remained the first peacekeeping operation, wholly initiated and implemented by African Union members (Muritto, 2008). Charged with the role of supervising the December 2, 2002 ceasefire agreement, including earlier by the transitional government of Burundi and the rebels, the peacekeeping mission was able to establish peace in a fluid and dynamic situation in which the country could relapse into conflict (Muritto, 2008). Thus AMIB could be adjudged a success having diffused tension in a potentially volatile state.

The 2008 Africa Union Mediation in Kenya

This proves to be another successful peaceful negotiation actualized by the AU in respect of the 2008 post-election violence in Kenya. The country was engulfed by ethnic violence due to the December, 2007 dispute presidential elections. President Kufuor of Ghana, the then chairman of the AU, requested Kofi Annan to lead the mediation on behalf of the auspices of the Panel of Eminent African personalities. The mediation successfully resolved the conflict and has been variously described by Kofi Annan and Ban Ki Moon (UN secretary- General) as an illustration of how effective and early external response could forestall escalation of conflict resulting in successful implementation of R2P without the necessity of using force. According to ban Ki Moon, the Kenya case represented the first time the UN and regional actors viewed a conflict situation partly, from the perspective of the responsibility to protect (Banki-Moon and Ana, cited in Kabau, 2012:65).

V. CRITICAL ASSESSMENT OF SUCCESS AND FAILURES OF AU'S R2P OPERATIONS

In spite of the provision of Article 4 (h) of its Constitutive Act, interventions by the African Union so far, like in Burundi, Sudan (Darfur) have been of a peacekeeping nature and were based on the consent of the territorial state. In effect, the African Union has been reluctant to undertake or even endorse forceful intervention even where and when it has become necessary. Like the case of Darfur and Libya. Hence, "the norm of non-interference continues to trump up human rights concerns" (Williams and Bellamy, 2005).

The cases, Darfur Sudan and Libyan crisis exemplify the AU's deficiencies in promoting robust forceful intervention to forestall mass atrocities as well as end the conflicts or in the case of Libya assume greater responsibility in ensuring protection of civilians from massive and indiscriminate military attacks. Political peaceful and consensual approaches which the AU settled for in the two conflicts (Sudan and Libya) were only appropriate in the case of Burundi and Kenya, but inappropriate and inadequate in Darfur Sudan and Libya. More so, intervention pursuant to invitation or consent of the territorial state as exhibited by the AU, is based on the sovereign right of a state to invite external intervention and has shown to be ineffective where the government is party to the conflict and atrocities. Consensual intervention and peacekeeping under the AU is based on Article 4 (1) of the Constitutive Act, which allows a member state to request the Union's intervention for the purpose of restoring peace and security. However, the danger in such arrangement is that where intervention is by consent, the territorial state (host

state) regulates the limits and modes of intervention and the invited state may not want to exceed the limits permitted by the inviting or consenting state.

Part of the reasons for non - forceful intervention when necessary by the AU is the Union's failure to institutionalize the concept of responsible sovereignty - in its legal framework and processes (Kabau, 2012). There is a manifest contradiction between sovereignty and intervention in the Unions legal framework in the sense that the two principles were itemized without establishing a framework of complementary and synergy between them. For instance, while Article 4 (g) of the constitutive Act reaffirms the principles of non-interference in Member state's internal matters by another, Article 4 (h) established the right of the AU to intervene in a member state due to genocide, crimes against humanity or war crimes.

There are similar conflicting provisions in the AU peace and Security Council protocol. Article 4 (e) of the protocol affirms the sovereignty and territorial integrity of member states and Articles 4 (f) prohibits member states from interfering in the domestic affairs of another state; and Article 4 (J) of the protocol reaffirms the African Unions right of intervention in a member state due to genocide crimes against humanity or war crimes. Thus, failure to establish a "Synergy and complementarily" between state sovereignty and intervention for humanitarian purpose could have promoted a subsequent practice of greater sovereignty concerns over those of humanitarian protection (Kabau, 2012), it only takes political will to intervene since there is justification in the legal framework for either forceful intervention or not as both justifications are contained in the provisions of the Constitutive Act of the AU.

Other factors contributing to AU's flawed intervention in Darfur and Libya include:

- Lack of political will by the AU leaders; lacking moral justification for forceful intervention to protect citizens, since most of them are equally repressive regimes, they opt for solidarity, hence peaceful negotiation in place of intervention to protect the civilians. For example, all the regimes except President Joyce Banda of Malawi had supported Sudanese president by collectively imploring the International Criminal Court (ICC) to drop the charges against President Bashir, as well as revoke the writ of arrest issued against him.
- Institutional and operational weakness of the AU; (i). institutionally, the AU has not established the Units that would design the modalities for the application of its R2P norm, (ii) lack of appropriate coordination between and among existing institutions of the AU concerning the process and procedure for implementing R2P. For example, there are no procedures and process in place for proper coordination between the African Commission on Human and Peoples Rights whose mandate, is to monitor human rights violations and the Peace and Security Council - the AU's security policy implementation organ (iii). The AU lacks adequate preventive mechanism that could be used to tackle crisis and conflicts before they degenerate into genocide, war crimes and crimes against humanity. In essence there are very weak links between the AU's "early warning system" and its preventive actions, (iv) Operationally speaking, there is absence of a strategic doctrine for implementing R2P; lack of adequate equipment for carrying out military operations and consequent lack of troop mobility; lack of an effective intelligence gathering, and perennial problems of inadequate funding thereby predisposing the AU -to rely on external donor support.

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VI. CONCLUSION

We have seen that the concept of R2P was first mooted in Africa as a "self-help" concept even before its formal adoption by the United Nations, when it seemed that the international community could not come to the rescue of the African continent which was then bedeviled by multiplicity of seemingly intractable conflicts. These conflicts however, forced the African Union to jettison its age-long concept of territorial inviolability or noninterference in internal affairs of member states. However, using the conflicts or civil wars in Darfur, Libya, Burundi and Kenya, it is clear that the AU like all other international institutions is still grappling with the problems emanating from monitoring and implementation of R2P with obvious constraints and weakness, though with some measures of successes in prodding a new chapter in international conflict handling norms. There is therefore a need to address these legal, institutional, political and operational weaknesses and deficiencies if the AU must live up to its R2P role to its citizens, especially in grave circumstances of danger. Besides, for R2P to work effectively in Africa, the Western countries especially the "great powers" should give genuine support to the UN to keep peace in Africa rather than engage in mere meddlesomeness.

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