

**A STUDY OF THE APPLICATION OF R2P IN COTE  
D'IVOIRE AND LIBYA: A SEMBLANCE OF A CRIME  
OF AGGRESSION?**

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**DECLARATION**

I hereby declare that this dissertation is as a result of my own research conducted under the supervision of Dr. Hassan Wahab. It has not been submitted by anyone for any academic award in this university or any other. All sources used in this dissertation have been appropriately acknowledged.

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**DEDICATION**

*This dissertation is dedicated to GOD.*

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~I see God working so I smile~

## ABBREVIATIONS

UN	-	United Nations
ICISS	-	The International Commission on Intervention and State Sovereignty
R2P	-	Responsibility to Protect
UNSC	-	United Nations Security Council
ICC	-	International Criminal Court
ICRC	-	International Committee of Red Cross
NATO	-	North Atlantic Treaty Organization
ECOWAS	-	Economic Community of West African States
LECIAD	-	Legon Center for International Affairs and Diplomacy
IMT	-	International Military Tribunal
ASP	-	Assembly of States Party
U.S	-	United States
UNOCI	-	United Nations Operation in Côte d'Ivoire
AU	-	African Union
LAS	-	League of Arab States

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## ABSTRACT

As a result of the failure of the UN and the entire international system to protect people against genocide, war crimes, ethnic cleansing and crimes against humanity such as was committed in Rwanda and Srebrenica in 1994 and 1995 respectively, the international system deemed it necessary to settle on a legal and political structure for a united international action (humanitarian intervention) that will protect people against genocide, war crimes, ethnic cleansing, and crimes against humanity. This led to the institution of the Responsibility to Protect (R2P) doctrine which was unanimously adopted by UN member states at the 2005 World Summit held in New York. The main objective of R2P is to guide the UN and the international system in protecting people against genocide, war crimes, ethnic cleansing, and crimes against humanity. This dissertation uses the interventions in Cote d'Ivoire and Libya under the R2P doctrine as case studies to investigate whether the operationalization of the R2P concept has in principle and practice protected the rights of citizens or otherwise perpetuated crimes. More specifically, the study seeks to find out if the use of military intervention under the third pillar of R2P is a semblance of the Crime of Aggression. The study is based on the theory of humanitarian imperialism. Humanitarian imperialism is chosen as the relevant theory for this study because of its assumption that humanitarian interventions can become problematic for developing countries within which the intervention is carried out. This assumption is useful in determining whether or not this was the case in Cote d'Ivoire and Libya under the R2P doctrine. As a case study, the research employs a qualitative approach, using semi-structured interviews and purposive sampling technique, to collect the requisite data from the target population. The findings of the study shows that operationalization of R2P in Côte d'Ivoire and Libya has not protected the rights of the citizens but rather ascended crime perpetuation since some atrocities committed against citizens in both Côte d'Ivoire and Libya were committed by operators of R2P in both states. Also, the findings of the study reveal that the application of R2P in Côte d'Ivoire and Libya, specifically the use of military force, has resulted in acts that could be likened to the crime of aggression. This finding is therefore a critique against the R2P doctrine. In conclusion, the study recommends that all states, specifically states in Africa, should make use of democratic institutions this is largely due to the similar deep-seated concerns of unconstitutional changes of government and territory occupation which births such atrocities and rights abuse. Given that democratic institutions are effectively in place and followed, there would be no need for humanitarian intervention hence, R2P.

## CHAPTER ONE

### RESEARCH DESIGN

#### 1.0 Background to the Research Problem

War over the centuries is a containing feature of international relations. While mortality is considered sacred and can only be affected by God or by the necessary earthly authorities; war has often been deemed a necessary evil as a means to dominate, prevent a greater calamity, or protect altruistic values and principles.

The world was taken by surprise in the 1990s about the terrible violence in countries of which the former Yugoslavia, Somalia and Rwanda were intricate in. The concept of ‘sovereignty’ crippled the international system in such a way that it was unable to do much to forestall the violent acts in these countries however, the founding of the United Nations (UN) during 1945 has had a cardinal goal of preventing conflicts between states and a dawning era of global security as well as peace. The stub of the Cold War also saw a drastic reduction of inter-state wars. In place of inter-state aggression, there is an increasing occurrence of war and violence within states.<sup>1</sup>

Thus, giving rise to the need for humanitarian intervention which characterizes intercessions in the domestic affairs of states by powerful states or collectively by powerful states. The concept of intervention has been previously engaged with reference to the annals of ancient political thought and its notable concept of the just war theory.<sup>2</sup> Political thinkers such as John Stuart Mills, Rousseau, Kant and Hegel have proffered “when a state’s sovereignty should be disregarded and when it is respected by other states with reference to global concerns such as

humanitarian causes, national self-determination, and national security”.<sup>3</sup> These political philosophers judged intervention not only as tolerable but mandatory. The Just War theory that emerged in the 16<sup>th</sup> and 17<sup>th</sup> Centuries permitted the right to wage war and punish tyrannies, enemies, enemies’ friends, rescue the afflicted or uphold revered values.<sup>4</sup> However, humanitarian interventions span across several issues which include non-military interventions as captured by the international committee of the Red Cross (ICRC). Actions such as Doctors without borders and relief supplies sent to naturally devastated areas (flood, earthquake, hurricane, landslides, etc.) which are highly commendable among other acts in general that are geared towards the global alleviation of human suffering.

In contrast, intervention in practice has been the locus of various controversies and is often seen as big-power politics. Political philosophers such as R Vincent were very skeptical about humanitarian intervention.

During the Cold War, given the realpolitik climate of the ideologically East-West divide, UN Charter 2(7) dominated and prevented ‘interference in the domestic affairs’ of state members. That era was marked with great suspicion for the incentives for intervention and it was forcefully rejected. Yet, it was marked by serious rights abuses in places like Chile, Zaire, and Cambodia when the states turned their war and egregious torture machines against parts of its population with impunity. The changed profile of threats to global peace, mostly transnational and the cusp of the Cold War resulted in the Boutros Boutros Ghali’s “*Agenda for Peace*”, a ground-breaking doctrine that sought to redefine sovereignty as a responsibility and called for forceful interposition in the domestic affairs of UN states members to maintain a long sought-after peace. The bound of the Cold War witnessed increased intervention as peacekeeping multiplied. UN

Resolutions for peacekeeping, even aid delivery, became authorized under the enforcement provisions of UN Chapter 7 instead of Chapter 6.

Nevertheless, the persisting controversy surrounding humanitarian intervention persisted reflecting the void in the prevailing regime regulating the international use of arms in domestic affairs. “The International Commission on Intervention and State Sovereignty (ICISS) introduced the innovative Responsibility to Protect (R2P) that was unanimously endorsed at a UN Summit of world leaders as the central organizing principle for responding to mass atrocity, crimes of genocide, crimes against humanity, war crimes, and ethnic cleansing. R2P became an international regime that set the standard for humanitarian intervention. The regime requires the collective security consensus of the United Nations Security Council (UNSC) as the authority for its implementation in any state”.<sup>5</sup> Until the introduction of this regime in 2011, most military interventions had been regarded as illegal and morally unjustified.<sup>6</sup> Intervention for human security purposes has been under controversy after various events such as the case of Bosnia, Kosovo, Somalia and when it was lacking, in Rwanda’s instance.<sup>7</sup>

“As a response to the failure of the international community to protect the Tutsi from genocide in Rwanda, the General Assembly authorized the International Commission on Intervention and State Sovereignty in Canada to come out with a new understanding and policy guidelines, dealing with these new political and legal problems”.<sup>8</sup> Thus, their 2001 report stated that, “sovereign states have a responsibility to protect their own citizens from avoidable catastrophe (from mass murder and rape, from starvation) but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states”.<sup>9</sup> A serious debate then ensued in the international arena on how to best respond when citizens’ human rights are flagrantly infringed upon.

According to Ramesh Thakur, “the responsibility to protect was the ICISS’ answer to reconciling the neuralgic rejection of humanitarian intervention by the global South with the determination by the North to end atrocities”.<sup>10</sup>

“The question at the heart of the matter was whether states have unconditional sovereignty over their affairs or whether the international community has the right to intervene in a country for humanitarian purposes.<sup>11</sup> The Commission redefined state sovereignty as “something not absolute and not timeless, but constrained and regulated internally by constitutional power sharing arrangements.”<sup>12</sup> The argument was that, state authorities had three main responsibilities to fulfill in order to “keep” their state sovereignty. First, “that state authorities protect the safety, lives and welfare of its citizens. Second, that state authorities be internally and externally responsible for their own citizens as well as to the principles laid forth in the Charter of the United Nations. Third, that the agents of the state be responsible and accountable for their actions. In the event that a state fails in all the above, their absolute sovereignty is believed to be lost. If the population of a particular state is suffering serious harm as a result of internal war, insurgency, repression or state failure and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect. Overall, if a state is failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the UN Charter”.<sup>13</sup>

Issues and critiques of the implementation of R2P give rise to further probing pertaining to issues underlying the perpetuation of crime and infringement on national sovereignty of some states such as cases of Libya and Cote d’Ivoire in 2011. Also, indulgence of military intervention under R2P which leads to destructions, and in other cases, devastation unequivocally begs the purpose of the intervention to protect people.<sup>14</sup> According to R. Paris, “the legitimacy of R2P rests upon

its altruistic aim. However, states will often be wary to engage in humanitarian intervention unless the intervention is partly rooted in self-interest. The appearance that interventions are not strictly altruistic consequently leads to questions about the legitimacy of R2P and its implementation, especially, military interventions”.<sup>15</sup> It is however important to state that, it is as a result of the same criticisms leveled against the use of military forces by state authorities to perpetuate violence including crimes of war, genocide, aggressions and crimes against humanity that necessitated the need for a new system with the establishment of an International Criminal Court; a synergy between civil society, states and international organizations.<sup>16</sup>

The Nuremberg Charter popularized the crime of aggression in international law as a crime under the Rome Statute of the ICC. Justice Robert Jackson, a Chief Prosecutor gave a notable warranty that “offenders who commit acts of aggression shall be prosecuted and international criminal law would be applied against them”. However, agreement on a universally accepted definition was reached at the first Review Conference of the ICC Statute in Kampala 2010. That being the case, Articles 15b and 15c of the ICC Statute prescribe the possibility of the court to exercise its jurisdiction over the crime of aggression after 1 January 2017. What demarcates the crime of aggression from other core crimes under the jurisdiction of the ICC namely, genocide, war crimes and crimes against humanity in this discourse, is the relevance that will be given to the presence of political justice (the R2P) and the reality of the court’s work. The study uses the interventions in Libya Vis a Vis Cote d’Ivoire under R2P as case studies to see if the operationalization of the R2P concept has in principle and practice protected the rights of citizens or otherwise perpetuated crime.

