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FACULTY OF LAW
DEPARTMENT OF PUBLIC LAW

UNITED NATIONS PEACEFUL SETTLEMENT OF ARMED CONFLICTS IN AFRICA

DOCTORAL THESIS

TEMITOPE SEFIAT OLUDOUN

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Adı-Soyadı

Temitope Sefiat OLUDOUN

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TABLE OF CONTENTS

TABLE OF CONTENTS iv
ABBREVIATIONS vi
INTRODUCTION viii

CHAPTER ONE

ARMED CONFLICT IN AFRICA

I. ARMED CONFLICT AS THREAT TO WORLD PEACE 6
A. Conceptualization of Armed Conflict 7
i. Existence of Organized Groups 18
ii. Engaging in Intense Hostility 13
B. Forms of Armed Conflicts 14
i. International Armed Conflict 14
ii. Non-International Armed Conflict 18
iii. Internationalized Armed Conflict 20
C. Status of Non-Intervention in Armed Conflict 23
D. Determining the Act of Aggression, Breach or Threat to the Peace 28
II. NATURE ARMED CONFLICTS IN AFRICA 32
A. Sources and Causes of Armed Conflict in Africa 35
i. Improper Colonial Border Designs 35
ii. Corruption and Poor Governence 38
iii. Ethnic and Religious Animosity 39
iv. Natural Resources 41
v. Arms Proliferation in Africa 42
B. Impacts of Armed Conflicts on Human Rights in Africa 44
i. Mass Murder and Genocide 45
ii. Displacement of Persons 45
iii. Violence Against Women and Children 46
iv. Torture 48
v. Terrorism 48

CHAPTER TWO

PEACEFUL SETTLEMENT OF DISPUTES UNDER THE UNITED NATIONS

I. FRAMEWORK FOR UN PEACEFUL SETTLEMENT OF CONFLICT 51
A. Peaceful Settlement as an Obligation 54
B. Objectives of Peaceful Settlement 56
i. Prevention of Breaches of the Peace 57
ii. Deterrence 57
iii. Reconciliation 58
iv. Restoration 59
v. Reconstruction 62
C. Participants of Peaceful Settlement Process 63
i. States 64
ii. The UN Security Council 65
iii. The UN General Assembly 66
iv. The Secretary-General 67
v. Special Envoys, Representatives, and Mediation Support Unit 69
vi. International Court of Justice 69
D. Multidimensional Approach to the UN Peaceful Settlement 70
i. Diplomatic Method 70
a. Negotiation 71
b. Enquiry 73
c. Mediation and Good Offices 74
d. Conciliation 76
ii. Adjudicative method 77
a. Arbitration 78
b. Judicial Settlement 79
iii. Institutional Methods of Conflict Resolution 81
a. Peaceful Settlement of Conflicts by the United Nations 81
b. Peaceful Settlement of Conflicts by Regional Organizations 82
II. PRACTICAL APPROACH TO PEACEFUL SETTLEMENT IN AFRICA 84
A. Background to the Conflicts 86
i. The Self-Determination Conflict (1955-2005) 86
ii. Post-Independence Power Struggle in South Sudan (2011-2017) 90

B. Application of UN Peaceful Settlement Methods in the Sudan/South Sudan Armed Conflict 93
i. Role of the UN 95
a. The UN Peace Support Operations 98
b. United Nations Mission in Sudan (UNMISS) 100
ii. Role of the AU and Regional Arrangement in Sudan 101
a. Darfur Peace Agreements (Abuja Agreement 2006 and Doha Agreement 2011) 104
b. The Comprehensive Peace Agreement 107
c. Agreement on the Resolution of the Conflict in the Republic of South Sudan 109
d. African Commission on Human and Peoples' Rights 111
e. The African Peer Review Mechanism and the Court on Human and Peoples' Rights 113
f. African Union Commission of Inquiry on South Sudan 114
III. An Appraisal of the UN Peaceful Methods of Conflict Resolution 115

CHAPTER THREE

THE PEACE AND SECURITY STRUCTURE OF AFRICA

I. EMERGENCE OF THE AFRICAN PEACE AND SECURITY STRUCTURE . 122
A. African Solution for African Problems 126
B. The United Nations and The African Union 129
C. Enforcement of Obligations under the AU 134
II. THE PEACE AND SECURITY ARCHITECTURE OF AFRICA (APSA) 136
A. Components of The Peace and Security Architecture 137
i. The Peace and Security Council of African Union 138
ii. The African Union Commission 140
iii. The African Standby Force 141
iv. The Panel of the Wise 143
v. The Peace Fund 144
vi. The Continental Early Warning System 145
B. The AU Mechanisms for Conflict Prevention, Management and Resolution .. 147
C. Methodology for Peaceful Settlement of Armed Conflicts under the APSA ... 149
i. Diplomatic Interventions 149
ii. Mediation Efforts and Preventive Diplomacy 150

iii. Peace Support Operations 151
iv. Post-Conflict Reconstruction and Development 152
III. PROSPECTS FOR PEACEFUL SETTLEMENT OF AFRICAN ARMED CONFLICTS 153
A. African Union and The Responsibility to Protect 155
B. Challenges to the African Peace and Security Architecture 156
i. Inadequate Funding 156
ii. Divisiveness and Peer Shielding 157
iii. Insufficient Capacity and Training of African Troops 158
iv. Inadequate Coordination: 159
CONCLUSION 161
ABSTRACT 168
ÖZET 169
BIBILIOGRAPHY 170

ABBREVIATIONS

ACDS : African Chiefs of Defence and Security

ACIRC : African Capacity for Immediate Response to Crises

ACLED : Armed Conflicts Location and Event Data

ADR : Alternative Dispute Resolution

AMU : Arab Maghreb Union

AP : Additional Protocol

APSA : African Peace and Security Architecture

ARCSS : Agreement on the Resolution of the Conflict in the Republic of South Sudan

ASF : African Standby Force

AU : African Union

AUCISS : African Union Commission of Inquiry on South Sudan

CA : Constitutive Act

CEN–SAD : Community of Sahel–Saharan States

CEWARN : Conflict Early Warning Mechanism

CEWS : Continental Early Warning System

CoH : Cession of Hostilities Agreement

COMESA : Common Market for Eastern and Southern Africa

CPA : Comprehensive Peace Agreement

CSAC : Community Security and Small Arms Control Bureau

DDPD : Doha Document for Peace in Darfur

DRC : Democratic Republic of Congo

EAC : East African Community

ECOWAS : Economic Community of West African States

ECCAS : Economic Community of Central African States

EWS : Early Warning Systems

GC : Geneva Convention

(GoSS) : Government of South Sudan

ICC : International Criminal Court

ICJ : International Court of Justice

ICRC : International Committee of The Red Cross

ICTR : International Criminal Tribunal for Rwanda

ICTY : International Criminal Tribunal for the former Yugoslavia

IDTFCP : Inter-Departmental Task Force on Conflict Prevention

IGAD : Intergovernmental Authority for Development

IHL : International Humanitarian Law

IHRL : International Human Rights Law

ILA : International Law Association

INGOs : International Non-Governmental Organizations

LJM : Liberation and Justice Movement

LOAC : Law of Armed Conflict

MSU : Mediation Support Unit

MVM : Monitoring and Verification Mechanism

PCA : Permanent Court of Arbitration

PSC : Peace and Security Council of the African Union

PSO : Peace Support Operations

POC : Protection of Civilians

PoW : Panel of the Wise

RECs : Regional Economic Communities

RDC : Rapid Deployment Capability

RMs : Regional Mechanisms

RUF : Revolutionary United Front

SADC : Southern African Development Community

SAF : Sudan Armed Forces (National Army of the Government of Sudan)

SIPRI : Stockholm International Peace Research Institute

SPLM/A : Sudan People's Liberation Movement/Army

SSPS : South Sudan Police Service

TGNU : Transitional Government of National Unity

UCDP : Uppsala Conflict Data Program

UNAMIR : United Nation Assistance Mission for Rwanda

UN : United Nation

UNDP : United Nations Development Programme

UNGA : United Nations General Assembly

UNMISS : United Nations Mission in the Republic of South Sudan

UNSC : United Nations Security Council

UNISFA : United Nations Interim Security Force for Abyei

UNITA : The National Union for the Total Independence of Angola

INTRODUCTION

Over four decades after the Cold War most continents had a decrease in the level of armed conflicts. However, Africa has remained the only continent most ravaged with different kinds of armed conflicts. The continuing escalation of armed conflicts in the continent is becoming a major disturbance to the entire globe, leading to mass death of civilians, terrorism, environmental degradation, economic crisis and illegal migration.

The importance of world peace cannot be overemphasized, but the reality is that conflicts are inevitable in the world we live in because of interactions, interests, rights and ambitions. Therefore the United Nations has been commissioned with the most important responsibility to be the custodian of the Peace Wade. The United Nations was established after World Wars with an expectation of ensuring global peace and security and saving the future generation from the plague of war. Although, it is structured to have similar institutions to the League of Nations, however, it has wider powers for maintaining peace and security and restoring peace by promoting cooperation and peaceful co-existence among States, through enforcement of preventive and punitive mechanisms to ensure compliance of the principles of international law.

The United Nations Charter prohibits its members from deploying the use of force when there is a conflict, rather mandate States to employ the peaceful settlement mechanism as the option in resolving their disputes. The United Nations Charter provides for a number of mechanisms that can be utilized by parties to a dispute. The provision of multiple approaches for the resolution of conflicts is to give parties options that can be explored to resolve their disputes peacefully; if one option fails another one can be applied.

The Research questions are the following:

1. What is the meaning of armed conflict under contemporary international legal regime?
2. What are the legal framework and principles governing the United Nations peaceful settlement of disputes?
3. Whether application of UN peaceful settlement mechanisms was effective in the resolution of the Sudan/South Sudan armed conflicts.
4. Whether the legitimacy of the African Peace and Security Architecture as a regional structure under the pacific settlement method.

Understanding the nature of armed conflicts is important and necessary in order to determine the most appropriate and workable mechanisms and approaches of conflict resolution. This research focuses on the United Nations conflict resolution mechanisms and approaches adopted in quelling ongoing conflicts in Africa, based on the armed conflict in Sudan and South Sudan.

The objective of this research is to focus on the application of the United Nations peaceful settlement mechanisms in armed conflicts in Africa through legal and practical analysis. It is expected to analyze the role of the United Nations in conflict resolution in African armed conflicts as 'peacemakers' not only utilizing the mechanism in Article 33 of the Charter , but also regional actors in the continent, such as the African Union, in peace operations and enforcement. Therefore, this research will focus on the role of the AU in peaceful settlement as well. The civil war in Sudan and South Sudan has been considered as a case study in this thesis due to the nature of the conflicts which has been characterized as a "hard case" due to its recurrent nature. The highly complexity of the conflict system which is characterized with multifaceted dimension (with different conflict types at national, regional,

and local levels and a multitude of conflict issues and actors) that reflects the different types of armed conflicts ongoing around Africa made it worth the study.

The study will focus on the regionalization of pacific settlement of dispute and the emergence of the AU as a tool within the UN system for peaceful settlement in Africa. This thesis will examine the collaborative effort of the UN and the AU in implementation of preventive diplomacy and effective peaceful management and sustainability in the region. The role of the AU in peaceful settlement of armed conflict in Africa, the institutional frameworks such as the African Peace and Security Architecture will be given prominence.

The research methodology adopted is the desktop theoretical and descriptive framework approach to develop the study in three chapters. The theoretical basis for the research are provided in areas of analysis of various resources including journals, books, articles and international seminars that discussed extensively various armed conflicts in Africa, as well as, the UN pacific settlement methodology, perspectives of authors and scholars in armed conflicts especially in Africa. The objective of the design is to build practical approach on principles set for conflict resolution and management by the United Nations and regional institutions. The methodology was also adopted to explore the ongoing conflict in Sudan and South Sudan and the peace process and methods utilized by UN and other regional institutions. The issue covers a politically sensitive area where national security, economic and political consideration determine the dispositions of parties and stakeholders in the conflict.

The first Chapter determines the general concept of armed conflict, by examining different perspectives of the concept regarding the definition of armed conflict. The Chapter identifies 3 classes of armed conflicts; international armed conflict, internal and internationalized armed conflict. This Chapter discusses extensively on the new trend

regarding the limits of the United Nations in intervening in situations which are specifically within the domestic jurisdictions of States. This new trend provides the exemption or the legal basis for situations when the United Nations can interfere in issues limited to the domestic jurisdiction of States. The Chapter also, gives an exposition of the nature, sources or causes and impact of armed conflicts in Africa.

The second Chapter focuses majorly on the historical development of the United Nations principle of Peaceful Settlement and its objectives. Various important Conventions concerning peaceful settlement are considered herein. The multidimensional approach of the United Nations peaceful settlement, with specific interest on the pacific settlement of disputes approach will be examined. The methods of peaceful settlement of conflicts discussed in this chapter are in three categories, they are; diplomatic, adjudicative and institutional systems. The practical approach of the United Nations peaceful settlement mechanisms in the Sudan/South Sudan conflict from the outbreak of the conflict till date will be examined. The chapter further explored the conflicts in Sudan and South Sudan together with the approach of the UN and the AU in the peace process, challenges and end result of the peace process. The historical background of the Sudan/South Sudan conflict, the role of the United Nations during resolution of the conflicts and the role of regional institutions, particularly, the African Union will be discussed. Furthermore, existing regional Agreements and mechanisms adopted by the African Union and Inter-governmental Authority for Development will be examined.

The third Chapter examines the emergence of a Peace and Security Structure for Africa, under the auspices of the common maxim African solution for African problems. The Peace and Security Architecture of Africa followed by its components will be discussed. The AU mechanisms for prevention, management and resolution of armed conflicts will be

discussed. Various methodologies for Peaceful Settlement of Armed Conflicts under the AU Peace and Security Architecture will be analyzed. Finally, the prospect for peaceful settlement of African armed conflicts in line with the Responsibility to Protect will be analyzed followed by the challenges of the African Peace and Security Architecture.

In conclusion, the value, process and prospect for success in achieving peace with the United Nations pacific settlement of disputes mechanisms in Africa will be discussed. Although the United Nations Charter mandates the UN to be the umpire with responsibility of securing world peace, the study unveils the need for task sharing between the United Nations and the African Union. This study reveals the commitment and effort of African leaders in resolving disputes within their regions with little or no support by the United Nations, while relying on regional arrangement of the UN pacific settlement, the maxim African solution for African problems and the Responsibility to Protect and the legal basis for their interventions. The study however, proposes a stronger commitment among African leader, the African Union should synergize and close ranks with the UN in peace and security. The democratization of the responsibility of peaceful settlement is necessary to unburden the United Nations with duties that can be carried out effectively by its regional actors, while it focuses on other matters. The study will give an exposition of the effectiveness of peaceful settlement through regional arrangement, as experienced in the Sudan and South Sudan conflict.

CHAPTER ONE

ARMED CONFLICT IN AFRICA

I. ARMED CONFLICT AS THREAT TO WORLD PEACE

Armed Conflict is a globalized phenomenon that steps back to time immemorial, with no universally accepted meaning that encapsulates all the essential elements of the concept. Consequently, the commonly utilized word "armed conflict" does not have a widely accepted legal principle which is clearly defined. The lack of an accepted definition cannot invalidate the fact that for decades, armed conflict portends grave security challenge requiring both domestic and international response. International responses to armed conflicts are especially important, as it has been prohibited by the United Nations (UN) Charter, except when utilized as prescribed by the UN Charter.[1]

States have vested the dominant powers for the preservation of international peace and security on the United Nations Security Council (UNSC), which is the executive organ endowed with a significant means of diplomatic or economic sanctions, with military measures at its disposal for that purpose.[2] However, the Security Council can only utilize these means after it has determined whether the situation falls within its competence. On this note, this Chapter will focus on determining a specific definition for armed conflict. Armed conflict will be examined from three perspectives: firstly, the nature and element that constitutes armed conflicts will be determined; secondly, the different types of armed conflicts will be examined; and thirdly, elements of armed conflicts such as elements that constitute the act of aggression, breach and threat to the peace will be examined. These topics

[1] The United Nations Charter Articles 24, 25 and 51, as well as Chapter VII , prescribes powers granted to the Security Council to authorize enforcement measures for the maintenance of international peace and security.
[2] See the UN Charter Articles 41-42.

will be discussed in the light of the resolving armed conflicts through peaceful means as envisaged by the UN Charter.

A. Conceptualization of Armed Conflict

As established above, "armed conflict" does not have a universally accepted definition. Long before the concept "armed conflict" became prominent the term "war" was used to describe the eruption of violent fighting between disputing parties or States, as the case maybe. War can be described as contention between two or more nations using their military might, with the aim of conquering each other and imposing such conditions of peace as the victor pleases.[3]

The global trend of conflict has changed dramatically since the above definition was first formulated and nothing captures this reality better than the character of recent wars and conflicts, many of which are initiated by non-state actors and fought primarily, though not exclusively, within rather than across State boundaries. It is thus important to consider the legal and normative implication of the new change in the perspective of armed hostilities which is contention between governments and rebel groups within the territories of States, such as the "contention" between the Nigerian government and Boko Haram jihadist rebel group.[4]

The Law of Armed Conflict otherwise known as International Humanitarian Law (IHL) is a set of customary law described as the concept of Jus ad Bello, which means, the law of war, regulates the activities of States, groups and individuals during armed conflict

[3] L. Oppenheim, **International Law: A Treatise, Vol. II, Disputes, War, and Neutrality**, H. Lauterpatch (ed.), London & New York, Longmans, 7th ed., 1952, p. 202.

[4] S.O. Ilesanmi and K. E. Temoney, **Counter terrorism and religious violence in Nigeria: A Just war perspective on the doctrine of necessity**, in Religion, Law and Security in Africa, M. Christian Green, T. Jeremy Gunn and Mark Hill (eds.), African SUN MEDIA, 2018, p. 181.

with the aim of minimizing the impact of war by providing protection for non-participants during hostilities and by restricting the means and methods of warfare.[5]

The establishment of the International Humanitarian Law (IHL) implies that the law is to be functional in the situation of war or armed conflicts. IHL impacts the definition of armed conflicts because it transverses every aspect of armed conflicts especially with the rising new players of conflicts such as terror groups, mercenaries, hired military organizations, as well as the changing dynamics of the conflicts such as the war against terrorism. However, in order to enforce IHL, the consent and political will of States is required for a situation to be considered an armed conflict. However, many States have restrained their consent due to some political reasons even in dire situations.[6]

Application of IHL is important in peaceful settlement of armed conflict because compliance is the first stage at achieving peace. This chapter provides an understanding of armed conflicts within international law in the context of actualizing peaceful resolution in armed conflicts. The Geneva Conventions of 1949 and their Additional Protocols introduced the terminology "armed conflict" in place of "war".[7]

Several Resolutions of the UN and documents have adopted the term armed conflicts, after it was introduced, for the purpose of establishing peaceful resolution and International humanitarian law. Despites its wide acceptance and use in international humanitarian documents and UN General Assembly Resolutions after it was introduced in the Geneva Conventions of 1949 neither the United Nations Charter or any other important treaty gives a

[5] The law of armed conflict is codified specifically in the four Geneva Conventions of August 14, 1949 and their Additional Protocols.

[6] M. E. O'Connell, "Humanitarian Assistance in Non-International Armed Conflict: The Fourth Wave of Rights, Duties and Remedies", 31, **Israel Yearbook on Human Rights 2001**, pp.183, 196.

[7] See Article 1, Additional Protocol I, and Article 1 Additional Protocol II, Common Article 2 and 3, Geneva Conventions 1949.

clear definition of armed conflict, however, several scholars, jurists and international law documents have attempted to determine whether a situation constitutes armed conflict.[8]

The term "armed conflict" has been consistently adopted and preferred for use above "war" for these two major reasons: firstly, the use of the concept armed conflict refers to *"a state of belligerence"* as against when the term is used in "*a state of outright war"*, which implies a situation not governed by clear cut rules.[9] Therefore, the term specifically refers a degree of hostile clashes between organized groups. While the term war usually gives a nuance of intense form of violent clashes on a wide scale between two or more States or between armed groups in the territory of a country in a collective way, in other words, "war" was described by a learned scholar as a sustainable struggle with a level of intensity by the military forces of two or more State or involving armed persons, who bear distinctive insignia and are subject to military control and discipline under responsible command.[10] This definition of war is very restrictive, therefore excludes other types of low level hostilities, such as terrorism, armed raids, and border attacks. Therefore, in ensuring adequate protection to victims of all forms of armed conflicts the restrictive concept of war should be replaced by a broader term, termed armed conflict, which accommodates low level violence.[11]

Secondly, the introduction of the concept "armed conflict" can be captured in a legal perspective. Before now, a declaration of war must be issued to activate relevant international humanitarian laws. However, this requirement was widely abused by States whereby large scale hostilities were commenced before declaring that war exists between them, leaving the

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[8] See the UN General Assembly Resolution 378 (V), 59/261, 59/178, and 59/171 bordering on the duties of States in the event of the outbreak of hostilities, children in armed conflict, mercenaries, and new humanitarian order, respectively.

[9] Additional Protocol II, States recognition of belligerency implies that the major part of IHL becomes applicable to armed conflict involving non-State and State parties.

[10] I. Detter, **The Law of War,** Cambridge, United Kingdom, Cambridge University Press, 2nd ed., 2000, p. 26.

[11] "End Conscription Campaign", South Africa, Supreme Court, Cape Provincial Division, 14 October 1988, 87 **International Law Report 1992**, pp. 279-281.

victims without adequate legal protection.[12] Consequently, the Geneva Conventions 1949 provides for an application of the rules of the Conventions once war has been declared or at any time when other forms of armed conflict may occur between two or more "*High Contracting Parties*", even when either party fail to recognize that war exists. Consequently, the notion of "armed conflict" allows for adequate protection of victims regardless of formality.[13]

Furthermore, establishing the existence of conflict between armed groups and the military forces of a country is a relevant subject to the territorial and jurisdictional authority of States, the determination of when precisely the hostilities commenced is directly relevant to the ability to bring perpetrators of the violence to book, and commencement of a peace process. IHL becomes active at the onset of an armed conflict during the perpetration of violence, making specific determination of violations important in certain situations. The inability to determine the particular time or period the commencement of conflict can amount to operational complexities.

Given the fact that the definition of "armed conflict" espoused in the Geneva Convention was insufficient for all purposes, the Appeal Chamber of the International Criminal Tribunal of Yugoslavia in Prosecutor v. *Tadi´c* laid down the most encapsulating descriptive definition of the term.[14] Responding to the Defendant who challenged the jurisdiction of the Tribunal, while determining the existence of a conflict, established that when Parties resort to armed engagements, force or, outbreak of protracted armed violence between armed groups within the territory of a State it can be said that armed conflict exist in

[12] J.S. Pictet, "*La Convention de Genève relative au traitement de prisonniers de Guerre: Commentaire"*, Geneva, **International Committee of the Red Cross, 1958**, p. 26.

[13] Hostilities could commence between armed groups and armed forces within a State, or armed attack could be carried out against defenseless communities without warning or formal declaration of war, resulting in deadly violence or genocide, as in the case of Rwanda. It is therefore typical for IHL to become operational to offer protection for victims such as these. See Common Article 2, Geneva Convention 1949.

[14] **Prosecutor v. Dusko Tadi´c,** Decision on Defence motion for Interlocutory Appeal on Jurisdiction, Case No. IT-94-1 (2 October, 1995).

that circumstance. The foregoing has become the determinant factor in the jurisprudence of the ICTY regarding the existence of a conflict, and it was adopted during the establishment of the ICC in the Rome Statute, including other special Courts and Tribunals in the prosecution of violators of IHL and perpetrators of war crimes.[15]

The ICTY Trial Chamber expounded on situations which constitutes armed conflicts on the merit phase of *Tadi`c* definition above for establishing the principles contained in Common Article 3 aimed at severity of the conflict and organization of parties in armed conflicts. In armed conflicts of an internal or mixed character, these characteristics which are closely related are used mainly with the aim of distinguishing situations which constitutes armed conflicts from banditry, unorganized and short-lived insurrections, or terrorist activities, not covered by international humanitarian law.[16]

The International Law Association (ILA) adopted the definition in *Tadi´c's* case as the determinant principle on situations that constitutes armed conflicts in an effort to encapsulate the different forms of armed conflict into a specific definition under international law.[17] It states that when non-state groups transcends from chaotic violence to having the ability to engage the armed forces of a State it means an organized structure such as a command order, training, ability to recruit, communications channels and facilities, and logistical capacity.

[15] The **Prosecutor v. Jean-Paul Akayesu**, Judgment of the International Criminal Tribunal for Rwanda for the Prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in Rwanda, Case No. ICTR-96-4-T, (September 2, 1998), pp. 619-620; **Prosecutor v. Milan Marti´c**, Judgment of the International Criminal Tribunal for the Prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Former Yugoslavia, Case No. IT-95-11-T, 41 (International Criminal Tribunal for the Former Yugoslavia June 12, 2007) (citing the *Tadi´c* definition of armed conflict).

[16] International Criminal Tribunal for the former Yugoslavia (ICTY), **Prosecutor v. Tadic**, Case No. IT-94-1-A, Judgment (Appeals Chamber), 15 July 1999, p. 562.

[17] International Law Association (ILA), The Hague Conference: Final Report on the meaning of Armed Conflict in International Law, (2010), p. 3.

These organized groups can be observed as engaging in armed conflict when hostilities become more than a minor attack, engagement or incident.[18]

From the foregoing, the ILA identifies two important indicative factors that must exist regarding all forms of armed conflicts, they are: existence or presence of organized armed groups and the engagement in fighting of some intensity. The indicative factors which must exist in establishing situations that constitutes armed conflicts as identified by the International Law Association above shall be examined as follows:

i. Existence of Organized Groups

With regards to the presence or existence of organized group in armed conflicts, the ICTY has identified a wide range of indicators that can be observed to determine armed groups engaging in conflicts, for example, determining if such group or groups have a hierarchical structure, the capability to recruit and train their combatants, to launch operations using military tactics; their extent of control and administration over territories, the capability to coordinate several units, and competence to participate in a peace process or enter cease-fire agreements.[19] Pictet's commentary on the Common Article 2 suggests that the Convention can only be triggered by the engagement of high contracting parties irrespective of the severity of the hostility.[20]

In other words, the Convention can be applied from the actual commencement of hostilities between organized groups or contracting parties. In this context, high contracting parties alludes to State and non-State actors. State actors connotes the military or armed forces of nation States, the latter engaging in armed conflict will mean an organized group

[18] International Law Association Report, *Ibid.* pp. 2-3.

[19] **Prosecutor v. Milan Luki´c** and **Sredoje Luki´c,** Case No. IT-98-32/1-T, International Criminal Tribunal for the Former Yugoslavia, Judgment, (July 20, 2009), p. 884.

[20] J.S. Pictet (ed.), The Geneva Conventions of 12 August 1949: Commentary- IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, **International Committee of the Red Cross, 1958**, p. 32.

having the actual capacity to engage the armed forces of nation States, possessing the ability to train, recruit, communicate, funding sources, and logistical capability and having a command structure.

ii. Engaging in Intense Hostility

The intensity factor of a conflict can be established by the gravity of violent attacks, the possible escalation of armed attacks, probability that clashes will extend across the territory for a period of time, access and distribution of arms and weapons among parties, increase in the mobilization of military or armed forces to affected areas, and considering if the violent conflict gained international attention and response, especially those of the UN.

In several decisions of the ICTY, key indicators from factual situations have been identified to help demonstrate the level of intensity of fighting, for example the duration of engagement, the number of casualties, including the gravity of confrontation. Other factors that will be considered include the amount of people and types of forces engaged in the fighting, the types of weapons and other equipment used in the conflict, the location and distribution of clashes, the scale of physical destruction, and the number of civilians fleeing the area of fighting.[21] The involvement of the UN and its organs and the frequency of hostilities are also important factors for determining the level of intensity of fighting with the aim of identifying situations that constitutes armed conflicts.[22]

[21] **Prosecutor v. Ramush Haradinaj & Ors**., Case No. IT-04-84-T, International Criminal Tribunal for the Former Yugoslavia, Judgment, (April 3, 2008), p. 49.

[22] S. Vite, "Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations", **International Law Review of the Red Cross**, Vol. 91, No. 873, **March, 2009**, pp. 76-77.

B. Forms of Armed Conflict

The meaning of armed conflict provided by the Convention is peculiar to the two major categories of armed conflicts.[23] The Conventions attempted to encapsulate all forms of armed conflict and thereby put forward two foremost categories of armed conflict that can propel the deployment of the Convention. The two broad categories are international and non-international (otherwise known as internal), armed conflicts, however, internationalized armed conflict a third category of armed conflict recognized by several scholars of international law, will also be considered.[24]

The Convention describes international armed conflict as confrontations between the military forces of two or more nation States, while non-international or internal armed conflict involves armed confrontations between the military forces of States and non-government forces or rebel groups, it also includes armed hostilities between non-government forces. Therefore, the meaning of armed conflict for each form of conflict as formulated in the Convention creates different triggers for the application of IHL.

i. International Armed Conflict

This form of conflict involves an armed confrontation or waging of hostilities by the military forces of two or more States.[25] Article 2 Common to the four Geneva Conventions states that armed conflicts of international character refers to situations where war is declared or other forms of violent conflict which may arise between two or more of the High

[23] The types of armed conflicts will be discussed below in this chapter.

[24] J. G. Stewart, "Towards a single definition of armed conflict in international humanitarian law: A critique of internationalized armed conflict", **International Review of the Red Cross**, Vol. 85, No. 850, **2003**, pp. 313-350.

[25] See the Geneva Conventions of 1949 and the Additional Protocol I relating to the Protection of Victims of International Armed Conflicts (This is applicable if the States engaging in hostilities are party to the Geneva Conventions of 1949, or certain rules have become customary international law). D. Schindler, "The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols", **The Hague Academy Collected Courses**, Vol. 63, II, **1979**, p.128.

Contracting Parties, even if the state of war is not recognized by any of the parties, the Convention also includes all forms of total or partial occupation of the territory of any of the high contracting party even if such occupation is not resisted.[26] Although the Convention did not particularly provide a definite meaning of the term, however it can be deduced to apply to any case where violent confrontations between the military forces of two or more nation States. Hence, armed conflicts of international character occur when there is clear violent conflict among the legal armed forces of two or more States, even when the existence of the conflict has been denied any of parties.[27]

The position of IHL is that, the level of intensity of a particular conflict is not relevant for it to be characterized as international; therefore the indicative factors present in each conflict must be analyzed freely. The nature of this type of conflict must take the form of a direct confrontation between the military forces of States,[28] regardless of how minor or short-lived or the number of victims affected.[29]

The only major international armed conflicts in Africa were between Eritrea and Ethiopia all other conflicts were non-international in character. However, most internal armed conflicts do not remain restricted within the territory of a single State. Due to changing nature of armed conflicts in recent times, it may be difficult to categorize conflicts as either one of international or non-international in form. The multiple uprisings and invasions of the Great Lakes region of Africa which occurred in Rwanda, DRC, Burundi, including Uganda have been described as an internal conflict because of the involvement of combatants from several

[26] Article 2, Geneva Convention I, Article 2, Convention II, Article 2, Convention III, and Article 2, Convention IV.

[27] M. O. Uhler and H. Coursier (eds.), **International Committee of the Red Cross**, Commentary on Geneva Convention (III) Relative to the Treatment of Prisoners of War, 1958, p.23.

[28] H. P. Gasser, **International Humanitarian Law: an Introduction**, Henri Dunant Institute, Geneva, 1993, p. 24.

[29] See International Law Association, **Initial Report on the Meaning of Armed Conflict in International Law**, Rio de Janeiro Conference, 2008, pp. 9-10 and 23-24.

States of different ethnic and tribal groups.[30] These conflicts have features of international armed conflict due to the engagement of combatants from different nationalities. In contrast to decisions of the ICC in a number of cases where it established that internal conflict can have elements of international armed conflicts.

At the beginning of the trial of Prosecutor v. Dyilo[31] and Prosecutor v. Germain Katanga & 1 Or.[32] both cases relating to conflicts in the DRC, the Pre-Trial Chamber pronounced that Uganda's presence as an occupying power from July 2002 until June 2003 made the conflict one of international character. Although, there were no sufficient evidences to establish reasonable grounds to believe that Rwanda had a direct intervention in the conflict, however, there were substantial grounds to believe that the conflict in North Eastern DRC was of international character. This was because of the direct intervention of the Ugandan military force as well as substantial contribution of weapons and ammunition to armed groups in DRC by the Ugandan government.[33]

Also in Prosecutor v. Lubanga, the Court identified two instances where an internal armed conflict can exist alongside an international armed conflict. The first instance is called a direct intervention, which involves situations where a third party State intervenes directly in the conflict through its armed forces, and the second instance is called indirect intervention, which occur when all or some persons participating in the internal armed conflict act on

[30] C. Bassiouni, "The New Wars and the Crisis of Compliance with the Law of Armed Conflict by Non-State Actors", **The Journal of Criminal Law and Criminology,** Vol. 98, No. 3, **2008**, p. 748.

[31] International Criminal Court, the **Prosecutor v. Thomas Lubanga Dyilo**, Decision on the confirmation of charges, No. ICC-01/04-01/06, (29 January, 2007), p. 72.

[32] International Criminal Court, **Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui**, Decision on the Confirmation of Charges, No. ICC-01/04-01/07, (26 September 2008), p.71.

[33] **Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui**, *Ibid.*, paras. 239-240.

behalf of a third party State, indirectly.[34] The ICJ shared the same opinion in the case of DRC v. Uganda.[35]

In international law, an armed conflict is not necessarily international in character if a third State intervenes on behalf of a State party to the conflict. In examining conflicts being tried by International Criminal Court/Tribunals, it has been observed that most of these conflicts have both internal and international features. In Prosecutor v. Jean-Pierre Bemba Gombo, Leader of the *Mouvement de libération du Congo*[36] was accused by the ICC of perpetrating crimes against humanity and war crimes, in the Central African Republic, outside the territories of the DRC.[37] The Prosecution submitted that the conflict which occurred in Central African Republic in 2002 within few months was armed conflicts of non-international character but possess elements of international armed conflict, even though it did not linger over a period of time.

The Conflicts which led to the military action against the Ugandan rebel group, the Lord's Resistance Army, whose leaders have been charged in the ICC, includes forces from neighboring Sudan and DRC. Concerning the situation in Darfur, the United Nations reported a series of attacks by rebels upon African Union Peacekeepers.[38] The Commission of Inquiry on Darfur revealed that there was sufficient evidence to show that members of the *Janjaweed* included fighters from neighbouring countries, particularly Libya and Chad, and the government of both countries have accused each other of actively supporting rebels in their

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[34] The **Prosecutor v. Thomas Lubanga Dyilo**, Decision on the confirmation of charges, *op. cit.*, para. 209.

[35] Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, **ICJ Report, 19 December, 2005**, para. 345.

[36] International Criminal Court, Warrant of Arrest for Jean-Pierre Bemba Gombo, **No. ICC-01-/05-01/08,** (10 June 2008), The **Prosecutor v. Jean-Pierre Bemba Gombo**, Transcript of confirmation of charges hearing, (13 January 2009), pp. 120-121.

[37] D. Fleck, The Law of Non-International Armed Conflict, in, **The Handbook of International Humanitarian Law,** Oxford: Oxford University Press, 2008, p. 605.

[38] At Least 51 United Nations personnel were killed in deliberate attacks against peacekeeping operations in 2015, **United Nations Meetings Coverage and Press Releases, 21 January 2016**, available at: http://www.un.org.press.en.2016.org1624.doc.htm, (retrieved on 16 July, 2016).

internal conflicts, also it is believed that most of the *Janjaweed* fighters in Sudan were from Libya and Chad.[39] The former Liberian President, Charles Taylor, was charged at the Special Court for Sierra Leone for war crimes contrary to the Geneva Conventions, committed within the territory of neighboring Sierra Leone.[40] Although these situations may be categorized as being internal armed conflicts, it is obvious that have considerable features of international armed conflict especially when during the conflicts parties violate principles of international law by committing crimes that attracts international condemnation in the form of war crimes, genocide, crimes against humanity among many others.

ii. Non-International (Internal) Armed Conflict

The characteristic of these conflicts involves confrontation of military and non-government forces in the territory of a State(s). Therefore, non-International conflict exists between State governments and local armed groups.[41] This remains the dominant form of conflict in Africa.

The Convention defines non-international conflicts as those devoid of any international outlook taking place within territory a Party.[42] Armed confrontation that is not international in nature is that which one or both parties engaged in the fighting is not a recognized government. Protocol to the Convention further describes this form of conflict as that which occurs between armed forces of a State or a high contracting Party and dissident

[39] Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Geneva, 25 January 2005, p. 32.
[40] Special Court for Sierra Leone, **Prosecutor v. Charles Taylor,** Prosecution's Second Amended Indictment, SCSL-03-01-PT, 29 May 2007.
[41] P. Wallensteen, (et. al.), "Armed conflicts, 1946-2014", **Journal of Peace Research**, vol. 52(4), **2015**, p. 549.
[42] Geneva Convention, Common Article 3, 1949.

forces, or other organized groups which under identifiable command to exert such control over part of the territory to continue sustained and concerted military activities.[43]

Depending on varying situations, hostilities can occur either between more than one armed groups and a government, or among militant groups. In cases where hostilities involves two non-government armed groups, the military of the State is deployed to quell the hostility. This is legitimized by Protocol II, in Article 3 which gives States the power to protect their sovereignty, right to preserve law and order, and to protect unity and territorial integrity using legitimate means. Therefore, State governments have a responsibility to maintain law and order when there is chaos. Also, the Protocol prohibits the direct or indirect intervention by another Party in the affairs of a Party in whose territory the conflict occurred.[44] Similarly, the Charter prohibits the UN from intervening in internal affairs of any State.[45] Such matters are not required to be submitted to UN for settlement under the Charter. However, this principle cannot derogate application of enforcement powers of UN in Chapter VII.

Accordingly, Article 2 (4) of the UN Charter prohibits the use of force between Parties. However, the proscription does exclude the domestic use of force and self-defence.[46] In other words, the provision of Article 2(4) does not deprive States of their rights to take measure to maintain order within their own jurisdictions. Accordingly, States may resort to

[43] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. This instrument does not apply to wars of national liberation, which are equated with international armed conflicts by virtue of Article 1(4) of Additional Protocol I.
[44] Protocols Additional to the Geneva Conventions of 12 August 1949, **ICRC Geneva, 1977**, p. 91
[45] Article 2(7) UN Charter.
[46] M.N. Shaw, **International Law**, Cambridge, Grotius Publications Limited, 1991, p. 720.

force in quelling riots and uprisings and may use it to punish dissenters without breaching Article 2(4).[47]

There is a general notion that internal conflict is beyond the realm of International law, nevertheless, the case cease to be exclusively a matter of internal affairs, if the internal use of force is condemned and declared as threat to world peace. Several cases before ICC/Tribunals that are non-international in nature usually have international elements, where the accused persons have been alleged to have perpetrated acts prohibited by international law. When the foregoing conditions are not present in a conflict, the violence could best be described as a mere civil unrest. Therefore a rebellion which constitutes civil unrest the local security can quell, such as, the 1992 crisis in Kenya where citizens called for democratization cannot be classified as an armed conflict. These however, do not apply to the outbreak of civil wars, or when it is obvious that the disturbance can escalate to a civil war.[48]

From the foregoing, internal armed conflicts assumes international character if the United Nations declares that the intensity of the violence between the High Contracting Parties amount threat to world peace.

iii. Internationalized Armed Conflicts

Internationalized armed conflict is the third type of conflict recognized by IHL. This type of conflict is an old phenomenon in international law. The Protocol applies to conflicts on independence from colonialism or oppressive government in the exercise of their right to

[47] M. Kinacioglu, "The Principle of Non-intervention at the United Nations: The Charter Framework and the Legal Debate", **PERCEPTIONS**, Summer, **2005**, p. 25.
[48] B. Simma (ed.), **The Charter of the United Nations: A Commentary**, Oxford University Press, 2nd ed. Vol. I, (2002), p.116

self-determination,[49] but only if the movement itself has adhered to Article 96(3) of Protocol II.[50]

The draftsmen of the Additional Protocol I was principally concerned with liberation struggles in Africa many of which were at their height in the 1970s. The provision backed the evolution of three principles of international law. Firstly, the principle of self-determination which dates back to 1919 and the second is the principle of decolonization which began to emerge after 1945, and thirdly, the principle of non-discrimination which evolved in the years since 1960. Thus, many Third World countries sought to give liberation struggles the status of 'international armed conflicts', in contrast many developed countries were fearful that such an approach might be seen as aiding terrorism. The ICJ supports general principle of liberation from alien or racist rule in a number of cases.[51]

Today, away from the era of colonization, many of the ongoing internationalized armed conflicts breakout from liberation from oppressive or undemocratic governments. This form of conflict can exist when fighting takes place between two different militant groups in a State but supported by two different States.[52] Internationalized armed conflict can also occur between governments and militant/rebel groups, with intervention from other States in the form of troops or rebel groups to one or both warring sides. Internationalized armed conflict takes the form of an intervention by a third party State or States in previously existing internal armed conflict.[53] In this case another State sends its forces into the territory of another State to provide support for armed groups against the incumbent authority. There

[49] Article 1(4) of the Additional Protocol I (1977); See, J. O'Brien, **International Law**, London: Cavendish Publishing Ltd., 2002, p. 774. See also, G. H. Aldrich, "Prospect for United States ratification of Additional Protocol I of the 1949 Geneva Conventions", **85 American Journal of International Law (AJIL), 1991**, p.1.

[50] G.H. Aldrich, "New life for the laws of war", **75 American Journal of International Law, 1981**, p.764.

[51] The Namibia case, ICJ (1971) p. 16; and The Western Sahara Case ICJ (1975) p. 12.

[52] J. G. Stewart, "Towards a single definition of armed conflict in international humanitarian law: A critique of internationalized armed conflict", *Op. cit.*, p. 315.

[53] Common Article 2(1) Geneva Convention 1949; Additional Protocol I; Article 1 (3).

may also be armed intervention by proxy when that foreign State supports the movement by providing funds or equipment and directs the operation from afar.[54] In this situation, it is important to determine the degree of involvement that makes it possible to characterize the armed conflict as internationalized in nature.

The ICTY noted that internal armed conflicts become internationalized when a third Party intervenes in the conflict through its armed forces or if some of the participants act on behalf of the intervening State. Although not all form of intervention or interference necessarily amounts to the internationalized of the conflict. In this regard, the ICTY noted that intervention by the Party over subordinate military forces, militias or paramilitary force must have an overall control element, and must extend beyond the provision of funds or military training and equipment. However, this requirement excludes issuing directives or specific orders by the States in each individual operation.

