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Rationale of the African Union's Right to Intervene in Regional Conflicts: Case of South Sudan

By

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Abstract
The right to intervene is one of the unique principles of the African Union as an international organization. Specifically, the study sought to analyze the rationale behind the principle of the right to intervene, in terms of what the original drafters envisioned as the conceptualization. The context of South Sudan conflict is mentioned to better understand the phenomena and apply it in a real time situation. This study utilized the qualitative approach, securing primary and secondary data from interviews conducted on AU peace and security experts. Secondary data entailed the review of journal articles, books and policy documents. The findings highlights that the right to intervene as envisioned in the Constitutive Act was primarily military intervention. However, with regards to recent practices by the AU and other relevant literature on the matter, the right to intervene is seen to encompass various forms and levels of intervention including military intervention; diplomatic peace processes; and sanctions, so long as the AU does not imitate the principle of non-interference like its predecessor, the OAU, and watch as humanitarian crisis escalates in the continent. Recommendations highlights employing an inter-agency coordination approach among the relevant stakeholders to resolve the many controversies associated with the right to intervene, starting with better mechanisms in place to guide conceptualization of the right to intervene.

Key words: AU, Intervention, South Sudan, Conflict, Human Rights, Conceptualization

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By

Becky Adiele

Introduction

The non-interventionist principle was developed to reflect the sovereignty of states (Rattan, 2019). This principle is contained within the UN charter, specifically in Article 2 (4) and (7). Considering the effects of wars that have occurred in history, the world recognized the need to intervene, if need be. The purpose of intervention was to stop serious abuse of human rights and maintain global law and order. Conforming to modern day development on the nonintervention principle, the UN provides exceptions forbidding the use of force. Chapter VII (Articles 39-51) in the Charter, contains provisions by which the use of force can be deemed acceptable where there are acts of aggression, danger to peace and breach of peace. The UN also sanction the use of force for self-defense (Rattan, 2019). Moreover, UN charter in Chapter VIII recognizes the important part played by regional organizations to sustain peace and order in their collective regions.

A number of regional organizations have also incorporated the interventionist approach within the Responsibility to Protect (R2P) umbrella. The European Union (EU) adopted The European Union Global Strategy (EUGS) in 2016 to increase the efficacy of the defense and security of the EU and its members, protect the public, guarantee collaboration among the member states military forces and so on (Smith, 2017). The EU has demonstrated its commitment to action by applying the European Union Global Strategy during the conflicts in Libya and Syria. The EU's contribution in both conflicts were mostly diplomatic and other non-coercive means such as the imposition of sanctions and embargoes (Bargueiro, Seaman & Towey, 2016). For military actions or intervention, the EU is quite hesitant and, in both cases, failed to apply its Common Security and Defense Policy (Faleg, 2013).

In West Africa, the sub-regional organization of Economic Community of West African States (ECOWAS), developed a Protocol for conflict prevention mechanisms. Article 3 of the statute reflects its stance on interventionism and the Responsibility to Protect (R2P) doctrine. ECOWAS has applied the provisions of the protocol and led interventions in conflicts within the region to stop human rights violation and restore peace and security. ECOWAS has led various interventions to restore the peace and order in Gambia (2017), Sierra Leone (1997) and Liberia (1990).

The right to intervene in its members affairs was included within the legal framework of the AU following the slow reaction by the international community to critical situations in Africa, examples include, the collapse of Somalia; the atrocious crimes that transpired in Eastern Nigeria amid the Biafran War in 1967; human rights violations committed by Bokassa; the atrocities committed in Uganda by Idi Amin and the Rwanda genocide of 1994. The right to intervene was incorporated following the "African Solutions to African Problems" doctrine and 'Silencing the Guns' initiative launched in 2013. The interventions so far carried out by the A.U. have only been with approval from affected Member States under Article 4 (j) and after various human rights violations have occurred, half of those interventions did not achieve its mandate. While Article 4 (h) grants the right to intervene where there are grave crimes against humanity, it has not been expressly invoked by the AU. Although there was an attempt to use Article 4 (h) in 2015 during the Burundi conflict, when

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the AU authorized the deployment of 5,000 personnel for MAPROBU (Williams, 2016). But the deployment was never executed due to various reasons relating to the applicability of the right to intervene.