### **1.1 Statement of the Research Problem**

As stated earlier, intervention in its variegated forms have ambivalently been a necessity and controversy in the annals of global peace and security. Humanitarian intervention in fact, was judged the “historical baggage of rapacious exploitation and cynical hypocrisy” by the West and rejected by the global South as imperialism. It has been argued by Ramesh Thakur that, “for this reason, the International Commission on Intervention and State Sovereignty endorsed the argument that the main thrust of safeguarding human rights in times of war crimes and crimes against humanity is the responsibility to protect of every state. Thus, the spirit and letter of R2P fundamentally differed from the political -laced humanitarian intervention. Conceptually, it is argued and R2P modifies state-citizens relations within the state, and reciprocally expresses the allotment of authority in the interdependence between states and the community of states. But humanitarian intervention does so with respect to diverse states. Normatively, while humanitarian intervention discards non-intervention and exempts and promotes the perspectives and rights of the intervening powers; R2P qualifies sovereignty as responsibility to human rights without rejecting non-intervention. However, the needs of victims take precedence over those of the recalcitrant state. In the operationalization of R2P, it is only the UN that can authorize intervention. Whereas, humanitarian intervention is uncertain between UN and unilateral interventions. It also follows that R2P always prioritizes the protection of civilians more than the

wellbeing and safety of the intervening troops. While R2P was unanimously endorsed at the UN, there were nevertheless dissenting voices, who described R2P as the massage of humanitarian intervention into a responsibility to protect”.<sup>17</sup>

The question however, remains has the evolution of R2P, in theory and practice, altruistically recalibrated world peace and security agenda to protect victims? Has it put to rest the controversies surrounding the redefinition of sovereignty, intervention, acts of aggression and neo-imperialism? The study uses the UN authorized NATO’s intervention in Libya, 2011 and France and ECOWAS intervention in Cote d’Ivoire, 2010-11 to answer the above questions.

## **1.2 Research Questions**

This dissertation addresses the questions below.

1. What are the factors that necessitated the institution of R2P as standard international regime for humanitarian intervention?
2. What are the successes, challenges and controversies the operationalization of the R2P interventions engendered on principles, values and practice, if any?
3. Has the use of military intervention in the application of R2P put to rest the controversies surrounding intervention, acts of aggression and neo-imperialism?
4. Is the R2P a semblance of the crime of aggression?

### **1.3 Objectives of the Study**

The general objective of the study is to examine the application of military intervention under the third pillar of the R2P doctrine in protecting the rights of threatened populations. It specifically seeks to:

1. Examine the factors that led to the institution of R2P.
2. Assess the exigencies and application of the R2P doctrine in Libya and Cote d'Ivoire, in terms of success, challenges and controversies it engendered.
3. Ascertain the controversies surrounding intervention, acts of aggression and neo-imperialism.
4. Ascertain the use of military force in R2P and its relativity to the crime of aggression.

### **1.4 Scope of the Study**

This research covers the lineage of intervention in contemporary political thought. It specifically studies the evolution and efficacy of the R2P doctrine and its application in preventing genocide, war crimes and crimes against humanity. It employs the 2010-11 Cote d'Ivoire and 2011 Libyan crises as case studies to see how efficacious R2P has been in principle, values and practice in promoting human rights.

### **1.5 Rationale of the Study**

Intervention has deep roots in political history of modern thought in which the just war theory is noteworthy. Several influencers have and are committed to humanitarian intervention all through history in the quest to prevent crimes against humanity, self-determination, national security and human rights. However, intervention however defined has been very controversial throughout

history. The controversy surrounds, if anything good much more peace can be achieved through violence. Besides, inter-state relations are built upon sovereign equality though some states are more endowed with the co-efficient of power than others. The question then becomes who sets the rules, values and conditions for intervention? Often, the basis of intervention cannot be separated from the 'interests' of the interventionists. And it is often judged that interventions are done on selective basis. As such, intervention has often been referred to as big-power politics.

However, the need for intervention persists in international relations. The genocides in Rwanda and Syria remain a blemish on non-intervention. Essentially, the cause and course of ECOWAS intervention in Liberia in the 1990s; and its attendant Protocols: the Protocol of 1999 on Conflict Prevention and Conflict Resolution and that of 2001 on Democracy and Good Governance have disabused the opinion that intervention is the Western powers' preserve. Besides, the R2P doctrine intended to reconcile the neuralgic denunciation of humanitarian intervention by developing states although the fortitude by the North to end atrocities through intervention has also engendered intervention controversies that it had sought to resolve. However, the need to intervene to protect human rights continues to exist in the international system. It is for this reason that this research is timely. Its findings will add to the ongoing debate and help states, regional organizations, international organizations and civil society organization best decide when to intervene, when not to and how to intervene in order to protect human rights and alleviate mass atrocities rather than aid or perpetuate them. The outcome of the research will also serve as a source of reference to scholars, students and other researchers.

## **1.6 Hypothesis**

“That the use of military intervention under R2P is a semblance of the Crime of Aggression”.

## **1.7 Theoretical/Conceptual Framework**

### **Humanitarian Imperialism**

This study is based on the humanitarian imperialism theory, which is the main critique of R2P. Humanitarian Imperialism theory posits that “today's emerging norm of humanitarian intervention and R2P have become salient features and useful instruments for the Western discourse on policies with the aim of creating justifications to gain control and power in developing countries”.<sup>18</sup>

Humanitarian Imperialism envisions humanitarian intervention negatively, “due to the short and long-term dependence that it creates through the interference of Western powers in other states. This theory purports of an ongoing conflict between the First and the Third-world nations. Even though developing countries stay formally independent, forms of coercion such as economic, political or social instruments may in some cases be used to keep developing countries under Western domination or at least under Western constraint through means such as the idea of a humanitarian intervention. This means, that humanitarian interventions can be understood as a concept that Western elites use to gain political economic advantages in a country”.<sup>19</sup>

The problems of such interventions covered under protective shells of humanitarian logic is that, “it comes at huge costs to developing countries, because they do not only mean less economic self-determination, but also less control of important economic resources which kills for instance, a country's ability to develop by itself.”<sup>20</sup> Nowadays, the global West lay emphasis on

the importance of human rights because of their cultural, political and socio-economic development. Realistically, only the West have the resources for military interventions.<sup>21</sup> Thus, there is considerable mistrust in US-led interventions because it is believed that these “new emerging norms” of humanitarian intervention has become the new “colonizing enterprise of the modern world.”<sup>22</sup>

In a realist view, states have a political identity which leads to its personal interest. States that are able to intervene and break the principle of non-interference do so with their security or even political interest attached, but not merely for altruistic purposes.<sup>23</sup> The demarcation between R2P and humanitarian imperialism lies in the motive that underlie states intervention into another territory where forth humanitarian imperialism argues for the national interests and security as a motivator for Western intervention as opposed to the protection of other states from human rights violations. This is why the theory of Humanitarian Imperialism is chosen as the relevant theory of this study since it sees humanitarian interventions as Western Imperialism in the manifestation of an “R2P”.<sup>24</sup>

## **1.8 Literature Review**

Chapter two of this study presents a detailed overview of the phenomenon of the study. This section therefore only reviews empirical literature relevant to the objectives of the study.

Natural law suggests the view that, “every human being on earth has essential rights that must be protected”.<sup>25</sup> However, R2P is used as a justification for military intervention in states for human protection purposes. Since the introduction of R2P by (ICISS), a large volume of literature has emerged on it. But it was in Libya that the R2P was first used and this has also generated several views pertaining to its application. The concept of “R2P”, tried to “establish a legal coverage for

humanitarian interventions suitable to protect national sovereignty”. However, some authors such as Cavandoli and Odell argue that, “the Commission on Intervention and State Sovereignty tried to interpret national sovereignty in R2P as something new rather than something that gives some states a control or power over others. This new principle, mandated and partly recognized by the United Nations, attempts to solve the legal and policy dilemmas of humanitarian interventions and desired to make it more of a legal instrument of multilateral politics even though it has never been officially adopted as a legal binding instrument (and has therefore been seen as rather a guideline on how to deal with such problems)”.<sup>26</sup>

There are varying views about the R2P in the literature. The beliefs of Orchard are that, “the introduction of the R2P doctrine has done two major things: It has reframed what had become an entrenched debate around the legality and legitimacy of humanitarian intervention; and it has provided an important focus for how the international community should respond”.<sup>27</sup>

However, Alan J. Kuperman is of the view that, “as with many aspects of institutional liberalism, this noble principle of the responsibility to protect has faltered in practice”. He explained that glaringly, as Darfur spells out, “the international community lacks the political will for the collective action necessary to protect vulnerable citizens. But even if the international community could muster the required political will, humanitarian intervention would remain bedeviled by two substantial obstacles namely: the logistical requirements of effective intervention and the awkward unintended consequences that result from moral hazard. He further added that based on recent experience, the R2P not only often fails to achieve its goal of protecting civilians, but it also inadvertently endangers other populations”.<sup>28</sup>

This assertion of Kuperman seems to be real as manifested in the Libyan context where after the intervention, violence has rather increased and human security has continued to plague the state

till date. But then again, Bellamy is of the view that the R2P doctrine is very productive to the international system. The focus in his opinion for R2P is how to successfully implement the R2P without worsening the situation that warranted the military intervention. This continues to be a huge task to achieve given that, “governments are reluctant to prioritize prevention and that there will always be ‘difficult prudential concerns’”.<sup>29</sup> Implementation consequently will require nothing less than “prioritizing of state identities and national interests so that the prevention of atrocities becomes habitual”.<sup>30</sup> Although R2P may become prevalent, the form of response as noted by Bellamy remains “indeterminate”. “It seldom clears what exactly the R2P requires in a given situation”.<sup>31</sup> Thus, many analysts argue that the R2P gives too much room for abuse and it is usually the powerful countries that abuse it for their own interest at the expense of the objective of the R2P. Jayne Discenza in his abstract stated that the aim of the R2P concept is “to clarify the relationship between state sovereignty and humanitarian intervention, thus, its invocation during the intervention in Libya provides an opportunity to assess its impact”.<sup>32</sup> In consistency with Bellamy’s views, Discenza further indicated that, “shortly after the North Atlantic Treaty Organization’s (NATO) military intervention in Libya in 2011, journalist David Rieff sounded the death knell for the United Nations’ new intervention doctrine, the R2P that had justified the coalition’s endeavor. He wrote that the doctrine was a threat to the international system’s legitimacy as it claimed a moral high ground while perpetuating the geopolitical status quo which is the Global North intervening upon the Global South”.<sup>33</sup> This assertion, further gives credence to the problem statement of this work of Libya as a remarkable case of armed intervention after the adoption of R2P. Debate about international involvement in Libya pivots around the concept’s applicability thus, the Libyan case has probable implications for humanitarian interventions. Rieff however, insists that the Libyan case

“exemplifies the unfavorable tenets of the well-intended business of humanitarian intervention”.<sup>34</sup> Kucinich also agrees that NATO abused the R2P by stating that “NATO already is out of control, using a UN mandate allowing for protection of civilians as the weak pretext for an unauthorized mission of regime change through massive violence.”<sup>35</sup> The topic is relevant in the discourse of international relations for better assessment of the R2P. In this regard, the way forward for successful use of R2P as indicated by Orchard is to “improve the international response to mass atrocities by ensuring better implementation, better institutional support, and clearer connections between the international and domestic levels.”<sup>36</sup> A realist worldview and new governance mechanism may help to solve the dilemma we face currently. “Humanitarian catastrophes will be prevented from even breaking out if today's policies emphasize on strategies for international cooperation and development, and not only for their own national interests”.<sup>37</sup> Additionally, there is the need to close the gap that exists for the abuse of R2P.

