THE ROLE OF THE UNITED NATIONS SECURITY COUNCIL IN THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY IN MALI

BY

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DECLARATION

I hereby declare that the work in this Ph.D. thesis titled "*The Role of the United Nations Security Council in the Maintenance of International Peace and Security in Mali"* was undertaken by me under the supervision of Professor Y. Aboki, Professor B.Y Ibrahim and Dr. K.M. Danladi of Faculty of Law, Ahmadu Bello University, Zaria. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree or diploma at this or any institution.

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CERTIFICATION

This thesis titled "*The Role of the United Nations Security Council in the Maintenance of International Peace and Security in Mali"* by Edward Emeka BRISTOL meets the regulations governing the award of Doctor of Philosophy in Laws – Ph.D of Ahmadu Bello University, Zaria, Nigeria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This thesis is dedicated to God who has made it possible for it to be concluded. I thank Him dearly.

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LIST OF ABBREVIATIONS

AFISMA :	African-led International Support Mission in Mali
APSA:	African Union Peace and Security Architecture
ASF:	African Standby Peacekeeping Force
ATT:	Ahmadu Toumani Toure
AU:	African Union
AUC:	African Union Chairperson
AQIM:	Al-Qaeda in the Islamic Maghreb
CADSP:	Common African Defence and Security Policy
CEWS:	Continental Early Warning System
CMD:	Conflict Management Division
CNRDR:	National Committee for Restoration of Democracy and State
CRS:	Catholic Relief Service
CSO:	Civil Society Organization
CSIS:	Centre for Strategic and International Studies
DFC:	Department of Field Support
DfID:	Department for International Development
DOD:	Department of Defence
DPKO:	Department of Peacekeeping Operations
ECOWAS:	Economic Community of West African States
ECOMOG:	ECOWAS Cease Fire Monitoring Group
EU:	European Union
FPA:	Front for Liberation of Azward
ICTY:	International Criminal Tribunal for the Former Yugoslavia

ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant for Economic, Social and Cultural Rights
IEDs:	Improvised Explosive Devices
IDP:	Internally Displaced Persons
IAC:	International Armed Conflict
ICISS:	International Commission on Intervention and State Sovereignty
ICJ:	International Court of Justice
ISIP:	Intervention and Special Initiative Programme
ICRC:	International Committee of the Red Cross
IHL:	International Humanitarian Law
MCPMR:	Mechanism for Conflict Prevention, Management, and Resolution
MSC:	Military Staff Committee
MICEMA:	Ecowas Mission in Mali
MPA:	Mouvement Populaire de l'Azaouad/Azawad People's Movement
MOJWA/MUJAO:	Movement for Oneness and Jihad in West Africa
MNLA:	National Movement for the Liberation of Azawad
MINUSMA:	Multinational Integrated Stabilization Mission in Mali
MJTF:	Multinational Joint Task Force
NEMA:	National Emergency Management Agency
MINUCI:	United Nations Mission in Cote d'Ivioire
MUNA:	Movement for Unity and Jihad
FNLA:	National Liberation Front of Azawad
NPFL:	National Patriotic Front of Liberia

NIAC:	Non-International Armed Conflict
NATO:	North Atlantic Treaty Organization
NPT:	non-Proliferation Treaty
OMC:	Observation and Monitoring Centre
OMUs:	Observation and Monitoring Units
OMZs:	Observation and Monitoring Zones
OAU:	Organization of African Unity
OECD:	Organization for Economic Cooperation and Development
PoW:	Panel of the Wise
PLO:	Palestine Liberation Organization
PSD:	Peace and Security Directorate
PSI:	Pan Sahel Initiative
PSO:	Peace Support Operations
PSC:	Peace and Security Council
R2P:	Responsibility to Protect
SOS:	Save Our Soul
RUF:	Revolutionary United Front
REC:	Regional Economic Committee
TCC:	Troops Contributing Countries
TSCTP:	Trans Sahara Counter Terrorism Partnership
UNTAC:	UN Transitional Authority in Cambodia
UNAMSIL:	United Nation Mission in Somalia
UN:	United Nations

USA:	United States of America
USAID:	United Nations Agency for International Development
UNOC:	United Nations Operation in the Congo
UNSC:	United Nations Security Council
UNTSO:	United Nations Truce Supervision Organization
UDHR:	Universal Declaration of Human Rights
WMD:	Weapons of Mass Destruction
WACSOF:	West African Civil Society Forum
WAFF:	West African Frontier Forces
WANEP:	West African Network for Peace Building

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ABSTRACT

On 16th January, 2012, several insurgent groups began raising another campaign against the Malian Government for independence or greater autonomy for northern Mali, an area known as Azaward. The National Movement for the Liberation of Azaward (MNLA), an organization fighting to make Azawad an independent homeland for the Tuareg people, had taken control of the region. On 21st March, 2012 President Amadou Toure was ousted in a coup d'etat because of the way and manner he was handling the crisis, a month before a presidential election which was to take place. Mutinous soldiers, calling themselves the National Committee for the Restoration of Democracy and State (CNRDR), took control and suspended the constitution of Mali. As a consequence of the instability following the coup, Mali's three largest northern cities, Kidal, Gao and Timbuktu were overrun by the rebels on three consecutive days. Since 2012, Mali faced a crisis disrupting nearly twenty years of democratization – a coup and rebel insurgency. The problems which gave birth to this crisis includes poor governance, non-challant attitude of the Malian government towards the hues and cries of the Azward people, ignoring of the early warning indicators, corruption, poor management of scarce resources and goods, ethnicism, lack of seriousness of the stakeholders such as the Malian government, ECOWAS, UNSC French Government and Mali internal political and social wrangling. These problems were thoroughly discussed and analyzed through the application of the doctrinal and empirical methods by the researcher. In the course of the research, it was discovered that the UNSC is not performing optimally its duty of maintaining peace and security in Mali to its fullest. This is notable because despite her presence, the war still rages on. Persons are killed every day in large numbers, properties are destroyed worth several amount of money creating humanitarian crisis and gross displacement of individuals and missing persons who can't be accounted for. It is also discovered that the insurgent groups often reorganize with the view to attacking one group or the other and all these are happening in the presence of the peacekeepers mandated by the UNSC. This unfortunately also goes to show that the UNSC has not been fully equal to the task ahead of it. Extract from this thesis further revealed the difficulty of categorizing such a complex conflict, but came to the conclusion that the intervention in Mali can indeed be labeled as a counterinsurgency operation.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 BACKGROUND OF THE STUDY

In the century prior to the United Nation's creation, several international treaty organizations and conferences were formed to regulate conflicts between nations. Such treaty organizations include the International Committee of the Red Cross, the Hague Conventions of 1899 and 1907[1]. Following the catastrophic loss of lives in the World War I from 1914 – 1918, the Paris Peace Conference then established the League of Nations to maintain harmony between nations[2].

The League of Nations was an intergovernmental organization founded on 10th January 1920 as a result of the Paris Peace Conference that ended the First World War. It was the first international organization whose principal mission was to maintain world peace[3]. Its primary goals, as stated in its Covenant, included preventing wars through collective security and disarmament and settling international disputes through negotiation and arbitration[4]. Other issues and related treaties included labor conditions, just treatment of native inhabitants, human and drug trafficking, arms trade, global health, prisoners of war, and protection of minorities in Europe[5].

The diplomatic philosophy behind the League of Nations represented a fundamental shift from the preceding hundred years. The League lacked its own armed force and depended on the great powers to enforce its resolutions, keep to its economic sanctions, or provide an army when

[1] Covenant of the League of Nations (2001). The Avalon Project. www.avalon.law.yale.edu/legacov.asp Retrieved 30 August, 2015 at 4.34pm
[2] Ibid
[3] Christian, T. (1995) *The United Nations at Age Fifty*: A Legal Perspective. Martinus Nijhoff LOL Publishers. p. 77.
[4] Ibid
[5] Article 23, "Covenant of the League of Nations"., "Treaty of Versailles" and Minority Rights Treaties. www.avalon.law.yale.edu/legacov.asp Retrieved 30 August, 2015 at 4.34pm

required. However, the great powers were often reluctant to do so because sanctions could hurt League members and so were reluctant to comply with them. When, during the Second Italo-Abyssinian War, the League accused Italian soldiers of targeting Red Cross medical tents, Benito Mussolini responded that "the League is very well when sparrows shout, but no good at all when eagles fall out[6]."

After a number of notable successes and some early failures in the 1920s, the League ultimately proved incapable of preventing conflicts by the Axis powers in the 1930s. Germany withdrew from the League, as did Japan, Italy, Spain, and others. The commencement of the Second World War showed that the League had failed its primary purpose, which was to prevent any future world war.

Despite the short comings of the League of Nations, it successfully resolved some territorial disputes and created international structures for areas such as postal mail, aviation, and opium control, some of which were later absorbed into the UN[7]. However, the League lacked representation for colonized peoples which were more than half of the world's population. Several major powers, including the USA did not participate. The League of Nations failed to act decisively against several conflicts such as the 1931 Japanese invasion of Manchuria[8], the Second Italo-Ethiopian War in 1935[9], the 1937 Japanese invasion of China[10], and German expansions under Adolf Hitler that culminated into World War II[11]. The League of Nations

[6]Jahanpour, F. (2008). "T*he Elusiveness of Trust: the experience of Security Council and Iran*". Transnational Foundation of Peace and Future Research p. 2.
http://www.oldsite.transnational.org/Area_MiddleEast/2008/Jahanpour_SC-Iran.pdf Retrieved 27 February, 2015 at 3.09pm
[7] Ibid
[8]www.inter-wars.weebly.com/japan-invades-manchuria retrieved 3 February, 2015 at 4.15pm
[9]Lina G., and John, H. (2009). *The use of chemical weapons in the 1935 – 36 Italo-Ethiopian War*. Retrieved from www.sipri.org/research/../ethiopiapaper. retrieved 27 February, 2015 at 3.11pm
[10] www.historylearningsite.co.uk/china_war retrieved 27 February, 2015 at 4.08pm
[11] Ibid

lasted for 26 years and the United Nations replaced it after the end of the Second World War on April 20th, 1945.

The earliest concrete plan for a new world organization begun under the aegis of the USA State Department in 1939. The US President, Franklin D. Roosevelt first coined the term 'United Nations' as a term to describe the Allied countries[12]. The term was first officially used on 1st January 1942, when 26 governments signed the Atlantic Charter[13].

In mid-1944, the Allied Powers met at Dumbarton Oaks Conference in Washington, D.C. to negotiate the United Nation's structure. The composition of the UN Security Council quickly became the dominant issue. France, the Republic of China, the Soviet Union, the UK, and US were selected as permanent members of the Security Council. The US attempted to add Brazil as a sixth member, but was opposed by the heads of the Russian and British delegations[14]. The most contentious issue at Dumbarton and its successive talks proved to be the veto rights of permanent members. The Soviet delegation argued that each nation should have an absolute veto that could block matters from even being discussed, while the British argued that nations should not be able to veto resolutions on disputes to which they were a party. At the Yalta Conference of February 1945[15], the American, British, and Russian delegations agreed that each of the "Big Five" could veto any action by the council, but not procedural resolutions, meaning that the permanent members could not prevent debate on a resolution.

On 25th April 1945, the UN Conference on International Organization began in San Francisco. It was attended by 50 governments and a number of non-governmental organizations

[12] www.unitednationssecuritycouncil.org. Retrieved February 28, 2015 at 2.08pm
[13] www.un.org/en/aboutun/history/ Retrieved February 28, 2015 at 2.08pm
[14] Ibid
[15] Francis O. (1945). The Yalta Voting Formula. The American Political Science Review. Vol. 39 p.5

involved in drafting the United Nations Charter[16]. At the conference, H. V. Evatt of the Australian delegation pushed to further restrict the veto power of Security Council permanent members[17]. Due to the fear that rejecting the strong veto could cause the conference's failure, his proposal was defeated by twenty votes to ten[18].

The UN officially came into existence on 24th October 1945 upon ratification of the Charter by the five then-permanent members of the Security Council and by a majority of the other 46 signatories[19]. On 17th January 1946, the Security Council met for the first time at Church House, Westminster, in London, England[20] and began deliberations which created the United Nation Security Council.

The United Nations Security Council (UNSC) is one of the six principal organs of the United Nations and is charged with the maintenance of International Peace and Security. Its powers include the establishment of peacekeeping operations, the establishment of international sanctions, and the authorization of military action through Security Council resolutions[21]. It is the only UN body with the authority to issue binding resolutions to member states.

Like the UN as a whole, the Security Council was created following World War II to address the failings of the other international organizations and the League of Nations in maintaining world peace. In its early days, the body was largely paralyzed by the cold war division between the US and USSR and their allies, though it authorized interventions in the Korean War and the Congo Crisis and peacekeeping missions in the Suez Crisis, Cyprus,

[16]"Milestones in United Nations History". Department of Public Information, United Nations. http://www.un.org/eng/sections/department-public-information/department-public-information/Retrieved 22 November, 2013 3.45pm
[17] Ibid
[18] www.un.org/eng/ga/president/bios/bio03.shtml. Retrieved 24th February, 2015 at 4.09pm
[19] http://www.un.org/en/sections/history/history-united-nations/ retrieved 24 February, 2015 at 5.10pm
[20]"What is the Security Council?".United Nations. Retrieved 24th February, 2015 at 4.11pm
[21] www.un.org/en/…/charter/chapter7.shtml Retrieved 24th February, 2015 at 4.15pm

and West New Guinea[22]. With the collapse of the Soviet Union, UN peacekeeping efforts increased dramatically in scale, and the Security Council authorized major military and peacekeeping missions in Kuwait, Namibia, Cambodia, Bosnia, Rwanda, Somalia, Sudan, and the Democratic Republic of Congo[23].

The Security Council consists of fifteen members. The great powers that were the victors of World War II, Russia, the United Kingdom, France, China, and the USA serve as the body's five permanent members. These permanent members can veto any substantive Security Council resolution, including those on the admission of new member states or candidates for Secretary-General. The Security Council also has 10 non-permanent members (Bolivia (2018), Cote D'iviore (2019), Equitorial Guniea (2019), Ethopia (2018), Kazakhstan (2018), Kuwait (2019), Netherlands (2018), Peru (2019), and Sweden (2018)[24] elected on a regional basis to serve two-year terms as captured alongside their year of expiration above. The body's presidency rotates monthly among its members[25].

Security Council resolutions are typically enforced by UN peacekeepers, military forces voluntarily provided by member states and funded independently of the main UN budget. As of April 2016, 121,780 peacekeeping soldiers and other personnels were deployed on 16 missions around the world, 123 countries contributed uniformed personnel, total fatalities in current operations amounts to 1,694, while total fatalities in all peace operations since 1948 amounts to 3,471[26]. Evaluations of the Security Council's effectiveness are mixed, and calls for its reform predate the body's first meeting. However, little consensus exists on how its structure should be changed.

[22] http://qasioun.net/en/archive/view/530 Retrieved 25th February, 2015 at 4.21pm
[23] www.careerride.com/view.aspx?id=19558 Retrieved 24th February, 2015 at 4.19pm
[24] www.un.org/en/sc/members/ Retrieved 21st September, 2018 at 1: 00pm
[25] http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=112359 retrieved 14th June, 2015 at 5.09pm
[26] www.un.org/en/peacekeeping/resources/statistics/factsheet.shtml Retrieved 12th June, 2016 at 11.23am

No doubt the United Nations Security Council has played a prominent role in maintaining international peace and security in many countries especially in Mali.

Mali peacefully gained independence from France in 1959[27], initially as part of a short-lived federation with Senegal. Founding President, Modibo Kéïta installed a one-party, socialist-leaning dictatorship. In 1968, Kéïta was ousted in a military coup by Moussa Traoré, who went on to serve as president for over two decades. (Former Prime Minister Modibo Diarra, who resigned on December 11, 2012 is Traoré's son-in-law.) Beginning from 1989, Malians increasingly began calling for Multiparty Democracy, echoing movements that emerged across Africa at the end of the Cold War. In 1991, Amadou Toumani Touré (popularly known as ATT) overthrew Traoré in a military coup and organized democratic elections. Opposition activist Alpha Oumar Konaré was elected President. Mali's growing reputation for democratic rule was enhanced in 2002, when Konaré stepped down at the end of two constitutionally permitted terms, and ATT, running as an independent and leveraging his reputation as Mali's "soldier of democracy," was elected President. It was Mali's first democratic transition between civilian leaders. ATT, who was reelected in 2007, pursued a broad and flexible ruling coalition and a style that he referred to as "consensus" (all inclusive) politics, in the absence of a clear ideological preferences or platforms among political parties. This system appeared to have promoted corruption and patronage among political elites, or at least contributed to public perceptions that the system was corrupt. As of early March 2012, the future of the "consensus" system was uncertain, given ATT's stated determination to step down once elections scheduled in April 2012 were held, and his lack of a clear successor. Anxiety over an anticipated political vacuum might have explained speculation in the local press that ATT—despite all reports to the

[27] http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=aa26 retrieved 25th June, 2015 at 6.02pm

contrary was plotting to prolong his time in office on the pretext of insecurity in the north citing the Tuareg issue.

Tuaregs are a small minority within Malian society, although no precise population figures are available. Tuareg rebel groups have claimed greater control over what they see as their historic homeland in the north[28], which they refer to as Azawad. At times, Azawad has been defined to include Tuareg areas across the region[29]. They have also complained of neglect and discrimination by the Malian government, which has been dominated by southern ethnic groups since independence. Negotiated settlements in the early 1990s and 2006/2009 mediated by the government of Algeria[30] laid the groundwork for fragile peace by promising greater regional autonomy, integration of Tuareg combatants into the military, and more state aid for the impoverished north. The government never fully implemented these agreements, and non-full implementation became a grievance unto itself. Prospective control over potential oil and gas resources in northern Mali might have fueled the conflict as well. Mali's population is 90% Muslim, with animist and Christian communities making up the remaining 10%[31]. The pre-colonial empires of current-day Mali played a key role in the spread of Islam in West Africa. Notably, the Saharan city of Timbuktu, then vital cross-roads of regional commerce, was a major center of Islamic scholarship between the 12th and 16th centuries. The Malian state is secular although it plays a role in regulating religious activities, and moderate approaches to Islamic beliefs are generally predominant. Yet, more radical and conservative views have also increased in recent years. In 2005, the International Crisis Group warned that although, in its view, the risk

[28] Alexis A. (2013). *Crisis in Mali. Congressional Research Service*. https://www.fas.org/sgp/crs/row/R42664.pdf retrieved on 3rd July, 2015 at 6.09pm
[29] Ibid
[30] Muchie, M. and Gumede, V. (2014). Unite or Perish: Africa Fifty Years after the Founding of OAU. Pretoria South Africa. p. 34
[31] Alexis A. (2013). Crisis in Mali. Congressional Research Service. https://www.fas.org/sgp/crs/row/R42664.pdf retrieved on 3rd July, 2015 at 6.09pm

of Islamist extremism in West Africa had been overstated by some Western policymakers, Mali "runs the greatest risk of any West African country other than Nigeria of violent insurgent activities." This risk is currently on display most vividly in the north, which has affected politics in Bamako.

1.2 STATEMENT OF THE PROBLEM

For the past five (5) years, insecurity in Mali especially in the separatist Tuareg in the northern territory has been mired in overlapping security, political, and humanitarian crises. After Mali's Government was overthrown in a military coup in March, 2012, insurgents, capitalizing on the ensuing power vacuum, seized much of the country's vast and sparsely populated northern territory.

As at early January 2013, three loosely connected, self styled extremist groups including Al Qaeda in the Islamic Maghreb (AQIM), a U.S.-designated Foreign Terrorist Organization reportedly controlled all the major towns in the north. While the number of insurgent combatants appears to be small, they became increasingly entrenched, ousting an ethnic Tuareg separatist group with which they were initially allied and recruiting adherents among local populations.

While the above problem was evident, the UNSC was a bit reluctant in intervening in the crisis at the initial stage because it was only in July 2013, after the destruction of the Timbuktu mausoleum, was then French ambassador to the UN, Gérard Araud, successful in passing a cautious resolution that took note of the request of the Economic Community of West African States (ECOWAS) and the African Union for a UN mandate authorizing the deployment of a stabilization force. This resolution further requested that the Secretary-General 'develop and implement in consultation with regional organisations, a United Nations integrated strategy for

the Sahel region encompassing security, governance, development, human rights and humanitarian issues[32]'.

This prudent resolution did not incite rapid and willing international response. The deployment of ECOWAS troops was delayed by the Sanogo junta's opposition to an international intervention by ECOWAS members that doubted the organization's intervention capacity and negotiated financial aid packages and political advantage, and by members of the UN Security Council, especially the United States, that questioned the operational capacity, ability and objectives of the ECOWAS force[33]. In November 2013, the Secretary-General expressed his fears that a poorly conceived and executed military deployment could exacerbate 'an already extremely fragile humanitarian situation' and 'risk ruining any chance of a negotiated political solution to the crisis[34]'. After long negotiations between France and the United States in particular, on 20 December the Security Council adopted Resolution 2085, which authorized the deployment of an African-led International Support Mission in Mali (AFISMA) for an initial period of one year after so much delays[35].

With the arrival of the UNSC in Mali, it still took them ample time to intervene in the crisis and this reason is bothered on the need for more personnel and greater material capacity in order to be able to implement this mandate. Interviews with MINUSMA's leadership indicated that the mission faces a lack of commitment by UN member states to contribute troops. Partially because of high security risks and asymmetric attacks from armed groups in Northern Mali, troop-contributing countries (TCCs) have been extremely cautious regarding areas to deploy to.

[32] UNSC Resolution 2056 (2012). Progress Towards the United Nations Security Integrated Strategy for the Sahel: Report of the Secretary General. (S/2014/297). Retrieved from https://reliefweb.int/report/mali/progress-towards-united-nations-integrated-strategy-sahel-report-secretary-general on 23rd February, 2015
[33] Charbonneau, B. et al (2014). Fighting for Liberal Peace in Mali? The Limits of International Military Intervention. Journal of Intervention and State Building. Vol. 8 (2-3)
[34] Charbonneau, B. et al (2016). The Politics of International Intervention: The Tyranny of Peace. Rutledge. New York. P. 232
[35] Ibid

As a senior MINUSMA staff member explained, 'TCCs see Mali as training ground. Most of the TCCs are not willing to expose their troops to the security threats in Northern Mali and run the risk of getting them back in body bags. There are a number of caveats coming from the capitals, limiting the possibilities for deployments in Mali[36].' Ever since its start-up phase the mission has suffered from a lack of staff as well as technical and logistical support. This has implications for MINUSMA's ability to tackle the deteriorating security which poses severe threats to its personnel and the civilian population in Mali.

The initial lukewarm attitude of AU and ECOWAS in the Malian crisis did not help matters at all. The African Union (AU) and the Economic Community of West African States (ECOWAS) who are opposed to the overthrow of legitimately constituted governments, especially by military coup were slow in reacting because of the coup in Mali which was happening simultaneously as the rebels struck. The AU and ECOWAS in principle are also unsympathetic to the breakup of countries, not least because once started, it is hard to see where it might end in a region with many ethnic and other divisions. Accordingly, the AU denounced the "secession" of the Tuareg-dominated northern part of the country as proclaimed by a Tuareg spokesman in France in a "declaration of independence[37]." Both the French Minister of Defense and the AU have said that Tuareg protestations have no validity because they are recognized by no one[38].

The AU and ECOWAS really had two Mali problems -- they are related, but different. The first is how to restore the legitimate government of Toure and return the military to the barracks. Here, diplomatic pressure played an important role, and the press already reported that the

[36] Alexis, A. (2013). " Crisis in Mali", CRS Report for Congress No. R42664. From www.fas.org/sgp/crs/row/R42664.pdf. retrieved 30th November, 2015 at 4.20pm
[37] Campbell, J. (2012). Mali: A Dilemma for African Regional Organizations. Council on Foreign Relations. Retrieved from https://www.cfr.org/blog/mali-dilemma-african-regional-organizations on June 13, 2015 at 4.20pm
[38] Ibid

Malian military head of state may in fact step aside[39]. But the second problem was how to respond to the Tuareg insurgency, with its calls (by some) for a separate state. Regional organizations did find that they had less leverage in such circumstances.

African led support mission to Mali was initially with a one–year mandate to restore peace and security in Mali. The European Union created a support mission beside the French and African troops. It was a training mission for developing the Malian Armed Forces[40]. The French intervention and the forces of AFISMA worked in cooperation, but their motivation to intervene was far different. France wanted to defend its political interests in the region while AFISMA came to put an end to the humanitarian crisis in Mali and prevent the escalation of the conflict in the region. Despite the French participation, the mission of AFISMA did not alter the well–tried method in peacekeeping with the western countries and international organizations providing the financial background and the equipment for the military operations while 3rd world countries deployed their soldiers[41]. The main financial contributors to AFISMA were: Japan with 120 million USD, the United States 96 million USD and the EU 75 million USD[42]. The member states of the African Union and ECOWAS sent the troops for AFISMA[43]. The initial plan was to deploy 3000 troops in Mali but when the operations started their strength increased to over 6000. Chadian, Nigerian and ECOWAS troops were over–represented in the forces of AFISMA. AFISMA was authorized to assist in training the Malian security forces and to support them in recovering and stabilizing northern territory, under U.N. Security Council Resolution 2085 of December 20, 2012. However, a regional deployment was widely seen as requiring many months to prepare, pending anticipated internationally assisted training and

[39] Ibid
[40] Stewart, J. (2013). What is next for Mali? The Root of Conflict and Challenges to Stability. United States Army War College Press. Carlisle Barracks PA. p. 8
[41] Ibid
[42] Ibid
[43] Ibid

restructuring of the Malian military, which was expected to lead operations to retake the north. Serious questions were raised concerning regional troops' military capacity, commitment, and human rights records, as well as the potential cost and humanitarian consequences of such an operation. AFISMA deployments were accelerated in the context of French operations. News reports estimated AFISMA's potential cost at $200 million-$500 million, but only 20% were released[44] and this created logistics problems for the peacekeepers.

The Government of President Touré and the armed forces of Mali demonstrated their lack of capacity and ability to deal with the new Tuareg rebellion. Malian soldiers felt humiliated and under-resourced to respond to the new Tuareg insurgency. As such, disgruntled soldiers turned a mutiny against President Touré for his ineffective response to the Tuareg rebellion into a military coup on March 22nd 2012 that deposed the president and suspended constitutional rule, ahead of the earlier planned democratic presidential elections in April 2012.

Touré was accused of not doing enough to tackle issues of religious rebels in the north with the associated drug trafficking and the grievances of the armed forces. Consequently, the military junta led by Captain Amadu Sonogo staged a coup and ousted the regime. This lack of coercion by the Malian military after the coup mitigated their direct frontal fight on the insurgents.

Meanwhile, the post-coup, nominally civilian-led government in Bamako had been weakened by internal divisions and military interference, while years of corruption and mismanagement appear to have hollowed out many state institutions. Mali's leaders also face stark economic constraints amid a national recession and revenue crisis. A regional food security crisis, exacerbated by population displacements from northern Mali, also continues to cause sufferings.

[44] Arieff, A. (2013). Crisis in Mali. Congressional Report Service. Retrieved from www.crs.gov on 21 June, 2016 at 9.11am

On January 11, 2013, France launched military air strikes and ground operations against insurgent targets in northern Mali after Islamist fighters following months of stalemate suddenly advanced toward the south and defeated Malian military forces in the town of Konna. French then President François Hollande justified the intervention based on the Malian government's request for assistance, portraying the intervention as necessary to prevent the Malian capital from falling into terrorist hands, and additional French deployments in Bamako is helping to protect some 6,000 French citizens. French troop reinforcements in Bamako also aimed at deterring actors who might try to further destabilize or attack the then Mali's interim government. French then Foreign Minister Laurent Fabius stated in January 2013 that the duration of French operations was "a question of weeks." At the same time, news reports indicated that the extremist insurgents are better trained and equipped than French forces had anticipated. In addition, given that the Malian military is internally divided, it lacked the capacity to effectively project force. Moreover, it was implicated in human rights abuses, and is very small (totaling some 7,000 troops prior to the defections and military defeats of the past years)[45].

Notwithstanding the presence of the UNSC, the conflict in Mali is still raging high and frequently occurring to the extent that it is now imminent that the UNSC is suffering from serious challenges in the region. Persons are killed every day in large numbers, properties are destroyed worth several amount of money creating humanitarian crisis and gross displacement of individuals and missing persons. Insurgent groups often reorganize with the view to attacking one group or the other and all these are happening in the presence of the peacekeepers mandated by the UNSC. This unfortunately also go to show that the UNSC has not been fully equal to the task ahead of it.

[45] Arieff, A. (2013). Crisis in Mali. Congressional Report Service. Retrieved from www.crs.gov on 21 June, 2016 at 9.11am

All the above have made the under mentioned research questions indispensable or imperative. They are:

1. That when the UNSC eventually arrived at the scene in Mali, why was the UNSC not able to bring back the needed peace and security as mandated by Chapter VII, Article 39 of the UN Charter?
2. What lessons can the UN system learn from its experience in Mali?
3. What were the true reasons for France's unilateral military intervention before the deployment of AFISMA?

These are some of the research questions this thesis sets out to address and eventually proffer possible recommendations for solutions of the problem.

1.3 SCOPE OF THE STUDY

This research thesis focuses on the role of the United Nations Security Council in the maintenance of international peace and security. Special emphasis on the applicable laws under Chapter VII, Article 39 is one of the focal points of this study.

This thesis also examined the concept of peace and security under the United Nations, the relevant legal framework for regional organization under Chapter VIII Article 52 and 53 of the United Nations Charter as applicable to Mali is another area in focus.

The thesis also analyzed the various UN Bodies through which the resolutions of UNSC decisions were implemented in maintaining peace in Mali.

1.4 AIM AND OBJECTIVES OF THE STUDY

This thesis is aimed at highlighting the Role of The United Nations Security Council in the Maintenance of International Peace and Security under its mandate conferred upon it in

Chapter VII, Articles 39, 41, 42 of the United Nations Charter, particularly, as it affects Mali. The objectives include:

i. To identify the reasons why the UNSC deployment of AFISMA and MINUSMA were not able to successfully restore normalcy in Mali.
ii. To learn from the reasons identified on why the deployment of AFISMA and MINUSMA did not achieve its desired result.
iii. To make recommendations that will guide policy makers to design better policies that will aid in curing these challenges identified by the deployment of these bodies deployed to maintain peace and security in Mali.
iv. To identify the true reasons for France's unilateral military intervention before the deployment of AFISMA in Mali.
v. To make findings, recommendations for way forward.
vi. To highlight data from this research that will provide springboard for further research.

1.5 JUSTIFICATION OF THE STUDY

As at 2012/2013, Mali began experiencing serious security and peace challenges. The United Nations, the African Union and The ECOWAS had mobilized itself to stabilizing the Malian state especially after the coup in 2012.

Thus, it became expedient that this research be carried out to purview the legal and institutional (framework) under which this UN Organization operated within and to also examine those organs responsible in the disposition and maintenance of international peace i.e. the United Nations, African Union and ECOWAS and how they have fared thus far in managing the security crisis.

This research work will be of tremendous benefit to international law lawyers, legal luminaries, students of international law, members of UNSC, Malian Government, NGOs, ECOWAS involved in the crisis.

Field commanders will also benefit from this research by familiarizing themselves with the politics being played out by the UN bodies in charge so as to know their limits especially as it concerns human right abuses among the citizens they set out to protect.

This research will also benefit private individuals who intend to undertake a research in this area of study, they will be exposed to enough literatures which will enhance their research pursuit.

Finally, it will add to literary knowledge of persons who intend to pursue this aspect of research in future.

1.6 RESEARCH METHODOLOGY

In this research, one methodology was adopted.

i. **Doctrinal Method**: This involves a critical analysis of the relevant UN Charters, conventions and protocols, laws in statutes (local and international) judicial pronouncement, discussions in commentaries, textbooks, journals and debates.

ii. Not withstanding the doctrinal method adopted, the researcher embarked on a visit to the University of Bamako in Mali (see attached appendix I), to source for material first hand whose text were used and applied where necessary to enrich this work.

Also, relevant materials were obtained from textbooks, journals, treaties, news, websites etc.

1.7 LITERATURE REVIEW

Several materials have been written and reviewed on the maintenance of international peace and security at different stages in the development of international law. The literature of

some of these notable writers considered relevant to this field of research shall be discussed and reviewed.

Yamchuk in her research work titled "***The European Union-United Nations: Cooperation for Maintaining International Peace and Security***"[46] discusses how the prevention of conflicts and peacekeeping appear to be not an easy task. According to her, violent conflicts still break out while some situations remain quite fragile, threatening to create serious regional problems. This paper is a very rich text and relevant to the subject matter but did not properly articulate the local mechanism on peace and security and how it can be applied in the regions affected by conflicts. The scope of the paper was mainly centered on the European Union. The relevant text in the paper shall be examined in this work.

Ibrahim and Haruna in their paper titled "***The United Nations And The Challenges Of Global Peace, Security And Development***"[47] discusses theoretical frame work to examine the origin and objectives of the United Nations and the contemporary challenges of war, conflicts and genocide etc. in the world. The study employs the methodology of documentary analysis to argue that despite some of its achievements, the UN failed to provide the necessary peace and security that will ensure leveled playing field in world politics and sustainable development among nations. This paper though very commendable, but is seriously lacking in empirical criticisms of the United Nations approach in peace keeping as the authors based mostly their theories on doctrinal approach of research.

Winther in his book ***Regional Maintenance of Peace and Security under International Law: The Distorted Mirrors***[48] discusses how the role of regional organizations adds a new mid-

[46] Yamchuk, A. (2014) *The European Union-United Nations cooperation for maintaining international peace and security*. Eastern Journal of European Studies Volume 5, Issue 1, 113 – 129

[47] Ibrahim, A. and Haruna, A. (2014). *The United Nations And The Challenges Of Global Peace, Security And Developmen*t. Research on Humanities and Social Science. Vol.4, No.2. 174 – 182

[48] Winther, D. (2014). *Regional Maintenance of Peace and Security under International Law: The Distorted Mirrors*. London / New York: Routledge.

level layer in the hybrid global system of the governance of peace and security. How the 'soft' regionalism embedded in Chapter VIII of the UN Charter was reactivated mainly after the end of the Cold War, and how regional organizations became a tool for UN operations of peacekeeping and peace-enforcement in a context of proliferating crises, increased demands, and overwhelmed capacities. This book is very vital to this research work as it focuses on regional enforcement as guaranteed under Chapter VIII, Article 52 of the UN Charter. The researcher applied most of the principles where necessary in this research work.

White in his book ***Keeping the Peace: The United Nations and the Maintenance of International Peace and Security***[49] first published in 1993, is the definitive legal and political analysis of the powers and practices of the UN in the field of collective security. However, considering when it was written, requires full update on current happenings within the UN to reflect the changes in the international system from 1997 to 2015, The book provides the basic fundamental principles of the United Nations that was used in this research work.

Gruenberg in his paper, ***An Analysis of United Nations Security Council Resolutions: Are All Countries Treated Equally?***[50] argues that the Security Council has failed to treat all members of the United Nations equally, specifically singling out Israel, and to a lesser extent South Africa, for disparate treatment during the Cold War period. This paper is very essential to this research but has short comings as it concerns other regions aside Israel and South African countries which was the main focus of the paper. However, certain texts within the book was employed in enriching this research work.

[49] White, N.D (1997). *Keeping the Peace: The United Nations and the Maintenance of International Peace and Security*. Manchester University Press.

[50] Gruenberg, J. (2009), *An Analysis of United Nations Security Council Resolutions: Are All Countries Treated Equally?*. Case Western Reserve Journal of International Law. Vol. 2 10 – 21

Sarooshi in his book ***The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of Its Chapter VII Powers***[51] captures the main essentials of this work. Though written in 1999, but very useful as it treats Chapter VII of the United Nations 1945 Charter. This book examines one of the most important challenges facing the United Nations namely the effective and lawful use of force by or under the authority of the UN to maintain or restore peace. In particular, the book provides a legal analysis of the institutional mechanisms and processes which the UN employs to use force to maintain or restore peace. However, the book posits a clear and convincing framework by which to assess the legality of Security Council practice. As a result, what at first glance appears to be disparate and confusing Security Council practice, is subjected to rigorous and clear legal analysis.

Hampson and Malone in their book ***From Reaction to Conflict Prevention: Opportunities for the UN System***[52] discusses that the prevention of conflict is first promise in the Charter of the United Nations. They argued that it is a promise constantly betrayed by international organizations, governments, and local actors alike. At the same time, and in a more positive vein, recent studies provide much-needed information about why and how today's conflicts start and what sustains them. This ground-breaking book presents some of the best scholarly and policy-relevant work on the practical challenges of conflict prevention within the UN system. The authors considered the causes and dynamics of war, the tools that are being developed to predict the eruption of conflict, and what is being done - and what could be done better - in the effort to move from promise to practice. The book added text to this research work.