There has been concern raised as to the inadequacy of the AU to abide by its commitments of active intervention and respond rapidly to save Africa from the scourges war and conflicts plaguing the continent, such as the one experienced in South Sudan (Gebrekidan, 2015). South Sudan plunged into conflict in 2013 after gaining its independence from Sudan in 2011. The efforts of peacekeepers and other armed militias in South Sudan during the earlier transition period and later on, were met with difficult setbacks as negotiation efforts were disregarded and the conflict continued (Rossi, 2016). The AU Commission of Inquiry (2014) established to look into human right atrocities committed in South Sudan reported that there was human rights violation and war crimes occurring in South Sudan. By 2015, a revolting massacre was reported, further demonstrating serious humanitarian crisis in the country (South Sudan Humanitarian Project, 2015). While South Sudan conflict had two circumstances that required intervention by the AU, the right was never invoked to restore peace in South Sudan and prevent human rights violation.

Like the previous President of the ICJ, H.E Judge Abdulqawi A. Yusuf in his statement on the International Holocaust Remembrance Day (27th January, 2020) stated:

> In Africa, the Constitutive Act of the African Union authorizes the Union to intervene in a Member State in respect to grave circumstances, namely war crimes, genocide and crimes against humanity. There is no doubt that this constitutes significant progress in a continent bedeviled lately by internal conflicts. However, we still have to see the actual use of this right by the African Union in order to save the lives of those who risk becoming victims of hatred and prejudice in their own countries (ICJ, 2020).

From the above statement it is clear that the conversion from the non-interference principle by OAU to AU's non-indifference principle, seems like a very promising and positive step undertaken to limit the bloody conflicts and human rights violations occurring in the Region, in practice however, there are various impediments to the right to intervene. Dyani-Mhango (2012) mentioned that the AU must address some issues that affects successful implementation of the right to intervene, one of which is clarify as to the meaning of the right to intervene. This further explains the various controversies and ambiguities associated to the AU's right to intervene

Statement of the Problem

The intervention right as enacted in AU Constitutive Act is a way to reduce the scourges of intrastate wars and its effect on the African people, article 4 (h) of the Act envisages intervention where grave crimes against humanity are present and even without obtaining consent from states, so as to respond quickly and limit human rights violation. Though the right to intervene is expressly provided for, the interventions so far led by the A.U. have been undertaken through Article 4(j) where AU States are allowed to seek intervention to restore law and order.

Although the situation in South Sudan met two of the thresholds for invoking the right to intervene, which was crimes against humanity and war crimes, there was no application of article 4 to liberate the South Sudanese people due to various challenges including the poor conceptualization of the right. The AU has also not adopted any implementing guidelines

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detailing how the provisions of Article 4 (h) would be applied. This has left a number of unresolved procedural issues (Kioko & Wambugu, 2016). Further clarity is needed on the conceptualization and operationalization of Article 4 (h). This study is an earnest attempt to uncover and resolve matters pertaining the rationale and applicability in enforcing the right to intervene as a means of limiting the effects of armed conflicts in Africa.

Research Objective

To analyze the rationale behind the enactment of the right to intervene in the AU's Constitutive Act.

Methodology

The study was qualitative in nature using the exploratory research design to address the clarity needed on the AU's right to intervene. The study relied extensively on empirical data by other writers through cross-referencing. Target population included AU peace and security experts and South Sudanese officials. Primary data was acquired through in-depth interview by physical consultations, electronic means such as telephone calls, zoom calls and google meet, as well as written submissions acquired from interview questions with the respondents. Secondary data collection was gotten from journal articles, books and documents of released by UN, AU and other relevant organizations on this study's subject matter. Primary data and secondary data were analyzed through qualitative data analysis using document analysis by looking at relevant documents such as the Constitutive Act and other policy documents.