The requirement of "overall level of control" may be realized where another Party takes part in strategizing and coordinating the military operations of the group, including providing funding, training, equipment and operational support to such group.[55] Interference therefore, must go beyond mere logistical support. However, such interference must not imply that every activity carried out by the militants is directed by the State participating from afar.[56]

The 1998 Congo crisis is one of the most visible examples of an internationalized armed conflict in Africa, when the forces from other African countries intervened to support several groups in the State. The United States, Russia, United Kingdom, France and Belgium

[54] Prosecutor v. Tadi`c, Judgment, *Op. Cit.* paragraph 84.

[55] A. Cullen, **The Concept of Non-International Armed Conflict in International Humanitarian Law: A Study on Thresholds of Applicability**, Thesis, University College, Galway, 2007, pp. 229; J.G. Stewart, "Towards a Single Definition of Armed Conflict in International Humanitarian Law: a Critique of Internationalized Armed Conflict", *Op. cit.*, pp. 323.

[56] S. Vite, "Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations", *Op. cit*. p. 26.

have been prominent as external warring parties and have been involved in several internationalized armed conflicts.[57]

The presence of troops from these powerful States poses a serious threat to conflict resolution or termination, as they constitute mostly the P5 of the Security Council, which possess the responsibility for maintaining world peace. It has been demonstrated in many cases that external military support prolongs armed conflict and mostly lead to increase in the number of casualties.[58] Consequently, external intervention often makes conflict resolution difficult or likely to fail as a number of actors with a stake in the negotiations increases and seem to meddle with the process.[59]

Internationalized armed conflict brings the issue of legitimacy of intervention into fore even though the UN Charter has prohibited the use of it. The next topic will consider the status of non-interventionism in armed conflicts, focusing on legal principles and the extent which prohibitions can be avoided legitimately.

C. The Status of Non-Intervention in Armed Conflict

Intervention applies to the situation of the use of force or armed interference from the government of one State in the domestic or external affairs of another. Under the UN Charter intervention is considered to be an unlawful act but some interventions may be considered lawful or justifiable. Intervention can be seen as an armed interference by one State in matters which constitutes issues relating to the local affairs of another sovereign government with the

[57] S. Vite, *Ibid*, p. 315.

[58] J. Balch-Lindsay Dylan, A. Enterline, A. Joyce Kyle, "Third-party intervention and the civil war process", **Journal of Peace Research**, Vol.45 No.3, **2008**, p. 345–363; M. Regan Patrick, "Third-party interventions and the duration of intrastate conflicts", **Journal of Conflict Resolution** Vol. 46 No.1, **2002**, p. 55–73.

[59] T. Petterson, "Pillars of strength: External support to warring parties", in Petterson Therese, Themner Lotta (eds.), States in Armed Conflicts 2010, **Research Reports** No. 94, Uppsala: Universitetstryckeriet, **2011**, pp. 41-60.

aim of altering the actual condition of events or happenings or maintaining the occurrence of the event.[60]

The Charter specifically prohibits the UN from intervening in matters which falls under the domestic jurisdiction of any country. Members States are not under an obligation to bring matters which falls within their national jurisdiction for settlement before the UN, however the principle does not preclude the deployment of enforcement measures under Chapter VII.[61] The Charter also provides for limits of the UN's discretionary power to interfere in the domestic affairs of Members.[62]

Consequently, there are three rules encapsulated in Article 2(7): The first rule prohibits the organs of the UN from meddling in situations relating to the *"domestic affairs"* of Members. The second rule relates to Members of the UN, it maintained that they should not submit matters which falls within the domestic jurisdiction to the UN for a peaceful dispute settlement. Thus, the UN organs are guided to claim competence to consider disputes only on matters under international law, as opposed to questions that are contained in the exclusive jurisdiction of States. The third component specified in the Article relates to the only exception to non-interventionism by UN in the domestic affairs of States. It thus establishes a limitation of domestic jurisdiction in relation to the enforcement measures contained in the Charter. It is noteworthy that, States are not under an obligation to bring

[60] A. Tanca, **Foreign Armed Intervention in Internal Conflict,** Dordrecht, Boston, London, Martinus Nijhoff Publishers, 1993, pp. 17-19.

[61] B. Simma (ed.), **The Charter of the United Nations. A Commentary**, Oxford: Oxford University Press, 1994, p. 149.

[62] T. M. Franck, "**The Security Council and Threat to the Peace**", in R. J. Dupuy, *op. cit*., Rene-Jean Dupuy (ed.), The Development of the Role of the Security Council, Martinus Nijhoff Publishers, Dordrecht, 1993, p. 83.

matters which concerns their domestic jurisdiction before the UN, however the Charter does not prevents states from submitting issues of national concern to the UN and its organs.[63]

Enforcement measures provided under Article 2(7) of the Charter are exceptions to the principle of non-interventionism. Although members are not under an obligation to submit their matters which relates to issues of national concerns to peaceful settlement in Article 33 and other measures in Chapter VI, the resolutions of the UN requiring these settlement need not be observed by States concerned, the organs of the UN may decide to refuse to assign such conflicts to any international procedure of dispute settlement.[64] However, the Article did not prescribe a clear standard to determine specifically issues in the domestic jurisdiction of States.

The Security Council's response towards a particular conflict or situation may be in the form of recommendations or decisions addressed to concerned State Parties. This raises the debate as to whether particular actions of the UN may constitute an intervention or not. Certain actions of the UN that can be considered an intervention can include issues contained in the agenda of meetings, discussions, investigations, and the passing of resolutions.[65]

The obligation on States to resolve their conflicts by peaceful means is not enforceable. Therefore, when conflict arises out of a matter essentially within the domestic jurisdiction of a State, the principle of peaceful settlement does not apply. Therefore, there is no basis within the Charter to restrict the interpretation of the rule of non-intervention or for the difference between coercive and non-coercive recommendation which is its end result. One of the objectives of Article 2(7) is to restrict the application of peaceful settlement and

[63] B. Simma, **The Charter of the United Nations. A Commentary**, 1994, *op.cit.* p. 143.
[64] Ibid, pp. 149-150.
[65] R. Higgins, **International Law and the Avoidance, Containment and Resolution of Disputes**, Recueil Des Cours, Martinus Nijhoff Publishers, 1993, p. 68.

every form of coercion against States on subject matters which falls within their domestic jurisdiction.[66] Therefore, the UN should refrain from adopting resolutions either to make recommendations addressing States, establishing committee of enquiry, or taking a decision by way of resolutions of the General Assembly to undertake a study of the economic or social situation of a State.[67]

Generally, the UN was established by a treaty, parties to this treaty deployed powers it can legitimately exercise authority upon. Therefore, in order to protect their sovereignty, State agreed to insert the Article to prevent the UN interference in matters which are exclusively within their jurisdiction unless if the Security Council authorizes enforcement measures. When the Security Council agree upon enforcement measures it will determine whether such matter threatens world peace, and therefore has already exceed the limits of the subject matter of domestic jurisdiction.

The UN and its organs are essentially concerned with international matters.[68] The powers of the UN Security Council for enforcing collective measures, similar to powers exercised by other organs of the UN, are restricted to issues which are exclusively global in character. It is believed that the restriction of the exception to enforcement measures shown in the *travaux preparatoires* was done deliberately to give the Security Council authority to interfere in any matter that may result to apprehension concerning the preservation of world peace, that is, such matters that may pose as a potential threat rather than an actual threat and could cause friction between States. Consequently, where the issue have become one of international concern or such matters within the domestic jurisdiction with element of

[66] L. Preuss, **Article 2, Paragraph 7 of the Charter of the United Nations and Matters of Domestic Jurisdiction**, Recueil Des Cours, 1949, p. 610.
[67] B. Conforti, **The Law and Practice of the United Nations**, Kluwer Law International, The Hague, 1996, p. 147.
[68] J. W. Halderman, **The United Nations and the Rule of Law**, Oceana Publications Inc., USA, 1966, p. 196.

international concern becomes visible, the Security Council has the mandate to recommend applicable measures.[69]

The term "international concern" is a vague concept and has no specific definition under the Charter. However, it has been described as any threat of war or outbreak of war, or which amounts to a disturbance to the League. There was a distinction between issues of international concern and jurisdiction in the days of the League. The issues of international concern are considered with broad political perspective while issues relating to jurisdiction are given legal consideration. The question of either "international concern" or "jurisdiction" should be given credence has created an ambiguity that will be left to the Security Council to determine in certain circumstances.

In resolving this ambiguity, the Charter will be an appropriate guide to provide a legal solution. Although, the Charter did not provide a list of what may relate to domestic jurisdiction, and it would be inappropriate to overlook or deviate from the legal concept. The Charter[70] has determined the scope of what constitutes "international jurisdiction", the UN and its organs can utilize powers assigned to it to make such determinations. Even when the situation falls under the jurisdiction of a State, once a grave "threat, breach of the peace, or act of aggression" is discovered, the Charter empowers the Security Council to take action.[71]

Sometimes it is difficult to establish if armed conflicts within the meaning of IHL that should warrant intervention exists. States generally can determine the specific period a conflict come into being. In some cases when the existence of an armed conflict cannot be denied due to the level of intensity of hostility. In the different classes of armed conflict

[69] R. Higgins, **International Law and the Avoidance, Containment and Resolution of Disputes** *Op. cit.* p. 90.
[70] Chapters VI and VII.
[71] Article 39

discussed above elements that can be used to determine the existence of armed conflicts within IHL have been established, including the level of intensity, the parties, etc.

In some armed conflicts witnessed in Africa, the United Nations standby to observe in silence, while armed attacks or clashes classified as internal disturbances lead to deaths and human right violations, such as the Rwanda genocide and the recent attacks in Southern Cameroon by government forces.[72] In some cases, government armed forces are involved infractions of IHL, in another circumstance, the armed forces of such State may be overwhelmed by the level of attack suffered by it in the hands of rebel/opposition groups, but feel too embarrassed to admit it. Therefore, it could be important to find measures which could be used for determining when an armed conflict has commenced, regardless of the class it may fall under. The Charter gives the Security Council powers to establish the existence of any threat, breach of the peace, or act of aggression and to make appropriate recommendations, or decide particular measures that can be taken in line with the Charter.[73]

Therefore, the question of whether an armed conflict has taken place should be determined by considering if any threat, breach of the peace, or act of aggression has occurred; the intention and declaration of the parties to the conflict, condemnation of the situation by the UN, regional organizations, as well as third States.

D. Determining Acts of Aggression, Breach or Threat to the Peace

The Security Council which is empowered to maintain global peace and security through adoption of enforcement measures to prevent the aggravation of conflicts among States. The adoption of enforcement measures comes after the Security Council must

[72] P. Zongo, "This is a genocide: villages burn as war rages in blood-soaked Cameroon", **The Guardian, May 30, 2018,** available at: https://www.theguardian.com/global-development/2018/may/30/cameroon-killings-escalate-anglophone-crisis, (retrieved on 15 June 2018).
[73] Articles 41 and 42.

determine the presence of any breach, threat to the peace, or an act of aggression in line with Article 39 of the UN Charter. Determinations of these issues by the Security Council must mainly be on the questions of threats, while breach of peace, or acts of aggression are usually not specifically declared, even when they clearly exists.[74]

In reality, issues relating to threats precede a breach of the peace or an act of aggression. There are two similar terms under the UN Charter which are threat to peace as stated in Article 39 and threat of use of force contained in Article 2 (4). Although these terms seem identical, however, the former is wider in scope than the latter, since threat to peace is not necessarily linked to the use or threat of military force. Therefore, a threat to peace does not relate to the actual breach of international law. The presence of a threat to the peace is not necessarily a state of fact rather it is the perception of Security Council that counts in each circumstance.[75]

To appreciate the meaning of threat to the peace, one must reflect on the meaning of the word peace in either negative positive or sense of view. The positive view of peace is defined in the Charter as the existence of friendly relations among member States, and the existence of political, economic, social, and environmental conditions needed for a world rid of conflict.[76] The negative perspective to the absence of organized application of armed force or the unleash of the use of force, therefore, for a situation to amount to threat to the peace, the situation in question must have the potential of distorting friendly relations among states, and provoking the use of armed forces between States.[77]

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[74] J. Frowein and N. Krisch, "Article 39" in B Simma *et al* (eds.), **The Charter of the United Nations**, 2nd ed., Oxford University Press, 2005, pp. 722-726.

[75] Y. Dinstein**, War, Aggression and Self-Defence,** 4th ed. Cambridge University Press, 2005, p. 284.

[76] E. De Wet, **The Chapter VII Powers of the United Nations Security Council,** Oxford: Hart Publishing, 2004, pp. 138–139.

[77] B. Martenczuk, "The Security Council, the International Court and Judicial Review: What Lessons from Lockerbie?" **European Journal of International Law (EJIL**), Vol. 10, **1999**, pp. 543–544.

The term is flexible and broad, it include all major forms of grave international infractions. In every situation, a threat to peace can be characterized as an event capable of destabilizing the peace and has the potential to escalate into a catastrophe. The Security Council states that the non-existence of hostilities amongst its States does not in itself amount to world peace. The non-military sources of instability in the social, humanitarian, economical, and ecological fields have become subjects of threats to global peace and security as well.

The Security Council reacts to the onset of instability, therefore, it is not equipped or empowered to prevent all possible recurrent threats; its powers are usually limited to conflicts. Interventions in recurrent situations require the attention and collective efforts of all organs of the UN to find appropriate solution to matters that may constitute threat to peace.[78] In reality, different situations may constitute threat to peace, some of the situations that are deemed a threat to world peace include internal conflicts, human rights abuses, violations of the rule of law and democratic principles, violations of IHL, proliferation of arms, nuclear, chemical, and biological weapons.[79] Although, the Council is not under an obligation to react to all matters that are potential threats, it has in some cases refused to respond to some clear cut threats or breaches of peace.

Despite the number of armed conflicts that has occurred in Africa, the Security Council has declared only a few situations as those that constituted threat to peace, some of these examples include the following: The 1961 crisis in the Congo was declared a threat to

[78] J. Frowein, N. Krisch, , "Article 39" in B Simma *et al* (eds.), **The Charter of the United Nations** *op. cit.,* p. 720.

[79] UN Security Council Resolution 713, 25 September 1991 (Yugoslavia); Resolution 733, 23 January 1992 (Somalia); Resolution 788, 19 November 1992 (Liberia); Resolution 864, 15 September 1993 (Angola); Resolution 217, 20 November 1965 (racist minority regime in Rhodesia); Resolution 688, 5 April 1991 (Kurdish population in the Northern Iraq); Resolution 841, 16 June 1993 (Haiti); Resolution 1132, 8 October 1997 (Sierra Leone); Resolution 808, 22 February 1993 (Former Yugoslavia); Resolution 1172, 6 June 1998 (India and Pakistan); Resolution 1540, 28 April 2004.

world peace and security, and the Security Council urged the Belgians to withdraw its troops and appealed to the UN to take appropriate measures to discontinue the violence.[80]

In 1966, the Security Council while referring to Articles 39 and 41 declared that the racial policies in Southern Rhodesia constitute threat to peace and security. It emphasized the grave impact of these policies on the African continent and considered the prescription of sanctions for maintaining the peace.[81]

Generally, it is not clear the standards a situation must meet to be recognized as a threat to world peace according to the Charter. However, it is believed that within the scope of Article 39 it will constitute the occurrence of situations which may compel the reaction of the UN and its organs competent to impose sanctions, to declare it to be an actual threat to the peace.[82] Therefore, the situation must be catastrophic for it to constitute an actual and recurrent threat to global peace.

It is significant to state that in determining what amounts to a threat for the purpose of deploying necessary action to remove the threat, same determination should be used as the basis for deploying measures for collateral and independent purposes, for example the deposition of an incumbent government or for the partitioning of the territory of a State.[83] Such action would be contrary to the principles protecting the sovereignty of States. Accordingly, the principles of the UN Charter can only be applied for justice and fairness.

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[80] UNSC Resolution 161, 21 February, 1961.
[81] UNSC Resolution 232, 16 December, 1966.
[82] J., Combacau, *Le pouvoir de sanction de l' ONU*, Paris, 1974, p. 100, in, P. H. Kooijmans, **The Enlargement of the Concept Threat to the Peace**, Rene-Jean Dupuy (ed.), The Development of the Role of the Security Council, Martinus Nijhoff Publishers, Dordrecht, (1993), p.111.
[83] I. Brownlie, **International Law at the Fiftieth Anniversary of the United** Nations, *Recueil Des Cours*, Martinus Nijhoff Publishers, The Hague, Boston, London, 1995, p. 218.

II. NATURE OF ARMED CONFLICTS IN AFRICA

Over four decades after the World Wars, many developing countries witnessed a decrease in the number of armed conflicts. The existence of armed conflicts in Africa is undeniable and has been a source of major disturbance to the globe. Africa has remained the only continent most ravaged with different kinds of armed conflicts. Therefore, an understanding of the nature of conflicts in Africa is important and necessary to determine the most appropriate and effective mechanisms and approaches of conflict resolution. Africa has been described as the most war ravaged continent of the world with the number of armed conflicts on the rise. A number of armed conflicts have been witnessed in the DRC, South Sudan, Somalia, Central Africa Republic, Mali, Burundi, and Nigeria.

During the World Wars, conflicts in Africa were instigated by the socialists and capitalists movements who turned Africa into the battlefront and final victim.[84] After the Cold war, the amount of armed conflict incidents and casualties rose due to the protracted proxy conflicts occurring across the continent. In 1989, some previously halted hostilities reignited violently across Africa, such as in Liberia, Sierra Leone, Rwanda, and DRC.

The post-Cold war era led to more intense violence despite high expectations of a more peaceful continent (Africa). This continued to be an impediment to development and progression of human rights especially where conflicts persisted for years, such as the situations in Sudan, Somalia and the DRC. Majority of African conflicts originated from independence struggles after World War II. In the 1960s, many African countries had gained independence from colonial authorities and civil conflicts that emerged afterwards were

[84] A. C. Philip, *"Transition from war to peace in sub-Saharan Africa",* **Journal of Third World Studies**, Vol. 15, **Spring 1998**, pp. 285-294.

mainly internal conflicts instigated by political elites who were competing for political power and economic control based on ethnic strife.[85]

Though armed conflicts dominated Africa but there has been a departure from conventional hostilities to internal conflicts.[86] In most cases, these conflicts commence in the territories of a State and later violence may extend into neighboring States and then become elongated for many years involving many parties mainly the government forces, insurgents, militias and criminal gangs, commonly caused by ideological, political, and religious or ethnic differences.[87]

As at 2001, serious armed conflicts were ongoing in Angola, Algeria, Burundi, Guinea, Liberia, Congo Brazzaville, DRC, Rwanda, Sudan, Somalia, Senegal, Sierra Leone, and Uganda.[88] Some of the armed groups may be poorly structured and small in size, but they are mostly well trained, having access to light arms and sometimes heavy weapons and fully capable of spreading terror and disruption across borders. Many of the existing armed groups have strong transnational characteristics, because, insurgents are capable of moving from State to State. Some armed groups presently pose a high level of threat to the States they confront and have the capacity to overtake large strips of territory and seize power.[89]

The recent conflicts in Africa are dominated by insurgents using guerrilla and terror strategies against civilians to subvert government forces while extending violence into State

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[85] D. Keen, **The economic functions of violence in civil wars, international institute of strategic studies,** New York: Oxford University Press, 1998, p.3.

[86] M. Kaldor, **New and old wars: Organized violence in a global era,** Cambridge UK: Polity Press, 1999, p. 29.

[87] S. Neema, Challenges in conflict resolution: Case of the Juba peace talks in Uganda (2006-2008), LAP LAMBERT Academic Publishing, University of Tromso: Center for Peace Studies, 2010. http://www.ub.uit.no/munin/bitstream/handle/10037/2478/thesis.pdf;jsessionid=55638C4837CD414CEFB882FCFE6A2272?sequence=2 (retrieved January 15, 2015).

[88] J. Richard, "Violent internal conflict and the African state: Towards a framework of analysis", **Journal of Contemporary African Studies**, 20, No. 1, **2002**, p.30.

[89] N. Kasfir, G. Frerks and N. Terpstra, "Introduction: Armed Groups and Multi-layered Governance", in **Civil Wars**, Routledge: Taylor & Francis, Vol. 19, No. 3, 2017, pp. 257-278.

borders, showing no indication of ending armed conflict in military victories or conditional surrender. To this end, civilians bear the burden as direct victims of fighting in form of deprivation, atrocities, and displacement.[90]

The current nature of armed conflict in Africa appears to be fragmented with several actors, particularly non-state groups, involved in conflicts which slow down peace process. This has been witnessed in regions like Darfur and South Sudan, whereby the peace processes had been finalized but was significantly frustrated by divergent interests among several militant groups. Similarly, the Séléka movement in the Central African Republic whose operation was stopped through the intervention of the AU, eventually divided into five factions. A peace agreement signed by 3 of the groups with President François Bozizé was stalled when Bozizé was eventually ousted.[91] The armed conflicts in northern Mali and DRC are also characterized by the existence of different factions. The frequent internal difference and struggles by rebel groups has been described as a "*messy empirical record*" frustrates the notion of state and non-state actors during conflict resolution.[92]

Some armed groups operate at the borders of well-structured States, such as Nigeria, Cameroon and Uganda while other groups exploit weak government structure of countries such as the Sudan region and Congo. Reports indicate the tendency towards connection between rebel groups and unlawful activities, such as, kidnapping, money laundering, human trafficking, drug trafficking, terrorism, etc.[93]

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[90] J. Gettleman, "Africa's forever wars: Why the continent's conflicts never end", **Foreign Policy Magazine**, **2010**. http://www.foreignpolicy.com/articles/2010/02/22/africas (retrieved on February 24, 2015).

[91] J. Schumann and J. Cillers, "The future of intrastate conflict in Africa-More Violence or Greater peace?", **Center for Security Studies, Institute for Security Studies (ISS), September 2013**, p.3.

[92] W. Pearlman and K.G. Cunningham, "Non-state actors, fragmentation, and conflict processes", **Journal of Conflict Resolution 56(1), 2012**, p.4

[93] S. Straus, "Wars do end! Changing patterns of political violence in sub-Saharan Africa", **African Affairs**, 111(443), **2012**, p. 181.

The sources or causes of armed conflicts as addressed by many scholars includes: ethnic and religious diversities, the uneven distribution of wealth and access to government, resource control and access to justice. Conflicts bordering on independence, secession, ethnic interests have been witnessed in Africa, such as those in Angola and IPOB in Nigeria.[94]

A. SOURCES AND CAUSES OF ARMED CONFLICT IN AFRICA

Many scholars are still trying to understand the causes of conflicts in the continent, some lean towards the belief that the main reason revolves around the legacy of colonialism.[95] This notion has being dismissed on the view that while social and economic inequalities, racial and religious differences are but just some of the causes, the nature of conflict in Africa is the result of a complex dynamic system.[96] Similarly, conflict in Africa has been viewed as emanating from illiteracy, poverty, failed political structures and reliance on natural resources.[97] The absence of unanimity complicates the conflicts in Africa making them difficult to resolve. However, it is generally believed that the vulnerability of the continent to armed conflicts is rooted in its past, and also linked to certain factors. Some of the causes of armed conflict in Africa identified for the purpose of this research are:

i. Improper Colonial Border Designs

Improper colonial border designs can be described as one of the blunders of our colonial leaders past. The scramble for Africa began with the Berlin Conference (1884–85)

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[94] D. Smith, "Trends and Causes of Armed Conflict", **Berghof Research Center for Constructive Conflict Management, August 2004**, pp. 5-13. https://www.berghof-foundation.org/fileadmin/redaktion/Publications/Handbook/Articles/smith_handbook.pdf (accessed on 10 July 2016).

[95] A. N Aniogolu, "**Keeping Nigeria One Through Visionary Constitutional Engineering: Philosophy Behind Some Provisions of the 1989 Constitution**", Cap. U. L. Rev. 1992, pp. 1033-1034. See also, O. Oko, "Confronting the Transgressions of Prior Military Regimes towards a More Pragmatic Approach", 11 **Cardozo Journal of International & Comparative Law**, 89, **2003**, p.102.

[96] P.D. Williams, **War and Conflict in Africa**, Cambridge, UK, Polity Press, 2011, p. 200.

[97] I. Elbadawi and N. Sambani, "Why are there so many Civil Wars in Africa? Understanding and Preventing Violent Conflict", **Journal of African Economies**, Vol. 9, **2000**, pp. 244-247.

and ended by the early twentieth century. Europeans partitioned Africa from European capitals into colonies, spheres of influence, and segments with little or no knowledge of the ethnic composition of Africans and their territories.[98]

European colonizers concluded treaties among colonial powers to avoid competition and designed regional maps without the consent of African rulers. However, many blunders were made due to their superficial knowledge and inaccurate mappings, the colonial powers have admitted to this fact. During this period, the European powers acquired resources rich territories from African local leaders and chiefs through deceit, fraud, intimidation, and bribery.[99]

During the colonial era the colonial powers adopted the "divide and rule," "direct rule," and "assimilation" policies, which forced Africans to lose their social and cultural identities. These policies instigated conflicts among local people, dividing them even further, and consequently strengthening ties among the colonial powers. Many Africans found themselves already within the same territory with people of different customs, traditions and ethnic group, at the same time colonial government handed over power to certain tribes who are considered by them more educated and politically inclined than other tribes. This gradually resulted into hostile relations among borderland communities.

At the end of the colonial era, African governments and political elites used this system for political means. The ethnic groups who hold power usually refuse to allow the rotation of power to include the minority tribes, whose regions usually suffer from infrastructural deficiency and economic growth, and are denied control to their natural

[98] M. Craven, "Between Law and History: The Berlin Conference of 1884-1885 and the Logic of Free Trade", **London Law Review of International Law**, 3(1), **2015**, pp. 31-59.
[99] J. Herbst, "The Creation and Maintenance of National Boundaries in Africa," **International Organization,** Vol.43, No. 4, **1989**, pp. 673-692.

resources. Efforts made by these minority groups to get power are sometimes met with resistance by the government forces that are controlled and dominated by those in power.[100]

African political elites have continuously used colonial borders as a political instrument to exploit and marginalize their people, by affiliating along ethnic lines and instigating hostilities, for example, the Jikany-Nuer of Ethiopia and the Lou-Nuer of South Sudan belong to the same ethnic group, and live along the Ethiopia-South Sudan border, yet they are considered as two distinct ethnic groups with different nationalities and have developed hostility due to resource competition.[101]

This factor and segmentation of ethnic groups have influenced political instability, and underdevelopment in African states. The lack of economic, social, and political development and limited upward mobility expose the borderland communities to a number of human security challenges such as widespread poverty, poor infrastructure, limited education, and cross-border inter-ethnic conflicts. Local communities in Africa have persistently fought over land and boundary adjustment resulting to violent killings and destruction of properties.

The 2017 crisis between the Cameroonian government forces and the Southern Cameroons Ambazonia Consortium United Front (SCACUF) is spurred by the Southern Cameroonians who believe that they have been marginalized since independence by the Francophone society. Activists in the country argue that the Anglophone western regions are forced to assimilate into the dominant Francophone society, and that this process violates

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[100] T. Gashaw, "Colonial Borders in Africa: Improper Design and its Impact on African Borderland Communities", **Southern Voices: Africa up Close**, The Wilson Center, **17 November, 2017**, available at: https://africaupclose.wilsoncenter.org/colonial-borders-in-africa-improper-design-and-its-impact-on-african-borderland-communities/ (accessed on 15 January, 2017).

[101] S.E. Hutchinson, *"Violence, legitimacy and Prophecy: Nuer struggles with uncertainty in South Sudan"*, **American Ethnologist**, Vol. 42, Issue 3, **July, 2015;** See also, G. Ruon Jal, "The Root Cause of Cross-Border Conflict in Gambella Regional State between Jikany-Nuer and Lou-Nuer", **Public Policy and Administration Research**, Vol. 4, No. 8, **2014**, pp. 44-58.

their minority rights.[102] Conflicts related to land and boundary can be resolved amicably if the parties are willing to find a peaceful solution to the dispute instead of resorting to violence. The ICJ has acted as an arbiter over the age long boundary dispute between Nigeria and Cameroon, which resulted in the withdrawal of the troops from both sides and Nigeria relinquishing title over the area to Cameroon.[103]

ii. Corruption and Poor Governance

The continent has been bedeviled with several challenges like corruption and poor governance by African leaders. After successful liberation struggles across the continent, several regimes mismanaged state resources and weakened existing government structures leading to economic degradation and political instability. These elements have been identified as the primary cause of recurrent violent conflicts and civil strife in many African States. The armed conflicts in Nigeria, Cameroon, and Chad have been linked to corruption and poor management of government institutions. For instance, the root cause of the conflict Sierra Leone has been identified to include political imbalance, corruption and poverty.[104]

The level of corruption in Nigeria has been identified as the primary cause of hostilities in the oil-rich Niger Delta which has the largest oil reserve in Sub-Saharan Africa but is also one of the poorest developed regions in the country. This is traceable to the high level corruption by government officials and multi-nationals which does not allow wealth from resources to trickle down to the indigenes of the region and the larger population. This attitude of government instigated the formation of several militia groups to take up arms

[102] P. Taoua, "Cameroon's Anglophone Crisis has brought the country to the brink of civil war", **Breaking Point: Quartz Africa, June 26, 2018**, available at: https://qz.com/africa/1313745/cameroons-anglophone-crisis-has-brought-the-country-to-the-brink-of-civil-war/amp (accessed on 15 July, 2018).

[103] "International Court of Justice gives Judgment in Cameroon-Nigeria Boundary Dispute", **United Nations, Press Release**, ICJ/603, (**10 October 2002**). https://www.un.org/press/en/2002.icj603.doc.htm (accessed on 18 July 2016)

[104] D. C. Fithen, **Diamonds and war in Sierra Leone: cultural strategies for commercial adaptation to endemic low-intensity conflict**, London: Department of Anthropology, University College, London, 1999 p. 36.

against government and disrupting the activities of oil companies in the region.[105] Recently and more pronounced is the ongoing violence in the North-East Nigeria between the Nigerian armed forces and the Boko Haram insurgent group, which has been linked to government ineffectiveness, political inequality and poverty, among many others.[106]

Similarly, in other countries such as Guinea-Bissau, corruption and poor management of government institutions are deeply entrenched in the political, social, and judicial institutions causing untold hardship on the local population which is sometimes expressed through violence.[107]

iii. Ethnic and Religious Animosity

Another root cause of armed conflict in Africa have been identified to include ethnic and religious complexity. Africa has many States with diverse ethnic and religious groups. This diversity has been a catalyst for catastrophe over the years, because political elites and belligerents in Africa affiliate more along tribal and religious lines and have made increasing use of ethnic and religious strife to fuel tension resulting in mass violations of minority and human rights, ethnic cleansing and terrorism. This attitude prolongs conflicts and lead to division that reduces the success of conflict resolution.[108]

The conflicts in Uganda and Congo are examples of the abuse of ethnicity. Political instability in DRC has been attributed to ethnicity instigated by government officials with the aim of destabilizing regions under Rwandan control. Similarly, Ugandan armed forces have been accused of exploiting ethnic differences so as to benefit from the conflict. In these

[105] H. T. Ejibunu, "Nigeria's Niger Delta crisis: Root causes of peacelessness", R. H. Tuschl, (ed.), **EPU Research Papers,** Vol.7, **2007**, p. 7.

[106] A. O. Adelaja, A. Labo and E. Penar, "Public opinion on the root cause of terrorism and objectives of terrorists: A Boko Haram case study", **Perspectives on Terrorism**, Vol. 12, Issue 3, **June 2018**, pp. 35-45.

[107] VOZ DI PAZ, **Root causes of conflict in Guinea-Bissau: The voices of the people,** Guinea-Bissau: Voz di Paz/Interpeace: Guinea-Bissau, 2010, p. 64

[108] P. Collier and N. Sambanis, Understanding Civil War in Africa**, World Bank: Evidence and Analysis**, Vol.1. Washington DC: The World Bank, **2005,** pp. 5-27.

instances ethnic division and segregation have been intense and an increase in the number of causalities and losses than can be witnessed in more conventional fighting.[109]

The actions of colonizers, such as improper border designs and favoritism, set the stage for ethnic hatred and rivalry which precipitated many Africans to align with their various ethnic groups. This happens when government did not to give attention to issues such as unemployment, poverty, security and equality. Colonial favoritism constitutes one of the factors that created strife thereby resulting to a huge gap between the different political classes; therefore many became poorer while a few amass wealth. This factor led to the genocide in Rwanda, as well as the atrocities in the Congo and other parts of Africa.[110]

It has been observed that conditions in ethnically diverse nations, those separated into minority groups, better favor formation of rebel or militancy. For example, Yoweri Museveni, Ugandan President during the Sudan conflict stated that the black people and the Arabs live together however, efforts by the Arabs to turn the Africans (into) Arabs led to violence, this has been identified as the major cause of the crisis among the Sudanese.[111]

Ethnicity largely led to the catastrophes and the death of millions in many African States, long-lasting brutal violence involving ethnic and religious groups over issues ranging

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[109] "The Causes of Conflict in Africa", **Consultation Document**, Department for International Development (DFID), **March 2001**, p. 14. http://webarchive.nationalarchives.gov.uk/+/http:/www.dfid.gov.uk/pubs/files/conflict-africa.pdf (retrieved 16 July 2016)

[110] S. Autesserre, "The Trouble With Congo: How Local Disputes Fuel Regional Conflict," **Foreign Affairs**, Vol. 87, No. 3, **May-June 2008,** p. 96. https://www.jstor.org/stable/pdf/20032653.pdf (accessed January 11, 2016).

[111] Yoweri Kaguta Museveni, President of the Republic of Uganda, "The Strategy of Protracted People's War: Uganda," **Military Review**, **November-December 2008**, p. 5, http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20081231_art005 pdf (accessed March 20, 2017).

from conflicts over territorial control, political influence, mineral resource control and rights.[112]

iv. Natural Resources

Most of the armed conflicts in Africa emanate from the struggle for the control of State power, due to the uneven distribution of resources.[113] There are basically two types of natural resources induced conflicts in the form of resource scarcity, and unequal distribution resources. The features of scarcity based conflicts relates to control of grazing areas and access to water for nomads, while in conflicts related to unequal distribution of resources, groups compete for resource control between natives and State.[114]

In sub-Sahara Africa, the intensity of armed conflicts is increasing due to the struggles for control over key resources, such as gas, crude oil, gold and diamonds. For example, in Angola, the rebel movement UNITA controls a substantial part of the diamond production, which allows it to sustain its armed group, while the government of Angola was financing its armed forces from the revenue generated from concessionary arrangements for oil production granted to multinationals.[115]

In the DRC, many Congolese have been subjected to hardships and many lives lost in conflicts between different rebel groups and government forces in a bid to partake in share of the country's rich mineral resources. The illegal exploitation of natural resources allows

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[112] S. Autesserre, "Hobbes and the Congo: Frames, Local Violence, and International Intervention," **International Organization**, Vol. 63, Issue 2, **Spring 2009,** pp. 249-280, linked from the Columbia University Séverine Autesserre Home Page at "Research," http://www.columbia.edu/~sa435/ (accessed March 20, 2017).

[113] A. Abiodun, "Governance and Natural Resource Conflict", Natural Resources and Conflict in **Africa: The Tragedy of Endowment,** Vol. 29, Boydell & Brewer, 2007, pp. 242-276.

[114] P. Le Billon, "The political economy of resource wars in "**Angola's war economy**" Cilliers and Dietrich(eds.), Institute for Security Studies, South Africa, 2000, p. 249.

[115] N. Duquet, "Angola's Rise to Regional Power: A Theoretical Approach on Oil and Conflict in Central-Africa", **St Antony's International Review** Vol. 2, No. 1, The International Politics of Oil, **May 2006**, pp. 96-112.

rebels to generate finance to engage in armed conflicts.[116] In Sierra Leone, exploitation of the diamond mines by the RUF has been a major source of power and wealth for the rebel activities. Reports indicate that rebels acquired weapons and arms through the sale of diamonds and paid Liberian soldiers engaged in fighting alongside their counterparts in the RUF in diamonds.[117]

Unequal distribution of natural resources can lead to liberation struggles and abundant resources sometimes attract unwarranted external armed intervention. Private companies and multinationals have played critical roles in stirring wars of resource control, as insurgents rely on their capacity to exploit and commercialize the resource. In many situations, the armed forces of States are involved in developing their corporations to allow self-financing, self-sustaining, and thereby reluctant to participate in conflict resolution.[118]

v. Arms Proliferation in Africa

Presence of illegal arms across African States has increased the proclivity of conflicts in the continent. This factor is another major cause of armed conflicts in Africa that should be given serious attention. The continent has become an area of considerable arms and weapons deposit due to the availability, porous borders, affordability, and accessibility, as well as, inadequate laws regulating their use.[119] It is estimated that over 400 million small arms[120] are in circulation around the globe and about 100 million circulating across Africa, which have been used to kill over 2 million people including women and children.[121] Additionally, the

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[116] C. Burnley, "Natural Resources Conflict in the Democratic Republic of Congo: A Question of Governance?", **Sustainable Development Law and Policy,** Vol. 12, Issue1, **Fall, 2001**, p. 7.
[117] **Report on the World Social Situation**, United Nations Publication, 2001, p. 234.
[118] "The Causes of Conflict in Africa", **Consultation Document**, *Op. cit*, p. 15.
[119] F. L. Keili, "Small arms and light weapons transfer in West Africa: a stock taking", **Disarmament Forum, 2008**, p. 4.
[120] C. Kwaja, "Confronting the challenges of small arms and light weapons", **West Africa Insight**, **2012**, p. 1.
[121] S. E, Edeko, "The proliferation of small arms and light weapons in Africa: a case study of the Niger Delta in Nigeria", **Sacha Journal of Environmental Studies**, 1(2), **2011**, pp. 55–80.

proliferations of small arms have increased the activities of insurgent groups in West African States.[122] Coups d'états, invasions, and communal clashes in West Africa resulting in the killings and displacement of persons have been remotely linked to proliferation in arms.[123]

The wide availability of arms where combatants have not been completely disarmed can undermine peace agreements, intensify violence and crime in communities, also impedes social and economic development. Countries like South Sudan, Somalia, Ethiopia and Angola have a number of arms in circulation from previous wars. Stocks of arms are in circulation in the continent due to active supply chains responsible for moving weapons between borders. However importation of arms, primarily from Russia and Eastern European countries continue to increase and sustain conflict.

The conflict in South Sudan has continued to brew due to the proliferation of arms.[124] Access to and uncontrolled use of arms by individuals particularly young people in villages remains a serious concern. Given the years of conflict, many people, particularly in rural areas, feel deprived of basic social services, especially security and access to justice. The situation is also complicated by the inefficiency of law enforcement agencies and the fact that most civilians are armed.[125]

The factors enabling arms proliferation in Africa include the increasing capacity to manufacture arms and ammunition within the region, the affordability of arms coupled with the presence of network of local and foreign suppliers who trade arms for natural resources.

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[122] A. Ebo, and L. Mazal, "Small arms control in West Africa, Monitoring the Implementation of Small Arms Control (MISAC)", **West Africa Series**, No.1, London: International Alert, **2003**, p. 11.

[123] C. Ero and A. Ndinga-Muvumba, "Small Arms and Light Weapons", in: A. Adebajo, and I. Rashid (eds.) **West Africa's Security Challenges: Building Peace in a Troubled Region**. London: Lynne Rienner Publishers, 2004, p. 226.

[124] D. Francis, **War of Visions: Conflict of Identities in Sudan**, Washington, DC, Brookings Institution, 1995; A.I. Wadi, **Perspectives on Tribal Conflicts in the Sudan**, Khartoum, University of Khartoum, IAAS, 1998, p. 26.

[125] United Nations Sudan Joint Assessment Mission Report, Vol. III, **Cluster Reports**, **March 18, 2005**.

These factors enable insurgents become self-sustaining, prolong conflicts, and consequently less amenable to conflict resolution.

B. Impacts of Armed Conflicts on Human Rights in Africa

Armed Conflicts in Africa have led to series of grave human rights abuses. Although IHL regulates activities of armed conflicts, it is that area of international law which regulates subject matters such as the exercise of force, and humanitarian activities in warfare. On the other hand, International Human Rights Law (IHRL) was created after the World War II as supplementary laws for protecting humanity from abuses during conflicts. These aspects of public international law, IHL and IHRL, stood separately for a long time; however, due to a surge in the number of internal conflicts, and devastating operations of insurgence, these branches of public international law have been merged together.[126]

Basically, human right revolves around the necessity to grant a series of collective or fundamental rights aimed at providing a certain level of protection to individual within a territory, or otherwise in control, of a state. IHRL ensures that the individual is protected from arbitrary or excessive interference by the state with the rights granted; individuals are granted certain rights of positive action by the state, to their benefits.

International Human Rights Law is reflected in the inalienable rights of individuals, personal dignity and equality, including a number of human rights treaties and customary international law.[127] The several legal instruments have been understood as the determination and intention of UN to strengthen and protect the rights of individuals during war and time of

[126] R. Kolb and R. Hyde, **An Introduction to the International Law of Armed Conflicts**, Hart Publishing: Oxford, 2008, p. 269.

[127] **International Legal Protection of Human Rights in Armed Conflict** United Nations Human Rights, Office of the High Commissioner, United Nations Publication, New York and Geneva, 2011, p. 8-9.

peace. Despite the existence of these legal instruments, several humanitarian abuses during armed conflicts have been reported by the UN and its agencies.

The violation of rights vary from the prevalent crimes such as, murder, child labor, torture, rape and recent cases of the use of abducted children as suicide bomber, genocide, mutilation, among others. Some of the major impacts of armed conflicts on Human Rights in Africa are:

i. Mass Murder and Genocide

Most of the conflicts in Africa have been characterized based on the level of killings and extermination of lives such as level of loss of human lives. During the genocide in Rwanda over 760,000 Rwandans including aid workers and UN personnel were killed.[128] Similarly, the extent of hardship and insecurity in Somalia compelled the international community to intervene. In the 1980s, over nine internal armed conflicts were ongoing across the continent which involved large-scale hostilities and series of riots coups, and demonstrations, in Ethiopia, Sudan, Uganda, Angola, Somalia, and Mozambique which led to civilian casualty and a high death toll.[129]

ii. Displacement of Persons

The scores of armed conflicts witnessed in Africa, most of them being internal armed conflicts in nature have generated huge flow of refugees and displaced persons. It was reported that in the 1990s more than 2 percent of Africans were displaced from their local communities fleeing from armed conflicts, including about 4.7 million persons displaced out of their countries to other foreign countries. This accounted for almost half of the global

[128] O. Agbu, "Human Rights Implications of African Conflicts", **African Journal of Political Science / Revue Africaine de Science Politique,** Vol. 5, No. 1, **June 2000**, pp. 93.
[129] G. Bender, "Peacemaking in Southern Africa: The Launda-Pretoria Tug of War", **Third World Quarterly**, **January 1989**, p. 24.

refugee population.[130] In the mid-1990s, many countries in Africa were engulfed in conflicts which amounted to over majority of all related deaths globally which generated over 8 million refugees.[131]

African refugees suffer greater abuses and hardship compared to citizens of other continent because of obvious reasons. Indeed one of the major reasons is due to the limited attention given to African problems by the international community. Just like all other persons, refugees, have certain basic rights contained in the Universal Declaration and the Charter. These rights include but not limited to the fundamental right to life, freedom of movement, liberty, religion, security of person, freedom of thought, and the right to own property. It is has been observed that the influx of refugees usually result in security problem for many host countries, this is evident from the recent surge of refugees into Europe from Africa and the middle-east. The rights of refugees may be restricted due to the need to protect the rights of the nationals of the host country. However, while adequate security measures is imperatives, host countries must always take into cognizance the fundamental rights of refugees as guaranteed by international law.[132]

iii. Violence Against Women and Children

Women and children constitute the highest number of victims in any armed conflict because of their inability to defend themselves from insurgents unlike adult men. Women and young girls are oftentimes exposed to forced labour and rape. Those who survive the conflicts usually live with physical injuries, trauma, social dislocation, and lifetime scar. Rape and sexual violence against women during armed conflicts were regarded as part of warfare, and

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[130] World Refugee Survey, 1989 in **Review**, Washington, US Committee for Refugees, 1990, p.30.