Zwanenburg in his paper titled "***Regional Organisations and the Maintenance of***

[51] Sarooshi, D. (1999): *The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of Its Chapter VII Powers.* Oxford University Press

[52] Hampson, F. and Malone, D (2002) in their book *From Reaction to Conflict Prevention: Opportunities for the UN System*. International Peace Academy.

International Peace and Security: Three Recent Regional African Peace Operations'[53] discuses the recommendation by the High-Level Panel on Threats, Challenges and Change. That authorisation from the Security Council should in all cases be sought for regional peace operations. It discusses the legal basis for such operations, and three recent regional peace operations are analysed in detail: African Union Mission in Sudan (*AMIS*), Economic Community of West African States in Cote d'Ivoire (*ECOFORCE*) and Economic and Monetary Community of Central Africa in the Central African Republic (*FOMUC*). His article concludes that the practice with respect to these operations does not support a requirement of Security Council authorisation, where there is consent of the parties or, it appears, the government of the host state alone. Very rich in text, but did not however capture the Malian situation, although this may be understandable considering when it was published.

Goodrich in his paper ***The Maintenance of International Peace and Security***[54] discusses that the text of the Charter gives a quite misleading picture of the United Nations as it is today. In no respect is this more true than in the working of the Organization in the maintenance of international peace and security. Those provisions of the Charter which were claimed by its authors to provide the new Organization with teeth that the League of Nations did not have, either have never been used or have in practice been of little importance. New emphases and new methods have been developed through the liberal interpretation of Charter provisions. These have not always been equally acceptable to all Members; however, the process of adaptation and development continues, with great uncertainty as to what the future has in store. However, the author's criticism of the United Nations does not truly reflect the reality of the UN operations on ground especially as it concerns peacekeeping.

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[53] Zwanenburg, M. (2010). *Regional Organisations and the Maintenance of International Peace and Security: Three Recent Regional African Peace Operations.* Journal of *Conflict Security Law. Vol. 11 (3). 483-508*

[54] Goodrich, L. (2009). *The Maintenance of International Peace and Security*. International Organization Journals. Volume 19 / Issue 03 424 – 443

Tariqul in his paper "***The Role of United Nations Peacekeeping in International Security: a Critical Analysis"***[55] examines the international security context from both realists and idealists perspectives and subsequently analyzed how the international security would be achieved through international organizations, especially by United Nations peace keeping operations. A debate has raged between realists and idealists who have been respectively pessimistic and optimistic in their response to this central question of securing peace and security through UN peacekeeping. Realists believe that the structure of international system is anarchical. Sovereign states are the only actor in the structure and their security is highly relative and interdependent between and among states. This anarchical structure imposes competitive and self-help conditions for its security. On the other hand, idealists believe that security can be achieved through international organizations. After the end of Second World War, United Nations was established for keeping peace through peaceful means for collective security. But, the great power rivalry at the very beginning blocked UN ability for the collective security action. As a result, peacekeeping evolved as an alternative to collective security that the UN designed. This paper identifies the facts that the great powers are reluctant to operate peacekeeping missions outside of their own sphere of interests. Without the consent of great powers, there would be no peace keeping. Moreover, the great powers see peacekeeping as a tool of their foreign policy. As a result, peacekeeping is facing problems for keeping peace. The paper fell short in postulating a concise solution on how to solve the attendant problems raised in it.

Dannreuther in his book ***International Security: the Contemporary Agenda***[56], discusses international security as a cutting-edge analysis of the key security challenges and developments in the post-Cold War world. Drawing on a wide range of contemporary examples, from the Iraq

[55] Tariqul, S. (2014). *Role of united nations peacekeeping in international security: a critical analysis.* Asian Affairs, Vol. 26, No. 3 : 24-40.
[56] Dannreuther, R., (2003) *International Security: The Contemporary Agenda*, Cambridge, Polity. P.109

war to the rise of China, it is an essential guide for students and policy makers seeking to understand the theoretical and empirical debates over the fast-changing nature of international security today. This book provided the rudimentary and background of international security and considering the time it was written in 2003, there have been new cases of contemporary issues the book did not capture as at today, hence its review.

Janse in his paper, ***The Legitimacy of Humanitarian Interventions***[57] according to many international lawyers, humanitarian interventions without authorization by the UN Security Council are unlawful, but are sometimes morally justified. This discrepancy between legality and legitimacy has led to proposals for making international law more congruent with morality. This article examines the legitimacy of humanitarian interventions by discussing the major justifications by Walzer, Rawls, and Tesón. It argues that these justifications are open-ended. They failed to show that intervention should be limited to cases of violation of basic human rights, and do not categorically rule out intervention in the name of liberal and democratic rights. This is one more reason for being cautious with attempts to establish a law of humanitarian intervention. The paper centers majorly on humanitarian intervention which according to him are open ended but did not in details discuss compensation to award for persons affected or how the perpetrators are to be dealt with.

Walid in his paper **"*The Role of the United Nations in Maintaining International Peace and Security"***[58] discusses the maintenance of international peace and how security represents the primary purpose behind the establishment of the United Nations. It reflects the intentions and desires of its founders who sought to establish an international organization for achieving this end. It is a prerequisite to any other purpose of the United Nations. Without it no friendly

[57] Janse, R. (2006). *The Legitimacy of Humanitarian Interventions*. Leiden Journal of International Law. Vol. 19 No. 3, 669

[58] Walid A. (2007) T*he Role of the United Nations in Maintaining International Peace and Security*. My International Law Studies. Vol. 2. 29 – 54.

relations, no international cooperation, and no harmonization of nation's actions could be achieved. Because of the importance of international peace and security, the founders of the United Nations insisted on it and emphasized it in the preamble and the Charter of the Organization. They stated all the possible principles, methods and procedures which are to be followed to attain this end. The paper was consulted and relevant text obtained for this research work. This paper mainly focused on proposition of theories regarding the maintenance of international peace and security, but did not properly analyze areas they have been tested in the field.

Sheeran in his paper ***Contemporary Issues in UN Peacekeeping and International Law.***[59] reviews the contemporary issues in UN Peacekeeping and international law. As it explains, the key issues and problems currently relating to the use of force, international human rights, international criminal law and accountability. There is a real need for a greater clarity on these issues, because of their significant policy and operational implications. This paper though very rich in text did not cover how forces are to be used in certain criminalities such as terrorism.

Bergamaschi in his paper ***French Military Intervention in Mali: Inevitable, Consensual yet Insufficient***[60] offers an account of France's military intervention in Mali launched on 11 January 2013. Firstly, it provides an analysis of the events that led up to the dual crises in the country's northern and southern regions and to a new wave of armed conflict between government and rebel forces. Then, it is argued that although the French military intervention was framed as inevitable and based on a broad consensus, it will nevertheless be insufficient to address the root socio-political causes of Mali´s multidimensional crisis. Very concise paper on Mali crisis and relevantly relied upon. This paper failed to criticize the uninspiring nature

[59] Scott P. (2011). *Contemporary Issues in UN Peacekeeping and International Law. Institute for Democracy and Conflict Resolution*. University of Essex Knowledge Gateway

[60] Bergamaschi, I. (2013). *French Military Intervention in Mali: Inevitable, Consensual yet Insufficient*. Stability: International Journal of Security & Development, Vol. 2 No.2: 20, pp. 1-11.

employed by the UN when it concerns peacekeeping especially one not originated by them. Example, the challenges faced by AFISMA.

Bøås in his paper titled "***The international intervention in Mali: "Desert blues" or a new beginning"***[61] discuses how Islamist rebels have retreated from northern Mali. However, a number of challenges for that country remain. The insurgents have gone into hiding but have not surrendered. There is a clear risk of long-term asymmetric warfare. The populations in both northern and southern Mali are divided in their views on the best way forward. The capacities of the Malian Government and the Malian armed forces to contain the conflict and retain credible leadership are questionable. This article analyses the Malian crisis with an emphasis on the strategies of key actors, including the Islamist rebels. The consequences of and responses to the conflict are discussed, before the article ends with some tentative conclusions concerning the potential for security in Mali and the Sahel region.

Karlsrud in his paper titled "***The UN at war: examining the consequences of peace-enforcement mandates for the UN peacekeeping operations in the CAR, the DRC and Mali"***[62], discusses how the UN peacekeeping operations in the Central African Republic (CAR), Democratic Republic of Congo (DRC) and Mali were in 2013 given peace enforcement mandates, ordering them to use all necessary measures to 'neutralise' and 'disarm' identified groups in the eastern DRC and to 'stabilise' CAR and northern Mali. It is not new that UN missions have mandates authorising the use of force, but these have normally not specified enemies and have been of short duration. This article investigates these missions to better understand the short- and long-term consequences, in terms of the willingness of traditional as well as Western troop contributors to provide troops, and of the perception of the missions by

[61] Bøås, M. (2013) *The international intervention in Mali: "Desert blues" or a new beginning* Canada's Journal of Global Policy Analysis. Vol. 68, No. 3

[62] Karlsrud, J. (2015) *The UN at war: examining the consequences of peace-enforcement mandates for the UN peacekeeping operations in the CAR, the DRC and Mali*, Third World Quarterly, 36:1, 40-54.

host states, neighbouring states, rebel groups, and humanitarian and human rights actors. The paper explores normative, security and legitimacy implications of the expanded will of the UN to use force in peacekeeping operations. It argues that the urge to equip UN peacekeeping operations with enforcement mandates that target particular groups has significant long-term implications for the UN and its role as an impartial arbitrator in post-conflict countries. Though very enriching as it covers African countries in crisis but did not effectively articulate the penalties for the abuse of human rights by peacekeepers.

Charbonneau and Sears in their paper titled "**Fighting for Liberal Peace in Mali? The Limits of International Military Intervention[63]"** This paper argues what is at stake in a debate of 'liberal peace' concerning Mali and what governance requirements it imposes. Such an ideology necessarily intersects with ongoing Malian peace, nation and state building dynamics and competing normative orders that transcend state borders and nationalist projects. This paper very useful in text but did not properly articulate the root causes of the Malian crisis being a country in the Sahel.

Francis in his paper ***The regional impact of the armed conflict and French intervention in Mali[64]*** discusses that despite the perceived threat to international peace and security presented by the crisis in Mali, the international community did not act to resolve it for nearly ten months, which allowed Islamists to militarily take control of the whole of northern Mali and impose sharia law. The French military intervention in Mali placed the country at the top of the international political agenda. But the conflict in Mali and the French intervention have wider implications not only for Mali and its neighbours, but also for Africa, the international community, and France's national security and strategic interests at home and abroad. This

[63] Charbonneau et al (2014). "Fighting for Liberal Peace in Mali? The Limits of International Military Intervention". Journal of Intervention and State building, Vol. 21 No. 2. Pp 32 – 41

[64] Francis, D. (2013). *The regional impact of the armed conflict and French intervention in Mali.* Norwegian Peace building Resource Centre

report assesses the current crisis, the key actors and the nature of the complex conflict in Mali; the nature and scope of the military, political and diplomatic interventions in Mali by a range of actors; the regional implications of the conflict for the Sahel and West Africa; and the consequences of the French military intervention and its wider implications, including the debate about the risk of the "*Afghanistanisation of Mali*". It concludes with policy-relevant recommendations for external countries and intergovernmental actors interested in supporting Mali beyond the immediate military-security stabilisation to long-term peace building, state reconstruction and development.

Marchal in his paper titled "***The Coup in Mali: the Result of a Long-Term Crisis or Spillover from the Libyan Civil War***[65]*?"* This paper discusses the current crisis in Mali. It was not unexpected, although most national and international players were eager to maintain an unrealistic view of political developments in this Sahelian country. This crisis reflects the decay of state institutions and practices. The Malian army collapsed and patronage does not mean democracy. Its crisis is built on four dynamics that have their own effects. The debatable implementation of previous peace settlements with the Tuareg insurgency; the growing economic importance of AQIM activities in the Sahelian region; the collapse of the Qaddafi regime in Libya; and the inability or unwillingness of Algeria to play the role of regional hegemony now that its rival (Libya) has stopped doing so. Very rich in text, but the analysis was dwelt mostly in the event of the separatist group gaining ground and how they would fare is they are actually given independence. It did not proffer solution mostly to the Malian military on how to tackle this insurgent groups.

[65] Marchal, R. (2012). *The coup in Mali: the result of a long-term crisis or spillover from the Libyan civil war?* Norwegian Peace building Resource Centre. Retrieved from https://noref.no/Publications/Regions/Mali/The-coup-in-Mali-the-result-of-a-long-term-crisis-or-spillover-from-the-Libyan-civil-war

Roland in his paper ***Military (mis)adventures in Mali***[66] discusses France's January 2013 military intervention in northern Mali against Islamic terrorist organizations. The process through which the French President François Hollande decided to intervene in Mali, including his diplomatic communication with Niger President Mahamadou Issoufou, is discussed. The role that the European Union (EU) played in the Malian intervention, including its developing of the EU Training Mission (EUTM) to train the Malian army to combat terrorists in northern Mali, is also discussed. The paper did not capture the African Union inputs in the ongoing crisis in Mali.

Lacher in his paper titled "***The Malian Crisis and the Challenge of Regional Cooperation***[67]**"** discusses that the weakness of regional security cooperation has been a key factor in the gradual destabilization of the Sahel-Sahara region over the past decade. While organized crime, extremist activity, and cross-border movements of arms and fighters have strengthened linkages among non-state actors in the region, state policies have failed to keep up. With the escalation of the crisis in Mali, West African states have adopted an approach diverging strongly from that of Mali's North African neighbours. Western governments' tendency to understand insecurity in the region through the notion of the Sahel has compounded the problem. Insecurity in the region, including criminal and extremist networks, is more Saharan than Sahelian in scope. North African states are part of the problem, and need to be part of the solution. A new framework for regional cooperation is needed – and while this can only be established on the initiative of regional states themselves, external actors need to adapt their policies to help such a framework emerge.

[66] Roland, R. (2013). *Military (mis)adventures in Mali*. African Affairs; Vol. 112 Issue 448, p486.
[67] Lacher, W., (2013). *The Malian Crisis and the Challenge of Regional Cooperation.* Stability: International Journal of Security and Development. 2(2), p.Art. 18.

Muggah in *Region in Crisis: Stabilizing Mali and the Sahel*[68] discusses the crisis in Mali and said it extends throughout the Sahel. Major powers in the neighborhood, such as Nigeria and Algeria, are also feeling the effects. The international community was caught completely off guard. Once regarded as a model democracy, Mali has witnessed a coup, secessionist movement, and the penetration of extremist and criminal groups. It has also seen various forms of engagement by the African Union, the Economic Community of West African States, and the United Nations — as well as by French and Chadian forces.

Soumana in his work ***Crisis in Mali: Lessons from an Ongoing Democratic Transitions***[69] dealt mainly on the political and economic situation in Mali and consolidation of democratic institutions. The book however did not cover extensively the current UN operations in Mali in the sustenance of the said political order in Mali. The scope only concerned Mali political history in general and did not proffer solutions to the ongoing crisis or the efforts of UN peacekeepers currently on ground. This thesis shall adopt the writer's position where agreeable and update obsolete positions where applicable.

Ladan in his book ***Introduction to International Human Rights and Humanitarian Laws***[70] discussed extensively the issues on the abuse of human rights in armed conflicts, and elucidates on the part which humanitarian law plays to meet the needs of those who find themselves in between warring factions, who are victims of situation, characterized by conflicts. His work proves indispensable as he sheds light in the areas that the two laws (IHL and IHRL) are violated. Most importantly, he explained in details the conditions that lead to the outbreak of armed conflicts, the severity of armed conflicts and the extent to which vulnerable groups are affected. However, the book considering its period of publication (2001) fell short of capturing

[68] Muggah, R. (2013). *Region in Crisis: Stabilizing Mali and the Sahel*. Stability: International Journal of Security and Development.
[69] Soumana, S. (2014). *Crisis in Mali: Lessons from an Ongoing Democratic Transitions*. Legatum Institute, London.
[70] Ladan, M.T. (2001). *Introduction to International Human Rights and Humanitarian Laws*, Ahmadu Bello University Press, Zaria.

the political and economic situation in Mali (considering when it was published, 2001). That affects vulnerable groups. The scope of this amiable professor's work covers namely IHL and IHRL and did not cover the United Nations activities in restoring peace and order in Mali as at today.

Also, Rebecca in her book ***International Humanitarian Rights; Text and Materials***[71], succinctly analyzed the implementation of human rights, violation of human rights as they relate to the protection of civilian persons in times of war. The issues raised in the work addressed some of the basic violations of human rights and humanitarian laws in armed conflicts. However, the scope of her research only dealt with the highlights above but never concerned herself with the provisions of Article 39, Chapter VII of the UN Charter especially as the UN struggles to curb the human rights violations currently in Mali by the rebels.

Beck in his book ***International Humanitarian and Human Rights Law***[72], in ICRC review series, discussed essential issues in the application of International Humanitarian and Human Right Laws, analyzed the fundamental principles of humanitarian law and areas of violations in conflicts situations. It fails to exhume the root causes that warranted enforcement of Article 39, Chapter VII of the UN Charter in Mali.

Frederick in his article ***Handbook on the Law of Way for Armed Forces***[73], explains the abuse of laws of war by armed forces. He identified the impunity with which combatants expose vulnerable groups to abuses. His focus was mainly on vulnerable groups and not their protection in cases of the outbreak of war and insurgency as we have in Mali.

Marco, and Antonie, in their book, ***How Does Law Protect in War?***[74] Highlighted the significant role humanitarian law plays in the protection of victims of armed conflicts and

[71] Rebecca, W. (1997). *International Humanitarian Rights; Texts and Materials*, Sweet and Maxwell.
[72] Beck, L.D.(1993). *International Humanitarian and Human Rights Law* in ICRC Review Series.
[73] Frederick, D.(1987). Handbook on the Law of War for Armed Forces in ICRC.
[74] Marco, S., and Antoine, A.B. (1999). *How Does Law Protect in War*? In ICRC Review Series.

examined in detail the mechanisms put in place to ensure that states and persons not actively involved in armed conflicts are adequately protected. He however, did not highlight the consequences of breaches of persons who undertake in war crimes. He also did not cover the UN action covering Mali. Although he couldn't have anticipated this considering when the book was written and published

1.8 ORGANIZATIONAL LAYOUT

This research work is composed of Six chapters.

Chapter one deals with preliminary issues such as general introduction, statement of the problem, scope of the study, objectives of the study, justification of the study, research methodology, literature review and organizational layout.

Chapter two examines conceptual discourse on international peace and security.

Chapter three focuses on the role of the United Nation Security Council in the maintenance of international peace and security.

Chapter four discusses the root cause of the Malian security crisis.

Chapter five discusses the role of the United Nation Security Council in Mali.

Chapter six summarizes the research work and drew conclusions. It made findings and proffered necessary recommendations.

CHAPTER TWO

CONCEPTUAL DISCOURSE ON INTERNATIONAL PEACE AND SECURITY

2.1 INTRODUCTION

Saving succeeding generations from the scourge of war was the main motivation for creating the United Nations, whose founders lived through the devastation of two world wars. Since its creation, the UN has often been called upon to prevent disputes from escalating into war, or to help restore peace when armed conflict does break out, and to promote lasting peace in societies emerging from wars. The Security Council, the General Assembly and the Secretary-General all play major, complementary roles in fostering peace and security.

Over the decades, the UN has helped to end numerous conflicts, often through actions of the Security Council- the organ with primary responsibility, under the United Nations Charter, for the maintenance of international peace and security. When a complaint concerning a threat to peace is brought before it, the Council's first action is usually to recommend to the parties to try to reach agreement by peaceful means. In some cases, the Council itself undertakes investigation and mediation. It may appoint special representatives or request the Secretary- General to do so or to use his good offices. It may set forth principles for a peaceful settlement.

When a dispute leads to fighting, the Council's first concern is to bring it to an end as soon as possible. On many occasions, the Council has issued ceasefire directives which have been instrumental in preventing wider hostilities. It also deploys United Nations peacekeeping operations to help reduce tensions in troubled areas, keep opposing forces apart and create conditions for sustainable peace after settlements have been reached. The Council may decide on enforcement measures, economic sanctions (such as trade embargoes) or collective military action.

According to the Charter[1], the General Assembly can make recommendations on the general principles of cooperation for maintaining international peace and security, including disarmament, and for the peaceful settlement of any situation that might impair friendly relations among nations. The General Assembly can also discuss any question relating to international peace and security and make recommendations, if the issue is not currently being discussed by the Security Council.

Pursuant to its "Uniting for Peace" resolution of November 1950, the General Assembly may also take action if the Security Council fails to act, owing to the negative vote of a Permanent Member, in a case where there appears to be a threat to or breach of the peace, or act of aggression[2]. The Assembly can consider the matter immediately with a view to making recommendations to Members for collective measures to maintain or restore international peace and security.

Two of the General Assembly's six main committees are involved in matters of peace and security. Besides the First Committee which is concerned with disarmament and related international security questions, the Special Political and Decolonization Committee deals with a variety of political subjects not dealt with by the First Committee, including decolonization, Palestinian refugees, human rights, peacekeeping, mine action, outer space, public information, atomic radiation and the uniting for Peace.

The Charter empowers the Secretary-General to "bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security". One of the most vital roles played by the Secretary-General is the use of his " good offices" – steps taken publicly and in private that draw upon his independence, impartiality and integrity to prevent international disputes from arising, escalating or spreading.

[1] 1945 Charter of the United Nations
[2] UNGA Resolution 377 (v) of November, 1950

2.2 CONCEPTS OF PEACEKEEPING AND SECURITY

Conflict prevention remains one of the highest objectives of the United Nations. In today's world, preventive action extends well beyond traditional preventive diplomacy to involve a broad constellation of UN entities working across a wide range of disciplines such as poverty eradication and development, human rights and the rule of law, elections and the building of democratic institutions and the control of small arms, to name just a few. The Department of Political Affairs plays a central role in these efforts for example monitoring and assessing global political developments; advising the UN Secretary-General on actions that could advance the cause of peace; providing support and guidance to UN peace envoys and political missions in the field; and serving Member States directly through electoral assistance and through the support of the work of the Security Council and other UN bodies.

The first UN peacekeeping mission was established, when the Security Council authorized the deployment of the United Nations Truce Supervision Organization (UNTSO) to the Middle East to monitor the Armistice Agreement between Israel and its Arab neighbors. Since then, there have been a total of 64 UN peacekeeping operations around the world[3].

Over the years, UN peacekeeping has evolved to meet the demands of different conflicts and a changing political landscape. Born at the time when the Cold War rivalries frequently paralyzed the Security Council, UN peacekeeping goals were primarily limited to maintaining ceasefires and stabilizing situations on the ground, so that efforts could be made at the political level to resolve the conflict by peaceful means. UN peacemaking expanded in the 1990s, as the end of the Cold War created new opportunities to end civil wars through negotiated peace settlements. A large number of conflicts were ended, either through direct UN mediation or by the efforts of others acting with UN support. Countries assisted included El-Salvador,

[3] https://ourworld.un.edu/ retrieved 8th May, 2015. 1:47pm

Guatemala, Namibia, Cambodia, Mozambique, Tajikistan, Sierra Leone, and Burundi. As the decade drew to a close, continuing crises led to new operations in the Democratic Republic of the Congo, the Central African Republic, Timor Leste, Sierra Leone and Kosovo[4].

The nature of conflict has also changed over the years. Originally developed as a means of dealing with inter-State conflict, UN peacekeeping has been increasingly applied to intra-State conflicts and civil wars. Although the military remain the backbone of most peacekeeping operations, today's peacekeepers undertake a wide variety of complex tasks, from helping to build sustainable institutions of governance, through human rights monitoring and security sector reform, to the disarmament, demobilization and reintegration of former combatants, and demining[5].

The Department of Peacekeeping Operations (DPKO) of the United Nations Security Council provides political and executive direction to UN peacekeeping operations, and maintains contact with the Security Council, troops, financial contributors, and parties to the conflict in the implementation of Security Council mandates. The Department of Peacekeeping Operations of the United Nations Security Council works to integrate the efforts of UN, governmental and non-governmental entities in the context of peacekeeping operations. The DPKO also provides guidance and support on military, police, and mine action and other relevant issues to other UN political and peace building missions.

In 2007, DPKO was split up, with the establishment of the Department of Field Support (DFS), which provides dedicated support and guidance to peacekeeping and political field missions in the areas of finance and budget; personnel and human resources; logistics and information, communication and technology[6].

[4] www.un.org/peacesecurity/12/12/2014 Retrieved 7th May, 2015 at 8:06pm
[5] Ibid
[6] Ibid

The experience of recent years has also led the United Nations to focus as never before on peace building – efforts to reduce a country's risk of lapsing or relapsing into conflict by strengthening national capacities for conflict management, and to lay the foundations for sustainable peace and development.

Building lasting peace in war-torn societies is among the most daunting of challenges for global peace and security. Peace building requires sustained international support for national efforts across the broadest range of activities – monitoring ceasefires; demobilizing and reintegrating combatants; assisting the return of refugees and displaced persons; helping organize and monitor elections of a new government; supporting justice and security sector reform; enhancing human rights protections and fostering reconciliation after past atrocities.

The United Nations has been at the center of expanding international peace building efforts, from the verification of peace agreements in southern Africa, Central America and Cambodia in the 1990s, to subsequent efforts to consolidate peace and strengthen states in the Balkans, Timor-Leste, and West Africa, to contemporary operations in Afghanistan, Haiti, Sudan and currently in Mali.

Recognizing that the United Nations needs to better anticipate and respond to the challenges of peace building, the 2005 World Summit approved the creation of a new Peace Building Commission. In the resolutions establishing the Peace Building Commission, the United Nations General Assembly and the Security Council mandated it to bring together all relevant actors to advise on the proposed integrated strategies for post conflict peace building and recovery; to marshal resources and help ensure predictable financing for these activities; and to develop best practices in collaboration with political, security, humanitarian and development actors[7].

[7] Resolution 60/180 and resolution 1645 2005

The resolutions also identified the need for the Commission to extend the period of international attention on post-conflict countries and where necessary, highlight any gaps which threaten to undermine peace building. The General Assembly and Security Council resolutions establishing the Peace building Commission also provided for the establishment of a Peace Building Fund and Peace building Support Office.

2.3 CONCEPTUAL ANALYSIS OF ARMED CONFLICTS UNDER INTERNATIONAL HUMANITARIAN LAW

The States parties to the 1949 Geneva Conventions have entrusted the International Committee of the Red Cross (ICRC), through the Statutes of the International Red Cross and Red Crescent Movement, "to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof[8]".It is on this basis that the ICRC takes this opportunity to present the prevailing legal opinion on the definition of "international armed conflict" and "non-international armed conflict" under International Humanitarian Law, the branch of international law which governs armed conflict[9].

International humanitarian law distinguishes two types of armed conflicts, namely: international armed conflicts, opposing two or more States, and non-international armed conflicts, between governmental forces and non-governmental armed groups, or between such groups only. IHL (treaty law also) establishes a distinction between non-international armed conflicts.

[8]Statutes of the International Red Cross and Red Crescent Movement, Art. 5, para. 2(g)

[9] Ladan, M.T. (2001). *Introduction to International Human Rights and Humanitarian Laws*, Ahmadu Bello University Press, Zaria Pp 23 – 34.

Article 3 of the Geneva Conventions of 1949 and non-international armed conflicts falling within the definition provided in Art. 1 of Additional Protocol II. Legally speaking, no other type of armed conflict exists. It is nevertheless important to underline that a situation can evolve from one type of armed conflict to another, depending on the facts prevailing at a certain moment.

2.3.1 International Armed Conflict (IAC)

1. International Humanitarian Law (IHL) Treaties

Common Article 2 to the Geneva Conventions of 1949 states that:"In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance".

According to this provision, IACs are those which opposes "High Contracting Parties", meaning States. An IAC occurs when one or more States have recourse to armed force against another State, regardless of the reasons or the intensity of this confrontation.

Relevant rules of IHL may be applicable even in the absence of open hostilities. Moreover, no formal declaration of war or recognition of the situation is required. The existence of an IAC, and as a consequence, the possibility to apply International Humanitarian Law to this situation, depends on what actually happens on the ground. It is based on factual conditions.

For example, there may be an IAC, even though one of the belligerents does not recognize the government of the adverse party[10].

The Commentary of the Geneva Conventions of 1949 confirms that "any difference arising between two States and leading to the intervention of armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter took place[11]".

Apart from regular, inter-state armed conflicts, Additional Protocol I extends the definition of IAC to include armed conflicts in which peoples are fighting against colonial domination, alien occupation or racist regimes in the exercise of their right to self-determination (wars of national liberation)[12]. It is the researcher's opinion that the conflict in Mali tracing from the Taureg rebellion to the coup in 2012 matches this definition under the Geneva Convention of 1949 because the Malian crisis basically has to do with the Taureg's rights in fighting for their self determination which in the researcher's view also is being campaigned illegally which has led to the escalation of the security crisis in Mali because the Malian state is resisting the secessionist move.

[10]Fleck, D (1995). *Joint Services Regulations.* The Handbook of Humanitarian Law in Armed Conflicts, Oxford University Press, Oxford. p. 45

[11]. Pictet G (1952), *Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, ICRC, Geneva. p. 32

[12]Additional Protocol I, Art. 1, para. 4: "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". Retrieved from http://www.academia.edu/24797718/How_is_the_Term_Armed_Conflict_Defined_in_International_Humanitarian_Law on 14 April, 2015 at 6.20pm

2.3.2 Jurisprudence

The International Criminal Tribunal for the former Yugoslavia (ICTY) proposed a general definition of international armed conflict. In the Tadic case, the Tribunal stated that "an armed conflict exists whenever there is a resort to armed force between States[13]".

This definition has been adopted by other international bodies since then. This definition however is of general application but its application has also been extended as evidenced within Article 2 of the 1949 Geneva Convention wherein it also encompasses any form of armed conflict which as seen in Mali is for self determination by the Taureg people of Northern Mali. in applying this definition, the researcher opines that every situation first and foremost should be investigated to know whether it fits into this general definition or not before a solution can be sought from the bodies concerned.

2.3.3 Definition of Armed Conflict

The doctrine gives useful comments concerning the definition of an international armed conflict. According to D. Schindler, "the existence of an armed conflict within the meaning of Article 2 common to the Geneva Conventions can always be assumed when parts of the armed forces of two States clash with each other. Any kind of use of arms between two States brings the Conventions into effect[14]" Gasser explains that "any use of armed force by one State against the territory of another, triggers the applicability of the Geneva Conventions between the two States.

It is also of no concern whether or not the party attacked resists. As soon as the armed forces of one State find themselves with wounded or surrendering members of the armed forces or civilians of another State on their hands, as soon as they detain prisoners or have actual

[13]ICTY, *The Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 70.
[14]Schindler, D. (1979), *The different Types of Armed Conflicts According to the Geneva Conventions and Protocols*, RCADI, Vol. 163, p. 131.

control over a part of the territory of the enemy State, then they must comply with the relevant convention"[15].

The German Joint Services Regulations says that "an international armed conflict exists if one party uses force of arms against another party. The use of military force by individual persons or groups of persons will not suffice[16]"

2.3.4 Non-International Armed Conflict (NIAC)

1. International Humanitarian Law (IHL) Treaties

Two main legal sources must be examined in order to determine what a NIAC under international humanitarian law is: a) common Article 3 to the Geneva Conventions of 1949; b) Article 1 of Additional Protocol II:

a. Non-International Armed Conflicts within the meaning of Common Article 3. Common Article 3 applies to "armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties" has lost its importance in practice. (This is because of the dimensional and asymmetrical way of conflict in today's world. The researcher notes that though conflict may be occurring as it is today in Mali, you will discover that there are sponsors of this conflict outside the shores of the contracting parties due to one reason or the other which most often than not is in the supply of arms or other reasons like imposing an ideology on persons. In the researcher's view, conflict resolution should not just be focused on the contracting parties, but also be extended to identifiable persons who fuel such crisis).

[15]Gasser, H.P. (1993), *International Humanitarian Law: an INTRODUCTION, in: Humanity for All*: the International Red Cross and Red Crescent Movement. Paul Haupt Publishers, Berne, Pp. 510-511.
[16]Fleck D. (1995). *The Handbook of Humanitarian Law in Armed Conflicts*, Oxford University Press, Oxford. p. 40

These include armed conflicts in which one or more Non-Governmental armed groups are involved. Depending on the situation, hostilities may occur between Governmental armed forces and Non-Governmental armed groups or between such groups only. Any armed conflict between Governmental armed forces and armed groups or between such groups cannot but take place on the territory of one of the Parties to the Convention.

In order to distinguish an armed conflict, in the meaning of common Article 3, from less serious forms of violence, such as internal disturbances and tensions, riots or acts of banditry, the situation must reach a certain threshold of confrontation.

It has been generally accepted that the lower threshold found in Article 1(2) of Additional Protocol II, which excludes internal disturbances and tensions from the definition of NIAC, also applies to common Article 3.

Two criteria usually used in this regard[17] are:

First, the hostilities must reach a minimum level of intensity. This may be the case, for example, when the hostilities are of a collective character or when the Government is obliged to use military force against the insurgents, instead of mere police forces[18].

Second, Non-Governmental groups involved in the conflict must be considered as "parties to the conflict", meaning that they possess organized armed forces. This means for example that these forces have to be under a certain command structure and have the capacity to sustain military operations,[19] also for example in Mali, the peace keeping monitoring group, structure is codified in the part two order given to the commanders in MINUSMA and AFISMA.

b. Non-International Armed Conflicts in the Meaning of Art. 1 of Additional Protocol IIA. More restrictive definition of NIAC was adopted for the specific purpose of Additional Protocol

[17] ICTY, *The Prosecutor v. Dusko Tadic*, Judgment, IT-94-1-T, 7 May 1997, para. 561-568; ICTY, *The Prosecutor v. Fatmir Limaj*, Judgment, IT-03-66-T, 30 November 2005, para. 8

[18] Ibid

[19] Schindler, D.(1979). *The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols*, RCADI, Vol. 163. p. 147.

II. This instrument applies to armed conflicts "which takes place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol"[20]. In Mali, this is exactly what is happening. For example, the French led troops had to in the early period of the insurgency rout the insurgents from the north who had overran the northern city of Kidal, Timbutu and Gao.

This definition is narrower than the notion of NIAC under common Article 3 in two aspects. Firstly, it introduces a requirement of territorial control, by providing that non-Governmental parties must exercise such territorial control "as to enable them to carry out sustained and concerted military operations and to implement this Protocol".

Secondly, Additional Protocol II expressly applies only to armed conflicts between State armed forces and dissident armed forces or other organised armed groups. Contrary to common Article 3, the Protocol does not apply to armed conflicts occurring only between non-State armed groups.

In this context, it must be re-intended that Additional Protocol II "develops and supplements" common Article 3" without modifying its existing conditions of application"[21].

This means that this restrictive definition is relevant for the application of Protocol II only, but does not extend to the law of NIAC in general. The Statute of the International Criminal Court, in its Article 8, para. 2 (f), confirms the existence of a definition of a non-international armed conflict not fulfilling the criteria of Protocol II[22].

[20] Additional Protocol II, art. 1, para. 1
[21] Ibid
[22] Statute of the ICC, art. 8 para. 2(f): "It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups". Retrieved from

2. Jurisprudence

Case law has brought important elements for a definition of an armed conflict, in particular regarding the non-international armed conflicts in the meaning of common Article 3 which are not expressly defined in the Conventions concerned.

Judgments and decisions of the ICTY throw also some light on the definition of NIAC.

As mentioned above, the ICTY went on to determine the existence of a NIAC" whenever there is protracted armed violence between governmental authorities and organised armed groups or between such groups within a State"[23].

The ICTY thus confirmed that the definition of NIAC in the sense of common Article 3 encompasses situations where "several factions [confront] each other without involvement of the Government's armed forces"[24].

Since that first ruling, each judgment of the ICTY has taken this definition as a starting point.

3. Definition of Non-International Armed Conflict

Several recognized authors also commented very clearly on what should be considered as a non-international armed conflict.

Their comments are relevant in the first place to the conflicts which do not fulfill the strict criteria foreseen in Additional Protocol II and provide useful elements to ensure the application of the guarantees provided in common Article 3 to the Geneva Conventions of 1949.

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http://www.academia.edu/24797718/How_is_the_Term_Armed_Conflict_Defined_in_International_Humanitarian_Law on 13 March, 2015 at 5.23pm

[23] ICTY, *The Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para.70. ICTY, *Prosecutor v. Ramush Haradinaj* (2012) T. 5948-5949; D120, ICTR, *Prosecutor v. Akayesu* (1998) *ICTR*-96-4-T

[24] Sandoz Y, et al. (1949) *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, 1987, para. 4461.