Theoretical Framework

Liberal institutionalism assumes that national and global institutions contribute significantly in ensuring peace and cooperation among states (Johnson & Heiss, 2018). The AU's action towards cooperation, securing stability, democracy and peace across the region through policies developed and implemented by its member states can be explained within the tenets of liberal institutionalism.

Data Analysis and Findings

Introduction

The analysis of the data obtained from primary and secondary sources, provided relevant information to demonstrate the meaning of the right to intervene while taking into account the transition phase from OAU to AU, both in principle and practice and then applying it to recent practices.

From Non-Interference to Non-Indifference

The OAU, an antecedent of the AU, was founded in 1963 and was guided by the principles of non-interference and state sovereignty which was an important safeguard of international order as established in the Corfu Channel Case (1949), between the Britain and Northern Ireland vs People's Republic of Albania, in which the ICJ noted 'between independent States, respect for territorial sovereignty is an essential foundation of international relations. The Charter of the OAU showed the prevailing issues in Africa during that period, which was to protect the newly acquired statehood of independent states, secure independence for the remaining colonized African states, and condemn apartheid in South Africa (Murray, 2004). The nonintervention principle was however still violated by powerful states especially in cases of competition for supreme power. The principle of nonintervention and state sovereignty was further advanced to protect the weaker states from stronger nations. Perhaps

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this is why the then Algerian President Bouteflika referred to sovereignty as 'our final defense against the rules of an unjust world' (Aboagye & Bah, 2005).

Geldenhuys (2006) notes that African rulers were fixated with the preposition of sovereignty, which was the non-intervention in internal matters of countries- especially theirs. Geldenhuys highlights that the ill treatment of the African leaders to its peoples was considered an element of domestic jurisdiction, void of external interference. African leaders at that time were further backed by the UN Charter, which emphasized the protection of States and not individuals. Because of its colonial history and the weakness and vulnerability experienced by post-colonial African states, there was extreme reluctance to disrupt the sacrosanct principles of nonintervention and sovereignty (Kunschak, 2006; Maluwa, 2001). The OAU Charter did not expressly forbid the violability of colonial borders, hence, the OAU Resolution of 1964 declared that territorial borders at the time of national independence were sacrosanct and thus should be respected (OAU Resolution, para 2, AHG/Res 16 (1)). Busumtwi-Sam (2006) notes:

> The OAU Charter's non-interference norms may have succeeded in minimizing certain types of conflict… specifically interstate conflicts fueled by irredentism or other transboundary claims, but they also contributed to the initiation and intensification of other types of conflict by legitimizing the preservation of the status quo and delegitimizing the grievances of disaffected groups… as a result, little was done to address the underlying political and socio-economic problems that gave rise to and sustained the vast majority of violent African conflict.

Busumtwi-Sam's explanation further reiterate the fact that even though the OAU non-interference principle was necessary to ensure the protection of states sovereignty and territorial integrity, the other end of the coin propelled an avenue that allowed for abuse and conflicts to thrive within some African countries without the other OAU member states stepping in restore peace and order.

Consequently, the outrage against apartheid and racism in South Africa by the OAU, even though South Africa was not part of the OAU until 1994, broke the boundary of judicial sovereignty and addressed the ill treatment of States to its own citizens, this raised international concern and the claim nonintervention and protection of sovereign statehood was scarcely applied (Clapham 1996). In 1979, the issue of human rights gained an even greater foothold when a legal experts committee was established in the OAU Summit to draft the African Charter of Human and Peoples' Rights ('the Banjul Charter'), which entered into force in October 1986. The African Commission of Human and Peoples' Rights as set up in the Banjul Charter with the mandate to act as a monitoring body of human and people's rights on the continent, further propelling the concept of human rights protection. Additionally, Cold War end brought about waves of democratization and began to seek accountability for the actions of leaders around the globe.