[131] J. Peters, "**The Nature of African Conflicts**", Paper delivered at the Regional Conference on The Management of African Security in the 21st Century, NIIA, Lagos, (23-24 June 1999).

[132] A. Osita, "The Socio-Economic and Political Dimensions of Refugee Movement in Africa", **Nigerian Forum**, **September/October 1995**, p.126.

the perpetrators are hardly brought to book or punished for the atrocities, until recently when the ICC and Tribunals commenced prosecution of sex offenders and the international community declared it a serious offence.[133]

The attitude of the international community has been severally questioned by stakeholders and more pressure is being exerted by advocacy groups for more attention to be given to the issue of sexual labour and rape in time of war. The UN has severely condemned violence against women in conflicts, after witnessing the degree of sexual violence in Rwanda.[134]

Although, sexual violence against women had been a front burning issue before the UN for a while, it was the conflict in Yugoslavia and the rate of sexual abuses in the DRC and Sudan civil wars that spurred the UN into action. The most outstanding development in international law emerged from the atrocities of the conflict. The emergence of the regime is also attributable to the advancement in the development of the right of women globally, including prohibition of sexual violence as a grave breach of international law and universal jurisdiction for the prosecution of the offence when it is committed in armed conflict.[135]

Presently, the involvement of children in African armed conflicts is gradually increasing. In the last decade, over 2 million deaths of children had been recorded, and Africa accounts for a large number of casualties, leaving millions disabled and traumatized from the series of armed conflicts. Currently thousands of children are being held serving as child soldiers, sex slaves, or forced laborers. Many of the children recruited as so called child

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[133] C. Chinkin "Rape and Sexual abuse of Women in International Law", **European Journal of International Law**, Vol. 5, No. 1. **1994**, p.326.

[134] R. Coomaraswary, "Report of the Special Rapporteur on Violence Against Women, its causes and consequences", **UN Doc.e/Cn.4/1998/54, 1998**.

[135] R. Kolb, "The relationship between International Humanitarian Law and Human Rights Law: A brief history of the 1948 Universal Declaration of Human Rights and the 1949 Geneva conventions", **International Review of the Red Cross,** No. 324 **September 1998**, p. 1.

soldiers have been engaged in the most grievous infractions in countries like Uganda, Liberia, Nigeria and Sierra Leone during armed conflicts.[136]

vi. Torture

Torture has become a recurrent decimal during armed conflicts, and the application of torture as a tool has also been reported especially in countries such as Uganda, South Africa, Algeria, Equatorial Guinea, Liberia and Sierra Leone. This has generated major concern and outcry. The Universal Declaration is the first international legal treaty specifically prohibiting the use of torture during armed conflicts followed by the European Convention on Human Rights which also prohibited torture in its entirety.

The 1948 Convention prohibiting torture became the first binding international treaty exclusively established to eradicate what has been described to be one of the most serious and pervasive human rights abuses in history. The Geneva Conventions, included on the list of minimum standards to be observed and complied with by all parties during all forms of armed conflicts, a prohibition of acts of torture. Also, the 2nd Protocol prohibits acts of violence, the infliction of cruel treatment such as mutilation or all form of punishment upon persons generally or persons engaged in armed conflict.[137]

v. Terrorism

Terrorism can be considered as the aftershock of armed conflict. Individuals or groups of persons may decide to terrorize a territory when they feel aggrieved that they did not receive justice for their losses or sufferings in an armed conflict. Some terrorist acts are

[136] B. Hart, "Why conflicts in the World", **THISDAY**, Nigeria, **Saturday, June 12, 1999**.

[137] Article 4, paragraph 2(a) of Protocol II, 1977. Other general human rights conventions on torture include, Article 7 of the Covenant on Civil and Political Rights (CCPR), 19 December, 1996; Article 37(a) of the Convention on The Rights of the Child (CRC), 20 November, 1989; Article 5(2) of the American Convention on Human Rights (ACHR), 22 November 1969; and Article 3 of the European Convention for The Protection of Human Rights and Fundamental Freedoms (ECHR), 4 November, 1950.

carried out as a result of displaced groups who have access to illicit arms due to its proliferation may engage in invading villages and small communities, and sometimes take hostages for ransom. Terrorism has claimed thousands of lives throughout Africa. Terrorist groups like Boko Haram, Al-Shabaab, Islamic State West Africa (ISWAP), and Al-Qaeda in the Islamic Maghreb (AQIM) continue to terrorize civilian populations and undermine effective governance in Africa.[138] The rise of terrorism in Africa's Sahel has had significant negative consequences for its civilian populations. The Sahara desert is home to foreign terrorist organizations that exploit community marginalization, inability of government to occupy their swathing territories, and inadequate accountability for human rights infractions leading to recruitment of vulnerable followers into the groups to foment terror.

One of the major impacts of armed conflicts is terrorism. In most cases, terrorist groups come about as an offspring of war or and aftermath of armed conflicts. David Kilcullen propounded the "Accidental Guerrilla" theory which, he describes as a process where a terrorist organization moves into an area with poor government or that is conflict ridden and then uses the safe haven to spread its ideologies and as a base to foment terror.[139]

Terrorism inflicts on its targets immeasurable suffering on extremely vulnerable and marginalized communities. These attacks are just the latest in a string of human rights abuses committed by foreign terrorist organizations in countries like Nigeria, Niger, Mali and Chad that also includes attacks on UN peacekeepers, kidnapping of school girls and killing of civilians, and restrictions on traditional practices. Human rights abuses by security forces during armed conflicts, lack of government presence and poverty are also contributing factors to radicalization and terrorism in Africa. It is a fact that democracies that are responsive to

[138] Philip Obaji Jr., "ISIS's West African Offshoot is Following Al Qaeda's Rules for Success", **Foreign Policy**, **April 2, 2019**, p. 1.

[139] D. Kilcullen, **The Accidental Guerrilla: Fighting Small Wars in the Midst of a Big One**, Oxford University Press, (2011), (Introduction).

their citizens, respect civil liberties, protect rights, promote democratization, and protect minorities are a less attractive breeding ground for terrorism to thrive.

One of the reasons for the conflict ongoing between farmers and herdsmen in the North-central part of Nigeria, according to President Muhammadu Buhari of Nigeria, is the collapse of government in Libya and the terrorist activities going on in Northern Mali, the Sahel and Maghreb region in West Africa. The terrorists were recruited and trained by Gaddafi into his personal defence militia and gave them years of training and arms, upon collapse of his government these militia men dispersed across central and western Africa with their weapons and training, unleashing mayhem as they go on the local communities with the aim of dislodging and claiming land of the locals for themselves and for grazing of their cattle.[140] They also engage in kidnappings for ransom, armed robbery and indiscriminate rape of women in the local communities. It is the new phase of terrorism in Central and West Africa, like its forerunners; Boko Haram and Al-Qaeda.[141]

The use of force alone cannot and will not stop armed conflicts in Africa. Government must partner with the UN, civil society, and local communities to deploy holistic programmes targeted at addressing poor governance, marginalization and lack of accountability for human rights abuses. Most importantly, the atrocities linked to conflict, and attendant human right abuses witnessed in the continent have attracted global condemnation, and intervention by the international community.

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[140] E. Basar, "**Report Update: Unsecured Libyan Weapons – Regional Impact and Possible Threats**", The Allied Command Operations (ACO) Civil - Military Fusion Centre (CFC) Publication, (November 2012). President Muhammadu Buhari's Speech at the Commonwealth Head of Government (CHOGM) Conference in London, United Kingdom, (April 2018).

[141] President Muhammadu Buhari's Speech at the Commonwealth Head of Government (CHOGM) Conference in London, United Kingdom, (April 2018).

CHAPTER TWO

PEACEFUL SETTLEMENT OF DISPUTES UNDER THE UNITED NATIONS

I. FRAMEWORK FOR UN PEACEFUL SETTLEMENT OF CONFLICT

The UN has a peculiar standing in the international system as the dominant actor for world peace. Therefore, it must react when threat to peace that could lead to war emerge.[142] With a view to ending conflicts among nation States, the United Nations has backed both the norm and practice of the peaceful resolution of disputes as laid out in the Charter, members are required to adhere to the principles provided therein.

This Chapter will elucidate the role of the UN through regional arrangements, in this case, the AU in the resolution of armed conflicts in Africa. It has been observed in the first Chapter of this thesis that Africa has never experienced a lasting peace. International law have gradually moved from creating laws to govern state to state relations to a position whereby states are directly interested in how citizens of other state actors are treated by their own government. Therefore, the idea of not meddling in the domestic affairs of States has become anachronistic.

In this context, the UN peaceful settlement of armed conflict involves resolving conflicts among and between nations, as well as conflicts within a nation. International organizations, at both global and regional levels, have become deeply involved in resolving all forms of armed conflicts. After the World Wars, the UN started promoting peace settlement processes in African conflicts, by providing avenues for conflicting parties to discuss and participate actively in peace settlement processes to resolve armed conflicts in the

[142] P. Wallensteen, "International Conflict Resolution, UN and Regional Organizations: The balance sheet", in **Regional Organizational and Peacemaking: Challengers to the UN**, P. Wallensteen and A. Bjurner (eds.), Routledge: London & New York, (2015), p. 13.

continent. This has been applied in countries like Angola, South Africa, Rwanda, Sudan, and Uganda.

Article 2(3) states that, State parties must resolve their conflicts by peaceful means, in a manner that world peace, stability, and justice, are not endangered. This principle therefore, creates obligations for States and responsibilities for principal UN organs. States are mandated to initiate the pacific settlement process, while the Charter outlines institutional arrangements to facilitate the pursuit of this principle. The accentuation of pacific settlement measures by the Charter has been expatiated in subsequent Declarations and Resolutions.[143]

The Friendly Relations Declaration put forth in General Assembly Resolution 2625 prescribed the norms for peaceful resolution of conflicts. Manila Declaration of 1982 provided detailed exposition, as it defined the substantive duties of States in the settlement of conflicts, including the competencies of relevant UN agencies. The General Assembly urged all members to resolve their conflicts by peaceful means in other Resolutions.[144]

The General Assembly outlines preventive measures which represent an important milestone in the UN peaceful settlement framework in its Resolution 43/51 in 1988, giving a declaration to prevent and remove all form of conflicts which threaten global peace. The Resolution is a clear departure from the restrictive scope of Article 2 (3), relating only to existing conflicts, not potential ones. Furthermore, recommendations in An Agenda for Peace, promoted preventive diplomacy, fact-finding, and involvement of General Assembly

[143] B. Simma, (ed.), **The Charter of the United Nations: A Commentary**, 2nd edition, Vol. 1, Oxford: Oxford University Press, 2002, p. 103.

[144] United Nations: Department of Political Affairs, **Repertoire of the Practice of the Security Council: Supplement 1985-1988**, United Nations Publications, ST/DPA/1/Add-10, 2000, p. 108. See UN General Assembly Resolution 40/9 of November 1985.

in pacific settlement framework, and appealed to members to proffer timely solutions to conflicts through peaceful methods.[145]

The UN Charter provides in Chapter I the objectives of the UN which includes preserving world peace, exercising effective collective measures for prevention, removal, and suppression of threats, aggression, and all forms of breaches of the peace, through peaceful means in conformity with the principles of justice and international law.[146] It further charge member States, in relation to pacific settlement, that the continuance of conflict is likely to threaten world peace, therefore, parties should first seek resolution through negotiation, enquiry, conciliation, arbitration, mediation, judicial settlement, and regional arrangements, or other peaceful means they choose.[147]

The jurisprudence of pacific settlement of conflicts has been reaffirmed in a number of General Assembly Resolutions and has been connected to several other doctrines of international law.[148]

The connections between the principle of peaceful settlement of conflicts and other principles of international law are highlighted both in the Friendly Relations Declaration and in the Manila Declaration. The UN requires strict compliance of these principles by members regardless of the circumstance leading to the outbreak of the conflict, however, over the years some States have faltered in complying with these obligations as set out in Article 2(3).

[145] The 2005 World Summit Outcome document devoted four paragraphs to the 'Pacific Settlement of Disputes,' reconfirmed periodically over the subsequent decade by world leaders underlining the salience of peacemaking in intergovernmental practice today. 2005 World Summit Outcome, UN document A/60/L.1, 15 September 2005, paras. 73–76.
[146] UN Charter Article 1, paragraph 1.
[147] UN Charter Article 33, paragraph 1.
[148] Including Resolutions 2627 (XXV) of 24 October 1970, 2734 (XXV) of 16 December 1970 and 40/9 of 8 November 1985.

A. Peaceful Settlement as an Obligation

The principle mandating States to settle their conflicts through peaceful means rather than by the use of force has been the cornerstone of the UN era and is enshrined in the Charter. States' duty to settle conflicts through peaceful means became prominent when the proscription of use of force was eventually enshrined in the UN Charter. The ICJ stated that the principle requiring parties to resolve their conflicts through peaceful mechanisms is complementary to the principles of a prohibitive nature.[149]

The obligation on States to resolve disputes peacefully, enshrined in the Charter applies only to international disputes. During the 1945 Conference establishing the UN, the Four Powers saw to it that the word "international" was included to the article, explicitly limiting the injunction to disputes of a trans-border nature, in deference to the principle of sovereignty. A dispute is a disagreement about issues and an "international dispute" is a disagreement, not exclusively, between States, but with consequences on the globe.[150]

International disputes, however, are not restricted to conflicts between States. It also applies conflicts involving other entities, including international organizations, de facto regimes, and ethnic communities enjoying a particular kind of status under international law, independence movements, and people having the right of self-determination.[151] This does not imply that the government is under an obligation to stand by as an insurgency movement emerge and take steps towards a peaceful resolution, unless the group has a legitimate right to self-determination.[152]

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[149] ICJ, Judgment, 27 June 1986, Military and Paramilitary Activities in and against Nicaragua, Rec. (1986), p. 145, par. 290.
[150] I. Bantekas and E. Papastavridis, **International Law Concentrate Law: Law Revision and Study Guide**, Oxford University Press, 2013, p. 130.
[151] B. Simma, The Charter, 2002, *Op. Cit*. p108.
[152] UN General Assembly Resolutions 1514 (XV), 14 December 1960.

This implies that internal armed conflicts can endanger world peace. Non-state actors are therefore also required to resolve disputes peacefully. Petitions brought by an individual against a State for non-compliance with human rights obligations do not create an international dispute.[153] Only when one party to a treaty on human rights requires a second party to comply with its legal obligations then an international dispute may arise. Most of the existing armed conflicts in Africa are internal in nature, and many of these conflicts are resolved through the pacific settlement method, the situation in Sudan/South Sudan is one among many.

Peaceful resolution of international conflicts is a core norm in international legal jurisprudence that has been described to be peremptory in character.[154] The principle constitutes an obligation of conduct, i.e. States have an obligation to try to resolve their disputes through peaceful means. This however, does not entail an obligation to resolve their disputes. On this basis, the Charter recommends a list of pacific methods for resolving conflicts.

Article 2 (3) is usually considered an extension of Article 33 (1), however it refers generally to "any dispute" without making any stipulations about its international scope. Article 33 also clarifies that, while it is the obligation of all states to resolve systematically and regularly all disputes through peaceful means, the UN organs are obliged to act only when world peace is under threat. Article 33(2) therefore requires the Council, to summon parties to resolve their conflicts by peaceful means as outlined under the pacific settlement framework of the Charter.[155]

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[153] R. Mani, "Peaceful Settlement of Disputes and Conflict Prevention", in **The Oxford Handbook on the United Nations**, S. DAWS & T. G. WEISS (eds.), Oxford University Press, 2007 p. 302.

[154] L. Alexidze, "Legal Nature of Jus Cogens in Contemporary International Law", in ***Recueil Des Cours*: Collected Courses of the Hague**, Academy of International Law III, Martinus Nijhoff Publishers, (1982) p. 262.

[155] R. Mani, "Peaceful Settlement of Disputes and Conflict Prevention" *Op. cit.* p. 302.

The responsibility to seek means of settling disputes peacefully extends not only to the member States directly involved in conflicts but also to third party States that have the right to bring any issue before the UN. It also applies to all entities that enjoy the protection concerning prohibition of the use of force, such as national liberation movements and de facto regimes. Their responsibility continues even after armed hostilities begin. Nevertheless, States are under an obligation to exhaust diplomatic options before approaching the ICJ for legal remedy. Also, the responsibility of States continues after they refer the matter to the UN.

As established in UN Charter, Article 37(1) stipulates that when parties' efforts to resolve their conflict fail, they have an obligation to submit it before the Council. Generally, under the framework of the peaceful resolution of conflicts, many of the international law research revolve around the binding or obligatory nature of pacific settlement. A controversial question is whether reprisals and counter-measures can legitimately be used in instances where the dispute arose due to an unlawful act by one party. There is in general no prohibition on counter-measures, provided these do not entail the use of force and do not contravene *jus cogens* or widely accepted norms enshrined in international law. States can apply necessary and reasonable force in exercising their rights of individual or collective self-defence.[156]

B. Objectives of Peaceful Settlement

In order to fulfill its mandate of upholding peace in the world community, the UN must develop measures to ensure that States adopt patterns of behavior for the mutual accommodation of conflicting interests, since dispute among States is inevitable. Therefore, exercise of the right to use of force must be controlled. It follows that commitment made by

[156] Article 51, UN Charter.

States to improve their value position by peaceful rather than coercive means is essential. Therefore, the common interest of all mankind in avoiding armed conflict and sharing in the fruit of peaceful co-existence must be accepted. The major objective of the principle of peaceful settlement is to ensure a balance between "law and order" and "law and justice", the principle therefore creates an international order which accommodate these principles. The following are the specific objectives of Peaceful Settlement:[157]

i. Prevention of Breaches of the Peace

One of the objectives of the principle of peaceful settlement is to maintain world peace therefore conflicting interests of UN members have to be resolved by peaceful means. This is the first of the five peace objectives identified for the purpose of achieving peace. Effort of all actors is required to appreciate the pre-dispositional and environmental conditions which exacerbate the likelihood of conflict, therefore available bases of power and strategies to counter hostilities must be employed. Another aspect that should be given increased attention is the need for early isolation of tension-producing situations, so that manipulative strategies can be employed to offset escalatory tendencies. In this order, it is crucial for all parties in the conflict, including State government to increase their commitment to adopt non-coercive methods of settlement that must be enshrined in the national laws.

ii. Deterrence

The objective of deterrence is simply to prevent UN members from employing the use of force thereby making peaceful settlement the first option in resolving their conflicts by emphasizing the consequences of deviation upon precluding acts of nonconformity.[158] Through rational evaluation of the implications involved in non-peaceful settlement, States

[157] The following division of objectives is adopted from R. Arens and H. Lasswell, **In Defence of Public Order: The Emerging Field of Sanction Law**, Greenwood Press (1985), pp. 199-203.
[158] R. Arens and H. Lasswell, *Ibid.* p. 201.

normally avoid the exercise of the use of force. Amongst the larger powers, and between the nuclear leaders, credible expectations of retaliation instituted rational evaluation within the expectations of nuclear deterrence. Because of the decentralized nature of the world order system, this threat of impending cost is normally found in the unilateral State decision of retaliation, albeit within the subject of permissible self-defence, and perhaps the role of military alliances or strategic military agreements.

iii. Reconciliation

Reconciliation involves a series of activities that help transform temporary peace agreement into a permanent peace by putting an end to the conflict. Reconciliation entails transitional justice, which brings parties to the conflict to a table to explore and overcome the pain of the conflict with the aim of proffering methods to build peace, trust and live together peacefully. There is no universally accepted definition for reconciliation however it is acknowledged that it encompasses about four key components which are: justice, truth, mercy, and peace.[159]

Reconciliation is a vital objective of peaceful settlement because the consequences of non- reconciliation can be devastating. Reconciliation can only be successful if it does not fall into the Fen Olsen Hampson's "Orphan" theory.[160] In this context, when parties finally arrive at a settlement that halts the hostility without employing measures to ensure stable peace, which can only happen when the root cause of the violence are addressed to the satisfaction of the parties involved in the dispute.[161] Without reconciliation there is high likelihood of break out of conflict, as witnessed in the tragic beginning of the series of civil

[159] C. Hauss, "Reconciliation", **Beyond Intractability**, Guy Burgess and Heidi Burgess (eds.), Conflict Information Consortium, University of Colorado, Boulder, **September 2003**, p. 1. available at: http://www.beyondintractability.org/essay/reconciliation.

[160] F. O. Hampson**, Nurturing Peace**: **Why Peace Settlements Succeed or Fail,** Washington**,** DC**:** United States Institute of Peace Press, 1996, p. 3.

[161] K. Boulding, **Stable Peace**, Austin, TX: University of Texas Press, 1978, pp. 5-143.

wars in Sudan and South Sudan, where despite several agreements and negotiations and efforts to reconcile parties at the grassroots level, little progress toward achieving stable peace is made.

Reconciliation was adopted as a key component in addressing conflict when South Africa was under the apartheid regime. The Truth and Reconciliation Commission fostered reconciliation while prosecuting human rights abuses. The Commission offered amnesty to individuals who expressed sincere repentance and remorse for their role during the racist rule. Since its creation in 1995, other similar Commissions have been established in other countries with similar mandate. This measure assembles people from different areas of a conflict together to express their mutual fears, anger and, most importantly, building trust among them to ultimately achieve final settlement of the conflict.

iv. Restoration

When peaceful resolution of conflicts and deterrence fail the objective of restoration becomes inevitable. The commitment to de-escalate aggressive confrontations must be nurtured amongst all parties, including all States and relevant international agencies. In the face of clear evidence of acts of injustice in an armed conflict, some form of restitution will alleviate the pains of victims. Repentance can assist parties to mend fences and achieve reconciliation. In practice, conflicts may be resolved when parties therein admit guilt, and seek forgiveness during war crimes trial or criminal proceedings established to prosecute and punish culprits.

There is a possibility that during armed conflicts, it may not be easy to draw a distinction between perpetrators and victims of conflicts, therefore the central goal of peace-building would then be to restore peace to the area. In South Africa, the application of restorative justice system helped transform harsh practices of punitive measures into non-

violent mechanisms of conflict resolution.[162] This practice is connected to the renewal of the interrelation among parties into one of acceptance of guilt, restitution and forgiveness for contrition of the guilty party. However, this form of restoration can only be introduced when backed by wider coverage social justice and compensation.

At the core of this system is the understanding that parties are the key stakeholders in the peace-building process.[163] Victims of conflicts are not limited only to persons who suffered directly from the conflict, but include family members of those victims and their communities where the conflict occurred. Protection and provision of material needs for victims is the starting point for achieving a successful restorative justice process. Therefore, the main purpose is to meet the immediate needs of victims to ameliorate their losses and sufferings.[164] In view of the fact that crimes in armed conflicts are mostly committed against persons, therefore restorative justice must be a campaign that advocates restitution to the victim by the perpetrators as opposed to retribution by the State against the perpetrators for crimes committed. Restorative justice strives to mend sored relationships in the community by first dousing tensions among parties to the conflicts.[165]

A restorative justice process also focuses on the empowerment of victims to participate in dialogue and mediation with perpetrators of armed conflict. Victims may be allowed to take active role in directing exchanges between parties, and determine scope of responsibilities of perpetrators of the armed conflict. Offenders must be mandated to partake

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[162] A. Skelton and M. Batley, "Restorative Justice: A Contemporary South African Review", **ResearchGate, January, 2008**, pp. 1-16. Available at: https://www.researchgate.net/publication/255062438_RESTORATIVE_JUSTICE_A_CONTEMPORARY_SOUTH_AFRICAN_REVIEW/download (accessed on 20 July 2018)

[163] H. Zehr and H. Mika, "Fundamental Concepts of Restorative Justice**", Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice,** Volume 1, Issue 1, **1997**, pp. 47-56. Available at: http://www.beyondintractability.org/library/external-resource?biblio=14829 (accessed on 20 July 2018).

[164] T. F. Marshall, "Restorative Justice: An Overview," **Home Office Research Development and Statistics Directorate, 1999**, p. 1. Available at: http://webarchive.nationalarchives.gov.uk/20110218135832/http://rds.homeoffice.gov.uk/rds/pdfs/occ-resjus.pdf (accessed on 20 July 2018).

[165] P. Hutchison and H. Wray, "What is Restorative Justice?" **New World Outlook, 1999, p. 1.** Available at: http://gbgm-umc.org/nwo/99ja/what.html (accessed on 20 July 2018).

in this exchange, to appreciate the depth of the damage they caused the victims. Offenders must take responsibility for the offences they committed in the conflict so as to make restitution and commence the healing process by admitting to some responsibilities such as apologies, reparations, restitution, or community service. The goal to achieve with the process is retribution or punishment, to enable the preservation and restoration of relationships between the victims, offenders and other members of the community.

From the foregoing, it is obvious that restorative justice is a progressive, preventive mechanism that focuses on understanding crime in its social context and the best means of achieving peace after conflicts. It encourages the identification of the root causes of armed conflicts so as to nip it in the bud. The practice rests on the background that conflict originates from bad social conditions in the society which had impacted negatively on the offender. Therefore, States must take responsibility for correcting horrible social vices that breed crime that may lead to conflict, while working to promote healing process for all affected by conflicts. The rehabilitation and integration of victims and offenders into the society are important scope of restorative justice in conflict resolution. Removal of offenders from the society, imposing sanctions or any other form of severe punishments must be a matter of last resort.[166]

This form of justice process strengthens the society while promoting developments that will prevent conflicts and deepen peace. It must be merged with legal justice system as a supplementary procedure to engender effective and efficient justice system. In view of the fact that restorative justice system focuses on the needs of parties involved in the conflict

[166] H. Zehr and H. Mika, "Fundamental Concepts of Restorative Justice", *op. cit*. p. 2.

including the community affected by armed conflicts, it can also help to determine how best the law may be implemented to achieve the best result, lasting peace and security.[167]

Restorative justice is intertwined, and closely connected to social changes, reconstruction of regions engulfed in conflict, civil liberty, and the empowerment of the non-governmental organizations. War crimes inquiries, investigative panels, and truth commissions foster healing from the memory and scars of armed conflicts while examining the extent of the devastation inflicted by the conflicts for lessons learnt as a way of deterrence for reoccurrence.[168] It is one of veritable means of restoring the parties in the armed conflict back to the pre-conflict status as much as is achievable.[169]

v. Reconstruction

This happens during intervention in an armed conflict, reconstruction becomes the quickest means adopted by the UN to bequeath on the people a functioning, peaceful and secure State after a period of transition to normalcy. While it may be possible to foster and maintain peace between parties to a conflict however, there is a likelihood of relapse into conflict upon withdrawal of intervention forces. Reconstruction of the basic infrastructure of a nation will be necessary to forestall a recurrence. The post-conflict comprehensive peace agreement reached by the parties must be clear and unequivocal on the terms and structures to be institutionalized after the conflict. The roles, obligations, and applicable sanctions must be clearly described to prevent a resurgence of the conflict.

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[167] T. F. Marshall, "Restorative Justice: An Overview", *op. cit*. p. 7

[168] M. Maiese, "Restorative Justice," **Beyond Intractability**, Guy Burgess and Heidi Burgess (eds.), Conflict Information Consortium, University of Colorado, Boulder, **October 2003**, p. 1. Available at: http://www.beyondintractability.org/essay/restorative-justice (accessed on 20 July 2018).

[169] W. E. Holder, "**Towards Peaceful Settlement of International Disputes",** paper submitted and address given to the Bankok (sic) World Conference on World Peace Through Law, (8 September 1969), p. 107-108. http://www5.austlii.edu.au/au/journals/AUYrBkIntLaw/1969/6.pdf (accessed on 20 July 2017)

Finally, the agreement prescribes mode of governance for the territory during the transition period including the type of legal system and mechanisms for conflict resolution. Therefore, the objective of peaceful settlement is not just to resolve conflict but also to define the roles of parties, rights, obligations and most importantly the future of the populace and territory engulfed in the conflict.

Fundamental restructuring of the system, such as devolution of powers to the constituents of the society, would also be regarded as an aspect of reconstruction. In light of present situations, however, such plans are lofty ideals without appeal to the international community especially given the fact that there is no established implementation or enforcement mechanism.[170]

C. Participants in Peaceful Settlement Process

In the quest for lasting peaceful settlement, all international stakeholders and participants must be engaged in the process. This includes States, their national officials, tribal leaders, international organizations and their officials, non-governmental groups, individuals and other interested parties. Also, actors and organs within the UN system have roles to play in conflict resolution. Even though Charter highlights the role of the Security Council, it is not the sole agent in the UN pacific settlements framework. As a matter of fact, the principal responsibility rests first with the conflicting parties, who have the capacity to resolve their conflict themselves or refer it to any appropriate institution. The secondary responsibility for conflict resolution lies with the Security Council to summon parties to resolve their conflicts by those methods listed in Chapter VI. The General Assembly is empowered also under Articles 11 and 12 to present issues and unresolved conflicts before the Security Council. Furthermore, the Secretary-General is mandated to act in securing the

[170] *Ibid.*, p. 108.

resolution of conflicts between parties, peacefully. Finally, ICJ provides recourse to judicial settlement of disputes by way of adjudication. The respective roles of the major actors and organs in the UN pacific settlement framework are discussed in details below.

i. States

Article 2(3) of UN Charter imposes an obligation primarily incumbent on UN member States to peacefully resolve disputes, whether they are directly connected with the Charter or not.[171] Since this principle is a central part of international legal jurisprudence, members have the right to put forward any conflict situation to the attention of the UN, at any time for intervention. As such, the principle of peaceful resolution is not optional, and States have a legal obligation to settle their disputes through pacific means. However, while the principle obliges States to pursue peaceful settlement in good faith, it does not oblige them to achieve a particular result. Thus, a violation of this principle is occasioned when a State is proven to have worked against a peaceful settlement process, and not just merely that parties did not agree to a peaceful resolution.

This is because States largely control the use of force, diplomacy, propaganda and economics, and it is the State that have powers to engage in hostilities and conflicts. The international system includes other participants, namely territorial units other than States, universal and comprehensive international organizations, functional and regional institutions, private groups, and individuals who also depend on State decisions and commitment to peaceful resolution of disputes.[172]

[171] B. Simma, **The Charter of the United Nations**, 2002, O*p. cit. p.* 105.
[172] W. E. Holder, "**Towards Peaceful Settlement of International Disputes"** *Op. cit.* p. 106.

ii. The UN Security Council

This is the dominant UN organ designated for preservation of world peace and peaceful settlement of conflicts among States. The Charter imposes an obligation on States to resolve conflicts by peaceful techniques of their own choice, while the Security Council is empowered to compel disputants to comply with this obligation by other means, if necessary. As the principal UN organ with the primary responsibility for conservation, preservation and maintain world peace, it has a cardinal duty in peaceful resolution of conflicts especially where the parties themselves failed to, or are unable or unwilling to reach a peaceful settlement. The Council's responsibilities are outlined under Chapter VI and Chapter VII wherein the powers exercisable by the Council are itemized and applicable in situations requiring enforcement of peace by UN. Chapter VIII governs peaceful resolution of conflicts by regional arrangements.

Article 34 enumerated the competence of the Council in the consideration of disputes and conflicts likely to threaten world peace. Article 35 ensures representation of States in the Security Council on non-permanent rotational basis, while Articles 36 and 38 empowers the Council to proffer appropriate procedure, and terms of settlement in dispute resolution engagement. At the same time, in the event of threat or breach of the peace, and acts of aggression, the Council is empowered to prescribe responsive action or intervention measures to be taken by virtue of Articles 39-42 in order to restore peace.

These broad powers given to the Council by the Charter are restricted in practice by utilization of veto power by permanent members (P5) pursuant to Article 27 (2). Therefore, it is only to the extent of agreement of the P5 can the principles and procedures of the Security Council to prescribe and apply policy in concrete circumstances be activated and achieved. Certainly, it is a constructive criticism that the veto power has had disruptive effects in the

workings of the UN and the Security Council, jettisoning a more desirable preference for common decision-making mechanism instead of a single overriding power by any of the P5.[173]

iii. The UN General Assembly

The General Assembly's mandate coexists, overlap and complement those of the Security Council in peaceful resolution of conflicts. Current trends indicate that the Assembly may also be utilized for the ends of peaceful settlement of conflicts even though it is restricted to making advisory recommendation for conflict resolution. By virtue of Article 10, discussion and recommendations can be made by the General Assembly upon questions related to the Charter, and by Article 11 it may consider and recommend mechanisms for maintaining of world peace.

Chapter VI makes minimal reference to the General Assembly's role in peaceful settlement of conflicts, during World War II; the Assembly filled the gap in Council capacity to address the conflicts in that era. In the Korean War, the General Assembly broke the gridlock between the P5 members springing from the Soviet Union's boycott of the Council, and the consequent incapacitation of the Council.[174] In terms of competence and procedure, therefore, the Council and the Assembly are fully empowered with the capacity for resolving conflicts between members or other actors under international law.

[173] De Visscher, **Theory and Reality in International Law**, Corbett Trans. 1968, pp. 111-12.
[174] T. Deen, "NGOs Lead Move to Use UN General Assembly to Stop War," **Inter Press Service**, Vol. 31, **January 2003**, paras. 1-5. available at: www.globalpolicy.org.

iv. The Secretary-General

The UN Charter[175] established the function of the Secretary-General within UN pacific settlement framework. Successive Secretaries-General took a rather critical activist approach to this mandate, deploying their good offices and mediation efforts to contribute to the development of conflict resolution through preventive diplomacy. Indeed, the legacies and success of Secretaries-General are often evaluated and measured in terms of their success as mediators, their influence, political acceptability, and perceived neutrality within the peaceful settlement processes.[176] All the nine Secretaries-General of the UN had sought to play a more influential and decisive role in the key conflicts during their respective tenures, albeit with varying success.[177] This mandate is exercisable through the Secretary-General personally or by delegation to the staff in the Secretariat, *ad hoc* committees, or by appointment of special envoys and representatives.[178]

Trygve Lie, former Secretary-General demonstrated the mandate in exercise of its powers in conflict resolution. He was a high-profile figure who exercised his authority in the Korean War. His assertiveness irked the Soviet Union and led to his eventual resignation in 1952. Then, the Sweden's Dag Hammarskjöld developed a unique and skillful approach of synergized public and private multilateral diplomacy for conflict resolution. He advocated preventive rather than corrective action, and was active particularly in the UN peace process in the conflict in Congo.[179]

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[175] Article 99.

[176] K. Skjelsbaek and G. Fermann, "The UN Secretary-General and the Mediation of International Disputes", in Jacob Bercovitch, ed., **Resolving International Conflicts: The Theory and Practice of Mediation** Boulder: Lynne Rienner, 1996, p. 83.

[177] B. Rivlin and L Gordenker, (eds.), **The Challenging Role of the UN Secretary-General: Making "The Most Impossible Job in the World" Possible,** Westport, CT: Praeger, 1993, pp. 211-232.

[178] K. Skjelsbaek and G. Fermann, "The UN Secretary-General and the Mediation of International Disputes", *Op. cit*., pp. 75–106.

[179] *Ibid*. p. 80.

The third Secretary-General, U Thant of Burma, successfully initiated the Congo operations to completion, but was criticized for the withdrawal of the peacekeeping mission from the Sinai region in 1967 because of the influence of Gamal Abdel Nasser who was then the President of Egypt.[180]

Javier Pérez de Cuéllar of Peru steered the mandate as Secretary-General in conflict mediation and resolution during his tenure. Although he attracted less publicity than his predecessors, his achievements are notable. He facilitated the end to the Iran–Iraq war, the Soviets' withdrawal from Afghanistan, the liberation of Namibia, and the peace agreements for Salvador. The *Agenda for Peace* reinvigorated the debate on the UN's capacity to engender world peace and security. Kofi Annan, who was a career UN official from Ghana, worked vigorously to develop and institute the culture of conflict prevention as a tool for world peace and security. In recognition of his numerous efforts in advocating for world peace, he earned the Nobel Peace Prize in 2001, alongside UN. In 2005, he bolstered the UN's dispute settlement capabilities through the creation of the Mediation Support Unit within the UN system for the peaceful settlement of conflicts.[181]

Ban Ki-moon's tenure was overly deferent to the P5 which led to reluctance in involving the provisions of Article 99 and deployment of his good offices actively for conflict resolution. António Guterres of Portugal who came into office in 2017 has promoted conflict prevention as his top priority for keeping world peace and security.

[180] *Ibid*. p. 82.
[181] See subsequent subsection.

v. Special Envoys, Representatives and the Mediation Support Unit of the UN Secretary-General

The successes achieved by successive Secretaries-General are in reality owed to the great work of special envoys and representatives deployed by the Secretary-General to execute his powers and mandate.[182] Though these subordinates are now mainly deployed in deepening of post-conflict peace-building and security.[183]

At the 2005 World Summit, member States approved and agreed to the proposals of the Secretary General to entrench the deployment of his good offices in conflict resolution. By virtue of this commitment, the Department of Political Affairs established the Mediation Support Unit (MSU) for UN peace envoys operating in the field.[184] The MSU provides resource to UN special envoys and representatives, a team of eight full-time mediation advisors having specialized skills in areas such as constitutional law, transitional justice, process design, gender inclusion, and security arrangements. The MSU is supplemented by a larger network of standby on-call mediators. In addition to providing highly-valued training to UN officials, the MSU deployed expert mediators to complement the activities of UN negotiators with technical and innovative mediation skills and methodologies.[185]

vi. International Court of Justice

The ICJ represents the last hope in the ladder of dispute resolution, providing for judicial remedy where other means have failed. The decisions of the Court are binding upon

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[182] C. R. Vance and D. A. Hamburg, **Pathfinders for Peace: A Report to the UN Secretary-General on the Role of Special Representatives and Personal Envoys,** Washington, DC: Carnegie Commission on Preventing Deadly Conflict, 1997.

[183] C. Peck, "Special Representatives of the Secretary-General," in D. M. Malone, ed., **The UN Security Council: From the Cold War to the 21st Century,** 2004, pp. 325–340.

[184] 2005 World Summit Outcome, UN document A/60/L.1, 15 September 2005, paras. 76.

[185] Interview with Professor Ibrahim Gambari on 21 March 2017.

States parties who were parties in the suit.[186] The ICJ has been criticized for not putting its full weight behind its judgments to ensure compliance. A review of the decisions of the ICJ found that judgments of the ICJ on fourteen contentious cases decided after the Cold War, only about five witnessed less compliance, but in practice no state has been directly defiant to the judgment of the Court.[187]

D. Multidimensional Approach to the UN Peaceful Settlement

The UN Charter sets out various means of conflict resolution termed as the Pacific Settlement of Disputes which entails providing both diplomatic and legal methods with the UN framework. This framework is highlighted in Article 33 of the Charter as well as the 1982 Manila Declaration. It is noteworthy that there is no particular hierarchy among these methods because the choice of which method to adopt belongs to the conflicting parties. The list in Article 33 (1) is not a prescriptive list of priorities but rather a set of options available to parties for achieving peaceful settlement of disputes.[188]

This thesis will give a brief overview of the eight methods of peaceful resolution as prescribed by the Charter in three categories, namely, diplomatic, legal, and institutional.[189]

i. Diplomatic Method

Diplomatic methods involve mechanisms to resolve conflicts the contending actors themselves to settle amicably or through intervention by a third party through discussion and fact-finding. In general, parties initially attempt to resolve the conflict internally, if this fails,

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[186] C. Peck, **Sustainable Peace: The Role of the UN and Regional Organizations in Preventing Conflict**, Lanham, Md.: Rowman & Littlefield, 1998, pp.76–80.

[187] C. Paulson, "Compliance with Final Judgments of The International Court of Justice since 1987," **The American Journal of International Law,** 98, No. 3, **2004**, pp. 436–437.

[188] B. Simmas, **The Charter of the United Nations**, *Op. cit*. p. 588.

[189] UN Legal Affairs Office, Codification Division, **Handbook on the Peaceful Settlement of Disputes between States**, New York: UN, 1992, pp. 9-91. See also, J.G. Merills**, International Dispute Settlement,** Cambridge: Cambridge University Press, 2017, pp. 1-127.

they may explore other methods of political resolution. Diplomatic means of resolution involve negotiation, enquiry, mediation/good offices and conciliation.

a. Negotiation

It is the oldest, commonest, and most flexible method of resolving conflicts generally.[190] Most treaties identified it as a first step towards the peaceful resolution of conflicts. The tool of negotiation enjoys special place among the pacific measures in Article 33 (1) and it is a universally accepted method of dispute resolution which possesses several advantages. One important feature is its flexibility. Negotiation can be applied to conflicts with political, legal, or technical undertone. Moreover, only States to the conflict are involved in negotiation, it empowers them to initiate the process and decide its outcome to produce a mutually accepted resolution acceptable to all involved.

One of the major disadvantages of negotiation is its reliance on compromise by the parties; a leeway for the stronger party to impose or assert its interest over the weaker party.[191] Almost all treaties identify negotiation as a condition precedent for parties before proceeding to other methods conflict resolution. The process involves discussions among all the parties concerned in a conflict for the purpose of to understanding the divergent views and reconciling parties. It is most appropriate for clarifying opposing contentions and interests of parties. It is the most recommended means of resolving conflicts because it is a voluntary bilateral method wherein parties are directly engaged in the conflict resolution. The UN Legal Office manual prescribes a step-by-step guide to the forms of negotiation parties may effect for their dispute, including the stages, methods, and likely outcomes of each of

[190] J. Collier and V. Lowe, **The Settlement of Disputes in International Law**, Cambridge, 1999, Chapter 2; P.J. De Waart, **The Element of Negotiation in the Pacific Settlement of Dispute between States**, The Hague, 1973, p. 166; A. Lall, **Modern International Negotiation**, New York, 1966, pp. 10-30.