According to Gasser, it is generally admitted that "non-international armed conflicts are armed confrontations that take place within the territory of a State between the government on the one hand and armed insurgent groups on the other hand. Another case is the crumbling of all Government authority in the country, as a result of which various groups fight each other in the struggle for power"[25].

Schindler also proposes a detailed definition: "The hostilities have to be conducted by force of arms and exhibit such intensity that, as a rule, the government is compelled to employ its armed forces against the insurgents, instead of a mere police force. Secondly, as to the insurgents, the hostilities are meant to be of a collective character, i.e. they have to be carried out not only by single groups. In addition, the insurgents have to exhibit a minimum amount of organization. Their armed forces should be under a responsible command and be capable of meeting minimal humanitarian requirements"[26].

Sassoli[27],writes "common Article 3 refers to conflicts 'occurring in the territory of one of the High Contracting Parties,' whereas Article 1 of Protocol II refers to those 'which takes place in the territory of a High Contracting Party.' According to the aim and purpose of IHL, this must be understood as simply recalling that treaties apply only to their state parties. If such wording meant that conflicts opposing states and organized armed groups and spreading over the territory of several states were not 'non-international armed conflicts', there would be a gap in protection, which could not be explained by states' concerns about their sovereignty. Those concerns made

[25]Gasser, H. (1993), *International Humanitarian Law: an Introduction, in: Humanity for All*: the International Red Cross and Red Crescent Movement, Paul Haupt Publishers, Berne. p. 555.
[26]Schindler, D. (1979). *The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols*, RCADI, Vol. 163. p. 147.
[27]Sassoli, M. (2006), "*Transnational Armed Groups and International Humanitarian Law*", Program on Humanitarian Policy and Conflict Research, Harvard University, Occasional Paper Series, Number 6, p. 8,9

the law of non-international armed conflicts more rudimentary. Yet concerns about state sovereignty could not explain why victims of conflicts spilling over the territory of several states should benefit from less protection than those affected by conflicts limited to the territory of only one state.

Additionally, Articles 1 and 7 of the Statute of the International Criminal Tribunal for Rwanda extended the jurisdiction of that tribunal called to enforce, inter alia, the law of non-international armed conflicts, to the neighbouring countries. This confirms that even a conflict spreading across borders remains a non-international armed conflict. Example Malians who crossed to Libya or to Sudan.

Internal conflicts are distinguished from international armed conflicts by the parties involved rather than by the territorial scope of the conflict.[28]

Some authors argue that 'no definition would be capable of capturing the factual situations that reality throws up and that a definition would thus risk undermining the protective ambit of humanitarian law[29]'. First of all, it is not clear what level of violence must be reached and how protracted the hostilities must be. On the one hand, internal situations with a very high level of violence are often regarded, mainly for political reasons, as banditry not reaching the threshold of armed conflict[30]. On the other hand, there are situations where a much lower level of violence that is not protracted is seen as armed conflict for the purposes of humanitarian law[31].

[28] Liesbeth Z. (2002). *Accountability of Armed Opposition Groups in International Law*, Cambridge: Cambridge University Press. p. 136.
[29] Ibid
[30] William A. (2005)., 'A human rights law of internal armed conflict: The European Court of Human Rights in Chechnya', European Journal of International Law, Vol. 16, p. 754
[31] Inter-American Commission on Human Rights, *Juan Carlos Abella v. Argentina*, Case 11.137, IACHR Report No. 55/97, 30 October 1997; see also Liesbeth Zegveld, 'The Inter-American Commission on Human Rights and international humanitarian law: A comment on the Tablada case', International Review of the Red Cross, No. 324,

Moreover, it seems problematic to assess the ability of armed groups to implement international humanitarian law and whether this should be seen as a criterion for identifying these groups as parties to conflict at all.

While stretching Common Article 3 to include anti-terrorist measures may serve humanitarian purposes in some situations, its application to ordinary (even wide-spread) human rights violations would not be a desirable result, because human rights – which remain applicable – generally provide more protection and are better tailored to situations that do not amount to an armed conflict.

As a rule, states are hesitant to admit the existence of an armed conflict within their borders. The case of Chechnya demonstrates that states will deny that there is an armed conflict even in cases where its existence appears obvious[32]. It follows that an objective criterion is necessary to determine the applicability of IHL, thus providing a clear basis for assessing the norms applicable to the conflict in question, both for the participants involved and the international community in general.

September 1998, Pp. 505–511. Retrieved from *hrlibrary.umn.edu/cases/1997/argentina55-97a.html on 19 March, 2015 at 7.12am*

[32] Bakhtiyar T.(2003) 'The implementation of international humanitarian law in the Russian Federation', International Review of the Red Cross, Vol. 85, No. 850, p. 395.

2.4 CONCEPT OF PEACEKEEPING AND SECURITY

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[33] Opcit at p.34

Guatemala, Namibia, Cambodia, Mozambique, Tajikistan, Sierra Leone, and Burundi. As the decade drew to a close, continuing crises led to new operations in the Democratic Republic of the Congo, the Central African Republic, Timor Leste, Sierra Leone and Kosovo[34].

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[34] www.un.org/peacesecurity/12/12/2014 Retrieved 7th May, 2015 at 8:06pm
[35] Ibid
[36] Ibid

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The resolutions also identified the need for the Commission to extend the period of international attention on post-conflict countries and where necessary, highlight any gaps which

[37] Resolution 60/180 and resolution 1645 2005

threaten to undermine peace building. The General Assembly and Security Council resolutions establishing the Peace building Commission also provided for the establishment of a Peace building Fund and Peace building Support Office.

2.5 CONCEPT OF THE USE OF FORCE AND EXCEPTIONS THERETO

Article 1 of the UN Charter says that one of the purposes of the Charter is to:

> To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means… adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

In order to maintain international peace and security and to prevent future wars:

Article 2(3) places an obligation on member States to settle their disputes peacefully. All Members shall settle their International disputes by peaceful means in such a manner that International peace and security, and justice, are not endangered. Article 2(4) prohibits member States from using force in their International relations. All Members shall refrain in their International relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

i. The ICJ held that the prohibition on the use of force is covered by treaty law (that is the UN Charter), by customary international law and the prohibition was a *Jus Cogens* norm[38].

ii. In the 1970 *Declaration on Principles of International Law concerning Friendly Relations* there is: (1) a general prohibition on the threat or use of force, (2) duty to refrain from "organizing, instigating, assisting or participating in acts of civil strife or

[38] *Nicaragua v USA*. Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*) ICJ Report (1986)

terrorist acts in another State or acquiescing in organized activities within its territory" when these acts involve the threat or use of force against a State.

iii. The prohibition is safeguarded by a system of collective sanctions against any offending State that uses force[39].

Articles 39, 40 and 41 operate to offer sanctions against a member State that has threatened or used force in a way that it amounts to a threat to or breach of peace or an act of aggression. Article 39 says:

> The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 41 allows the Security Council to impose sanctions (trade and economic sanctions, arms embargoes): The Security Council may decide what measures not involving the use of armed forces that are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication example ICY and the severance of diplomatic relations.

Article 42 gives the Security Council the power to authorize the use of necessary force to maintain international peace and security. Because the Security Council does not have a military force of its own, the Security Council authorizes member States to use force. The Security Council may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.

Exceptions to the above sections are contained in Article 51 which provides for a member State to use force in self defense when there is an armed attack against that State

[39] Articles 39-51 of the UN Charter.

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security[40].

As discussed, the only exceptions to the prohibition on the use of force in the UN Charter are found in Articles 42 and 51 of the UN Charter, highlighted above. The situation in Mali invokes section 39, 40 and 42 of the UN Charter as the conflict is of International nature given that the AU and even the ECOWAS are on ground to maintain peace.

2.6 CONCEPT OF PEACEMAKING

The term "peacemaking" is used in several different ways. According to the UN, peacemaking is "action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in Chapter VI of the Charter of the United Nations and Pacific Settlement of Disputes[41]." In this sense, peacemaking is the diplomatic effort intended to move a violent conflict into non-violent dialogue, where differences are settled through representative political institutions. The objective of peacemaking is thus to end the violence between the contending parties. Peacemaking can be done through negotiation, mediation, conciliation, and arbitration. International law provides another channel through international courts[42].

United Nations peacemaking is an extension of the parties' own efforts to manage their conflict. When they cannot, the parties, the Security Council or the General Assembly may call

[40] Chapter VII: action with respect to threats to the peace, breaches of the peace, and acts of aggression. http://www.un.org/en/sections/un-charter/chapter-vii/ retrieved 23rd June, 2016 at 4.09pm

[41] Boutros Boutros-Ghali, "An Agenda for Peace," [document on-line] (New York: United Nations, 1992, available from http://www.unrol.org/files/A_47_277.pdf, retrieved 12th June, 2016 at 4.30pm

[42] "Peacemaking -- Overview" Conflict Management Toolkit. (Johns Hopkins University, School of Advanced International Studies, Conflict Management Program). Retrieved 13th June 2016 at 3.09pm. Available from http://legacy2.sais-jhu.edu/cmtoolkit/approaches/peacemaking/index.htm

upon the United Nations Secretary General to exercises his "Good Offices" to facilitate the resolution of the conflict. The Secretary General may also undertake independent peacemaking initiatives by offering his "Good Offices" to parties to resolve the conflict in a peaceful way. In an Agenda for Peace, former United Nations Secretary General Boutros-Boutros Ghali defined peacemaking as

> "action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in Chapter VI of the Charter of the United Nations; Pacific Settlement of Disputes."

These actions are carried out during a conflict, violent or latent. They entail the diplomatic process of brokering an end to conflict, principally through the use of mediation and negotiation skills. United Nations Peacemaking excludes the use of force, unless imposed action is taken by the Security Council to facilitate the peacemaking process[43].

Outside the UN context, peacemaking is sometimes used to refer to a stage of conflict, which occurs during a crisis or a prolonged conflict after diplomatic intervention has failed and before peacekeeping forces have had a chance to intervene. In this context peacemaking is an intervention during armed combat.

The term is sometimes used to mean simply "making peace." Peacemaking is necessary and important in cases of protracted violence that do not seem to burn themselves out and in cases where war crimes and other human devastation demand the attention of outside forces. In the latter two cases, peacemaking implies the threat of violent intervention as an act of last resort. In the third case it may demand violent intervention sooner rather than later. This module has not been used for the peacekeepers on ground in Mali who are applying instead the module of peace

[43] Nita Y. (2001) Political Affairs Officer and Project Manager for the UN Department of Political Affairs Peacemaking Databank Project: UN Peacemaker www.un.org/peacemaker Retrieved 13th June 2016 at 3.09pm

enforcement due to the nature of the strength of the insurgent groups. Perhaps in time, when the crisis has been under control, then this module of peacemaking may be deployed.

2.6.1 Peacemaking Constraints: Political and Economic

Understood simply as an outside intervention in a violent conflict, peacemaking should imply a few obvious things. First, outside interveners may not want to sacrifice their own troops in order to make peace. This implies that the most peacemaking effort and energy should initially be devoted to negotiation, mediation, arbitration, and the like. In fact, Chapter VI of the U.N. Charter is largely devoted to this very concept[44]. While the U.N. Charter does allow for active military intervention under Chapter VII of the Charter, the ordering of processes in Chapter VII clearly favors negotiation as a first step. This level of negotiation usually takes place at the level of Track I diplomacy, negotiations involving high-level elites[45].

Track I diplomacy at this level of conflict is likely to be multinational in nature. Because the potential costs of getting involved in negotiation and because the collective willpower of the international community is stronger than any individual nation, multinational diplomacy in violent conflicts has a higher probability of initiation and success. These two issues, troop commitments and economic and political costs, represent basic constraints on peacemaking actions, but peacemaking also entails certain moral obligations as well. As observed by the researcher in Mali (see appendix).

[44] United Nations Charter, Chapter VI & VII [document on-line], available fromhttp://www.un.org/aboutun/charter retrieved 14th May, 2015 at 5.50pm

[45] Julian O. (2003). Beyond Intractability. http://www.beyondintractability.org/essay/peacemaking retrieved 15th May, 2015 at 5.10pm

> Some of the constraints of the peacemaking in the Malian crisis included the fact that ECOWAS Mission in Mali (MICEMA) never went beyond the planning stages, having faced several obstacles including the junta's hostility to any armed presence in Bamako; the absence of consensus on the way forward with Algeria and, to a lesser extent, Mauritania, accentuated by the fact that these two countries do not belong to ECOWAS; and logistical and financial constraints that made it impossible to deploy troops in the absence of international support.
>
> The absence of clear authority in Bamako enabled the rebels and jihadists to increase their hold on the northern part of the country. The jihadist groups took advantage of the unstable situation as well as the international community's hesitation and the inability of ECOWAS to respond militarily. Although ECOWAS expressed its desire to lead international efforts, it was soon confronted by financial, capacity and logistical constraints.

2.6.2 Moral Obligations to Peacemaking

States that are party to the Geneva Conventions and the U.N. Charter have implied, though not legally binding, obligations to intervene in cases of genocide, disturbances to international peace, and other cases of human devastation[46]. Article 33 of the U.N. Charter states:

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. This method was hardly tested in Mali as the insurgents incursion was impromptu (which required quick intervention to stem the upsurge). In the composition of the ECOWAS Commission, there is a body of the council of elders whose main job is to wade into negotiations. The researcher opines that even though there might be negotiations ongoing in Mali, nothing concrete was reached because the ongoing crisis was still escalating and there is no record anywhere of the council of elders even trying to mediate in this crisis

[46] Boulden, J. (2001). *Peace Enforcement*, New York, Praeger. p.41

situation. Besides, the swift nature with which the insurgents began their operation in 2012 could not have even given room for a more concrete negations to be done at that stage. What was paramount then was to stop the incursion by the insurgents which was eating up the country (security wise) and perhaps negotiations might follow after security has been stabilized.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means[47].

Similar clauses exist in the Geneva Conventions and the Genocide Convention. Unfortunately, constraints often outweigh obligations in the minds of state leaders; however, by signing on to these treaties, states have accepted an implicit moral obligation to intervene. In fact, weak as this obligation is, the researcher still sees it as the motivating factor behind many of the interventions that takes place in the world today. Notwithstanding these constraints as physically observed by the researcher during his visit (see Appendix III) when he interacted with some of the peacekeepers on ground who stated the difficulties and dangers they faced in Mali and that this notwithstanding the casualties suffered by MINUSMA, the protection of civilians still remained a moral obligation. From this remark, it is the researcher's opinion that the use of moral obligation was actually tested in Mali.

[47] Ibid

2.6.3 Methods of Peacemaking

Article 33 of the UN Charter specifies, "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements" as modes of peaceful intervention in violent conflicts. Articles 41 and 42 of the Charter also allow for sanctions, blockading, and intervention in order to restore the peace between warring states. It is important to note that all U.N. Charter justifications for peacemaking were based on the concept of sovereign states. That is, there is no support for intervention in civil wars in the U.N. Charter itself. However, the *Agenda for Peace*, written under the auspices of former Secretary-General Boutros Boutros-Ghali, changes the conception to allow for intervention in civil wars[48]. Other modules have explored negotiation, mediation, and arbitration in depth.

2.7 CONCEPT OF PEACEKEEPING

The UN Charter gives the Security Council primary responsibility for the maintenance of international peace and security. In fulfilling this responsibility, the Council can establish a UN peacekeeping operation.

UN peacekeeping operations are deployed on the basis of mandates from the United Nations Security Council. Their tasks differ from situation to situation, depending on the nature of the conflict and the specific challenges it presents.

The Charter of the United Nations is the foundation document for all the UN work. The UN was established to “save succeeding generations from the scourge of war” and one of its main purposes is to maintain international peace and security.

Peacekeeping, although not explicitly provided for in the Charter, has evolved into one of the main tools used by the United Nations to achieve this purpose.

[48] Ibid

The Charter gives the UN Security Council primary responsibility for the maintenance of international peace and security. In fulfilling this responsibility, the Council may adopt a range of measures, including the establishment of a UN peacekeeping operation.

1. Chapter VI deals with the "Pacific Settlement of Disputes". UN peacekeeping operations have traditionally been associated with this Chapter. However, the Security Council need not refer to a specific Chapter of the Charter when passing a resolution authorizing the deployment of a UN peacekeeping operation and has never invoked Chapter VI.
2. Chapter VII contains provisions related to "Action with Respect to the Peace, Breaches of the Peace and Acts of Aggression'. In recent years, the Council has adopted the practice of invoking Chapter VII of the Charter when authorizing the deployment of UN peacekeeping operations into volatile post-conflict settings where the State is unable to maintain security and public order. The Security Council's invocation of Chapter VII in these situations, in addition to denoting the legal basis for its action, can also be seen as a statement of firm political resolve and a means of reminding the parties to a conflict and the wider UN membership of their obligation to give effect to Security Council decisions.
3. Chapter VIII of the Charter provides for the involvement of regional arrangements (ECOWAS, AU) and agencies in the maintenance of international peace and security provided such activities are consistent with the purposes and principles outlined in Chapter I of the Charter.

Article 10 of the protocol relating to the mechanism for conflict prevention, management, resolution, peace-keeping and security states that the Mediation and Security Council shall take decisions on issues of peace and security in the sub-region on behalf of the Authority. It shall also implement all the provisions of this Protocol. By the application of this section of the mechanism, ECOWAS member states created AFISMA which was deployed to Mali.

2.7.1 Peacekeeping Mandates

UN peacekeeping operations are deployed on the basis of mandates from the United Nations Security Council. Over the years, the range of tasks assigned to UN peacekeeping operations has expanded significantly in response to shifting patterns of conflict and to best address threats to international peace and security.

Although each UN peacekeeping operation is different, there is a considerable degree of consistency in the types of mandated tasks assigned by the Security Council. Depending on their mandate, peacekeeping operations may be required to:

1. Deploy to prevent the outbreak of conflict or the spill-over of conflict across borders;
2. Stabilize conflict situations after a ceasefire, to create an environment for the parties to reach a lasting peace agreement;
3. Assist in implementing comprehensive peace agreements;
4. Lead states or territories through a transition to stable government, based on democratic principles, good governance and economic development.

Depending on the specific set of challenges, UN peacekeepers are often mandated to play a catalytic role in the following essentially peace building activities:

1. Disarmament, demobilization and reintegration of ex-combatants;
2. Mine action;
3. Security sector reform and other rule of law-related activities;
4. Protection and promotion of human rights;
5. Electoral assistance;
6. Support for the restoration and extension of State authority;
7. Promotion of social and economic recovery and development.

Security Council mandates also reflect a number of cross-cutting, thematic tasks that are regularly assigned to UN peacekeeping operations on the basis of the following landmark Security Council resolutions:

1. Security Council on women, peace and security[49];
2. Security Council on children and armed conflict[50];
3. Security Council on the protection of civilians in armed conflict[51].

In all the above peacekeeping mandates, all was resorted to in quelling the security crisis in Mali apart from disarmament, demobilization and reintegration of ex-combatants (this one, the researcher believes has not been resorted to for now because a collation of all ex-combatants has not been made for disarmament). Electoral assistance too was not resorted to as a result of the escalated violence as at that time.

The boundaries between conflict prevention, peacemaking, peacekeeping, peace building and peace enforcement have become increasingly blurred. Peace operations are rarely limited to one type of activity[52]. While UN peacekeeping operations are, in principle, deployed to support the implementation of a ceasefire or peace agreement, they are often required to play an active role in peacemaking efforts and may also be involved in early peace building activities[53].

Today's multidimensional peacekeeping operations facilitate the political process, protect civilians, assist in the disarmament, demobilization and reintegration of former combatants; support the organization of elections, protect and promote human rights and assist in restoring the rule of law[54].

[49] United Nations Security Council Resolution 1325 (2000)
[50] United Nations Security Council Resolution 1612 (2005)
[51] United Nations Security Council Resolution 1674 (2006)
[52] Pbpu.unib.org/pbps/library/capstone... retrieved 12 December, 2014 at 8:43pm
[53] www.peaceopstraining.org/../preview retrieved 12 December, 2014 at 8:52pm
[54] Ibid

UN peacekeeping operations may use force to defend themselves, their mandate, and civilians, particularly in situations where the State is unable to provide security and maintain public order.[55]

2.8 CONCEPT OF PEACE ENFORCEMENT

Peace enforcement is the use of military force to compel peace in a conflict, generally against the will of those combatants[56]. To do this, it generally requires more military force than peacekeeping operations. The United Nations, through its Security Council per Chapter VII of its charter, has the ability to authorize force to enforce its resolutions and ceasefires already created[57].

Peace enforcement differs from peacekeeping as peace enforcement activities are generally used to create a peace from a broken ceasefire or to enforce a peace demanded by the United Nations[58]. Compared to peacekeeping, peace enforcement requires more military force and is thereby best done by heavily armed forces[59]. However, it is generally unable to create lasting peace, as it does nothing to deal with the underlying problems which caused the conflict itself[60].

One of the most famous examples of peace enforcement was the UN intervention during the Gulf War to force Saddam Hussein's Iraqi army from Kuwait

The meaning of the term peace enforcement is often misunderstood. Consider that when soldiers are performing enforcement actions under a UN Security Council mandate, they are still called peacekeepers. The term's origins are found in the UN Charter under Chapter VII and

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[55] Ibid
[56] Richard, C.*(2012) "Peacekeeping / Peace Enforcement retrieved from https://pesd.princeton.edu/?q=node/259 on 23rd October, 2014 at 5.05pm*
[57] Henry, R *(2015). Perspectives on International Relations. Washington DC: CQ Press. P. 16*
[58] Ibid
[59] Ibid
[60] *"CHAPTER III -- PEACE ENFORCEMENT". www.globalsecurity.org. Retrieved 11 July, 2015 at 5.30pm*

Articles 39, 41, and 42. Article 47 goes on to outline the procedures for managing "breaches of peace and acts of aggression". It establishes a Military Staff Committee to manage the armed forces placed at the disposal of the UN Security Council[61]. The first real use of the term peace enforcement came in Boutros Boutros Ghali's January 1992 Secretary General's report to the UN Security Council. The report, more commonly known as An Agenda for Peace, outlined procedures for the use of "peace enforcement forces" by stating that Member States should place at the UN's disposal volunteers to manage broken or in effective ceasefires. He also stated that the forces must be more heavily armed than peacekeepers and undergo extensive preparatory training. Such forces would be under the command of the UN Secretary General[62]. In his report, Boutros Boutros Ghali defines preventive diplomacy, peacemaking, peacekeeping, and post conflict peace building, but does not define peace enforcement. In his supplement to the Agenda for Peace, published in 1995, he further stated: "Even though the use of force is authorized under Chapter VII of the Charter, the United Nations remains neutral and impartial between warring parties…[63]". Later in the same supplement, he stated that One of the achievements of the Charter of the United Nations was to empower the Organization [UN] to take enforcement action against those responsible for threats to the peace, breaches of peace or acts of aggression. Neither the Security Council nor the Secretary General at present has the capacity to deploy, direct, command and control operations for this purpose, except perhaps on a limited scale[64].

A clear definition of peace enforcement did not emerge until the British and the American military doctrines on peacekeeping were published in 1994. Armies develop doctrine to guide the training of military forces, and in such documents, define terms. The US Army's Field Manual 100 of 23rd December, 1994, defined preventive diplomacy and peace building

[61] Charter of the United Nations and Statute of the International Court of Justice, 26th June 1945, 22-26.
[62] Ibid
[63] Ibid
[64] Ibid

along the lines described in Agenda for Peace. The manual also defined peace enforcement as, "the application of military force or the threat of its use, normally pursuant to international authorization, to compel compliance with generally accepted resolutions or sanctions[65]." The British field manual, Wider Peacekeeping, published in September 1994 defined peace enforcement as: "operations carried out to restore peace between belligerent parties who do not all consent to interventions and who may be engaged in combat activities[66]". The British manual also addressed consent of the warring or belligerent parties in some detail. Consent of the local parties is the critical difference between peacekeeping and peace enforcement.

Peace enforcement involves the application of a range of coercive measures, including the use of military force. It requires the explicit authorization of the Security Council. It is used to restore international peace and security in situations where the Security Council has decided to act in the face of a threat to the peace, breach of the peace or act of aggression (Researcher's opinion). The Council may utilize, where appropriate, regional organizations and agencies for enforcement action under its authority and in accordance with the UN Charter. For example, ECOMOG was used in 1992 in Liberia and was deployed in 1997 to Sierra Leone to enforce peace agreement.

[65] United States Army (1991), Field Manual 100-23, Peace Operation, p.6.
[66] Director General Land Warfare, United Kingdom, Army Field Manual Wider Peacekeeping, pp.1-2

2.9 CONCEPT OF COLLECTIVE SECURITY

International security law, is primarily found in the United Nations (UN) collective security system. This is based on the norm of non-use of armed force under Article 2(4) of the UN Charter and the institution of the UN Security Council vested with the primary responsibility for the maintenance of international peace and security under Article 24 of the Charter[67]. Thus, collective security is a product of law, based on the delegation of power by sovereign states to a collective entity, providing the normative foundation for and means of regulating the behavior of sovereign states and conflict among them[68]. Collective security provides institutionalized procedures for legalizing collective response, designed at least originally to address traditional, military-oriented threats to the maintenance of international peace and security. However, challenges to the sovereign-centered collective security have arisen, particularly after the end of the Cold War, due to the diversity of perceived security threats, the rise of transnational security concerns, the greater role played by non-state actors, and the alleged ineffectiveness of existing international arrangements in responding to dynamic security challenges

Collective security is one type of coalition building strategy in which a group of nations agree not to attack each other and to defend each other against an attack from one of the others, if such an attack is made. The principle is that "an attack against one, is an attack against all." It differs from "collective defense" which is a coalition of nations which agree to defend its own group against outside attacks. Thus, NATO and the Warsaw Pact were examples of collective defense[69], while the UN is an attempt at collective security.

Proponents of collective security say it is a much more effective approach to security than individual countries trying to act alone, as weaker countries cannot possibly defend themselves,

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[67] Baldwin, D. (1983). '*The Concept of Security'*, Review of International Studies, pp. 5-26. Cf B. Buzan, People, States and Fear: The National Security Problems in International Relations, Brighton.
[68] Mathews, J. et al (2009). '*Redefining Security', International Security* Cambridge University Press. Pp. 129 – 153
[69] www.colorado.edu/../collsec.htm retrieved 12 December, 2014 at 9:00pm

and countries that try often become involved in never-ending arms races which actually detract from, rather than enhance, their security over the long term. In addition, it is the researcher's opinion that, collective security arrangements encourage international cooperation, while balance of power deterrence leads to competition and conflict instead[70]. Although the UN got bogged down in the superpower conflict during the cold war, now that that era has ended, many observers expect and hope that the UN will become a much more effective actor in protecting the security of its members.

Other scholars and diplomats, however, feel the collective security concept is misguided[71]. It is seen as conceptually muddled (as it is often confused with other similar concepts) and naively unrealistic. Although they are pledged to defend each other, many countries will refuse to do so, if such an act is not in their own best interests or is thought to be too risky or expensive. In addition, it has been argued, collective security arrangements will turn small struggles into large ones, and prevent the use of alternative (nonviolent) problem solving, relying instead on the much costlier approach of military confrontation. In addition, there is always a danger, that alliances formed for the purposes of collective security can also serve as a basis for an aggressive coalition[72].

[70] Researcher's opinion on the statement
[71] www.colorado.edu/../collsec.htm retrieved 12 December, 2014 at 9:00pm
[72] Ibid

2.10 CONCEPT OF HUMANITARIAN INTERVENTION

Over the last forty years, a number of Governments have justified unilateral military action with reference to the "customary law" of military humanitarian intervention in one form or another, and without exception, the international community has refused to recognize these actions as legitimate[73]. But this "customary law" is reckless and offers absolutely no guidance to the manner in which the intervention itself should be conducted. If there is to be humanitarian intervention, there should be a coherent humanitarian justification coupled with a proper procedural and substantive legal regime to underwrite it.

Humanitarian intervention is a means to prevent or stop a gross violation of human rights in a state, where such state is either incapable or unwilling to protect its own people, or is actively persecuting them. Many scholars identify the 1990s as a 'period of humanitarian intervention', during which the UN authorized several interventions on humanitarian grounds[74]. During the 1990s, even as the Security Council was increasingly willing to authorize humanitarian intervention, the United States and its allies took military action on at least three occasions, for express humanitarian purposes, when the specific action was not authorized by the Security Council[75]. Some instances of intervention, though unauthorized, have been declared legitimate – like NATO's intervention in Kosovo in 1999[76]. More recently, the military intervention in Libya[77], though frowned upon by several states in the international community, can be said to be lawful since it was authorized by the Security Council in Resolution 1973, in ostensible exercise of its powers under Chapter VII of the UN Charter.

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[73] Alex de W et al. (2003). *Can Military Invention be "Humanitarian"*? http://www.merip.org/mer/mer187/can-military-invention-be-humanitarian; retrieved 12 May 2016 at 12:40 pm.

[74] Mary K. (2007) *Human Security: Reflections on Globalization and Intervention* Polity Press, Cambridge, p.16.

[75] Some of these instances include the establishment of no-fly zones in Northern and Southern Iraq in 1991 and 1992, the bombing of the Bosnian Serbs by the NATO in 1995, and the NATO's Kosovo campaign against Yugoslavia in 1999.

[76] Kirthi J.(2012). *Humanitarian Intervention: A Legal Analysis.* E-International Relations. Retrieved from http://www.e-ir.info/2012/02/06/humanitarian-intervention-a-legal-analysis/ retrieved 4th June, 2016 at 4.09pm

[77] Ibid

As Noam Chomsky argued, "for one thing, there's a history of humanitarian intervention. You can look at it. And when you do, you discover that virtually every use of military force is described as humanitarian intervention[78]." Chomsky precisely pointed out everything that is wrong with the way humanitarian intervention is frequently justified and carried out: There is a quick resort to military force without relying on force itself as a last resort; there is always an ulterior motive that predisposes a state's decision to intervene; and, many a time, the intervention itself is unilateral and unauthorized. Therefore, it is no longer about whether a state should intervene or not, but rather, that a law should be brought into place for the state that intervenes to conform to, in its *modus operandi*.

The most important principle in international law is the inviolability of the territorial sovereignty of states. The principle of respect for the territorial integrity of states is well founded as one of the linchpins of the international system, as is the norm prohibiting interference in the internal affairs of other states[79]. Article 2(4) of the UN Charter preserves the territorial integrity and political independence of states by forbidding any use of force, or threat of use of force against either. The accepted exception to this principle, which has now become a peremptory norm from which no derogation is permissible or *jus cogens* as it is known[80], is only the right to self-defence under Article 51 of the UN Charter, and Collective Security measures under Chapter VII of the UN Charter.

In pre-Charter law, there was some support for the consideration of humanitarian intervention as legal[81]. Early recognition of the doctrine of humanitarian intervention as acceptable in international relations is widely attributed to the works of the 17th century Dutch

[78] Kirthi J. (2012). Humanitarian Intervention: A Legal Analysis. Retrieved from http://www.e-ir.info/2012/02/06/humanitarian-intervention-a-legal-analysis/ retrieved 4th June, 2016 at 4.09pm
[79] Malcolm N. Shaw, *International Law* 488 (6th ed., 2008).
[80] Yearbook of the ILC, 1966, vol. II, p. 248.
[81] Ganji, H. et al (2006). International Protection of Human Rights, Saving Strangers: Humanitarian Intervention in International Society, R. Goodman, 'Humanitarian Intervention and Pretexts for War', 100 AJIL, p. 107

author Hugo Grotius, also known as the Father of International Law[82]. Specific invocation of the doctrine of humanitarian intervention by intervening states arose mostly in the latter half of the 19th Century[83]. However, things changed after the Second World War, when all uses of force were beginning to be outlawed – admittedly with major exceptions – except in the permissible pursuit of self-defence. When the UN Charter came into force, it "completely divorced the legal system from the pre-existing body of rules under customary international law[84]." The legislative history of the UN Charter shows that the drafters clearly intended to render illegal all excuses for resorting to military force, except those explicitly stated in the Charter. Therefore, with Article 2(4) replacing pre-Charter law, there seems to be some sort of a discrepancy in reconciling present-day events involving humanitarian intervention and the letter of the law as it stands. A cursory perusal of Article 2(4) does not suffuse any intervention on humanitarian grounds with legality, unless one follows a radical mode of legal interpretation and reads in additional words that are not already there in the text[85]. Judicial interpretation endorses a similar perspective. In the *Nicaragua Case*[86], the ICJ had explicitly ruled that the use of force could not be the appropriate method to monitor or ensure respect for human rights, that there is no general right of intervention in international law and, therefore, intervention violated international law. Although humanitarian intervention does exist in state practice, and although state practice is deemed a source of law as under Article 38 (1) (a) of the Statute of the ICJ[87], considering the hegemony of the sources of law in the same provision, there is a generally accepted notion that

[82] Oppenheim L, (1991) "Humanitarian intervention derives from the teachings of Grotius." J.D. van der Vyver, Statehood in International Law, 5 Emory Int'l L. p.65

[83] Pierre J. et al (1973)*The Customary International Law Doctrine of Humanitarian Intervention*: Its Current Validity Under the U.N. Charter, 4 CAL. W. INT'L L.J. p.203 ;

[84] Ibid

[85] The rules of interpretation of Statutes generally allow courts to interpret texts and statutes to avoid ambiguity. In domestic legal systems, sometimes, there are judges who "add" words into a legal provision, to "clarify" the meaning of a term.

[86] *Nicaragua v. United States of America* ICJ Reports, (1986), pp. 14, 94; 76 ILR, p. 349, 428.

[87] Owing to a lack of any other legal instrument suggesting a list of sources, this Article has been cited.

state practice cannot over rule treaty and customary law, both of which denounce the use of force except in self-defence[88].

Despite its putative illegality, there is no denying that Humanitarian Intervention exists. The conspicuous lack of legally "binding" material governing humanitarian intervention has led to a situation of legal black holes. There is no legal rule governing the exception of humanitarian intervention to the use of force, as there is for the use of collective security measures and self-defence. Commentators in support of humanitarian intervention argue that if humanitarian intervention were legal, the very cost of the potential abuse of pretextual interventions would outweigh any benefit from altruistic interventions[89]. A pretextual intervention is essentially a case of a state's use of military force in another state in pursuit of its own gain and not for the protection of human rights[90]. An altruistic intervention is one that is rooted in the core value of protecting human rights[91]. That a state will not intervene in another state unless it has something to gain is obvious, and these concerns make sense. What is being ignored or perhaps misconstrued in the term "legal" is that it is not only to be legitimized by being accorded legality, but that it is to be "legally regulated". According legality to humanitarian intervention does not mean a blind acceptance of humanitarian intervention as permissible in law, but that it is acceptable only if it adheres to a predetermined yardstick. Seeing as though the right to self-defence is being regulated by law, there is little doubt that a legal provision would be adequate in helping streamline the deployment of humanitarian intervention.

The basis of intervention on humanitarian grounds is that it is no state's prerogative to allow the wanton disregard and violation of human rights, and therefore, if such wanton

[88] Verwey, V. et al (1895), Humanitarian Intervention Under International Law, 32 NETHERLANDS INT'LL. REV. 357 Bangladesh: The Law of Humanitarian Intervention by Military Force, 67 AM.J. INT'L L. p.275, 305
[89] Brownlie I. (1963) *International Law and the Use of Force by States* Oxford Press. England. p.338
[90] Schachter O, (1994)*The Right of States to Use Armed Force*, 82 MICH. L. REV. p1620 .
[91] Ibid

disregard and violations take place, another state, or other states may intervene to put an end to them[92].

Given that humanitarian intervention exists, the law must rise to the occasion and evolve a framework to accommodate and regulate the phenomenon. This is not difficult in International Law, especially that one of the special characteristics of International Law is that violations of law may lead to the formation of a new law, so that an international custom could be intentionally created[93].

Some experts argue that intervention on humanitarian grounds must be approved by the Security Council to stand the test of legality[94]. If humanitarian intervention is to be authorized by the Security Council, and if it is not a unilateral measure, then can it not be considered legal under the ambit of Chapter VII of the Security Council? While in principle, it can be construed so, there have been plenty of instances when the Security Council has failed in its responsibility for collective security[95]. It is in extreme cases in which the most fundamental human rights are massively threatened, that the United Nations and regional organizations – paralyzed by great power disagreements over the sacrosanct principles of sovereignty and non-intervention, outside of the colonial and para-colonial contexts – have been unable or unwilling to take any significant measures[96]. Furthermore, Chapter VII speaks of what the Security Council may do, but does not govern intervention on humanitarian grounds per se, nor does it explain the what, how, why or when of a possible intervention on humanitarian grounds.