Violence perpetrated against citizens, in regions such as in Great Lakes in Africa, Horn of Africa and the Mano River, began the debate on whether the concepts of sovereignty and non-interference should still be considered sacrosanct. The 1991 Somalian conflict, the Biafran War of 1967-1970 and the Rwandan genocide in 1994 were the most determining case that fueled the debate on State sovereignty as a responsibility and intervention. The aftermath of Rwandan genocide impelled the UNSC to set aside the State sovereignty by concluding that national unrest may upset world peace and security (Mepham & Ramsbotham

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2007; Samkange 2002; Axworthy 2001). This shift towards intervention manifested in the Economic Community of West African States (ECOWAS) led interventions in the 1990s and from the adoption of the right to intervene in the 1999 ECOWAS Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security ('Protocol on the ECOWAS Mechanism'). On the above, a respondent A2 noted that:

> One of the major factors that pushed the intervention agenda was when it became evident that the global community, including the UNSC were not responding quickly to the African plights. For example, the UN missions to Somalia in 1992 and Angola in 1999 failed to resolve the conflicts. Because of these, it was widely concluded that these failed missions demonstrated an unwillingness by the UN to address conflict issues in Africa.

This view further demonstrates how the conflicts and the effects of such conflicts that occurred during OAU existence played a big role in revisiting some of the strict principles applied by the OAU and taking an active part in addressing the conflict situations.

African leaders and activists began to recognize and condemn the damage caused by lack of scrutiny and accountability caused by abusive African leaders and regimes as a result to the strict adherence of the non-interference and State Sovereignty. Shortly after taking power in 1986, Ugandan President Yoweri Museveni rebuked the lack of attention to atrocities perpetrated by African leaders, in particular, for allowing Idi Amin's continuous killing of Ugandans within the excuse of non-interference. President Museveni stated:

> Over a period of 20 years, three quarters of a million Ugandans perished at the hands of governments that should have protected their lives…. Ugandans felt a deep sense of betrayal that most of Africa kept silent… the reason for not condemning such massive crimes had supposedly been a desire not to interfere in the internal affairs of a Member State, in accordance with the Charter of the OAU and the (UN). We do not accept these reasons because in the same organs there are explicit laws that enunciate the sanctity and inviolability of human life. (Kuwali & Vijoen, 2013).

In the same vein the OAU Secretary General, Ahmed Salim, condemned African leaders actions and asserted that non-intervention as contained in the OAU Charter ought not to be interpreted as indifference. He mentioned the absence of a provision within the framework of the OAU Charter that granted African leaders a right to harm and massacre citizens with impunity. He then urged the OAU to champion movements that transcend the traditional view of sovereignty and invoke African values of kinship and solidarity, he advised Africans to see themselves as one people who are merely separated by an artificial border (Kuwali & Vijoen, 2013).

Owing to the wake-up call given by leaders such as President Museveni of Uganda, Salim and President Aferwerki of Eritrea, as well as the realization in the shortcomings of the OAU, the OAU began to take measures to redress its defaults. In 1991, African leaders assembled in Uganda where they deliberated on the continent's issues (Dyani-Mhango, 2012). The Kampala Document was drafted and signed by the leaders, the document advocated the establishment of a Conference on Security, Stability, Development and Cooperation in Africa (CSSDA), with the main aim of strengthening and promoting African States cooperation by prioritizing the security of Africans in all areas. The Grand Bay

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(Mauritius) Declaration and Plan of Action declared that 'the promotion and protection of human rights is a matter of priority for Africa'. In July 2000, the OAU Assembly endorsed the CSSDA Solemn Declaration during its 36th Session in Togo (Kioko, 2003). The CSSDA Solemn Declaration became the building block for the African Union focus. In July 2002, the AU replaced the OAU in Durban summit, South Africa. The AU's Act enshrining a right to intervene came into force in 2000. Besides Article 4 (h) of the Act, the AU Member States further demonstrated their commitment to action and non-indifference by adopting the 'Common African Position on the Proposed Reform of the United Nations' ('The Ezulwini Consensus) at the 7th Extraordinary Session of the Executive Council at Ezulwini Swaziland in 2005. The Ezulwini Consensus points out the AU's approval of the R2P principles and AU's position on the implementation of Article 4 (h) through the use of force (Aning & Okyere, 2016). Respondent A5 from AU peace and security department stated that:

> The language used in the AU constitutive Act clearly shows its determination to protect human rights and limit armed conflicts in Africa. The preamble for example makes outlines the duty of African leaders to prevent the scourges of war on socio-economic development, peace and security.

Hence, it is clear that through enactment of the right to intervene in its Constitutive Act, the AU was taking a bold step to properly address the conflict situations and its devastating effects on human rights and developmental agenda in Africa. This position is corroborated by other relevant literature looking at the rationale behind including an intervention right within the AU legal framework.

For Dan Kuwali (2014), in his book, he contends that the rationale behind the enactment of the right to intervene stems from massive disapproval with OAU's strict adherence to its non- interference principle which prevented it from interceding to put an end to atrocious actions in Africa. He asserts that even though the paradigm move from non-interference to non- indifference was motivated by a lot of concerns, the foremost being the assumption that the global community had turned its back to the problems plaguing the African continent, the international society paid no attention to conflict resolution and peacekeeping in Africa, which propelled the OAU to devise its own solutions to its problems.

The rationale behind Article 4 (h) on the AU's right to intervene is to provide discretion to the AU as a continental organization to address fundamental human rights violation, in the form of genocide, war crimes and crimes against humanity on the continent (Omorogbe, 2012). According to Stahn (2007), the objective of Article 4 (h) on the right to intervene as intended by the drafters, is not only to consider the right to intervene as an institutional pledge but also AU's obligation for action. Like Kindiki (2007) writes:

> Article 4 (h) is of prime relevance to the question of humanitarian intervention. It gives the AU the 'right to intervene in member states pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity'. Being couched in terms of a 'right', it means that the AU Assembly will have the discretion to decide whether or not to intervene. the consent of the target state will not be required. It would have been better if the provision required the AU to intervene as a matter of 'duty', because a sense of obligation to intervene is more likely to move the AU into action.

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This single statement alone summarizes the entire section regarding the what Article 4(h) entails, the party responsible for deciding whether to intervene or not, and supports the argument that the right to intervene is a commitment for action by African states.

Looking at the series of events that lead to the enactment of Article 4 (h) into the AU's Constitutive framework, one thing is clear, the rationale for including the right to intervene by the AU was to create 'African Solution for African Problems', in light of the global community hesitance to offer assistance when the need arose, like in the case of the Rwandan genocide. The drafters of Article 4 (h) envisioned a situation in which the AU would step up and intervene where atrocious crimes are perpetrated among the African people and restore peace and order without having to wait for assistance or support from the rest of the international community, in which case, if or when the assistance indeed comes, it might already be too late as seen in instances such as the Biafran War in Nigeria and the Rwandan Genocide. The reasons for including Article 4 (h) are hence clear and valid, it is justifiable, it is rational and it would definitely come a long way in limiting human rights violation and restoring peace and order within the African Continent, so why is it yet to be invoked especially in situations that required its application, such as the South Sudan conflict. Existing literature on the rationale behind the enactment of Article 4 (h) has done a good job with analyzing the various reasons but has failed to apply it to recent events so as to understand the difficulty in the comprehension and application of Article 4 (h). This lacuna in the literature on the right to intervene must be filled so that the attempts made by past and present leaders to limit gross human rights violation will not be in vain.

Having looked at the reason behind the inclusion of Article 4(h) into the AU's Constitutive Act, the next step is to analyze the meaning of the right to intervene as intended by the drafters of Article 4(h) and (j) in terms of its conceptualization, whether military intervention, political sanctions, diplomatic practices or an entirely different mechanism.