[191] A. Cassese, **International Law in a Divided World,** Oxford: Clarendon Press, 1986, p. 202.

such negotiation. The principles and guidelines for international negotiations enjoin states to act in good faith during negotiations and resolution of conflicts.[192]

Knowing that, negotiation does not always result in final resolution of conflicts between the parties, third parties interventions may be required by the parties to steer and help them reach amicable settlement of their disputes. This is when the need for the intervention of the other diplomatic methods of dispute resolution within the UN system can be introduced. Some scholars had positive view that peaceful resolution of armed conflicts in Africa is only possible through the adoption of effective and efficient negotiation process.[193]

Armed conflicts in Africa often involve many actors such as government forces, insurgents, warlords, criminal gangs and militias. To resolve conflicts, parties have to resort to peace deals through negotiations, by making compromises for peace to prevail. Peace negotiations in Africa enable the participation of all parties including international war criminals who ordinarily should be standing trial in Courts are given the opportunity at the table to participate in peace processes. The United Nations started calling for the application of peaceful negotiations to resolve violent conflicts in Africa after the World wars by encouraging parties to participate actively in peace negotiations. The UN negotiations were visible in the resolution of the armed conflicts in Angola, South Africa, Sudan, Mozambique, Uganda, DRC, and Rwanda and a number of others, with diverse degrees of successes and failures. Negotiations were often effective in controlling tensions from violent conflicts rather than addressing the deep seating causes.[194]

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[192] I. W. Zartman, Conflict Management and Negotiation, in **The Sage Handbook of Conflict Resolution**, J. Bercovitch, V. Kremenyuk, and I. W. Zartman (eds.), London: Sage Publications Ltd., 2009, p. 322.

[193] S. M. Tumuranzye, **"Factors Affecting Peace Negotiations in Resolving Armed Conflicts in Sub-Saharan Africa"**: A Thesis Presented to the US Army Command and General Staff College, Fort Leavenworth, Kansas, January, 2011, p. 53.

[194] United Nations University (UNU), "**Examining the shortcomings of the liberal peace model"**, 2007, available at http://update.unu.edu/issue46_25.htm (accessed July 25, 2016).

The negotiation proceedings include pre-negotiating agreements on the modalities for disputants to clearly manage or resolve their primary differences and ultimately resolve their conflicts by reaching an agreement.[195] Negotiation is the most preferred mechanism for conflict resolution because it provides useful and unanimous position for the conflicting parties thereby fostering avenues for genuine and frank discussions of emotional and interpersonal perspectives of the conflict.[196] Negotiation is considered by most African leaders, commentators and scholars as more diplomatic, cheaper, civilized, and efficient method of resolving conflicts and engendering continuous peace because all conflicts cannot be peacefully resolved through military intervention.[197]

b. Enquiry

This method involves a process where parties to a dispute initiate fact-finding or enquiry through a commission, to investigate and establish basic facts and information about the conflict, to ascertain whether the infraction claimed by parties were actually committed, and determine specific obligations or treaties that may have been violated, suggest remedies or actions to be undertaken by the parties towards the final resolution of the conflict. Enquiry is not usually considered a distinct system of conflict resolution. It is usually adopted as part of other methods of conflict resolution. A commission of inquiry may be deployed in along with other methods of dispute resolution as the first phase of gathering facts; factual clarity being an important component in any conflict resolution process. Enquiry is basically deployed to bring to the fore the deep-rooted facts via a neutral channel to make way for the resolution of conflicts by other peaceful mechanisms. Parties are not mandated to accept the

[195] M.D. Toft, "Ending civil wars; a case for rebel victory" **International Security**, **2010**, p. 10, http://muse.jhu.edu/journals/ms/summary/r034.34.4.toft.html (accessed July 20, 2016)

[196] J. Bercovitch and J. Richard, **Conflict resolution in the twenty first century: Principles, methods, and approaches**, Michigan: University of Michigan Press, 2009, p. 21.

[197] D.A. Bekoe, "Mutual Vulnerability and the implementation of peace agreements: Examples from Mozambique, Angola, and Liberia", **International Journal of Peace Studies,** 10, No. 2, **Autumn/Winter 2005**.

conclusions of an enquiry as the findings and recommendations there from are not binding on the disputants. It is the organ to which the findings and recommendations are submitted to will ultimately take the final decision on them.[198]

The role of an inquiry is mainly to facilitate conflict resolution by clarifying the facts by way of carrying out an independent investigation. Report of an enquiry is restricted to fact-finding, and is not required to propose any settlement of the conflict in question. Enquiry and conciliation are identified as central parts of a combined process for achieving peaceful settlement of disputes.[199] Enquiry has been an important tool for the operations of UN in conflict resolution. The General Assembly adopted resolution 46/59 in 1991, containing in-depth guide and practices for fact-finding by UN agencies while the Legal Office Manual equally explained the various stages and process of enquiry.[200]

c. Mediation and Good Offices

This method of peaceful conflict resolution involves the process by which an independent third party seeks or is appointed to guide the parties towards peaceful resolution.[201] Mediation refers to the offer by an independent third party of his good offices to the disputants with the objective of leading and steering them towards amicable settlement. The third party mediator may be a person, State(s), an international or regional agency which both parties must accept.[202] This is initiated when the disputants are not willing or fail to negotiate adequately, influence and guidance by an independent third party via mediation or good offices may be as a veritable tool achieving settlement. Any of the disputants may request or commence the mediation process. Consent of parties may not be necessary

[198] M. N. Shaw, **International Law,** Cambridge, UK: Cambridge University Press, 2008, pp. 923-925.
[199] L. M. Goodrich and A. P. Simons, **The United Nations and the Maintenance of International Peace and Security,** Washington, D. C: Brookings Institution, 1955 p. 173.
[200] UN, Legal Affairs Office, **Handbook on the Peaceful Settlement of Disputes between States**, *op. cit.* pp. 24–32.
[201] J.G. Merrills, **International Dispute Settlement**, 3rd ed., Cambridge, 1998, Chapter 2 and 4.
[202] United Nations Office of Legal Affairs, *Op. cit.* p.33.

initially, but it is important to note that, no mediation proceedings can commence without their clear and unequivocal consent.

The mediator is expected to motivate parties to undertake or resume negotiations. The mediator can also proffer proposals to guide the parties in identifying a mutually acceptable solution. These good offices may be offered by the mediator, or solicited by one or both conflicting parties. A fundamental condition is that all parties accept the mediator. Although Article 33 does not specifically use the term in its list of measures, 'good offices' is listed in the UN Legal Office manual, as well in other studies of dispute settlement, as a distinct method. However, the manual also notes that mediation and good offices can be used interchangeably.[203]

Another role of the mediator is to present proposals to parties for the resolution of issues connected to the conflict. These proposals for the solution are no more than body of recommendations. Just as in mediation, good offices may be adopted through the consent of conflicting parties to that effect. The good offices intervention is the process where a third party assists in bringing conflicting parties to a table to facilitate final resolution of a conflict via negotiation. The role of the profferer here is to play the middle-man who transmits information and suggestions to the parties in a bid to foster or create conducive environment for parties to elect to peaceful settlement through negotiation. Once negotiations commences, the intervention via good offices comes to an end giving room to the parties to mutually resolve them difference and ultimately reach a solution for the settlement of their conflict.[204]

[203] United Nations Office of Legal Affairs, **Handbook on the Peaceful Settlement of Disputes between States** at *Ibid.* p. 42

[204] S. Vinogradov, P. Wouters and P. Jones, **Transforming Potential Conflict into Cooperation Potential: The Role of International Water Law,** University of Dundee, UK, (2003), at p. 28.

In contrast to mediation, the procedure of good offices is restricted to encouraging and assisting the parties to converge at a table to commence negotiation. In this process, the mediator participates actively in the negotiations and may even present proposals for terms of settlement to parties. The profferer of good offices meets separately with the parties while acting as the middleman, not jointly. The profferer may participate via agreement. Like in mediation, it is not compulsory for parties to accept the outcome of good offices.[205]

d. Conciliation

This process involves the use of an impartial third party by parties as conciliator who usually is a formal, institutionalized and impartial commission empowered to investigate the deep seating causes of the conflict and suggest means for resolving it by deploying tools of inquiry and mediation in the intervention.[206] Conciliators may have meetings with the parties separately or together. The procedural aspect of this process is generally initiated by disputants.

The conciliator is appointed by the parties to a dispute by virtue of his official position, or in their personal capacity. Conciliation is distinguishable from enquiry because enquiry is based on elucidation of facts leading to the conflict, while proffering opportunity for parties to resolve their conflicts, whereas the primary role of the process is to proffer settlement of a conflict and steer parties to accept outcome of the process. Also, conciliation in contrast to mediation is complex and formal in that when a mediator's proposal is rejected,

[205] See M. W. Abdulrahim, **Introduction to Public International Law**, Dar El-Manhal/El-Lubnani, Beirut-Lebanon, (25 November 2011), p. 14. Available at https://sites.google.com/site/walidabdulrahim/home/my-studies-in-english/14-peaceful-settlement-of-disputes#_ftn1 (retrieved on 20 July 2016).

[206] United Nations Office of Legal Affairs, **Handbook on the Peaceful Settlement of Disputes between States,** *Op. cit*. at p. 45.

a new proposal may be presented, whereas the role of a conciliator ends upon presentation of a report.[207]

In UN practice, these non-adjudicatory mechanisms have been deployed with great success in conflict resolution. Mediation and conciliation have numerous advantages in comparison with other methods of conflict resolution with the UN pacific settlement framework. In comparison with adjudicatory processes such as arbitration and judicial settlement, these mechanisms are simpler and more flexible, leaving room for the will and interests of the parties as well as the initiatives of the third party. The parties shall, at all times, be in control of the outcome of the process, while their proceedings can be conducted in secret. These processes cannot be initiated or be effective without the consent and agreement of the parties.

The disadvantage of diplomatic methods of conflict resolution is that final decisions are not binding on the parties. This is the basis for the suggestion by many that adjudicative methods of conflict resolution are preferable for the main reason that the decisions are binding on parties, in contrast to mere recommendations issued in diplomatic processes such as mediation and conciliation.

ii. Adjudicative System

Adjudicative system of conflict resolution involves the submission of dispute to the ICJ or international Arbitration. This system generally consists of arbitration and judicial system which entail the resolution of conflict through legal decisions of a Court or Arbitral tribunal.

[207] M. W. Abdulrahim, **Introduction to Public International Law**, *Op. cit.* p. 14.

a. Arbitration

It is a means of conflict resolution that requires initial consent of all parties involved in the dispute before its commencement. This system of settlement is initiated via a compromise which is an agreement between parties.[208] Arbitration has been defined as the resolution of conflicts between parties by judges appointed by them in accordance with the rule of law. This definition was replicated in the Hague Convention of 1907.[209]

Arbitration sprouted from the processes of diplomatic settlement of conflicts. It represents advancement in developing a legal jurisprudence for conflict resolution at the global level. It is considered one of the most equitable and efficient means of conflict resolution because of the fact that it is a combination of elements of both diplomatic and judicial procedures in resolving conflicts.[210] The disputants are empowered to nominate the arbitrators, who decide the seat of the tribunal, and adopt the procedures to be applied and the governing law of the tribunal. It must be noted that disputants are at liberty to deploy a specific arbitral formula, they may elect to use other procedures if the disputants otherwise agree. Relevant arbitral procedures that may be applied include procedures of the Permanent Court of Arbitration founded in 1899.[211]

A typical arbitral was the intra-State conflict between Sudan People's Liberation Movement (SPLM) and Sudanese government on boundary delimitation by the central government and the national liberation movement in 2008. The question submitted to arbitration was whether the Abyei Boundaries Commission which was the international boundary commission mandated to establish the boundary of the Abyei area. The role of the

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[208] United Nations Office of Legal Affairs, **Handbook on the Peaceful Settlement of Disputes between States**, *Op. cit.* p. 31.
[209] M. W. Abdulrahim, **Introduction to Public International Law,** *Op. cit.* p. 14.
[210] 1899 Convention, Article 16; 1907 Convention, Article 38.
[211] F. C. Smith, **The Permanent Court of Arbitration (PCA),** (August 3 2013), available at http://nvvn.nl/the-permanent-court-of-arbitration-pca/ (retrieved on 19 August 2017).

tribunal was to establish whether the Commission actually acted ultra vires to its powers, and if so, to draw a fresh boundary for the parties. This arbitration demonstrated the potential speed in conflict resolution through international arbitration. After the receipt of the arbitration agreement by the tribunal in July 2008, the final arbitral award was rendered in July 2009, exactly one year after receipt of the arbitral agreement. The uniqueness and success of this arbitration enhanced the potential for the adoption of Arbitration in resolving armed conflicts within the international arena, however most armed conflicts in present times are internal in nature; the question remains whether arbitration might be applied more often in future in resolution of these form of conflicts.[212]

The mode of arbitration agreement regarding the nomination of arbitrators is that each party appoints one arbitrator, and both of them in turn appoint another as the Chairman or Umpire. The panel will then consider the facts of the conflict, analyse same, and arrive at a final decision known as an Award via majority vote. Same dispute may be submitted to a sole Arbitrator appointed by both of them, who may be a foreign president, head of government, or a distinguished individual. Arbitration proceedings are usually confidential to protect the secrets of parties, and exposure of sensitive information.

b. Judicial Settlement

This means resolution of conflicts between parties by a Court or a Tribunal in line with international legal jurisprudence. These include adjudication of disputes by the ICJ, the Law of the Sea Tribunal and other ad hoc tribunals like the UN Tribunal in Libya. There are

[212] A. Frankel, "Wilmer Represents Sudan People's Liberation Movement in Landmark War-Ending Arbitration", **The American Lawyer**, July 22, **2009**, *available at* http://www.law.com/jsp/law/international/LawArticleIntl.jsp?id=1202432567182&Wilmer_Represents_Sudan_Peoples_Liberation_Movement_in_Landmark_WarEnding_Arbitration (retrieved on 20 August 2017)

currently between seventeen and forty international Courts and tribunals adjudicating on disputes.[213]

Ordinarily, the decisions of an international tribunal are definitive, final and cannot be appealed.[214] The major advantage of permanent international tribunals over arbitral tribunals is that they are in a better position than arbitral tribunal to become seized of a matter, since they are permanent in nature.[215] The disputes submitted to the Courts are subjected to pronouncements, interpretation, application of treaties, sovereignty over territory, maritime and territorial delimitation, the use of force, breach of contracts, and adjudication on other doctrines of customary international law.[216]

The ICJ is the most important international tribunal both in scope of jurisdiction and prestige as the principal judicial arm of UN. UN members are *ipso facto* subject to the jurisdiction of the Court. The judges of the ICJ are appointed by the UN and not by the disputing parties. The Court must comply with Article 38 of its Statute in its adjudication.[217]

The UN Charter proffers arbitration and judicial settlement in Article 33(1) as mechanisms, among others that States may adopt in peaceful resolution of conflicts. Moreso, Article 36(3) mandated the Security Council to refer disputes involving State parties to the Court. However, the Charter did not obtrude an obligation on parties to submit any dispute to the Court. They may decide to submit their disputes to other tribunals for resolution.[218]

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[213] M. Madsen, "Judicial globalization: the proliferation of international courts", **Research Handbook on Global Administrative Law**, 2016, Vol. 13, p. 282.
[214] Article 60 of the Statute of the ICJ.
[215] G. Born, **International Arbitration: Cases and Materials,** Leiden: Kluwer Law International, 2015, p. 7.
[216] UN Legal Affairs Office, Handbook *Op. cit.* pp. 68–69.
[217] F. Cede, The settlement of International Disputes by Legal Means - Arbitration and Judicial Settlement**,** .in **The SAGE Handbook of Conflict Resolution,** J. Bercovitch, V. Kremenyuk and I. William Zartman (eds.), London: Sage Publications Ltd., 2009, p. 358.
[218] C. Greenwood, Scope of Application of Humanitarian Law, in **The Handbook of Humanitarian Law in Armed Conflicts**, D**.** Fleck **(**ed.**),** Oxford**:** Oxford University Press**,** 2008, p. 252-253.

iii. Institutional Methods of Conflict Resolution

These methods of conflict resolution entail submission of parties to international organizations for resolution of their conflicts. Institutional mechanisms originated along with the advent of the international organizations in the world. The most prominent organizations, which provide mechanisms for resolving conflicts between their member States, are the UN and other regional bodies such as the EU, the Organization of American States, the Arab League and the AU to mention a few.

a. Peaceful Settlement by UN

In line with preserving world peace, resolution of international conflicts is one of the core responsibilities of the UN. The UN Charter mandated the UN to ensure conflicts or disputes which may threaten world peace and security are resolved peacefully.[219] Accordingly, the Charter instituted a system for the peaceful resolution of conflicts within the UN system. This system is covered by the Charter in Chapter VI.

Article 33 is an omnibus and blanket directive to all States to ensure that all conflicts and disputes which may degenerate into threatening world peace and security are resolved amicably between the disputing parties in conformity with the provisions of the Charter. Upon failure of parties to observe these obligations or failure to amicably resolve the conflict, the United Nations shall intervene and make recommendations ways to peacefully resolve the conflict. The Security Council is competent to intervene either on its own discretion, by invitation of any State or the General Assembly or via petition brought before it by any conflicting party.[220] The Council may take these measures. Firstly, it may summon the

[219] L. Moir, **The Law of Internal Armed Conflict**, Cambridge: Cambridge University Press, 2002, pp. 30-52.
[220] E. Crawford, "Unequal before the Law: the Case for the Elimination of the Distinction between International and Non-international Armed Conflicts", Vol. 20, Issue 2, **Leiden Journal of International Law, 2007**, p. 441.

conflicting parties to resolve the conflict under Article 33(1),[221] secondly, it may recommend appropriate mechanisms for resolution of the conflict,[222] and thirdly, it may suggest terms of settlement to the parties, as it deem necessary for the peaceful resolution of the conflict.[223]

Even though the Security Council has the dominant duty for maintaining world peace and security, the General Assembly is also not left out from taking adequate measures to assist the Council. It is empowered to initiate discussions and make recommendations for procedures, methods of adjustment, or for terms of settlement with regards to conflicts submitted to it.[224] The conflicts may be submitted to the Assembly by any organs of the UN, members States or any party to the dispute in question.[225]

b. Peaceful Settlement of Dispute by Regional Organizations

By virtue of Article 33(1) parties to a conflict may recourse to regional arrangements or agencies for the peaceful resolution of their conflicts. Chapter VIII of the Charter is devoted to regional mechanisms, and their thereof role is specifically detailed under Article 52. The UN's dispute settlement manual referred to the resolution mechanisms and procedures of the Arab League, the Organization of American States, the African Union, the Council of Europe, EU, and ECOWAS among others as regional organizations recognized by

[221] M. Bothe, K. J. Partsch, and W. A. Solf, **New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949**, Nijhoff, 1982, pp. 232-272.

[222] G. I. A. D. Draper, "Humanitarian Law and Internal Armed Conflicts", 13 **Georgia Journal of International and Comparative Law, 1983**, p.253, 275.

[223] D. Willmott, "Removing the Distinction between International and Non-International Armed Conflict in the Rome Statute of the International Criminal Court", 5, **Melbourne Journal of International Law**, **2004**, pp.196 & 218.

[224] Articles 11, 12 and 14.

[225] H. Spieker, "The International Criminal Court and Non-International Armed Conflicts", Vol. 13 (2) **Leiden Journal of International Law, 2000**, p. 395 & 409.

the UN for regional dispute resolution purposes. The regional bodies may refer any unresolved disputes to the Security Council.[226]

The Charter acknowledges the right of the members to institute regional arrangements or agencies to deal with the maintenance of regional and world peace and stability. It requires the member States of the regional organizations to resolve conflicts within the framework of the regional arrangement before such conflicts are submitted to the Security Council.[227] Though, it may seem that the prescribe obligation under Article 33(1) is consistent with those in Article 52(2), however, paragraph 1 of Article 52 imposes three explicit limitations with regard to the application of regional mechanisms. The first is the requirement that the conflicts submitted to the regional arrangement must be appropriate for regional action. The second requirement is that the dispute resolution system of the regional organizations must not be at cross purpose with the core objectives with principles of UN. In addition, a third clear limitation obtruded by Article 54 is to the effect that reports of all activities of the regional organizations in relation to the peaceful resolution of conflicts must be submitted to the Security Council from time to time.

Article 52 legitimizes regional arrangements mechanism and imposing an obligation upon the member States, it also extends to placing a duty on the Security Council itself. The Council is required to also support the evolution and development of peaceful resolution of conflicts through regional arrangements where the State parties to the dispute refer the dispute to regional arrangement or by referral from the Security Council itself.[228]

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[226] R. K. Ramphul, "The role of international and regional organizations in the peaceful settlement of Internal Disputes (with special emphasis on the Organization of African Unity)", **Georgia Journal of International & Comparative Law**, Vol. 13, **1983,** p. 371.

[227] Article 52, paragraph 2, UN Charter.

[228] H. Kelsen, **The Law of the United Nations: A Critical Analysis of Its Fundamental**, The London Institute of World Affairs, The LAWBOOK Exchange , LTI Union, New Jersey, 2000, p. 434.

This provision is in synergy with the perspective of the Charter relating to peaceful resolution of conflicts requiring the conflicting parties to make efforts in finding lasting solution to their conflicts themselves through any peaceful mechanism they may choose, and that the Council should provide necessary support they may need to do so. Where parties decide to refer their conflict to the Security Council prior to making any effort to reach a settlement through the regional mechanisms, the Council has a responsibility to suggest their obligation to them, or use its authority to refer such conflict to the regional arrangements for settlement.

At a high-level meeting of the UN, member States reiterated the growing menace of armed conflicts in Africa and the need for the UN to begin collaboration with the AU in engendering peace in the Africa.[229] With regards to solving Africa's conflicts, Chapter VIII of the UN Charter should serve as the focal point of reference. Chapter VIII of the Charter charged UN members to seek to achieve peaceful resolution of conflicts through regional arrangements first, before reverting to the Security Council. This provision has been interpreted as an obligation on the UN to promote regional arrangements to foster peace and security, and success of its mandate. It is a fact that, the UN needs regional organizations if it must succeed in the resolution of changing conflicts, which are dynamic and fluid in nature.

II. PRACTICAL APPROACH TO PEACEFUL SETTLEMENT OF CONFLICTS IN AFRICA

Peaceful Settlement maybe considered as involving a two phase process, first is peacemaking phase which consists the process of identifying the nature and root causes of conflict between parties, and applying the appropriate mechanism to resolving the conflict as well as, brokering peace agreements that is expected to end the conflict and propose a starting

[229] At a UN Policy Forum on the topic of "Advancing Chapter VIII: The AU-UN experience" co-hosted by IPI, the African Union Commission, and the Permanent Mission of Sweden to the UN, 4th May, 2015.

point for stable peace and security. Peace-building and implementation is the second phase which encompasses implementation of the peace process designed to actually resolving the conflict in line with the terms previously agreed upon by the parties.[230]

This thesis deals majorly with the first phase of peaceful settlement, while the second part is discussed in passing. This section will consider the role of the UN in peacemaking in African disputes through the mechanisms under Article 33, use of third party actors, such as the AU, in peaceful settlement of armed conflicts on the continent. In other words, this Section focuses on the functions of the AU and UN in peace making in Africa.

The civil war in Sudan and South Sudan will be considered as a case study in this thesis due to the nature of the conflicts which has been characterized as a "hard case" due to its recurrent nature. The Sudan conflict has been termed "intractable" due to the existence of the following features of intractability:[231]

a. Weakness and collapse of the state of conflict.
b. Proliferation of conflicting parties.
c. Development of a resources based war economy.
d. Existence of regional linkage, and
e. Resilience to peacemaking.

These characteristic of intractability made the conflict seem unending and unsolvable, therefore worth the effort and measures taken to finding a lasting and sustainable solution to the conflict. This section will analyze the sources of the hostilities in the Sudan region and the role of the UN and the AU.

[230] P. Wallensteen and A. Bjurner, The Challenges of Regional Organizations, in **Regional Organizations and Peacemaking: Challengers to the UN,** P. Wallensteen and A. Bjurner (eds.), Routledge: London & New York, 2015, p. 6.

[231] O. Owiso, E. Boshoff, T.M. Mamhare and A.Z. Tsighe "Intractable conflicts in Africa: The international response to the Darfur and South Sudan crises", **Global Campus Human Rights Journal**, 1, 2017 , p. 287

A. Background to the Sudan Conflicts

Sudan is a nation with the largest land mass in Africa which has been entangled in several armed conflicts of several origins for different periods of time. Sudan is strikingly divided between the Arabic-Muslim North (now known as the Republic of Sudan) and an African South (now known as the Republic of South Sudan) which consists of Christians and animist. Since its freedom from colonialism in 1956, the country has been enmeshed in successive civil wars, including armed conflict of the Northern and Southern people of the region, including those of the Upper Blue Nile, Nuba Mountains and Beja region.[232] The more recent conflicts in Darfur erupted due to deep seated grievances over historical marginalization of the Southerners by the Northerners, particularly due to access to use and control of natural resources in the country. These two realities epitomize the reasons Sudan only enjoyed 11 years of peace since it gained independence.[233]

i. The Self-Determination Conflict (1955-2005)

The armed conflict in Sudan erupted few months after it gained freedom from colonizers. Troops of Southern Sudanese origin became fearful of domination by the Northern soldiers who were the majority and began to mutineer. The mutiny was quelled, and shortly after independence strife in the southern region continued in the form of militia group called the Anya-Nya, which demanded, amongst other things, autonomy or outright secession from Sudan. These operations persisted until the President entered the Addis Ababa pact in 1972 with the militias which necessitated the establishment of three provinces within the Southern region with some significant level of autonomy. After this peace deal, Sudan

[232] A. Sikainga, "The world's worst humanitarian crisis: Understanding the Darfur conflict", 2009, para. 2. available at http://origins.osu.edu/article/worlds-worst-humanitariancrisis-understanding-darfur-conflict (accessed 3 July 2016).

[233] J. K. Adams, "History of the Sudan Conflict and the Role of the United Nations", **EDGE**, Professor Lusignan, **December 3, 2004**, pp. 2-22.

enjoyed relative peace until 1983 when President Numeiry, contrary to the earlier accord, introduced the observance of Islamic law all over the country, and re-divided the provinces in the southern region.[234]

Following criticisms and regional outcry by the South Sudanese, another civil war broke out across the country that instigated the southern Sudanese rebel movement known as Sudanese People's Liberation Army (SPLA) against the government. The SPLA was led by John Garang who successfully deposed the President by a military coup in 1985. The Sudanese Prime Minister, who was leading the government at the time, did not properly prosecute the conflict, while economic development was seriously impeded by the conflict.

Even though several steps were taken to end the armed conflict, political and religious differences between the conflicting parties propelled the conflict to continue. The Prime Minister initiated negotiation between the government and the militia groups in 1989, with a view to achieve peaceful resolution. The negotiation effort was sabotaged by a *coup* led by the National Islamic Front (NIF) which ousted the Prime Minister, South Sudanese rebels took over government and Omar Al Bashir became the President of Sudan. By the end of 1999, Al-Bashir took over total control of the government, and he ordered government troops and tanks to take over the parliament.[235]

The possibility of any rapprochement or peaceful settlement of the conflict became even more difficult with the NIF taking over power in Sudan. The SPLA disintegrated in 1991, which led to the formation of a second rebel group known as the SPLA-United. This new group multiplied into several opposing factions, prominent of them all was the Independent Army of South Sudan, the reasons for the fragmentation of the group including

[234] J. K. Adams, "History of the Sudan Conflict and the Role of the United Nations", *Ibid.*, pp. 2-22.
[235] Don Petterson, "Inside Sudan: Political Islam, Conflict and Catastrophe", **The Arab Studies Journal**, Vol. 7/8, No. 2/1, **Fall 1999/Spring 2000,** pp. 137-139.

ethnic strife between John Garang's tribe and other southern Sudanese tribes as well as dis-satisfaction with his leadership style. Even though the SSIA held a difficult position than the SPLA, by demanding outright secession as against the SPLA's demand for autonomy, it however, signed the historical peace agreement in April 1996 with the government of Sudan to suspend hostilities pending final agreement and resolution of the conflict.[236]

Another SPLA faction emerged in 1996 including a couple of other Sudanese opposition groups operating in the Northern region, prominent among which is the National Democratic Alliance (NDA). The NDA found a valuable ally in Sadiq Al Mahdi, the ousted Prime Minister, who as a prisoner of the government who escaped from Khartoum in December 1996.[237] The NDA started attacking the Sudanese government with supports from Eritrea. While the SPLA also got support from Eritrea, Ethiopia and Uganda likewise launched several attacks on the government.[238]

In October 2002, the conflict continued until the SPLA and the government of Sudan entered an agreement for cessation of hostilities. The parties later accepted to allow uninterrupted access to humanitarian aid. A peace agreement entered on April 26, 2003 by the Sudanese government, the SPLA and the UN allowed for cross-line deliveries to be made to regions controlled by parties.[239]

Another phase in the Sudan civil war originated when low-level violence erupted in Darfur for years and which originated between nomadic and sedentary farmers. Another

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[236] A. Atta-Asamoah, R. D. Sharamo and P. M. Mwanzia, "South Sudan: Origins and Implications of emerging (In)security dynamics", **Situation Report**, Institute for Security Studies, **29 July 2011**, p. 5, available at: http://erepo.usiu.ac.ke/bitstream/handle/11732/352/Mwanzia%20philip.pdf?sequence=1&isAllowed=y (retrieved on 25 August 2017)

[237] United Nations Regional Centre for Peace and Disarmament in Africa, "Conflicts in Africa: Sudan." http://www.unrec.org/eng/conflicts/sudan.htm

[238] Don Petterson, **Inside Sudan: Political Islam, Conflict and Catastrophe: Revised & Updated,** Westview Press Books, 2009, p. 223.

[239] "World Food Programme Sudan: 2003 Facts and Figures", available at: http://www.unsudanig.org/system/data/UN_Sudan_Factsheets/WFP.pdf.(retrieved on 20 August 2016)

perspective to the conflict is the activities of the nomads from the Northern region moved south during the dry season for animal grazing on the lands of sedentary farmers. The grazing migration arrangement remained in place without any violence until the increase in population growth and competition for resources crept in. Traditional reconciliation mechanism was introduced as violent attacks between the groups became a regular occurrence. Government forces responded to the conflict in Darfur with crack down on the groups with obvious discrimination against the sedentary southern farmers. In 2001 national emergency was declared across the region, and the government commenced random and indiscriminate detention of leaders from the groups without any trial or fair hearing.[240]

In February 2003, the sedentary southern farmers created a force known as the Sudan Liberation Army (SLA) and started offensive operations against government forces. These attacks were reactions to discrimination, marginalization and refusal of government to protect them from attacks of the northern nomad groups the southern groups call "Janjaweed" (armed men on horses). While the nomad groups referred to themselves as "Fursan" or Fur meaning horsemen or knights. Earlier, the government was interested in reconciliation with the SLA, however, the government recourse to utilize brutal force to quell the insurgency. The SLA attack of Al-Fasher airport in April 2003 led to the death of 70 military personnel and wanton destruction of aviation facilities at the airport.[241]

In response to the attack, the government instigated and motivated the nomad militias to attack southern communities leading to displacement of persons. It was reported that the government played a major role in coordinating the attacks by going as far as paying the nomads to attack the sedentary southern groups. The government had earlier proscribed the militias as outlaws describing them as bandits, however, available evidence suggests

[240] J. K. Adams, "History of the Sudan Conflict and the Role of the United Nations" *Op. cit.* p. 5.
[241] V. Tanner and J. Tubiana, "Divided They Fall: The Fragmentation of Darfur's Rebel Groups", **Small Arms Survey**, Graduate Institute of International Studies, Geneva, **2007**, p. 3.

otherwise as the militias continue to wear Sudanese military uniforms, while standby without making any attempt to disarm or arrest them. About the same time, another militia group known as the Justice and Equality Movement (JEM) was created with objectives similar to the SLA, which fueled the violence already raging in Darfur.[242]

In June 2002, the government and the SPLA and began negotiations to douse the second civil war in the country. The negotiations culminated in the Comprehensive Peace Agreement (CPA) of 9th January, 2005 which contained six protocols finalized between 2002 and 2005. Pursuant to the terms of the CPA, South Sudanese voted in the referendum on January 9, 2011, when the Interim Period ended after six months South Sudan became gained independence.[243]

ii. Post-Independence Power Struggle in South Sudan (2011-2017)

In the new country post-independence conflict broke out in December 2013 in the capital, Juba, and quickly spread to three States of the Upper Nile, Jonglei and Unity. Some of the factors that triggered the conflict are post-independence governance problems, the dissolution of the cabinet, and the dismissal of Vice-President Reik Machar Teny by President Salva Kiir in July 2013.[244] These, among other factors, led to a leadership tussle within the ruling party, the Sudan People's Liberation Movement (SPLM), then engaged the country's military, the SPLA in armed conflict.[245]

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[242] "Sudan: Urgent call for Commission of Inquiry in Darfur as situation deteriorates." Available at: http://news.amnesty.org/index/engafr540042003 (retrieved on August 20 2016).

[243] D. Smith, "Soudan referendum results conformed", **The Guardian, February 2011**, (accessed March 19, 2016).

[244] Human Security Baseline Assessment (HSBA) for Sudan and South Sudan, Darfur Peace Process Chronology**, Small Arms Survey**, Geneva-Switzerland, **2013**, p. 1-35, available at: http://www.smallarmssurveysudan.org (retrieved on 20 August 2017).

[245] M. Defoe, "The Effect of Institutional and Political Instability on Civil War in South Sudan**", Inquiries Journal,** Vol. 9, No. 11, **2017**, p. 1/1, available at: http://www.inquiriesjournal.com/articles/1692/the-effects-of-institutional-and-political-instability-on-civil-war-in-south-sudan (retrieved on 16 August 2018).

The history of conflict in South Sudan can be traced to pre-independence Sudan, particularly the early years of colonialism.[246] The mostly Christian/animist South, which had been administered separately from Juba during colonial times, expressed fear that amalgamation with the Northern region who are predominantly Arab-Muslim following independence would result in its discrimination and marginalization.[247] The fact that in 1991, a faction led by Dr Riek Machar split from the SPLM/A, and aligned with President Al-Bashir's government only to rejoin the SPLM/A again in 2002 towards the conclusion of the peace process, contributed to the conflict.[248]

The internal differences and ideological bickering within the SPLM/A had taken ethnic dimensions between the Nuer and Dinka people of the South, and the split has been fingered as one of the major events which left deep scars within the SPLM/A up to independence.[249] This is particularly so given the fact that the SPLM/A leadership of the group had to be rearranged to accommodate Riek Machar, a decision which raised a lot of uneasiness within the group because of the antecedence of the later.[250]

This unease became evident upon the sudden death of Dr Garang when Salva Kiir became President, and Reik Machar his deputy, following the 2010 elections. The relationship between the two leaders was reportedly frosty with the two running a parallel government. These political divisions which persisted for many years have since taken ethnic

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[246] G. Kebbede, "Sudan: The North-South conflict in historical perspective", **Contributions in Black Studies,** 15, **1997**, p. 27.

[247] Peace Direct, Sudan: Conflict Profile, 2015, available at http://www.insightonconflict.org/conflicts/sudan/conflict-profile/ (retrieved on the 27 March 2016)

[248] L. Akol, **SPLM/SPLA**, The Nasir Declaration New York, iUniverse Inc. 2003, p. 76.

[249] The Sudd Institute, "South Sudan's crisis: Its drivers, key players, and post-conflict prospects", (03 August 2014), available at http://www.suddinstitute.org/assets/ Publications/South-Sudan-Crisisfinal.pdf (retrieved on the 22 July 2016). See also, African Union Communiqué of the Peace and Security Council 440th Meeting (2014b), paras 42-44 available at http://www.peaceau.org/uploads/psc-515-com-southsudan-13-june-2015.pdf (accessed on the 22 July 2016).

[250] African Union, "Final Report of the African Union Commission of Inquiry on South Sudan", 2014a, para. 50, available at http://www.peaceau.org/en/article/final-report-ofthe-african-union-commission-of-inquiry-on-south-sudan (retrieved on the 22 July 2016) (AUCISS Report)

undertones, and had created a divide beyond the ruling class, which had also percolated among the people. It has been pointed out that the CPA ignored democratization while striving to achieve independence, resulting in "cosmetic peace".[251]

The government of Salva Kiir totally failed to strengthen democratic institutions, and failed to address the historical divisions of the people, while recovery and reconciliation took a back seat in the new State. Even though the events above triggered the violence, feelings of discontentment at the government's failure to implement the CPA into visible development already were rife amongst the South Sudanese. Another factor that contributed to the exacerbation of the ethnic division is the failure of the government to initiate a much-needed healing and reconciliation process which would have prepared the country to embrace the past and forge ahead to sustainable development, peace and security.[252]

To make this situation worse, the government failed to make the most of the abundant oil and mineral resources in the country to address years of marginalization and underdevelopment suffered under the Northern regime, instead corruption was rife, there was breakdown of law, mismanagement of natural resources and nepotism resulting in the inability of government to provide basic social amenities to the already frustrated populace.[253]

In July 2013, the situation was worsened when President Kiir dismissed his deputy Reik Machar along with a number of oppositions from his cabinet.[254] Violence broke out in

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[251] M. Leriche and M. Arnold, **South Sudan: From revolution to independence**, New York: Oxford University Press, 2013, p. 36; 132.

[252] J.M. Jok, "Negotiating an end to the current civil war in South Sudan: What lessons can Sudan's comprehensive peace agreement offer", **Berghof Foundation**, **2015**, p.8

[253] L. De Vries, and P.K. Justin, "A failure of governance: Understanding the South Sudan's conflict dynamics beyond the political and humanitarian crisis", 2014, p.3, available at: http://www.salo.org.za/wp-content/uploads/2015/01/De-Vries-Jusitn-2014-Fail ure-of-Governance-in-South-Sudan.pdf (accessed on the 22 July 2016).

[254] D.H. Johnson, "Briefing: The crisis in South Sudan", **African Affairs**, 113, **2014**, p. 300.

December 2013, when President Kiir alleged that Riek Machar attempted a coup to oust him, this was followed by an attempt to arrest him and disarm members of the Presidential Guard who hailed from Machar's Nuer ethnic region.[255] The African Union Commission of Inquiry on South Sudan (AUCISS) concluded that no evidence of such coup attempt by Machar was found, and that the whole saga smirks of politically witch-hunt on the part of President Kiir to remove a democratically-elected deputy who hailed from a different ethnic background, with the sole aim of removing any form of dissent or opposition to his government.[256]

The steps taken by the international community after the eruption of the conflict was on intervention which resulted in a ceasefire. After over a one year of deliberations, and intensified pressure by the international community, the government of South Sudan and opposition groups entered the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS) in August 2015, which specified a power sharing formula between the conflicting parties. Despite the peace deal, the conflict continued spreading to other areas of the country. In July 2016, renewed violence between government forces and the SPLM led to the opposition leader Reik Machar to flee the country into exile. The UN blamed the government of perpetrating genocide in the country, while negotiations and national dialogue continue.[257]

B. Application of UN Peaceful Settlement Methods in the Sudan/South Sudan Armed Conflict

The duty on UN member States to settle their conflict through peaceful means can only be enforced by the Security Council. The founders of the Charter explicitly envisaged a

[255] L. De Vries, and P.K. Justin, "A failure of governance: Understanding the South Sudan's conflict dynamics beyond the political and humanitarian crisis", *Op. cit.* p. 6.
[256] African Union (2014a), *Op. cit.* para 68.
[257] L. De Vries and M. Schomerus, "South Sudan's Civil War Will Not End with a Peace Deal", **Peace Review**, 29:3, **2017**, p. 333-340.

subordinate role for regional agencies in this regard. The Charter empowered the Council to employ regional arrangements in enforcement powers under its authority, but the regional organizations must take any enforcement measures without the prior consent of the Council to that effect.[258]

The Sudan/South Sudan peace process was led by the UN with active support and collaboration by AU and IGAD showcasing the drive of UN Secretariat in encouraging a paradigm shift towards the decentralization of the mandate of maintaining world peace through increased task and participation of regional organizations in peace-making and peace-building process. Decentralization, in accordance with the UN Charter, is an avenue to reduce the burden of the Council and to engender and promote more participation, consensus and democratization in global affairs.[259] Since the 1990s the UN Secretariat has facilitated structural and institutional measures for active participation and contribution by African institutions to regional conflict management on the continent.

Peace negotiations, mediation and good offices were significant in dousing tensions during the Sudan and South Sudan armed conflict. Although, the peace process in Sudan and South Sudan was mainly driven by the regional bloc, the IGAD, the UN and the AU have equally made major positive impact in complementing the workings of the organization.[260] A number of different strategies or measures have been employed by the UN, in an attempt to bring about a resolution of the conflicts, including the passage of critical Resolutions, the indictment of the President of Sudan by the ICC, as well as the imposition of other unilateral and multi-lateral sanctions against Sudan.

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[258] Articles 53 and 54 of Chapter VIII of the UN Charter, these chapters regulate regional-global interactions.

[259] B. Boutros-Ghali, "An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping", A/47/277 - S/24111, New York: United Nations, 1992, para. 64.

[260] Korwar Adar, "Conflict Resolution in a Turbulent Region: The Case of the Inter-Governmental Authority on Development (IGAD) in Sudan", African Center for the Constructive Resolution of Disputes (ACCORD), AJCR/2000/2, **25 June 2000**, available at: http://www.accord.org.za/ajcr-issues/conflict-resolution-in-a-turbulent-region/ (retrieved on 20 August 2016).

i. Role of the UN

The UN has been highly involved in the situation in Sudan in areas of peace-keeping, working together with the AU in a manner which had never before been experienced and to the extent of referring the situation to the ICC. Negotiations on the Darfur crisis commenced in 2003 with an AU-UN peace initiative team led by the former Chadian President, Idriss Deby, and this process led to a truce between the government and the SLM in September 2003. However, both parties violated the ceasefire due to alleged impartiality of the mediator culminating in the failure of the process. In 2004 the same mediation team managed to negotiate a ceasefire agreement for humanitarian aid.[261]

The experience of the United Nations garnered in containing armed hostilities in countries like Rwanda, Bosnia, DRC and Iraq came handy in dealing with the Sudan/South Sudan conflict. Peacekeeping was invented by the UN, because nowhere in the UN Charter was peacekeeping mentioned as part of its mandate. Peacekeeping was invented as a necessity by the UN as an interventionist force that should be utilized in unstable regions to supervise peace processes or military operations during conflicts, and to protect civilian population from human right infractions that in many cases are carried out by the oppressive regimes. The UN developed peacekeeping as a practical solution when it was clear that certain of the provisions of the Charter concerning the preservation of world peace and security could not be realized as envisioned without a mechanism or system for enforcement.[262]

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[261] N. Netabay, "The Darfur peace process: Understanding the obstacles to success", 2009, available at: http://www.beyondintractability.org/casestudy/netabay-darfur (accessed on 9 June 2016)

[262] United Nations, 21 April 2008, United Nations Documentation, 8 May 2008, http://www.un.org/Depts/dhl/resguide/specpk.htm

The major obstacle to peacekeeping is in the willingness of the P5 to speak with one voice, especially in adopting resolutions to authorize peacekeeping missions in line with the Charter. The P5 members of the Council often prioritize matters of national interest, therefore when they observe that certain resolutions would not be of benefit to them or their political allies, they can refuse the vote or veto whatever resolution or decisions that may be made. Even where the resolution is passed successfully, the troops might not be assembled for a months, since the UN depends on the contributions from the members which provide the members of their armed forces including resources for peacekeeping missions. This makes the UN peacekeeping mechanism slow, cumbersome and dependent on the political interest of the permanent and other members the Security Council.[263]

With regards to the conflict in Sudan, only three resolutions were adopted by the Council which called for an end to atrocities in Darfur, by identifying and prosecuting perpetrators of violence which led wide spread human rights abuses.[264] The Security Council was reluctant to respond to the conflict in Darfur, for the mere fact that it was not included its agenda at the time and the UN had major shortfall from the US invasion of Iraq. It had admitted that there were grave human right violations being perpetrated in Darfur, however, failed to send a peacekeeping mission, out of concern that some P5 members would veto any resolution for military intervention in the conflict.