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[92] Teson F, (2005) *'Humanitarian Intervention: An Inquiry into Law and Morality"* Transnational Publishers. New York.

[93] Portela C,(2000) '*Humanitarian Intervention, NATO and International Law: Can the Institution of Humanitarian Intervention Justify Unauthorized Action?* 'http://www.bits.de/public/pdf/rr00-4. Retrieved 12 May 2016 at 12:14pm

[94] Mark S and Seybolt B (2007)., *Humanitarian Military Intervention: The Conditions for Success and Failure* Oxford: Oxford University Press, p 14.

[95] Pierre J. et al (1973) *The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the U.N. Charter*, 4 CAL. W. INT'L L.J. p.203 at 237.

[96] Ibid

Though it is a step in the right direction to understand and recognize the fact that the Security Council must be the authorizing body, it is equally important to have a roadmap of sorts drawn up for the organ to evaluate each situation and determine whether it warrants intervention. In terms of the provisions the legal framework could contain, there are several aspects that must be handled. It should ideally mandate prior permission from the Security Council, emphasize the "humanitarian" factor as a prerequisite motive or at least the most preponderant amongst other motives, mandate the resort to military force as a last resort, most importantly, provide for the UN's oversight and accountability to the Security Council in carrying out such a mission, and generally advocate the need to adhere to accepted principles of respecting human rights of the people in the state that is intervened in.

A legal instrument or provision in itself is not a safeguard. A law cannot guarantee complete success of every endeavour of intervention on humanitarian grounds. But, with a law in place, a minimum standard of accepted behaviour and procedure is set. An accepted standard could well prove to be useful in setting right the chaotic state of affairs as they existed in Rwanda[97]. At a time when the practice has already been often employed in foreign policy, there is no doubt that a state can intervene on humanitarian grounds. Scholarly debates should stop focussing on whether the practice should be allowed or not, and shift to evaluate the expected standard and yardstick of behaviour that must be adhered to during an intervention on humanitarian grounds. The fact is that humanitarian intervention is here to stay, and instead of trying to get rid of it there is more prudence in allowing the lesser evil of a streamlined and legally-regulated form of humanitarian intervention to continue. When such a modus of intervention is accommodated under the rubric of the law with a clearly enunciated 'expected yardstick' to adhere to, its practical implementation can be subjected to control, and can be

[97] https://www.cfr.org/councilofcouncils/global_memos/p33324 retrieved on 28 October, 2015 at 6.09pm

streamlined to bring in good results. In Mali, there have been report of human right abuses allegedly orchestrated by peacemakers on ground. The United Nations in application of this instrument has carried out disciplinary measures where they deem fit to curtail the complains. In Mali, the ECOWAS/AU hybrid peacekeepers under the auspices of AFISMA has been deployed. This has further been boosted by the UN module of MINUSMA who are all enforcing peace in Mali on humanitarian grounds.

2.11 CONCEPT OF RESPONSIBILITY TO PROTECT (R2P)

The Responsibility to Protect (R2P) has developed out of the need for a clear and coherent framework to respond to intrastate mass atrocity crimes. The inconsistent and uncoordinated manner in which the UN and international community have exercised the contestable right of humanitarian intervention has led to failed, apathetic, or incompetent responses to humanitarian catastrophes in Somalia in 1993, Rwanda in 1994, and Srebrenica in 1995[98]. The inability of the international community to reach consensus on the appropriate response to humanitarian crises before the loss of an enormous amount of life has highlighted the need for a well defined, internationally accepted, and coherent set of parameters to guide the effective international response to imminent or occurring mass atrocity crimes. R2P has functioned as a valuable starting point, shifting the emphasis from the 'right to intervene', which inevitably generates considerable backlash, to the notion of 'responsibility[99].' It has also unveiled a willingness among states to negotiate a compromise between responding to events "that affect

[98] Christopher J. (2007)."'The Responsibility to Protect': Humanitarian Concern and the Lawfulness of Armed Intervention," *Virginia Journal of International Law Vol.* 47 p 698.

[99] Evans G (2012). "The Responsibility to Protect Comes of Age." *Project Syndicate*, http://www.project-syndicate.org/commentary/the-responsibility-to-protect-comes-of-age retrieved 31 May 2016 at 4.09pm.

every precept of our common humanity," with the established principles of sovereignty and non-intervention[100].

Those who criticize the character of R2P as serving to undermine the legality of the UN Charter generally take the view that the doctrine strives for "nothing short of democracy and justice, imposed by military intervention[101]." Contrary to this notion, R2P sets out the broader responsibilities that states have towards their own citizens, the responsibilities states have as members of the international community, and the responsibilities that institutions such as the Security Council have in preventing, responding to, and rebuilding after mass atrocity crimes. That the *prevention*[102] of mass atrocity crimes is the most important aspect of R2P does not make any easier the reconciliation of tensions between the preeminent legal principles of sovereignty and non-intervention, with the emerging responsibility of the international community to prevent and respond to mass atrocity crimes that offend an increasingly globalized human conscience[103].

The architects of the doctrine incorporated political, legal and moral language into the 2001 Commission document[104], which established the R2P, in order to define a vast and persuasive set of responsibilities to appeal to all levels of the international community. This far-reaching framework cannot be said to accurately constitute a norm of international law, not only because it developed outside of a normative vacuum, but also *within* an existing and comprehensive legal framework comprised of the UN Charter and customary legal documents

[100] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), p. vii. Retrieved from https://www.idrc.ca/en/book/responsibility-protect-report-international-commission-intervention-and-state-sovereignty on 23 June 2015 at 4.10pm

[101] Alex D. (2012) "How to End Mass Atrocities." *New York Times*, 9 March ,http://www.nytimes.com/2012/03/10/opinion/how-to-end-mass-atrocities.html?pagewanted=all (retrieved 31 May 2016).

[102] ICISS, *The Responsibility to Protect*. Retrieved from http://www.e-ir.info/2012/08/08/the-legal-basis-of-the-responsibility-to-protect/ on 24 June 2015 at 4.14pm

[103] Ramesh T. (2006), *United Nations Peace and Security*, Melbourne: Cambridge University Press, p 244.

[104] Brad H.(2012). The Legal Character of R2P and the UN Charter. http://www.e-ir.info/2012/08/08/the-legal-basis-of-the-responsibility-to-protect/ retrieved 21st Sept. 2015

such as the Genocide Convention, the Geneva Conventions and the Statute of the International Criminal Court[105]. R2P can neither be considered a source of binding international law, as none of the relevant R2P documents conform to those sources of international law identified in Article 38 of the International Court of Justice[106]. To be considered as customary law, the tenets of R2P would require the repeated conduct of states, and a corresponding belief that such conduct is an *opinio juris* principle of international law[107]. If these were the case, the obligations of states and institutions articulated in the R2P documents would lack the contention they have received, and this analysis would be meaningless. However, R2P is not devoid of legal character, and is perhaps best articulated as a political commitment towards existing but contested legal responsibilities, best articulated in its current form as soft law.

The UN Charter, more than any other document, encapsulates the agreed upon consensus of the international community on the prevailing customary norms of international law, but is not devoid of conflicting principles, notably those of non-intervention articulated in Articles 2(4) and 2(7), and the powers vested in the Security Council regarding the authorization of force under Chapter VII[108]. Soft laws generally interact in complex ways with hard laws, and act as precursors to future legal development or the formation of binding treaties[109]. They may also take on the character of *opinio juris* inherent to customary law, and "help shape legal interpretation of existing rules by emphasizing particular normative understandings and rules of

[105] Ibid
[106] Office of the President of the General Assembly, 'Concept note on the responsibility to protect populations from genocide , war crimes , ethnic cleansing and crimes against humanity' , 17 July 2009, p. 1 (available at http://www.un.org/ga/president/63/interactive/protect/conceptnote.pdf retrieved 13 May 2016
[107] Peter Malanczuk (1995) *Akehurst's Modern Introduction to International Law*, (New York: Routledge, p 35
[108] Thakur, R. (2006). *The United Nations, Peace, and Security: From Collective Security to the Responsibility to Protect.* Cambridge: Cambridge University Press. p. 20
[109] Chinkin C, (1989) "*The Challenge of Soft Law: Development and Change in International Law*," International and Comparative Law Quarterly. Cambridge University Press. *p 855.*

international conduct[110]." Soft law is characteristically found in the resolutions of high-level panels, which lack binding legal status but offer 'anticipatory' documents informing judicial decision-making and legal interpretation[111]. Article 138 and 139 of the 2005 World Summit Outcome Document are thought to embody soft law most accurately, given their "open-ended, malleable language and the fact that their implications have engendered considerable controversy[112]."

Thus, R2P is best understood as a form of soft law, defined and influenced by existing international legal principles[113]. While the initial interpretation of R2P in the report of the Commission did pose a potential normative threat to the legality of the UN Charter, R2P has undergone a transformation in succeeding reports and can now be accurately said to constitute a comprehensive restatement of how existing legal commitments ought to be interpreted and applied in the future[114].

If the researcher is to support the view that the purpose of R2P is not to create new law, but to aid in the clarity and implementation of existing legal principles, it is of value to outline the relevant legal framework and some of the contemporary interpretations of the commitments that derive from such provisions. The cornerstone principle of the international system of states is UN Charter Article 2(4), which provides a general prohibition on the interstate use of

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[110] Jennifer M.(2010) "*International Law and the Responsibility to Protect: Clarifying or Expanding States' Responsibilities*?" *Global Responsibility to Protect p* 230. Retrieved from http://booksandjournals.brillonline.com/content/journals/1875984x on 20 October, 2014

[111] Malanczuk, *A(1997). Modern Introduction to International Law*, Psychology Press, London p. 55.

[112] Welsh, J. et al (2010) "International Law and the Responsibility to Protect: Clarifying or Expanding States' Responsibilities? Retrieved from http://booksandjournals.brillonline.com/content/journals/10.1163/187598410x500363 on 12 October, 2014 at 5.10pm

[113] Payandeh, M. (2009). "With Great Powers Comes Great Responsibility? The Concept of the Responsibility to Protect Within the Process of International Lawmaking," *Yale Journal of International Law* 35 no. 2 p. 471.

[114] Hehir A, (2010) "*The Responsibility to Protect: 'Sound and Fury Signifying Nothing'*?" International Relations Sage Journal http://journals.sagepub.com/ p *230.*

force[115]. Article 2(4) is bolstered by Article 2(7)[116], which similarly prohibits intervention by the UN in interstate affairs.

This basic proscription on the use of force is subject to two explicit exceptions. The first of which entails force utilized in self-defense as authorized under Article 51, and force authorized by the Security Council "to maintain international peace and security" under provisions in Chapter VII. In order to authorize force under Chapter VII, the Security Council must determine that massive violations of human rights are occurring, or are about to occur, that the violations constitute a threat to international peace, and that the authorization of enforcement action to prevent or end those violations are necessary[117]. While the former prescription makes clear the legitimate course of action for conflict between states, the latter is "conspicuously silent" on the issue of justification for military intervention in intrastate conflicts that threaten or materialize into massive humanitarian crises[118]. Article 24(1) vests primary responsibility for the maintenance of peace and security in the Security Council, backed up by Article 39, which grants the Security Council the right to "determine the existence of any threat to the peace, breach of the peace, or act of aggression and…make recommendations, or decide what measures shall be taken…to maintain and restore international peace and security."

The doctrine of R2P requires the relevant actors to adopt a limited scope to Article 2(4), a consensus that has yet to have been reached, effectively enlarging the number of exceptions to

[115] Article 2(4) "All Members [of the United Nations] shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations."

[116] Article 2(7): "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."

[117] Brad H.(2012). The Legal Character of R2P and the UN Charter. http://www.e-ir.info/2012/08/08/the-legal-basis-of-the-responsibility-to-protect/ retrieved 21st Sept. 2015

[118] Ibid

the prohibition on the use of force[119]. While the Commission report does emphasize the norm of nonintervention as the bedrock principle of international law[120], it assumes a limited view on the scope of the principle, arguing that:

Where a population is suffering serious harm as is currently witnessed in Mali, 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[121].

The scope of R2P requires the Security Council to assume an extensive reading of Article 39, incorporating human rights violations into the broader interpretation of "threats to the peace[122]." A convincing case can be made for the extensive reading of such open-textured language, and the willingness of the Security Council throughout the 1990s to sanction military intervention under Chapter VII in response to intra-state crises reflects this rendering[123]. While the Security Council's response to intrastate crises has been sporadic and grounded within questionable humanitarian motives, such actions raise the dilemma of whether or not the content of the principle of non-intervention has changed, and if so, how this new understanding is to be put into practice in future humanitarian crises[124].

[119] Ibid

[120] ICISS, *The Responsibility to Protect. Retrieved from* http://www.e-ir.info/2012/08/08/the-legal-basis-of-the-responsibility-to-protect/ *on 24 June, 2015 at 4.15pm.*

[121] Ibid

[122] Brad H.(2012). The Legal Character of R2P and the UN Charter. http://www.e-ir.info/2012/08/08/the-legal-basis-of-the-responsibility-to-protect/ retrieved 21st Sept. 2015

[123] Ibid

[124] The Principle of Non-Intervention in Contemporary International Law: Non-Interference in a State's Internal Affairs Used to be a Rule of International Law: Is it still?" *Chatham House,* 28 February 2007, p. 2 (available online at http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/il280207.pdf).

2.12 CONCEPT OF WAR ON TERRORIST

The term terrorism has no precise or widely accepted definition[125]. Laqueur defines terrorism as "the substrate application of violence or threatened violence intended to sow panic in a society, to weaken or even overthrow the incumbents, and to bring about political change."[126] Terrorism can also be defined as acts of violence committed against innocent persons or non-combatants that are intended to achieve political ends through fear and intimidation. Laqueur and Beck emphasize that with the global terrorism or post-modern terrorism as named by Laqueur[127], new concepts, terms and definitions may have to be developed for new realities since studies suggest that there are changes in traditional terrorist acts, motivations, strategy, means, weapons and aims[128].

According to Medd and Goldstein[129], the terrorist motivations in the 1970's were political, but in the 1980's besides politically motivated terrorism, religiously and economically motivated terrorism is observed, and this situation has continued during the 1990's. Also, Chalk, Kartha and Kronin emphasize the religious terrorism in the 1990's[130].According to Laqueur, extreme right groups have replaced the terrorism of leftist and anarchic groups. In addition, ethnically motivated terrorism has in-creased[131].Today, the global terrorists might be very small

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[125]Walter L. (2003), '*Postmodern Terrorism*', in *The new Global Terrorism* by Charles W. Kegley, New Jersey: Prentice Hall, p. 151-160;

[126]Ibid

[127] Walter L. (1996). Postmodern Terrorism: New Rules for an Old Game. Council on Foreign Relations. Retrieved from https://www.foreignaffairs.com/articles/1996-09-01/postmodern-terrorism-new-rules-old-game on 23 November, 2015 at 6.09pm

[128]Laqueur, 'Postmodern Terrorism'; Ulrich Beck, 'Terror and Solidarity' in *Re-ordering the World: The Long-term Implications of September 11th,* (ed.) (Mark Leonard, 2002, London: Foreign Policy Center), p. 112-119; Ulrich Beck, 'The Silence of Words: On Terror and War,' *Security Dialogue*, Vol. 34, No. 3, 2003, Pp. 255-267.

[129]Medd, R. et al (1997). '*International Terrorism* on the eve of the millennium'. Taylor and Francis, London. P12

[130]Peter C. (1996), *West-European Terrorism and Counter Terrorism: 'The Evolving Dynamic',* London: Macmillan. P.35

[131] Laqueur, 'Postmodern Terrorism'; Ulrich Beck, 'Terror and Solidarity' in *Re-ordering the World: The Long-term Implications of September 11th,* (ed.) (Mark Leonard, 2002, London: Foreign Policy Center), p. 112-119; Ulrich Beck, 'The Silence of Words: On Terror and War,' *Security Dialogue*, Vol. 34, No. 3, 2003, Pp. 255-267.

groups or even individuals. The state-sponsored terrorism and the individual terrorist are both flourishing[132]. Kronin emphasizes that by the late 1990's there is growing target of Americans.

Terrorism is a concept that does not have a recognized and agreed legal meaning. Because the word is not merely descriptive but normative, it tends to become a place-holder for those forms of political violence that the researcher regards as most illegitimate. One of the most authoritative definition is in the 2004 Report of the UN High-Level Panel on Threats, Challenges and Change, which refers to terrorism as "any action… that is intended to cause death or serious bodily harm to civilians or noncombatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act." This statement dismisses the idea that attacks on civilians may be raised above the level of terrorism if they take place as part of a campaign of resistance to occupation. However it also excludes attacks against military targets by non-State groups (such as al-Qaeda's attack on the American destroyer Cole in Yemen in 2000)[133].

The UN Panel proposed its definition as the basis for a comprehensive international convention banning terrorist which has long been under discussion at the United Nations but the idea was not endorsed by the 2005 UN World Summit[134], as some developing countries insisted on preserving an exclusion clause for national liberation movements. Nevertheless, the actions associated with terrorism are already prohibited under a wide variety of international and domestic laws. Acts of terror when committed by non-State groups are generally crimes under the law of the country where they take place, and are most often prosecuted as such. For instance, Ramzi Yousef, who masterminded the 1993 bombing of the World Trade Center, was

[132] Ibid
[133] *Anthony D. (2011). Crimes of War.* http://www.crimesofwar.org/a-z-guide/terrorism/ *retrieved 22nd June, 2015 at 4.02pm*
[134] Ibid

convicted in a New York court and sentenced to life imprisonment without parole[135]. In addition, in recent years, there have been 13 international conventions directed at specific acts identified with terrorism, including the 1979 Convention on the Taking of Hostages and the 1997 Convention against Terrorist Bombings[136].

Terrorist actions committed in the context of armed conflict are violations of international humanitarian law. One rule stated in Article 51 of the first Additional Protocol of 1977 and Article 13 of the second Additional Protocol specifically addresses the psychological effects that terrorism aims at, by prohibiting "acts or threats of violence the primary purpose of which is to spread terror among the civilian population." This provision is a reminder that for all the debate about whether terrorism as a concept is necessarily limited to non-State groups national authorities and regular armed forces can also carry out acts of terror.

In addition, treaty and customary law contains rules against the deliberate targeting of civilians, the launching of indiscriminate attacks, and the taking of hostages that are binding on all participants in both international and non-international armed conflicts. The prohibition on perfidy would ban attacks that rely on the attacker using the appearance of a civilian to avoid suspicion (as with most suicide bombs). In addition, wholesale acts of violence or systematic campaigns directed against a civilian population as an organizational policy might qualify as a crime against humanity.

As a method of fighting, terrorism represents the ultimate form of asymmetrical warfare, in which an armed group tries to neutralize the greater strength of its opponent by avoiding conventional battles in open terrain. Like guerrillas, terrorists fight with stealth. Indeed, there are some overlap between the two categories, and groups like the FLN (*Front de Libération*

[135] Ibid
[136] http://www.un.org/law/cod/finterr.htm retrieved 23rd June, 2015 at 2.37am

Nationale) during the Algerian war of independence against the French in the 1950s[137] or the Tamil Tigers in Sri Lanka[138] combines elements of both approaches. But terrorism, as generally understood, does not involve an attempt to capture and hold territory, or to attack military targets for anything other than symbolic purposes. For these reasons campaigns of terror that are divorced from any broader military struggle have traditionally been seen as a form of crime, not warfare.

The uniqueness of the Bush administration's response to September 11, 2000 USA terrorist attack lay in invoking the notion of war to claim sweeping powers against al-Qaeda suspects[139], while at the same time denying the protection of the laws of war to America's supposed enemies. U.S. officials argued that the traditional prerogatives of war the right to detain hostile fighters without trial or target them without warning were necessary and appropriate, but that the restraints embodied in the Geneva Conventions, the Additional Protocols and customary law were not applicable against such an unconventional and dishonorable foe[140]. By their actions, al-Qaeda's fighters had placed themselves outside the law and could be treated as military necessity required: this was the moral and legal intuition to which American policies appealed for justification[141].

But the administration's position based on arguments developed largely by civilian officials, often in the face of strong opposition from senior uniformed lawyers and State Department experts relies on an extraordinarily narrow and anachronistic picture of international law. It may have been true in earlier centuries that irregular fighters were entirely at the mercy of their enemies, but since World War II a complex set of international rules has been developed

[137] http://www.globalsecurity.org/military/world/war/algeria.htm retrieved 25th June, 2015 at 4.09pm
[138] Ibid
[139] *Anthony D. (2011). Crimes of War.* http://www.crimesofwar.org/a-z-guide/terrorism/ *retrieved on 23rd June, 2015 at 5.09pm*
[140] Ibid
[141] Ibid

that builds on a vision of essential human dignity to offer some fundamental protections to individuals in all circumstances. These rules are found in Common Article 3 of the 1949 Geneva Conventions, in Article 75 of the first Additional Protocol, in human rights instruments like the Convention against Torture, and in customary law. They enshrine principles of humanity and due process and are not in any way dependent on a reciprocal commitment from the individual protected by them to respect similar values himself. The decision of the U.S. Supreme Court[142] ruling that Common Article 3 applied at a minimum to American military operations against al-Qaeda, recognized this point.

Whether or not the fight against them is characterized as an armed conflict, suspected terrorists are entitled to baseline protections (for instance against cruel and degrading treatment or ill conducted trials) in all situations[143]. What about the Bush administration's claim that the existence of a "war against terror" allows the United States to target enemy combatants or detain them indefinitely[144]? As stated, the phrase is legally meaningless, since the notion of war has historically been restricted to conflicts between States and there cannot be a war against a method of fighting. More cautious and lawyerly administration officials speak instead of an armed conflict against al-Qaeda and affiliated groups.

Even this claim is open to question. For an armed conflict to exist there must be protracted armed violence between two or more organized groups, and it is by no means clear that those conditions hold in the case of the United States and al-Qaeda (as distinct from the geographically limited conflict against the Taliban in Afghanistan that the U.S. launched in October 2001). More importantly, it is also not clear that the traditional prerogatives of warring parties to target or detain enemy combatants would automatically carry over into such an

[142] *Hamdan v. Rumsfeld* 548 U.S. 557 (2006). Supreme Court of the United States. https://www.supremecourt.gov/opinions/05pdf/05-184.pdf retrieved 26th May, 2015 at 4.09pm

[143] *Anthony D. (2011). Crimes of War.* http://www.crimesofwar.org/a-z-guide/terrorism/ *retrieved on 23rd June, 2015 at 5.09pm*

[144] Ibid

unconventional conflict, if it existed. Fundamental human rights principles forbidding arbitrary killing and prolonged arbitrary detention are now generally agreed to apply in time of war as well as peace. As armed conflict moves ever further from the traditional model of uniformed troops confronting each other on the field of battle, these human rights principles are likely to assume increasing importance in our understanding of what is permissible. In a conflict that may have no definite end, and where there is enormous uncertainty about who is taking part in hostilities on the other side, it does not seem compatible with these norms to seize or target anyone you assert to be an enemy combatant without independent oversight.

The then Bush administration's reluctance to acknowledge these principles obscured the continuing relevance of international law and threatens its authority. In the long run, however, concern over the excesses of the "war on terror" may force a new awareness that the overlapping legal regimes that apply to the use of armed violence contain no gaps and operate across more of a continuous spectrum than has previously been recognized.

2.13 ANALYSIS OF THE LAW APPLICABLE TO THE FIGHT AGAINST TERRORIST WITH RESPECT TO HUMAN RIGHT AND INTERNATIONAL HUMANITARIAN ARMED CONFLICT AND NON INTERNATIONAL ARMED CONFLICT AS APPLIED TO MALI CONFLICT

One of the main purposes of the laws of war has been to tame the 'dogs of war' to ensure professional control of the use of armed force. This was also the main purpose behind Clausewitz's often misconstrued claim that war was 'the continuation of politics by other means'[145]. But does this logic also apply in non-international armed conflict or in 'asymmetrical' conflicts between the armed forces of a state and non state groups, or even terrorists? Are the mechanisms of the 'classic' law of war, and international humanitarian law (IHL) in particular, still suited to the current situation, where states often only go to war against each other through

[145] Carl C. (1989). *On War*, Princeton University Press, Princeton p.102.

the 'proxy' of non-state groups, or are involved in battles with such groups within and across borders?

When the then Chinese President visited his counterpart in the White House during the heyday of the Bush administration, he brought with him some gift-wrapped advice; while Bush was fighting an increasingly ferocious insurgency in Iraq, it was reported that Hu Jintao presented him with a copy of Sun Tzu's The Art of War[146]. The point was subtle, but the allusion clear. While Bush had sent a conventional Army to Iraq to topple Saddam Hussein, the insurgency was waging another kind of war. Thus, Clausewitz was dethroned by Sun Tzu and conventional battle by insurgency tactics – a kind of warfare with which a classical army trained in the spirit of Clausewitz could not cope. Similarly, when Western critics chastised Israel for its conduct in the Lebanon war in 2006, the political scientist Herfried Mu¨nkler responded that Israel could not be expected to apply the rules of IHL to a conflict in which the other party violated IHL as a means of combating the superior forces of a regular army[147]. In the Gaza war of January 2009, the legal branch of the Israeli Defense Forces apparently condoned attacks on Hamas policemen because Hamas was using the civilian infrastructure for attacks against Israeli civilians[148].

What can we expect from international humanitarian law in such situations? Is it, and should it be, applicable? Indeed, one of the glaring gaps in international humanitarian law concerns its very foundation – namely the question of the definition of war, or rather 'armed conflict' in the more objective sense given to the term by Article 2 common to the four 1949

[146] Sun T (1971), *The Art of War*, Oxford University Press, Oxford. p. 87

[147] Herfried M.(2006) '*Asymmetrie und Kriegsvo¨ lkerrecht: Die Lehren des Sommerkrieges* ', Friedens-Warte Journal of International Peace and Organization, Vol. 81, No. 2. pp. 62–5.

[148] Yotam F. et al (2009), '*Consent and Advise*', available at www.haaretz.com/hasen/spages/1059925.html retrieved 10 March 2014 at 4.20pm.

Geneva Conventions[149]. This raises questions as to the threshold at which IHL comes into operation[150].

A single definition may not encompass all variants of contemporary armed conflict. On the other hand, a definition appears necessary in order to ensure an effective extension of basic humanitarian guarantees to new types of armed conflict[151].

In earlier times, the existence of a 'war' in the legal sense was made dependent on an official declaration of war[152]. Since the Second World War, formal declarations of war have been virtually non-existent[153]. Instead, the 1949 Geneva Conventions used the concept of 'armed conflict' to convey the idea that humanitarian law needed to apply whenever armed forces battled with each other, regardless of official classification[154]. The International Court of Justice has confirmed as much in its Wall Advisory Opinion[155]. Apparently, in cases of inter-state war the identification of an armed conflict did not create major problems; instead, the objective nature of the term 'armed conflict' guaranteed that lack of official recognition would not impede

[149] For an outline of prevailing legal opinion, see International Committee of the Red Cross (ICRC), How is the term "armed conflict" defined in international humanitarian law?; Opinion Paper, March 2008, available at www.icrc.org/web/eng/siteeng0.nsf/htmlall/armed-conflict-article–170308/$file/Opinionpaper-armed-conflict.pdf. See also the International Law Association Committee on the Use of Force, 'Initial report on the meaning of armed conflict in international law', 2008, available at www.ila-hq.org/en/committees/index.cfm/cid/1022; Mary Ellen O'Connell, 'Defining armed conflict', Journal of Conflict and Security Law, Vol. 13 (2009), pp. 393–400. Retrieved on 28 April, 2015 at 4.15pm

[150] Hilaire M. et al (1992), *International Law and Armed Conflict*, Dartmouth Publishing Company Limited, Aldershot, p. 318: '[T]he "grey area" of categorization remains an issue of serious potential concern.' For earlier assessments of the legal situation, see Dietrich Schindler, 'The different types of armed conflicts according to the Geneva Conventions and Protocols', Recueil des Cours, Vol. 163 (1979), p. 119.

[151] James G. (2003), '*Towards a single definition of armed conflict in international humanitarian law: A critique of internationalized armed conflict*', International Review of the Red Cross, Vol. 85, No. 850, pp. 313–50; but see Lindsay Moir, The Law of Internal Armed Conflict, Cambridge University Press, Cambridge, 2002, p. 32; Jelena Pejic´, 'Status of armed conflicts', in Elizabeth Wilmshurst and Susan Breau (eds.), Perspectives on the ICRC Study on Customary International Humanitarian Law, Cambridge University Press, Cambridge, 2007, p. 85.

[152] Article 1 of Convention III relative to the Opening of Hostilities (Hague Convention III), 18 October 1907.

[153] Christopher G. (1987), 'The concept of war in modern international law'. International and Comparative Law Quarterly, Vol. 36, pp. 283–306; Dieter Fleck (ed.), The Handbook of International Humanitarian Law, Oxford University Press, Oxford, 2008, para. 203; Elihu Lauterpacht 'The legal irrelevance of the "state of war"', Proceedings of the American Society of International Law, Vol. 62, p. 58.

[154] Jean P. (ed.), Commentary on the Geneva Conventions of 12 August 1949, ICRC, Geneva, 1952, p. 32;

[155] International Court of Justice (ICJ), Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, p. 136, para. 95.

an application of international humanitarian law as long as at least two contracting states were involved. Pictet's commentary emphasizes that even one wounded soldier may trigger the application of the Geneva Conventions in international armed conflicts[156].

The situation was different, even in 1949, for non-international armed conflicts. While Common Article 3 took pains to specify that its application 'shall not affect the legal status of the Parties to the conflict', states were unwilling/reluctant to recognize the existence of an internal armed conflict on their territory because this might be viewed as an acknowledgement of the government's inability to prevent a civil war[157]. Thus practice suggests a higher threshold for the application of Common Article 3, in particular the requirement of the willingness and capacity of nonstate groups, evidenced by their possession of some level of organization and an identifiable internal structure, to abide by Common Article 3.

In defining its sphere of application, 1977 Protocol II additional to the Geneva Conventions, unlike its sister protocol, further narrowed the scope of non international armed conflict by stressing the requirements to be met by groups involved in it and by specifying that such a conflict did not include 'situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature'. This has led some scholars to conclude that a unified concept of armed conflict does not exist, and that, instead, international armed conflict and non-international armed conflict were fundamentally distinct[158].

Conversely, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) proclaimed, in its very first judgment, that 'what is inhumane, and consequently proscribed, in international wars, cannot but be inhumane and inadmissible in civil strife[159]'. The most recent comprehensive effort to codify violations of international

[156] Pictet J. (1999) ,Commentary on the Geneva Conventions of 12 August 1949, ICRC, Geneva, 1952, p. 32;
[157] Ibid
[158] Pictet J. (1999) ,Commentary on the Geneva Conventions of 12 August 1949, ICRC, Geneva, 1952, p. 32;
[159] *ICTY, Prosecutor v. Tadic´*, Case No. IT-91-1-AR72, Decision on the Defence Motion for Interlocutory

humanitarian law of a criminal nature, the Rome Statute of the International Criminal Court (ICC), follows this approach, at least partially, while maintaining the distinction in principle[160]. Article 8(2)(f) of the ICC Statute extends war crimes provisions to non-international armed conflicts, namely to 'armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups'. If the triggering event for the applicability of *jus in bello* – that is, the existence of an international or non-international armed conflict – is not clearly defined, states can more easily claim that international humanitarian law is inapplicable, especially in conflicts involving non-state groups. Such a situation would be reminiscent of the obsolete notion of recognition of belligerency, which made the applicability of IHL dependent on recognition of rebels by the government[161].

The necessity of such recognition was contrary to the humanitarian purpose of contemporary IHL, which is therefore in need of a coherent concept of armed conflict. Transnational armed conflict In its Hamdan decision, the US Supreme Court ruled that the minimum rules of Common Article 3 of the Geneva Conventions apply to a conflict with a transnational enemy of a non-state character[162]. In its Tadic´ jurisdiction decision, the ICTY Appeals Chamber proposed a comprehensive definition of armed conflict in both international and non-international armed conflicts, finding that 'an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental

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Appeal on Jurisdiction (Appeals Chamber) (hereinafter Interlocutory Appeal on Jurisdiction), 2 October 1995, para. 119. Steven R. Ratner, 'The schizophrenias of international criminal law', Texas International Law Journal, Vol. 33 (1998), pp. 237, 239, 240, 249.

[160] Article 8(2)(c)–(f) on war crimes in non-international armed conflicts.

[161] Pictet J. (1999) ,Commentary on the Geneva Conventions of 12 August 1949, ICRC, Geneva, 1952, p. 32;

[162] *US Supreme Court, Hamdan v. Rumsfeld*, 548 U.S. 557, 633, 126 S.Ct. 2749, 2797 (2006). Cf. the implicit criticism in Michael N. Schmitt, Charles H. B. Garraway and Yoram Dinstein, The Manual on the Law of Non-International Armed Conflict: With Commentary, International Institute of Humanitarian Law, San Remo, 2006, p. 2, with the approval of Fleck, above note 11, p. 607, para. 1201(3)(b); Marco Sasso` li, Transnational Armed Groups and International Humanitarian Law, Harvard University Program on Humanitarian Policy and Conflict Research, Occasional Paper Series, Winter 2006, No. 6, p. 8.

authorities and organized armed groups or between such groups within a State[163]'. This test was subsequently endorsed by the International Committee of the Red Cross and the Rome Statute of the International Criminal Court[164]. While assessing the legal status of violence on a case-bycase basis, the scale and intensity of the conflict as well as the identity and level of organization of the parties should be taken into consideration. These criteria should make it possible to 'distinguish an armed conflict from banditry, unorganized and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law[165]'. Though the definition makes it clear that armed groups may be parties to conflict, it does not specify the characteristics of such armed groups. It establishes situations that are to be characterized as armed conflict rather than as a merely internal riot without military connotations.

2.13.1 Analyses of the Legal Foundation on Self Defence in the Fight against Terrorist

Article 2, Section 4 of the United Nations Charter requires member states to respect the territorial integrity and political independence of other nation states, and to refrain from the use of force or threat of the use of force in international relations[166]. Article 2, Section 3 also requires members to settle international disputes by peaceful means in a manner that will not endanger international peace and security[167]. To reinforce that these principles are more than mere treaty obligations, General Assembly Resolution 2625 declared the principles stated in Article 2 to be basic principles, or customary international law[168]. This umbrella of a general prohibition against force in international relations is the cornerstone to analyzing modern attempts to use force against international terrorism. The difficulty in applying these principles

[163] *ICTY, Prosecutor v. Tadic´*, Interlocutory Appeal on Jurisdiction, above note 17, para. 70.
[164] Article 8(2)(f) of the Rome Statute of the International Criminal Court, 17 July 1998 (entered into force 1 July 2002).
[165] ICTY, Prosecutor v. Tadic´, Case No. IT–94–1-T, Opinion and Judgment (Trial Chamber II), 7 May 1997, para. 562.
[166] United Nations Charter, Article 2 Para. 4
[167] Ibid
[168] Resolution 2625 in 13 United Nations Resolutions, Senes 1, General Assembly 337

directly to terrorism is that often, terrorist activities are difficult to trace to individual state sponsorship. Because international law has traditionally regulated the conduct of states vis-a-vis each other, applying international legal principles to non-state actors is substantially more difficult. As an example, in the case of the missile strikes, the United States' international dispute with the terrorist organizations was tangentially related to the nation state whose territorial boundaries were violated. The terrorists were not state-actors of Sudan and Afghanistan, but were using these sovereign territories as bases of support[169]. It would be, of course, easier to resolve this legal issue if there was proof of state sponsorship to the terrorists. The difficulty in applying international rules, as in the case of military strikes, occurs when there is covert support of terrorist activities, or the state in which the terrorists reside is unable or unwilling to take action against the terrorist organizations. The provisions of the U.N. Charter, when it was written, were simply not designed to deal with the concept and organization of modem terrorist groups or their actions. With these difficulties in mind, the expansion of conventional legal doctrines to cover terrorist activities is understandable. Four legal bases have been proposed to justify the use of force against international terrorist[170]. Which includes the inherent right of self-defense under Article 51 of the United Nations Charter[171]; acts of reprisal against illegal acts of terrorism[172]. Referencing the Malian situation, the preceding paragraph will unearth the root causes of the Malian security crisis which witnessed series of rebellions. These rebellions per say in the researcher's view are not terrorist attacks strictly speaking, but insurgency by the Taureg persons who felt neglected by the Malian government. One may argue that one of the methods

[169] Andrews, G. (2004). *Self-Defence Against Terrorism In The Post-9/11 World*. Faculty of Law, Queens Land University of Technology

[170] Jeffry B. (1999). Legal Bases for the use of Force against International Terrorism: The U.S. Paradigm of Humanitarian Self-Defense. An Unpublished Thesis Presented to The Judge Advocate General's School United States Army in partial satisfaction of the requirements for the Degree of Master of Laws (LL.M.) in Military Law

[171] Thomas A. (1967). *The Dominican Republic Crisis*. Hammarisjold Forum. P.14

[172] William, O. (1990). "*Reprisals*, Deterrence and Self—*Defense* in Counter— *Terror Operations*," 30 Va. J. Int'l L. 421 (*1990*)

used in actualizing this their ideology may be through terrorist activities which as the researcher further opines is strictly not the general application employed by the insurgent in the Malian situation.