The Right to Intervene

The Constitutive Act is the sole global accord that creates a right to intervene by the AU in its member state national affairs, under Article 4(h) and (j). The concept of intervention- be it humanitarian, military or whether it falls within the scope of peacekeeping missions- in the affairs of other states is one that has been met with various controversies in international law. Corten (1991) noted that the phrase 'right' or 'duty' of intervention was first conceived by Mario Bettati and Bernard Kouchner in the late 1980s. Bettati was an International Public Law professor at University of Paris II while Kouchner was a French politician and one of the founders of an aid organization called *Médecins sans frontiers*. Both men were tackling the issue of "*the old-fashioned theory of State sovereignty, used to fend off criticism of massacres*". According to Corten, the concept of humanitarian intervention was embraced quickly as the world recognized that values such as democracy, human rights and the rule of law be prioritized over sovereignty. Corten lastly noted that, when there are cases of gross violation of human rights, retaliatory measures and reprisals such as political, diplomatic and economic measures, can be taken.

The R2P doctrine is developed using three core pillars. The first pillar relates to the assertion that individual States have the primary obligation to ensure its population protection against genocidal killings, war crimes, crimes against humanity, ethnic cleansing, and even the instigation thereof. The next pillar includes the global community's obligation to support States to fulfill these duties. The final pillar involves ability of the United Nations Security Council (UNSC) to address conflict situation in a quick and decisive way following approval from the UN Member, in circumstances where the domestic leaders have failed to protect its

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population against mass atrocity crimes (UN, 2005). In the R2P report by the International Commission on Intervention and State Sovereignty (2001), the commission deliberately refused to use the term 'humanitarian intervention', instead it chose to use both 'intervention' or 'military intervention' for humanitarian protection purposes. This was because of some reasons to do with controversies and the absence of common understanding or precision surrounding the term 'humanitarian intervention'. The commission avoided using the term of humanitarian intervention to reflect the position of humanitarian organizations, workers and agents regarding militarization of the phrase 'humanitarian'. It also avoided the term so as not to suggest that the response applied or soon to be applied was justifiable just because it was 'humanitarian', even when such is not the case.

With regards to Article 4(h) of the AU Constitutive Act, it does not clearly give the modalities of intervention, it does not state whether interventions under the provision is limited to the use of force or if it also includes sanctions, diplomatic means and peacekeeping missions (Packer & Rukare, 2002). According to Dan Kuwali (2014), understanding the meaning of Article 4(h) intervention would need a look to the narrative of 'responsibility to protect', as approved by United Nations General Assembly (UNGA). Dan argues that Article 4(h) falls under the third pillar of the Responsibility to Protect doctrine which is the mutual obligation of the global society to limit or stop atrocious acts and the responsibility of mutual action to prevent mass atrocious acts Horn of Africa. Hence, the kind of intervention envisaged in the AU Constitutive Act is primarily military intervention or the 'use of force'. Dan Kuwali contends that other methods of intervention such as economic and political sanctions for non-compliance with the obligations of the AU, is already included in Article 23 (2), therefore, 4(h) should not be seen to mean other forms of intervention other that militarily.

Kunschak (2006) writes that Article 4(h) implies military intervention because the grave circumstances contained in the article which warrants intervention, including genocide, war crimes and crimes against humanity, can realistically, only be contained by means of military force. Baimu and Sturman (2003), however, highlights that, it does not matter the language used, whether 'right' or 'duty' as long as States demonstrate a political will to effect intervention. Thakur (2005) states that:

> …whereas the language of the right or duty to intervene is inherently more confrontational…. The goal of intervention for human protection purposes is not to wage war on a state in order to destroy it and eliminate its statehood but to protect the victims of atrocities inside the state, to embed the protection in reconstituted institutions after the intervention, and then withdraw all foreign troops.

The comment by Thakur confirms the argument that the language used those not matter as long the goal to protect victims of mass atrocities is achieved. Article 4(h) can be viewed as an implementation response through *erga omnes partes or erga omnes contractantes* so as to stop or limit violations of *jus cogens*.