Thus, the UN could only passing tenuous resolutions and condemnations which were not supported unanimously by members.[265] This included the argument by some of the members that believed in the need for an implementation of the African solution to an

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[263] B. S. Nikitin, "The Positive Impact of African Union Forces in Darfur", **Inquiries Journal**, Vol. 2, No. 1, **2010**, available at: http://www.inquiriesjournal.com/articles/128/2/the-positive-impact-of-african-union-forces-in-darfur (retrieved on 18 August 2018).

[264] UN Resolution 1564.

[265] N. J. Udombana, "Still Playing Dive with Lives: Darfur and Security Council Resolution 1706" **Third World Quarterly**, 28.1, **2007**, p. 97.

African problem policy. Despite the acceptance of this policy, the UN failed to muster a swift intervention in the conflict, reflecting the fact which reaffirmed the same moral deficit and credibility standing which it exhibited during the Iraqi invasion debates.

The UN as a custodian of the territorial immunity and sovereignty of States was limited in its interventionist process, since any act of the UN which is not sanctioned by the Security Council may amount to derogation of right of a State to its territorial integrity, and consequently, would amount to setting a precedent for undermining the UN as an impartial and the dominant institution that overlook State's actions. Therefore, the UN refused to approve a stern resolution to enable swift actions that might have curtailed the Sudanese government's atrocious genocide. Even the watered down resolutions that was passed were not unanimously approved by members, this was a reflection of the unwillingness and disinterest of the international community in the conflict, giving it the Sudanese government the audacity to continue the conflict and genocide.

The sovereignty issue is similar to the debate on classification of atrocities committed in Sudan, raised in the UN, as to whether or not to term the atrocities in Sudan a genocide, which would enable swift response, compared to when it is characterized a humanitarian crisis. Diplomats had the opinion that classifying the crisis "genocide" would impair the Sudanese government's participation and collaboration with the AU and UN operations and thus hamper civilian protection functions, especially in light of the hostile security situations in the region, which made it impossible for AU and UN troops to disarm the Janjaweed without the government's consent and collaboration.[266] The international community had difficult times deciding on this issue, while in actual sense genocide was being perpetuated

[266] T. Piiparinen, "Reconsidering the Silence over the Ultimate Crime: a Functional Shift in Crisis Management from the Rwandan Genocide to Darfur" **Journal of Genocide Research,** 9.1, **2007**, p. 71.

by the government. To trigger a swift response and military intervention, genocide was eventually applied by the UN to label the atrocities in Darfur.

The UN was not directly involved in the mediation and negotiation process during the South Sudan conflict. Although, the UNMISS was originally mandated to support South Sudan in consolidating the peace process and provide assistance with some reforms in security and infrastructure, however, the Security Council expanded its task in the wake of renewed conflict adopting civilian protection as its main mandate in the conflict. Therefore the UN utilized the regional arrangement mechanism through the AU and its sub-regions in the peaceful settlement of the Sudan/South Sudan armed conflict.

a. The UN Peace Support Operations

The first UNSC Resolution on the civil war in Sudan was adopted on 11 June, 2004. The purpose of the Resolution was to set up an advance team (UNAMIS) to undertake a UN peace-support operation in the region after the comprehensive peace agreement on the conflict was entered.[267] About a month later, the UNSC demanded, in line with the Charter that the government must disarm the Janjaweed militias.[268] Thereafter, in March 2005 three more resolutions were equally passed, Resolutions 1590, 1591 and 1593. These resolutions dealt respectively with the establishment of the UNMIS; a peace-keeping mission consisting of 10,000 military personnel, imposition of sanction such as freezing of assets and travel ban on certain persons who actively participated in the Darfur crisis and finally, referral of the atrocities committed to the ICC for investigation, indictment, prosecution and punishment.

[267] United Nations Security Council endorses establishment of 3-month advance team in Sudan to prepare for UN Peace Support Operation (2004a), available at http://www.un.org/press/en/2004/sc8120.doc.htm (accessed on 1 April 2016).

[268] United Nations Security Council demands Sudan disarms militias in Darfur, adopting Resolution 1556 (2004) by vote of 13-0-2 (2004b), available at http://www.un.org/ press/en/2004/sc8160.doc.htm (accessed on 1 April 2016).

While these resolutions were intended to eliminate conflicts in the region, some factors prevented any meaningful result to emanate from their enforcement. One of the major factors was that there was division among the P5 about the best way to approach the situation, leading to the abstention of some of the members from voting on the resolutions.[269] In 2006, the UN maintained its peace-keeping forces on the ground while the Abuja peace negotiations was ongoing between the government and one of the major militia groups, and in late 2006 it was decided that the UN should launch a joint mission with the AU for peace operation in the conflict. However, the operation was not approved until July 2007 when the requisite resolution, Resolution 1769, was adopted by the UNSC. This was the first time ever that such a joint mission would be established, and it became the biggest UN mission in history.

In 2011, the Doha Document for Peace (DDP) was signed by the government and the LJM which consists of power sharing and a compensation Fund for victims of the conflict in Darfur. This was intended to bring lasting peace to the region, however, violence, human rights violations and internal displacement persisted unabated. The violence which escalated in Darfur in February 2014 led to the adoption of UNSC Resolution 2148 in which the mandate of UNAMID was revised to focus on the following three priority areas: the protection of civilians, mediation between the government and armed groups, and support for community mediation.

[269] J. Prendergast and D. Sullivan, "Irresolution: The UN Security Council on Darfur", **ENOUGH Strategy Paper, 2008,** p. 334.

b. United Nations Mission in Sudan (UNMISS)

UNMISS was formed by the Security Council as a peacekeeping mission, and lead agency for all UN agencies and activities in Sudan.[270] Its main mandate of the mission included the use of good offices and the AU in resolving the conflict, support services for governmental activities, maintenance of peace, protection and distribution of humanitarian aid to displaced persons.[271]

UNMISS is also authorized to take necessary and appropriate measure in the deployment of its troops when necessary within its capacity, to provide safety for UN officials and facilities. Moreover, with conscientious recognition to the authority of the government of Sudan, UNMISS is mandated to provide protection to persons under imminent danger of attacks, and in this regard, the Security Council authorized up to 10,000 military personnel deployed to the conflict zone. Although UNMISS has no authority to undertake sustainable development, its activities would support ongoing work in this field, including the Sustainable Development Goal projects, as the case may be. The work of UN and the African Union in Sudan is complementary; they maintained strong relations at operational and strategic levels.

It is noteworthy that UNMISS was commissioned to assist South Sudan consolidate peace and helping with sectoral reforms in security and reconstruction activities of the government. The mandate was changed to civilian protection at the emergence of renewed

[270] Resolution 1590, 24 March 2005. United Nations Mandate in Sudan (UNIMIS), available at: https://peacekeeping.un.org/mission/past/unmis/mandate.shtml (retrieved on 5 June 2017).

[271] W. Fenton and S. Loughna, "The Search for Common Ground: Civil-Military Coordination and the Protection of Civilians in South Sudan", **Humanitarian Policy Group (HPG), Working Paper**, **December 2013**, p. 11, available at: https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8784.pdf (accessed on 5 June 2017)

crisis.[272] During the violence in December 2013, UNMISS served as a place of refuge for the vulnerable civilian population in expectation that hostilities would cease and civilians at the UN refugee camps would return to their communities.[273] The highlight of the violence was the droves of refugees who flocked into the UNMISS camps which at the time was unprepared for due to the problem of inadequate number of UN staff at the bases.[274]

Consequently, the UNMISS increased its military and institutional capacity, to enable it work more efficiently with the State's armed forces to institute internal governance.[275] UNMISS then established eight "*Protection of Civilian*" (POC) sites under UN protection across South Sudan.[276]

ii. Role of the AU and Regional Arrangement in Sudan

Since the UN was unable to take actions promptly to the atrocities carried out in the region, the need for an international mediator was inevitable. Therefore, the AU stepped in as a mediator, in adherence to the provisions of its Charter to the effect that human right violations would not be allowed to continue, and States would become more active in preventing the conflict from lingering.[277] International organizations like the EU and North Atlantic Treaty Organization refused to take appropriate steps in the crisis because of certain

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[272] D. Maxwell and P. Donnelly, Planning From the Future Component, the Contemporary Humanitarian Landscape: Malaise, Blockages and Game Changers Case Study: The Violence in South Sudan, December 2013 to Present, Feinstein International Center, **Humanitarian Policy Group**, **August 2015**, p. 7.

[273] Amnesty International, "South Sudan: Nowhere Safe: Civilians under Attack in South Sudan," May 8, 2014, Index number: AFR 65/003/2014, 37.

[274] W. Fenton and S. Loughna, "The Search for Common Ground: Civil-Military Coordination and the Protection of Civilians in South Sudan" *Op. cit*, p, 11.

[275] "Mission Report, South Sudan, "We Fear the Worst", **Fédération internationale des ligues des droits de l'Homme (FIDH)**, Paris, 4, **2015,** p.14, available at: https://www.fidh.org/IMG/pdf/report_south_sudan_final_english.pdf (retrieved on 5 August 2017)

[276] J. Hemmer, "We are laying the groundwork for our own failure": The UN Mission in South Sudan and Its Civilian Protection Strategy: An Early Assessment," **CRU Policy Brief**, No. 25, **January 2013**, p.1-8, available at: https://www.clingendael.org/sites/default/files/pdfs/20130100_cru_policybrief_no_25_unmiss.pdf (retrieved on 5 August 2017)

[277] The UN could have been a legitimate and strong intervener in the situation in Sudan, showing that the international community would not tolerate genocide and ethnic cleansing; however, internal constraints and lack of political will prevented it from acting directly.

internal restrictions on procedural challenges of military intervention. The vacuum of mediation was filled by the AU, which mediated the dispute between the government and other rebel groups which included *Janjaweeds*, JEM and SLA.[278]

Countries such as Rwanda, advocated for intervention in form of military action which would entail on provision of protection for civilians and humanitarian support. The initial AU forces consisted of few personnel and troops contributed by various African countries, but were subsequently increased to 7,000, which was still insufficient for carrying out its mandate in the region.[279] However, this move by the AU showed its readiness and willingness to take the lead in its security mandate in the continent.

The UN Security Council and African leaders had high expectations in the AU's security initiative in Sudan. Most important was disarming the Janjaweed militias, which numbered approximately 10,000-20,000 by 200,000 government military troops.[280] Thus, the number of the AU force was inadequate to confront the Janjaweed militias much less of disarming them.[281] The AMIS commission was shrouded in controversy due to varying perspectives held by members of the AU, also due to respect of the sovereignty right upon the State. Although many Western countries showed apathy towards providing military intervention, they however provided logistical and financial support to the AU mission, it was apparent that they had interest in ending the conflict.[282]

In resolving conflicts successfully, it is imperative to possess the appropriate mediator to facilitate the process. The AU was the appropriate mediator in the situation in Sudan, because it had adequate background knowledge of the region and conflict, had more interest

[278] B. S. Nikitin, "The Positive Impact of African Union Forces in Darfur", *Op. cit.* p. 2.
[279] P. Williams, "Military Responses to Mass Killing: The African Union Mission in Sudan", **International Peacekeeping,** Vol. 13, Issue 2, **June 2006,** p. 168-183.
[280] D. Gompert, et al. "Learning from Darfur: Building a Net-Capable African Force to Stop Mass Killing", National Defense University, Center for Technology and National Security, 2005, p. 5.
[281] P. Williams, "Military Responses to Mass Killing: The African Union Mission in Sudan" Op. *cit*. p.9.
[282] B. S. Nikitin, "The Positive Impact of African Union Forces in Darfur", *Op. cit.*, p. 2.

in settlement of the conflict over other international organizations. The cardinal AU mission in the resolution of the conflict was further supported and emboldened by the non-African countries who believed Africans should come up with solutions to solve their own problems. This may appear to be an inappropriate position in the face of the occurrence of genocide and grave human rights abuses, and humanitarian catastrophe where thousands of people were massacred. By virtue of the foregoing, it is arguable that the conflict was an international shame, and ought to be tackled collectively by the global community.

The issue of sanctity of the sovereignty right of the Sudan State that deterred UN from intervening is understandable, because even though the Sudanese government could not provide adequate security to its people, it still possesses power and sovereignty right over its territory. Nevertheless, more proactive steps should have been deployed by UN in mobilizing international organizations and NGOs to tackle the crisis, even though the permanent members of the Council has full responsibility in this regard. As a result of these, the AU was left with the burden of dealing with the crisis.[283] Consolidated mediation efforts were significant in providing successful outcomes for peaceful resolution of the conflict due to varying interests.

In the case of South Sudan, proximity to the region gave IGAD the advantage of taking the lead in the mediation. However, the AU maintained a central role in the overall resolution of an African conflict under the auspices of the continental structure. The silent arrangement was that IGAD take the lead in facilitating a political solution through mediation while the AU takes on the issues of providing protective space in international arena and tackle accountability related matters such as justice and investigating the alleged atrocities and human rights abuses carried out during the crisis.

[283] D. Kew, "**Nelson Mandela in Burundi: An Analysis of the Eminent Person Mediator in Africa**," UMASS Boston, 2000, p. 1.

AU's overall interest concerning issues of peace and security in the continent demanded that IGAD reports the progress, challenges and factors that may hinder the peace process to the Peace and Security Council of the AU, while it continued to execute the principle of solidarity with Regional Economic Communities (RECs) playing vital roles as major components of the AU. The AU commenced actions in the conflict in South Sudan by investigating the alleged atrocities and cases of human right violations.[284]

In the conflict the parties accepted IGADs' mediation, while AU remains the higher level of reporting, and to seek remedies. In Sudan's Darfur conflict, the AU took the lead with support from IGAD. Nonetheless, with the mounting discomfort of the deteriorating situation on the ground, IGAD role was strengthened with the IGAD plus, where the 5 regions of Africa were represented in the decision-making of the AUSC namely, Algeria, Chad, Nigeria, Rwanda and South Africa in addition to Troika and China.[285]

a. Darfur Peace Agreements- DPA (Abuja Agreement, 2006 and Doha Agreement, 2011)

A comprehensive mediation process to resolve the Darfur conflict began in 2004 in Abuja, Nigeria as initiated by the UN and assigned AU to undertake the negotiations. The AU team was led by the then President of Nigeria, Olusegun Obasanjo. However, because of attacks by the government forces on Darfur, the rebel groups declined to come to the

[284] A. Garang, "The impact of external actors on the prospect of a mediation settlement in South Sudan", Paper presented at the Academic Conference on International Mediation, University of Pretoria, 2-4 June 2015, Pretoria, South Africa, (2015), p. 22, available at: https://www.up.ac.za/media/shared/237/PDFs/International%20conference%202015/garang.zp60101.pdf (accessed on 5 August 2017).

[285] *Ibid*. p. 22.

conclusion of the negotiations.[286] At about the same time, the UN and Sudanese government adopted a Resolution on Darfur outlining the steps that should be taken by the government.[287]

The Abuja negotiations resumed in June 2005 under the leadership of the former Secretary-General of OAU, Ahmed Salim, and supported by UN, the US and the UK. The government of Sudan, the SLM and JEM initially were parties to the negotiations, but only the government and SLM signed the May 2006 Darfur Peace Agreement (DPA) which resulted from the negotiation.[288] The DPA intensified the conflict instead of resolving it. First, the negotiation of the DPA was not all inclusive as it did not include all rebel groups or tribal leaders and also did not give credence to the perspectives of the civilian population. During the negotiations, there was a split in the SLM, and the leader who signed the DPA lost his credibility as the representative of the group, thereby leading to internal conflict in the group. The second failure of the DPA is the inclusion of an impracticable election and referendum deadline while the conflict subsisted.[289]

All these shortcomings of the DPA came about because the process was unnecessarily accelerated as the EU and the governments supporting the mediation threatened to withdraw their support unless an agreement was reached expeditiously.[290] Thus JEM, which represents one of the major ethnic groups in Sudan, rejected the DPA because in an attempt to finish before the deadline, the mediators drafted an agreement without sufficient input from the parties.[291] Consequently, the DPA was a futile agreement that did not resolve the conflict in Darfur, rather it worsened the conflict as the aggrieved militant groups that were

[286] International Crisis Group, "Sudan's spreading conflict (III): The limits of Darfur's peace process", African Paper 3, 2014, p. 211.
[287] H. Slim, "Dithering over Darfur? A preliminary review of the international response", **International Affairs**, 80, **2004**, p. 819
[288] L. Nathan, "No ownership, no peace: The Darfur Peace Agreement", **Crisis States Research Centre, 2006**, pp. 1-9
[289] J. Flint, "Rhetoric and reality: The failure to resolve the Darfur conflict", **Small Arms Survey, 2010**, pp. 9-14.
[290] L. Nathan, "No ownership, no peace: The Darfur Peace Agreement", p. 4.
[291] *Ibid*., p. 5.

unrepresented during the mediation process joined forces and started attacking the government forces and SLM rebel groups.

Another round of negotiation commenced in 2007, under the joint AU-UN leadership. These negotiations took place in Libya, and this venue was contested for obvious reasons. Other issues in contention include the approach to be followed and the team involved as well as the lack of political will to implement agreements. The negotiation was suspended due to non-participation by main rebel leaders. In addition, the leaders of the mediation team had different perspectives on the approach to be followed, which led to conflict within the mediation team itself. A new joint UN-AU mediation team was constituted in June 2008, but was soon followed by the AU establishing a High-Level Panel on Darfur.

Thereafter, the UN-AU mediation continued in Doha, Qatar, in 2009. During the mediation the international community facilitated the establishment of an umbrella group for the rebels called the Liberation and Justice Movement (LJM) in order to overcome the division of rebel groups, but many of the groups opposed the initiative. Despite this, the DDPD was adopted in May 2011. On 14 July 2011, government of Sudan and LJM signed a protocol highlighting their commitment to the DDPD. In September 2012, JEM was split and a faction group led by Mohamed Bashir Ahmed (JEM-Bashir) emerged, which then signed the DDPD in Doha in March.[292]

The DPA did not appeal to the main rebel groups and the majority of the Sudan population, who continue to boycott these processes and peace initiatives. Consequently, the peace negotiations failed to tackle the conflict and build trust among the parties. More devastating is the failure of government to implement the agreements. This further eroded the

[292] Sudan Tribune "Sudan, Darfur rebels sign peace agreement in Doha" 2013, available at http://www.sudantribune.com/spip.php?article46015 (last visited 26 April 2016).

trust of the rebels in the said peace process and the conflict continued unabated, while the world looked on.[293]

b. The Comprehensive Peace Agreement (CPA)

The CPA was endorsed as a result of the mediation conducted under the umbrella of the IGAD, an eight-nation Horn of Africa regional economic community. During the period the CPA was signed, the rebel groups in the South unified into one group, the SPLM/A.[294] In line with the Agreement, South Sudan gained independence on the 9th of July 2005 under John Garang as South Sudanese President and first Vice-President of Sudan. The CPA comprises of six protocols which provided the following:[295]

a. A six-year Interim Period within which South Sudanese may take a referendum on remaining within the Sudan or secede.

b. A cessation of hostilities.

c. Establishment of a secular, semi-autonomous Southern Sudan.

d. Power sharing arrangements for all parties to the conflict.

e. 50/50 redistribution of petrol wealth between Sudan and South Sudan.

f. Conduct of elections within the interim period

g. Special status for the Abyei region with the opportunity to conduct referendum simultaneously as the South Sudan.

[293] IRIN: The inside story on emergencies, "Concerns over implementation of Darfur peace deal", NAIROBI, (23 June 2006), available at: http://www.irinnews.org/report/59423/sudan-concerns-over-implementation-darfur-peace-deal (accessed on: August 20 2017).
[294] African Union 2014a, supra, para. 41.
[295] M. Zapata, "Sudan: Comprehensive Peace Agreement and South Sudan Independence", **Enough Project, December 20, 2011.**

The endorsement of the CPA in was historic as it was well received by the northerners, southerners and the international community. The CPA served as an interim constitution for Sudan, which created power sharing among the NCP and SPLM/A, it also instituted a semi-autonomous regional government in the south under the leadership of SPLM/A, and elucidate a system for the redistribution of oil revenues between the North and South, and mandated the government to conduct a referendum in the South in 2011. The parties of the peace agreement and the foreign interlocutors who sponsored the CPA considered the period towards the referendum as a window for the ruling NCP to commence democratic reforms, and show unity so as to the incite southerners to vote against their independence in 2011. But this was not the case.[296]

The CPA was finally responsible for terminating twenty-one years of armed conflict in Sudan. The internationally brokered accord between the governing NCP in the North and the Southern rebel forces, the SPLM, was applauded as a remarkable achievement in peaceful resolution after two decade of armed conflict. Unfortunately, years later, an independent South Sudan is ravaged in armed conflict, due to the failure of the CPA to establish peace and stability. Another armed conflict erupted across South Sudan in December 2013 after enjoying its independence for barely two years.[297]

The origin of the armed conflict was attributable to the tensed political relationship between President Kiir and Machar, who are both in government and members of the SPLM. During the CPA interim period, these leaders presented different candidates in the planned 2010 elections.[298] In 2013, while South Sudan was preparing to conduct its first general

[296] J. Campbell, "Ten Years Later: Taking stock of Sudan's Comprehensive Peace Agreement", **Council on Foreign Relations, January 15, 2015**, pp.10-56, available at: https://www.cfr.org/blog/ten-years-later-taking-stock-sudans-comprehensive-peace-agreement (retrieved on 15 August 2017).
[297] *Ibid.* p. 15.
[298] C. H. Vhumbunu, "A Hurried and Imposed Peace Pact?: Conflict Resurgence and the Agreement on the Resolution of the Conflict in the Republic of South Sudan", 19 October 2016, available at:

elections following its independence, which was scheduled for 2015, factional political struggles within SPLM became escalated. Machar, together with Pagan Amum Okiech (then SPLM secretary-general) and Rebecca Nyandeng de Mabior (member of the SPLM Political Bureau and widow of the late SPLM leader, John Garang), publicly criticized the SPLM chairman and declared there intension to challenge president Kiir at the presidential race. The frosty relationship between the President and his Vice, in addition to contestations to improper army recruitments, were part of the foundational causes of the armed conflict.[299]

c. Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS)

The post-independence civil war in South Sudan was mediated by the IGAD which was an East African regional integration-inspired organization in accordance with the UN Charter, which established regional conflict mediation and resolution mechanism. The peace negotiations began on the 4th of January, 2015 hosted in Addis Ababa, Ethiopia. However, efforts of the peace process suffered setbacks because of the missed deadlines; however, the ARCSS was signed in August 2015. This initiated the establishment of a Transitional Government of National Unity in April 2016, while Reik Machar, who had earlier fled Juba after civil war erupted, returned to the country. The TGoNU recognized James Wani Igga as the second vice president, even though he was not one of the signatories to the Agreement. Before the ARCSS was signed, the UN reported a grave humanitarian crisis in South Sudan brought about by the armed conflict, resulting in millions of people facing severe food shortage, millions in need of water and hundreds of thousands dead.[300]

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https://reliefweb.int/report/south-sudan/conflict-resurgence-and-agreement-resolution-conflict-republic-south-sudan (accessed on August 20 2017).

[299] *Ibid.*

[300] Government of the Republic of South Sudan, "The Reservations of the Government of the Republic of South Sudan on the "Compromise Peace Agreement on the Resolution of the Conflict in South Sudan, Juba, 26th

The ARCSS was signed between the Sudan People's Liberation Movement and Army in Government and SPLM/A in Opposition, both represented respectively by President Kiir and First Vice President Machar. The agreement was ratified by the National Legislative Assembly of South Sudan on 10th September, 2015. This Agreement ended albeit temporarily, the armed hostility in South Sudan from December 2013 to 17th August, 2015.

The Peace Agreement also facilitated the establishment a permanent ceasefire, unification of forces, and a multi-stakeholder Joint Monitoring and Evaluation Commission to monitor its implementation. Significantly, the agreement also provided for the Hybrid Court for South Sudan to be instituted by the AU armed with authority to prosecute perpetrators of infractions committed during the conflict. Both parties signed the Peace Agreement and, to complement its implementation, the UNSC on 9th October, 2015 extended the mandate of UNMISS with an enhanced force ceiling of 13,000 with the adoption of Resolutions 2241 and 2252.[301]

However, the situation which occurred on 7th July, 2016, were characterized by armed attacks carried out in Juba by the SPLM/A-IG and SPLM/A-IO which extended across the city, leading to the deaths of many civilians and military personnel, destruction of properties and displacement of persons. This renewed fighting provoked the international community to reconsider and reflect on the processes which brought about the signing of the Agreement.[302]

On 12th June, 2017, the IGAD Assembly of Heads of States at its 31st Summit, in Addis Ababa, Ethiopia, decided to convene a High-level Revitalization meeting of the participants to the ARCSS. The coverage of the renewed peace process was to include

of August 2015", 2015, pp. 4–12, Available at: http://carleton.ca/africanstudies/wp-content/uploads/GRSS-reservations.pdf (Accessed on 20August 2017).

[301] *Ibid.* p. 5.

[302] *Ibid.* p. 7.

estranged groups to discuss concrete measures for peaceful resolution of the conflict, restore permanent ceasefire, full implementation of the ARCSS, and to develop revised realistic timelines and implementation schedule towards elections within the Transitional period.[303] This meeting established the Revitalization the Agreement on the Resolution of the Conflict in the Republic of South Sudan.[304]

d. African Commission on Human and Peoples' Rights

This Commission is the body mandated to promote and protect rights of civilians and interpret the African Charter as regards individual rights.[305] The Commission carried out significant functions in the Sudan crisis, but it was only able to make recommendations, given the fact that it is a quasi-judicial body. For example, the Commission undertook a fact-finding mission to Darfur in 2004 and established that there were massive humanitarian violations perpetrated by parties.[306]

The government responded to the report by insisting that it was efforts to protect human rights in the conflict and, as such, it considered the report as reflecting unsubstantiated allegations mainly peddled by the media. Despite this reaction from the government and the failure of AU to execute the African Commission's recommendations and findings has been

[303] The Inter-Governmental Authority on Development (IGAD), "Revitalization Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS)", Addis Ababa, Ethiopia, (12 September, 2018), (Preamble), p. 1.

[304] Abraham Kebede, "The Chairperson of the Commission welcomes the signing of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan", African Union Peace and Security, (14 September 2018), available at: http://www.peaceau.org/en/article/the-chairperson-of-the-commission-welcomes-the-signing-of-the-revitalized-agreement-on-the-resolution-of-the-conflict-in-the-republic-of-south-sudan (retrieved on 18 September 2018).

[305] African Commission on Human and Peoples' Rights, "Ratification Table: Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court of Human and Peoples' Rights," available at http://www.achpr.org/instruments/court-establishment/ratification/ (retrieved on 20 August 2017).

[306] African Commission on Human and Peoples' Rights "Report of the African Commission on Human and Peoples' Rights Fact-Finding Mission to the Republic of South Sudan in the Darfur Region" (2004a), available at http://www.achpr.org/files/sessions/41st/mission-reports/sudan/misrep_factfind_sudan_2004_eng.pdf (retrieved 3 April 2016)

the catalyst for exposing the catastrophe and true picture of the events on ground to the world.[307]

The African Commission came up with a number of Resolutions urging parties to desist from hindering humanitarian assistance missions to civilian populations, while urging President Al-Bashir to cooperate with the investigations by the ICC prosecutor. However, the AU resolved in 2009 not to cooperate with the ICC due to what it considered as lack of consultation by the UNSC before the Darfur crisis was referred to the ICC, and the attendant threat such unilateral action posed the peace process.

In terms of Article 59, all measures taken in line with the African Charter remain confidential until the Assembly decides otherwise. This implies that the Commission on its own does not have the power to implement its own recommendations. This can only be done by the AU, which has been described above as lacking the political will to enforce the recommendations. One of the measures at its disposal which it failed to employ is the procedure under Article 58 of its Charter. Pursuant to this Article, the Commission must refer situations resulting to grave human rights violations to the AU Assembly of Heads of States, following which the Assembly may direct the Commission to do a thorough study of the case. However, to date the Commission has been hesitant to use the procedure under Article 58, partly due to the tendency of the Assembly to show solidarity and not to expose its failings.[308]

[307] African Commission on Human and Peoples' Rights Resolution on Darfur (2004b), available at http://www.achpr.org/sessions/35th/resolutions/68/ (retrieved on 22 August 2017)

[308] African Commission on Human and Peoples' Rights, "Resolution on the Human Rights Situation in Darfur", (11 May 2005), available at http://www.achpr.org/sessions/ 37th/resolutions/74/(retrieved on 22 August 2017).

e. African Peer Review Mechanism and the Court on Human and Peoples' Rights

The APRM is a mutual and voluntary self-monitoring programme of AU States for promoting and reinforcement of high standards of governance and leadership. The mandate of the APRM is to guarantee that the policies and decisions of African countries comply with the laid down values in the following four key areas; democracy, economic transformation, corporate governance, and socio-economic development.[309] Sudan is a voluntary member of the APRM. The APRM undertook a mission in January 2016 to Sudan upon the invitation of Sudan. However, this had nothing to do with the crisis in Darfur, but was rather a pre-country review intervention to examine and appreciation the National Dialogue as part of the APRM procedural phases.[310]

The voluntary nature of the mechanism makes it less effective as the APRM heads of state often avoid criticizing one another in order to avoid provocation and retaliation. Sudan signed the Protocol of the African Court on 9th May, 1998, but has not authorized its implementation. While the judgments of the Court are binding on members who have accepted its jurisdiction, the Court has no jurisdiction over Sudan as the latter has not ratified the relevant Protocol. Consequently, the Court currently has no jurisdiction to adjudicate over the Darfur conflict.[311]

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[309] New Partnership for Africa's Development African Peer Review Mechanism (16 February 2004), available at http://www.nepad.org/economicandcorporategovernance/african-peer-review-mechanism/about (accessed on 22 August 2017)

[310] African Peer Review Mechanism APRM Pre-Country Review Mission to Sudan (11 January 2016), available at http://aprm-au.org/viewNews?newsId=92 (accessed on 22 August 2017).

[311] *Ibid.*

f. African Union Commission of Inquiry on South Sudan

While peace process was ongoing, a simultaneous and equally vital process of AU Commission was also underway. On 30 December 2013, and for the first time since it was established, AU directed the Commission to establish a commission of inquiry known as the AU Commission of Inquiry on South Sudan mandated to launch investigations on human rights violations and other crimes carried out while armed conflict was ongoing in the country, and make recommendations for ensuring responsibility, accountability, reconciliation and healing for the nation.[312]

This was a landmark decision with great significance for the reason that the AU directed the AUCISS to work with the AU Commission on this even though South Sudan was during the time the only AU member not party to the African Charter, which established the AU Commission. Had South Sudan been a party to the African Charter, the AU Commission would have been in a position to undertake a fact-finding mission to South Sudan such as the one in Darfur. It would also have been able to entertain information concerning South Sudanese government's failure to address the historical humanitarian infractions right from the days of the liberation struggle, the effects of which sowed the seeds for the current conflict. Its recommendations would have helped avert the relapse of the country back into conflict.

The AUCISS, however, stepped in where the AU Commission had no jurisdiction, completed its investigations and presented its final Report on 24th July, 2015.[313] The AU-PSC felt that it would not be prudent to immediately publish the report in light of the ongoing IGAD peace process. The final Report of AUCISS was subsequently published on the 26th

[312] African Union *Communiqué* of the Peace and Security Council 411th Meeting (2013a), available at http://www.peaceau.org/uploads/psc-com-411-south-sudan-30-12-2013.pdf (accessed on 28 March 2016)

[313] African Union *Communiqué* of the Peace and Security Council 515th Meeting (2015a), available at http://www.peaceau.org/uploads/psc-515-com-south-sudan-13-june-2015.pdf (accessed on 28 March 2016)

September, 2015. The Report identified the underlying causes of the conflict and indicted both parties in wide-spread and systematic human rights abuses, such as massacres, the drafting of child soldiers, sexual assault against women and children. Finally, the Report recommended directed at the economic sources of the conflict, justice and reparation for the victims through institutional reform, reconciliation, disarmament, punishment of those responsible for perpetrating the atrocities, demobilization and reintegration of the various armed groups back into the society.[314]

III. AN APPRAISAL OF THE UN PEACEFUL METHODS OF CONFLICT RESOLUTION

As viewed from the exposition in the Sudan/South Sudan conflicts, the UN has been highly committed in its mandate of ensuring peaceful settlement in armed conflicts, with progressive results, sending large peacekeeping troops to the conflicts, and working together with the AU and other institutions in a manner which had never before been seen. Till date there has been a coordinated effort by the UN, AU and sub-regional bloc IGAD to resolve the conflict. The progress made in South Sudan before the event of July 2016 is attributable to the cooperation, and unity of purpose exhibited by the IGAD, the AU, the UN and other stakeholders. While this initial success may appear to have been eroded by events post-July 2016, significant hope remains in the IGAD-led process of revitalizing the Peace Agreement, backed by the AU and the UN. A headway could not have been made without the support and backing of the UN through its Resolutions and sanctions, as well as its collaborations with the AU.

[314] Final Report of the African Union Commission on South Sudan: Executive Summary, Addis-Ababa, October 15, 2015, pp. 2-26. Available at: http://www.salo.org.za/wp-content/uploads/2016/02/auciss.executive.summary.pdf (retrieved on July 15, 2017).

The UNMISS is in charge of undertaking peacekeeping, supported by the UN Interim Security Force for Abyei (UNISFA). UNMISS has unmatched capacity for analyzing and monitoring armed hostilities. It is adequately equipped to provide information sharing and expertise with other relevant bodies involved in the peace-building. The Civil Affairs section of the UNIMISS collates and dispatch information and undertakes conflict prevention and resolution activities in collaboration with International Non-Governmental Organization, and government offices. UNMISS provides logistical and technical support to conflict resolution initiatives. While the UN Development Programme provides extensive support in the security sector, including to the Community Security and Small Arms Control Bureau, the former Ministry of Peace and the South Sudan Police Service, developing effective community security structures, and democratic institutions.[315]

Perpetrators of these attacks gave no regard for the UN protection sites as a place of refuge under international humanitarian law.[316] Series of attacks were carried out by parties on UNMISS bases across South Sudan, leading in the loss of lives of peacekeepers including civilians. The UNMISS played an unprecedented role in the humanitarian crises as protector of civilians and as a watch dog over the participants in the conflict.[317] The POCs became dangerous for both the refugees and the UN peacekeepers.[318] These kinds of attacks, threats and challenges are undoubtedly one of the most intractable situations humanitarian organizations have faced in recent times.[319]

In 2018, the South Sudan crises received huge attention from the UN and AU brought about the facilitation of the peace process between warring rebel fighters of Rick Machar and

[315] Richard Reeve, "Peace and Conflict Assessment of South Sudan", **International Alert, 2012**, p. 7.
[316] Amnesty International, "South Sudan: Nowhere Safe: Civilians under Attack in South Sudan", *op. cit.*, p. 37.
[317] Ibid, p. 38.
[318] South Sudan Humanitarian Project, "South Sudan Macro Conflict Analysis", Juba, **South Sudan Humanitarian Project, 2015**, p. 1/1.
[319] D. Maxwell and P. Donnelly, "The Violence in South Sudan from 2013 to present", *op. cit*. p. 12.

the government forces of President Kiir. This peace process was initiated by the IGAD mediated by President Bashir of Sudan. In September 2018, a Peace Deal was signed in a ceremony reported worldwide to end the lingering internal disputes within South Sudan and its environs, when both primary actors agreed to a power-sharing model for the final resolution of the armed conflict. This ended the conflict in the region and marked the beginning of greater things for Sudan and South Sudan.

Prior to the signing of the peace Agreement it is evident that the decentralization of the peaceful settlement was global in scope, it became peculiar to African continent. In view of the complex and difficult nature of African conflicts, and the lack of political interests demonstrated by the P5 of the Security Council in the conflict, the AU embarked the rapid regionalization of conflict management in the continent. For example, Security Council members were reluctant to provide troops and funds for UN missions during conflicts.[320]

In recent past it is a fact that the Africa-UN relationship was frosty, as UN Security Council policies concerning Africa were characterized as distance and driven by double standards. The event that provoked the most criticism of the UN Security Council's position on Africa was the extraction of UN troops (UNAMIR) right when the Rwandan genocide broke out. Moreover, the UN Security Council did not, until mid-1999, consider military intervention to protect civilians in some of the world's deadliest armed conflicts at the time, like the conflicts in South Sudan, DRC, Liberia, Rwanda and Sierra Leone.[321]

Similarly, the UN maintained its peace-keeping forces in Darfur, and in late 2006 it was decided that the UN should launch a joint mission with the AU. However, it took until

[320] This is as a result of the failed UN mission in Somalia which involved the US-led Unified Task Force (UNITAF) (1992/93) and its successor United Nations Operation in Somalia II (UNOSOM II) (1993/95). Cleaver, Gerry and May, Roy, "Peacekeeping: The African Dimension", **Review of African Political Economy**, 22, No. 66, **1995**, p. 485.

[321] J. Boulden, "Double Standards, Distance and Disengagement: Collective Legitimization" in the Post-Cold War Security Council", **Security Dialogue** 37, No. 3, **2006**, p. 419.

July 2007 for the requisite Resolution[322] to be adopted by the Security Council. This was the first time such a joint mission was attempted, and it was the biggest UN mission since the Balkans armed conflicts. Yet from the beginning there was a continued power struggle within the UNAMID, with the UN continuing to blame the AU for any failures and insisting that it was primarily a UN Mission since it had been constituted by a UN Resolution. In 2011, through Resolution 1997 (2011), the UN Security Council recalled UNMIS in order to leave UNAMID as the only UN Security Council constituted body present in Sudan.

UN-AU joint mediation effort was transformed into a more complicated framework, as both organizations shared fatally different perspectives. The credibility of the mediators was marred by continued international criticisms due to internal rift among the rebels and government restrictions. Also, the relationship between the UN and AU during negotiations was described to be more competitive than complementary.[323]

The UN is tasked with supporting the implementation of the peace Agreements and with facilitating the voluntary reintegration of displaced persons to their communities. The UN Security Council Resolution lacked implementation mechanisms and was repeatedly ignored by parties. While these resolutions together had the ability to bring about real change in the region, some factors prevented any meaningful action to flow from them. One of the most important reasons is that there was division among the P5 on how to approach the conflict situation, leading to the abstention of Russia and China from these Resolutions. There have even been allegations that China was supporting the government of Sudan and was providing them with arms and training. Without agreement among the P5, it is unlikely

[322] Resolution 1769, (2007).

[323] Sudan's Spreading Conflict (III): "The Limits of Darfur's Peace Process", **Crisis Group Africa Report** N°211, **27 January 2014**, p. 4. For example, to resolve the problem of two mediators, a joint AU-UN mediation led by Djibril Yipènè Bassolé was created in June 2008. However just three weeks after appointing him, the AU created its High-Level Panel on Darfur (AUPD), led by the ex-South African president, Thabo Mbeki.

that any real action will follow on the implementation of resolutions, as was indeed the case. Secondly, there was no consultation with the African states on these Resolutions, festering reluctance for cooperation with the Security Council.

The UN will, furthermore, have to grapple with and facilitate a framework for continuous resolution of conflict in the region. De-mining, repatriation, and resettlement are the great challenges the UN will contend with regarding the formidable costs and the required technicalities for the job. In this regard, the UN will have to see that both the internal and external actors adopt harmonized structures and concerted action to undertake implementation of agreements.

This research began when there were heightened tensions in the region, however, with the current peace process and Agreements reached between the parties as facilitated by the UN, AU and other international actors, the end to hostilities seems to be on the horizon if the provisions of the Agreements were fully adhered to and implemented, and enforced.

Therefore, more coordination and cooperation among the various actors at the global and regional levels is vital to any success that may be achieved. Further, while it is important that the negotiation should give priority to ceasefire Agreements to end violence, the international community should also focus on strong negotiations that can deal with the root causes of the conflicts. The start of resolution of these intractable conflicts may have taken place with almost a year of vastly lower conflict rates. However, the international community cannot allow itself to be pulled into a false sense of peace and security. The decision by the

UN to remove almost a third of its peace-keeping troops have the tendency to upset this delicate balance achieved thus far.[324]

The international community must work together to contribute to sustainable peace in the continent and around the world. The effectiveness of peace Agreements mostly depends on the level of interest and cooperation demonstrated by participants in the peace pact. The imposition of deadlines to pressurize parties to sign agreements, even in circumstances when the end justifies the means, succeeds in influencing parties to sign the dotted lines but in most cases fails to achieve the much-needed peace, and may lead to parties to be reluctant and unwilling to implement terms of the Agreement.[325] Consequently, in mediating conflicts patience, persistence and determination must come into play. The UN and mediating entities must facilitate adequate engagement among all parties, and discuss extensively on the concerns of every interest so that all parties are satisfactorily on board. At the same time, adequate measures should be entrenched to preserve all that has been achieved so far by the then transition government of South Sudan. This is can be achieved through dialogue and negotiation by parties.

The United Nations has seen the need to change its usual and predictable approach to regional mechanisms. This means utilizing regional organizations in resolving armed conflicts to relieve too much burden placed on the UN. The former UN Deputy Secretary General Jan Eliasson is of the opinion that some of the conflict-mediation mechanisms utilized in the past are no longer relevant in the face of the changing nature of conflicts, and the rise of new military actors, which has transformed the calculus when it comes to war and peace. Finally, he advised that UN and other international organizations should adjust to this

[324] Somini Sengupta, "U.N. to reduce peacekeepers in Darfur region of Sudan", New York Times, 29th June, 2017, para. 2. Available at: https://www.nytimes.com/2017/06/29/world/africa/united-nations-security-council-sudan-darfur.html (retrieve on July 6, 2017).