2.13.2 Inherent Right of Self Defence Under Article 51 of UN Charter

The missile strikes against the terrorist camps in Sudan and Afghanistan occurred approximately two weeks after the bombings of the American embassies in Dar es Salaam, Tanzania and Nairobi, Kenya[173]. The world community registered objections and reservations for the strikes, as highlighted above, because they resembled reprisals for the past bombings rather than legitimate acts in self-defense. Ironically, the United States claimed an identical self-defense basis for its actions that Israel attempted to claim before the U.N. Security Council in its fight against terrorism in the 1970s and 1980s. The U.S. often sided against Israel, and its explanation for its legal basis before the Security Council, in Israel's fight against terrorism during this period[174]. Thus, it is unsurprising that the world community condemned the U.S. strikes under the basis of Article 51 of the U.N. Charter. In order to understand the parameters of self-defense under Article 51, it is first necessary, to understand the pre-Charter rules and practice as applied to the law of self-defense. During the 19th century, the concept of self-defense was mixed with the concept of self-preservation[175]. The concept of self-preservation is broader than that of self-defense because it bases its justification and legality for actions on necessity as applied by the State claiming self-preservation. It therefore does not base legality on a set

[173] Un.pressreleasech/6559 available at http://www.un.org/news/[ress/dpc/1998/19980813. retrieved 14th May, 2015 at 3.30pm

[174] Israel Justification for the majority of its actions were premise on the basis of self defence in response to a long standing pattern of terrorist activities against Israel by Lebanon

[175] Weldock, M. et al (1952). *The Regulation of the use of Force by individual states in International Law*. 81 Revceil/Des Course 455, Pp.461 – 462

principle of law, but on the rationale of necessity of the nation itself[176]. In municipal law, it is only selfdefence and not self-preservation which may justify an otherwise criminal use of violence against another person; e.g. the English case of *Regina v. Dudley and Stephens*[177] where two shipwrecked sailors after many days without food ate the third to keep themselves alive and were convicted of murder. So too in international law it came to be accepted that only acts of self-protection against a threatened injury would excuse a violation of the independence of another State. The decisive point, perhaps, was the incident of the Caroline in 1837.[178]

Thus, the incident of the *Caroline* became the standard, legally acceptable definition and limitation to the rights of self-defense, or self-protection, in intervention which would shape the law and practice of states in the future. The *Caroline* incident, although it occurred over one-hundred and fifty seven years ago, still applies as the standard for using force in self-defense, particularly anticipatory self-defense[179]. The incident involved the United States, a group of dissidents from Canada and Great Britain[180]. In 1837, colonial Canada rebelled against Great Britain. American sympathizers offered supplies and equipment to the rebels. The American ship *Caroline* was docked in the United States at Fort Schlosser but had been carrying men and supplies to Canada from the United States previously. American support to the Canadian uprising could not be suppressed by the U.S. government, leading British and Canadian agents to cross the border into the United States. Once in the United States, the British loyalists forcibly boarded the *Caroline*, set her on fire, and sent her adrift over Niagara Falls. The attack resulted in U.S. deaths, which prompted a claim of reparation by the U.S. against Great Britain. Great Britain asserted that the acts were done in self-defense. This resulted in a series of

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[176] Ibid
[177] *R v Dudley and Stephens* (1884) 14 QBD 273 DC
[178] Available at www.historycentral.com/ant/caroline.html retrieved 15th May, 2014 at 3.15pm
[179] Weldock, M. et al (1952). *The Regulation of the use of Force by individual states in International Law*. 81 Revceil/Des Course 455, Pp.461 – 462
[180] John, B. (1938). Digest of International Law, American Journal of International Law. Pp.82 – 89

correspondence between then Secretary of State Daniel Webster and the British Minister in Washington[181]. In the resulting correspondence, Secretary Webster set forth the requirements for self-defense, which became the standard under international law.

Secretary Webster stated that a State, to prevail under a claim of self-defense, one must show that the "necessity of that self-defense is instant, overwhelming, leaving no choice of means, and no moment for deliberation[182]. Thus, the key factor of necessity for self-defense in customary international law requires a close nexus in time between the actual, or threatened, attack and the response, such that no ability to resort to other means short of force were available. This concept differed significantly from the practice of reprisal[183]. The key distinction between self-defense and reprisal is that self-defense was viewed as being preventive and did not include the right to exact reparation for injury actually done to the State. Rather, self-defense sought to protect the State from immediate threats or uses of force. Therefore, applying the rules to the *Caroline* incident, Britain's action could only be justifiable as a precaution against further injury and not as retaliation for past injury. While these distinctions may sometimes be difficult to draw, they are nonetheless essential concepts which have a large bearing on the legitimacy of State actions involving the use of force. Although Great Britain and the U.S. disagreed about the facts of the *Caroline* incident, they did agree that the principles set forth by Secretary Webster were the principles to be applied in self-defense cases[184]. "It is commonly accepted today that the proper limits of the plea of self-defence are correctly stated in the above principles and that, in the particular circumstances, the destruction of the Caroline fell within these principles[185]."

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[181] Ibid

[182] Webster, D. (1983) 'Letter to Henry Stephen Fox', in K.E Shewmaker (ed.). *The Papers of Daniel Webster: Diplomatic Papers, vol. 1. 1841-1843.* Dartmouth College Press. p. 23

[183] Ibid

[184] Weldock, M. et al (1952). *The Regulation of the use of Force by individual states in International Law*. 81 Revceil/Des Course 455, Pp.461 – 462

[185] Ibid

Therefore, the *Caroline* principles set forth the requirements for selfdefense, and also included the right of anticipatory self-defense in very limited circumstances. This customary right of self-defense was not modified by the Covenant of the League of Nations or the Kellogg-Briand Pact[186]. "Neither the Covenant nor the Pact mentioned selfdefense.

But it was universally agreed that resort to war - and therefore any lesser use of force - in self-defence was not restricted by either instrument[187]." The applicable limits for a valid claim of self-defense were also not modified by the Covenant and Pact and remained the *Caroline* limits set forth above[188]. The need to keep self-defence within the strict limits of the doctrine in the Caroline has been demonstrated only too often in recent history. Aggressive war having become illegal, every aggression is now represented to be selfdefence: - e.g. Japan in Manchuria, Italy in Abyssinia, Russia in Finland. The plea of self-defence was disallowed by the League in all these cases as it was also by the Nuremberg and Tokyo Tribunals in regard to the numerous invasions undertaken by Germany and Japan. The Nuremberg Tribunal expressly reaffirmed that the proper limits of the right of self-defence are those stated in the *Caroline*[189]. Because the rules and limits of self-defense were not modified by the League of Nations Covenant or the Kellogg-Briand Pact, it must be determined whether or not the passage of the United Nations Charter changed the customary rules regarding self-defense.

As stated earlier, the United Nations Charter is the modern foundation of international law with respect to the use of force between nations. Any analysis of self-defense in the modern era must begin with the provisions of the Charter, and specifically focus on the provisions and

[186] Ibid
[187] Ibid
[188] Ibid
[189] Ibid

interpretation of Article 51 of the Charter. Having witnessed the horrors and brutality of the Second World War, the drafters of the Charter wrote the document 'to maintain international peace and security.' The guiding principle behind the Charter is that international aggression should be avoided whenever possible and condemned as a violation of international law[190].

Article 2(4) sets forth the general prohibition concerning the use of force as specified above[191]. An exception to this prohibition is contained in Article 51 of the Charter: Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security[192]. The key phrase in Article 51, and its resultant impact on the customary law of selfdefense, is "armed attack." This phrase has been the source of controversy and debate over what the present limits are within the doctrine of self-defense[193]. "Two main schools of thought have developed over time regarding the meaning of 'armed attack': one advocates a restrictive interpretation of the phrase, while the other argues for an expansive view of the term[194]." The restrictive view holds that Article 2(4) limited or modified the customary law of self-defense under *Caroline* to allow self-defense only in cases of an actual armed attack[195]. The expansive view rejects this literalist interpretation of Article 2(4) and argues that the inherent right of self-defense named in the Charter is the *Caroline* limitations, which also provided for anticipatory self-defense[196]. To determine the meaning of "armed attack" and the limits of self-defense under the Charter, several sources are

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[190] Stuart, B. (1994). *Comparing the 1993 US air strikes on Iraq and the 1986 bombing of Libya*, the New Interpretation of Article 41 (24). GA. Intl & Compl. Pp. 99 – 106

[191] Antonio T. (1993). Foreign Armed Intervention in Internal Conflict. Martinus Nijhoff Publishers. Netherlands

[192] UN Charter, Article 51

[193] Ibid

[194] Ibid

[195] Derek, W. (1958). *Self Defence in International Law*. New York: Praeger. p. 67

[196] Ibid

critical and have decisive impact on the term. The decisions of the International Court of Justice provide strong authority for the limits of self-defense[197]. Additionally, the U.N. Security Council determinations made regarding the limits of self-defense are authoritative interpretations of the Charter[198].

The International Court of Justice in the *Corfu Channel Case*[199] supports the idea that the limits of self-defense under the Charter include anticipatory self-defense under the *Caroline* limits, which a strict interpretation of "armed attack" would not allow. The intention must have been, not only to test Albania's attitude but at the same time to demonstrate such force that she would abstain from firing again on passing ships. Having regard, however, to all the circumstances of the case **..** the Court is unable to characterize these measures taken by the United Kingdom as a violation of Albania's sovereignty[200]. The International Court of Justice specifically found that the British ships were within their rights. Having their guns manned and ready to fire in anticipation of attack was acceptable because of the prior actions of Albania. The Court based this decision on the prior aggressive acts by Albania toward Great British shipping. Thus, it held that the British need not have waited for an actual armed attack by Albanian gun positions before it could act in proportional response in anticipation of further attacks. Therefore, the Court upheld Great Britain's use of force in anticipation of attack as being consistent with Article 2(4) of the Charter. It did so, however, by specifically focusing on the limited nature of the response (proportionality) and necessity of the action, essentially reiterating the *Caroline* standards. Reviewing actions by the U.N. Security Council, by its interpreting State acts under

[197] Louis, H. (1989). *Right v Might, Use of Force*. Law and US Policy p. 6
[198] Ibid
[199] "Corfu Channel case, Judgment of April 9th, 1949:I.C. J. Reports 1949, P. 4."
[200] Ibid

the provisions of the Charter, also leads to the conclusion that Article 51 provides for anticipatory self-defense, but that the limits of anticipatory self-defense are as set forth in the *Caroline case*. William's comprehensive article on reprisals, deterrence and selfdefense in counter terror operations catalogues in chronological fashion the Security Council responses to Israel's claims of self-defense in actions against terrorist organizations[201]. From the period 1971 to 1975, "Israel claimed that its attacks on the PLO in Lebanon and Syria were justified as self-defense. These self-defense measures were necessitated by the fact that Lebanon and Syria failed, under the doctrine of State responsibility, to prevent their territory from being used by a third party as a base for attacks on another State[202]." In responding to the Israeli claims, the Security Council specifically found that there was, "no immediate and indispensable necessity for the Israeli action, following the criteria for the use of force set out by Daniel Webster in the Caroline incident[203]." In 1978, during the Litani Operation[204], Israel characterized its actions as preventive measures rather than reprisals for the Country Club raid[205]. "The Israeli justification was explicitly rejected by most Security Council members numerous representatives charged that Israel's action was premeditated, implying that self-defense measures must not be premeditated[206]."

[201] Ibid
[202] Ibid
[203] Ibid
[204] The 1978 Litani operations was the largest and longest counter terror operations prior to the 1982 war in Lebanon. Retrieved from https://www.globalsecurity.org/military/library/report/1987/SGC.htm *on 26 June 2015 at 5.10pm*
[205] Ibid
[206] Ibid

A review of the records of the San Francisco Conference supports the fact that the customary international law limits of self-defense were preserved with the passage of the Charter. At the Inter-American Conference on 3 March 1945, the Act of Chapultapec was signed establishing a collective defense system. There was concern among the delegates to the San Francisco Conference that the UN Charter might adversely affect this relationship. Article 51 was drafted to clarify this issue. Originally it was proposed that the article be placed in Chapter VIII of the Charter, which would have limited the right of collective self-defense to regional organizations and would have required prior approval by the Security Council. In the debate that ensued, the delegates intended clearly that the customary right of self-defense not be altered. As a result, Article 51 was moved from Chapter VIII of the Charter to Chapter VII[207].

To summarize the law of self-defense as it applies today, we must look to the principles set forth in the *Caroline* incident[208]. The necessity for self-defense must be instant, overwhelming, leaving no choice of means and no moment for deliberation. There is a small exception for anticipatory self-defense if the situation requiring immediate action meets the Caroline parameters. This customary international principle of law was not supplanted by the passage of the U.N. Charter. The background leading to the passage of the Charter, coupled with the International Court of Justice opinions, read in context with the decisions of the U.N. Security Council, demonstrate that the *Caroline* principles are the modern law of self-defense.

As observed from the crisis in Mali, certain modules were used by the insurgents in perpetrating their ideology. The insurgents used an act of terrorism in some aspects and a direct act of combatancy in other aspect in facing the Malian state. This chapter has dwelt on the analysis of the concept of International Peace and Security generally and has applied its

[207] Richard, J. (1989). Legitimate use of force against state sponsored terrorism. Humphrey Waldok (ed). Law of Nations. P. 410 – 419

[208] Robert, I et al (2001). Don't Tread on US International Law and Forcible State Response to terrorism in wts.wil.l.l. p. 1153 – 193

legislation where applicable as it concerns Mali, the conflict did not give way for peaceful resolution from the onset even though as we will see in our subsequent chapters, its root causes, the swift nature of the attack by the insurgents gave the crisis an international concern making the United Nations Security Council to see it as an international breach of peace requiring her to intervene even though the Malian state has every right to defend itself against aggressors internally or externally.

CHAPTER THREE

THE ROLE OF THE UNITED NATIONS SECURITY COUNCIL IN THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

3.1 INTRODUCTION

The maintenance of international peace and security represents the primary purpose behind the establishment of the United Nations. It reflects the intentions and desires of its founders who sought to establish an international organization for achieving this end. It is a prerequisite to any other purpose of the United Nations. Without it no friendly relations, no international cooperation, and no harmonization of nation's actions efforts could be achieved.

Because of the importance of international peace and security, the founders of the United Nations insisted on it and emphasized it in the preamble of the Charter of the Organization. They stated all the possible principles, methods and procedures which are to be followed to attain this end.

The founders of the UN said "we are going to create a collective security system, and this time we are going to make it work." This assertion dominated the entire process of planning and formulating the United Nations Charter[1]. The Charter provided a system for the pacific settlement or adjustment of disputes, and the use of collective measures in threat to or breaches of peace and acts of aggression.

The first method provided by the system is that of seeking peaceful settlement of disputes of situation by peaceful means listed in the Charter. For example, in Chapter VI, VII and VIII of the charter. The second method is that of taking collective actions (measures) of a coercive nature for the prevention and removal of threats to the peace and for the suppression of acts of aggression and other breaches of the peace. For example in Chapter VI deals with

[1] Mitrany, D. (1970) *The Functional Approach to World Organization"*, in *The New International Actors,* Cosgrove & K. Twitchett eds., London. p.131

"Pacific Settlement of Disputes" and Chapter VII reinstates "Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression".

The aim of this chapter is to highlight the organs saddled with the responsibility of carrying out the functions of this charter and how they have been effectively applied in situations of disputes especially as it concerns Mali which is the focal point of this discourse.

3.2 ANALYSIS OF THE UN SETTLEMENT OF DISPUTES

Chapter VI of the Charter of the United Nations contains the procedures for the pacific settlement of disputes. Article 33 obliges the parties to a dispute, "the continuance of which is likely to endanger the maintenance of international peace and security," to seek a solution by adopting either of the following; "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangement, or other peaceful means of their own choice[2]." Under this Article, any party to any dispute which is likely to endanger the maintenance of international peace and security is obligated to seek, first of all, a settlement by the traditional peaceful procedures already established in international law.

In the contemplation of the Charter, the first recourse of nations in dispute should be to any of the peaceful methods, in a manner that international peace and security, and justice, are not endangered. This position is justified, first, on the grounds that it will relieve the United Nations of the burden of handling too large number of controversies and, on the second, that it will minimize the interference of the United Nations in the affairs of sovereign states[3]. However, should the parties to a dispute fail to observe their obligation under Article 33 or their attempts be unsuccessful, the United Nations would intervene to consider the matters and to give its

[2] For a discussion on the means of peaceful settlement of disputes, *see* Mohammad Walid Abdulrahim, Introduction to Public International Law, chapter 14, Beirut (2006); and P. Malanczuk ed., Akehurst's Modern Introduction to International Law, chapter 18, 7th Rev. Edn, London and New York (1997). p. 106

[3] Hill, N. (1952) *International Organization*, Oxford Press. New York. p. 299

recommendations and decisions under the Charter. The Security Council is given the primary responsibility regarding peace and security. Whatever the action taken by the parties, they cannot prejudice the right of the Security Council to intervene by investigation or recommendation of appropriate procedures or methods of adjustment or settlement of any dispute which is likely to endanger international peace and security. The Security Council is entitled to intervene either by its own initiative, upon invitation of any member of the United Nations[4], upon a call of attention by the General Assembly[5], upon a call of attention by the Secretary General[6], or upon a complaint of a party to a dispute[7].

To discharge its duty for maintaining international peace and security, the Security Council may follow three causes of action. Firstly, the Security Council may call upon the parties to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, to settle their dispute by any of the peaceful means listed in the Article[8]. Secondly, it may, in case of a dispute of the nature referred to in Article 33, recommend "appropriate procedures or methods of adjustment[9]." Thirdly, it may recommend "terms of settlement as it may consider appropriate[10]." This legislation are crystal clear and gives the disputed parties options to settle whatever bridge. In the Malian situation none of this method was even used due to the spontaneity of the insurgents who almost overran the country in a spate of days thereby beclouding either of this method to be adopted in the early stages. This nonetheless as the presiding paragraph will disclose, the researcher discovers that the root causes of the Malian crisis which was mostly internal did not elicit the United Nations interference as it was expected that the country will pull itself together in settling her domestic dispute being a

[4] UN Charter Art. 33(2).
[5] Ibid Art. 35(1).
[6] Ibid Art. 99.
[7] Ibid Arts. 35(2) & 37(1).
[8] Ibid Art. 33(1).
[9] Ibid Art. 36(1).
[10] Ibid Art. 37(2).

sovereign state. In the instant stage, the United Nations security council had no choice than to abandon these three stages and authorized enforcement procedures by changing its mandate from peace keeping to peace enforcement to curtail the crisis which has escalated.

Although, under the Charter the Security Council is given the primary role for maintaining international peace and security, the General Assembly is not excluded from doing so. The General Assembly may call the attention of the Security Council to situations which are likely to endanger the maintenance of international peace and security[11]. It may discuss any question relating to the maintenance of international peace and security, and may make recommendations with regard to any dispute or situation to the concerned states or to the Security Council or to both[12]. It may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations[13]. Questions, disputes or situations may be brought before the General Assembly by the Security Council[14], by any member of the United Nations[15], or by any state which is a party to a dispute[16].

However, the General Assembly is prevented from making any recommendation with regard to any dispute or situation while the Security Council is exercising its function in respect of it, unless the Council so requests[17]. This is a limitation imposed on the General Assembly in making recommendations relating to the maintenance of international peace and security.

[11] Ibid. Art. 11(3).
[12] Ibid. Art. 11(2).
[13] Ibid. Art. 14.
[14] Ibid. Art. 11(2).
[15] Ibid
[16] Ibid Arts. 11(2) & 35(2).
[17] Ibid Art. 12(1).

In practice, with regard to the pacific settlement of disputes (or "peacemaking" as it may be known)[18], the United Nations has provided various means through which conflicts, disputes, and situations are contained and resolved[19]. The Security Council has applied all the available diplomatic techniques in various international disputes, in addition to open debate and behind-the scenes discussion and lobbying. It has called upon the parties to a dispute to resort to any peaceful means of their own choice to settle their disputes. It has recommended to the parties specific appropriate procedures or methods of adjustment. It has recommended to the parties ways to resolve their disputes, or terms of settlement[20]. It has dispatched special envoys or missions for specific tasks, such as investigation, fact finding, negotiation or reconciliation. It has requested the Secretary General to assist the parties in reaching a settlement to their disputes; the impartiality of the Secretary General is one of the United Nations' assets. The Secretary General has taken diplomatic initiatives to encourage and maintain the momentum of negotiations. He has used his "good offices" for mediating, or to exercise "preventive diplomacy". That is, to take actions in order to prevent dispute from arising, to resolve them before they escalate into conflicts or to limit the spread of conflicts when they occur. In many instances, for example the Secretary General has used his good offices in appointing envoys and formal mediators which are key tools of preventive diplomacy. Both have been important factors in cases of effective preventive diplomacy in Africa. Kofi Annan in Kenya, Haile Menkerios in Zimbabwe and Sudan, Said Djinnit in Guinea, Thabo Mbeki in Sudan, Blaise Compaore in Cote d'Ivoire and Guinea, Olusegun Obasanjo in the Rwanda/DRC conflict, Augustine Mahiga and Jerry Rawlings in Somalia, and Joachim Chissano on the LRA-affected areas are all good

[18] "Peacemaking" refers to the use of diplomatic means to persuade parties in conflict to cease hostilities and to negotiate a peaceful settlement of their dispute.
[19] *See UN Basic Facts,* Chapter 2.
[20] Probably the most famous Security Council's resolution recommending terms of settlement is the Resolution 242 (1967) dealing with the Middle East.

examples[21]. However, a number of these cases can be viewed only as highly qualified successes. The Secretary General has been instructed to avert threats to peace or to secure peace agreements.

To foster the maintenance of peace, the General Assembly has held special or emergency special sessions on issues such as disarmament. For example, the Assembly held a High-level Meeting, on achieving the goal of nuclear disarmament in Iraq, Iran and North Korea on September 26th, 2013[22]. Over years, it has helped promote peaceful relations among nations by adopting declarations on peace as was seen in the July 2011 General Assembly adoption by consensus its first resolution specifically on mediation. The landmark resolution entitled "Strengthening the role of mediation in the Peaceful Settlement of Disputes, Conflict Prevention and Resolution" (A/RES/65/283) which recognized the increased use of mediation, reflected on current challenges facing the international community in such mediation efforts and called on key actors to develop their mediation capacities as was applied in Ivory Coast during president Gbagbo's reign and Burkina Faso[23]. The peaceful settlement of disputes and international cooperation. It has established investigatory organs to examine matters under consideration by it, and to report back to it. The Security Council has established a wide-variety of Commissions to handle a variety of tasks related to the maintenance of international peace and security. Commissions have been created with different structures and a wide variety of mandates including investigation, mediation, or administering compensation. The body has applied this

[21] Preventive Diplomacy in Africa: Adapting to New Realities. Originally published in International Peace Institute. Available at https://www.crisisgroup.org/africa/preventive-diplomacy-africa-adapting-new-realities retrieved on 23 May 2016 at 5.09pm

[22] Press Release: United Nations General Assembly opens on 17 September 2013. Available at http://www.unis.unvienna.org/unis/en/pressrels/2013/unisinf491.html retrieved on 23rd May, 2016 at 4.09pm

[23] United Nations Peacemaker: The General Assembly and Mediation. Retrieved from http://peacemaker.un.org/peacemaking-mandate/general-assembly on 4th February, 2016 at 8.01pm

position in Sudan in 2007, Pakistan 2011, Lebanon 2009, Timor-Leste in 2007[24]. It has established subsidiary organs for observation, mediation, conciliation and good offices such as an ad-hoc subsidiary organ under Article 29 (for example a Commission of Inquiry composed of several members of the Council, of diplomatic staff of member states, of UN officials and so on) or by entrusting the Secretary General who will act accordance to Article 98[25].

Under Chapter VI relating to the pacific settlement of disputes and other articles of the Charter of the United Nations, the Security Council and the General Assembly may exercise their role in maintaining international peace and security by discussions, investigations and recommendations[26]. But the possibility remains that pacific settlement may fail to resolve the disputes which may become so serious as to constitute threats to or breaches of the peace or acts of aggression example Kuwait and Iran. In such cases, the United Nations may intervene by taking collective actions of coercive nature for the prevention and removal of the consequences of such disputes.

3.2.1 Collective Enforcement Actions

The method of using collective enforcement (coercive) actions by the United Nations is provided by Chapter VII of the Charter and the provisions of the "Uniting for Peace" Resolution[27] as analyzed below:

[24] Reports of the Practice of the Security Council Commissions and Investigative Bodies. Available at http://www.un.org/en/sc/repertoire/subsidiary_organs/commissions_and_investigations.shtml retrieved on 13th May, 2016 at 4.02pm

[25] Benedetto C. (2010). *The Law and Practice of the United Nations.* The Law and Practice of the United Nations. Boston: Martinus Nijhoff *Publishers. p.86*

[26] Ibid

[27] The General Assembly adopted this resolution on November 3, 1950, G.A. Res. 377(a) (V), 5 GAOR, Supp. 20, U.N. Doc. A/1775, p. 10

3.2.2 Chapter VII of the Charter

Chapter VII authorizes the Security Council to deal with threat to peace, breach of peace, or act of aggression, and to take collective enforcement actions (measures) in order to maintain or restore international peace and security.

> Article 39 states; "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security"

The Security Council, under Article 39, the first Article of Chapter VII, is given a wide discretion in determining "the existence of any threat to peace, breach of peace, or act of aggression", and to "make recommendations", or to "decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

> Article 41 states "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42 states "Should the Security Council consider that measures provided for in Article 41would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations"

A determination under Article 39 is an essential pre-condition to the operation of Chapter VII of the Charter. The Security Council cannot exercise its powers under this Chapter, particularly Articles 41 and 42, without such a determination made expressly or implicitly[28].

Before exercising its most far-reaching powers under Articles 41 and 42, the Security Council, under Article 40, may call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable in order to prevent an aggravation of the situation, provided that such provisional measures shall be without prejudice to the rights, causes, or position of the parties concerned. Such provisional measures may include a demand that all parties concerned cease fire or withdraw their forces behind specified truce lines examples Iran, Iraq and Israel.

In case of failure of the parties or any of them to comply with the provisional measures, or the provisional measures are inappropriate, the Security Council may proceed to recommend or decide measures under Articles 41 and 42. Under Article 41, the Security Council may decide to take measures not involving the use of armed force to give effect to its decisions, and may call upon the members of the United Nations to apply such measures. These measures may include complete or partial interruption of economic relations, means of transportation, means of communication, and the severance of diplomatic relations.

Should the measures taken under Article 41 be inadequate or have proved inadequate, the Security Council may decide to take measures under Articles 42. The Security Council may take armed action by air, sea, or land forces as may be necessary to maintain or restore international

[28] Walid, A. (2013). The United Nations. Retrieved from https://sites.google.com/site/walidabdulrahim/home/my-studies-in-english/25-the-united-nations on 4 June, 2015 at 7.10pm

peace and security[29]. This action may include demonstrations, blockade, and other operations by air, sea, or land forces of members of the United Nations.

To assist the Security Council in planning for the application of armed forces, It requires the establishment of a "Military Staff Committee" consisting of the Chiefs of Staff of the permanent members of the Security Council or their representatives[30]. This Committee is responsible under the Security Council for the strategic direction and command of any armed forces placed at the disposal of the Security Council[31].

To give assurance that effective forces will be at the disposal of the Security Council, all members of the United Nations undertake, under Article 43 of the Charter, to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security. No such special agreements under Article 43 have ever concluded between the United nations and its member states. Members are also required to make available national air-force contingents for combined international enforcement action[32].

To assure the effectiveness of the enforcement action decided by the Security Council, members of the United Nations are required to join in affording mutual assistance in carrying out such measures[33]. Moreover, the action required to carry out the decisions of the Security Council for the maintenance of international peace and security must be taken by all the members of the United Nations or by some of them, as the Security Council may determine[34].

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[29] The use of force by authorization of the Security Council, and upon a recommendation of the General Assembly constitute two exceptions to the principle of the prohibition of the use of force provided in Article 2(4) of the Charter of the United Nations. On this subject, *see* Abdulrahim, *Introduction to Public International Law*, pp. 180-183. Retrieved from https://sites.google.com/site/walidabdulrahim/home/my-studies-in-english/25-the-united-nations on 4 June, 2015 at 7.10pm

[30] UN Charter Arts. 46 and 47(1) & (2).

[31] Ibid Art. 47(3).

[32] Ibid Art.45.

[33] Ibid. Art. 49.

[34] Ibid art. 48.

All the members of the United Nations are bound by the decisions of the Security Council under Chapter VII of the Charter.

In practice, the Security Council has exercised its powers under Chapter VII of the Charter as is the case in Sudan in 2005 and Mali in 2012. It has decided on collective enforcement measures to maintain or restore international peace and security[35]. Such measures have ranged from economic and diplomatic sanctions to military actions as applied through AFISMA and MINUSMA in Mali.

The Security Council has resorted to economic sanctions as enforcement measures to maintain or restore international peace and security. Economic sanctions have taken many forms, ranging from specific trade ban to full embargoes. Such sanctions were imposed, for example, against South Africa's apartheid regime in 1977[36], Iraq in 1990[37], the Former Yugoslavia in 1991[38], and Libya in 1992[39], Afghanistan[40], Belarus[41], Bosnia and Herzegovina (freezing of funds)[42], Burundi[43], and Central African Republic[44].

The Security Council has authorized the use of military forces, for peace-keeping and peace-enforcing actions, to maintain or restore international peace and security. Peace-enforcing (Enforcement) actions were authorized against North Korea in 1950 and Iraq in 1991. Peace-keeping forces have been established in many instances, for example, in Palestine (1948), in the Congo (1960), in Cyprus (1964), in Lebanon 1978, in Bosnia and Herzegovina (1995)

[35] *UN Basic Facts*, chapter 2.
[36] James A. and Senwan A. (1998): Sanctions: An Analysis. Global Policy Forum. New York. USA
[37] Ibid
[38] Ibid
[39] Ibid
[40] https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list retrieved 3 May, 2015 at 5.09pm
[41] Ibid
[42] Ibid
[43] Ibid
[44] Ibid

Libera (2003), Cote'd Ivoire (2004), Sudan Dafur (2007), Democratic Republic of Congo (2010), South Sudan (2011), Mali (2013), Central African Republic (2014)[45].

Although Chapter VII of the Charter which empowers the Security Council to decide collective enforcement measures for the purpose of maintaining peace and security does not empower the General Assembly with such authority. This organ can exercise such authority under the provisions of the "Uniting for Peace" Resolution as was applied through the ECOWAS mechanism empowering the African International Support Mission in Mali (AFISMA) currently on ground maintaining peace through the ECOWAS regional mechanism.

3.2.3 Uniting for Peace Resolution

The Uniting for Peace Resolutions grants the General Assembly the powers to act in place of the Security Council if the latter fails, because of the lack of unanimity of its permanent members, to discharge its primary responsibility in maintaining international peace and security in any case where there appears to be a threat to the peace, breach of the peace or act of aggression[46]. Under this Resolution, the General Assembly may by recommendations do anything the Security Council may do by decisions under Chapter VII of the Charter. The Assembly may consider the matter immediately and recommend to members collective measures, including in case of a breach of peace or act of aggression the use of armed forces deemed necessary for the maintenance or restoration of international peace and security[47].

To ensure that the General Assembly could act promptly and effectively, the Uniting for Peace Resolution provides a procedure for calling of an emergency special session of the Assembly. The Assembly may meet in an emergency special session within twenty-four hours

[45] Retrieved from *peaceoperationsreview.org/wp-content/uploads/2015/04/2008_annual_review.pdf* on 23 June 2015 at 4.10pm
[46] Uniting for Peace Resolution Section A.
[47] Ibid

upon the request of any of the nine members of the Council, by the majority of members of the United Nations, or by one member if the majority of members concur[48].

Under the Uniting for Peace Resolution, the General Assembly asserts its right to act in the same manner that the Security Council can act under Chapter VII of the Charter, but only when the Council fails to act. The Assembly may determinae the kind referred to in Article 39, and may recommend collective measures to be undertaken in case of threat to the peace, breach of the peace, or act of aggression. It should be noted that this right granted to the Assembly is not intended to be a substitute for the Council's responsibility for the maintenance of international peace and security, but rather a supplement[49].

The General Assembly had its first experience with the Uniting for Peace Resolution on February 1, 1951, after the Soviet Union's veto blocked the Security Council from taking any action against the intervention of the People's Republic of China in Korea. The Assembly exercised its authority by adopting a resolution determining that the Chinese intervention in Korea constituted an act of aggression, and calling upon the Chinese Government to cease hostilities and to withdraw from Korea[50]. After the failure of the Chinese Government to comply with the above resolution, the Assembly adopted another resolution recommending the employment of economic sanctions against the Chinese Government and the North Korean authorities[51].

The Uniting for Peace Resolution was again implemented during the 1956 Middle East Crisis[52]. The General Assembly assumed its responsibility for maintaining international peace and security after the failure of the Security Council to discharge its duty because of the veto

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[48] Ibid
[49] *Ibid*
[50] General Assembly Resolution 498 (V) of 1 February 1951, 5 U.N. GAOR Supp. (No. 20 A) at 1, U.N. Doc A/1775/Add. 1 (1951).
[51] General Assembly Resolution 500 (V) of 18 May 1951, id. at 2.
[52] www.un.org/en/**peace**keeping/missions/past/unef1backgr2.html *retrieved 4th May, 2016 at 4.10pm*

power used by the United Kingdom and France. In its emergency special session opened on November 1, 1956, the general Assembly adopted a series of resolutions. In the first resolution, it urged the parties to comply with certain provisional measures, including the cease-fire, the withdrawal of forces and the full observance of armistices agreements, and the reopening of the Suez Canal and the restoration of secure freedom of navigation[53]. Also, it recommended that all members of the United Nations refrain from introducing military goods in the area of hostilities and from any acts which would delay or prevent the implementation of its resolution. In the last resolution, the Assembly decided the establishment of the United Nations Emergency Force for the task of implementing the measures provided for in its first resolution[54].

Regarding the Israeli annexation of the occupied Syrian Golan Heights, the failure of the Security Council to take any action against Israel, because of the United States' veto, led to the transfer of the matter to the General Assembly under the Uniting for Peace Resolution[55]. On February 6, 1982, the General Assembly adopted a resolution calling on all its members to apply economic and diplomatic sanctions against Israel on a voluntary basis, and laying the groundwork for the possible expulsion of Israel from the United Nations[56].

The practice of the General Assembly demonstrates that this organ can, under the Uniting for Peace Resolution, do by recommendations anything the Security Council can do by decisions under Chapter VII of the Charter. The Assembly can determine, call for provisional measures, and recommend economic, diplomatic and military measures similar to those which the Security

[53] General Assembly Resolution 997 (ES-I) of 2 November 1956, U.N. GAOR ES-I Supp. (No. 1) at 2, U.N. Doc. A/3354 (1956).
[54] General Assembly Resolution 1000 (ES-I) of 5 November 1956, *Ibid*. at 2.
[55] Security Council Resolution 500 (1982), 37 U.N. SCOR Res. & Decs. (1982) at 2, U.N. Doc. S/INF/37 (1982). Note that the S.C. adopted a resolution in December 1981, after the annexation of the Golan Heights by Israel, calling on Israel to rescind its legislation, and declaring such annexation null and void. S.C. Res. 497 (1981), 36 U.N. SCOR Res. & Decs. (1981) at 6, U.N. Doc. S/INF/36 (1981). However, the council failed because of the negative vote of the U.S. to adopt a draft resolution introduced by Jordan calling on all members of the United Nations to consider sanctions against Israel for annexing the Syrian Golan Heights. *See* 37 U.N. SCOR Supp. (Jan.-Mar. 1882) at 5, U.N. Doc. S/14832/Rev. 1 (1982).
[56] General Assembly Resolution 1 (ES-IX) of 5 February 1982.