Views held by scholars analyzed above on their interpretation of Article 4 (h) of the constitutive act has also been reflected by respondents. When asked if he thinks the right to intervene falls within the scope of peacekeeping missions, Respondent A1 an AU personnel contended that:

> The right to intervene is different from a peacekeeping mission, it can go as the first intervention preceded by peacekeeping missions because the situation

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> is getting out of hand, intervention forces can go there to normalize it and then probably after the forces have agreed with the government and put some systems in place, then the forces can transition to peacekeeping.

Respondent A4 also commented that:

> I do not think the right to intervene should be taken to mean anything other than military intervention because other forms of conflict resolution-sanctions, diplomatic peace missions and the rest, already have different mechanisms.

These views demonstrates that the right to intervene is different from other forms of peace processes that connotes military intervention through the deployment of forces to conflicting countries that will restore order and protect civilians through forceful military means. Ademola Abass (2012) however, gives a whole different perspective. In her paper, having analyzed relevant documents relating to the responsibility to protect within the African Union framework and also their past "interventions" in conflicting countries, she came to the conclusion that the practices and history of the Union shows that African States planned for the Article to only be a set of continent-wide policy to guide *political* intervention within their territories.

From the data obtained in the field by respondent's answers to the interview question, it is evident the right to intervene in Article 4(h) of the Constitutive Act was envisioned primarily as military intervention. However, with recent conceptual development and practices of both the global sphere and AU, it was found that today's conceptualization of the right to intervene encompasses the different levels or kinds of intervention, including military intervention, depending on the situation and what is considered to be the most suitable response at the time. This finding can also be corroborated by secondary data obtained from prominent scholars. Dan Kuwali (2009) notes:

> Intervention under Article 4(h) should not be equated with, or be seen through the prism of, military force but rather as a focus on the entire spectrum of preventive strategies. The AU should reduce the need for costly intervention and focus more on dealing with the causes of crisis rather than its symptoms. The AU should focus more on improving human security and promoting rule of law, good governance and economic development in AU States. The challenge of the AU is to develop a political-normative framework that promotes a culture of prevention and a climate of compliance with international obligations. Since the causes of mass atrocity crimes are complex, they need to be addressed in a comprehensive and coherent manner.

To sum up this finding, the right to intervene in Article 4(h) can be conceptualized to include the full regional security trajectory- from early warning, conflict prevention, conflict resolution, to post-conflict reconciliation, rehabilitation and reconstruction and indeed military intervention. Conceptualizing the right to intervene is an important prerequisite to determining the thresholds and trajectories for intervention and indeed the applicability.

Threshold on the Right to Intervene under Article 4 (h)

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Over time, with the move of non-intervention to development of terms such as the R2P and humanitarian intervention, the threshold regarding such external actions in the affairs of a different state has been established legally by international laws and normatively by generally accepted principles in the international society.

The threshold for intervention as enlisted in the Act includes- genocide, war crimes and crimes against humanity. A number of scholars have recognized that the threshold is too narrow and if indeed the reason for the enactment of Article 4(h) in the constitutive Act is to protect human right and prioritize the African people's welfare over state sovereignty then the threshold should not really matter as long as it saves the lives of those in danger (Kuwali, 2009). While these seems like a reasonable assertion, the law is the law and if it were ignored, it would create an avenue for further abuse and anarchy. Kuwali proposes that the AU expand the boundary of the threshold by seeing them as mass atrocious crimes for grounds of intervention. Scheffer (2007) stated the phrase 'mass atrocity crimes' be applied for policy deliberation purposes and the judges and prosecutors should have discretion, 'to work out which tag is mostly legally acceptable for a specific case'. The disadvantage of broadening the threshold on the right to intervene as atrocious crimes would lead to a change in the convention originally signed by States and probably cause them to opt out, it would also be opening it to different interpretations by external actors specifically to suit their self-interest under the guise of intervention.