### **1.9 Research Methodology**

The research employed qualitative research methodology to gain a deeper understanding of the subject under study. The work relied on both primary and secondary data. A total of 5 experts were selected through a purposive sampling technique to be interviewed. These experts are made up of foreign relations experts, security experts, international legal experts and academics in the field of security and international relations in order to gather their opinion on the subject matter.

The respondents are selected through purposive sampling based on the fact that they are experts whose information will be useful for this study. The respondents include Dr. Vladimir Antwi Danso-Dean of the Armed Forces Staff College; Dr. Kwasi Anning of Kofi Annan International Peacekeeping Training Centre; Professor Kofi Kumado of School of Law, University of Ghana; Dr. Yao Gebe, a lecturer in International Relations and a researcher in the areas of International Relations, Foreign Policy and International Security and Dr. Ken Ahorsu, a security expert at the Legon Centre for International Affairs and Diplomacy (LECIAD). However, only two of these experts were available to be interviewed. Consistent follow ups on the other three respondents and rescheduling of appointments for interviews with them did not yield any positive result. This was a major challenge that the study encountered. Hence primary data was gathered from the two respondents that were available to be interviewed.

The primary data was gathered using semi-structured interviews. The interviews were electronically recorded and transcribed for analysis. The sources of secondary data include books, related documents, journal articles which were obtained from the University of Ghana Balme library and LECIAD library. Others include online sources such as Google Scholar, and JStor. These secondary sources of data are reliable because they have been peer reviewed.

After collecting the data, the transcribed data and the data gathered through secondary sources were grouped into themes and analyzed in line with the research objectives, using content analysis based on the objectives of the study.

### **1.10 Ethical Consideration**

In accordance to the ethics of research, the consent of respondents was sought to provide their names and titles to be used for the purpose of analysis. Prior to the data collection, respondents were informed in advance about the electronic recording of the interview and their personal agreement was sought indicating their preparedness to take part in the interview.

### **1.11 Limitations of the Study**

This study only focuses on the application of R2P in Cote d'Ivoire and Libya. Other cases of applying R2P might have occurred in the international system. However the focus of this study is specifically on the operationalization of R2P in Cote d'Ivoire and Libya.

### **1.12 Arrangement of Chapters**

The study is organized into four chapters. Chapter One outlines the Research Design. Chapter Two presents an overview of the crime of aggression and the Responsibility to Protect (R2P). Chapter Three assesses the exigencies and application of the R2P doctrine in Libya and Cote d'Ivoire, in terms of success, challenges and controversies it engendered. Chapter Four, the final chapter, consists of summary of findings, conclusion and recommendations of the study.

## Endnotes

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## CHAPTER TWO

### OVERVIEW OF THE CRIME OF AGGRESSION AND RESPONSIBILITY TO PROTECT (R2P)

#### 2.0 Introduction

The chapter will discuss the Crime of Aggression and the doctrine of Responsibility to Protect (R2P) to broaden the knowledge-base of the researcher and guide the study to come out with findings that are relevant to the objectives.

#### 2.1 Origin of the term “Crime of Aggression”

The Crime of Aggression is a crime under the Rome Statute of the International Criminal Court.<sup>38</sup> It was not until 2010, a conference held at Kampala in Uganda that States Party to the International Criminal Court (ICC) agreed on the definition and jurisdictional prerequisites for its prosecution at the ICC. It is also considered as one of the crimes against peace. ‘Crimes against peace’ as defined in the Nuremburg International Military Tribunal (IMT) is characterized by acts of “planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.”<sup>39</sup>

According to Iwanek Tomasz, “an important historical turning point occurred in 1974 when the definition of aggression was adopted at the UN General Assembly Resolution. He added that it was worth noting in the language of international law that aggression is not only a harmful and overt interference in the affairs of others. Instead, it is a war of aggression, or the use of

military force in international relations”.<sup>40</sup> Section 1 Article *8bis* of the International Criminal Court Review Conference in Kampala, Uganda (2010) defined the crime of aggression as “the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a state, of an act of aggression which, by its character, gravity and scale, constitutes or manifests violation of the United Nations Charter”.<sup>41</sup> Section 2 of the same article throws more light on what is entailed in an act of aggression. The section points out that, “an act of aggression could be in the form of military invasion of the territory of a state by another, bombardment, annexation by the use of force, any form of military occupation and blockade of the ports or coasts of a state by armed forces of another state”.

## **2.2 Criticisms against the Crime of Aggression**

Eric Engle in his article “The International Criminal Court, the United States, and the Domestic Armed Conflict in Syria”, points out that, there has been much debate over “whether or not crimes against humanity would include crimes committed during an internal armed conflict and crimes occurring outside any armed conflict”.<sup>42</sup> According to him, the United States of America took the lead in advocating for both propositions and issued a statement during the session to argue that “contemporary international law makes it clear that no war nexus for crimes against humanity is required”.<sup>43</sup> He added that the legal critique of the crime of aggression is that, “it violates the principle of ‘*nullum crimen sine lege*’ (no crime without law) due to its vagueness, over-breadth nature and circularity. ‘*Nullum crimen sine lege*’ according to George Fletcher, is the moral principle in criminal law and international criminal law that a person cannot or should

not face criminal punishment except for an act that was criminalized by law before he/she performed the act".<sup>44</sup>

Another scholar, Michael Walzer , points out that, "every state derives its legitimacy and political sovereignty from the fact that it protects the basic individual rights to life and liberty of its citizens, hence when a state uses military action on another state which consistently and brutally violates these basic rights of its citizens, the action in itself would not constitute aggression, because no right to political sovereignty could have been violated unless the victim is redefined as the citizenry and not the government".<sup>45</sup> He added that the use of force could be morally wrong for wide reasons but may not constitute aggression given that the victim would not be a legitimate state with rights to political sovereignty.

Jonathan Ophardt also brings a new dimension to the discourse of the crime of aggression. In his view, "cyber-attacks just like physical combats represent a new form of disaggregated warfare substantially conducted by non-state actors who also display new concepts of territoriality. He added that the Assembly of State Party (ASP) should adapt its definition of the crime of aggression to better account for this emerging threat by including the aggressive acts of non-state actors. By this, he meant that the definition should be broadly interpreted by the International Criminal Court (ICC) to include the new concepts of territoriality and most importantly, new weapons of cyberspace".<sup>46</sup>

Javier Croxatto et al also point out that, "aggression" in the 21<sup>st</sup> century are part of the difficulty thinking violence which stems from the International Criminal law.<sup>47</sup> They further stated that, "although the definition of crime of aggression at the international criminal court represents a

valuable effort of time and ideals, the definition is still insufficient and fails to take into consideration the various forms of aggression that we encounter in recent times as a result of advancement in technology". Views of Croxatto et al stresses the fact that, the definition brought forth at the Kampala conference is not sustaining to holistically explain all forms of aggression as expressed in recent times resulting in a sort of "double standard" of criminal prosecution. They added that, the ICC will commence with judgment on the crime of aggression from 2017 hence it would be prudent to rethink bearing in mind the advancement that have taken place with time; in terms of seeing things from an open minded point of view.

Another sensitive critique on the crime of aggression is presented by Howard Koh and Kathleen Koh. These authors stated that, "the fundamental point is that the crime of aggression is different from the other three crimes in certain aspects; indicating that, there have been hundreds of prosecutions for genocide, war crimes and crimes against humanity but there have only been two prosecutions for wars of aggression, namely Nuremberg and Tokyo which both happened before the introduction of the United Nations".<sup>48</sup> In the view of the Kohs, "there have been no successful prosecution for an act of aggression alone which necessitates worry over the fact that since the inclusion of the crime of aggression would have a great influence on the international system of justice be it positive or negative, the international system must make sure that as a legal matter every detail must be right and that even if the substantive elements of the crime become clearer in that light, the questions of who exactly is to be held responsible for that crime remain unanswered".

Andreas Paulus also points out that, "the definition of crime of aggression is limited in scope in the sense that it endorses the view of only certain acts of aggression and the extent to which

these acts are carried out; character, gravity and scale constituting a manifest violation of the Charter of the United Nations”.<sup>49</sup> He however added that, “it remains unclear what makes an act of aggression a crime. According to him, ‘gravity’ and ‘scale’ may point to the extent of an armed attack, and thus exclude mere border incursions of the type frequent in anti-terrorist warfare beyond borders. ‘Character’, of course, is so indeterminate that it is almost meaningless. It is entirely in the eye of the beholder – or, rather, the Court – to determine which use of armed force is of a ‘character’ that warrants treatment as an individual crime”.<sup>50</sup>

Claus Kress raised an argument that, “the definition of the crime of aggression ignores the role of the leader in committing the crime of aggression where he stated that crime implies that those who actually execute the stated act of aggression and who are in a position directly to commit war crimes are under no threat of being prosecuted for the crime of aggression and retain every possible incentive derived from international criminal law not to commit war crimes”<sup>51</sup>. Despite this criticism, Kress raised an objection arguing that “the retention of such incentive constitutes the best explanation of the existence of the leadership requirement”.<sup>52</sup>

Gerald Doppelt points out that although “the use of force might still be morally wrong for various reasons, it would not constitute aggression because; the victim would not be a legitimate state with the rights of political sovereignty”.<sup>53</sup> With reference to Michael Walzer’s view (stated earlier), Doppelt indicated that “a state may possess the right of political sovereignty independently of the form of its political institutions, whether or not it protects individual rights to life and liberty based on the understanding obtained from the liberal democratic tradition”<sup>54</sup>. He added that, Walzer agrees with the view that “states must be treated as self-determining communities whether or not their internal political arrangements

are free, whether or not the citizens choose their government and openly debate the policies carried out in their name”<sup>55</sup>.