Council can take under Articles 39, 40, 41, and 42 of the Charter. However, the recommendations of the General Assembly under the Uniting for Peace Resolution do not have the legal force and effect that the Council's decisions have. Such recommendations are not legally binding upon members of the United Nations. They do not legally commit members to action. However, although this might be the case, it might logically be expected that a resolution by the Assembly that has broad support and to which the great majority of members of the United Nations have committed themselves to the extent of voting for it, would receive as favorable a response in terms of compliance as a resolution by the Security Council[57]. Although as crispy as this procedure is, it was not visibly adopted in the Malian situation due to the spontaneous actions undertaken by the insurgents which was very swift and endangering the polity and creating lot of security concern.

3.2.4 United Nations Forces

The use of military forces by the United Nations for the purpose of maintaining and restoring international peace and security represents the effective measures which may be employed by the Organization under the system of collective actions. The constitutional bases for the establishment of each of these forces have been different. The tasks which these forces have been required to perform have ranged from a mere policing action to an enforcing action. The composition, size and command have varied. The relations of the forces with and within states have been diverse. For example, one of the differences between municipal and international law is that the former has enforcement agencies while the later, that is international law has no enforcement agency such as Army, Police and other persons.

[57] Goodrich, L. et al (2002) Charter of the UN Commentary and Doc. https://law.wustl.edu/sba/upperlevel/International%20Organizations/IntOrg-Mutharika1.pdf retrieved 30th June, 2015 at 4.08pm

The constitutional bases for the establishment of United Nations forces are found in the Charter of the United Nations and the Uniting for Peace Resolution. Under the Charter, the Security Council may, in the last resort, take armed action involving the establishment of international forces for the purpose of enforcing its decisions for ending a threat to the peace, breach of the peace, or act of aggression. Articles 29, 39, 40, 41 and 42 provide possible constitutional bases for the establishment of United Nations military forces by the Security Council in order to maintain or restore international peace and security. Article 29 authorizes the Security Council to establish such subsidiary organs as it deems necessary for the performance of its functions; the establishment of United Nations forces is coming within this scope of authority. United Nations forces may be established as collective measures authorized to be taken by the Security Council under Articles 39, 40, 41 and 42 of Chapter VII.

With regard to the General Assembly, the Uniting for Peace Resolution provides a constitutional basis for the establishment of United Nations forces by the General Assembly. Further constitutional bases may be found in Articles 10, 11, 14, and 22 of the Charter of the United Nations. Under Articles 10, 11, and 14, the General Assembly may establish United Nations forces for the task of implementing its recommendations with regard to any question, situation or dispute, for the purpose of maintaining international peace and security. Article 22 authorizes the general Assembly to establish such subsidiary organs as it deems necessary for the performance of its functions. The establishment of United Nations forces are coming within this scope of authority

The United Nations forces have performed various functions and tasks in accordance with the circumstances of each case. The functions and tasks of the United Nations forces have ranged from a peace-enforcing nature to a peace-keeping nature.[58] The United Nations peace-

[58] The UN force which was established in Korea in 1950 was the only force of a peace-enforcing nature.

keeping forces have been entrusted to perform peace-building functions in addition to the peace-keeping functions. Peace-building functions are functions aiming to support environments and structures which strengthen and consolidate peace and security. Areas of activity include military security, civil law and order, judicial-building or reform, human rights, political progress (referendums and elections)[59], administration, health, education, reconstruction, social development and economic development. The United Nations peace-keeping forces are increasingly charged with functions related to peace-building, in addition to those related to the maintenance of peace and security. Generally, they are charged to maintain ceasefires as witnessed in Sierra Leone and Liberia and separate forces, to prevent the recurrence of war and violence, to implement comprehensive settlement, and to protect or facilitate humanitarian operations and activities. It seems that there is no limit on the functions which the United Nations forces can perform. Future conflicts are likely to present new and complex challenges to the international community, to which it will respond. Effective responses to these challenges will require courageous and imaginative courses of action to be taken, and new means and tools for peace and security to be utilized. For example, the Security Council in the crisis in Central African Republic adopted Resolution 2127 under Chapter VII of the UN Charter. The Resolution recognized the Transitional Authorities' primary responsibility to protect the population of the CAR, and simultaneously authorized the deployment of MISCA and an additional contingent of French troops to take all necessary measures to contribute to the

[59] The United Nations electoral assistance has become a regular and increasingly important feature in United Nations peace operations. In 2005 and 2006, UN peace-keeping forces supported elections in six post-conflict countries – Afghanistan, Burundi, Haiti, Iraq, Liberia and the Democratic Republic of the Congo-with populations totaling over 120 million. Retrieved from www.un.org/en/events/peacekeepersday/2007/pdfs/factsheet.pdf *on 25 June, 2015 at 4.19pm*

protection of civilians, the stabilization of the country, and the restoration of State authority, among others[60].

Over the years the United Nations forces have been entrusted with the following missions: to repel an aggressor or aggressors by using full military actions by air, sea and land as was seen in Iraq and Kuwait crisis in 1990[61]; to secure or supervise cease-fire as was witnessed in Liberia, truce and armistice agreements; to control frontiers; to secure the withdrawal of armed forces and personnel of the conflicting parties; to maintain a buffer zone between the conflicting parties; to participate in mine clearance; to assist in the exchange of prisoners of war; to ensure the release of political prisoners or detainees; to assist in and secure safe return of refugees and displaced inhabitants; to establish and maintain safe zones or protected areas; to implement or assist in the implementation of peace agreements; to disarm or disband (or to assist in or supervise the disarming or disbanding) armed groups; to collect, storage or destruction of weapons; to establish and maintain law and order (security and stability); to restore peace and achieving national Mali reconciliation; to prevent the occurrence of Democratic Republic of Congo civil war; to maintain the territorial integrity and independence of state of Sierra Leone; to assist legitimate governments in returning Liberia to their effective authority over their territory or in specific areas; to support Dafur transitional governments; to provide humanitarian protection; to coordinate, facilitate and protect humanitarian relief operations; to secure vital infrastructures; to establish or maintain the functioning of civil service facilities; to prepare, hold, or monitoring free referendums of Libya elections; to administer a country, a territory or a specific zone; to provide technical assistance for institutional building, such as the building of law enforcement institutions and judicial organizations; to perform certain civil administrative functions; to secure or monitor the respect

[60] http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-the-central-african-republic#history retrieved on 21 June, 2016 at 3.09pm

[61] This was the case of Unified Command in Korea (1950-1953).

of human rights and fundamental freedoms; to assist in the development and economic reconstruction of Iran.

In the practice of the United Nations, the structure, composition, size and command of the United Nations forces have varied in accordance with the circumstances of each case, and the tasks and functions they have been requested to perform[62]. The United Nations forces have been composed of national contingents voluntarily provided by member states of the United Nations. Their sizes ranged from several observers to thousands and hundreds of thousands of persons[63]. The strategic and political controls over the forces have been for the United Nations (the Security Council, the General Assembly or the Secretary General). The direct operational responsibility and day-to-day administration of force is entrusted to the commander of the force. The commander operates under the instructions and guidance of the United Nations. Since the United Nations forces are composed of national contingents from the contributing states, each of these contingents is placed under the command of its own national commanding officers who are under the control of the United Nations. The chain of command runs directly from the commander of the force to the commanding officers of each national contingent. A force is subjected to orders and instructions only from its commander and, through him, from the United Nations. The officers of the contingents receives their instructions and directions from the commander of the force, advised and assisted by his staff. The commanding offices of the units are responsible to the commander of the force for the proper functioning and discipline of its personnel.

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[62] Mohammad A. (1994) *The United Nations and the Maintenance of International Peace and Security*. Saida-Beirut. p. 46

[63] The smallest peace-keeping force is UNMOGIP (1949-) between India and Pakistan, it is consisted of 45 military observers and 19 international civilians. Personnel. Note that the UNFIL in South Lebanon consists of as of 30 April 2007 of: troops 13,251; international civilian 202, local civilian p. 308.

The United Nations establishes its international forces on the basis of voluntary contribution of its member states. The contributing states enters into negotiations with the Secretary General acting on behalf of the United Nations, are concluding agreements with him. They provide contingents to serve under the control of the United Nations, and its political and strategic direction on the field. However, a contributing state retains the right to withdraw all its contingents or a particular unit or to replace the national commanders of its units, after a notice informing the United Nations of its decision. Nevertheless, it is pertinent that any change in the contingents must have been made in consultation with the contributing states and the commander of the United Nations forces. The national contingents retain their separate national identities and organizational units. The national commanders also retain direct responsibility for national contingents serving under them. Although the national commanders have the right to communicate with their governments, they have had to receive instructions from the United Nations through the commander of the United Nations forces, not from their governments. In this context, the United Nations is regarded as international forces representing the interests of the United Nations (the international community), not the national interests of contributing states. This is the main principle upon which the relationship between the contributing states and the United Nations forces has been based.

The practice of the United Nations demonstrates that the consent of the host states on whose territory the United Nations forces operates is a pre-condition for the presence of these forces. The consent of the host states is required in every action taken by the United Nations. It is required for the entry, stationing and stabilization of the forces. With regard to the questions of the composition, functions of the force, and the contributing states, the position has been that

the view of the host state is one of the determinant elements to be considered, although the United Nations has the sole prerogative on decisions on these questions.

The United Nations, on many occasions, have performed different functions, and played various roles. Its forces have constituted an executive action on behalf of the United Nations for the purpose of maintaining international peace and security. Although in most of the crises, the United Nations succeeded in preventing further fighting between the parties. It however did not succeed in finding lasting solutions or in reaching lasting peace to most of these crises example Libya and Darfur. It has had challenges responding to major crises, prevent wars and violence, or repel aggression. Its efforts in urging and encouraging parties to settle their differences peacefully have not been successful in most cases brought before it. Its efforts to enforce world law, peace and order have not been too effective or very successful and some instances as in the Malian crisis situation.

The experience of the United Nations in maintaining international peace and security cannot be viewed with complete satisfaction. This imperfection raises a serious question regarding the effectiveness of the United Nations system for maintaining international peace and security. Apart from all the arguments in this respect, the United Nations present system for maintaining international peace and security through the use of military forces constitutes the better system that has ever been established by the international community. It is not clear whether the situation in the international stage would have been better if the United Nations system had been differently constructed. The present United Nations system provides effective means and processes which may be employed by the international community for the maintenance and restoration of international peace and security. The defect is not related only to the system, but primarily to the unwillingness of certain members of the United Nations to make

it work. International peace and security are entirely dependent upon the willingness of the member states of the United Nations to cooperate toward this end.

The situation in Mali with its ongoing security crisis is evident of some of the lacuna highlighted in the sub paragraph above as the UN has not completely stemmed out the problem in the country even with their presence on ground and the fund expended thus far. Upon the researcher's visit to Mali (see appendix I). He observed that ever since its deployment, MINUSMA has faced a complex set of challenges that have prevented the mission from achieving its full potential and successfully implementing its mandate. One of the main challenges concerns mission capacity: even though MINUSMA has a robust mandate, it needs more personnel and greater material capacity in order to be able to implement this mandate. The researcher's interaction with some of MINUSMA's operatives (see appendix III, IV & V) indicated that the mission faces lack of commitment by UN member states to contribute troops. Partially (as he later realized) was because of high security risks and asymmetric attacks from armed groups in Northern Mali, troop-contributing countries (TCCs) have been extremely cautious regarding areas to deploy to. As a senior MINUSMA staff member explained, 'TCCs see Mali as training ground. Most of the TCCs are not willing to expose their troops to the security threats in Northern Mali and run the risk of getting them back in body bags. Ever since its start-up phase the mission has suffered from a lack of staff as well as technical and logistical support. This as the researcher further observed has implications for MINUSMA's ability to tackle the deteriorating security situation, which poses severe threats to its personnel and the civilian population in Mali. these complexities have turned Mali into one of the most complex settings for UN peacekeeping operations.

3.2.5 The Secretary-General

Just as the impotence of the Security Council stimulated a growing awareness of the potentialities of the General Assembly, it similarly underlined the role to be played by the United Nations Secretary-General. By Chapter XV Article 99 of the UN Charter, he is entitled to bring to the attention of the Security Council any matter which he thinks may threaten the maintenance of International peace and security and this power is in addition to his function as the chief administrative officer of the United Nations organization under Article 98[64]. In effect, the Secretary-General has considerable discretion and much has depended upon the views and outlook of the person filling the post at any given time, as well as the general political situation. The good offices role of the Secretary-General has rapidly expanded[65]. In exercising such a role, Secretaries-General have sought to act independently of the Security Council and General Assembly, in the former case, in so far as they have not been constrained by binding resolutions (as for example in the Kuwait situation of 1990–1). The assumption of good offices and mediation activity may arise either because of independent action by the Secretary-General as part of the exercise of his inherent powers or as a consequence of a request made by the Security Council[66] or General Assembly[67].

In some cases, the Secretary-General has acted upon the invitation of the parties themselves, and on other occasions, the Secretary-General has acted in concert with the relevant regional organizations. As evident when the then Secretary-General Banki Moon and the three briefers all highlighted the existing cooperation between the United Nations and the three regional organizations in combating terrorism, drug trafficking and organized crime, and in

[64] Article 98 Stating that the Secretary-General also performs such other functions as are entrusted to him by the General Assembly, Security Council, Economic and Social Council and the Trusteeship Council

[65] Franck, T. (1995). *Fairness in International Law and Institutions*, p. 1295, Oxford Publications.

[66] Security Council Resolutions 242 (1967) regarding the Middle East; 367 (1975) regarding Cyprus; 384 (1975) regarding East Timor; 435 (1978) regarding Namibia and 713 (1991) regarding Yugoslavia.

[67] General Assembly Resolution ES-6/2, 1980 with regard to Afghanistan, and *The Geneva Accords* published by the United Nations, 1988, DPI/935-40420.

countering other threats to peace and security in Eurasia and Central Asia, including the United Nations Regional Centre for Preventive Diplomacy for Central Asia[68].

In many cases, the Secretary-General will appoint a Special Representative to assist in seeking a solution to the particular problem. The development of good offices and mediation activities first arose as a consequence of the severe restrictions imposed upon UN operations by the Cold War. The cessation of the Cold War led to increased activity of the UN which expanded the work of the Secretary-General expanded as he sought to bring to fruition the wide range of initiatives undertaken by the organization.

The UN too is playing a very important role on its part in the maintenance of International peace and security, through its various agencies. Till 2017 we can see that UN has conducted 71 peace keeping mission since inception[69]. Presently, 16 operations are still in progress and the body still maintains peace through her subsidiaries like United Nations Children Emergency Fund (UNCEF), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Health Organization (WHO), United Nations Development Program (UNDP), International Labor Organization (ILO), United Nations Human Right Council (UNHRC) which tries to ensure the welfare of persons through it.

In respect to the recent Malian crises, the Secretary General good offices became very active after the insurgent has been pushed out. This is understandable as no one envisaged the speed of the insurgent action carried on the Malian state. So far, what the researcher has noticed is that the Secretary General is doing all he can to push for legislations that would really support the quelling of the crisis.

[68] United Nations Committed to Cooperation with Regional Bodies, Secretary-General Affirms as Eurasian, Central Asian Entities Brief Security Council. Available at https://www.un.org/press/en/2016/sc12566.doc.htm retrieved on 29th June, 2016 at 4.10pm

[69] https://www.un.org/en/peacekeeping/resources/statistics/factsheet.shtml retrieved 9th April, 2016 at 9.07am

3.3 APPLICATION OF ARTICLE 39 UNDER CHAPTER VII OF THE UNITED NATIONS CHARTER

Article 2 (4) of the United Nations Charter states that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

Further, Article 2 (7) adds that "this principle shall not prejudice the application of enforcement measures under Chapter VII." Hence, the Security Council has the primary responsibility for the maintenance of international peace and security (Article 24 (1)). The Security Council is a political body; entitled to adopt measures having legal consequences. The competence granted to the Council by the Charter is a normative one. Under Chapter VII it can take enforcement action to maintain or restore international peace and security. Such measures range from economic sanctions to military interventions in case the Security Council has previously established the existence of "any threat to the peace, breach of the peace or act of aggression" under Article 39 of the Charter. This is of utmost importance, as the drafters of the Charter refused to define what constitutes "any threat to the peace" and, on the contrary, agreed that a responsible and capable Council should determine whether there was a threatening situation or not, on a case by case basis[70]. Thus, after a decision under Article 39 stating that a situation constitutes any threat to, or breach of the peace, the Security Council can order states to undertake provisional measures under Article 40, measures under Article 41 – normally referred to as sanctions – and finally, military action under Article 42, against the entity responsible for the threat or breach[71]. The Security Council seldom states explicitly on which article it is basing

[70] Müller, J. (2006.), *Reforming the United Nations*. Hoter Publishing Press, London. p.14

[71] 15 P/3, 1 UNCIO, Words of the United States Representative at the Opening of the Conference in San Francisco, 124.

its resolution, but confines itself to state that it is "acting under Chapter VII of the Charter.[72]" The fact that a situation constitutes a threat to the peace does not prejudice the objective nature of the specific situation. The general concept of international peace and security can cover all kinds of situations[73].

The wide margin of Appreciation within the Framework of Chapter VII, according to Article 39 of the UN Charter, the Security Council "shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken ...". This means that on the basis of actual facts, the Council will decide the severity of the situation. Its very wide discretion is not arbitrary[74]; any situation contrary to international peace and security may potentially be determined. This wide margin of appreciation cannot be delegated[75]. However, the competence of the Council is not unlimited. This conception of the discretion of the Security Council has two limits.

On the one hand, it is obliged to act on real and imminent threats[76].On the other, it serves as a curb on the abuse of power. The end of the Cold War and the disappearance of the political blocs have led to a closer co-operation among the permanent members of the Security Council. In some circumstances, China and the Russian Federation have preferred to abstain, rather than exercise their right to veto, thereby allowing the Council to develop an intense executive, regulatory and disciplinary activity within Chapter VII[77].

[72]S/RES/824 (1993) of 6 May 1993; S/RES/841 (1993) of 16 June 1993; S/RES/917 (1994) of 6 May 1994; S/RES/1160 (1998) of 31 March 1998.
[73]ICTY Appeals Chamber Tadić Decision 1995 IT-94-1-AR72, para. 28.
[74]Conforti B. (2003), "*UN Targeted Sanctions, Legal Safeguards and the European Convention on Human Rights*", Nord. J. Int'l L. 72 p. 178.
[75]Zaum, M. (2008) "*The Security Council, the General Assembly and War: The Uniting for Peace Resolution*", 154 (2)
[76]Ibid
[77]Nolte, G. (2002), "*The different functions of the Security Council with respect to Humanitarian Law*," Koninklijke Brill, Netherlands. P. 273 – 335.

Traditionally not only armed conflicts between states have been identified as a threat to international peace and security[78]but under certain circumstances also direct or indirect support by one state for armed rebel groups operating in another state[79].

However, the living conditions of civilians and respect for human rights have not always been considered essential elements of peace and security. Until 1990 the protection of human rights was regarded as an internal affair of states. Considering Article 31 3. b) of the Vienna Convention on the Law of Treaties, the Security Council recognizes that certain domestic situations (e.g. civil wars or serious violations of human rights) can be considered threats to international peace and security and, therefore, fall under its primary responsibility[80]. The early Council enforcement actions against violations of human rights and the humanitarian intervention in internal affairs were considered innovative and not always peacefully accepted[81].

It was, for example, the magnitude of the repression perpetrated against the Kurdish civilian population of northern Iraq and the masses of refugees and displaced persons with cross-border incursions which threatened the peace and security in the region and thus, led the Security Council to authorize humanitarian intervention in Iraq. Subsequently, it also authorized military

[78]S/RES/1297 (2000) of 12 May 2000; S/RES/1298 (2000) of 17 May 2000 and S/RES/1308 (2000) of 17 July 2000; S/RES/1312 (2000) of 31 July 2000 and S/RES/1430 (2002) of 14 August 2002; on the situation between Eritrea and Ethiopia. On the situation between Iraq and Kuwait, S/RES/661 (1990) of 6 August 1990; S/RES/986 (1995) of 14 April 1995; S/RES/1284 (1999) of 17 December 1999; S/RES/1382 (2001) of 29 November 2001; S/RES/1447 (2002) of 4 December 2002

[79]In the Nicaragua case the Court stated "… that the US had to have effective control of the operations in order to be responsible" and that was finally denied, Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), ICJ Reports1986, 14 et seq. (101 et seq., para. 191) which analyses the customary nature of the rule prohibiting the use of force and recognizes that "it will be necessary to distinguish the gravest forms of the use of force (those constituting an armed attack) from other less grave forms." S/RES/1343 (2001) of 7 March 2001 and S/RES/1497 (2003) of 1 August 2003, on the situation in Liberia.

[80]Valek, V. (2005) "*Is unilateral humanitarian intervention compatible with the UN Charter*?", Mich. J. Int'l L.26, 1223 et seq. (1233).

[81] Abiew, K. (1999). *The Evolution of the Doctrine and Practice of Humanitarian Intervention*. University of Alberta Publishing Press, Canada. p. 234

action in similar situations e.g. in the former Yugoslavia[82],Somalia[83],Rwanda[84],Kosovo[85],Côte d'Ivoire[86],and East Timor[87].

In other instance, the Council has estimated that the dismantling of a state's institutions, particularly the police and the judiciary, the breakdown of law and public order, or the illegal exploitation of natural resources are threats to the international peace and security[88].

The Council has also enabled the system of collective security against the failure to protect civilians during armed conflict[89],to control the risks of small arms trafficking[90],against the recruitment of child soldiers[91],to stop child abuse[92]and to ensure the safety of its staff[93].

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[82]S/RES/770 (1992) of 13 August 1992 and S/RES/757 (1992) of 30 May 1992, the Council authorized the states to take all measures necessary to facilitate the delivery of humanitarian assistance in Bosnia and Herzegovina, in coordination with the United Nations. Retrieved from www.un.org/en/sc/documents/resolutions/1992.shtml *on 29 June, 2015 at 4.59pm*

[83]S/RES/733 (1992) of 23 January 1992, where the Security Council ex-pressed "alarm at the worsening civil war in Somalia and the heavy losses of human lives". Retrieved from https://documents.tips/documents/4d068un-collective-security-system-mpunyb07lopez-jacoiste14.html on 29 June, 2015 at 5.04pm

[84] S/RES/918 (1994) of 17 May 1994. Retrieved from www.refworld.org/docid/3b00f2093c.html *on 28 June, 2015 at 6.10am*

[85]Indeed, the violence in the province of Kosovo was spreading into the Federal Republic of Yugoslavia. Under these circumstances the Security Council adopted resolution S/RES/1160 (1998) of 31 March 1998, condemning the Serbian security forces for excessive power abuse committed against civilians and the Army for the Liberation of Kosovo for terrorist acts. After the armed intervention and as a result of it, the Federal Republic of Yugoslavia and the Kosovo came to an agreement. In S/RES/1244 (1999) of 10 June 1999 the Council endorsed the agreement of the parties and the G8, and, acting under Chapter VII, established a security force for Kosovo. Retrieved from https://www.un.org/press/en/1998/19980331.SC6496.html *on 29 June 2015 at 6.14am*

[86]S/RES/1572 (2004) of 15 November 2004 and S/RES/1643 (2005) of 15 December 2005. Retrieved from www.un.org/en/peacekeeping/missions/unoci/resolutions.shtml *on 29 June 2015 at 6.11am*

[87] S/RES/1264 (1999) of 15 September 1999. Retrieved from https://www.phdn.org/archives/www.ess.uwe.ac.uk/Timor/News23.html *on 29 June 2015 at 6.19am*

[88]Doc. S/2001/357 of 12 April 2001 and Doc. S/2001/1072 of 13 November 2001 Uganda, Zimbabwe and the Government of the Democratic Republic of the Congo. Retrieved from www.un.org/press/en/2003/sc7642.doc.htm *on 29 June 2015 at 6.20am*

[89]S/RES/1738 (2006) of 23 December 2006; S/RES/1674 (2006) of 28 April 2006. Retrieved from www.un.org/en/peacekeeping/documents/sc_poc_meetings.pdf *on 29 June 2015 at 7.00am*

[90] S/RES/1467 (2003) of 18 March 2003. Retrieved from www.refworld.org/docid/582120407.html *on 29 June 2015 at 8.10am*

[91]S/RES/1612 (2005) of 26 July 2005; S/RES/1460 (2003) of 30 January 2003; S/RES/1379 (2001) of 20 November 2001; S/RES/1314 (2000) of 11 August 2000. Retrieved from *unscr.com/en/resolutions/1612 on 29 June 2015 at 7.10am*

[92]S/RES/1325 (2000) of 31 October 2000; S/RES/1445 (2002) of 4 December 2002. Retrieved from www.un.org/womenwatch/osagi/wps/ *on 29 June 2015 at 6.16am*

[93] S/RES/1296 (2000) of 19 April 2000. Retrieved from www.responsibilitytoprotect.org/files/SC_Res_1296_POC.pdf *on 29 June 2015 at 7.11am*

The continuous violation of international law has also provoked institutional intervention imposed by the Council[94].Therefore, the Security Council decided to intervene in Haiti[95],Somalia[96],Afghanistan[97], Liberia[98],Sierra Leone[99],Sudan[100],Iraq[101]and the Democratic Republic of the Congo[102].

In all these cases the Council attempted to rebuild the status quo. Once the Security Council determines that a particular situation poses a threat to the peace or that there exists a breach of the peace or an act of aggression, it enjoys a wide margin of discretion in choosing the course of action. It can exercise its exceptional powers under Chapter VII to choose between the particular measures provided for in Arts 41 and 42 of the Charter. A question arises in this respect as to whether the choice of the Security Council is limited to the measures provided for in Arts 41 and 42 of the Charter (as the wording of Article 39 suggests), or whether it has even

[94]S/RES/1676 (2006) of 10 May 2006; S/RES/1737 (2006) of 23 December 2006. Retrieved from https://www.iaea.org/sites/default/files/unsc_res1737-2006.pdf *on 29 June 2015 at 8.10am*

[95] S/RES/940 (1994) of 31 July 1994. Retrieved from www.securitycouncilreport.org/un-documents/.../Chap%20VII%20SRES%20940.php *on 29 June 2015 at 8.19am*

[96]S/RES/1872 (2009) of 26 May 2009, op. paras 2 and 6; S/RES/1844 (2008) of 20 November 2008. Retrieved from https://www.un.org/sc/suborg/en/s/res/1844-%282008%29 *on 29 June 2015 at 7.22am*

[97]S/RES/1662 (2006) of 23 March 2006; S/RES/1659 (2006) of 15 February 2006; S/RES/1806 (2008) of 20 March 2008; S/RES/1868 (2009) of 23 March 2009. Retrieved from http://www.securitycouncilreport.org/cgi-sys/cgiwrap/scrarchives/managed-mt/mt-search.cgi?search=%22Security%20Council%20Resolutions%22%20AND%20%22Afghanistan%22&__mode=tag&IncludeBlogs=10&limit=15&page=2 on 29 June 2015 at 8.11am

[98] S/RES/1854 (2008) of 19 December 2008. Retrieved from *dag.un.org/handle/11176/12012 on 29 June 2015 at 9.11am*

[99]S/RES/1270 (1999) of 22 October 1999; S/RES/1289 (2000) of 7 February 2000; S/RES/1306 (2000) of 5 July 2000; S/RES/1389 (2002) of 16 January 2002. Retrieved from www.un.org/en/peacekeeping/missions/past/unamsil/UnamsilRS1.htm on 29 Jun e2015 *at 8.11am*

[100]S/RES/1070 (1996) of 16 August 1996, the Council adopted new measures under Chapter VII of the Charter because the Sudanese Government had not responded to the requests made in op. para. 4 of Resolution S/RES/1044 (1996) of 31 January 1996, as reaffirmed in op. para. 1 of Resolution S/RES/1054 (1996) of 26 April 1996; therefore, its failure posed a threat to international peace and security. Retrieved from www.un.org/en/sc/documents/resolutions/2011.shtml *on 29 June 2015 at 9.10am*

[101]S/RES/1291 (2000) of 24 February 2000; S/RES/1304 (2000) of 16 June 2000; S/RES/1323 (2000) of 13 October 2000; S/RES/1332 (2000) of 14 December 2000; S/RES/1341 (2001) of 22 February 2001; S/RES/1355 (2001) of 15 June 2001; S/RES/1376 (2001) of 9 November 2001; S/RES/1417 (2002) of 14 June 2002; S/RES/1445 (2002) of 4 December 2002; S/RES/1484 (2003) of 30 May 2003. Retrieved from www.un.org/en/sc/documents/resolutions/2000.shtml *on 29 June 2015 at 9.12am*

[102]Stromseth J, (1999) "*Rethinking Humanitarian Intervention: The Case for Incremental Change*", in: Holzgrefe, J.L (2003) (ed.) *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, 232 et seq. (241); Danish Institute for International Studies, Humanitarian Intervention: Legal and Political Aspects, 1999, p. 64.

broader discretion in the form of general powers to maintain and restore international peace and security under Chapter VII. In the latter case one does not have to find every measure decided by the Security Council under Chapter VII within the confines of Arts 41 and 42, or possibly Article 40. Whatever the case, under both interpretations, the Security Council has broad discretion in deciding on the course of action and evaluating the appropriateness of the measures to be taken.

The wording of Article 39 is quite clear as to the channeling of the very broad and exceptional powers of the Security Council under Chapter VII through Arts 41 and 42. These two articles leave the Security Council a wide choice. This consideration is reinforced by the fact that the Security Council is not a "law enforcement organ", but it enjoys unfettered discretions as a political one. Indeed, the UN Charter recognizes the Council's powers and tasks as those of a political organ enjoying a wide margin of discretion regarding "how to maintain or restore international peace and security". This idea was stressed by Kelsen, stating that "the purpose of the enforcement action under article 39 is not to maintain or restore the law, but to maintain, or restore peace, which is not necessarily identical with the law.[103]" The broad scope of action has enabled the Council to act against non-state actors such as rebel groups[104]or mercenaries[105]and against specific individuals which can be individually identified[106].

As it relates to Mali, Article 39 under chapter VII simply states the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles

[103]. Kelsen, H. (1951). *The Law of the United Nations, American Political Science Association*, Ohio. P. 1951- 294

[104] S/RES/1521 (2003) of 22 December 2003. Retrieved from www.un.org/press/en/2004/sc7976.doc.htm *on 29 June 2015 at 9.15am*

[105]S/RES/1457 (2003) of 24 January 2003; S/RES/1474 (2003) of 8 April 2003. Retrieved from www.un.org/press/en/2004/sc7976.doc.htm *on 29 June 2015 at 5.10pm*

[106]In the case of Liberia; S/RES/1343 (2001) of 7 March 2001; S/RES/1521 (2003) of 22 December 2003; S/RES/1638 (2005) of 11 November 2005; S/RES/1523 (2004) of 30 January 2004, concerning Western Sahara. In case of Afghanistan and Al-Qaida, S/RES/1390 (2002) of 16 January 2002; S/RES/1455 (2003) of 17 January 2003; S/RES/1526 (2004) of 30 January 2004; S/RES/1617 (2005) of 29 July 2005; S/RES/1735 (2006) of 22 December 2006; S/RES/1822 (2008) of 30 June 2008. Retrieved from www.un.org/en/peacekeeping/missions/unmil/resolutions.shtml *on 29 June 2015 at 12.07pm*

41 and 42, to maintain or restore international peace and security[107]. By the wordings of this section in contrast to the security crisis in Mali which the ECOWAS and AU early warning mechanism data must have revealed and the first, second, third and fourth rebellion the country experienced especially the fourth rebellion, the UN considered this as a clear breach of international peace and security and authorized enforcement actions under Article 41 and 42 which elicited reactions from ECOWAS, AU, and the UN. These reactions from these regional bodies gave birth to the UN peacekeeping forces we have on ground in Mali today under the auspices of AFISMA and MINUSMA. Notwithstanding the challenges these peacekeepers face especially AFISMA as the preceding paragraph will reveal, Mali former colonial masters was able to at least control the insurgent incursion before the UN peacekeepers were able to build on the gains of the French troops.

Whatever the case, when adopting any measure under Article 41 of the Charter, the Security Council should be guided by the approach taken in Annex II of General Assembly Resolution 51/242 (Supplement to an Agenda for Peace), which indicates that sanctions should be resorted to only with the utmost caution, when other peaceful options provided by the Charter are inadequate. The reasons that necessitate the imposition of sanctions should be identified and stated in advance[108].

UN sanctions is the common denomination to designate non-military measures decided by the UN Security Council following Article 41 of the UN Charter, despite the fact that the word "sanction" does not appear in the Charter. It is, moreover, an open question whether Article 41 measures are "sanctions" as a matter of international law, i.e. reprisals or counter measures. It should be noted that Article 41 has evolved over time. Undoubtedly nowadays sanctions are still

[107] Chapter VII: Action with Respect to Threats to The Peace, Breaches of The Peace, And Acts of Aggression

[108] A/RES/64/115 of 15 January 2010.

an important tool under the Charter of the United Nations aimed towards the maintenance of international peace and security without recourse to force.

The feasibility of interrupting postal, telegraphic and radio communications was challenged by Member States at various times, and such severances have rarely occurred. Some of the measures adopted by the Security Council are not expressly mentioned in Article 41, although in some respects, the Council has clearly gone beyond these stipulations. Some writers consider an alternative view of UN sanctions under Article 41, at least potentially, as a kind of economic warfare, i.e. non-forcible measures regularly undertaken in wartime alongside (or instead of) armed measures, for the purpose of harming or defeating the enemy, rather than as peacetime countermeasures[109]. Subsequently, the list of Article 41 is non-exhaustive[110].

The most frequently adopted sanctions have covered prohibitions of export and import[111], selective embargoes[112], prohibitions of service[113],prohibitions of movement of funds and freezing of funds and assets[114],prohibition of air, sea and land communication[115],severance or reductions

[109]Stenhammar, F (2010), "*United Nations Targeted Sanctions, the International Rule of Law and the European Court of Justice's Judgment in Kadi and al Barakaat*", Nord. J. Int'l L.79,

[110]Schrijver, N. (1994) "*The Use of Economic Sanctions by the UN Security Council: An International Law Perspective*", in: H.H.G. Post (ed.), International Economic Law and Armed Conflict, p128.

[111]S/RES/661 (1990) of 6 August 1990, concerning Iraq-Kuwait; S/RES/757 (1992) of 30 May 1992, concerning the Federal Republic of Yugoslavia; S/RES/917 (1994) of 6 May 1994, concerning Haiti. Regarding the specific prohibition of export and import of diamonds, see S/RES/1295 (2000) of 18 April 2000 on the situation in Angola; S/RES/1306 (2000) of 5 July 2000, S/RES/1385 (2001) of 19 December 2001, both on the situation in Sierra Leone; S/RES/1343 (2001) of 7 March 2001, on the situation in Liberia. Retrieved from www.un.org/en/sc/documents/resolutions/1992.shtml *on 29 June 2015 at 12.08pm*

[112]Oil in the case of Haiti with Resolution S/RES/917 (1994) of 6 May 1994, the Security Council expanded the embargo to include all commodities and products, with the exception of medical supplies and foodstuffs. The expanded embargo went into effect on 21 May 1994. S/RES/661 (1990) of 6 August 1990, against Iraq; arms and related material in the case of the Former Yugoslavia S/RES/713 (1991) of 25 September 1991. In Resolution S/RES/788 (1992) of 19 November 1992, the Security Council imposed an arms embargo on Liberia; S/RES/918 (1994) of 17 May 1994 concerning Rwanda; S/RES/1493 (2003) of 28 July 2003, concerning the Democratic Republic of the Congo. Retrieved from www.un.org/Docs/scres/1994/scres94.htm *on 29 June 2015 at 4.10pm*

[113] S/RES/1127 (1997) of 28 August 1997, concerning Angola. Retrieved from https://reliefweb.int/.../angola/security-council-resolution-1135-1997-situation-angola *on 29 June 2015 at 2.11pm*

[114]In Resolution S/RES/883 (1993) of 11 November 1993, the Security Council tightened sanctions, approving the freezing of Libyan funds and financial resources in other countries and the prohibition on providing equipment to Libya for oil refinery and transport. With regard to Bosnia and Herzegovina, see S/RES/820 (1993) of 17 April 1993; Libya S/RES/883 (1993) of 11 November 1993; Bosnian Serbs S/RES/942 (1994) of 23 September 1994; against Osama bin Laden, the Taliban and other entities, S/RES/1267 (1999) of 15 October 1999; S/RES/1333 (2000) of 19

of diplomatic and other official relations[116],and restrictions on movement of persons[117] as a means to enforce the effectiveness of its other measures[118].

The sanctions/resolutions also usually contained humanitarian and other exceptions[119], medical equipment and foodstuffs in humanitarian circumstances being generally excepted, although the resolutions have shown great inconsistency in other types of exceptions[120].