[325] J. R. Rummel, **The Conflict Helix: Principles and Practices of Interpersonal, Social and International Conflict and Cooperation,** New Brunswick: Transaction Publishers, 1991, p. 221.

switch and recognize that effective conflict resolution can only be achieved through cooperation.[326]

The utilization of continental arrangement by UN in tackling the Sudan and South Sudan armed conflicts coupled with the success achieved thus far in resolving the conflict, as well as, similar armed conflicts in the continent is a testament to the success achievable using the UN peaceful settlement mechanism. This also exhibits the readiness and capability of the AU and its sub-regional organizations to settle their disputes through effective collaboration with the UN. The next Chapter of this thesis will unravel the rationale for evolution of a new structure for peace in the continent, and prospect for a pan-African peace and security structure as a front-runner in peaceful resolution of armed conflicts in Africa.

[326] Policy Forum, "Advancing Chapter VIII: The AU-UN experience", the African Union Commission, and the Permanent Mission of Sweden to the UN, International Peace Institute, May 4, 2015, available at: https://www.ipinst.org/2015/05/advancing-chapter-viii-the-au-un-experience-2 (accessed on 8 August 2017).

CHAPTER THREE

AFRICAN PEACE AND SECURITY STRUCTURE

I. EMERGENCE OF THE AFRICAN PEACE AND SECURITY STRUCTURE

The emerging structure for peace in Africa places the AU as a competent continental partner of the UN in line with the regional arrangements for pacific settlement system. The evolution of AU calls for a major change from the constant reliance on the global system to Pan-African security arrangements, especially with regards to intervention for civilian protection and implementation of peace. The Constitutive Act of the AU which established the Peace and Security Council reiterates on developing a continental system having the capacity of preventing, managing, and resolving African armed conflicts.[327]

The UN is expected to support the evolving AU peace and security structure. Events leading to the termination of the Cold War meant that UN could act more frequently in a number of conflicts throughout the world through the Security Council. For the first decades, the UN was acting on its own in achieving world peace. However, from the perspective of the two Security Council Resolutions in 2011 in Resolutions 1973 and 1975, on Libya and Cote d'Ivoire, respectively, shows a drastic departure from the way the UN responds to armed conflicts in contemporary times.[328]

In view of this, in resolving armed conflicts in Africa, the UN thought it expedient not to work in isolation but to rather cooperate with regional partners, in the case of Africa, the AU. This is important because these armed conflicts are localized and African leaders have a better understanding of the various conflicts ongoing in their regions; such as the

[327] K. Powell, "The African Union's Emerging Peace and Security Regime: Opportunities and Challenges for Delivering on The Responsibility to Protect", **Working Paper**, The North-South Institute, No. 119, **May 2005**, p. 1.

[328] D. M. Malone (ed.), **The UN Security Council: From the Cold War to the 21st Century,** Lynne Rienner, Boulder, USA, 2004, p. 1.

causes of the conflicts, the various groups and parties involved in the conflicts, and most importantly the best strategy by which to resolve the conflicts and achieve peace. The UN operations in the continent has been very challenging because the conflicts are multifarious in nature in terms of their background, conditions, driving forces, consequences and amenability for settlement. It has been observed that the transnational dimension of African conflicts is important for giving a clearer picture of the origin, evolution, dynamics and length of time of these local and regional security complexes to achieve resolution of the conflicts and peace.[329]

In recent times, African leaders have seen the need to champion the course of resolving their conflicts themselves, this is evident from the establishment of a more efficient and effective African Union with specific organs empowered to ensure effective peace enforcement process. AU peace and security structure was developed partly with the aim of creating global legitimacy for enhanced regional ownership and conflict resolution. The key leaders behind the African Peace Architecture, by associating themselves with AU project, increasingly generated international legitimacy for the activities of organization. The establishment of the AU reflects the aspiration of some African leaders to institute a democratized and self-reliant African community, and a greater level of globally acceptable power. It also triggered the question of need to transform the AU into an independent player in world peace and security. The AU normative structure also demonstrates the impact of the international response to the atrocities in Rwanda and other African conflicts. The extraction of UN troops deployed for the peace mission in Rwanda from the country at the onset of the crisis, led to wide spread indignation of the UN role in African conflicts, this necessitated the

[329] F. Olonisakin, **African Peacekeeping at the Crossroad: An Assessment of the Continent's Evolving Peace and Security Architecture**, External Study, DPKO Best Practices Unit, September 2004, p.4.

rise of the African Peace Architecture under the AU system for adequate and efficient management of African armed conflicts.[330]

Since the 1990s, African organizations have been more involved in ensuring peace and security at the global scene. The African Union in collaboration with the UN is working strategically to ensure the termination of ongoing conflicts and preventing the eruption of crisis in the continent. This realization by African leaders to champion the course of peace in their regions comes with some hurdles due to the fact that the UN Charter sets the limit to which regional bodies can interfere in world peace and security, since, the UN Charter gives the Security Council the mandate to be the dominant actor in securing world peace. It also requires authorization from the UN Security Council before regional organizations can proceed on security intervention and enforcement.

The need for active involvement of the UN Security Council and other regional organizations in peace-keeping while peace mediation or negotiation are ongoing is remotely connected to the argument that, in resolving armed conflicts, reasonable and proportionate level of force must be employed to keep peace while negotiating the settlement of the armed conflict.[331] The AU has been commended as the first regional organization to pioneer intervention right with force in its member States on humanitarian grounds. This provision will be discussed further in subsequent sub-headings of this thesis.

Generally, peaceful settlement is a matter of peaceful engagement using measures such as mediation, fact finding, negotiations, e.t.c., listed under Article 33 of the UN Charter. Nevertheless, this is does not exclude the application of Chapter VII and corresponding

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[330] L. Gelot, African regional organizations, peace operations and the UN, in P. Wallensteen and A. Bjurner (ed.), **Regional Organizations and Peacemaking: Challengers to the UN?**, Milton Park, Abingdon, Oxon; New York, NY: Routledge, 2015, p. 142-143.

[331] S. S. Kayode, "Intervention Brigade for the Congo: A precedent for UN Peace Enforcement", **Review of International Law and Politics**, Vol. 10, Issue 38, **2014**, pp. 99 -118.

activities by regional organizations. Arguably, peacemaking cannot be achieved without peace enforcement, that is, the utilization of military intervention to accomplish peace and security in particular directions favoured by regional organizations or the UN. However, it should be made clear on this note that, legitimate use of force must be approved by Security Council. The UN Charter explicitly prohibits regional organizations from venturing into any military intervention measures outside the express approval of the Security Council, although it allows limited and temporary self-defence intervention as specified under the Charter.[332] A number of other measures are open for the AU such as mediation as well as diplomatic and economic sanctions to exert pressure on parties to negotiate peace and resolution of the conflict.[333]

The attitude of the AU towards resolving armed conflicts in the African continent and interacting with the UN has changed over the years. The rise in the number of regional and sub-regional organizations (such as ECOWAS, SADC and IGAD) involved in peace processes in various conflicts in the continent signifies what can be labeled as a regional paradigm shift in world peace and security system. This regional shift has extensively influenced the efficiency of the AU in peacemaking as well as its interaction with the UN. A counter-reaction against the dominance of the UN and thus an ideological push for regional solution can be observed from the common slogan that the international community must leave "African problems to Africa and African solutions to African problems".[334]

Some commentators observed that, Africa has so many problems to be grappled with such as the crisis in the Libya, South Sudan, Nigeria, Ethiopia, Eritrea, and Somalia to mention a few. Therefore it is impossible for Africa to solve its problem alone given the international nature of such armed conflicts. Yet, the recent progress witnessed in the role of

[332] Article 51, UN Charter.
[333] P. Wallensteen and A. Bjurner, "The Challenge of Regional Organizations", *Op. cit.* p. 7.
[334] *Ibid*, p. 7.

IGAD in South Sudan, and the developments in Ethiopia/Eritrea and Congo shows the efficiency and capability of the Pan- African system in resolution of armed conflicts in the continent.[335]

A. African Solution for African Problems

The notion is expected to engender a sense of pride, independence, ownership and responsibility amongst all African States.[336] This concept dates back to the era of the OAU, which demanded that members should apply African solutions first when soliciting conflict management support from the international community. Generally, it is evident that external military interventions, including those provided by the UN, are likely to stimulate unfavourable political reactions and related problems which may complicate the conflict.[337]

The African solutions concept received wide acceptance and approval as a result of the some key factors which converged as the guiding elements. Central to these is the need to develop a Pan-African conflict management system with swift response capabilities. Firstly, African States have declared their readiness to resolve crisis emanating within their territories internally and while minimizing the interference of external actors in the resolution of local armed conflicts; with this they can build trust through frequent interactions and dialogue. Consequently, governments are expected to spearhead conflict response measures in their territories. Secondly, African States have compelling interest in resolving internal security challenges, and are conversant with the nature of these conflicts compared to external states. Thirdly, non-African States and coalitions tend to show apathy, and only respond in

[335] F. Olonisakin and C. Ero, "Africa and the Regionalization of Peace Operations: The U.N. and ECOWAS", in **The United Nations and Regional Security: Europe and Beyond**, Michael Pugh and Waheguru Pal Singh Sidhu, (eds), 2003 p. 233

[336] L. Nathan, "African Solutions to African Problems South Africa's Foreign Policy", **World Trends Journal of International Policy**, 92, Vol. 21, **September/October 2013**, pp. 48-55.

[337] T. M. Mays, "African Solutions for African Problems: The Changing face of African-Mandated Peace Operations", **The Journal of Conflict Studies, Vol 23, Issue 1, 2003**, pp. 103-125, available at: https://journals.lib.unb.ca/index.php/jcs/article/view/353/552 (accessed on 25 August 2017)

situations that are beneficial their interests and not always because they are concerned about security threat millions of Africans face in times of armed conflicts.[338]

The subject arises on the extent to which the AU's concept of African solution for African problems may undermine and challenge a harmonious and effective world peace and security system and the authority of the UN. It has been established that international enforcement action needs the express authorization of the UN Council. The reality is that the UN has been forced to take a pragmatic attitude and accept such infringements on its authority when the UN has failed to lead a peace operation but only to mandate such operations.

Accordingly, the peace and security structure projected in the PSC Protocol is to be implemented through Africa's own resources, with continuous acknowledgement of the UN as the central authority for approval of its peace intervention. The PSC Protocol place the AU under a strengthened security scheme comprised of regional bodies, including the UN and other key members of the international community.[339]

African security community has matured greatly over the past years flowing from the continued effort of the AU, and other sub-regional organizations to strengthen the continent's security architecture first and foremost with the implementation of the Peace and Security Council of the AU, including other structures. With six peace and security operations between 2003 and 2015, among those the three large-scale missions to Burundi,

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[338] T. M. Mays, "African Solutions for African Problems: The Changing face of African-Mandated Peace Operations"*Ibid*. p. 110.

[339] Cedric De Coning, "Can the AU Finance its own Peace Operations, and if so, what would the impacts be?": Contribution to the Annual Report of African Union Peace Operations, African Union and the Kofi Annan International Peacekeeping Training Center publication, 2018, **Complexity for Peace Operations, March 28, 2017**, para. 2-22. Available at: https://cedricdeconing.net/2017/03/28/can-the-au-finance-its-own-peace-operations-and-if-so-what-would-the-impact-be/ (retrieved on July 20, 2017).

Sudan, and Somalia, the AU has clearly strategically positioned itself as Africa's leading regional security player for armed conflicts resolution on the continent.

"African solutions for African Problems" has not only been endorsed by AU member States, but largely also by Western governments that have invested heavily into the strengthening of African regional security structures. There is a long list of foreign sponsored training and capacity building programmes for regional security operations in Africa, like the US African Contingency Operations Training Assistance, and the British Africa Conflict Prevention Pool to further support the African Security Architecture.[340] Therefore, in Africa, the regionalization of peace and security operations is trendy and has gained global support for resolving armed conflicts in the continent.

For decades the UN and AU have struggled to settle several armed conflicts in Africa with little or no results leading to some scholars questioning the effectiveness of a peaceful settlement driven by the AU and other sub-regional organizations with the UN. The recent change in the dimension of peace process and attitude of African leaders in cooperating with regional organizations during peace negotiations and mediations reflects the paradigm ideological change and the effectiveness of the evolving trend in regionalization of peace processes. This is evident from the historic visit by the Ethiopia's Prime Minister to former rival and neighbor Eritrea with intent to ending the decade old conflict, as well as the successful conclusion of peace negotiations and mediation in South Sudan where conflict has raged on since 2013 till date.

A close observation of the African Union peaceful settlement effort in Sudan and South Sudan reveal that the organization possesses the will to execute its mandate to ensure

[340] S. Riesche, "Bosnia, Dafur, and the Actorness of Regional Organizations: Assessing the Performance of EU and AU Regional(ized) Peace Operations", in F. Attina, and D. Irrera (eds.), **Multilateral Security and ESDP Operations**, London and New York, Routledge, 2016, p. 131.

peace and stability in the continent, engage in intervention for ensuring civilian protection, and conflict resolution. The AU is demonstrating commitments to filling critical gaps in the continent's security structure, and has recorded some level of success in implementing peace in Rwanda, Cote d'Ivoire, Burundi, Sudan and South Sudan.[341] It has also created conditions conducive to UN deployment of peacekeepers, humanitarian aid workers and intervention, and continues to work closely with the UN for the provision of necessary support when the AU lacks the adequate capacity to nip the menace of armed conflicts in the bud when they occur.[342]

B. The United Nations and the African Union

The African Union was established within the framework of a transformed African regional organization.[343] This transition was necessary due to the urgent need for inclusion in broader global development and growth for the continent. The OAU had adopted a Declaration which was initiated to usher the OAU into a new approach aimed at responding to issues of human rights, democracy and peace, security and development in the continent.[344] However, the subject of peace and security was still considered a restricted area within the exclusive national jurisdiction of States. Therefore, the OAU refused to react or interfere in local conflicts even when grave violations of human rights occur, emphasizing on the existence of principles of sovereignty and non-interference in domestic affairs of member

[341] B. F. Franke, "Competing Regionalism in Africa and the Continent's Emerging Security Architecture", **African Studies Quarterly,** Vol. 9, Issue 3, **Spring, 2007**, p. 46. Available at: http://www.africa.ufl.edu /asq/v9/v9i3a2.htm (retrieved on July 25, 2017).

[342] R. Lobakeng, "African solutions to African problems: a viable solution towards a united, prosperous and peaceful Africa?", **OCCASSIONAL PAPER**, 71, Institute for Global Dialogue, **October 2017**, p. 2.

[343] S. Desmidt, Peace-building, conflict prevention and conflict monitoring in the African Peace and Security Architecture, European Centre for Development Policy Management (ECDPM), March 2016, background note.

[344] See Declaration on the Political and Socio-Economic Situations in Africa and the Fundamental Changes Taking Place in the World, adopted on 11th July 1990.

States.[345] The Rwandan genocide and the armed conflicts in Liberia, Somalia and Sierra Leone brought these drawbacks to fore.[346]

The establishment of the African Union in 2002 symbolizes a transition from non-interventionism to a proactive intervention system along with the institutionalization of a broader peace and security architecture.[347] The OAU adopted the decision to transform itself into the AU in line with the Constitutive Act, which required it to be ratified by two-thirds of the members of OAU.[348] Once the new Constitutive Act came into effect it replaced the OAU Charter. The terms and conditions contained in the Constitutive Act were extracted from the Treaty establishing the African Economic Community, signed in Abuja in 1991 and has been in effect since 1994. It was expected that the newly created African Union would inherited the legal personality of the OAU as a successor organization to the later.[349]

The core constitutive norms of the AU are the followings, sovereign equality, non-interventionism, African solutions for African problems, territorial integrity or (*Uti possidetis),*[350] proscription of the use of force and peaceful settlements of conflicts,[351] proscription of unconstitutional regime change,[352] and power to intervene in armed conflicts of member States.[353] It is noteworthy that the first five were core norms right from the era of

[345] Article III, OAU Charter.
[346] S. Dersso, The African Peace and Security Architecture, in T. Murithi, (ed.) **Handbook of Africa's International Relations Publisher**, London: Routledge, 2013, p. 45.
[347] The normative foundations of the APSA consist of the African Union Constitutive Act, The Protocol on the Establishment of the Peace and Security Council of the African Union (PSC Protocol) and the Common African Defence and Security Policy (CADSP).
[348] Article 28, Constitutive Act.
[349] K.D. Magliveras and G.J. Naldi, "The African Union, A new dawn for Africa?", **International Comparative Law Quarterly**, Vol. 51, **2002**, p. 415.
[350] Article 4b
[351] Articles 4e, 4f, 4i
[352] Article 4p
[353] Article 4h

the OAU, the last two norms constituted a paradigm shift from the old order since the birth of the AU.[354]

The Constitutive Act laid the basis for defining the relationship between the UN and AU. The founders of the AU did not state the intention to set up a regional organization pursuant to the UN Charter. The objectives of the CA were to enhance global cooperation, while taking into consideration the UN Charter and the Universal Declaration of Human Rights, to engender peace and stability in Africa. More importantly, its objectives further provide for resolution of conflicts among members through peaceful means and such other measures as may be authorized by the Assembly of the Union.

The possibility of regional action without UN approval altogether is stated rather explicitly in the Constitutive Act which provides for regional intervention when grave humanitarian violations occur such as war crimes, genocide, and crimes against humanity.[355] This indicates that the founding States intended the African Union operate in line with the framework of the purpose and principles of the UN. The AU therefore qualifies as a regional institution under the UN Charter, as its purposes and principles are compatible with those of the United Nations, and it was intended to be a key player in the peaceful settlement of conflicts between member States.

The UN would also form an integral part in the entire security structure visualized by the AU, which necessitated the MoU between the AU and the UN on the 18th September, 2017, on UN-AU partnership in Peace-building at the AU Permanent Observer Mission in New York, on the margins of the 72nd meeting of the UN General Assembly. The purpose of

[354] P. D. Williams, From Non-Intervention to Non-Indifference: The Origins and Development of the African Union's Security Culture, **African Affairs**, 106, No. 423, **2007**, p. 261

[355] D. Kuwali, **The Responsibility to Protect: Implementation of Article 4(h) intervention**, Leiden: Martinus Nijhoff Publishers, 2011; M. Mwanasali, "The African Union, the United Nations and the Responsibility to Protect: Towards and African Intervention Doctrine", **Global Responsibility to Protect**, vol. 2, Issue 4, **2010**, pp-388-413.

the MoU was to provide framework, and strengthen ties in support of peace-building and sustaining peace efforts in Africa between the two. The MoU is a major step towards the implementation of the Joint UN–AU framework for enhancing partnership on Peace and Security entered into on 19th April, 2017. The MoU will further strengthen coordination of UN-AU efforts and contribute to a more predictable and strategic partnership in the areas of conflict prevention, political dialogue, national reconciliation, democratic governance, human rights, peace and stability.[356] This is a step towards formalizing the AU and the UN relationship and modalities of task-sharing as envisioned by the Peace and Security Council Protocol for partnership created through collaboration and mutual recognition of joint responsibility between the two organizations. For example, the PSC Protocol mandated the Peace and Security Council to collaborate with the UN Security Council.[357]

In carry out its mandate as a competent regional agency the UN Charter, the AU will seek necessary logistics, financial and political support for its military operations.[358] This form of task-sharing unifies and enhances the evolution of UN-regional arrangements. The mandate for the preservation of world peace and security in the UN Charter does not imply that this responsibility is exclusive to the UN Security Council alone. This principle was encapsulated in Chapter VIII of the Charter, which created regional arrangements for conflict resolution and recognized the contribution they can make in this regard. Regional organizations have been charged to show more commitment in world peace affairs through consensus and participation, this will not only lighten the over-stretched burden on the UN in it security role but will also efficiency in management of world peace.[359]

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[356] Joint *Communique* On United Nations-African Union Memorandum Of Understanding On Peace-building, (September 20, 2017), available at: http://www.peaceau.org/uploads/joint.com.au-un-9-19-2017.pdf(accessed on 10 October, 2017)
[357] Article 17 (1), PSC Protocol
[358] Article 17 (2), PSC Protocol.
[359] B. Boutros-Ghali, An Agenda for Peace, United Nations, New York, 1995, paragraph 64.

While major documents demand that responsibility be shared between the UN and the regional organizations, the AU has also resolved to strengthen its institutions to ensure that it is adequately prepared to take appropriate actions in situations where the UN is unwilling, unable to decide or fails to authorize an intervention. It should be noted that the Constitutive Act of the AU was adopted well before the 2005 World Summit Outcome document was accepted by the UN General Assembly. Thus, to this day the African Union Constitutive Act remain the only existing binding legal document laying the foundation for humanitarian intervention or a responsibility to respond by military means by the African Union in armed conflicts in Africa.[360]

While the AU's PSC Protocol acknowledges the dominate role of the UN with regards to world peace and security, it also emphasizes responsibility of AU in ensuring peace, security and stability in the continent, thereby subtly reinforcing its claim to the continent's security framework. Although, neither the Constitutive Act nor the PSC Protocol clearly prescribes steps that should be taken if the UN decline or fail to authorize intervention for the AU.[361] This raises the question of whether this ambiguity constitutes an adequate excuse for the AU to authorize intervention without prior approval of UN Security Council.[362] A document on UN Reforms points out that, regional organizations can sanction intervention only under the authorization of the UN. However, the document also acknowledges that such

[360] I. Osterdahl, Collective Security in a changing geopolitical landscape, in P. Wallensteen and A. Bjurner (ed.), **Regional Organizations and Peacemaking: Challengers to the UN**, London, New York, Routledge, 2015, p. 65.

[361] B. Kioko, "The right of intervention under the African Union's Constitutive Act", **International Review of the Red Cross** 85(853), **2003**, p. 821.

[362] J. Cilliers and K. Sturman, "The right intervention: Enforcement challenges for the African Union", **African Security Review** 11(3), **2002**, p 8.

approval could be granted subsequently in situations clearly requiring immediate and urgent action, or intervention.[363]

C. Enforcement of Obligations under the AU

The African Union has enforcement capabilities unlike its predecessor; the OAU. The Constitutive Act enumerated the three different instances in which the African Union could adopt punitive measures over member States. These measures are regulated in Articles 23 and 30, and consist of sanctions and suspension respectively. Article 23(1) provides that where a member State defaults in the paying its contributions to the Union's budget, the Assembly could determine the appropriate sanctions which may be imposed. These sanctions may take the form of the suspension of the right to speak during meetings, right to vote, or right to present candidates for any Union positions or posts, or right to enjoy any benefits from the Union commitments.

These provisions have been criticized as it is considered as being too harsh due to several reasons, such as the fact that many countries in Africa face difficulties and pressing financial constraints threatening the core of their existence and survival, much less meeting their financial obligations and commitments to the Union.[364]

While acknowledging the harshness of the sanctions, it is also important to remember that the lack of funding was a key factor to the demise of the OAU, and the members now intended to prevent a repeat of that mistake. Financial constraint would impede the African Union to effectively carry out its mandates, functions, chief amongst which is dispute and conflict resolution. Mediation and other dispute settlement initiatives require adequate

[363] African Union Executive Council, The common Africa position on the proposed reform of the United Nations: "The Ezulwini Consensus", 7th Extraordinary Session, 7-8 March 2005, Addis Ababa, Ethiopia, p 6.

[364] K.D. Magliveras and G.J. Naldi, "The African Union, A new dawn for Africa?", *Op. cit.*, p. 423.

funding to achieve peace on the continent. Furthermore, while it is a fact that many African States undergo extremely serious economic hardship, it is also true that many States did not pay their contributions to the OAU because of their lack of commitment to the organization. However, it is advisable for the AU to introduce an exception which will allow deferral of payment in very special circumstances.

Secondly, Article 23(2) proffers the imposition of sanctions in cases of failure by any member to adhere to the Union's decisions and policies. The rationale of this Article is to give the African Union the requisite "teeth" needed to implement and enforce it decisions. However, it is inferable that while Article 23(1) stated that in cases of non-compliance, the Assembly will decide the appropriate sanctions that may be imposed on such defaulting member. These may take the form of denial of transport and communication links with other member States, and other measures which may be political or economic in nature. The issue of determination of non-compliance is legal rather than political, thus recourse may be had to the AU Court of Justice for adjudication.[365] However, if the Assembly makes this determination, the risk is that the sanctions would be enforced politically.

With regards to dispute and conflict resolution, the possibility of establishing sanctions is controversial. In general, it can be considered a positive step, as that will enhance the capacity of the African Union to mount pressures on member States to settle their conflicts peacefully. However, as stated earlier, sanctions should be kept separated from the mediation process. Sanctions could be imposed first, rather than to impose a concrete settlement, this will oblige state parties to initiate the process of settlement and to, later, make it respect its commitment to a certain settlement. It may be counter-productive to entrust the application of these sanctions in the hands of the AU organs conducting dispute settlement to coerce or threaten one of the parties to the conflict to make it accept a certain settlement.

[365] *Ibid*., p. 424.

Such a usage of sanctions would harm the ultimate goal of achieving stability in the continent.

Lastly, Article 30 established powers of the AU to suspend any government that takes over power illegitimately or through undemocratic means from taking part in the activities of the organization. This provision is related to the democratic clause included in the principles established in Article 4. The application of this rule by the AU and African leaders was evident when the AU condemned and outlawed the *coups d'états* in Togo, Mauritania, Niger and Burkina Faso.[366] Even where *coup d'états* are experienced, a reversal to status quo may be unrealistic, but the AU always insists on the organization of free and fair elections within a clearly defined deadline as a prerequisite for the return to constitutional government. In certain cases in the past, it resorted to diplomatic consultations leading to power-sharing arrangements including the coup perpetrators, but this new policy of sanctions bars coup perpetrators from participating in the subsequent elections or unity government.[367] This is a landmark power of the African Union to act against unconstitutional governments by excluding such governments from taking part in its activities, and imposing economic and political blockade on the errant State or government.[368]

II. THE PEACE AND SECURITY ARCHITECTURE OF AFRICA

The APSA embodied framework of principles, objectives, structures relating to the preventing, managing and crises settlement, reconstruction and development in the continent. The PSC Protocol outlined the vision and different areas of the Architecture and

[366] L. Zamfir, "Actions of the African Union against coups d'état," **European Parliamentary Research Service (EPRS), April 2016**.
[367] *Ibid.*, p. 2.
[368] A. A. Packer and D. Rukare, "The African Union and Its Constitutive Act", **American Journal of International Law**, 96, 2, April, **2002,** p. 374.

their various functions. Related instruments were adopted in engendering and expediting operations of the Structure within in the continent.[369]

The cornerstone of APSA is the PSC through which its mandate is implemented through various structures which shall be discussed below. The connection between AU and RECs/RMs for Conflict Prevention, Management and Resolution is equally important to the component of the APSA. Synergy between the PSC and other AU organs is equally crucial for to promote peace, security and stability. Additionally, Protocol to PSC harmonized the symbiosis of AU on the one hand, and UN and other stakeholders, on the other. The APSA deploys an agenda that encompasses early warning, preventive systems, peacekeeping, post-conflict reconstruction and development, promotion of democracy, human right, disaster management, and humanitarian intervention.

A. Components of APSA

From the lessons learnt from the collapse of the OAU, AU designed an extensive system aimed at managing, preventing, and resolving conflicts within the continent. As stated earlier in this Chapter, there have been gradual positive results reported in the process of fully operationalizing the APSA, though there are some variations, mainly in institutionalization of its major components. From the positive results recorded, it is evident that AU is on a renewed path of taking the lead in security of Africa by creating enabling environment for tackling devastating effects of armed conflicts which had stagnated growth of the continent.

[369] S. Bah, E. Choge-Nyangoro,S. Dersso, B. Mofya and T. Murith, **A Handbook on The African Peace and Security Architecture (APSA)**, Friedrich-Ebert-Stiftung (FES), Addis Ababa Office and the African Union (AU), 2014, p. 17.

i. The Peace and Security Council of the African Union

It is AU's major organ mandated to make decisions with regards to security, and it is the cornerstone of APSA.[370] It is mandated to establish collective security system, and an early-warning mechanism to ensure efficient reaction to conflicts in the continent.[371] It is noteworthy that the Council is a component of OAU which was not included in the Constitutive Act but later became a core organ of the AU by ratification of the Assembly. The Council was incorporated through a Protocol adopted in July 2002 pursuant to the Constitutive Act regarding formation of new organs for the Union. The Protocol replaced the Cairo Declaration which established the OAU mechanisms for resolving conflict with the Council.

By virtue of the said Protocol, the Council comprised of 15 members elected by the AU Assembly.[372] The voting system replicates the one of the Executive Council and Assembly of the Union, by way of consensus, and when consensus is impossible, adoption of the decision is carried by a two-thirds majority. Procedural issues are decided by simple majority.[373] The functions of the Council include promoting stability, security, peace-making, including the use of Good Offices, Mediation, Conciliation and Enquiry, intervention operation, peace building, reconstruction, humanitarian efforts, and other function which can be conferred on the Council by the Assembly.[374]

The Council must take measures and actions it deems appropriate and necessary regarding to situations of potential and full-blown conflict.[375] To that end, the Council is empowered to utilize its discretion to effect entry into any conflict in Africa by deploying

[370] Article 2(1), Peace and Security Council Protocol.
[371] S. Bah, E. Choge-Nyangoro,S. Dersso, B. Mofya and T. Murith, **A Handbook on The African Peace and Security Architecture (APSA),** *Op. cit.* pp. 9-10.
[372] PSC Protocol at Art. 5.
[373] PSC Protocol at Art. 8.
[374] PSC Protocol at Art. 6.
[375] PSC Protocol at Art. 9(1).

collective security system of the Council, its Chairperson, Chairperson of the Commission, Panel of the Wise in collaboration with other regional bodies.[376]

Chairperson of the Commission plays a distinguished role in the Council because he is empowered to submit issues to the Council or the Panel of the Wise for deliberation. He may also at his own discretion or upon the Council's request, utilize his good offices either personally or through special delegates, the Panel of the Wise or the regional bodies to prevent potential conflicts, resolve conflicts and promote stability and post-conflict reconstruction within the continent.[377] Therefore, effectiveness of the system, largely, depends on the personal capacity, influence, experience, and character of the elected Chairman of the Council.

Regarding the relation with sub-regional organizations, the Protocol establishes that the Union has a duty to promote security, stability, and peace in Africa. It is Chairperson of the Commission who is entrusted with harmonization and coordination of the activities of the two systems.[378] Concerning the relationship with the UN, the Protocol enjoined the Council to work closely in unison with UN Security Council and other agencies of UN in fulfilling its peace mandate in Africa.[379] Therefore, the Protocol establishes a clear relation of hierarchy between the three systems of the UN, AU, and the Council in maintaining African peace.

The international community views the Council as the center for decision-making in relation to peace and humanitarian needs on the continent, since it provides leadership on peace and security affairs. The Council addresses from time to time issues on conflict and crisis situations through meetings and briefing sessions. Its activities has increased and

[376]Article 9(2), PSC Protocol.
[377] Article 10(2), *Ibid.*
[378] Article 16(1)(a)and(b), Ibid.
[379] Article 17(1), PSC Protocol.

become more visible, because of its effectiveness in conflict resolution, and quelling of major crisis in Africa.

The Council played notable part in many conflicts across the continent, and is currently actively collaborating with RECs to address threats of conflicts in their regions. Within the system of the Council, other issues that requires attention are the absence of an enforcement and compliance mechanisms with regard to the implementation of decisions made, the low level of interaction between the Council and similar structures at the REC level, interaction between the Council, interaction with the Panel of the Wise and Chairperson's Special Envoys, Representatives and Mediators. [380]

There is urgent need for structuring of the relationship between the Council and the aforementioned agencies to achieve the reduction of the workload of the Council's secretariat.

ii. The African Union Commission

African Union Commission is responsible for execution of Council's decisions and resolutions. It may also provide operational support to the Council where needed through the Chairperson and Commissioner for Peace and Security that presents reports to the Council on enforcement of the resolutions. The Peace and Security Department supports activities of the Chairperson and Commissioner. It serves as Secretariat of the Union, and is empowered with carrying out its duties. The structure represents and protects the interests of the AU under the umbrella of the Assembly of Heads of State, and the Executive Committee. Portfolios of the Commission include Peace and Security, Political Affairs, Social Affairs, Economic Affairs, among many others, all of which it may be deployed to in implementing the decisions of the Council.

[380] S. Bah, *et. al*, **A Handbook on The African Peace and Security Architecture (APSA),** *Op. cit.* p. 9-10.

iii. The African Standby Force

To enable the effective implementation of its revitalized system for security, the Protocol also advocated for development of a rapid response system of intervention in the form of the ASF. The ASF is the force of the APSA stretching to the Military, Police and civilian formations. The ASF was established to consist of five regional and multidisciplinary brigades,[381] which are expected to work together in the execution of the decisions of the Council dealing Peace Support Operations.[382]

The use of the term "force", by the Protocol has been criticized when it was observed that it is somewhat inappropriate in view of the fact that most of the personnel and resources for the Standby Force will be sourced from regions and States.[383] The objective of the standby Force is to strengthen the military capability of the various regions of the continent. The policy document which established the ASF and the Military Staff Committee provides that the Standby Force shall be a formation of five regionally managed multidisciplinary contingents possessing about 4000 troops, observers, police units, and civilian specialists on standby in various countries for implementing and enforcing the decisions of the AU.[384]

AU may mandate the deployment of regional troops under its operational control or UN's directive. The Standby Force may undertake operations in responding to conflicts with support of the Military Staff Committee which is made up of senior military officers of member States. The leadership of the AU emphasized the need for the organization to deploy African missions not only for peacekeeping but also for peace enforcement and post-conflict

[381] Article 13, PSC Protocol.

[382] These include: East African Standby Force (EASF), South African Standby Force (SASF), Central African Standby Force (CASF), North Africa Regional Capability (NARC) and ECOWAS Standby Force (ESF).

[383] Cedric De Coning, "Refining the African Standby Force Concept", **ACCORD**, Special Edition on Peacekeeping, Issue 2, **2004**.

[384] African Union, Policy Framework for the Establishment of the African Standby Force and Military Staff Committee, adopted by the African Chiefs of Defense Staff (Addis Ababa: Ethiopia, May 15-16, 2003).

operations to be effected by the AU in collaboration with the UN pursuant to their collective drive at maintaining world peace and security.[385]

Accordingly, the Standby Force is activated when there is potential threat of genocide or grave humanitarian crisis to observe, monitor, undertake peacekeeping, and engage in peace-building, carry out post-conflict disarmament and demobilization operations. The Force is also empowered to carry on specific civilian protection task of the AU, the UN, or the Council, especially relating to vulnerable population in armed conflict in which it is enforcing intervention operations by adopting special operational standards for this purpose.[386]

The idea to create the Force is not the first effort of the AU at setting up a continental rapid response military architecture. Leaders conceived the idea of a continental military system to operate within the framework of the OAU structure for conflict prevention, management and resolution when it was inaugurated in 1993. However, Members could not reach consensus on size, structure, mandate, and source of funding for the purpose.[387]

Much progress and achievements has been made so far in developing and implementing projects to enhance the Force. The ASF Roadmap III outlined some of the progress made with a series of common policy documents, an annual meeting for the implementation and coordination of harmonized continental training standards, annual training directives that guide Member States and ensure utilization of training centers, and collectively use of the Force to address conflicts on the continent. The Rapid Deployment Capability system and the Civilian and Police Components of the Force have been developed;

[385] K. Powell, "The African Union's Emerging Peace and Security Regime: Opportunities and Challenges for Delivering on The Responsibility to Protect", *Op. cit.* p. 62.

[386] See Issues Paper on the Establishment of the African Standby Force and the Military Staff Committee for First Meeting of the African Ministers of Defence and Security on the Establishment of the ASF and the CADSP (20-21 January, 2004, Addis Ababa, Ethiopia).

[387] K. Powell, "The African Union's Emerging Peace and Security Regime: Opportunities and Challenges for Delivering on The Responsibility to Protect", *Op. cit.* p. 15.

particularly in policy development and establishment of management capacity at strategic and operational level of AU. However, establishment of a civilian component has not made as much progress as the military and police formations of the Standby Force.[388]

The assessment report of the Force recognizes that the objective of the Union to develop a Force with the requisite capacity to deploy rapidly peace support operations, having sustainable administrative, logistics support, and management capabilities has been achieved. Although, the ASF is still faced with the challenge of inadequate framework to support planning, deployment, management and sustenance of the Force on a continuous basis is a major clog in of progress of the Force, and by extension, success of the AU.[389]

iv. The Panel of the Wise (PoW)

The PoW was formed pursuant to provisions of Article 11 of the Protocol and empowers the Panel to provide advisory functions to the Council and the Chairperson of the Commission on matters relating to promotion and maintenance of peace and security. It may also carry on all other tasks and measures deemed necessary to support activities of Council and those of the Chairperson of the Commission for the prevention of conflict.[390]

It applies "soft" and preventive diplomacy as its mode of engagement. It is made up with five distinguished African personalities wherein each member is selected different regions of the continent.[391] The Panel is mandated to engender peace among nations and

[388] See The African Standby Force: Draft Maputo Strategic Work Plan (2016-2020). The ASF Roadmap III was adopted by the 5th Ordinary Meeting of the Specialized Technical Committee on Defence, Safety and Security (STCDSS), held in Addis Ababa, on 26 October 2011, and subsequently approved by the 20th Ordinary Session of the Executive Council, held in Addis Ababa, from 23 to 27 January 2012.

[389] African Peace and Security Architecture (APSA) Roadmap 2016–2020, African Union Commission, Peace and Security Department, Addis Ababa, December 2015, p. 16.

[390] Article 11 (3 & 4), PSC Protocol.

[391] S. Desmidt and V. Hauck, "Conflict management under the African Peace and Security Architecture (APSA) Analysis of conflict prevention and conflict resolution interventions by the African Union and Regional Economic Communities in violent conflicts in Africa for the years 2013-2015", Discussion Paper, European Centre for Development Policy Management (ECDPM), No. 211, (April 2017), p. 4.

engage in conflict resolution either upon the request of the Council, or the Chairperson of the Commission or on its own accord.[392] The Panel had been involved in several dimension of dispute resolution across the continent since its establishment.

It is my opinion that the Panel should have been established as "the Expert Mediation Unit of the Peace and Security Council". This is in support of the view that Mediation is a specialized process requiring extensive experience and proficiency.[393] Experienced Mediators are more likely to produce a successful outcome in a peace process than one lacking experience, and a confidence-building approach to Mediation is more likely to produce a positive outcome than the application of coercive diplomacy in form of Panel of the Wise.[394] In other words, the fact that members of the Panel are influential does not allude to the fact that they possess the necessary skill to carry out this function.

By establishing a confidence-based system of mediation, through the Panel, the AU would be able to considerably satisfy States' yearning for confidence and control, while other organs of the African Union could be in charge of keeping the dispute within the AU system by using its "sticks" or enforcement capacities. However, the system could again fail if States refuse to submit their conflicts to the Panel.

v. The Peace Fund (PF)

Peace Fund constitutes an important element of the APSA as enshrined in line with terms of the Protocol.[395] It was established to provide the requisite financial support for operations, and other administrative activities in relation to peace and security in Africa. Its activities are to be regulated by applicable Financial Rules and Regulations of AU. It is

[392] S. Bah *et. al*., **A Handbook on The African Peace and Security Architecture (APSA),** *Op. cit.* p. 55.
[393] L. Nathan, "Mediation and the AU's Panel of the Wise", in Shannon Field (Ed.), "Peace in Africa: Towards a Collaborative Regime", 2004, p. 64.
[394] *Ibid.*
[395] Article 21, PSC Protocol.

equally mandated to generate funds by receiving contributions from its members, donor agencies, States, private sector, NGOs and private individuals.[396]

The Chairperson of the Commission is empowered to receive voluntary contributions and solicit funds from non-African sources and donors. A revolving Trust Fund has been established, under the Peace Fund, whose operations and management are to be sanctioned by Policy Organs of AU based on recommendation of Council to that effect. Following an authorization and when necessary, Member States may access funds required for operations, as envisaged under the ASF, according to size of their contributions to the normal budget of AU.[397]

In 2017, the Fund received the highest levels of Member States' contributions since its establishment in 1993.[398] The Council is working on establishing the Chairperson of the Commission of an Inter-Departmental Task Force to drive the operationalization of the Peace Fund and the AU-UN partnership with respect to securing reliable and sustainable funding for AU-mandated peace-keeping operation as adopted in its resolution adopted on 30th May, 2017.[399]

The said operationalization of the governance and management arrangements of the Peace Fund included the appointment of a Board of Trustees by mid-June 2018, submission of Report to the Assembly of the Union in July 2018, to be followed by the operationalization of the remaining elements by September, 2018

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[396] Recently, steps have been undertaken by the African Union to revitalize the contributions to the Peace Fund, building on recommendations made by the High Representative for the Peace Fund

[397] Article13(3), PSC Protocol.

[398] Briefing made by Dr. Donald Kaberuka, the AU High Representative for Financing of the African Union and the Peace Fund within the framework of the implementation of Assembly Decision Assembly/AU/Dec.605(XXVII) on the Financing of the African Union, including the Peace Fund, adopted by the 27th Ordinary Session of the Assembly held in Kigali, Rwanda, in July 2016 at the 770th meeting of the Peace and Security Council (PSC) of the African Union (AU), held on 2 May 2017.

[399] *Communiqué,* The Peace and Security Council (PSC/Council) of the African Union (AU), at its 689th meeting held on 30 May 2017, Addis Ababa, Ethiopia. PSC/PR/COMM. (DCLXXXIX), (2017)

vi. The Continental Early Warning System (CEWS)

CEWS was established in accordance with provisions of the Protocol[400] as a of key component of APSA charged with the responsibility of providing timely and reliable data to warn the Council and the AU Commission about threats to peace and, actual conflicts. The objective of CEWS is to enhance conflict prevention by providing adequate and accurate information to the AU on anticipated conflicts at an early stage through analysis and early warning reporting. The concept of early warning and response was introduced by the Protocol out of the need to detect conflicts early in the continent.

The System includes an observation and monitoring center sited within AU, termed Situation Room, and charged with observing and monitoring engagements for the Regional Mechanism system. The Units are linked directly to the Room for communication on data collection and processing at regional level, and transmit collected data to the Room. The System is expected to coordinate efforts with similar structures in the Regional Economic Communities.[401] The Chairperson of the Commission is charged to analyze the data collected in Early Warning System, and advise Council on appropriate actions to take regarding potential or existing conflicts which may constitute threat to the peace in Africa, so as to nip such threats in the bud.

The Early Warning Systems are functional on the continental and regional levels, and are intelligence based. The CEW and RECs holds meetings twice a year to coordinate efforts. The CEWS frequently engage with civil society organizations through workshops at the Union to discuss modalities for collaboration. However, the CEWS still faces the challenges of weak connections between the early warning and early response by stakeholders, inadequate information due to the constant change in dynamics of conflicts, low linkage

[400] Article 12(1), PSC Protocol.
[401] S. Bah *et. al*., **A Handbook on The African Peace and Security Architecture (APSA),** *Op. cit.* p. 46.

between the CEWS and low connectivity between States and RECs early warning system. Despite these challenges a lot of progress has been made.