#### **2.4 The Responsibility to Protect (R2P)**

The “Responsibility to Protect” doctrine was coined by ICISS and was unanimously adopted by UN member states at a World Summit in 2005. The doctrine, according to Laurie O’Connor is a new doctrine which came in as a replacement of the right to intervene after NATO intervened in Kosovo.<sup>56</sup> She further points out under this doctrine that, “each state is expected to protect its own population from genocide, war crimes and crimes against humanity but in a situation where a state fails to protect its citizens from massive human rights violations and abuse; it forfeits a certain degree of the sovereignty it wields to the international community such that the onus lies on the international community to intervene immediately through the various provisions set out in the UN Charter”. In most cases, these interventions turn to take the form of military invasion, military occupation, and bombardments which happen to be the characteristics of the crime of aggression.

#### **2.5 Criticisms of the “Responsibility to Protect” (R2P) Doctrine**

According to Thomas Weiss, “with the exception of Raphael Lemkin’s efforts on behalf of the erstwhile Genocide Convention, no doctrine has moved faster in the international scene than “the responsibility to protect” (R2P), which was formulated by the International Commission on Intervention and State Sovereignty (ICISS).<sup>57</sup> He added that both critiques in favor and against

the R2P doctrine have pointed to it as a framework for averting mass atrocities via a three-pronged responsibility - to prevent, to react and to rebuild".<sup>58</sup> Weiss also made reference to U.S. President Barack Obama's speech in Brazil a little after imposing the no-fly zone in Libya. According to Weiss, per his utterances, "Obama did not see any inconsistency between authorizing military action and his Nobel Peace Prize stating that one can be in favor of peace but still authorize force to halt the butchering of civilians. He added that convinced about his decision, President Obama addressing the US public still stood his grounds that his position on the enforcement of the R2P in Libya provided no political advantage but prevented massacres that would have stained the conscience of the world".<sup>59</sup>

Paul Williams and Alex Bellamy also agreed to the assertion of Weiss, indicating "that R2P has largely resolved the principled debate about whether or not the international society should become engaged in military intervention and about how to best protect populations from gross abuse of their human rights."<sup>60</sup> They added that, R2P has also helped to change international political calculations, shared expectations and common interests despite the fact that national interests and domestic politics continue to shape decisions with the use of force.<sup>61</sup> They however noted that while the use of force to protect populations from genocide and mass atrocities has become more likely, it is still rare and is likely to remain the same way for the foreseeable future.<sup>62</sup>

Williams and Bellamy also touched on the fact that, by focusing on the prevention of mass atrocities and protection of would-be victims, international actors have become more familiar with a wider range of policy options short of military force and have adopted new tactics such as lending political support to regionally led efforts.<sup>63</sup> They added that, once states accept that

international actors have a responsibility to protect foreign civilians from mass atrocities, it is very difficult for them to remain indifferent in the face of compelling evidence of such crimes.<sup>64</sup>

Touching on the lack of show of support for Gaddafi at the time of his overthrow, William and Bellamy stated that although Gaddafi's regime was an important donor to the African Union and some African states, it was widely infamous in Africa and the Middle East for its role in instigating conflicts in Liberia, Sierra Leone and Chad. And that his proclamation of himself as African "King of Kings annoyed" many African leaders resulting in their lack of support for him".<sup>65</sup>

According to Williams and Bellamy, the case of Libya is the most prominent and well-known in the use of R2P. According to these authors, the attack on Libya was the first time the Security Council had authorized the use of military force for protection purposes against the will of a functioning de jure government.<sup>66</sup> Although the Council had come close in the past, it had never before crossed the line. The Security Council justified its use of military force against Gaddafi's de jure government with the aim of protecting civilians.

Regarding the justification of the use of the R2P in Libya, Thomas Weiss points out that, "the Security Council's authorization of prompt, robust, and effective international action was aimed at protecting its citizens from the murderous harm that Muammar Gaddafi inflicted on unarmed civilians and all those who opposed dictatorial regime adding that if the Libyan intervention goes well it will bring validation and acceptance to the fledgling R2P doctrine and that if it goes wrong, the position of the critics of the doctrine would be justified".<sup>67</sup>

In Libya, "the impending fall of Benghazi (a city in Libya), the Gadhafi regime's overt threats to commit atrocities, evidence that it had already targeted civilians and its long track record of

abuses left little room to doubt the credibility and the urgency of the threat”<sup>68</sup>. In the end, as the result of the lack of plausible alternative policies for preventing a massacre in Benghazi, even those members of the Security Council that remained deeply skeptical about the use of force felt unable to vote against those calling for a forceful response.

Concerning the intervention in Libya, Simon Chesterman also points out that, “the intentions behind the decision to intervene in Libya were good as they were in Somalia, in Srebrenica, and in other efforts to respond to mass atrocity”.<sup>69</sup> However, “the difficulty in following through on those intentions in Srebrenica allowed the killing of innocent men and boys, and severely undermined the credibility of NATO; the decision to withdraw from Somalia led to the failed, pirate-ridden state of today and indirectly to the mass graves of Rwandans, where genocide took place less than a year later”<sup>70</sup>. He added that “do something, do anything is not a military strategy”.<sup>71</sup> Based on this, Chesterman concluded that “it is far from clear how the Libyan conflict will play out, but that outcome will have consequences that reach far beyond Libya itself”.

Thomas Weiss purports again “that many states in the diplomatic context at the United Nations from the global south condemned the R2P doctrine as the Trojan Horse of Western Neo-Imperialism”.<sup>72</sup>

Gerald Doppelt indicated that his stance was that “foreign intervention would not constitute aggression provided it has not violated any sovereign government's rights or any political community's rights of self-determination and territorial integrity.”<sup>73</sup> However, to keep the matter straight, any foreign intervention “to destroy” an illegitimate government might still be

immoral if the aim was for example, to simply advance other selfish economic or political aims of the foreign power".<sup>74</sup> Other criticisms leveled against the R2P doctrine is that, the military attacks aimed at fighting an illegitimate regime result in the death of innocent citizens.

## **2.7 Conclusion**

This chapter discussed the Crime of Aggression and the doctrine of the Responsibility to Protect (R2P). This chapter therefore broadens the knowledge-base of the researcher. It also guides the study to come out with findings that are relevant to the objectives of the study. The next chapter, chapter three, will focus on assessing the exigencies and application of the R2P doctrine in Libya and Cote d'Ivoire, in terms of success, challenges and controversies it engendered.

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## CHAPTER THREE

### ASSESSMENT OF THE EXIGENCIES AND APPLICATION OF THE R2P DOCTRINE IN LIBYA AND COTE D'IVOIRE, IN TERMS OF SUCCESS, CHALLENGES AND CONTROVERSIES IT ENGENDERED

#### 3.0 Introduction

This chapter assesses the exigencies and the use of 'R2P' doctrine in Libya and Cote d'Ivoire, in terms of its successes, challenges and controversies it engendered.

Military interventions have been a highly debated subject that conveys a huge duty for International Governmental Organizations and countries alike. Arguments in favour of, and in opposition to humanitarian interventions have been discussed severally on different platforms, and they are currently being debated in the global media. The awkward connection between military means and humanitarian ends is obvious and it keeps garnering attention. Likewise, the deep divisions in the UN throughout the 1990s was largely between those who maintained that there was a need for 'humanitarian intervention' and those who saw the afore-mentioned principle as an outright encroachment of state sovereignty. Former Secretary-General, Kofi Annan cautioned that "the UN could endanger its credibility if it is unable to respond to the devastating occurrences such as happened in Rwanda and Srebrenica, and he challenged member states to settle on a legal and political structure for a united international action"<sup>75</sup>.

Following the failure of the UN Security Council to sanction a motion to end "ethnic cleansing" in Kosovo, the lack thereof incited NATO to embark on an aerial attack on its own thus, causing a further divide within the international community. While some openly condemned the

intervention and labeled them as illegal, others maintained that “legality was less relevant than the moral necessity to save lives”. This impasse suggested dual unpleasant options: states could either stay unconcerned or allow the mass killing to persist in a bid to firmly preserve the sanctity of international law, or they could bypass the UN Charter and embark on war-like acts on humanitarian basis.<sup>76</sup>

The International Commission on Intervention and State Sovereignty (ICISS), established by the Government of Canada in encumbrance, in the rear end of 2001, delivered a report on “The Responsibility to Protect” (R2P). Thus, the originated the doctrine of R2P. The fundamental principle of R2P is that the sovereignty of states is not only limited to their control over a specified territorial space without external aggression. It also involves responsibilities towards their citizens. This sovereignty also requires that states protect inhabitants within its territorial borders against all forms of human right abuses and crimes. Consequently, “the responsibility of the safety of the people depended primarily on the state. However, extending from that responsibility is a ‘residual responsibility’, which lied with the broader community of states, and activated when an individual state is clearly either reluctant or incapable of fulfilling its responsibility to protect, or is itself the actual perpetrator of crimes or atrocities”.<sup>77</sup>

Its concern was not on the sanctity of sovereignty but rather the obligation of each state to protect citizens at the mercy of unrelenting human rights abuses especially if the state was perpetrator of said abuses. This was largely accepted by the UN in 2005. The UN World Summit accepted its duty of protecting people against ‘genocide, war crimes, ethnic cleansing, and crimes against humanity’ which was the pivot of R2P. During the 2005 United Nations World Summit, world leaders agreed to universally approve R2P, conceding that state sovereignty entails an obligation to shield citizenry against mass atrocity crimes.<sup>78</sup> The R2P aimed at

combating such tragedies as happened in Rwanda and Kosovo by specifying states' duty of safeguarding their citizens from 'mass atrocity' and to carry out its obligations the lack of which it then falls upon the international community to act.<sup>79</sup> The 2005 World Summit Outcome Document of the UN clearly limits the rollout of R2P to quadruple stages of crimes namely 'genocide, ethnic cleansing, war crimes and crimes against humanity'.<sup>80</sup> Provided at the apex of R2P is that the worldwide community of nations has a charge to provide support to countries that are unable to protect their citizens against the crimes mentioned above. This support may include building capacity of states through 'economic assistance, rule-of-law reform and the creation of participatory political systems and norms or, in the face of impending violence, through direct mediation'. It is upon the failure of these means to resolve the issues that the international community empowered by the UNSC can resort to the use of military force.