December 2000; S/RES/1390 (2002) of 16 January 2002. Retrieved from www.un.org/en/sc/documents/resolutions/2011.shtml *on 29 June 2015 at 3.01pm*

[115]S/RES/665 (1990) of 25 August 1990 on the situation in Iraq; S/RES/1221 (1999) of 12 January 1999 about the UNITA; S/RES/820 (1993) of 17 April 1993 on the situation in Bosnia and Herzegovina and S/RES/1267 (1999) of 15 October 1999 on Afghanistan. Retrieved from www.mpil.de/files/pdf3/mpunyb_07_lopez-jacoiste_14.pdf *on 29 June 2015 at 3.11pm*

[116]Question concerning the situation in Southern Rhodesia, S/RES/217 (1965) of 20 November 1965; S/RES/253 (1968) of 29 May 1968; S/RES/277 (1970) of 15 March 1970; Libya, S/RES/748 (1992) of 31 March 1992; Bosnia and Herzegovina, S/RES/757 (1992) of 30 May 1992; Angola, S/RES/1173 (1998) of 12 June 1998 and against the Taliban, S/RES/1333 (2000) of 19 December 2000. Retrieved from www.un.org/en/sc/documents/resolutions/1968.shtml *on 29 June 2015 at 3.16pm*

[117]S/RES/1054 (1996) of 26 April 1996 in case of Sudan; S/RES/1137 (1997) of 12 November 1997, on the situation between Iraq and Kuwait; S/RES/1343 (2001) of 7 March 2001, concerning Liberia; S/RES/942 (1994) of 23 September 1994, concerning Bosnia and Herzegovina; S/RES/1171 (1998) of 5 June 1998 in case of Sierra Leone; S/RES/1333 (2000) of 19 December 2000 against the Taliban. Retrieved from http://www.worldlii.org/int/other/UNSC/recent.html on 23 October, 2015 at 8.10pm

[118]In Resolution S/RES/1132 (1997) of 8 October 1997, the Security Council imposed an oil and arms embargo on Sierra Leone, as well as travel restrictions for members of the military junta of Sierra Leone. The Security Council imposed several embargoes on the Federal Republic of Yugoslavia: firstly, in Resolution S/RES/713 (1991) of 25 September 1991, the Security Council imposed a general and complete embargo on all deliveries of weapons and military equipment. One year later, in its Resolution S/RES/757 (1992) of 30 May 1992, the Security Council imposed economic and other sanctions on the Federal Republic of Yugoslavia, including a full trade embargo, a flight ban and the prevention of the participation of the Federal Republic of Yugoslavia in sporting and cultural events. Finally, in Resolution S/RES/942 (1994) of 23 September 1994, the Security Council imposed comprehensive economic and diplomatic sanctions on Bosnian Serb military forces. Retrieved from www.un.org/Docs/scres/1997/scres97.htm on 23 October, 2015 at 8.12pm

[119]For instance, in Resolution S/RES/1070 (1996) of 16 August 1996, the Security Council decided to impose an air embargo on Sudan; however, the sanctions measures adopted, which were to enter into force pending a decision by the Council within 90 days after the date of the adoption of Resolution S/RES/1070 (1996), was not imposed, for humanitarian reasons. Retrieved from www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C.../s_res_2304.pdf *on 23 October, 2015 at 8.15pm*

[120]S/RES/841 (1993) of 16 June 1993, on the situation in Haiti; S/RES/1284 (1999) of 17 December 1999 on the situation between Iraq and Kuwait; S/RES/1110 (1997) of 28 May 1997, on the situation in the former Yugoslav Republic of Macedonia; S/RES/1133 (1997) of 20 October 1997, on the situation concerning Western Sahara; S/RES/1132 (1997) of 8 October 1997, on the situation in Sierra Leone; S/RES/1343 (2001) of 7 March 2001, on the situation in Liberia; S/RES/1005 (1995) of 17 July 1995, on the supply of an appropriate quantity of explosives for the use in the demining operations in Rwanda; S/RES/1333 (2000) of 19 December 2000 on the situation in Afghanistan; S/RES/1298 (2000)of 17 May 2000 on the situation in Eritrea/Ethiopia; S/RES/1390 (2002) of 16 January 2002 against the Taliban and Al-Qaida. Retrieved from www.un.org/Docs/scres/1993/scres93.htm on 23 October, 2015 at 8.19pm

In the Malian 2012 coup, exceptions were not made as ECOWAS reacted by closing it borders to trade and froze Mali's access to bank accounts which forced the junta to be opened to "mediation to find solutions out of the crisis. The exception as not accorded Mali not minding that country is landlocked and heavily dependent on its neighbors for food.

In short, the network of sanctions spans all continents including Mali and covers all types of content. After determining the prerequisites of Article 39 of the UN Charter, the Security Council can make recommendations or decide what measures are to be taken in order to maintain or restore international peace and security[121].

The power of the Security Council to impose sanctions is based on Article 41 of the Charter. It must be stressed, however, that Article 41 of the Charter empowers the Security Council to adopt measures not involving the use of force. Sanctions are the Security Council's main instrument for maintaining international peace and security. The sanctions listed in Article 41 is not a closed list, on the contrary, it is open to possible further action provided it does not involve the use of force. Any individual measure can be resorted to alternatively and/or cumulatively[122].

What has to be certain is that any authorized action is necessary in itself[123].Sanctions aim to modify the behavior of the target state, party, individual or entity threatening international peace and security, and not to punish or otherwise exert retribution. For this reason, all sanctions regimes should be commensurate with these objectives. Measures not involving the use of armed force can vary considerably, but basically one can distinguish between a general trade embargo against one or more states, an economic embargo directed against a particular entity, and a range

[121]Kondoch, B. (2001), "*The Limits of Economic Sanctions under International Law: The Case of Iraq*", Journal of International Peacekeeping. Retrieved from http://booksandjournals.brillonline.com/content/journals/10.1163/187541101x00093 on 24 October, 2015 at 8.30pm

[122] Ibid

[123] Ibid

of lesser "targeted" measures. Economic embargoes are traditional and customary measures in the Council's practice, as in the case of Somalia[124],Sierra Leone[125],Liberia[126],the Democratic Republic of the Congo (DRC)[127],Eritrea and Ethiopia[128],Iraq[129],Afghanistan[130],Libya[131]or North Korea[132]. In Mali, the researcher posits that the scenario is quite different as it involves armed group within the region. The realistic way these sanctions can be effectively applied here is after thorough investigation of persons, groups or organizations and states who may be involved in arming the rebel groups to fight against the Malian state. Once these persons are truly identified who reside outside the shores of Mali they can be sanctioned. This in turn will help limit the escalation of the crisis in Mali.

But in most of these cases sanctions have unintentionally contributed to the emergence of black markets, creating huge profit-making opportunities for ruling elites and their collaborators[133].

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[124]S/RES/1356 (2001) of 19 June 2001; S/RES/1407 (2002) of 3 May 2002; S/RES/1425 (2002) of 22 July 2002; S/RES/1725 (2006) of 6 December 2006; S/RES/1744 (2007) of 20 February 2007; S/RES/1772 (2007) of 20 August 2007. Retrieved from www.un.org/press/en/2007/sc8960.doc.htm on 24 October, 2015 at 3.11pm

[125] S/RES/1299 (2000) of 19 May 2000; S/RES/1306 (2000) of 5 July 2000. Retrieved from *unscr.com/en/resolutions/1306* on 24 October, 2015

[126] S/RES/1343 (2001) of 7 March 2001. Retrieved from www.un.org/Docs/scres/2001/sc2001.htm on 25 October, 2015

[127] S/RES/1493 (2003) of 28 July 2003. Retrieved from https://www.sipri.org/sites/default/files/2016-03/N0344315.pdf on 24 October, 2015 at 7.10pm

[128] S/RES/1298 (2000) of 17 May 2000. Retrieved from www.refworld.org/docid/3b00f2441c.html on 24 October, 2015 at 8.10pm

[129]Notwithstanding the general embargo against Iraq, the oil for food program allowed some transaction under specific international supervision and control. It was finished with the S/RES/1472 (2003) of 28 March 2003. Retrieved from *cisgw3.law.pace.edu/cases/080820u1.html* on 24 October, 2015 at 3.10pm

[130]S/RES/1267 (1999) of 15 October 1999 op. para. 4 a): "deny permission for any aircraft to take off from or land in their territory if it is owned, leased or operated by or on behalf of the Taliban". This prohibition was in force until S/RES/1388 (2002) of 15 January 2002 and S/RES/1390 (2002) of 16 January 2002. Retrieved from https://documents.tips/documents/4d068un-collective-security-system-mpunyb07lopez-jacoiste14.html on 24 October, 2015 at 4.10pm

[131] S/RES/748 (1992) of 31 March 1992. Retrieved from www.un.org/en/sc/documents/resolutions/1992.shtml on 24 October, 2015 at 10.10am

[132]S/RES/1718 (2006) of 14 October 2006; S/RES/1874 (2009) of 12 June 2009. Retrieved from https://www.un.org/sc/suborg/en/sanctions/1718/resolutions?page=1 on 2 November, 2015 at 8.02am

[133]2005 World Summit Outcome, retrieved from www.un.org/womenwatch/ods/A-RES-60-1-E.pdf on 2 November, 2015 at 8.10am

Worst of all, economic sanctions tend to hit the wrong targets, instead of the regime, the population at large and particularly the weakest in society become the true victims. Faced with these situations, scholars have condemned economic sanctions as being inhumane and destructive diplomatic measures that jeopardize human rights in target countries[134] as seen in North Korea.

Such criticism is based on the negative effects of economic sanctions on the population (North Korea) at large in countries targeted by sanctions[135].Thus, such criticism concerning the effects of economic sanctions is no longer limited to NGOs and humanitarian organizations. The UN Human Rights Commission through its various Sub-commissions had also voiced concern about the adverse consequences of economic sanctions on the enjoyment of human rights[136].

The General Assembly itself took the lead in passing resolutions questioning unilateral economic sanctions and in particular their extraterritorial effects[137].

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[134]Damrosch, L. (1993), *"The Civilian Impact of Economic Sanctions"*, in: L. Damrosch (ed.), Enforcing Restraint: Collective Intervention in Internal Conflicts, p. 279.

[135]Simons, G., The Scourging of Iraq, 1998, 33-34; Malone, D., "*The UN Security Council: 10 lessons from Iraq on regulations and accountability*", Journal of International Law and International Relations. Retrieved from https://www.scribd.com/document/257265359/4d068UN-Collective-Security-System-Mpunyb-07-lopez-Jacoiste-14 on 4 November, 2015 at 11am

[136]Doc. E/CN.4/Sub.2/2000/33 of 21 June 2000, Sub-commission on the Promotion and Protection of Human Rights. The adverse consequences of economic sanctions on the enjoyment of human rights, working paper prepared by Mr. Marc Bossuyt, 2000. With regard to the Humanitarian impact of sanctions in Burundi, see Commission on Human Rights Resolutions 1998/82 of 24 April 1998 and 1997/77 of 18 April 1997; Decision 1999/111 of 26 August 1999, of the Sub-commission on the Promotion and Protection of Human Rights about its concern over economic sanctions and human rights. Retrieved from http://ap.ohchr.org/documents/alldocs.aspx?doc_id=7180 on 4 November, 2015 at 11.09am

[137]Since 1989 the General Assembly has passed resolutions entitled "unilateral coercive economic measures", because of its concern about impacts on the civil and economic rights of the population. See, A/RES/44/215 of 22 December 1989; A/RES/46/210 of 20 December 1991; A/RES/48/168 of 21 December 1993; A/RES/50/96 of 20 December 1995; A/RES/52/181 of 18 December 1997; A/RES/54/200 of 22 December 1999; A/RES/56/179 of 21 December 2001; A/RES/58/198 of 23 December 2003, A/RES/60/185 of 22 December 2005, A/RES/62/183 of 19 December 2007 and A/RES/64/189 of 9 February 2010. Retrieved from *hlp.home.igc.org/docs/reports/du_report_210600.doc* on 4 November, 2015 at 12.09pm

Meanwhile, various UN bodies have become rather outspoken in criticizing multilateral sanctions imposed by the Security Council. In year 2000, the Sub-Commission on the Promotion and Protection of Human Rights recommended to the Security Council that, "as a first step, it alleviated sanctions regimes so as to eliminate their impact on the civilian population by permitting the import of civilian goods, in particular to ensure access to food and medical and pharmaceutical supplies and other products vital to the health of the population in all cases[138]."

For this reason, since the late 1990s, the Security Council has increasingly preferred targeted sanctions in the form of blacklisting of individuals and private entities and the freezing of their assets instead of general trade embargoes as means of maintaining international peace and security. These new sanctions should be carefully targeted in support of clear and legitimate objectives under the Charter and be implemented in ways that balance effectiveness to achieve the desired results against possible adverse consequences, including socio-economic and humanitarian consequences, for populations and third states.

[138]Doc. E/CN.4/SUB.2/RES/2000/1 of 11 August 2000, para. 1 entitled Human Rights and Humanitarian Consequences of Sanctions, including Embargoes. Retrieved from www.un.org/Docs/SC6988.doc on 4 November, 2015 at 3.13pm

This new approach of targeted sanctions is a result of several factors. Three international initiatives have been undertaken to develop political approaches for the targeting of sanctions, with the goal of increasing effectiveness[139].

The United Nations itself promoted a general review of collective sanctions and the functioning of the Sanction Committees[140],encouraged by some academic institutions[141]and academic opinions[142].

[139]The first of these, the Interlaken Process, was initiated by the Swiss Government in 1998 and focused on targeted financial sanctions. Consultations during the Process identified the role of humanitarian exemptions in designing targeted financial sanctions and briefly mentioned the role of humanitarian impact monitoring. The report of the contributions to the sanctions debate resulting from the process did, however, suggest a draft text for incorporating provisions relating to monitoring of potential humanitarian consequences in UN Security Council resolutions. (The Thomas J. Watson Jr. Institute for International Studies, Targeted Financial Sanctions: A Manual for Design and Implementation – Contributions from the Interlaken Process, 2001). The second initiative, the Bonn-Berlin Process, organized by the Foreign Office of Germany in 2000, focused on arms embargoes and travel sanctions (M. Brzoska (ed.), Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions: Results of the "Bonn-Berlin Process", 2001). Retrieved from www.watsoninstitute.org/tfs/CD/ISD_Summary_of_Interlaken_Process.pdf on 4 November, 2015 at 6.10pm

[140]Doc. S/2005/841 of 29 December 2005, Report of the Informal Working Group on General Issues of Sanctions, established in April 2000 (Doc. S/2000/319 of 17 April 2000). Retrieved from www.securitycouncilreport.org/atf/cf/…6D27…/Somalia%20S%20RES%201732.pdf on 5 November, 2015 at 5.10pm

[141]Watson Institute for International Studies, Strengthening Targeted Sanctions Through Fair and Clear Procedures, 2006, sponsored by the governments of Sweden, Germany and Switzerland (hereafter Watson Institute). Retrieved from www.watsoninstitute.org/pub/Strengthening_Targeted_Sanctions on 10 March, 2015 at 9.01am

[142]Geiss, see note 101. D. Sarooshi, "The United Nations collective security system and the establishment of peace", Current Legal Problems 53 (2000), 621 et seq.; L. Van den Herik, "The Security Council's Targeted Sanctions Regimes. A Need of Better Protection of the Individual", LJIL20 (2007), 797 et seq.; T. Tsagourias, "The shifting laws on the use of force and the trivializations of the UN collective security system: the need to reconstitute it", NYIL34 (2003), 55 et seq.; J. Cockayne/ D. Malone, "The UN Security Council and Iraq: Some Implications for Public International Law", LJIL47 (2007), 30 et seq. retrieved from https://documents.tips/documents/4d068un-collective-security-system-mpunyb07lopez-jacoiste14.html on 5 November, 2015 at 8.10am

Consequently, the Security Council and the General Assembly adopted the Best Practices and Guidelines for all kinds of sanctions, as discussed in the 2005 World Summit as a guide to the elaboration and implementation of sanctions regimes, notwithstanding its ongoing improvement[143].

In conferring primary responsibility for the maintenance of international peace and security on the Security Council, the UN Member States agreed that the Council acts on their behalf. As mentioned above Member States are bound by *jus cogens* norms and as they cannot transfer more power than they themselves are permitted to exercise, the Security Council is also bound by *jus cogens*[144]. (refers to certain fundamental overriding principles of international law in which non-derogation is permitted because of their fundamental nature in maintenance of legal order)

The relevance and force of *jus cogens* with respect to the Security Council is also discernible in the UN Charter. As also mentioned above according to Article 24 (2) of the Charter, the Security Council is bound to act in accordance with the purposes and principles of the United Nations. These purposes and principles are formulated broadly and, specifically, as they relate to human rights, they can be understood in light of *jus cogens* norms. As basic statements of the most fundamental human values, those human rights norms that have acquired *jus cogens* status directly influence the purposes and principles of the United Nations[145].

[143] Doc. S/2006/997 of 22 December 2006, Report of the Informal Working Group of the Security Council on General Issues of Sanctions. Retrieved from www.securitycouncilreport.org/atf/cf/…6D27…/WG%20Sanctions%20S2006997.pdf on 5 November, 2015 at 8.15am

[144] Ibid

[145] Gowlland D. (2010), "*U.N. Sanctions and International Law: An Overview*". Rutledge, London. Pp. 47 – 55.

In this context, the Security Council is, at least, bound to respect the right to life, which is not only non-derogable under the ICCPR[146], but which has also acquired *jus cogens* status[147].

In support of this position, a UN working paper on the criteria for imposing sanctions stipulated "decisions on sanctions must not create situations in which fundamental human rights not subject to suspension even in an emergency situation would be violated, above all the right to life, the right to freedom and the right to effective health care and medical services for all. Sanctions regimes must correspond to the provisions of international humanitarian law and international human rights norms[148]."

In its recent practice, the Council directly recognizes the binding force of human rights law by implementing its resolutions, for example, stating clearly that "States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law[149]."

[146] Bossuyt, M.J (1987). *Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights*. P 115. International Academy Publishers, New York.

[147] Akande, D. (1997), "*The International Court of Justice and the Security Council: Is there Room for Judicial Control of Decisions of Political Organs of the United Nations*?". Retrieved from https://books.google.com/books?isbn=9004162461 on 5 November, 2015 at 4.10pm

[148] Doc. A/AC.182/L.114/Rev.1 (2004) 14-15, Declaration on the Basic Conditions and Standard Criteria for the Introduction and Implementation of Sanctions and Other Coercive Measures: Revised Working Paper, United Nations General Assembly Special Committee on the Charter of the UN and on the Strengthening of the Role of the Organization, prepared by the Russian Federation. Retrieved from www.un.org/documents/ga/docs/55/a5533supp.pdf on 10 November, 2015 at 4.10pm

[149] S/RES/1456 (2003) of 20 January 2003. Retrieved from https://www.un.org/sc/suborg/en/s/res/1456-%282003%29 on 5 November, 2015 at 4.10pm

As analyzed above, the Security Council undoubtedly has to act in accordance with the purposes and principles of the United Nations[150], and the promotion of respect for human rights is one of the purposes of the United Nations[151]. For example, in Mali, it is estimated that 700,000 Malians will be forced to flee in the next few months presenting humanitarian organizations with a range of needs arising from displacement and food insecurity – both within Mali and regionally. In addition, humanitarian organizations will have to negotiate the difficult terrain of counter terrorism legislation that could affect the provision of humanitarian assistance in areas held by terrorist groups[152].

Since they form part of the purposes of the organization as set out in Article 1 (3) of the Charter, the Security Council's complete disregard for them would violate the Charter. Therefore, Chapter VII measures cannot disregard the concerns embodied in basic international human rights and humanitarian law. "Humanitarian law and human rights norms, rather than establishing precise limits to Chapter VII powers, form guidelines in the exercise of those powers.

However, it is up to the (Security Council) to strike the concrete balance between humanitarian and human rights concerns and the goal of maintaining peace[153]"

Hence, the Security Council is, as already shown above, principally bound by human rights law[154].

[150] Article 24 para. 2 UN Charter
[151] Article 1 para. 3 UN Charter
[152] Conflict and intervention in Mali: the humanitarian consequences retrieved from https://www.odi.org/events/3125-conflict-and-intervention-mali-humanitarian-consequences 23 May, 2015 at 5.10pm
[153] Frowein, J., Krisch, J., "Introduction to Chapter VII". Retrieved from www.mpil.de/files/pdf3/mpunyb_07_lopez-jacoiste_14.pdf on 6 November, 2015 at 5.10pm
[154] Kulessa, M., "Von Märchen und Mechanismen – Gefahren und Chancen der Sanktionen des Sicherheitsrates", Vereinte Nationen 44 (1996), 89 et seq. (92); A. Segall, "Economic Sanctions: Legal and Policy Constraints", Rev. ICR

It should be noted, however, that with regard to the more specific individual rights spelt out in the ICCPR, the ICESCR, and the Universal Declaration of Human Rights (UDHR), the Security Council's legal obligations are less clear[155],as the United Nations at this time was yet to become a party to any of the human rights treaties then in force[156].

Nonetheless, numerous considerations weigh in favor of adherence to these treaties[157], although specific considerations of human rights in the overall work of the Security Council remain vague and are evidenced unsystematically[158].

International human rights law itself generally recognizes this balancing act, as, for example, in the emergency principle embodied in Article 4 of the ICCPR[159].

Considering that every state and the international community itself must do everything possible to protect at least the core content of human rights, it should also be recalled that the ICESCR has been ratified by three of the five permanent members of the Security Council (United Kingdom, the Russian Federation, and France) and signed by the United States and China. One could therefore argue that organs of the United Nations, including the Security Council, have to actively stop behavior that violates the rights protected in these treaties[160].

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836 (1999), 763 et seq. Retrieved from https://www.scribd.com/document/257265359/4d068UN-Collective-Security-System-Mpunyb-07-lopez-Jacoiste-14 on 7 November, 2015 at 8.10am

[155] Normand, R. (1990), "A Human Rights Assessment of Sanctions: The Case of Iraq, 1990–1997", in: W.J.M. Van Genugten/ G.A. de Groot (eds), United Nations Sanctions: Effectiveness and Effects, Especially in the Field of Human Rights: A Multi-Disciplinary Approach, 19, 25. Retrieved from https://documents.tips/documents/4d068un-collective-security-system-mpunyb07lopez-jacoiste14.html on 8 November, 2015 at 8.10am

[156] Ibid

[157] Bedjaoui, M. (1995), *The New World Order and the Security Council: Testing the Legality of Its Acts*. Retrieved from http://www.springer.com/gp/book/9780792334347 on 10 November, 2015 at 8.15am

[158] This concept is illustrated in a 1999 presidential statement, SCOR 54th Sess., Doc. S/PRST/1999/34 (1999) of 30 November 1999, Statement by the President of the Security Council, 1: "The Council emphasizes the need fully to respect and implement the principles and provisions of the Charter … and norms of international law … The Council also affirms the need for respect for human rights and the rule of law." Retrieved from https://www.scribd.com/document/257265359/4d068UN-Collective-Security-System-Mpunyb-07-lopez-Jacoiste-14 on 10 November, 2015 at 10.13am

[159] Oraa, L. (1990), Human Rights in States of Emergency in International Law, 1992. Claredon Press, Oxford. p. 50

[160] Ibid

The ICCPR contains mainly negative rights (actions the government cannot take against you). Examples include, the right to life (Article 6), the right to be free from slavery and forced labor, (Article 8); the right to liberty and security, (Article 9) and the right to a fair and public hearing by an impartial tribunal (Article 14). Rights protected by the ICCPR are not always immediately enforceable, and state parties must "adopt such legislative or other measures as may be necessary to give effect to the rights recognized" in the Covenant according to Article 2 (2). Perhaps these last criteria could be helpful for the Security Council's resolutions. At the same time, the ICESCR, unlike the ICCPR, includes mainly positive rights (things which the government must do for you). Because of the positive nature of economic, social and cultural rights, it is difficult to assess whether they have been violated. Some scholars examining the UN's development of economic sanctions against states, for example, have criticized that the Security Council has a record of "almost complete failure to consider international law standards[161]"

Each Member State and the community as a whole, should undertake in conformity with Article 2 (1) of the ICESCR to, "take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means ...". And, similarly, according to Article 2 (2) ICCP R, "where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant." In the implementation of both Covenant obligations, States Parties are required to utilize "all

[161] Reisman, W. et al (1998) "The Applicability of International Law Standards to United Nations Economic Sanctions Programmes," retrieved from *ejil.org/pdfs/9/1/1485.pdf on 11 November, 2015 ay 5.10pm*

appropriate means, including particularly the adoption of legislative measures." Each State Party has a margin of appreciation in assessing which measures are most suitable to meet its specific circumstances. The obligation of State Parties to promote progressive realization of the relevant rights to the maximum of their available resources clearly requires governments to do much more than merely abstain from taking measures which might have a negative impact on individuals' rights. In other terms, the obligation is to take whatever steps that are necessary to ensure everyone enjoys individual rights and to reduce structural disadvantages, as soon as possible. Hence, both covenants impose a duty on each State Party to take positive measures.

The full meaning of the phrase in Article 2 (1) "to take steps", implies that the complete achievement of the relevant rights may be achieved progressively, and steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the states concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in both Covenants and mainly will involve legislation. However, the adoption of legislative measures, as specifically foreseen by the Covenant, is by no means exhaustive. Rather, the phrase "by all appropriate means" points into another direction. Among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justifiable. The Committee on Economic, Social and Cultural Rights has noted, for example, that the enjoyment of the rights recognized, without discrimination, will often be appropriately promoted, in part, through the provision of judicial or other effective remedies. Indeed, those State Parties which are also parties to the ICCPR are already obliged, by virtue of Article 2 (1), (3) and Article 3 and 26 of that Covenant, to ensure that any person whose rights or freedoms (including the right to equality and non-discrimination) recognized in the Covenant are violated, "shall have an effective remedy" (article 2 para. 3 (a)). In addition, there

are a number of other provisions in the ICESCR, including arts 3, 7 (a) (i), 8, 10 para. 3, 13 para. 2 (a), paras 3 and 4 and 15 para. 3 that can be applied directly by judicial organs. This will depend on the different national legal systems[162].

3.4 ANALYSIS OF THE SUPREMACY OF THE RULE OF LAW IN THE SUSTENANCE OF CHAPTER VII OF UN CHARTER

This research sub topic analyses the question of how the supremacy of the Rule of Law can be sustained in relation to the Security Council acting under Chapter VII of the UN Charter and its relevance to Mali situation[163].Since the 1990s, recourse to Chapter VII has become a commonplace and unchallenged practice of the Council, furnishing a wide range of flexible grounds for justifying its actions[164].

The highly political nature of the body, influenced largely by the five permanent members (P-5), in combination with the discretionary use of Chapter VII powers, has allowed the Council to expand its scope of activities whenever the political hurdle of the veto can be overcome. Recent developments in the Council's activity have seen a legislature-like endeavor to address threats posed by non-state actors[165],and more complex and technical administrative operations imposing sanctions against non-state actors[166].There is no doubt that Chapter VII powers must be exercised consistently with the UN Charter[167].

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[162]Doc. HRI/GEN/1/Rev. 9 (Vol. I), 27 May 2008, 16, General Comment No. 4: The right to dequate housing (Art. 11 (1) of the Covenant). Retrieved from www.ohchr.org/Documents/HRBodies/TB/HRI-GEN-1-REV-9-VOL-I_en.doc on 11 November, 2015 at 9.10am

[163] Charter of the United Nations, opened for signature 26 June 1945, USTS No 993 (entered into force 24 October 1945), as amended by GA Res 1991, 557 UNTS 143 (1963); GA Res 2101, 638 UNTS 308 (1965); GA RES 2847, 892 UNTS 119 (1971). Retrieved from https://books.google.com/books?isbn=9047425731 on 18 November, 2015 at 6.10am

[164]David M., (2003). 'The Security Council in the Post-Cold War Era: A Study in the Creative Interpretation of the U.N. Charter'. 35 New York University Journal of International Law and Politics Vol. 487, Pp. 492-495.

[165] Security Council Resolution 1373 (28 September 2001); SC Res 1540 (28 April 2004). Retrieved from https://www.un.org/press/en/2004/sc8214.doc.htm on 13 November, 2015 at 3.09pm

[166]SC Res 1267 (15 October 1999); SC Res 1390 (28 January 2002); SC Res 1452 (20 December 2002); SC Res 1455 (17 January 2003); SC Res 1526 (30 January 2004); SC Res 1566 (8 October 2004); SC Res 1617 (29 July 2005).

The legality of the Council's action is subject to the purposes and principles of the Charter including subsequently developed human rights norms[168].It is also arguable that the Council's decisions under Chapter VII must be adopted within the jurisdictional limits, which form the prerequisites for the valid exercise of Chapter VII powers[169].Yet the reference to such requirements does not automatically lead to the objective assessment of the legality and validity of the Council's action. It requires a mechanism whereby the legality and validity of the Council's decision is subject to public scrutiny.

There is no doubt that the Security Council is a political organ that has reflected and institutionalized the asymmetric power balance between the P-5 and other states. The veto power, the voting privilege given to the Great Powers, has played a significant role in preserving the Council's authority by preventing it being used as a politically 'privatized' tool in the face of a powerful dissenter, whilst allowing it to take peacekeeping action when they are acting in concert[170].The political coalition among the P-5, however, does not guarantee that necessary action will be taken, but rather, allows for the exercise of discretion in determining whether action is to be taken. The discretionary element involved in decision-making is characteristic of governance generally[171].

Retrieved from https://www.treasury.gov/resource-center/sanctions/Documents/1526.pdf on 14 November, 2015 at 7pm

[167] Cf Gabriël H (1999), *'Playing the Devil's Advocate: The United Nations Security Council is Unbound by Law'* 12 Leiden Journal of International Law. p549.

[168]Erika de Wet, (2004). The Chapter VII Powers of the United Nations Security Council. / 178-368; David Schweigman, (2001). The Authority of the Security Council under Chapter VII of the UN Charter: Legal Limits and the Role of the International Court of Justice. p.92

[169]Hitoshi N. (2007), '*Chapter VII Powers and the Rule of Law: The Jurisdictional Limits*' 26 Australian Year Book of International Law. p.87.

[170] Mariano-F.C. (2004). '*Reflections on Sovereignty and Collective Security*' 40 Stanford Journal of International Laws Vol. 211 p.224.

[171] Ian B. (1974) '*The United Nations as a Form of Government' in James E S Fawcett and Rosalyn Higgins, (eds), International Organization*: Law in Movement vol. 26, Pp. 31-33.

Nevertheless, it has laid the ground for the Council being accused of adopting double-standards or a selective approaching responding to threats to the peace[172].While the view that the Council is not acting enough represents one side of the criticism, the view that the Council may be acting excessively is also suggested[173].The fact that the P-5 states are more readily agreeable to forming collective decisions after the end of the Cold War has facilitated the expansion of the Council's scope of activity, reflected in the widening concept of a threat to the peace[174],as well as in the proliferation of measures taken under Chapter VII[175].

At times, doubt has been cast on the legality and validity of the Council's decisions, especially when they purport to trump or override existing legal orders, seemingly in the interest of particular states rather than in the international public interest[176].Illustrative is the Council's action on the Lockerbie incident, whereby it demanded the extradition of two Libyan nationals who were indicted for terrorist offences overseas[177],notwithstanding the existing legal arrangements under the Montreal Convention[178].The Council's expanded functionality – beyond traditional peacekeeping and peace-enforcement – could well be characterized as international security regulation. UN member states have delegated to the Council their sovereign powers to

[172]Thomas M. (1984), '*Of Gnats and Camels: Is There a Double Standard at the United Nations?*' 78 American Journal of International Laws P. 811.

[173]David D. (1993), *'The Legitimacy of the Collective Authority of the Security Council'* 87 American Journal of International Law Vol. 552, Pp. 559-561

[174]Karel W. (2003), *'The UN Security Council and New Threats to the Peace: Back to the Future'* 8 Journal of Conflict and Security Law 15; Inger Österdahl, Threat to the Peace: The Interpretation by the Security Council of Article 39 of the UN Charter p.14

[175]Niko K. (2004) '*Rise and Fall of Collective Security: Terrorism, US Hegemony, and the Plight of the Security Council*' in Christian Walter et al (eds), Terrorism as a Challenge for National and International Law: Security versus Liberty? P.8790, 88 – 93

[176] John Q. (1996). '*The "Privatization" of the Security Council Enforcement Action: A Threat to Multilateralism'* 17 Michigan Journal of International Law Pp.249, 270-3.

[177]Fiona B. (1992), *'The Lockerbie Affair'* 41 International and Comparative Law Quarterly 907.

[178]Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature 23 September 1971, 974 UNTS p.177 (entered into force 26 January 1973)

regulate activities[179]of both state and non-state actors relating to the maintenance of international peace and security[180].

Whilst having been successful in deterring the 'privatization' of the body by a permanent member, the veto power does not prevent the P-5, when acting in concert, from using the Council as the source of legitimacy for pursuing their own national interests[181]. From the regulatory point of view, this possibility of the P-5 taking advantage of their privileges and influence in mobilizing the Council to pursue their own national interests can be loosely explained as 'capture' of the regulatory regime. The risk of corruption and capture is at the heart of regulatory debates, calling for innovative accountability mechanisms to constrain the exercise of the Council's discretion[182].

Baring exercise of the collective veto by non-permanent members, there is no mechanism in place within the UN system to hold the Council accountable for its decisions. Once the Council adopts a resolution, moreover, it follows its own path independent of the collective will of Council members[183],leaving ambiguous terms to be interpreted differently and thereby wittingly or unwittingly 'delegalizing' the situation at hand[184].

UN member states arguably reserve the right of 'last resort' to raise opposition if the Council's decision is not adopted in accordance with the UN Charter[185],although the refusal to

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[179] Charter of the United Nations arts 24-5

[180]Dan S. (2005), International Organizations and Their Exercise of Sovereign Powers. Oxford University Press Pp.28-107

[181]Ian H. (2002), *'Legitimacy, Power, and the Symbolic Life of the UN Security Council*' 8 Global Governance Vol. 35, Pp. 44-45;

[182]Ian A. et al (1992). Responsive Regulation: Transcending the Deregulation Debate. p.55-6

[183]The veto can obstruct the modification or termination of sanctions (reverse veto). The recent practice has shifted to imposing time limits for sanctions. See generally, Lutz Oette, 'A Decade of Sanctions against Iraq: Never Again! The End of Unlimited Sanctions in the Recent Practice of the UN Security Council' (2002) 13 European Journal of International Law P. 93

[184]Michael B. (2004), *'Agreeing to Disagree: Security Council Resolution 1441 and Intentional Ambiguity'* 10 Global Governance vol. 165, P. 166.

[185]Nicolas A.,(1998). 'Protest against Security Council Decisions' in K Wellens (ed), International Law: Theory and Practice, Essays in Honour of Eric Suy. 277; Karl Döbring, 'Unlawful Resolutions of the Security Council and Their Legal Consequences' 1 Max Planck Yearbook of United Nations Law P.91.

implement a resolution remains controversial in the absence of objective third party assessment of the legality of the Council's decision[186].Instead, states may seek action through the General Assembly, either in the form of a declaration challenging the authority of the Council's decisions, or by using its budgetary powers, or, arguably, by requesting the submission of explanatory memoranda[187].

While not legally prohibited from doing so[188],such channels of protest remain ad hoc, sporadic and ineffective. All this has contributed to the perception that the General Assembly is stagnant or impotent[189].There is no doubt that the extent to which the Council is subject to political accountability is, at best, weak. Viewed against the trajectory of the quest for Security Council reform in the historical context[190], the primary concern has predominantly been the issue of representation and democratization of the Council, presumably in an attempt to strengthen political accountability. As pointed out, however, 'perceptions of whether the Council is acting in a representative manner are based more on the perceived legitimacy of the content of Council actions than on the size and composition of its membership'[191].