B. AU Regional Mechanisms for Conflict Prevention, Management and Resolution

In 1976, OAU decided to partition Africa into five regions in alignment with other existing regional economic bodies.[402] Regional organizations of the continent were originally created as the center points for economic development and integration but African leaders observed that these purpose may not be fully realized due to the level of insecurity and instability existing in their regions which will impede on integration and development.[403] African RECs have implemented security mechanisms within the framework of a broader regional integration agenda.

While seeking to rationalize the need for a pan-African security system, the Abuja Treaty 1991, indicated that RECs in Africa would constitute the constitutive elements of the pan-African integration agenda for future development. Before the establishment of AU, most RECs were already in existence, so the AU retained this organizational structure. The RECs constitute key players in the general security structure of the AU. The AU and the RECs together make up the Regional Mechanism System of Africa. The five regions of Africa are the legs upon which the APSA is instituted and the eight RECs recognized by the AU are: ECOWAS, SADC, UMA, COMESA, CEN–SAD, EAC, ECCAS, and IGAD.[404]

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[402] OAU, Resolution CM/Res464 (XXVI), Twenty-Sixth Ordinary Session of the Council of Ministers, Addis Ababa, 23 February — 1 March 1976.

[403] M. Mwanasali, From the Organization of African Unity to the African Union, in M. Baregu and C. Landsberg (eds), **From Cape to Congo: Southern Africa's evolving security challenges**, Lynne Rienner, Boulder, 2003, p. 1.

[404] S. Desmidt and V. Hauck, "Conflict management under the African Peace and Security Architecture (APSA) Analysis of conflict prevention and conflict resolution interventions by the African Union and Regional Economic Communities in violent conflicts in Africa for the years 2013-2015", *Op. cit.* p. 5.

The system between AU and RECs is based on a series of legal frameworks and documents. First, the Protocol outlines the collaboration between AU and RECs within Regional Mechanisms system for conflict management and resolution.[405] Secondly, the 2008 Memorandum signed by AU and RECs forms the foundation for establishment of a regional mechanism system.[406]

In addition to the Protocol, the Solemn Declaration on a Common African Defence and Security Policy emphasized that regional mechanisms and Standby Force will constitute the "central system" of AU's peace and security structure. The Protocol reiterates this by emphasizing importance of synergy, coordination and collaboration between AU and RECs to ensure success.[407] The structure of the regional mechanism provides effective coordination and cooperation. However, it is faced by institutional challenges such as the friction on hierarchy, leadership and insufficient political will in responding to conflicts.

The major responsibility the AU has assigned to the RECs will allow the AU to leverage on their comparative advantage, experience and institutional frameworks, and mechanisms for conflict management. The proximity of the regional institutions to the conflicts area makes them suitable for the peace mandate, because they have deeper understanding of the dynamics, participants, context and appropriate options for the conflict. The issue of proximity enables regional organizations initiate faster and affordable responses to conflict than UN or AU. They may also be considered more accountable and legitimate than other organizations and because these RECs have more stakes in finding a peaceful solution to the conflicts than foreign entities.[408]

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[405] Article 16 PSC Protocol, 2002.
[406] S. Desmidt and V. Hauck *Op. cit.* p. 7.
[407] Article 7 (j) of the PSC Protocol.
[408] M. Juma and A. Mengistu, **The infrastructure of peace in Africa: Assessing the peace-building capacity of African institutions**, International Peace Academy, New York, September 2002.

C. Methodology for Peaceful Settlement of Armed Conflicts under the AU Peace and Security Architecture

AU and RECs, adopted and deployed mechanisms developed from UN Pacific Settlement during interventions in armed conflicts. These methodologies are worth mentioning due to the success achieved so far in the Sudan/South Sudan conflicts. There are four types of interventions developed by AU and RECs under the APSA, which have been deployed in armed conflicts across the Africa. The aforementioned pacific methods of conflict resolution consists diplomatic engagements, mediation, peace operations, reconstruction and development projects.

i. Diplomatic Interventions

This mechanism involves a broad range of activities and decisions such as political meetings held by different stakeholders on conflict situations at various levels, diplomatic statements issued, high-level panels set up and the sanctions adopted and imposed. Several actors participate in diplomatic interventions through the UN, AU and RECs. Preventive diplomacy can be undertaken in States with likelihood of outbreak of hostilities. Preventive diplomacy is initiated before violence erupts, and before AU and RECs involvement through other formal conflict resolution mechanisms. The US, China and the EU have intervened in series of armed conflicts in Africa in the twenty-first century by way of diplomacy. Many scholars have embarked on scrutinizing and comparing the motives of the three non-African actors in intervening in African crises which I believe contribute to understanding the changing geopolitical environment and the current conditions for conflict management in Africa.[409]

[409] G. Rye Olsen "Great power' intervention in African armed conflicts", **Cambridge Review of International Affairs,** Vol. 28, Issue 2, DOI: 10.1080/09557571.2013.867299, **2015**, p. 229-245.

ii. Mediation and Preventive Diplomacy

Mediation efforts consist of a range of activities including the establishment of mediation teams, organizing consultations among conflicting parties, and working towards an intermediate or final peace deal. By nature, mediation processes are very intensive, flexible and requires more time in engagement. The situations and environment under mediation are often complex and protracted involving a number of organizations and individuals.[410]

This methodology has been mostly utilized by the AU and RECs and it has proven to be one of the most effective methodologies adopted under the APSA for peaceful settlement of armed conflicts in Africa. Recent success achieved by IGAD led Mediation by President Al-Bashir of Sudan in the South Sudan conflict is a testament to this effectiveness.[411]

While undertaking preventive diplomacy functions, the Council works closely with the AU Commission's Chairperson and in consultation with parties in the conflict, deliberate on the appropriate measures to deploy in managing the conflicts. The chairperson can, on his own initiative or by the Council's request, deploy his good offices, personally or through special envoys or representatives, PoW or RECs, and proffer measures to prevent or resolve potential or existing conflicts. The Chairperson is equally assisted by Commissioner for Peace and Security, and other units of APSA.

PoW forms an integral part of the AU preventive diplomacy structure charged with responsibility to provide support to efforts of the Council and the AU Commission's Chairperson in conflict prevention. Preventive diplomacy is deployed in countries going through electioneering and democratic processes. The Panel provides advice, open channels

[410] A. Kugel, "Three's a crowd? Inter-Organisational Cooperation in Conflict Mediation", **Global Peace Operations Review**, Monthly Newsletter, **November 2015**, p. 10-16.

[411] J. G. Porto and K. Y. Ngandu, "The African Union, Preventive Diplomacy, Mediation, and the Panel of the Wise: Review and Reflection on the Panel's First Six Years", **African Security**, Vol. 7, Issue 3, **2014,** pp. 181-206.

of communication, carry out fact-finding missions, undertake subtle diplomacy and promote adoption of confidence-building measures in peace building.[412]

RECs are developing and others have developed mediation and conflict prevention facilitation units with full backing of the African Union. The Pan-African Network of the Wise was established in 2013 by AU and RECs with the objective of converging relevant mediator actors to enhance cooperation between the structures and harmonize modalities of the AU and RECs through workshops, joint missions and research.

iii. Peace Support Operations

The third important conflict management mechanism under the Regional Mechanisms system is centered on the authorization, deployment and maintenance of Peace Operations in Africa. Generally, this mechanism involves activities ranging from holding resource mobilization meetings, authorization for peace support operations, or extension of specific mandates. The AU in collaboration with the REC/RMs have launched eleven Peace Support Operations in Africa with varying degrees of organizational set-ups, funding modalities and troop composition since its formation.[413]

Diplomacy is deployed via dialogue by AU with its external financiers[414] to facilitate and mobilize financial and logistical support for peace operations in Africa. Before undertaking peace support operations, the AU Assembly must first seek authorization of Security Council, given its dominant position in world peace and security, which can be a really difficult process most of the times. Due to the unresolved issue of hierarchy and regional leadership in carrying out peace operations within the continent, the AU and RECs

[412] *Ibid.* p. 185.
[413] A. Boutellis and P. D.Williams, Peace Operations, the African Union, and the United Nations: Toward More Effective Partnerships, **International Peace Institute** (IPI), New York, **2013,** p. 7.
[414] These include primarily the United Nations, the European Union, the United States of America, China and others, such as some Gulf States.

often disagree about leadership position in launching peace operations. For example, when African-led Mission to Mali in 2013 was deployed, there was disagreement between ECOWAS and the AU on who would take the lead, and there were major concerns over which of the actors will control engagements of non-ECOWAS countries.

iv. Post-Conflict Reconstruction and Development

This a policy of AU which is based on the provisions of the Protocol and the experiences garnered many years of peace management and peace-keeping in Africa. The policy was adopted in July 2006 after intensive consultations with relevant stakeholders. The objective of the policy is to mobilize support for countries in Africa emerging from the rubbles of armed conflicts. This can be achieved by sensitizing the international community, donors and other stakeholders on post-conflict reconstruction needs of these countries, in the form of strengthening their capacity to assist them meet challenges of re-building and developments.[415]

This policy was pioneered in Sudan during implementation of CPA from 2005. Prior to signing of the CPA, a Ministerial Committee for Post Conflict Reconstruction and Development for Sudan was inaugurated in July 2003 by AU Commission, through its Executive Council. It was mandated to assess, in consultation with the Government of Sudan and the SPLM, the needs and immensity of the post-conflict situation in Sudan.

Major activities and focus have been the envisaged deployment of African expertise to countries in need of post-conflict reconstruction. These require AU countries taking the lead in facilitating and mobilizing technical and financial resources in this regard. AU is also

[415] The Post-Conflict Reconstruction and Development (PCRD) policy framework was only adopted in 2006. See African Union, "Policy on Post-Conflict Reconstruction and Development (PCRD)", published by Conflict Management Division, Peace and Security Department, Commission of the African Union, (July 2006), p.v, available at: http://www.peaceau.org/uploads/pcrd-policy-framwowork-eng.pdf (accessed on 5 August 2018)

expected to provide financial support for Quick Impact Projects in regions emerging from conflicts like Liberia, Cote d'Ivoire, the Comoros, and South Sudan, to lay foundation for long term sustainable development, and peace. Importance of Quick Impact Project is the fact that they allowed communities benefit directly from AU's efforts to give visibility at the grassroots level of conflicts.

III. PROSPECTS FOR PEACEFUL SETTLEMENT OF AFRICAN ARMED CONFLICTS

Since the emergence of "African solutions to African problems" agenda, AU has had its share of struggles in realizing its expectations. The UN has not slowed down in its momentum in playing its role in peacekeeping and operational support in Africa. It has become almost impossible for the AU to handle its crisis without the involvement of the UN and other regional actors for obvious reasons. However, the commitments displayed by the AU evident from the establishment of a number of institutions for the purpose of resolving, managing and preventing conflicts in the region, propelled the UN and others such as EU to provide support and resources through partnerships to strengthen the African Union.

In a bid to this agenda, AU developed and supports some policies and institutions to enhance conflict resolution and sustainable development structure in Africa. Several institutions with corresponding units to deliver an extensive peace, security and development agenda has been created. The AU Commission has initiated strategy for post-conflict reconstruction programmes. The NEPAD and African Peer Review Mechanism is created to engender structural conflict prevention and respond to different stages of conflict within the continent.

The establishment of the African Standby Force is a proof of AU's preparedness to consolidate with the UN in tackling instability in the continent. Over the years the

Organization has consistently embarked on building its capacity to respond rapidly to various types and stages of conflict through its Standby Force. The Standby Force has been empowered with capacity to adopt standard operating procedures for protecting civilians, and deployed to respond rapidly to conflicts where the international community does not act or intervene promptly, once fully developed.

Funding is an important element for operationalization of African peace and security system. AU has increased its awareness on the need for adequate funding of its security structure to drive efficiency and effectiveness in its operations. Major external actors are supporting the structure, for example, the EU's African Peace Facility supports AU in its effort at building peace in the continent. Although, the Peace Facility rely on funds already earmarked for development. The Facility normally mobilize funds for operational and structural development assistance programmes which are designated to address the root causes of insecurity and instability in Africa, however, these Funds may be utilized for peace support operations if the need arise.[416]

Other entities such as the G8 are making important contributions to the peace and security structure through the G8's joint initiatives in Africa. The G8 is parochial in supporting regional military capability, due to the belief that the development of African security structure is capable of inducing long-term military pressure. Therefore, it focuses on supporting conflict resolution capabilities. The G8 and other donors need to increase efforts in assisting the AU develop some operational and structural conflict prevention capability.[417]

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[416] Conrad Rein "Enhancing Peace and Security in Africa through Institutional Cooperation", **Contemporary Security Policy**, Vol. 36, Issue 2, **2015,** p. 267-295.

[417] M. Malan, "African Solutions to African Problems"– with G-8 Funding: African peacekeeping and the challenges for the G-8 action plan, Draft paper for the Chatham House Meeting on Africa & the G8: Assessing the G8-Africa Partnership and Recommendations for Sea Island and Beyond, 2004, p 1.

Countries like Canada have made significant efforts in bringing African issues to the fore in the G8's agenda. A number of initiatives have been developed that responds to NEPAD's developmental programmes on security on the continent. Canada has been responsible for providing flexible funding for conflict resolution in Africa. The country also makes major financial contributions for developing the capacity of peace and security regime of RECs, especially the ECOWAS.

Mobilizing adequate funding for peace and security architecture in Africa is imperative to ensure the system is efficient in its mandate. The UN and other international entities need to ensure that its regionally oriented support extends to the AU which is the main structure rather than undermining continental security architecture envisioned. Furthermore, the UN and other nations need to address the issue of strengthening and consolidating peace operations capacity and support for conflict response in Africa with the need to developing capacity for conflict prevention, management and resolution within the Africa continent.

A. African Union and "The Responsibility to Protect"

AU paved way for the development of pan-African peace and security agenda, particularly with respect to the framework of sovereignty, conflict resolution, management and intervention for humanitarian protection. The principles underpinning the AU's emerging peace and security regime resonates with elements of The Responsibility to Protect framework.[418]

In terms of the norms and rules governing intervention, the AU finds itself closely aligned with the responsibility to protect principles in as much as the AU acknowledges that

[418] K. Powell, "The African Union's Emerging Peace and Security Regime: Opportunities and Challenges for Delivering on The Responsibility to Protect", *Op. cit.* p. 5.

it has a right to intervene without the consent of the affected State to protect civilian populations against atrocious human rights violations. However, consistent with the prevention-reaction-rebuilding continuum of protection articulated in the responsibility to protect, the emerging frameworks and founding documents highlights the importance of conflict prevention and sustainable post-conflict reconstruction through development as a means of achieving peace and security among States, and emphasizes that sustainable development cannot take place in the context of extreme instability and insecurity in Africa.

B. Challenges to the African Peace and Security Architecture

Despite efforts and commitments put into operationalization of APSA, AU is still faced with many obstacles to its development and capability to fulfill its mandates. Some of the challenges hampering the APSA mandate include the followings:

i. Inadequate Funding

Inadequate funding remains a major challenge to the AU's peace process efforts. AU members often fail to fulfill their financial obligations, and sometimes fail to pay up their dues later. The AU have had to depend on funds from EU through its Africa Peace Facility, bilateral support from partner countries, notably the USA and the United Kingdom, World Bank and UN Trust Fund arrangements.[419] Reliance on funds from external financiers dampens the reputation of AU regarding its ability and credibility to move independently in search of African solutions because dependence on external funds means the donors will have to decide the response time and capacity for its operations. In some cases external financiers tag contributions by deciding what the funds should be used for. The expectation in Africa,

[419] Ekott Ini, Africa: The AU's Funding Woes Continue, Africa in Fact, 2017, available at: http://allafrica.com/stories/201701200093.html (accessed on 20 August 2018)

expressed by AU is to the effect that UN authorized peace missions under Chapter VIII should come under the same system of assessed contribution.[420]

ii. Divisiveness and Peer Shielding

The inability to act with one voice in time of conflicts by member States is another factor that is hindering the African Solution mandate. African countries tend to hold divergent views while responding to conflicts, for example, African leaders held varied opinions on measure to take in conflicts in Libya and Ivory Coast. This attitude of divisiveness and inability to act with one common purpose by AU and sub-regional bodies creates confusion, frustrates the African solution and leaves space for external actors to intervene. The African solutions approach portends that it is assumed that States are willing to fulfill this promise, and that they are ready act in the best interests of the continent and its people even in circumstances where difficult decisions may be required to be taken.[421]

However, African leaders tend to ignore the unacceptable actions of their colleagues on the continent shows that they are not fully committed to this agenda. African States have also displayed the attitude of peer shielding due to the fear of being sidelined on the continent, this indicates that leaders are not always willing to stand against or openly condemn their colleagues when they commit clear infractions because this might mar their relationship with such States.[422] For example, Nigeria's President Muhammadu Buhari refused to condemn egregious acts perpetrated by Cameroonian President Paul Biya on the people of southern Cameroon, even though it received international condemnation.

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[420] M. Fahlen, The African Mission in Somalia, in P. Wallensten and A. Bjurner (ed.), Regional Organizations and Peacemaking: Challengers to the UN?, *Op. cit*, p. 186.

[421] Hussein Solomon, "African solutions to Africa's problems? African approaches to peace, security and stability", **South African Journal of Military Studies**, Vol. 43, No. 1, **2015,** pp. 57-69.

[422] R. Lobakeng, "African solutions to African problems: a viable solution towards a united, prosperous and peaceful Africa?", op. cit. p. 5.

iii. Insufficient Capacity and Training of African Troops

The inadequate capabilities of African troops and the Standby Force limit their capability to eliminate conflict situations independently without support in the form of foreign troops or training. African troops have unimpressive reputation of human rights abuses in their respective countries. They are often poorly equipped and trained to deal with complex peace operations. Africa's strongest armed forces have also been found inadequate in operations such as the South African army when it was deployed to unilaterally intervene in CAR in 2013, leading to the death of thirteen of its soldiers, this unsuccessful operation was considered a political embarrassment to the continent's strongest powers.[423]

Another weak spot of the African troops has been its limited capacity to gather intelligence and strategic analysis. The weak structure of African Troops is a major obstacle to the AU implementing the peace and security agenda, and its mandate to protect civilian populations. It also lacks adequate capacity to plan and deploy troops on schedule. It is also faced with the challenge of leadership in command, control, and logistical constraints. The number of troops on the ground is usually few with weak mandate. Consequently, lacking the ability to adequately monitor ceasefire operations or provide adequate protection to vulnerable civilians caught in crossfire of conflicts. The experiences of African troops in Burundi, Sudan and Somalia demonstrated that the AU requires extensive financial, logistical and political support from the international community in order to fulfill its commitments to it peace and security mandate in armed conflicts on the continent.

[423] C. Ero, The Problems with "African Solutions" **International Crisis Group**, **2013**, available at: https://www.crisisgroup.org/africa/problems-africansolutions

iv. Inadequate Coordination

The major challenge to peace operations in Africa lies in the ambiguity in responsibilities and leadership caused by overlapping roles, inefficient coordination and synergy among UN, AU and RECs.[424] This leads to tension among actors as there is always uncertainty and competition over which organization should take the lead in conflict intervention.[425] Beyond this and despite clear legal frameworks demarcating respective roles to be played by each entity, sovereignty and non-intervention clearly continues to impose constraints on the competence of AU, RECs and other intergovernmental organizations intervention at an early stage in armed conflicts.[426]

Differences and competition among existing among the different actors of the APSA continue to clog the wheel of progress and creates confusion and frustrates the pan-African solutions ideology. The tension and power politics at play between regional actors often hinders them from coming together and acting with one voice in times of conflict. The need to protect their power and influence in their respective regions has a negative impact on continental unity in conflict resolution, causing delays in conflict resolution. In view of these challenges, AU Commission is focusing on creating legal instruments aimed at consolidating AU-RECs relations into effective practice in armed conflict intervention in Africa.

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[424] Mohammud A. Hussien, "From AMIB to AMISOM: The Need for Institutional and Mandate Clarity in APSA**", ISS Paper,** Pretoria, **2012**; Gilles Yabi, Keeping the Peace in Electoral Conflicts: The Role of ECOWAS, UNOCI and the International Community in Côte d'Ivoire, Berlin: **Center for International Peace Operations, 2012,** p. 4.

[425] Kruschen Govender, Yvette Ngandu, and Ed Katz, Towards Enhancing the Capacity of the African Union in Mediation, Umhlanga Rocks: **ACCORD, 2010**, p. 22.

[426] J. Lar, "The PSC and ECOWAS: Collaboration on Conflict Resolution in the Two Guineas", in T. Murithi and H. Lulie (eds), **The African Union Peace and Security Council: A Five-Year Appraisal**, Vol. 187, Pretoria: Institute for Security Studies, 2013, p. 14.

CONCLUSION

The menace of armed conflicts and the devastating impact on the socio-economic and political development of the world cannot be overemphasized. The post-Cold War events in the world heralded Europe, Asia and the Americas with relative peace while Africa and the middle-east have been embroiled in many armed conflicts leading to loss of lives, human right abuses, and humanitarian crises and failed States.

Armed Conflicts Location and Event Data reported that Africa remain the most heavily burdened with armed conflicts, which translates to the fact that the continent continue to suffer the most measured by magnitude of losses and affected population over time.[427] In the same vein, the Sub-Sahara Africa has been reported to have the very high intensive level conflicts, accounting for the highest number in global categorization.[428] Consequently, United Nations peacekeeping operations and deployment of troops are more visible and rampant in Africa.[429]

In the last twenty years, method of armed conflicts has changed from conventional to non-conventional wars, most contemporary armed conflicts in Africa are non-conventional and intra-state armed conflicts involving actors such as rebel groups, freedom fighters and terrorist organizations.

It is obvious that Africa is at the verge of achieving relative peace, this is evident from the endorsement of the peace deal in South Sudan, the defeat of Boko Haram terrorist group in North-East Nigeria and some parts of West Africa, including the landmark peace

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[427] The Armed Conflict Location and Event Data Project (ACLED), "Trends and Unexpected Developments in Africa 2015", 11 December 2015.

[428] Heidelberg Institute for International Conflict Research (HIIK), 2017. Heidelberg Conflict Barometer 2016. February 2017.

[429] J. Cilliers, "Future (im)perfect? Mapping conflict, violence and extremism in Africa", **Institute for Security Studies (ISS), Paper 287, October 2015**, pp. 2-18. Available at: https://www.files.ethz.ch/isn/194062/Paper287-1.pdf (retrieved on August 5, 2017)

Agreement, ending the two-decade long hostilities between Eritrea and Ethiopia.[430] Consequently, most part of Africa is generally at peace, while most ongoing conflicts have become concentrated in relatively small areas in a few countries like Nigeria, Somalia, DRC and South Sudan. The number of armed conflicts in Africa may have diminished, however these conflicts are significant enough to trigger another wave of human right abuses, humanitarian crises and loss of lives, and there is a likelihood of a relapse into violence in the areas where fragile peace has been achieved such as the South Sudan.

After Second World War, world powers conceived the idea of creating an organization to be saddled with maintaining global peace and security. It was inevitable to create a new international organization which is more effective, efficient and responsive than the League of Nations. The UN has similar structure with the League of Nations, with enormous powers to enforce world peace through the dominant status of the permanent members and Security Council. During the establishment of the UN, member States made tremendous efforts to streamline the original proposals to minimize the difference between the Security Council and the UN Assembly to ensure that principles of justice, fairness and international law will be the cornerstone for an assurance of world peace and stability.

The supremacy of the Council is never in doubt with regards to the matters within Chapters VI and VII of the Charter being organ solely charged with the responsibility to sustain world peace. Regarding resolution of armed conflicts and disputes, Security Council may request that parties settle their conflicts, or carryout investigation into conflicts which is likely to endanger world peace and security. The UN General Assembly is also competent to discuss matters concerning the world peace and security, however, where measures or

[430] J. Cillers, "Conflict trends in Africa: a turn for the better in 2015?," **Institute for Security Studies (ISS), 4 November 2015**, p. 1. Available at: https://issafrica.org/iss-today/conflict-trends-in-africa-a-turn-for-the-better-in-2015 (retrieved on August 20,2017)

intervention is required; the Assembly has to direct it to the Council for determination. The Secretary-General may also draw attention of Council to any conflict that could endanger world peace.

According to the Charter, the UN system established peaceful resolution mechanism in form of Negotiation, Mediation and the use of Good offices, Conciliation, Arbitration, Judicial Settlement and Regional arrangement. This is a blanket restriction on use of force in conflict resolution by any member State, except where such force is sanctioned by the Council or where necessary for self-defence. Council also recognizes the role of Regional arrangements or agencies in peaceful resolution of conflicts.

Where parties to a conflict fail to amicably resolve conflicts, the Security Council is competent to take necessary military or non-military measures under the determination of an act of aggression, breach of or threat to the peace, to restore peace. Although, the main obstacle to the effectiveness of the Council is the division within the five the Permanent Members along the lines of ideology, foreign policy agenda and national interests which inform their position in the determination of any conflict or impending threat brought before them. This resulted in the evolution of "regionalization" envisioned by drafters of the Charter, and became the most concerted effort by the UN in the area of the international peace and security. The African States invoked their rights to intervene under regional arrangement of the UN pacific settlement framework in resolving conflicts across the continent. The application of the UN pacific settlement framework in Africa is hinged on the cooperation and collaboration with the African Union who is the successor to the OAU.

As stated earlier in the thesis, the Sudan/South Sudan armed conflict is a very good example to showcase the contemporary experience of the application of the UN-AU pacific settlement of armed conflict in Africa. Upon breakout of violence in Sudan between the Arab

North and the Southern Africans due to deep seated, age long discriminations, oppression, persecution and segregation of the South by the North, UN intervened by condemning the acts of violence, made recommendations and issued Resolutions, calling on parties to dialogue and resolve the conflicts amicably. Continued aggression by the North on the South without any difference to the Security Council Resolution and world peace and security, political and economic sanctions were imposed on the President Al-Bashir and his political allies as a form of soft diplomacy to pressure the parties to dialogue and resolve the disputes peacefully. Instead of a military intervention, the President was reported to the ICC, investigated, charged and was to arrested, which made him dialogue with the Southern opposition and engender a cessation of the aggression.

The conflict in Sudan and the negotiation between the parties eventually culminated in the birth of the newest State in the world; South Sudan in July 2011. Unfortunately, hardly had the country enjoyed the hard earned independence than armed conflicts ensued due to the breakdown of the relationship between the President Slava Kiir and Reik Machar who accused each other of corruption, nepotism, ethnic bigotry and oppression. The South Sudan armed conflicts was very alarming and threatening world peace and stability in view of parties involved consisting South Sudan and militant groups led by Reik Machar, and likely extension of the conflict into neighbouring States such as Ethiopia, Eritrea, Uganda, and Somalia.

The UN Security Council had to intervene immediately in concert with African Union to quickly contain, manage and peacefully settle the crisis. Security Council's fist move was to issue words of condemnation and Resolutions which called on parties to a ceasefire, embargo on arms, direction to parties to allow peace reign. In view of the fact that the parties flouted these directives of the Security Council, the UN decided that while its Mediators and

special envoys carry on with their activities to resolve the conflict amicably, there was an urgent need to assemble and deploy an intervention military mission called UN Mission in South Sudan, to enforce ceasefire, keep parties at the dialogue table, protect civilian populations and provide humanitarian aid for victims of the conflict. The Council also approved the deployment of the AU Mission in the South Sudan to complement the UNIMISS to achieve its mandate.

Even though, it was a long time coming for the conflict in the new country, the move by the Security Council largely ensured cessation of hostilities, reduced number of casualties, minimized the level of human right abuses and the humanitarian catastrophe that would have been witnessed if there were no intervention at all. While the military Missions were keeping the peace, the parties had no choice than to dialogue extensively, leading to the success of the mandates and goals expected to be achieved by the UN in the South Sudan. It is a fact that, the UN-AU peaceful resolution of conflicts methodologies applied in the South Sudan was a test case in contemporary times which yielded positive result culminating in the signing of the 2018 peace deal between the President Kiir and Reik Machar on power-sharing and unity government to end the armed conflicts.

Conclusively, it is my thesis that going forward from now there is a bigger role and a place for UN pacific settlement of conflicts in international law as a veritable means of maintaining world peace and security; which is the primary and founding mandate of United Nations. In this regard, it is recommended that the UN work more closely with the African Union which is the leading regional institution in the continent due to the cumbersome nature of the responsibility to maintain world peace and stability, as well as the experience and readiness of the African Union to take up this task with the UN support. The adoption of regional arrangement in African conflicts by the UN has paved way for the emergence of the

African Peace and Security Architecture which has proven to be very effective and efficient in delivering a more peaceful continent. An Agenda for Peace sets the stage for the democratization and decentralization of peace and security function by regional organizations, with UN effort engendering in-depth participation in maintaining world peace.[431]

Therefore AU should ensure stronger commitment among its member to improve the capacity of the African Standby Force, as well as, continuous partnership with the UN for trainings and resources. The 2010 establishment of a UN Office to the AU (UNOAU) in Addis Ababa indicates the desire for a more regular interaction between the two institutions, including between their respective Security Councils. Increasingly there are now common or closely coordinated assessments ahead of the preparation for possible deployment of multidimensional security and political missions. For the future AU-UN co-existence in African conflicts, possible co-location, joint units and joint programmes have been considered.[432]

Financing peace and security in Africa on a sustainable basis is a global strategic imperative, and liability to be left to Africa alone given the complex and interconnected character of threats to world peace today. The AU and its Members are already taking the lead in confronting challenges which other institutions are not able to address. The AU in collaboration with its partners is working on establishing a foundation for creating responsive global security architecture. AU Assembly's decision on the Peace Fund is a strong demonstration of the organization's determination and commitment to assume primary responsibility to fund its peace operations. This initiative engenders a platform for

[431] B. Boutros-Ghali, "An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping. Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992," United Nations, New York, (1992), para. 64.
[432] Joint UN-AU statement before the Security Council 14 February, 2014.

partnerships with local partners, international organizations, private sector, to pool out strength in order to meet the emerging global threats.

In addition to funding and partnerships with UN, African States should ensure to develop programs targeted at terminating the root cause of armed conflicts such as developing and implementation of policies relating to de-radicalization and Amnesty program: the conscription of young idle men has always been the strategy of armed group to effectively carry out their operations. Recently, groups have invaded small communities with no presence of security forces, and most recent Schools have been targeted for this purpose. National policies which capture programs for de-radicalizing repentant villains should be made. For example, in 2010, the Nigerian government initiated an Amnesty program for militants who decide to drop their arms and reach a truce with the government. Also, in 2016, after the decimation of some Boko Haram enclaves some of the young men and women who were under the captivity of the terrorist group were admitted into the de-radicalization program of the United Nations.

Also, border development and management policy implementations are vital to secure entry points into territories. Armed groups have always being known to operate and capture territories close to the border of two countries. Many borders in Africa are porous, under developed and unsecured. States must partner with neighbours for better border development and Management policy implementation. The complexity of issues ranging from funding, to forming new partnerships with the UN, cannot be underestimated and will demand political will. A journey of a thousand miles begins with one step. It is now time to take that step.

ABSTRACT

The United Nations is charged with the duty of ensuring world peace and security. After the Cold War the world has seen relative peace, however, there have been pockets of serious hostilities in Africa, Easter Europe and other parts of the world. The United Nations have developed series of mechanisms within its Pacific Settlement of Disputes regime. In recent times, there is a reduction in the upsurge of armed conflicts in Africa, however, the ongoing conflicts in Africa has taken a new dimension and if left unresolved can escalate and lead to catastrophe.

This thesis will examine, analyze and identify the principles of the United Nations Peaceful Settlement of Disputes, and the effectiveness of the application of the peaceful settlement mechanisms in African Armed Conflicts, using the Sudan/South Sudan conflict as a case study. The aim of this thesis is also to consider the nature of armed conflict in Africa and the response of the United Nations and the African Union with regards to conflict resolution and management, while expounding the recent developments and emerging peace and security structure of the African Union.

Although the Charter mandates the UN to be the umpire with responsibility of securing world peace, the study unveils the need for task sharing between the UN and regional organization (the African Union). The study reveals the commitment and effort of African leaders to take the lead in resolving disputes within their regions with little or no support by the United Nations, while relying on regional arrangement of the UN pacific settlement, the maxim African solution for African problems and the Responsibility to Protect and the legal basis for their interventions.

Keywords: Armed Conflict, United Nations, Peaceful Settlement, Africa.

ÖZET

Birleşmiş Milletler uluslararası barış ve güvenliğin korunmasından sorumludur. Soğuk savaş sonrasında kısmen barış sağlanması olsa da yine de Afrika, Doğu Avrupa ve dünyanın diğer bölgelerinde ciddi uyuşmazlıkların baş göstermiş ve Birleşmiş Milletler Pasifik Uyuşmazlıkların Çözümü mekanizması gibi çeşitli mekanizmalar geliştirmiştir. Son dönemlerde, Afrika'da silahlı çatışmaların azaldığı görülse de devam eden uyuşmazlıklar yeni bir boyut almıştır. Nitekim söz konusu uyuşmazlıklar çözülmezse, çatışmaların kızışacak ve bu durum ağır sonuçlar doğuracaktır.

İşbu tezin amacı, Birleşmiş Milletler Uyuşmazlıkların Barışçıl Çözüm Yöntemlerini inceleme, tahlil etme ve temel ilkeleri belirlemenin yanında, söz konusu mekanizmaların Afrika'da cereyan eden silahlı çatışmalara uygulanmasının etkili olup olmadığını tayin etmektir. Bunun için Sudan/Güney Sudan'ın durumu vaka incelemesi olarak kullanılmıştır. Tezin amacı aynı zamanda Afrika'daki silahlı çatışmaların özünü araştırmak, son gelişmeleri ve gelişmekte olan Afrika Birliği barış ve güvenlik yapısını izah ederek Birleşmiş Milletler ve Afrika Birliği'nin, çatışmaları çözmek amacıyla uyguladıkları uyuşmazlıkların çözümü mekanizmalarını nasıl yönettiklerini incelemektir.

Birleşmiş Miller Şartı, dünya barışını koruma yükümlülüğü bir üçüncü taraf olarak Birleşmiş Milletlere yüklese de, Birleşmiş Milletler ile bölgesel örgütler (Afrika Birliği gibi) arasında görev paylaşımının zorunluluğu aşikârdır ve çalışma bu gerekliliği ortaya koymaktadır. Aynı zamanda çalışma, Afrika liderlerinin, Birleşmiş Milletler'in çok az desteğiyle, uyuşmazlıkların çözümünde başı çekme kararlılığını ve çabalarını gözler önüne sermektedir. Bunu, bölgesel bir girişim olarak BM pasifik uyuşmazlıklarının çözümüne, Afrika'nın problemleri için olabilecek en iyi çözüm düsturu öncülünde koruma sorumluluğu ve müdahalelerinin hukuk çerçevesinde yapılmasına bağlı kalarak gerçekleştirmektedirler.

Anahtar Kelimeler: Silahlı Çatışmalar, Birleşmiş Milletler, Barışçıl Çözümü, Afrika.

BIBLIOGRAPHY

BOOKS

Adams, J. K., "**History of the Sudan Conflict and the Role of the United Nations**", EDGE, Professor Lusignan, December 3, 2004).

Adebajo, A., Rashid, I., (eds.) **West Africa's Security Challenges: Building Peace in a Troubled Region**, Ero, C., Ndinga-Muvumba, A., Small Arms and Light Weapons, (London: Lynne Rienner Publishers, 2004).

Akol, L., **SPLM/SPLA: The Nasir Declaration** (New York, iUniverse Inc. 2003).

Alexidze, L., "**Legal Nature of *Jus Cogens* in Contemporary International Law**", (in *Recueil Des Cours*: Collected Courses of the Hague, Academy of International Law III, Martinus Nijhoff Publishers, 1982).

Arens, R., Lasswell, H., **In Defence of Public Order** (1961).

Bah, S., Choge-Nyangoro, E., Dersso, S., Mofya, B., Murith, T., **A Handbook on The African Peace and Security Architecture (APSA)**, (Friedrich-Ebert-Stiftung (Friedrich Ebert Stiftung (FES), Addis Ababa Office and the African Union (AU), 2014).

Bantekas, I., Papastavridis, E., **International Law Concentrate Law: Law Revision and Study Guide**, (Oxford University Press, 2013).

Bercovitch, J., Richard, J., **Conflict Resolution in the Twenty First Century: Principles, Methods, and Approaches**, (Michigan: University of Michigan Press, 2009).

Born, G., **International Arbitration: Cases and Materials,** (Leiden: Kluwer Law International, 2015).

Bothe, M., Partsch, K. J., and Solf, W. A., **New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949**, (Nijhoff, 1982).

Boulden, J., **United Nations Security Council Policy on Africa, in Dealing with Conflict in Africa**, (J. Boulden (ed.), New York, Palgrave, 2003).

Boulding, K., **Stable Peace**, (Austin, Texas: University of Texas Press, 1978).

Boutros-Ghali, B., **An Agenda for Peace**, (New York, United Nations, 1995).

Brown Scott, (ed.), **The Hague Court Reports**, (Buffalo, New York: William S. Hein, 2004).

Brownlie, I., "**International Law at the Fiftieth Anniversary of the United Nations"**, Recueil Des Cours, (Martinus Nijhoff Publishers, The Hague, Boston, London, 1995).

Bruno S., (ed.), **The Charter of the United Nations. A Commentary**, (Oxford, Oxford University Press, 1994).

Bruno S., (ed.), **The Charter of the United Nations: A Commentary**, 2nd edn., vol. 1 (Oxford: Oxford University Press, 2002).

Cassese, A., **International Law in a Divided World**, (Oxford, Clarendon Press, 1986).

Cede, F., **The Settlement of International Disputes by Legal Means - Arbitration and Judicial Settlement,** (in Bercovitch, J., Kremenyuk, V., Zartman, I. W., (eds.), The SAGE Handbook of Conflict Resolution, London: Sage Publications Ltd., (2009).

Cilliers, J., "**Resource Wars – A New Type of Insurgency**", (in Cilliers, J., Dietrich, C., (eds), Angola's war economy, Peace, profit or plunder? Pretoria: Institute for Security Studies, 2000).

Collier, J., Lowe, V., **The Settlement of Disputes in International Law**, (Cambridge, 1999)

Combacau, J., ***Le pouvoir de sanction de l' ONU*, (Paris, 1974),** (quoted in, Kooijmans, P. H., "The Enlargement of the Concept Threat to the Peace", Rene-Jean Dupuy (ed.), The Development of the Role of the Security Council, Martinus Nijhoff Publishers, Dordrecht, 1993).

Conforti, B., **The Law and Practice of the United Nations**, (The Hague, Cordesma, Kluwer Law International, 1996).

Cullen, A., **The Concept of Non-International Armed Conflict in International Humanitarian Law: A Study on Thresholds of Applicability**, (Thesis, University College, Galway, 2007).

De Visscher, **Theory and Reality in International Law**, (Corbett Trans. 1968).

De Waart, P.J., **The Element of Negotiation in the Pacific Settlement of Dispute between States**, (The Hague, 1973).

De Wet, E., **The Chapter VII Powers of the United Nations Security Council**, (Oxford: Hart Publishing 2004).

Dersso, S., **The African Peace and Security Architecture** (in Murithi, T., (ed.) Handbook of Africa's International Relations Publisher. London: Routledge, 2013).

Detter, I., **The Law of War**, (Cambridge, Cambridge University Press, 2000).

Dinstein, Y., **War, Aggression and Self-Defence**, (4th ed., Cambridge University Press, 2005).

Ellison, G. and Shirlow, P., **“From War to Peace: Informalism, Restorative Justice and Conflict Transformation in Northern Ireland”**, in Restorative Justice: From Theory to Practice, Emerald Group Publishing, (2008).

Ellison, G., Shirlow, P., **"From War to Peace: Informalism, Restorative Justice and Conflict Transformation in Northern Ireland**," (in Restorative Justice: From Theory to Practice, Emerald Group Publishing, 2008).

Fleck, D., Bothe, M., **The Law of Non-International Armed Conflict**, (Oxford University Press, 2008).

Fleck, D., **The Law of Non-International Armed Conflict, in, The Handbook of International Humanitarian Law**, (Oxford: Oxford University Press, 2008).

Francis, D., **War of Visions: Conflict of Identities in Sudan**, (Washington, DC, Brookings Institution, 1995).

Franck, T. M., **"The Security Council and "Threat to the Peace": Some Remarks on Remarkable Recent”,** (in Rene-Jean Dupuy (ed.), The Development of the Role of the Security Council, Martinus Nijhoff Publishers, Dordrecht, 1993).

Frank, T. M., **Nation against Nation,** (Oxford University Press, Oxford and New York, 1985).

Gasser, H. P., “**International Humanitarian Law: an Introduction”,** (in Haug, H., (ed.), Humanity for All: the International Red Cross and Red Crescent Movement, Henri Dunant Institute, Geneva, 1993).

Gelot, L., **African regional organizations, peace operations and the UN**, (in Wallensteen, P., Bjurner A., (ed.), Regional Organizations and Peacemaking: Challengers to the UN?, Milton Park, Abingdon, Oxon ; New York, NY: Routledge, 2015).

Goodrich, L., Simons, A., **The United Nations and the Maintenance of International Peace and Security**, (Washington, D.C, The Brookings Institution, 1955).

Greenwood, C., **Scope of Application of Humanitarian Law, in The Handbook of Humanitarian Law in Armed Conflicts,** Fleck, D., **(**ed**),** The Handbook of International Humanitarian Law **(**Oxford**:** Oxford University Press**,** 2008).

Halderman, J. W., **The United Nations and the Rule of Law**, (Oceana Publications Inc., USA, 1966).

Hampson, F. O**, Nurturing Peace**: Why **Peace Settlements Succeed** or **Fail, (**Washington**,** DC**:** United States Institute of Peace Press, 1996**).**

Henderson, E. A., “**When States Implode: Africa’s Civil Wars 1950-92**”, (in Alfred G. Nhema, The Quest for Peace in Africa: Transformation, Democracy and Public Policy, Netherlands: International Books, 2004)

Higgins, R., **International Law and the Avoidance, Containment and Resolution of Disputes**, (Recueil Des Cours, 1991-V, Martinus Nijhoff Publishers, 1993).

Ibok, S.B., **The OAU/AU: Records, Challenges and Prospects,** (in Burja, A., Solomon, H., (ed.), Perspectives on the OAU/AU and Conflict Management in Africa, Oxford: African Books Collective Ltd, 2004).

Ilesanmi, S.O., and Temoney, K. E., **Counterterrorism and religious violence in Nigeria: A Just War Perspective on the Doctrine of Necessity,** (in Christian, M., Green, Jeremy, T., Gunn, Mark Hill (eds.), Religion, Law and Security in Africa, African SUN MEDIA, 2018).