Since its ratification, R2P has been accompanied with variegated comebacks and counter-arguments. Some member countries support the central rationale behind the concept but have reservations about its operations and possible abuse especially with the military intervention component of the norm. The outcome of the intervention in Cote D'Ivoire and Libya has given much impetus to these concerns.<sup>81</sup>

The ICISS reports proposed "precautionary principles" or "criteria of legitimacy" to help guide possible military action under the UN Charter to achieve world Peace and security is overriding the shared principles that the International Criminal Court (ICC) is to safeguard.<sup>82</sup> Crime of aggression unreservedly compromises the attainment of this value. The international community is keen on redeeming its image, having been accused of aloofness in the Rwandan crisis, hence the adoption of an R2P. Response to the crisis in Côte d'Ivoire and Libya requires an in-depth understanding from the perspective of the UNSC's growing preparedness to sanction troops on

peacekeeping operations to use all the means necessary for civilian protection purposes and raises international debate about the alacritous use of R2P by the UNSC any time the need has arisen.

This chapter will therefore discuss the use of R2P in promoting human protection, with specific emphasis on the 2010-11 Cote d'Ivoire and 2011 Libyan crises.

### **3.1 Côte d'Ivoire**

Entangled in coup d'états, violent elections and various levels of inhumane activities, Ivory Coast has entirely demonstrated characteristics of an unsuccessful democracy.<sup>83</sup>

The conflict originates from disagreements over results of the November, 2010 Presidential elections between the incumbent President, Laurent Gbagbo and his contender, Alassane Ouattara. The run-off which started on 27 November, 2010 ignited disagreements ensuing over citizenship and ethnicity amidst violence and intimidation from both parties leading to loss of several civilian lives.

More so, Gbagbo enforced a curfew during the election which led to the displeasure and retaliation of Ouattara's supporters in Abidjan who took to the streets to express their dissatisfaction. 'Security forces opened fire on them, killing five people and injuring several others'.<sup>84</sup> Meanwhile, early election results signified a win for Ouattara however Gbagbo's representatives refused a broadcast of the results. Amidst these, the Constitutional Council had announced a massive vote rigging in the northern part of the country, which led to the cancellation of 660,000 votes for Ouattara thus, declaring Gbagbo the winner.

This reignited armed confrontations between the loyalists of the two presidential candidates. Gbagbo insisted on occupying the seat despite declarations from different quarters including ECOWAS and UN to the effect that Ouattara had actually won the elections.

The increasing acts of atrocity committed by supporters from both sides triggered the response of the United Nations Operation in Côte d'Ivoire (UNOCI) and France who had to find answers to questions about the most effective ways to protect civilians. Bax states that, the response of the UN by deciding to protect civilians can possibly be attributed to the murder of some women on a peaceful demonstration by Pro-Gbagbo forces.<sup>85</sup>

By 2011, the international community was confronted with a highly complex situation: there was a forthcoming threat to the civilian population, leading to UN and French forces being mandated to protect civilians but Gbagbo and his supporters saw the peacekeepers to be biased. Little agreement about what should be done to resolve the crisis and protect civilians was reached.<sup>86</sup>

Diplomatic attempts to resolve the crisis were advanced in two directions. First, ECOWAS took steps to ensure peaceful resolution to the crisis. It revoked Côte D'Ivoire's membership and called on Gbagbo to relinquish the Presidential seat. Among other things, the organization also asked its military chiefs to assess possible military options. On the second front however, UN officials followed through with discreet negotiations. Nevertheless, countless attempts at negotiating brought little progress, due to Gbagbo's hesitation to concede defeat with calls from the UN Secretary General, Ban Ki Moon proving futile.

In late February, 2011 the forces loyal to Gbagbo 'seized two towns, Zouan Hounien and Binhouye and on 17 March, an attack on a pro-Ouattara part of Abidjan killed or injured at least 100 people. The UNOCI then issued a statement stating that such acts, committed against

civilians, could be classified as a crime against humanity’ and this pushed the Security Council to unanimously pass Resolution 1975 that recognized Ouattara as president, condemned Gbagbo’s actions, and authorized UNOCI to ‘use all necessary means’ to protect civilians, including by “preventing the use of heavy weapons against the civilian population”<sup>87</sup>.

Concerning the Ivorian crisis and subsequent military intervention, the international society’s involvement had human protection as a possible aim, endorsed the use of force to that end. The situation became provocative once the UN Secretariat and Council had declared Ouattara as Côte D’Ivoire’s legitimate President allowing UNOCI to discard calls by Gbagbo for its withdrawal. Ultimately, it seems improper for UN peacekeepers to be drawn into armed conflict and to support one of the parties while executing their mandate. The use of force by peacekeepers to protect civilians must be done with utmost restraint. This is needed to guarantee that the UN troops are not seen as parties to the conflict and also to avoid perpetuation of more atrocities. Avoiding such a perception is critical for the sustained success of peacekeeping.

Also, regional structures played crucial roles in defining the problem and terms of engagement. The Security Council’s decision about the election result was clearly influenced by earlier declarations of the ECOWAS and AU thus creating evidence of direct support by said structures. The specific positions taken on the employment of force for protection purposes in Resolution 1975 was enabled by ECOWAS’s prior declaration that force could be a lawful mechanism for responding to the crisis. Without a strong regional backing, it is very doubtful that events would have gotten where they did. Critics complained that the UN Secretariat exceeded its mandate by challenging the Constitutional Council’s announcement about the election result and permitting the use of force by UN peacekeepers in collaboration with French forces.<sup>88</sup> However, the position taken by UN was influenced by ECOWAS’ position.

Furthermore, the human protection agenda obviously requires international actors to engage in chaotic and complex national and international politics. In cases like this, peacekeepers will have to make difficult judgment about how to balance possibly inconsistent aspects of their mandate.

The path taken by UNOCI's leadership and the UN Secretariat was very instrumental in stabilizing the situation and reducing loss of lives and property. Notwithstanding, things could have turned out very differently. Possibly, the goal of human protection would have been better achieved had the UNOCI and French troops engaged both sides of the conflict with equal intensity, hence condemning actions of all armed groups on the conflict, instead of taking sides with one party. There result would probably differ had the UNOCI tried to maintain a strong neutral stance. Perhaps, it would have been more beneficial if the UN had cooperated with the Constitutional Council of Côte d'Ivoire to find the truth about the outcomes of the elections. A more thorough deliberation is therefore needed on the operational framework of R2P and the extent of engagement of the UN peacekeepers.

Another major question that the crisis in Ivory Coast and the subsequent intervention raises is in relation to the willingness and capacity of the UN, AU and ECOWAS to take a firm position on such issues and act in a manner that effectively solves the problems. Even with a UN force (UNOCI) in-place before the post-electoral conflict, the UN struggled to carry out its fundamental role of protecting civilians. One may be right to argue that, the indifference of the UN largely triggered the kind of response France gave.

### **3.2 Libya**

The origins of Libya's predicaments can be traced to the political disturbances connected with the 'Arab Spring' demonstrations that spread from Tunisia to Egypt and beyond in the early

months of 2011. After some early protests in mid-January that were relatively peaceful, things hurriedly became violent. This sudden violence could partly be attributed to the government's shortcomings and partly to breakaway factions from the government and army who masterminded the formation of an armed opposition group. At first, the rebels made some progress seizing cities of Benghazi and Tobruk and announcing their supposed control over most of the country's other key cities. Not long after that, Qaddafi's forces regained control over much of the country and threatened to crush the rebellion's stronghold in Benghazi.

Numerous factors fed into the decision to employ force against Libya. Specifically, there seemed to be some form of agreement at the regional level, similar to the Ivorian situation. Coupled with this, the Qaddafi's regime had a poor image in the international system. The possible threat of the happenings in Libya and the brevity of time for action were also very clear to the actors involved. Having established the need to intervene, there arose some challenging operational issues. For instance, how are they able to determine the most effective means of protection in advance? Given the complexity of the nature of the local political arena in which these conflicts occur, how should the international society engage? What functional directives can be given to forces tasked with implementing human protection mandates? And how can international society manage the longer-term implications of its actions?<sup>89</sup>

As in Ivory Coast, UN officials painted the problem as one of human protection, cautioning of the looming danger to civilians in Libya. On 22 February, the UN's High Commissioner for Human Rights, Navi Pillay, called on the authorities to stop using violence against demonstrators, which 'may amount to crimes against humanity'.<sup>90</sup> On the same day, the Special Advisers said the Qaddafi regime's behavior could be equated to crimes against humanity and insisted that it comply with its 2005 commitment to R2P. The Secretary General echoed this

position the following day and referring to the crisis as a human protection problem. This call was meant to remind both the Libyan authorities and the UN Security Council of their responsibilities. Subsequently, the UN Human Rights Council established a commission of inquiry to scrutinize the situation and advised the General Assembly to suspend Libya from the Human Rights Council.

Similar to the Ivorian case, regional organizations played a ‘gatekeeping’ role by creating the conditions under which the Security Council could consider embracing the use of force. The League of Arab States (LAS) suspended Libya’s participation until the end of the violence. AU’s Peace and Security Council also issued a document, which condemned the haphazard and unnecessary use of force and fatal weapons against peaceful demonstrators.<sup>91</sup>

The involvement of the UN Secretariat and the position taken by regional organizations influenced the Security Council’s discussions on the crisis. The Council thus demanded an instant end to the violence; urged Qaddafi’s government to ensure safe passage for humanitarian and medical supplies; referred the situation in Libya to the Prosecutor of the International Criminal Court; established an arms embargo on the country; imposed indefinite travel bans on 16 individual members of the Libyan regime; froze indefinitely the assets of six members of the regime; established a sanctions committee to monitor the implementation of these measures; and called upon member states to make available humanitarian and related assistance for Libya.<sup>92</sup> In response, Qaddafi wrote to the UN Security Council stating that it was premature for the Council to declare Libya’s situation as a crime against humanity. He therefore requested that all UN interventions be suspended until the claims against Libya were established.<sup>93</sup>

The Council authorized the use of all necessary measures to protect civilians and civilian populated areas under threat of attack. It also established a ban on all flights in the airspace of

Libya in order to help protect civilians’, except those necessary to enforce the no-fly zone and those whose sole purpose is humanitarian.

### **3.3 Pertinent Issues Arising from the Discussion of Secondary Data**

The cases of military interventions in Côte d’Ivoire and Libya make it clear that this new agenda faces a range of unsettled challenges, which could hinder the formation of consensus in responding to future protection crises. These unanswered questions make the R2P activities susceptible to several misinterpretations and raise questions about the level of success it has achieved in effectively promoting human rights.