Dan Kuwali (2009) writes about the circumstances for intervention under the Article 4(h), in which he highlights that provision is not only activated because the thresholds are grave actions globally condemned but also because the crimes sometimes involve government action against its own citizens. Intervention is thus justified as long as it saves the lives of many that might otherwise be lost. Hence, the rationale for intervention should not only depend on actual crimes or the numbers of casualties but on the culpability of the national government in either causing or tolerating such crimes. Abass (2007) argues that the AU should prioritize intervention over legal ascertainment of the Article 4 threshold. Since the International Criminal Court, Geneva Conventions and Additional Protocols definition of 'war crimes', genocide and crimes against humanity in adopted by the AU, Kuwali argues that the absence on the universal meaning of the term genocide or the threshold of 'grave circumstances' involving crimes against humanity and war crimes, may result in disruption on determining on intervention in Article 4(h).

To sum up the findings in this section, a major problem interfering with the threshold on the AU's right to intervene in Africa conflicts and particularly South Sudan would be the complicated nature of those conflicts. In the case of South Sudan, various peacekeeping missions were present at the time of the conflict and attempts towards bringing the conflicting parties to an agreement were made and seemed to be working but this was not the case, as violence continued to erupt. So, whether or not the African Union invoked its right to intervene would have been a serious dilemma. Hence the need to properly define the 'right to intervene', establish clearly the thresholds needed and probably expand the threshold as various scholars have suggested.

Conclusion

Mass human rights abuse which has mostly been perpetuated by African governments against its own people, serve as a continuous risk to Africa's developmental progress and stability. In a bid to tackle this challenge, the African Union adopted a more active intervention approach that widely deviates from the non-interference stance by its predecessor, the OAU. To further demonstrate its intervention agenda, legal and institutional mechanisms were developed

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within the AU peace and security framework. The right to intervene was enacted in the Constitutional Act in Article 4(h) and 4(j) and institutional bodies were mandated to operationalize this right.

Unfortunately, the right has not been expressly invoked even in situations in Africa where it was important and even necessary to intervene and stop mass atrocities such as in South Sudan's case where two of the thresholds required for intervention were present. The reason for non-application of the right to intervene have been explored by various scholars over the years and a major concern is placed on the conceptualization of the right to intervene, whether the drafters envisioned the right to intervene as a general intervention scheme that encompasses the various peace processes such as diplomatic means, sanctions and embargoes, or whether the right to intervene has contained in the Act is simply military intervention. Whatever the case may be, there is need for further understanding of this right and explanation as to why it has not yet been explicitly invoked by the Union.

Despite the continuous challenges faced by the AU, the Union has also made huge strides in achieving its longing for peace and stability across the continent, however, a lot more work needs to be put into action. This study has made an attempt to reconcile the arguments on the right to intervene through extensive research that produced both primary and secondary data on the subject matter with a goal to push for reforms within the AU APSA that will resolve the many controversies relating to the right to intervene and guarantee successful intervention in whatever capacity, be it intervention through diplomatic means, sanctions or military intervention.

Recommendations

Recommendations for this study are aimed primarily at the African Union, specifically its peace and security mechanisms, the entirety of African leaders and finally the international community. Overall submission based on the findings recommends for Inter-agency Coordination among relevant parties and stakeholders. In determining the proper conceptualization of the right to intervene, there needs to be coordination among the AU and African leaders to decide on what level of intervention is necessary for a certain situation. If the right to intervene is different from other intervention strategies recognized by the international community, then it should be included in a policy document to prevent the confusion and ambiguities regarding that right. Further clarification on the right to intervene and its threshold will make it easier for the Assembly or the PSC to decide on intervention in a timely manner and prevent. If the right to intervene as enshrined in the Constitutive Act encompasses other intervention mechanism, then that fact must also be made clear in policy documents and meetings held for record purposes. Perhaps it's time to revisit the Constitutive Act and amend ambiguities in order to guarantee the achievement of the AU's Agenda 2063.

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