Kaldor, M., **New and old wars: Organized violence in a global era**, (Cambridge UK: Polity Press, 1999).

Keen, D., **The Economic Functions of Violence in Civil Wars, International Institute of Strategic Studies**, (New York: Oxford University Press, 1998).

Kelsen, H., **The Law Of The United Nations: A Critical Analysis Of Its Fundamental**,(The London Institute of World Affairs, The LawBook Exchange , LTI Union, New Jersey, 2000).

Kilcullen, D., **The Accidental Guerrilla**, (Oxford University Press, 2009).

Kolb, R., ***Ius contra bellum: le droit international relatif au maintien de la paix***, (Bruxelles, Bruylant, 2003).

Kuwali, D., **The Responsibility to Protect: Implementation of Article 4(h) Intervention**, (Leiden: Martinus Nijhoff Publishers, 2011).

Lall, A., **Modern International Negotiation**, (New York, 1966).

Landsberg, C., (eds), **From Cape to Congo: Southern Africa's evolving security challenges**, (Lynne Rienner, Boulder, 2003).

Lauterpacht, H., **International Law and Human Rights**, (New York, Frederick A. Praeger, Inc. 1950).

Leriche, M., Arnold, M., **South Sudan: From revolution to independence,** (New York: Oxford University Press, 2013).

Madsen, M., **Judicial Globalization: The Proliferation of International Courts**", (Research Handbook on Global Administrative Law, 2016).

Malone, D. M., (ed.), **The UN Security Council: From the Cold War to the 21st Century,** Peck, C., Special Representatives of the Secretary-General, (London, Lynne Rienner Publishing, 2004).

Malone, D. M., (ed.), **The UN Security Council: From the Cold War to the 21st Century**, (Boulder, USA, Lynne Rienner, 2004).

Mani, R., "**Peaceful Settlement of Disputes and Conflict Prevention**", (in S. Daws, S., Weiss, T. G., (eds), The Oxford Handbook on the United Nations, Oxford University Press, 2007).

McDougal, M. S., Feliciano, F. P., **Law and Minimum World Public Order: The Legal Regulation of International Coercion**, Yale University Press, 1961).

Merills, J. G., **International Dispute Settlement,** (Cambridge: Cambridge University Press, 2017).

Merrills, J. G., **International Dispute Settlement**, (3rd ed., Cambridge, 1998).

Moir, L., **The Law of Internal Armed Conflict**, (Cambridge: Cambridge University Press, 2002).

Mwanasali, M., **From the Organization of African Unity to the African Union**,(in Baregu, M., Landsberg, C., (eds), From Cape to Congo: Southern Africa's evolving security challenges, Lynne Rienner, Boulder, 2003).

O'Brien, J., **International Law**, (London: Cavendish Publishing Ltd., 2002)

O'Connell, M. E., **Humanitarian Assistance in Non-International Armed Conflict: The Fourth Wave of Rights, Duties and Remedies** (31 Israel Yearbook on Human Rights, 2002).

Olonisakin, F., Ero, C., "**Africa and the Regionalization of Peace Operations: The U.N. and ECOWAS**",(in Pugh M., Waheguru P. S. S., (eds) The United Nations and Regional Security: Europe and Beyond, 2003).

Oppenheim, L., **International Law: A Treatise**, (7th ed., London, Longmans, 1952).

Osterdahl, I., **Collective Security in a changing geopolitical landscape**, (in P. Wallensteen, P., Bjurner, A., (ed.), Regional Organizations and Peacemaking: Challengers to the UN, London, New York, Routledge, 2015).

Peck, C., **Sustainable Peace: The Role of the UN and Regional Organizations in Preventing Conflict** (Lanham, Md.: Rowman & Littlefield, 1998).

Petterson, D., **Inside Sudan: Political Islam, Conflict and Catastrophe: Revised & Updated**, (Westview Press Books, 2009).

Pictet, J.S., *La Convention de Genève relative au traitement de prisonniers de guerre: commentaire*, Geneva, International Committee of the Red Cross, 1958, 26.

Report on the World Social Situation, (United Nations Publication, 2001).

Riesche, S., **Bosnia, Dafur, and the "Actorness of Regional Organizations: Assessing the Performance of EU and AU Regional(ized) Peace Operations**", (in Attina, F., Irrera, D., Multilateral Security and ESDP Operations, London and New York, Routledge, 2016).

Rivlin, B., Gordenker, L., (eds.), **The Challenging Role of the UN Secretary-General: Making 'The Most Impossible Job in the World' Possible** (Westport, Conn., Praeger, 1993).

Roberts, A., Guelff, R. (eds.), **Documents on the Laws of War**, **3rd ed**. (Oxford, Oxford University Press, 2000).

Rummel, R.J., **The Conflict Helix: Principles and Practices of Interpersonal, Social and International Conflict and Cooperation**, (New Brunswick: Transaction Publishers, 1991).

Salehan, I., **Rebels without borders: transnational insurgencies in world politics**, (New York: Cornell University Press, 2009).

Seguya, Neema, **Challenges in conflict resolution: Case of the Juba peace talks in Uganda (2006-2008),** (LAP LAMBERT Academic Publishing, University of Tromso: Center for Peace Studies, 2010).

Shaw, M. N., **International Law,** (Cambridge, UK: Cambridge University Press, 2008).

Shaw, M.N., **International Law**, (Cambridge, Grotius Publications Limited, 1991).

Simma. B., (eds.), **The Charter of the United Nations: A Commentary**, (Oxford University Press, 2nd ed. Vol. I, 2002).

Skjelsbaek, K., and Fermann, G., "**The UN Secretary-General and the Mediation of International Disputes,**" (in Bercovitch, J., (ed.), Resolving International Conflicts: The Theory and Practice of Mediation, Boulder: Lynne Rienner, 1996).

Taisier M. A., and Robert O. M., **Durable Peace: Challenges for Peace Building in Africa**, (University of Toronto Press, 2004).

Tumuranzye, S.M., **"Factors Affecting Peace Negotiations in Resolving Armed Conflicts in Sub-Saharan Africa**", (A Thesis Presented to the US Army Command and General Staff College, Fort Leavenworth, Kansas, January, 2011).

Ulf Engel, ***Frieden, Sicherheit Und Demokratie—Wie Weiter Mit Der* AU?**, (Hamburg: German Institute of Global and Area Studies, 2012).

UN Legal Affairs Office, Codification Division, **Handbook on the Peaceful Settlement of Disputes between States** (New York: UN, 1992).

United Nations University (UNU), "**Examining the Shortcomings of the Liberal Peace Model**", (New York, United Nations, 2007)

Vance, C. R., and Hamburg, D. A., **Pathfinders for Peace: A Report to the UN Secretary-General on the Role of Special Representatives and Personal Envoys**, (Washington, DC: Carnegie Commission on Preventing Deadly Conflict, 1997).

Vinogradov, S., Wouters, P., Jones, P., **Transforming Potential Conflict into Cooperation Potential: The Role of International Water Law,** (UNESCO, 2003).

Wallensten, P., and Bjurner, A., (ed.), **Regional Organizations and Peacemaking: Challengers to the UN?, (**Milton Park, Abingdon, Oxon ; New York, NY: Routledge, 2015).

Williams, P. D., **War and Conflict in Africa**, (Cambridge, UK, Polity Press, 2011).

Zartman, I. W., **Negotiation and Conflict Management,** (London, Routledge, 2009).

ARTICLES

Abdulrahim, M. W., "Introduction to Public International Law", (Dar El-Manhal/El-Lubnani, Beirut-Lebanon, 25 November 2011)

ACLED, "**Trends and Unexpected Developments in Africa 2015",** (11 December 2015).

Agbu Osita, "**The Socio-Economic and Political Dimensions of Refugee Movement in Africa"**, (Nigerian Forum, September/October 1995).

Aka, C.P., "**Transition from war to peace in sub-Saharan Africa**", (Journal of Third World Studies *Americus,* Spring 1998).

Aldrich, G. H., "**Prospect for United States ratification of Additional Protocol I of the 1949 Geneva Conventions"** (85AJIL 1, 1991).

Aldrich, G.H., **"New life for the laws of war"**, (AJIL, vol. 75, 1981)

Alison Frankel, **"Wilmer Represents Sudan People's Liberation Movement in Landmark War-Ending Arbitration",** (The American Lawyer, July 22, 2009).

Aniogolu, N. A., "**Keeping Nigeria One through Visionary Constitutional Engineering: Philosophy Behind Some Provisions of the 1989 Constitution",** (Cap. U. L. Rev., 1992).

Balch-Lindsay Dylan, J., Enterline, A., Joyce Kyle, A., **"Third-party intervention and the civil war process"**, (Journal of Peace Research Vol.45 No.3, 2008).

Basar, E., "**Report Update: Unsecured Libyan Weapons – Regional Impact and Possible Threats",** (The Allied Command Operations (ACO) Civil - Military Fusion Centre (CFC) (Publication, November 2012).

Bassiouni, C., **"The New Wars and the Crisis of Compliance with the Law of Armed Conflict by Non-State Actors",** (The Journal of Criminal Law and Criminology, vol. 98, No. 3, 2008).

Bassiouni, M. C., (ed.), *"The Pursuit of International Criminal Justice: A World Study on Conflicts",* Victimization, and Post-Conflict Justice 79, Vol. 1, 2010.

Bekoe, D. A., "**Mutual Vulnerability and the implementation of peace agreements: Examples from Mozambique, Angola, and Liberia**", (International Journal of Peace Studies 10, No. 2, Autumn/Winter 2005).

Bender, G., *"**Peacemaking in Southern Africa: The Launda-Pretoria Tug of War"**, Third World Quarterly, (*January 1989), p. 24.

Bouka, Y., **"Missing the Target: The African Union's Mediating Efforts in Burundi"**, (Africa Policy Brief, EGMOT Royal Institute for International Relation, No.15, June 2016).

Boulden, J., "**Double Standards, Distance and Disengagement: Collective Legitimization in the Post-Cold War Security Council",** (Security Dialogue 37, No. 3, 2006)

Boulden, J., **United Nations Security Council Policy on Africa, in Dealing with Conflict in Africa**, (J. Boulden (ed.), New York, Palgrave, 2003).

Boutellis, A., Williams, P. D., "**Peace Operations, the African Union, and the United Nations: Toward More Effective Partnerships**", (International Peace Institute (IPI), New York, 2013).

Boutros-Ghali, B., **"An Agenda For Peace: Preventive Diplomacy, Peacemaking and Peacekeeping",** (A/47/277 - S/24111, New York: United Nations, 1992).

Brosché, J., **"Darfur: Dimensions and dilemmas of a complicated situation",** (Uppsala: Uppsala University, 2008).

Campbell, J., "**Ten Years Later: Taking Stock of Sudan's Comprehensive Peace Agreement"**, (Council on Foreign Relations, January 9, 2015).

Cedric De Coning, *"***Refining the African Standby Force Concept,"** (ACCORD, Issue 2, Special Edition on Peacekeeping, 2004).

Cedric De Coning, "**Can the AU Finance its own Peace Operations, and if so, what would the impacts be?",** (Contribution to the Annual Report of African Union Peace Operations, African Union and the Kofi Annan International Peacekeeping Training Center publication, 2018, Complexity for Peace Operations, March 28, 2017).

Chinkin, C., **"Rape and Sexual abuse of Women in International Law", (**European Journal of International Law, Vol. 5, No. 1, 1994).

Cillers**,** J., **"Conflict trends in Africa: a turn for the better in 2015?,"** (Institute for Security Studies (ISS), 4 November 2015)

Cilliers, J., **"Future (im)perfect? Mapping conflict, violence and extremism in Africa**", (Institute for Security Studies, October 2015).

Cilliers, J., "**Towards a Continental Early Warning System for Africa***"*, (Pretoria: Institute for Strategic Studies, April 2005).

Cilliers, J., and Schünemann, J., **"The future of intrastate conflict in Africa: More violence or greater peace?"** (Institute for Security Studies, May, 2013).

Cilliers, J., and Sturman, K., **"The right intervention: Enforcement challenges for the African Union",** (African Security Review, Vol.11, Issue 3, 2002).

Clapham, C., "**African Guerillas Revisited (2007) in A., BELLAL, "The Distinction between International and Non-International Armed Conflicts: Challenges**

for IHL?", (XXXVIII Round Table Current Issues of International Humanitarian Law, Saremo, 3rd-5th September, 2015).

Collier, P., and Sambanis, N., **"Understanding Civil War in Africa",** (World Bank: Evidence and analysis. Vol.1. Washington DC: The World Bank, 2005).

Colter, P., **"Compliance With Final Judgements of The International Court of Justice since 1987",** (The American Journal of International Law 98, No. 3 2004).

Conrad Rein "**Enhancing Peace and Security in Africa through Institutional Cooperation**", (Contemporary Security Policy, Vol. 36, Issue 2, 2015).

Crawford, E., **Unequal before the Law: the Case for the Elimination of the Distinction between International and Non-international Armed Conflicts** (Vol. 20, Issue 2, Leiden Journal of International Law, 2007),.

Cullen, A., ***"Key Developments Affecting the Scope of Internal Armed Conflict in International Humanitarian Law",*** (183 Mil. L. Rev., 2005).

De Vries, L., and Justin, P.K., **"A failure of governance: Understanding the South Sudan's conflict dynamics beyond the political and humanitarian crisis",** (2014.)

De Vries, L., and Schomerus, M., **"South Sudan's Civil War Will Not End with a Peace Deal"**, (Peace Review, Vol. 29:3, 2017).

Defoe, M., **"The Effect of Institutional and Political Instability on Civil War in South Sudan",** (Inquiries Journal, Vol. 9, No. 11, 2017).

Desmidt, S., **"Peace-building, conflict prevention and conflict monitoring in the African Peace and Security Architecture",** (European Centre for Development Policy Management (ECDPM) background note).

Desmidt. S., and Hauck,V., **"Conflict management under the African Peace and Security Architecture (APSA) Analysis of conflict prevention and conflict resolution interventions by the African Union and Regional Economic Communities in violent conflicts in Africa for the years 2013-2015",** (Discussion Paper, European Centre for Development Policy Management (ECDPM), No. 2011, April 2017).

Draper, G. I. A. D., **"*Humanitarian Law and Internal Armed Conflicts*"**, (Georgia Journal of International and Comparative Law, vol. 13, 1983).

Duquet, N., **"Angola's Rise to Regional Power: A Theoretical Approach on Oil and Conflict in Central-Africa"**, (St Antony's International Review, Vol. 2, No. 1, The International Politics of Oil May 2006).

Ebo, A., Mazal, L., "**Small arms control in West Africa, Monitoring the Implementation of Small Arms Control (MISAC)**", (West Africa Series No.1, London: International Alert, 2003).

Edeko, S. E., "**The proliferation of small arms and light weapons in Africa: a case study of the Niger Delta in Nigeria**", (Sacha Journal of Environmental Studies, 1(2), (2011).

Egute, M. A., Ode, I.O. and Kur, J.J., **"A Report made by a Chief in Nigeria to the West Africa Lands Committee of 1912",** (Cited in Access to Justice Programme, Nigeria Land Rights and Mechanisms for Resolving Land Disputes in Benue State, Makurdi, Benue State University, Nigeria, 2004).

Ejibunu, H. T. **"Nigeria's Niger Delta crisis: Root causes of peacelessness"**, (Tuschl, R. H.(ed.), *EPU Research Papers*, Vol.7(7), 2007.)

Ekott, I., **"Africa: The AU's Funding Woes Continue",** (Africa in Fact, 2017).

Elbadawi, I., and Sambani, N., **"Why are there so many Civil Wars in Africa? Understanding and Preventing Violent Conflict**", (Journal of African Economies, Vol. 9, 2000)

Ero, C., "**The Problems with "African Solutions", (**International Crisis Group, 2013).

Feldema C. Smith, "**The Permanent Court of Arbitration (PCA)",** (August 3 2013)

Fenton, W., and Loughna, S., **"The Search for Common Ground: Civil-Military Coordination and the Protection of Civilians in South Sudan",** (Humanitarian Policy Group (HPG), Working Paper, December 2013).

Fithen, C., **"Diamonds and war in Sierra Leone: cultural strategies for commercial adaptation to endemic low-intensity conflict",** (London: Department of Anthropology, University College, London, 1999).

Flint, J., **"Rhetoric and reality: The failure to resolve the Darfur conflict"**, (Small Arms Survey, 2010)

Franke, B. F., **"Competing Regionalism in Africa and the Continent's Emerging Security Architecture",** (African Studies Quarterly, Vol. 9, Issue 3, Spring, 2007).

Garang, A., "**The impact of external actors on the prospect of a mediation settlement in South Sudan***"*, (paper presented at the Academic Conference on International Mediation, University of Pretoria, 2-4 June 2015, Pretoria, South Africa, 2015).

Gerry, C., Roy, M., **"Peacekeeping: The African Dimension",** (Review of African Political Economy, Vol. 22, No. 66, 1995).

Gettleman, J., "**Africa's endless wars: why the continent's wars never end"**, (Foreign Policy 178, March/April 2010)

Gettleman, J., **"Africa's forever wars: Why the continent's conflicts never end"**, (Foreign Policy Magazine, 2010).

Gilles Yabi, **"Keeping the Peace in Electoral Conflicts: The Role of ECOWAS, UNOCI and the International Community in Côte d'Ivoire,"** (Berlin: Center for International Peace Operations, 2012.)

Gorm Rye Olsen, **"Great power' intervention in African armed conflicts"**, (Cambridge Review of International Affairs, Vol.28, Issue 2, 2015.)

Goulding, M., **"The United Nations and Conflict in Africa since the Cold War",** (African Affairs 98, No. 391, 1999)

Gustavo De Carvalho, **"Conflict Prevention: What's in it for the African Union",** (Policy Brief, Institute for Security Studies, Training for Peace, No. 103, May 2017)

Hauss, C., "**Reconciliation,"** ***Beyond Intractability***, Guy Burgess and Heidi Burgess (eds.), Conflict Information Consortium, University of Colorado, Boulder, (September 2003).

Heidelberg Institute for International Conflict Research (HIIK), Heidelberg Conflict Barometer 2016, (February 2017)

Homewood, K., Coast, E., and Thompson, D.M., **"In-migrants and exclusion in east African rangelands: Access, tenure and conflict, Africa",** (Vol. 74, No. 4)

Howell, "**Domestic Question in International Law"**,(AS1L Procs., Vol. 48, 1954)

Howell, J.M., "**Domestic Question in International Law**", (in Proceedings of the American Society of International Law (ASIL), Vol. 48, Cambridge University Press, April 1954).

Human Rights Watch, **"These killings must be stopped: Abuses by Government and Separatist Groups in Cameroon's Anglophone Region"**, (19 July, 2018)

Human Security Baseline Assessment (HSBA) for Sudan and South Sudan, Darfur Peace Process Chronology, (Small Arms Survey, Geneva-Switzerland, 2013)

Hussein Solomon, "**African solutions to Africa's problems? African approaches to peace, security and stability"**, (South African Journal of Military Studies, Vol. 43, No. 1, 2015).

Hutchison, P., and Wray, H., "**What is Restorative Justice?"** (New World Outlook, 1999).

International Crisis Group **"Sudan's spreading conflict (III): The limits of Darfur's peace process",** (African Paper Vol. 3, 2014)

IRIN: **The inside story on emergencies, "Concerns over implementation of Darfur peace deal",** (NAIROBI, 23 June 2006).

Jackson, R., **"Violent internal conflict and the African state: Towards a framework of analysis",** (A journal of contemporary African Studies 20, No. 1, 2002).

Jacob, F.O., "**Boundary Disputes and Communal Conflict Resolution: The Role of Traditional Rulers**", (Ikogho: Multi-disciplinary Journal, Vol. 8, No. 3, September 2010).

Johnson, D.H., "**Briefing: The crisis in South Sudan",** (No. 113 African Affairs, 2014).

Jok, J.M., **"Negotiating an end to the current civil war in South Sudan: What lessons can Sudan's comprehensive peace agreement offer?",** (Berghof Foundation, 2015)

Jones, B., Cherif, F., **"Evolving Models of Peacekeeping Policy Implications and Responses"**, (Center on International Cooperation, NYU, 2003).

Juma, M., and Mengistu, A., **"The infrastructure of peace in Africa: Assessing the peace-building capacity of African institutions"**, (International Peace Academy, New York, September 2002.)

Kayode, S. S., **"Intervention Brigade for the Congo: A precedent for UN Peace Enforcement",** (Review of International Law and Politics, Vol. 10, Issue 38, 2014)

Kebbede, G., **"Sudan: The North-South conflict in historical perspective",** (15 Contributions in Black Studies, 1997.)

Kebede, A., "**The Chairperson of the Commission welcomes the signing of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan"**, (African Union Peace and Security, 14 September 2018).

Keili, F.L., "**Small arms and light weapons transfer in West Africa: a stock taking***",* (Disarmament Forum, 2008).

Kinacioglu, M., **"The Principle of Non-intervention at the United Nations: The Charter Framework and the Legal Debate"**, (PERCEPTIONS, Summer, 2005).

Kioko, B., **The right of intervention under the African Union's Constitutive Act**, (International Review of the Red Cross, Vol. 85, 2003).

Kolb, R., **"The relationship between International Humanitarian Law and Human Rights Law: A brief history of the 1948 Universal Declaration of Human Rights and the 1949 Geneva conventions",** (International Review of the Red Cross, September, No. 324, 1998).

Kruschen Govender, Yvette Ngandu, and Ed Katz, **Towards Enhancing the Capacity of the African Union in Mediation,** (Umhlanga Rocks: ACCORD, 2010).

Kwaja, C., **Confronting the challenges of small arms and light weapons**, (West Africa Insight, 2012).

Lar, J., "The PSC and ECOWAS: Collaboration on Conflict Resolution in the Two Guineas", in T. Murithi and H. Lulie (eds), **The African Union Peace and Security Council: A Five-Year Appraisal**, (Vol. 187, Pretoria: Institute for Security Studies, 2013)

Le Billon, **"The political economy of resource wars in Angola's war economy"** (ed. Cilliers and Dietrich, Institute for Security Studies, South Africa, 2000.)

Lori-Anne Théroux-Bénoni, **"Mali in the aftermath of the French military operation"**, (Institute for Security Studies, Situation Report, 2013).

Magliveras, K.D., and Naldi, G.J., "**The African Union, A new dawn for Africa?**", (International Comparative Law Quarterly, Vol. 51, 2002).

Maiese, M., **"Restorative Justice," (**Beyond Intractability, Guy Burgess and Heidi Burgess (eds.), Conflict Information Consortium, University of Colorado, Boulder, October 2003).

Malan, M., **"African Solutions to African Problems- with G-8 Funding: African peacekeeping and the challenges for the G-8 action plan",** (Draft paper for the Chatham House Meeting on Africa & the G8: Assessing the G8-Africa Partnership and Recommendations for Sea Island and Beyond, 2004).

Martenczuk, B., "**The Security Council, the International Court and Judicial Review: What Lessons from Lockerbie?**", (European Journal of International Law, Vol.10, 1999).

Mays, T. M., **"African Solutions for African Problems: The Changing face of African-Mandated Peace Operations",** (The Journal of Conflict Studies, 2003).

Mohammud A. Hussien, **"From AMIB to AMISOM: The Need for Institutional and Mandate Clarity in APSA"**, (ISS Paper Pretoria, 2012).

Mollie Zapata, **"Sudan: Comprehensive Peace Agreement and South Sudan Independence",** (Enough Project, December 20, 2011).

Mwanasali, M., **"The African Union, the United Nations and the Responsibility to Protect: Towards and African Intervention Doctrine",** (Global Responsibility to Protect, vol. 2, Issue 4)

Myrill, E., "**Hague Panel's Award Settles Ethiopia-Eritrea War Related Claims"**, (International Institute for Conflict Prevention and Resolution (CPR), August 19 2009).

Nathan, L., **"African Solutions to African Problems South Africa's Foreign Policy",** (World Trends Journal of International Policy, Vol. 21, (September/October 2013).

Nathan, L., "Mediation and the AU's Panel of the Wise", in Shannon Field (Ed.), "Peace in Africa: Towards a Collaborative Regime", (2004).

Nathan, L., **"No ownership, no peace: The Darfur Peace Agreement"**, (Crisis States Research Centre, 2006)

Netabay, N., "**The Darfur peace process: Understanding the obstacles to success**", (2009).

Nikitin, B. S., ***"The Positive Impact of African Union Forces in Darfur"***, (INQUIRIES Journal, Vol. 2, No. 1, 2010)

O'Connell, M. E., **"Saving Lives through a Definition of International Armed Conflict, in Proceedings of the 10th Bruges Colloquium 22-23 October 2009: Armed CoSnflicts and Parties to Armed Conflicts under IHL, Confronting Legal Categories to Contemporary Realities",** (N° 40, (Autumn/Automne 2010).

Okechukwu Oko, **"Confronting the Transgressions of Prior Military Regimes towards a More Pragmatic Approach",** (11 Cardozo Journal of International and Comparative Law, 2003).

Olonisakin, F., "**African Peacekeeping at the Crossroad: An Assessment of the Continent's Evolving Peace and Security Architecture**", (External Study, DPKO Best Practices Unit, September, 2004).

Owiso, O., Boshoff, E., Mamhare, T.M., and Tsighe, A.Z., **"Intractable conflicts in Africa: The International Response to the Darfur and South Sudan Crises"**, (1 Global Campus Human Rights Journal, 2017).

Packer, C., and Rukare, D., "**The New African Union and its Constitutive Act", (**American Journal of International Law, Vol. 96, 2002),

Peace Direct, Sudan: Conflict Profile, 2015.

Pearlman, W., and Cunningham, K.G., **"Non-state Actors, Fragmentation, and Conflict Processes"**, (Journal of Conflict Resolution 56/1, 2012).

Peters, J., **"The Nature of African Conflicts", Paper delivered at the Regional Conference on The Management of African Security in the 21st Century,** (NIIA, Lagos, Nigeria, 23-24 June, 1999).

Petterson, D., "**Inside Sudan: Political Islam, Conflict and Catastrophe"**, (The Arab Studies Journal, Vol. 7/8, No. 2/1, Fall 1999/Spring 2000).

Petterson, T.,**"Pillars of strength: External support to warring parties", (**in Petterson Therese, Themner Lotta (eds.), States in Armed Conflicts, 2010, Research Reports 94, 2011.)

Philip Obaji Jr., **"ISIS's West African Offshoot is Following Al Qaeda's Rules for Success",** (Foreign Policy, April 2, 2019).

Porto, J. G. and Ngandu, K. Y., **"The African Union, Preventive Diplomacy, Mediation, and the Panel of the Wise: Review and Reflection on the Panel's First Six Years",** (African Security, Vol. 7, Issue 3, 2014).

Powell, K., **"The African Union's Emerging Peace and Security Regime: Opportunities and Challenges for Delivering on The Responsibility to Protect",** (The North-South Institute, May 2005).

Prendergast, J. and Sullivan, D., **"Irresolution: The UN Security Council on Darfur"** (ENOUGH Strategy Paper, 2008)

President Muhammadu Buhari's Speech at the Commonwealth Head of Government (CHOGM) Conference in London, United Kingdom, April, 2018.

Radha Krishna Ramphul,**"The Role of International and Regional Organizations In The Peaceful Settlement Of Internal Disputes (With Special Emphasis On The Organization Of African Unity)"**, (Georgia Journal of International & Comparative Law, Vol. 13:371, 1983).

Regan Patrick, M., "**Third-party interventions and the duration of intrastate conflicts"**, (Journal of Conflict Resolution Vol. 46 No.1, 2002).

Reitano, I., and Shaw, M., **"Check your blind spot – confronting criminal spoilers in the Sahel"**, (Institute for Security Studies, Policy Brief, 2013).

Remofiloe Lobakeng, **"African solutions to African problems: a viable solution towards a united, prosperous and peaceful Africa?",** (Occassional Paper, 71, Institute for Global Dialogue, October, 2017).

Renwick, D., "**Peacekeeping in Africa"**, (Council on Foreign Relations (CFR) Backgrounders, May 2015).

Schindler, D., "**Different Types of Armed Conflicts according to the Geneva Conventions and Protocols***"*, (RdC, II, 1979).

Scott Straus, **"Wars Do End! Changing Patterns of Political Violence In Sub-Saharan Africa"**, (African Affairs, 111/443, 1 March 2012).

Séverine Autesserre, **"Hobbes and the Congo: Frames, Local Violence, and International Intervention,"**(International Organization 63, Spring 2009).

Séverine Autesserre, **"The Trouble with Congo: How Local Disputes Fuel Regional Conflict",** (Foreign Affairs 87, No. 3 May 1, 2008).

Shaw, M., and Reitano, T., "**The Evolution of Organised Crime in Africa: Towards a New Response"**, (Institute for Security Studies, Paper 244, April 2013).

Sikainga, A., "**The World's Worst Humanitarian Crisis: Understanding the Darfur Conflict**", (Origins, Ohio State University, Vol. 2, Issue 5, February, 2009).

Slim, H., **"Dithering over Darfur? A Preliminary Review of the International Response",** (International Affairs, Vol. 80, 2004)

Spieker, H., **"The International Criminal Court and Non-International Armed Conflicts",** (Leiden Journal of International Law, Vol. 13, Issue 2, 2000.)

Stewart, J. G., **"Towards a Single Definition of Armed Conflict in International Humanitarian Law: A Critique of Internationalized Armed Conflict",** (85 No. 850, International Review Red Cross, 2003)

Tanner, V. and Tubiana, J., **"Divided They Fall: The Fragmentation of Darfur's Rebel Groups"**, (Small Arms Survey, Graduate Institute of International Studies, Geneva, 2007).

Thalif Deen, **"NGOs Lead Move to Use UN General Assembly To Stop War", (**Inter Press Service, 31 January 2003).

The Sudd Institute **"South Sudan's crisis: Its drivers, key players, and post-conflict prospects"**, (03 August 2014).

Toft, M.D., "**Ending civil wars; a case for rebel victory**", (International Security", 2010).

Tony F. Marshall, "**Restorative Justice: An Overview",** (Home Office Research Development and Statistics Directorate, 1999).

Udombana, N. J. **"Still Playing Dive with Lives: Darfur and Security Council Resolution 1706",** (Third World Quarterly 28.1, 2007).

Vhumbunu, C. H., "**A Hurried and Imposed Peace Pact?: Conflict Resurgence and the Agreement on the Resolution of the Conflict in the Republic of South Sudan**", (19 October, 2016).

Vinck, P., Pham, P. N. and Kreutzer, T., **"Talking Peace: A population-based survey on attitudes about security, dispute resolution, and post-conflict reconstruction in Liberia",** (Berkeley, CA: Human Rights Center, University of California, Berkeley, 2011).

Vite, S., "**Typology of armed conflicts in international humanitarian law: legal concepts and actual situations"**, (International Review of the Red Cross, Vol. 91, No. 873, March, 2009).

Voz di Paz and Interpeace, **"Root Causes of Conflict in Guinea-Bissau: The Voices of the People"**, (Guinea-Bissau: Voz di Paz/Interpeace, 2010).

Wadi, A.I., **Perspectives on Tribal Conflicts in the Sudan**, (Khartoum, University of Khartoum, IAAS, 1998).

Wallensteen, P., (et. al.),**"Armed conflicts 1946-2014"**, (Journal of Peace Research, Vol. 52(4), 2015)

Watson, J. S., **"Auto interpretation, Competence, and the Continuing Validity of Article 2(7) of the UN Charter"**, (71 American Journal of International Law 1977)

Williams, P. D., **"From Non-Intervention to Non-Indifference: The Origins and Development of the African Union's Security Culture",** (African Affairs, 106, No. 423, 2007).

Willmott, D., **"Removing the Distinction between International and Non-International Armed Conflict in the Rome Statute of the International Criminal Court",** (Melbourne Journal of International Law, Vol. 5, 2004).

World Refugee Survey, *1989 in Review,* Washington, US Committee for Refugees, 1990.

Yoweri Kaguta Museveni, **"The Strategy of Protracted People's War: Uganda,"** (Military Review (November-December 2008).

Zamfir, L., **"Actions of the African Union against coups d'etat"**, (European Parliamentary Research Service (EPRS), April 2016.)

Zehr, H. and Mika, H., "**Fundamental Concepts of Restorative Justice"**, (Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice, Volume 1, Issue 1, 1997)

REPORTS

2005 World Summit Outcome, UN document A/60/L.1, 15 September 2005, paras. 73–76.

African Commission on Human and Peoples' Rights Ratification Table: Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court of Human and Peoples' Rights.

African Commission on Human and Peoples' Rights Report of the African Commission on Human and Peoples' Rights Fact-Finding Mission to the Republic of South Sudan in the Darfur Region (2004a)

African Commission on Human and Peoples' Rights *Resolution on Darfur* (2004b).

African Commission on Human and Peoples' Rights *Resolution on the Human Rights Situation in Darfur* (11 May 2005)

African Peace and Security Architecture (APSA) Roadmap 2016–2020, African Union Commission, Peace and Security Department, Addis Ababa, (December 2015)

African Peer Review Mechanism *APRM Pre-Country Review Mission to Sudan* (11 January 2016)

African Standby Force and African Capacity for the Immediate Response to Crises Revised Roadmap (June 2014 -December 2015)

African Union "Final Report of the African Union Commission of Inquiry on South Sudan" (2014a), para. 50.

African Union *Communiqué* of the Peace and Security Council 411th Meeting (2013a)

African Union *Communiqué* of the Peace and Security Council 411th Meeting (2013a)

African Union Communiqué of the Peace and Security Council 440th Meeting (2014b), paras 42-44

African Union *Communiqué* of the Peace and Security Council 515th Meeting (2015a)

African Union *Communiqué,* The Peace and Security Council (PSC/Council) of the African Union (AU), at its 689th meeting held on 30 May 2017, Addis Ababa, Ethiopia. PSC/PR/COMM. (DCLXXXIX), (2017)

African Union Executive Council, The common Africa position on the proposed reform of the United Nations: "The Ezulwini Consensus", 7th Extraordinary Session, 7-8 March 2005, Addis Ababa, Ethiopia, p 6.

African Union, Policy Framework for the Establishment of the African Standby Force and Military Staff Committee, adopted by the African Chiefs of Defense Staff (Addis Ababa: Ethiopia, May 15-16, 2003).

Boutros Boutros-Ghali, An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping. Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, (United Nations, New York, 1992), para. 64.

Briefing made by Dr. Donald Kaberuka, the AU High Representative for Financing of the African Union and the Peace Fund within the framework of the implementation of Assembly Decision Assembly/AU/Dec.605(XXVII) on the Financing of the African Union, including the Peace Fund, adopted by the 27th Ordinary Session of the Assembly held in Kigali, Rwanda, in July 2016; at the 770th meeting of the Peace and Security Council (PSC) of the African Union (AU), held on 2 May 2017.

Communiqué [PSC/PR/COMM. (DCLXXXIX)] adopted at its 689th meeting held on 30 May 2017.

Communiqués and press statements on the AU Peace Fund, in press statement [PSC/PR/BR.(DCXXI)] adopted at its 621st meeting held on 5 September 2016

Coomaraswary, R., Report of the Special Rapporteur on Violence against Women, its causes and consequences, 1998.

Crisis Group South Sudan: Keeping Faith with the IGAD Peace Process (2015b)

Crisis Group, 'The chaos in Darfur', (22 April 2015).

Evaluation Report on the Conduct of the AMANI II Field Training Exercise (December 2015)

Inter-Governmental Authority on Development Agreement to resolve the crisis in South Sudan (2014c)

Inter-Governmental Authority on Development Communiqué of the Foreign Ministers of Inter-Governmental Authority on Development (2013a).

Inter-Governmental Authority on Development Communiqué on the 23rd Extraordinary Session of the IGAD Assembly Heads of State and Government on the Situation in South Sudan (2013b)

Inter-Governmental Authority on Development Communiqué on the 24th Extraordinary Session of the IGAD Assembly Heads of State and Government on the Situation in South Sudan (2014b).

Inter-Governmental Authority on Development Communiqué on the 26th Extraordinary Session of the IGAD Assembly Heads of State and Government on the Situation in South Sudan (2014d).

Inter-Governmental Authority on Development Communiqué on the 27th extraordinary session of the IGAD Assembly Heads of State and Government on the Situation in South Sudan (2014e).

Inter-Governmental Authority on Development Re-dedication of and Implementation of Modalities for the Cessation of Hostilities Agreement Signed on 23rd January2014 between the Government of the Republic of South Sudan and the Sudan People's Liberation Movement/Army (In Opposition)' (2014f).

Inter-Governmental Authority on Development South Sudan Parties sign areas of Agreement on Establishment of the Transitional Government of National Unity (2015a).

International Law Association, Draft Report, Initial Report on the Meaning of Armed Conflict in International Law, Rio de Janeiro Conference, 2008, pp. 9–10 and 23–24.

Issues Paper on the Establishment of the African Standby Force and the Military Staff Committee for First Meeting of the African Ministers of Defence and Security on the Establishment of the ASF and the CADSP (20-21 January, 2004, Addis Ababa, Ethiopia)

Joint Communique On United Nations-African Union Memorandum Of Understanding On Peace-building, September 20, 2017.

Joint UN-AU statement before the Security Council 14 February, 2014.

New Partnership for Africa's Development African Peer Review Mechanism (16 February 2004)

Pinto, R., (Rapporteur), "Report of the Commission of experts for the study of the question of aid to the victims of internal conflicts", International Review of the Red Cross, February 1963.

Report of the African Action Review on the Conduct of the AMANI II Field Training Exercise (April 2016)

Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Geneva, 25 January 2005, p. 32.

Sudan's Spreading Conflict (III): The Limits of Darfur's Peace Process Crisis Group Africa Report N°211, 27 January 2014, p. 4.

United Nations High Commissioner for Refugees 2015 UNHCR Country Operations Profile: Sudan (2015)

United Nations Human Rights Council Sudan: Unilateral sanctions hit the innocent harder than the political elites, warns UN rights expert (1 December 2015).

United Nations Regional Centre for Peace and Disarmament in Africa, "Conflicts in Africa: Sudan."

United Nations Report of the Secretary-General to the General Assembly and the Security Council. "The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa," A/52/871-S/1998/318, 13 April 1998, para. 41

United Nations Security Council demands Sudan disarms militias in Darfur, adopting Resolution 1556 (2004) by vote of 13-0-2 (2004b).

United Nations Security Council endorses establishment of 3-month advance team in Sudan to prepare for UN Peace Support Operation (2004a).

United Nations Sudan Joint Assessment Mission Report, vol. III, Cluster Reports, March 18, 2005.

NEWSPAPERS

Fortin. J., and Kron, J., **"Factional Fighting Breaks in South Sudan's Capital",** (The New York Times, July 8, 2016)

Hart, B., "**Why conflicts in the World"**, (THISDAY, Nigeria, Saturday, June 12, 1999).

Phyllis Taoua**, "Cameroon's Anglophone Crisis has brought the country to the brink of civil war",** (Breaking Point: Quartz Africa, June 26, 2018)

Somini Sengupta, **"U.N. to reduce peacekeepers in Darfur region of Sudan",** (New York Times, 29 June 2017).

Smith, D., **"Soudan referendum results conformed",** (The Guardian, February 2011).

Sudan Tribune, "**Sudan, Darfur rebels sign peace agreement in Doha**" (2013)

Taddele, M., **"Lessons from the failure of Darfur peace agreement"** (Sudan Tribune, 26 March 2007,)

The Guardian, **"Congo Criticises Detention of Nationals by Burundi",** (June 2. Ogata begins African refugee's awareness campaign, June 23, 1999)

Zongo, P., **"This is a genocide: villages burn as war rages in blood-soaked Cameroon",** (The Guardian, May 30, 2018).

CONVENTIONS

American Convention on Human Rights (ACHR), 22 November 1969;

Constitutive Act of the African Union

Convention on Suppression of Unlawful Acts against the Safety of Civil Aviation, 23 Sep. 1971, 24 U. S. T, 65, 974 U. N. T. S, 177.

Convention on the Rights of the Child (CRC), 20 November, 1989

Convention with Respect to the Laws and Customs of War on Land, art. 2, July 29, 1899.

Conventions for the Pacific Settlement of International Disputes of 29 July 1899 (Articles 9–14) and of 18 October 1907

Covenant on Civil and Political Rights (CCPR), 19 December, 1996;

European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 4 November, 1950

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 48, adopted June 8, 1977

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), adopted June 8, 1977.

Protocol of the Court of Justice of the African Union 11 July 2003.

Protocol relating to the establishment of the Peace and Security Council of the African Union, Durban 10 July 2002, into force since 26 December 2003

Protocol relating to the establishment of the Peace and Security Council of the African Union (hereinafter PSC Protocol), Durban 10 July 2002, into force since 26 December 2003, Art. 22(1).

The four Geneva Conventions of August 14, 1949 and their Additional Protocols.

RESOLUTIONS

OAU, Resolution CM/Res464 (XXVI), Twenty-Sixth Ordinary Session of the Council of Ministers, Addis Ababa, 23 February — 1 March 1976.

United Nations General Assembly Resolution 378 (V).

United Nations General Assembly Resolution 59/261 (children in armed conflict).

United Nations General Assembly resolutions 1514 (XV), 14 December 1960.

CASES

Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment of 19 December 2005, (2005) ICJ Rep., para. 345

Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, 619–620 (Sept. 2, 1998)

Prosecutor v. Charles Taylor, Prosecution's Second Amended Indictment, 29 May 2007, SCSL 03-01-PT.

Prosecutor v. Delali´c, Case No. IT- 96-21-T, Judgment, 327 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998)

Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Decision on the Confirmation of Charges, paras. 239-240.

Prosecutor v. Halilovi´c, Case No. IT-01-48-T, Judgment, 160–73 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 2005)

Prosecutor v. Jean-Pierre Bemba Gombo, Transcript of confirmation of charges hearing, 13 January 2009, T. 120-1

Prosecutor v. Kordia, Case No. IT-95-14/2-T, Judgment, 24 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 26, 2001)

Prosecutor v. Marti´c, Case No. IT-95-11-T, Judgment, 41 (Int'l Crim. Trib. for the Former Yugoslavia June 12, 2007)

Prosecutor v. Naletilic, Case No. IT-98-34-T, Judgment (Trial Chamber), 31 March 2003, para 198.

Prosecutor v. Tadi´c, Case No. IT-94-1, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction.

Prosecutor v. Thomas Lubanga Dyilo Case No. ICC-01/04-01/06, Judgment, 34–40 (Mar. 14, 2012).

Spanish Civil War Pension Entitlement case, Federal Republic Germany, Federal Social Court, 14 December 1978, 80 ILR 1989, 668-669; End Conscription Campaign, South Africa, Supreme Court, Cape Prov. Div., 14 October 1988, 87 ILR 1992, 279-281.

The Namibia case (1971) ICJ 16.

The Western Sahara case (1975) ICJ 12.