According to the ICISS report which constitute R2P, the use of military force must meet the following conditions to be deemed lawful: it must have a just cause, which means that a state has to be clearly unable to perform its duty of protecting civilians from mass atrocity crimes in order for the use of force to be justified; it must be appropriately sanctioned by the Security Council; it should only be used when all available non-violent options have been exhausted; it should employ as little violence as possible; do more good than harm; and have a reasonable chance of success.<sup>94</sup>

It is difficult, however, for us to determine the level of compliance of these provisions. This is largely because, the criteria for the use of military force is difficult to measure. For instance, at what stage are we able to say that all available peaceful options have been absorbed? Are we even able to tell the number of options available before the employment of force? Can we rank the options in such an order that we are able to say that option A has failed, so we will employ option B, and that option N is the last available peaceful alternative and that once it fails, military force is legit? It appears there is no clear indication what the options are. Therefore, the excuse that would be given for the use of military force would be that “all other options have failed”.

This leaves the responsibility solely in the hands of the Security Council to decide when the use of military force is appropriate.

Also, if a military intervention is authorized, how do we set the boundaries of that intervention, and how are we able to tell how much military action is too much? Answers to these questions are relevant in determining the rightfulness or otherwise of such interventions. A policy or principle that leaves a wide room for the exercise of discretion is problematic, especially when it has to do with the use of force, and its resultant possible loss of lives and property. Who determines a just cause for military interventions? At what point do we say that a state is failing and needs external support? What metrics do we use in measuring the extent of failure hence the need for military intervention? The subjective nature of these decisions is not helpful. What is the relationship between human protection and other goals such as regime change? Where do we draw the line between these two? In the case of Ivory Coast and Libya, the interventions are known for their role in changing the regimes in those countries. There is the need to establish a clear distinction between human protection and regime change. Overly extensive interpretations of the protection of civilians could create the notion that it is being used as a cover-up for undue intervention and for regime change.<sup>95</sup> It is necessary to ensure that there are no efforts to change regimes or engage in a civil war by any party, using civilian protection as pretext.<sup>96</sup> The use of force by UN peacekeepers and French troops blurred the lines between human protection and regime change and raised questions about the role of the UN in overruling Côte d'Ivoire's Constitutional Council, about the accurate explanation of Resolution 1975, and about the place of nonalignment and neutrality in UN peacekeeping. The former South African President Thabo Mbeki, maintained that the UN had violated its authority by overriding the Constitutional Council of Côte d'Ivoire.<sup>97</sup> R2P's main focus is protecting civilians, and definitely not about

regime change. The Security Council's resolution that permitted an R2P-based intervention to protect Benghazi (a city in Libya) created an avenue for interventionists to provide air support for the subsequent rebellion against Qaddafi which ultimately led to a regime change and the murder of a head of state. It is starkly apparent that without that support his overthrow would not have been successful. It can be argued that, rejecting such interventionist support might permit dictators like Qaddafi to stay in power however; civilian rights could not be protected in the midst of rebellions such as happened in Libya.

Human protection requires external actors to engage in local wars and politics, and this will blur the lines between protection and other agendas such as regime change. While the demand that these agendas be kept separate is politically understandable and conceptually appealing, it is often hard to meet. When the principal threat to civilians comes from its regime, those demanding strict separation need to explain how peacekeepers or coalitions authorized to use force to protect civilians can do so effectively without facilitating regime change. More dialogue is thus needed on operational questions including: What do no-fly zones entail? How can civilians be protected from their own governments as well as external actors? What constitute safe areas and how can they be protected? What military resources, tactics and strategies are required to fulfill protection mandates?<sup>98</sup>

In addition, genocide and other such crimes are not the same in every country in which they happen. For instance, the case of Rwanda may be entirely different from that of another country. The devastating aftermaths of wars, genocidal activities, ethnic cleansing among others cannot be foreseen. There is no scientific means of determining the effects of these activities. It is therefore out of place to assume that responses to these issues should be a mere to-do list.<sup>99</sup> To the contrary, responses to different cases should be specific and doctored to suit the differing

situations, taking into consideration the peculiarities of those cases. Adopting a one-size-fits-all approach to addressing all cases is inappropriate. Critics of R2P insist that it will never be applied to major powers, and thus it is undermined by inconsistency. Even though R2P imposes obligations on all United Nations member states to prevent mass atrocity crimes occurring anywhere in the world, regardless of the status or prestige of the perpetrator, it appears it would be impossible for R2P to be activated on some countries due to their position in the international system. Also, more powerful states have a far greater capacity to extend assistance and far greater economic, diplomatic, logistical, and military capacity, thus their responsibility to respond and react to mass atrocity crimes is arguably greater. R2P is fundamentally about protecting the weak.

Other challenges relating to the role of regional organizations as gatekeepers give evidence from these and other recent cases, that international responses to crises are most effective when there is a strong partnership between the UN and relevant regional organizations. Moreover, the emerging gatekeeper role being played by regional organizations provides avenues for increased activism on human protection while ensuring that the Security Council acts in a manner that is consistent with regional norms and interests. Nevertheless, such gatekeeping presents at least two challenges. First, what should be done when regional organizations disagree, as the LAS and AU did in relation to Libya? Second, while regional gatekeepers can facilitate robust international responses to protection crises, they can also block decisive action.<sup>100</sup> Realizing the relevant role they have played in the two crises under consideration, it is important to ensure that these regional bodies are well informed about the occurrences in the countries within which interventionist activities will be carried out. This is because, decisions and activities of other external actors will depend largely on the information they gather from the regional bodies.

Moreover, the Council has repeatedly proven willing to authorize the use of military force for human protection purposes. Even though some authors question the extent of willingness, it is obvious that the UN Security Council (UNSC) has used this option in different situations and with different degrees of intensity. Either on its own accord or giving support to another actor to do same, the UNSC has activated the R2P and resorted to the last option under the principle (military intervention). However, the role of individual states or regional organization as primary implementers of R2P in some cases raises suspicions.

It is widely believed that, but for the strong intervention of France, not much would have been done to oust Gbagbo and impose sanctions on him and others, regardless of the numerous voices worldwide that referred to the situation as genocide and also notes that since 2002, France has been instrumental in ensuring that the UNOCI had a forceful mandate to prevent attacks on unarmed citizens and French nationals.<sup>101</sup> In the absence of a powerful actor like France, global attention would still have been drawn to the violence in Ivory Coast, but it would not have occupied the top position on the list of priorities in the international system.<sup>102</sup> The French interventions have been very helpful in ending the violence, but France has since benefitted hugely in political and economic terms through trade, sales and contracts. This leaves us with the question as to whether it is pure benevolence or just Realpolitik.<sup>103</sup> Indeed Reiff argues that, a doctrine of intervention that both assumes the moral uprightness and calls for its universal acceptance but under which the interveners are always from the Global North and the intervened upon always from the Global South is not moral progress; it is geopolitical business as usual. Massingham Eve contends that, humanitarian intervention is defective largely because it depends on the military and the use of force making it difficult to assess the legitimacy of the interventions. She argues that the R2P is a defective concept in that, often, R2P becomes a

deceptive mechanism that opens up the affected states for intervention. She indicates that the word “protect” is too strong, and that it is not possible to see it fully achieved, particularly in cases of interventions<sup>104</sup>.

### **3.4 Discussion of Findings from Secondary Data**

With the response given to the crises in Côte d’Ivoire and Libya, we see what Bellamy and Williams refer to as a new politics of protection. Obviously, it is less difficult to agree on the principle that people should be protected against grievous crimes than it is to arrive at a consensus on how to respond in a given situation.<sup>105</sup> This ‘new’ position on protection exhibits some critical features and numerous unanswered questions that are discussed above.

The global community is now openly dedicated to the protection of civilians. This manifests both in the declaration of the ‘responsibility to protect’ (R2P) and the Security Council’s operations and approach toward peacekeeping. The leadership of the UN and the other arms of the Secretariat have been very instrumental in establishing this emphasis.

A point worth emphasizing is that, overthrowing Gbagbo’s unconstitutional government was crucial for the growth of democratic governance in all of Africa because it would give a clear indication to individuals with dictatorial tendencies that their intentions will not succeed. Similarly, the U.N.-sanctioned NATO intervention averted a massacre. Yet it also did much more. It brought down Qaddafi’s 42-year-long dictatorship, adding Libya to the list of countries in the Arab Spring.

Possibly, R2P is a principle with good intentions. A major weakness however is that “it turns war into a form of police work writ large, guided by fables of moral innocence and righteousness. War, even when it is waged for a just cause and with scrupulous respect for international

humanitarian law, always involves a descent into barbarism (think of the way Qaddafi died). This is why when R2P is applied, it carries moral risks”<sup>106</sup>.

Direct violence with its accompanying possible lasting bloodshed ended, thanks to the military interventions under R2P. Nevertheless, can we say that without doubt, the issues that necessitated the violence in these countries have been solved completely? The fundamental issues of nationalism, land ownership and religious and ethnic divisions remain unresolved in these countries. Several years on, we can say boldly that Libya has not totally recovered from the crisis and accompanying military interventions; and so is Ivory Coast.

Moreover, both activist and more cautious states have agreed to respond to crises through the Security Council and relevant regional organizations under the principle of R2P. Among other things, unsettled questions concern the interpretation of Council resolutions, the relationship between protection and other goals, the relationship between the Security Council and regional organizations, and how protection mandates can be effectively implemented.<sup>107</sup>

### **3.5 Discussion of Primary Data**

In addition to secondary sources of data, the study relied on interviews to gather information from selected people with expertise in the area under study.

In all, two respondents were interviewed on November 22, 2018 in their offices at the Center. They were purposively selected for their in-depth knowledge and experience in the specific area of my study.

Dr. Yao Gebe is a lecturer in International Relations and a researcher in the areas of International Relations, Foreign Policy and International Security. He teaches at Legon Center for International Affairs and Diplomacy (LECIAD).

Similarly, Dr. Ken Ahorsu is a security expert at the Legon Center for International Affairs and Diplomacy (LECIAD)

### **3.5.1 Does Application of R2P constitute Crime of Aggression?**

Both experts were asked whether the application of R2P constitute Crime of Aggression. Their responses are as follows.

According to the first interviewee (Dr. Gebe), the international system is such that we have the big or great powers, such as the United States, Russia, Germany, France, and the United Kingdom, among others. Occasionally, these countries undertake some activities in the international system to preserve their own interests and security, rather than the interest of the international system. When that happens it might be a deviation from the expectations of the United Nations particularly in relation to promoting international peace and security. He added however that, these activities are not pursued by only the big powers. For instance after the Cold War, Iraq decided to take over Kuwait. That is an example of a crime of aggression. In justifying this pursuit the then Iraqi leader, Saddam Hussein indicated that Iraq had the right to control or take over the territory of Kuwait and its resources. It took the intervention of the then president of the United States, George W.H Bush to draw the attention of the entire international system to the need to intervene in Iraq's action against Kuwait. He told the entire international community that it was an act of aggression for Iraq to seek to take over Kuwait since Kuwait, just like Iraq was a sovereign state. In addition, both countries were members of the United Nations so it was unlawful for any country to seek to annex another for its own interest. The international community therefore came together and prosecuted Iraq for its actions against Kuwait.

Consequently, Iraq was forced to relinquish its control over Kuwait and Kuwait continued to be a sovereign state and a member of the United Nations.

Dr. Gebeh also mentioned a recent instance involving Russia and Ukraine where Russia considered part of Ukraine as its integral sovereign state, hence organizing a referendum in Ukraine. This step taken by Russia did not please other powers in the international system. Consequently, it was suspended from the group of eight and sanctions imposed on it.

He reiterated the fact that even though these things happen occasionally, they are unacceptable, especially by the United Nations whose Charter frowns on it. Therefore, anytime such things occur, the entire membership of the United Nations comes around to decide on appropriate sanctions to impose on the perpetrators. He indicated that dating back to days before the World Wars; history presents us with many examples of these acts of aggression.

There are other kinds of aggression where in the cause of a violent conflict, some states will decide to intervene and in doing that commit various atrocities. A current situation is Syria or Saudi Arabia's intervention in Asia. Another is NATO intervening in Libya on the part of those who felt that they needed to stop the leadership of the former leader Muammar Gaddafi. In the process of protecting victims of some form of human right abuses, the interveners sometimes end up committing further crimes and other issues pertaining to aggression and therefore what they thought they were doing to improve stability, and security rather perpetuates more of the aggression that they wanted to prevent.

On his part, Dr. Ken Ahorsu stated that R2P is a new conceptualization the UN and other interested international observers came up with to alleviate human rights abuses within a nation. When the leader is causing human rights abuses, the international community comes in to protect the stability and security of the people. The cases of Libya, Syria and Iraq during the period of

Sadam Hussein are instances where R2P was implemented. The UN, international organizations and even nations can take up the responsibility to protect. According to Dr. Ahorsu, during the course of taking up this responsibility to protect citizens of state human rights abuses as was done in Libya and Côte d'Ivoire, the interveners sometimes end up committing further crimes and other issues pertaining to aggression although this was not their original intentions.

### **3.5.2 Does the military intervention aspect of R2P come off as a form of aggression?**

When the experts were asked specifically whether military intervention aspect of R2P come off as a form of aggression, their responses are as follows.

According to Dr. Ahorsu, Military intervention in itself is not wrong and cannot outrightly be classified as aggression. Dr. Ahorsu holds the view that if the original idea is to intervene for humanitarian purposes, then it is not aggression. However, if in the course of the intervention, the interveners take sides with the rebels or any of the feuding parties, then there is a possibility of the intervention degenerating into aggression against the other party. In Libya for instance, the US started supplying ammunition and supporting the dissidents financially.

Syria's Al Assad also had similar assistance. The kind of help that Russia was giving Syria caused the death of many civilians. This can be said to be perpetuation of crime. Dr. Gebe agrees with Dr. Ahorsu on the kind of support Al-Assad received from Russia during the Syrian insurgency, and explained that actions of intervening states in a conflict situation can lead to the commission of a crime of aggression.

Likewise, Dr. Gebe intimated that in the case of Libya, in order to address the horrific nature of the aggression, more atrocities were committed by the intervening party, and such acts he said could be referred to as "committing aggression within a situation of aggression". NATO

intervened to stabilize the situation, but ended up taking sides with the dissidents. This eventually led to the killing of Muamar Gadafi .

On another level, the dissident group that fought against Gadafi committed many human rights abuses. Several people died. That situation could be regarded as the commission of aggression by the Libyan people themselves – one party against the other.

Dr. Ahorsu also mentioned that to the extent that R2P sometimes perpetuates crime, causes more atrocities and the murder of people, we cannot conclude with absolute certainty that R2P leads to the protection of the people or a humane intervention.

### **3.5.3 Unconstitutional Changes of Government and Crimes of Aggression**

On the question of whether unconstitutional changes of government give rise to crimes of aggression, Dr. Gebe responded in the affirmative. Citing Yahya Jammeh of Gambia, he indicated that despite a democratic election that took him off office, Jammeh decided not to leave, leading to the passage of a number of ECOWAS and AU resolutions that sought to force him out. However, he finally agreed to step down; and that was what saved him. Dr. Gebe argued that but for his timely abdication of the seat, a lot more would have happened which probably would constitute crime against aggression.

A similar thing happened in Cote d'Ivoire when Laurent Gbagbo refused to hand over to Alassane Ouattara upon losing the elections. It took the intervention of France to oust him, amidst several violent attacks and loss of lives.

### **3.5.4 The Relevance of intervention Despite Sovereignty of States.**

On the question of the relevance of intervention amidst the sovereignty of states, Dr. Ahorsu answered that there is a new development internationally, which is different from what existed formerly when sovereignty of states received so much priority. Now, the UN must do everything

to promote international peace and security and states can no longer plead sovereignty when there are internal instability and human rights abuses.

If it is necessary that the carnage, aggression and human right abuses be stopped, even an international organization can rally and intervene.

The relevance of the intervention is that it can alleviate the degree of human rights abuses and killings if handled appropriately and in a timely manner. The point however is valid that the use of intervention may deteriorate an already bad situation. However, the international community can no longer stand aside when there is unrest within a state.

It is very difficult to arrest leaders because they have powerful supporters who protect them. Nevertheless, interventions help to arrest the situation, or in some cases, it can aggravate the situation because more crimes can be committed. He also stated that, the international community has not come up with the most appropriate method to solve unrests and instabilities within states because, to really protect the people, more crime should not be committed or aggression should not be perpetuated.

### **3.5.6 Recommendations from the Respondents.**

Dr. Ahorsu highlighted the fact that most of the unrest comes about because of unconstitutional changes in government. He therefore recommended that countries should make use of democratic institutions so that there would be no need for R2P or international community coming in to intervene.

In his concluding remarks, Dr. Ken Ahorsu said that the R2P is useful but the UN and sub divisional blocs need to figure out whether it is feasible and come up with a parameter for those intervening so that further crime is not perpetuated.<sup>108</sup>

### **3.6 Discussion of Findings from Primary Data**

It is clear that both Dr. Gebe and Dr. Ahorsu agreed that the application of R2P in the case of Libya and Côte d'Ivoire resulted in the commitment of further crimes and other issues pertaining to aggression and therefore although the interveners thought they were doing to improve stability and security, their acts rather perpetuates more of the aggression that they wanted to prevent. Both of the experts however explained that, the resultant crimes and other issues pertaining to aggression which was committed by the interveners in the case of Libya and Côte d'Ivoire were unintended consequences. The assertions of Dr Gebe and Dr Ahorsu therefore aggress with scholars such as Thomas Weiss, Paul Williams and Alex Bellamy who criticized the application of the R2P as constituting some crimes of aggression.

### **3.7 Challenges of the Study**

The major challenge that this study identified is the unavailability of respondents to provide data for analysis.

### **3.8 Conclusion**

This chapter assessed the exigencies and application of the R2P doctrine in Libya and Cote d'Ivoire, in terms of success, challenges and controversies it engendered. This chapter also outlines the challenges of the study. The next chapter, chapter four which is the final chapter of the study, will outline the summary of the findings, conclusion and recommendations of the study.

## Endnotes

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<sup>75</sup> Ibid

<sup>76</sup> Ibid.

<sup>77</sup> UN. 2016. *Genocide Prevention-About Responsibility to Protect*. Accessed October 20, 2018. <http://www.un.org/en/genocideprevention/about-responsibility-to-protect.html>.

<sup>78</sup> Ibid

<sup>79</sup> Global Centre for the Responsibility to Protect. 2008. "About the Responsibility to Protect." New York.

<sup>80</sup> UN-GA. "Resolution Adopted by the General Assembly on 16 September 2005." 2005 World Summit Outcome . 2005.

<sup>81</sup> UNA-UK. 2016. "The Responsibility to Protect: In Detail." <https://www.una.org.uk/r2p-detail>. Accessed October 19, 2018.

<sup>82</sup> Rome Statute of the International Criminal Court, A/CONF.183/9, 17 July 1998, and corrected by proc` Esverbaux on 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001, and 16 January 2002 (entry into force: 1 July 2002).

<sup>83</sup> Collier, Paul. (2009) *Wars, Guns and votes: Democracy in dangerous places*.

<sup>84</sup> ICG, *Côte d'Ivoire: is war the only option?*, Africa Report no. 171 (Brussels, 3 March 2011), p. 1.

<sup>85</sup> Bax, Pauline. *Ivory Coast on brink of civil war as seven women killed at protest march*.

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<sup>86</sup> Bellamy and Williams (2003), p. 834

<sup>87</sup> NPR. *U.N. Condemns Mortar Attack On Ivory Coast Market*. December 2010. <http://m.npr.org/story/134670468>

<sup>88</sup> 'Ivory Coast shelling in Abidjan a war crime—UN', BBC News, 18 March 2011. 'Ivory Coast: more than 100 bodies found', BBC News, 8 April 2011.

<sup>89</sup> Reuters, 'Libya attacks may be crimes against humanity: UN', 22 Feb. 2011.

<sup>90</sup> Ibid

<sup>91</sup> AU document PSC/PR/COMM (CCLXI), 23 Feb. 2011.

<sup>92</sup> Ibid p. 850

<sup>93</sup> Cited in Security Council, *Update report no. 1, Libya*, and 14 March 2011.

<sup>94</sup> ICISS. *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty . Ottawa, ON, Canada: International Development Research Centre, 2001.

<sup>95</sup> UN Document S/PV.6531, p. 11

<sup>96</sup> Ibid-p. 20.

<sup>97</sup> Thabo Mbeki, 'What the world got wrong in Côte d'Ivoire', *Foreign Policy*, 29 April 2011, [http://www.foreignpolicy.com/articles/2011/04/29/What\\_the\\_world\\_get\\_wrong\\_in\\_cote\\_d\\_ivoire](http://www.foreignpolicy.com/articles/2011/04/29/What_the_world_get_wrong_in_cote_d_ivoire), accessed 11 December 2018. 'Russia lashes out at UN military action in Côte d'Ivoire', Associated Press, 6 April 2011.

<sup>98</sup> Bellamy and Williams (2003), p. 850

<sup>99</sup> Ibid

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<sup>101</sup> Loza León Carolina Melisa (2013) Responsibility to Protect and its Role during the Humanitarian Intervention to End the 2010/2011 Post-Electoral Crisis in Ivory Coast. Thesis (Bachelor in International Relations), University San Francisco de Quito, College of Social Sciences and Humanities

<sup>102</sup> Ibid

<sup>103</sup> David Rieff, (2011) R2P, R.I.P. November 7, 2011, New York Times. pp.

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<sup>105</sup> Ibid. p. 826

<sup>106</sup> David Rieff, (2011) R2P, R.I.P. November 7, 2011, New York Times

<sup>107</sup> Ibid

## **CHAPTER FOUR**

### **SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS**

#### **4.0 Introduction**

This chapter outlines summary of the research findings and presents the conclusion of the study. Using the research findings as a basis, this chapter also outlines the recommendations of the study.

#### **4.1 Summary of Findings**

Based on the discussions from the secondary and primary data, the findings of the study are presented in accordance to the research questions and objectives as follows.

With regards to the question on the factors that necessitated the institution of R2P as standard international regime for humanitarian intervention, the study found out that R2P originated in respond to the failure of the UN and the entire international system to protect people against genocide, war crimes, ethnic cleansing, and crimes against humanity such as was committed in Rwanda and Srebrenica in 1994 and 1995 respectively. As a result of these devastating occurrences, the international system deemed it necessary to settle on a legal and political structure for a united international action (humanitarian intervention) that will protect people against genocide, war crimes, ethnic cleansing, and crimes against humanity. The challenge of settling on a legal and political structure for a united international action (humanitarian intervention) was taken by the International Commission on Intervention and State Sovereignty

(ICISS), established by the Canadian Government, which at the end of 2001 delivered a report entitled “The Responsibility to Protect” (R2P). This report was unanimously adopted by UN member states at the 2005 World Summit held in New York. At the 2005 World Summit, the UN member states therefore accepted the R2P doctrine as a legal and political structure which currently guides the international system in protecting people against genocide, war crimes, ethnic cleansing, and crimes against humanity. This finding therefore indicates that this study achieved its first objective which seeks to examine the factors that led to the institution of R2P.

With regards to the question on the successes, challenges and controversies the operationalization of the R2P interventions engendered on principles, values and practice, the study found out that although the operationalization of R2P in Côte d’Ivoire and Libya has led to regime change in the two states, the operators of R2P in Côte d’Ivoire and Libya ended up becoming parties to the conflict they intervened to protect civilians against by engaging in armed conflicts which led to the perpetuation of more atrocities in Côte d’Ivoire and Libya. Although the operators of R2P in both Côte d’Ivoire and Libya ended up changing the regimes in both states, it is important to point out that the purpose of applying R2P as stipulated in the ICISS report on R2P which was adopted by UN member states at the 2005 World Summit held in New York was to protect people against genocide, war crimes, ethnic cleansing, and crimes against humanity and to change the regimes of states. The operationalization of R2P in Côte d’Ivoire and Libya has therefore not achieve a complete success since more atrocities such as the murder of some women on a peaceful demonstration by Pro-Gbagbo forces (in the case of Côte d’Ivoire) and the murder of the head of state, Muammar Al Gathafi, and the subsequent instabilities (in the case of Libya) have been attributed to operators of R2P in both states by some scholars as

identified in the analysis of findings in chapter 3. Rather, the operationalization of R2P in Côte d'Ivoire and Libya has engendered controversies and challenges with regards to political instability particularly in the case of Libya. This finding shows that the second objective of the study which seeks to assess the exigencies and application of the R2P doctrine in Libya and Cote d'Ivoire, in terms of success, challenges and controversies it engendered has been achieved.

With regards to the question on whether or not the use of military intervention in the application of R2P put to rest the controversies surrounding intervention, acts of aggression and neo imperialism, the study found out that specifically on military intervention (as an application of R2P) the cases of military interventions in Côte d'Ivoire and Libya make it clear that this new agenda (R2P) faces a range of unsettled challenges, which could hinder the formation of consensus in responding to future protection crises in the international system. Majority of these concerns are whether the Military interventions in Côte d'Ivoire and Libya met the requirement that: it must have a just cause, which means that a state has to be clearly unable to perform its duty of protecting civilians from mass atrocity crimes in order for the use of force to be justified; it must be appropriately sanctioned by the Security Council; it should only be used when all available non-violent options have been exhausted; it should employ as little violence as possible; do more good than harm; and have a reasonable chance of success. These are the conditions that the ICISS report which constitute R2P stipulates for the use of military force to meet before it can deem as lawful. It is very clear that the use of military force in the cases of Côte d'Ivoire and Libya did not satisfy some of the above conditions including the use of little violence as possible and doing more good than harm.

These unanswered questions about military interventions as an application of R2P make the R2P activities susceptible to several misinterpretations and raise questions about the level of success it has achieved in effectively promoting human rights in Côte d'Ivoire and Libya. This therefore shows that the use of military intervention in the application of R2P has not put to rest the controversies surrounding intervention, acts of aggression and neo imperialism in the international system. This finding therefore demonstrates that the third objective of the study which seeks to discuss the controversies surrounding intervention, acts of aggression and neo-imperialism has been achieved.

With regards to the question on whether the application of R2P have any semblance of the crime of aggression, the study find out that in both the Côte d'Ivoire and Libya cases, the application of R2P resulted into commitment of further crimes and other issues pertaining to aggression which were not intended by the operators of R2P. The original intent for applying R2P in both Côte d'Ivoire and Libya was to improve stability, security and protect civilians against any form of genocide, war crimes, ethnic cleansing, or other crimes against humanity. Unfortunately however, the acts of the operators of R2P, in both Côte d'Ivoire and Libya, had rather perpetuated more of the aggression that they wanted to prevent. This study therefore reveals that the application of R2P in Côte d'Ivoire and Libya, specifically through the use of military force, has resulted into some unintended acts that resemble the crime of aggression. This finding is therefore a critique against the R2P doctrine. This finding shows that the last objective of this study which seeks to discuss the use of military force in the application of R2P and its relativity to the crime of aggression has been achieved.

#### **4.2. Conclusion of the Study**

The study uses the interventions in Cote d'Ivoire and Libya under the R2P doctrine as case studies to find out if the operationalization of the R2P concept has in principle and practice protected the rights of citizens or otherwise perpetuated crime. More specifically, the study seeks to find out if the use of military intervention under the third pillar of R2P is a semblance of the Crime of Aggression.

As a case study, the research employs a qualitative approach, using semi-structured interviews and purposive sampling technique, to collect the requisite data from the target population. This study uses the theory humanitarian imperialism to examine the phenomenon under study and come out with its findings.

The findings of the study shows that although the operationalization of R2P in Côte d'Ivoire and Libya has led to regime change in the two states, the purpose of applying R2P as stipulated in the ICISS report on R2P which was adopted by UN member states at the 2005 World Summit held in New York was to protect people against genocide, war crimes, ethnic cleansing, and crimes against humanity and to change the regimes of states. The operationalization of R2P in Côte d'Ivoire and Libya has therefore not protected the rights of citizens but rather perpetuated crimes since some atrocities committed against citizens in both Côte d'Ivoire and Libya were committed by operators of R2P in both states. Also, the findings of the study reveal that the application of R2P in Côte d'Ivoire and Libya, specifically through the use of military force, has resulted into some unintended acts that resemble the crime of aggression. This finding is therefore a critique against the R2P doctrine.

The findings of this study justify the hypothesis of the study that the use of military intervention under R2P is a semblance of the Crime of Aggression.

It is very significant to point out that although the application of R2P in both Côte d'Ivoire and Libya has not successively yielded the intended result of applying R2, the need to intervene to protect human rights will continue to exist in the international system. This research is therefore very significant and timely since its findings will add to the ongoing debate on R2P and help states, regional organisations, international organisations and civil society organisation to best decide on when to intervene, when not to and how to intervene in order to protect human rights and alleviate mass atrocities rather than aid or perpetuate them. The findings of this study therefore serve as a source of reference to scholars, students, researchers and also serve as a valuable addition to the existing literature on the application of R2P.

#### **4.3. Recommendations of the Study**

The recommendations of the study, as based on the findings of the study include the following.

To start with, the UN should set out strict guidelines to regulate its engagement of troops during the application of R2P so that interveners do not violate rights of citizens of the states they seek to protect.

Secondly, the UN should set up a supervisory body that will ensure that R2P interventions are carried out according to the laid down procedures.

To add to the above, the Responsibility to Protect (R2P) resolution should be amended to include sanctions on individuals and states that perpetuate act of aggression during the application of R2P.

Also, interveners or operators of R2P should endeavor to be neutral as much as possible during the application of R2P. In both the Ivorian and Libyan cases as studied in this dissertation, the interveners were accused of taking sides with the conflicting parties and thereby becoming parties to the conflicts that they went in to intervene. Taking sides with the conflicting parties compromises the objectivity with which R2P interveners are expected to work with. It is therefore very important for interveners or operators of R2P to be neutral during the application of R2P.

Finally, I urge all states, specifically states in Africa, to make use of democratic institutions so that there would be any need for R2P or international community coming in to intervene in their domestic affairs.

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## APPENDICES

### APPENDIX I

## **A STUDY OF THE APPLICATION OF R2P IN COTE D’IVOIRE AND LIBYA: A SEMBLANCE OF A CRIME OF AGGRESSION?**

My name is Opusumah Esther-Lilian. I am an MA Student from the Legon Centre for International Affairs and Diplomacy (LECIAD), University of Ghana. I am conducting a research on the above topic for the purpose of my dissertation. Kindly assist me by providing responses to each question. All responses will be treated with strict confidentiality and used for academic research purposes only. I am very grateful for your assistance. Thank you.

### **INTERVIEW GUIDE FOR RESPONDENTS**

Occupation / Position of respondent:

Number of years at post:

**Objective 1. To examine the factors that necessitated the institution of R2P as standard international regime for humanitarian intervention**

1. What do you know about the Responsibility to Protect (R2P) doctrine?
2. Can you recount any scenario(s) in the international system in which R2P was implemented?
3. From your perspective what factors necessitated the institution of R2P?

**Objective 2. To assess the exigencies and application of the R2P doctrine in Libya and Cote d’Ivoire, in terms of success, challenges and controversies it engendered**

4. What will be your assessment of application of the R2P in Libya and Cote d’Ivoire

5. What do you know about the Crime of Aggression?
6. Did the application of R2P in Libya and Cote d'Ivoire, constitute Crime of Aggression?

**Objective 3. To ascertain the controversies surrounding intervention under RTP and acts of aggression and neo-imperialism.**

7. Do unconstitutional changes of government give rise to crimes of aggression?
8. Giving the relevance of sovereignty of states in the international system, is intervention necessary?

**Objective 4. To ascertain the use of military force in R2P and its relativity to the crime of aggression**

9. In your opinion, does the use of military intervention as a way of implementing R2P (as done by NATO in Libya and US as well as Russia in Syria) violates the crime of aggression?
  - b) Please why (concerning your responds above)?

10. Please do you have any other contribution to make concerning my topic?

**Thank you very much for your time and useful responses.**