The term 'democratization' in the context of Security Council reform is in fact deceptive. Institutional decision-making itself is arguably responsible for undermining substantive democracy at both inter-state and intra-state levels[192].It is therefore doubtful whether compositional changes can significantly enhance the Council's accountability in respect of the

[186]Jost D. (2002). 'Article 25' in Bruno Simma (ed), The Charter of the United Nations: A Commentary. P. 452, 459
[187]Bedjaoui, M. (1994).The New World Order and the Security Council: Testing the Legality of Its Acts. Retrieved from www.springer.com/us/book/9780792334347 on 14 November, 2015 at 4.10pm
[188]The prohibition against making recommendations while the Council is exercising its power over a matter under Art 12(1) of the Charter would not pose an obstacle to assessing and reviewing the legality or the validity of the Council's decisions.
[189]UN Secretary-General's High-Level Panel on Threats, Challenges and Change, A More Secure World: Our Share Responsibility (2004) p.24
[190]Joachim M. (2006), Reforming the United Nations: The Struggle for Legitimacy and Effectiveness Martin Nijhoff Publishers. Holland. p. 122
[191]Sydney D. et al. (1998), The Procedure of the UN Security Council. Oxford University Press. United Kingdom.
[192]Chimni, B. (2004). *'International Institutions Today: An Imperial Global State in the Making*' 15 European Journal of International Law. Vol. 254. p19.

use of Chapter VII powers. The conventional view is that the supremacy of the rule of law over the exercise of discretionary powers is best maintained through judicial control. The concern that the Security Council may act ultra vires has led to the development of a significant body of literature examining the possibility of the International Court of Justice (ICJ) reviewing the Council's actions[193]. Different views have been expressed on the doctrinal basis for judicial review by the ICJ of the acts of international organizations[194].The ICJ has developed its practice of judicial review on an incidental, rather than primary, basis of judicial power[195].However, proposals have been made to expand the review role of the ICJ on the basis of the advisory jurisdiction[196].The true point of contention could be not so much with the jurisdictional basis of judicial review by the ICJ, but rather with the propriety of judicial review of the Council's decisions under Chapter VII. Even if the ICJ assumed jurisdiction of a case involving an issue as to the legality or validity of the Council's decision, its proceedings might well be challenged on the basis of the non-justiciability of the matter[197].

[193]Ibid

[194]Different doctrinal views include: (i) a residual or implied power from the lack of an express prohibition against engaging in judicial review (Dapo Akande, 'The International Court of Justice and the Security Council: Is There Room for Judicial Control of Decisions of the Political Organs of the United Nations?' (1997) 46 International and Comparative Law Quarterly309, 326-37); (ii) the very nature of the judicial function (Malcolm Shaw, 'The Security Council and the International Court of Justice: Judicial Drift and Judicial Function' in A S Muller et al (eds), The International Court of Justice: Its Future Role After Fifty Years (1997) 219, 255-7); (iii) a general principle of law (Erika de Wet, 'Judicial Review as an Emerging General Principle of Law and Its Implications for the International Court of Justice' (2000) 47 Netherlands International Law Review 181-210)

[195]Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion) [1971] ICJ Rep 16 (hereinafter Namibia case), 45.

[196]Bowett, D. (1996).'The Court's Role in Relation to International Organizations' in Vaughan Lowe and Malgosia Fitzmaurice (eds), Fifty Years of the International Court of Justice: Essays in Honour of Sir Robert Jennings. P.181, 187-92; Christopher Weeramantry, 'Expanding the Potential of the World Court' in Nandasiri Jasentuliyana (ed), Perspectives on International Law. Retrieved from www.gbv.de/dms/spk/sbb/recht/toc/27885723X.pdf on 15 November, 2015 at 5.10pm

[197]The distinction between jurisdiction to entertain a case and the admissibility of a claim is acknowledged in Oil Platforms (*Iran v United States*) (Mertis) [2003] ICJ Reports 161, 177 [29]; Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v United States*) (Merits) [1986] ICJ Reports 14 (hereinafter Nicaragua case), 26-27 [32]-[34].

The Court can exercise judicial discretion by virtue of the 'inherent limitations on the exercise of the judicial function which the Court, as a court of justice, can never ignore'[198].The likelihood of the Court finding a matter non-justiciable under its advisory jurisdiction could be greater owing to the permissive wording of art 65 of the ICJ Statute[199],though the court has noted that a matter will be justiciable in the absence of compelling reasons[200].Judicial discretion must be carefully circumscribed lest it expose the Court to criticism of arbitrariness[201].In practice, however, the attitude towards judicial restraint is deep-rooted and commonly observed in the judgments of the ICJ and other international courts[202].It is thus argued that the discretionary determinations under art 39 of the Charter are by their very nature non-justiciable by virtue of a number of political, social and circumstantial factors involved, which cannot objectively be weighed or balanced by judicial scrutiny[203].

This stance has been influenced by the political question doctrine[204], originating from US case law[205].It has also been suggested that the ICJ should refrain from exercising its judicial power in cases where the decision may not entail practical consequences[206],or where it may put the international legal system into greater jeopardy than if the question of lawfulness remained

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[198]Northern Cameroons (*Cameroon v United Kingdom*) (Preliminary Objections) [1963] ICJ Reports 15, 29

[199]It provides: 'The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request' (emphasis added)

[200]Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996(1)] ICJ Reports 226, 235 [14]; Western Sahara (Advisory Opinion) [1975] ICJ Reports 12, 21 [23]; Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (Advisory Opinion) [1950] ICJ Reports 65, 72.

[201]Shabtai R. (2006) *The Law and Practice of the International Court 1920-2005* (4th ed) vol 2, p. 538

[202]Judge P. (2007), '*The ICJ in the 21st Century: Judicial Restraint, Judicial Activism, or Proactive Judicial Policy*' 56 International and Comparative Law Quarterly p.741

[203]Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (*Libyan Arab Jamahiriya v United States*) (Provisional Measures) [1992] ICJ Rep 3, 66 (Judge Weeramantry dissenting opinion); *Prosecutor v Joseph Kanyabashi* (ICTR) (Jurisdiction) Case No ICTR-96-15-T (18 June 1997), [20]; *Prosecutor v Dusko Tadic* (ICTY) (Jurisdiction) (Trial Chamber) (1997) 105 ILR 427, 435 [23]-[24].

[204] Ioana P. (2005), *'The Review of the United Nations Security Council Decisions by the International Court of Justice*' 52 Netherlands International Law Review 167, 174-7; Schweigman, above n 6, 265-7

[205]*Baker v Carr*, 369 US 186 (1961); *Powell v McCormack*, 395 US 486 (1968).

[206]Nicaragua case, above n 35, 237 [53] (Judge Oda dissenting opinion); Nuclear Tests Case (*Australia v France*) (Judgment) [1974] ICJ Reports 253, 270-2 [55]-[59]; Nuclear Tests Case (*New Zealand v France*) (Judgment) [1974] ICJ Reports 457, 476-7 [58]-[62].

unresolved[207]. The alternative possibility of judicial review lies with domestic courts. Given that each state theoretically retains the right of last resort to challenge the legality and validity of Council decisions, reviews by an independent domestic court would carry more weight than review by a political organ[208].

The push towards a more active judicial role may well be echoed in different jurisdictions, which could encourage judicial engagement in an iterative process of interaction, interpretation and reinterpretation; creating a pathway to transnational judicial dialogue. This possibility has been flourishing recently, especially in the context of human rights litigation[209].

However, the recourse to domestic courts is also subject to the issue of justiciability[210].The idea of judicial restraint lies in the distinction, familiar to common law countries, between public policy and legal principle, the former being formed on the basis of technical expertise and political judgment[211].This traditional common law approach, albeit diverse in each jurisdiction, tends to defer to the public authority's decision about what is required, in so far as it conforms to the formal conception of the Rule of Law[212].Judicial restraint is also commonly observed in other countries, suggesting that domestic courts are inclined to find acts of international organizations non-justiciable[213].Substantive and political aspects of Security Council decisions under Chapter VII – such as reasonableness and proportionality – therefore may well lie beyond the reach of judicial scrutiny. It is rightly pointed out that there are

[207]Georg N. (2000), *'The Limits of the Security Council's Powers and Its Functions in the International Legal System: Some Reflections*' in Michael Byers (ed), The Role of Law in International Politics.
[208]Erika D. et al (2004). *'Review of Security Council Decisions by National Courts'* 45 German Yearbook of International Law P.166, 184-200
[209]Erika D. (2008), '*Holding the UN Security Council Accountable for Human Rights Violations: A Role for Domestic and Regional Courts?*' 35 Houston Law Review 623, 649-51
[210]Daniel S. (2008), *'Who's Responsible? Justiciability of Private and Political Decisions*' in Jeremy Farrall and Kim Rubenstein (eds), Sanctions Accountability and Governance in a Globalised World p.241-9
[211]Trevor R. (2001). *Constitutional Justice: A Liberal Theory of the Rule of Law*. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1652496 on 18 November, 2015 at 8.10pm
[212]Ibid
[213]August R. (2000), International Organizations Before National Courts. 84-99. Retrieved from *assets.cambridge.org/97805216/53268/sample/9780521653268wsc00.pdf* on 19 November, 2015 at 4.10pm

no independent international legal barriers to review of decisions of international organizations by domestic courts[214].

Yet the conservative attitude common to international and domestic courts is likely to incline them to refrain from evaluating executive decisions. The sentiment that domestic judicial review of Council decisions will undermine the whole collective security arrangements under the UN Charter seems strong[215].However, the impropriety of judicial justice does not necessarily mean that the Security Council's decisions are beyond the reach of law. In the context of administrative justice and the international Rule of Law, Lauterpacht states that: 'Administrative justice and legal justice are not opposed one to another. It is only judicial justice which is opposed to administrative justice. But judicial justice is not the only manifestation of the rule of law[216].'It is an established principle that, whilst barring conduct ultra vires, it is for each organ to determine its own jurisdiction. This creates a prima facie presumption of validity of its own decision[217].

The requirement that discretionary powers be legally authorized or regulated does not necessarily require that all discretionary powers be judicially reviewed.[218].Judge Schwebel in fact pointed out that many legal systems rely 'not upon judicial review but on self-censorship by the organ concerned or by its members or on review by another political organ[219]'.

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[214] Ibid

[215]Anthony A. (2003), '*The Role of Human Rights in Limiting the Enforcement Powers of the Security Council: A Practitioner's View'* Review of the Security Council by Member States. Retrieved from www.eui.eu/Documents/DepartmentsCentres/…/HR2009/…/FassbenderReadings.pdf on 19 November, 2015 at 8.10am

[216]Hersch L. (1933), *The Function of Law in the International Community*. Oxford: Clarendon Press p.386.

[217]Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter) (Advisory Opinion) [1962] ICJ Rep 151, 168. Retrieved from www.worldcourts.com/icj/eng/decisions/1962.07.20_expenses.htm on 19 November, 2015 at 8.29am

[218]Timothy E. (2003), '*The Reason of the Law*' 48 American Journal of Jurisprudence Vol. 83, Pp.87-95

[219]Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (*Libyan Arab Jamahiriya v United Kingdom*) (Preliminary Objections) [1998] ICJ Reports 9, 76 (Judge Schwebel dissenting opinion).

The essence of this sub-chapter is to remind readers that irrespective of the United Nations Charter in the maintenance of International Peace and Security among members, it is still subjected to the rule of law. No enforcement action can be undertaken outside the legislation as contained in the UN Charter. The peacekeepers on ground in Mali will be subject to litigation if they are found wanting on human right abuses. There have been reports that one of the reasons why the AFISMA troops were not given full gear to operate was the fear of human right violations on the citizens of Mali. If evidence reveals this, perpetrators will certainly be brought to book through trials. The rule of law acting through the International Criminal Court of Justice is powered to bring to justice agents who are involved in fueling the Malian crises both home and abroad. Hence, it was imperative that this sub topic be visited to establish a foundation on how and where to treat offenders of the Malian state be it the peacekeepers or the insurgents.

CHAPTER FOUR

THE ROOT CAUSES OF THE MALIAN SECURITY CRISIS

4.1 INTRODUCTION

Mali is a landlocked country in West Africa, located South West of Algeria. It lies between latitude 10 and 25 degrees North, and longitude 13 degrees West and 5 degrees East. Mali is bordered by Algeria to the North, Niger to the East, Bukina Faso to the South, Guinea to the South-West, Senegal and Mauritania to the West.

It has a land mass of 1,242,248 square kilometers (479,635 sq mi), including the disputed region of Azawad. Mali is the world's 24th largest country which is comparable in size to South Africa or Angola[1]. Most of the country lies in the Southern Sahara which produces a hot, dust-laden Sudanian Savana zone. Mali is mostly flat, rising to rolling northern planes covered by sand. The *Adrar des Ifoghas massif* (a town located in the Kidal area of Mali) lies in the Northeast.

Mali is divided into regions and one district; each region has a Governor. Since Mali's region are very large, the country is sub-divided into 49 circles and 703 communes[2] (see appendix II & III).

The West African country of Mali is undergoing a deep crisis that threatens its territorial integrity, and therefore its sovereignty, and that has worrying implications for large part of the Sahel and West Africa as a whole. The fall of President Amadou Toumani Touré prompted a national strike which in turn triggered an institutional crisis that has been made worse through the annexing of northern Mali by the National Movement for the Liberation of Azawad (MNLA). Resolving the crisis has been made more difficult by the number of actors and groups involved.

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[1] https://www.countries-ofthe-world.com/largest-countries.html retrieved 19 may, 2015, at 4.15pm

[2] Martin P. (2006). *Managing migration: the promise of cooperation.* Lanham, Maryland: Lexington Books. p.134

This chapter is an effort to highlight the root causes of the Malian security crisis stemming down from the historical perspective of the Tuareg ethnic dissatisfaction till date to recent 2012 rebellion. Several literatures have been written in this area, but only few have captured the legal angle and challenges faced by the UN bodies on ground in trying to maintain peace and security in the country. The overwritten objective of the chapter is to trace the root of the crisis and the actions taken by regional and international actors at every stage of the crisis with a view to providing solution to same.

4.2 The Tuareg Ethnic Dissatisfaction

The establishment of Mali as an independent nation state in the 1960's was not accompanied by a structural adjustment for the effective accommodation of ethnic interests especially in the northern part of the country. From the very beginning of Malian nation hood the nomadic population, particularly the Tuaregs were not ready to be integrated into the emerging nation. Consequently, they felt marginalized in subsequent political developments that ended up in setting a new nation by the name Mali. The Malian state has also failed from the very beginning to develop a socio-economic model that can sensibly accommodate the differences and differing needs of the many ethnic groups that make up the country's population. This situation has been made worse by global economic developments and the structural demands placed on the country by donor nations. There were uprisings in the Tuareg-inhabited northern part of the country as far back as the 1960s, which had much to do with the close ethnic ties between the people there and those of the border regions, including those of Niger[3] . In fact, the Tuareg nomads were in struggle for autonomy since the days of establishment of French colonialism in the region in the 20th Century. The Tuareg people have consistently wanted self-independence and in pursuit of such goals have engaged in a number of rebellions. The first was

[3]Aman S., (2012) *Battle Reveals Islamists Riding over Ethnic Fault lines,* The Hindu p. 51

in 1916 when, in response to the French not giving the Tuareg their own autonomous zone (called Azawad) as was promised, they revolted[4]. The French violently quelled the revolt and subsequently confiscated important grazing lands while using Tuaregs as forced conscripts and labor and fragmented Tuareg societies through the drawing of arbitrary boundaries between *Soudan* (Mali) and its neighbors. Yet, this did not end the Tuareg goal of an independent, sovereign state. Once Mali attained independence, the Tuareg began to push toward their dream of establishing Azawad again with several prominent Tuareg leaders lobbying for a separate Tuareg homeland consisting of northern Mali and parts of modern-day Algeria, Niger and Mauritania. However, Modibo Keita, Mali's first President, made it clear that independent Mali would not cede its northern territories[5]. As a result, the Taureg's launched rebellions which escalated till date.

4.3 The First Tuareg Rebellion

The Tuareg felt greatly oppressed by the government of Modibo Keita, which came into power after the French had left, as they were discriminated, and were more neglected than others in the distribution of state benefits, which could be manifested by the fact that most of the senior leadership of post-colonial Mali were drawn from the southern ethnic groups who were not sympathetic to the pastoral culture of the northern desert nomads.

In addition to this, the government's policy of 'modernization' particularly policies such as "land reform" was perceived by the Tuaregs as a move to alienate them from their privileged access to agricultural products. The government of Keita was introducing soviet style collective

[4]Devon D. (2013). *The Crisis in Mali: A Historical Perspective on the Tuareg People.* Retrieved from https://www.globalresearch.ca/the-crisis-in-mali-a-historical-perspective-on-the-tuareg-people/5321407 on 23 June, 2015 at 4.09pm

[5]Hazard J., (1969) *Marxian Socialism in Africa: The Case of Mali.* Comparative Politics Vol2: Pp1-15.

farms together with state owned corporations to monopolize the purchase of basic crops[6]. Nevertheless, the government guaranteed the unchanging nature of the customary land rights except the land is needed by the state for development works. Unfortunately for the Tuareg, this unchanging of customary land rights did not apply to the subsoil that was on their land. Instead, this subsoil was turned into a state monopoly due to Keita's desire to ensure that no one became a capitalist based on the discovery of subsoil resources. Consequently the Minister of Rural Economy issued a decree of acquisition and registration in the name of the state, with prior publication of notice and a hearing to determine customary claims[7].

The above developments finally triggered a turmoil that eventually became the first Tuareg rebellion, which began with small hit-and-run attacks on government forces. However, it was quickly crushed due to the Tuareg lacking a unified leadership, a well-coordinated strategy or clear evidence of a coherent strategic vision. In addition to this, the rebels were unable to mobilize the entire Tuareg community. In contrast the Malian military, well-equipped with new Soviet weapons, conducted vigorous counterinsurgency operations[8]. By the end of 1964, the government's strong arm methods had crushed the rebellion. It then placed the Tuareg-populated northern regions under a repressive military administration[9].

Yet while the Malian military may have won the battle, they failed to win the war as their heavy-handed tactics not only alienated Tuareg who didn't support the insurgency, but also the government failed to follow through on promises to improve the local infrastructure and increase economic opportunity. To avoid the military occupation of their communities, as well as due to

[6]Abebe W. (2016*). Responsibilities and Challenges of the African Union in Maintaining Continental Peace and Security: A Case Study of the Malian Crisis. Civic and Ethical Studies,* WolaitaSodo University, WolaitaSodo, Ethiopia. p. 45

[7]Jaimie B (2011). *Countries at the Crossroads 2011-Mali.* Freedom House, USA. p.32

[8]Abebe W., (2016). *Responsibilities and Challenges of the African Union in Maintaining Continental Peace and Security: A Case Study of the Malian Crisis.* Civic and Ethical Studies, WolaitaSodo University, WolaitaSodo, Ethiopia. p. 45

[9]Katharine M., (2003) *Africa South of the Sahara 2003. 32ndedn*. The Gresham Press, London, England. P. 102

massive drought in the 1980s, many Tuareg fled to nearby countries such as Algeria, Mauritania, and Libya. Thus, the grievances of the Tuareg went unaddressed, only creating a situation in which a rebellion would once again occur.

4.4 The Second Tuareg Rebellion

While Mali was transitioning to a democracy, in the 1990's the Tuareg people were still not in a position to benefit them from the newly changing order. Three decades after the first rebellion, the occupation of Tuareg communities still had not ended and resentment fueled by the harsh repression, continued dissatisfaction with government policies, and perceived exclusion from political power led various Tuareg and Arab groups to begin a second rebellion against the Malian government.

The second rebellion was precipitated by an event in which the government forces attacked the non-Tuareg Malians at the southernmost edge of the Tuareg regions. This resulted in a new wave of conflict between the Malian army and Tuareg rebels. By 1990, Traoré's authoritarian rule fueled a democratic resistance movement in the capital, Bamako that threatened his regime. Recognizing that his military could neither eliminate the Touareg insurgency quickly nor protect him in Bamako from the democratic resistance movement, he sought the assistance of Algeria in negotiating a peace treaty with two major Touareg and Arab movements, the Azaouad Popular Movement (MPA), and the Arabic Islamic Front (FIAA)[10] called the Tamanrasset Accord, named after the southern Algeria town where it was negotiated, was signed in January 1991.

> In January 1991, President Moussa Traore agreed to enter a negotiation with the rebel leaders in Tamanrasset under the auspices of Algeria

[10] *Tamanrasset Accord Agreement on Ceasing of Hostilities, 1991,* www.**ucdp**.uu.se/gpdatabase/peace/mal19910106.pdf retrieved June 23, 2015 at 5.30pm

resulting in the signing of the agreement between Bamako the MPA and the FIAA. The Tamanrasset accord granted the north special status with more political and administrative power given to local population it also provided for a lesser presence of the army in the north. The demilitarization or administration; the dismantling of several military post, military withdrawal from grazing area as well as densely populated area; and the granting of close to 50% of and upcoming development program to northern region.[11]

In the Accord also, the Malian military agreed to "disengage from the running of the civil administration and suppress certain military posts," "avoid zones of pasture land and densely populated zones," and to be "confined to their role of defense of the integrity of the territory at the frontiers." The Accord also affirmed that "combatants may integrate the Malian Armed Forces under conditions defined by the two parties" and called for a ceasefire between the two main Tuareg/Arab factions and the government.

The Accord, however, was stillborn, as both sides lacked confidence that it would be implemented. The MPA then split into three movements committed to independence and/or autonomy. Members of the Songhai ethnic group felt that too much control was being offered by the government to the Touareg. Violence escalated.[12].

[11] Stephanie P., et al (2015*). Achieving peace in northern Mali, past agreement, local conflicts and the prospect of a durable settlement*. Rand cooperation, Santa Monica. p13

[12]Ingrid S., (2002). *The Integration of National Languages into the Educational System of Mali.* Paper presented at NETREED Conference, Gausdal, Norway. P. 92

In spite of these developments the accord was not able to bring lasting solutions. This was partly attributed to the fact that not all of the Tuareg factions signed onto the Accords, insisting on the removal of current administrators in the north and their replacement with local representatives as the Accord represented a political compromise in which more autonomy was granted to Tuareg communities and local and regional councils made up of local representatives were established, yet the Tuareg still remained a part of Mali. The tensions between the Tuareg and the Malian government still remained unabated.

In a further move to settle the tension the transition government of Mali attempted to open another negotiation with the Tuareg which culminated in the April 1992 National Pact between the Malian government and several Tuareg factions[13]. The National Pact allowed for integration of Tuareg combatants into the Malian armed forces, demilitarization of the north, economic integration of northern populations, and a more detailed special administrative structure for the northern regions[14].

With the election of Alpha Omar Konaré as a new president of Mali in 1992, the status of Tuareg autonomy was further improved and restrictions on local authorities were removed within the framework of the Republic of Mali[15]. But the question of unique status of the Tuaregs was left without a clear recognition and some rebel groups, such as the Arabic Islamic Front of Azawad, did not attend the National Pact talks and the violence continued, eventually resulting in the deaths of 6,000-8,000 people before a peace agreement was signed by all factions[16].

The beginning of the involvement by the Arabic Islamic Front of Azawad to the Tuareg rebellion is also the introduction of radicalism in the struggle for Tuareg independence. The

[13]Devon D., (2013). The *Crisis in Mali: A Historical Perspective on the Tuareg People*. Retrieved from https://www.globalresearch.ca/the-crisis-in-mali-a-historical-perspective-on-the-tuareg-people/5321407 on 23 June, 2015 at 4.09pm

[14] Ibid

[15] Ibid

[16]McGregor A (2011) Can African *Mercenaries save the Libyan Regime? Jamestown Foundation*. p.102

emergence of radical Islam was supported by Gaddafi in the 1970s which is facilitated by the fact that many Tuareg had fled to Libya and other countries, mainly for economic opportunity and he exploited the opportunity to found the Islamic Legion in 1972[17]. The goal of the Legion was to further Gaddafi's own territorial ambitions in the African interior and advances the cause of Arab supremacy. However, it came to an end due to the price of oil declining in 1985, which meant that Gaddafi could no longer afford to recruit and train fighters and left many Tuareg going back to their homes in Mali with large amounts of combat experience[18].

4.5 The Third Tuareg Rebellion

In May 2006 an insurgency that kidnapped and killed members of the Malian military was staged by a group of Tuareg army deserters. It was this event that attained a status to be referred to as the third rebellion. The rebels attacked military barracks in Kidal region, seizing weapons and central to their demands were greater autonomy and development assistance for the region[19]. Amadou Toumani Toure the then president after winning the presidential elections in 2002 resorted to peace talk with the rebel groups represented by a coalition known as the May 23 Democratic Alliance for Change through the good office of Algeria[20]. Accordingly, a peace agreement by the name the Algiers Accord under the auspices of Mahamat Saleh Annadif of Chad, a Special Representative for Mali which entailed Malian government's commitment to

[17]Nigatu, A (2014*). Responsibilities and Challenges Of The African Union In Maintaining Continental Peace And Security: A Case Study Of The Malian Crisis.* Center for African and Oreintal Studies. Addis Ababa, Ethiopia

[18]Freedom House (2009) *Mali, Freedom in the World.*https://freedomhouse.org/report/freedom-world/2009/mali retrieved 18 May, 2015 at 3.10pm

[19]Arieff A (2013) *Crisis in Mali. Current Politics and Economics of Africa* Pp. 6 - 25.

[20]Devon D. (2013). *The Crisis in Mali: A Historical Perspective on the Tuareg People*. Retrieved from https://www.globalresearch.ca/the-crisis-in-mali-a-historical-perspective-on-the-tuareg-people/5321407 on 23 June, 2015 at 4.09pm

improving the economic and social situation in the northern areas and keeping promises pertinent to the National Pact was signed[21].

> As violence resumed in northern Mali in 2006 in ways that were highly reminiscence of the 1990 rebellions, the rebellion started when 150 Tuareg officers from the Kidal region deserted their military barrack in Kidal, Menaka, and Tassalit with weapons and army vehicles under the leadership of Hassan Fagaya, a deserted Tuareg Lt. Col. in the Malian army who started the rebellion. As a result of this, Bamako almost immediately began negotiations with the ADC and signed a peace agreement within 3 months tagged "the Algier's accord, under the mediation of Algeria" (which has like Mali, a vested interest in containing Tuareg unrest having a sizable Tuareg population itself). This accord specifically addresses issues in the region of Kidal and underlined in the full title, but most provisions are largely similar to what has been promised in the Tamaransset and national Pact accords. The accord created a regional assembly to consult on new laws affecting the Kidal region. The ADC obtained several concessions from the government in terms of economic and social developments including the organization of a forum with international donors to be held in Kidal. The implementation of a health system adapted to the nomadic way of life; new or improved infrastructure (building of airport in Kidal, extension of electricity and phone networks,

[21]Jennifer S., (2001). *A Political Analysis of Decentralization: Co-opting the Tuareg Threat in Mali.* The Journal of Modern African Studies p. 39.

> tarring of the road from Kidal to Gao, Menaka an Algeria) and the renewal of the ten years preferential tax regime meant to stimulate economic development that had been part of the national pact accord that had never been implemented. The combatants who have deserted were to be allowed back into the Malian army which will largely retreat from the northern region. Under the agreement, security of the north will be implemented as security special unit, constituted by many northerners to be put in charge of basic security and patrolling mission.[22]

However, many rebel groups were indifferent to the agreement and continued to destabilize the region that prompted government response to launch military occupations of the region with a large offensive force to eliminate the insurgency.

After 2006 the hope to settle the Tuareg rebellion remained elusive due to fragmentation of the rebel groups and their associated demands. Consequently, there were series of conflicts and skirmishes between the government forces and different rebel groups that rendered the region unstable. The introduction of the cocaine trade to the region in the early 2000s as well as the trade in weapons, cigarettes, and other narcotics further exacerbated the dynamics of instability that gradually precipitated the current crisis.

[22] Stephanie P. et al (2015*). Achieving peace in northern Mali, past agreement, local conflicts and the prospect of a durable settlement*. Rand cooperation, Santa Monica. p17

4.6 The Fourth Tuareg Rebellion

On 16th January 2012, several insurgent groups began raising another campaign against the Malian Government for independence or greater autonomy for northern Mali, an area known as *Azawad*. The National Movement for the Liberation of Azawad (MNLA) had again taken control of the region by April, 2012.

On 24th January 2012, the rebels captured *Aguelhok* after the Malian army ran out of ammunition. The next day, the Mali Government recaptured the city[23]. Mali launched air and land counter operations to take back the seized territory, amid protests in Bamako and Kati[24].

Malian President Amadou Toumani Touré then reorganized his senior commanders for the fight against the rebels. On 1st February 2012, the MNLA took control of the city of Menaka when the Malian army operated what they called a tactical retreat. The violence in the north led to counter protests in the capital city of Bamako. Dozens of Malian soldiers were also killed in fighting in Aguelhok. On 6th February, 2007 rebel forces attacked Kidal, a regional capital[25].

On 4th March 2012, a new round of fighting was reported near the formerly rebel-held town of Tessalit[26]. The next day, three Malian army units gave up trying to lift the siege. The C-130's most likely came from either Ouagadougou, Burkina Faso, or Mauritania, both of which are known to have been used by the United States military[27]. On 11th March, 2012 the MNLA re-

[23] Ralp S., (2012). *Situation in Mali*, Uppsala Conflict Data Program, http://uppsalaconflictdataprogram.wordpress.com/2012/06/05/backgrounder-situation-in-mali/Retrieved 4th April, 2015 at 9.10am

[24] Mali, Uppsala Conflict Data Program Conflict Encyclopedia. 2013,http://www.ucdp.uu.se/gpdatabase/gpcountry.php?id=103&regionSelect=1-Northern_Africa#Retrieved 4th April, 2015 at 9.00am

[25] https://www.revolvy.com/main/index.php?s=Tuareg%20Rebellion%20%282012%29&item_type=topic *on* 3rd April, 2015 at 3.10pm

[26] Ibid

[27] https://www.revolvy.com/main/index.php?s=Northern%20Mali%20conflict&item_type=topic retrieved on 18 July, 2016 at 3pm

took Tessalit and its airport, and the Malian military forces fled towards the border with Algeria[28].

The rebels advanced to about 125 kilometers away from Timbuktu and their advance was unchecked when they entered without fighting in the towns of Diré and Goundam[29].

On 21st March 2012, soldiers dissatisfied with the course of the conflict attacked Defense Minister Sadio Gassama as he arrived to speak to them. They then stoned the minister's car, forcing him to flee the camp[30]. The next morning, Captain Amadou Sanogo, the chairman of the new National Committee for the Restoration of Democracy and State (CNRDR), made a television appearance in which he announced that the junta had suspended Mali's constitution and taken control of the nation. The mutineers cited Touré's alleged poor handling of the insurgency and the lack of equipment for the Malian Army as their reasons for the rebellion. The CNRDR to serve as an interim regime until power was returned to a new, democratically elected government[31].

The coup was "unanimously condemned" by the international community, including the United Nations Security Council, the African Union, and the Economic Community of West African States (ECOWAS).The latter announced on 29th March, 2012 that the CNRDR had 72 hours to relinquish control before landlocked Mali's borders would be closed by its neighbors, its assets would be frozen by the West African Economic and Monetary Union, and individuals in the CNRDR would receive freezes on their assets and travel bans. ECOWAS and the African Union also suspended Mali. The U.S., the World Bank, and the African Development

[28] Ibid
[29] Ibid
[30] Dembele D., (2002). *"Mali Military Blocks Presidential Palace After Gunshots"*. Bloomberg Retrieved from *societalsecurity.net/MediaWatch/article/mali-soldiers-killed-rebel-ambush-peace-deal-due* on 4th April, 2015 at 7.07am
[31] Ibid

Bank suspended development aid funds in support of ECOWAS and the AU's reactions to the coup.

The coup was reminiscent of the military uprising staged by the military officers in Sierra Leone in 1992 when junior officers toppled the regime of Gen. Joseph Momoh which it felt neglected the needs of the Sierra Leone military as they were fighting the Revolutionary United Front (RUF) rebels[32].

On 30th March 2012, the rebels again seized control of Kidal, the capital of Kidal Region, as well as *Ansongo* and *Bourem* in Gao Region. On 31stMarch, Gao fell to the rebels, and both MNLA and Ansar Dine flags appeared in the city. The following day, rebels attacked *Timbuktu*, the last major government-controlled city in the north. They captured it with little resistance[33]. The speed and ease with which the rebels took control of the north was attributed in large part to the confusion created in the army's coup, leading Reuters to describe it as "a spectacular own-goal"[34].

On 5th April 2012, after the capture of Douentza, the MNLA said that it had accomplished its goals and called off its offensive. The following day, it proclaimed Azawad's independence from Mali[35].

The MNLA were initially backed by a group known as Ansar Dine. After the Malian military was driven away from Azawad, Ansar Dine and a number of smaller groups began imposing strict *Sharia* law[36]. Afterwards, the MNLA began fighting against Ansar Dine and other insurgent groups, including Movement for Oneness and Jihad in West

[32]https://www.hrw.org/reports/1999/sierra/SIERLE99-02.htm retrieved 23 May, 2016 at 5.10pm
[33] Human Rights Watch (2012). War Crimes by Northern Rebels. Retrieved from https://reliefweb.int/report/mali/war-crimes-northern-rebels on 3rd April, 2015 at 9.01am
[34] Ibid
[35] Ibid
[36] Ibid

Africa (MOJWA/MUJAO), a splinter group of Al-Qaeda in the Islamic Maghreb. By 17th July 2012, the MNLA had lost control of most of northern Mali's cities to other insurgents[37].

Côte d'Ivoire President, Alassane Ouattara, who was the rotational chairman of ECOWAS, said that once the civilian government was restored, an ECOWAS stand-by force of 2,000 soldiers could intervene against the rebellion. Burkina Faso's President Blaise Compaore was appointed as a mediator by ECOWAS to resolve the crisis. An agreement was reached between the junta and ECOWAS negotiators on 6th April, 2012 in which both Sanogo and Touré would resign, sanctions would be lifted, the mutineers would be granted amnesty, and power would pass to National Assembly of Mali Speaker Diouncounda Traoré[38]. Following Traoré's inauguration, he pledged to "wage a total and relentless war" on the Tuareg rebels unless they released their control of northern Malian cities[39].

During the uncertainty following the coup, the rebels launched an offensive with the aim of capturing several towns and army camps abandoned by the Malian army[40]. Though the offensive ostensibly included both the MNLA and Ansar Dine, according to Jeremy Keenan of the University of London's School of Oriental and African Studies, Ansar Dine's military contribution was slight.[41]

On 6th April 2012, stating that it had secured all of its desired territory, the MNLA declared independence from Mali. However, the declaration was rejected as invalid by the African Union and the European Union[42].

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[37] Ibid
[38] Ibid
[39] https://worldjournalweb.wordpress.com/category/northern-mali-conflict/ Retrieved on 23 March, 2015
[40] Lewis, D. (2012) "Mali rebels advance in north, mutineers seek president". 23rd March. Retrieved 4th April, 2015 at 7.33am
[41] Robyn D., et al (2012). *"Gains of Mali's Tuareg rebels appear permanent,* analysts say". Retrieved from*www.tandfonline.com/doi/full/10.1080/10246029.2013.839100?src=recsys* on 4th April, 2015 at 7.52am
[42] https://www.revolvy.com/main/index.php?s=Tuareg%20Rebellion%20%282012%29&item_type=topic *on 23 April, 2015 at 8.30am*

Protests broke out on 26th June 2012 in the city of Gao, the majority of whose people are not Tuaregs (as opposed to the MNLA), but rather sub-Saharan groups such as the Songhay and Fula people. The protestors opposed the Tuareg rebels and the partition of Mali. Two were killed as a result of the protests, allegedly by MNLA troops[43]. The protesters used both Malian and insurgents' flags, and France 24 reported that many locals supported the insurgents as a result of their opposition to the Tuareg nationalists and the secession of Azawad[44].

On 26th June 2012, the tension came to all-out combat in Gao between the MNLA and MOJWA, with both sides firing heavy weapons. MNLA Secretary General Bilal Acherif was wounded in the battle[45]. The MNLA were soon driven from the city and from Kidal and Timbuktu shortly after. However, the MNLA stated that it continued to maintain forces and control some rural areas in the region[46].

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As of October 2012, the MNLA retained control of the city of Ménaka, with hundreds of people taking refuge in the city from the rule of the insurgents, and the city of Tinzawatene near the Algerian border[47]. In the same month, a splinter group broke off from the MNLA; calling itself the Front for the Liberation of the *Azawad* (FPA), the group stated that Tuareg

[43] Alexandra T., (2013). A *Handbook on Mali's 2012 – 2013 Crisis*. Institute for the working of Islamic Thought in Africa Working Paper Series. North Western University. Illinois.

[44] Peggy B., (2012) "*Backed by popular support, Mali's Islamists drive Tuareg from Gao"*. Retrieved from http://societalsecurity.net/MediaWatch/article/mali-soldiers-killed-rebel-ambush-peace-deal-due 5th April, 2015 at 4.22pm

[45] Retrieved from http://north-africa.com/mali-at-least-30-dead-in-clashes-between-tuareg-groups-in-kidal/5th April, 2015 at 4.32pm

[46] Adam, N. (2012) *"As Refugees Flee Islamists in Mali, Solutions Are Elusive"*. Retrieved from http://societalsecurity.net/MediaWatch/article/mali-soldiers-killed-rebel-ambush-peace-deal-due 5th April, 2015 at 4.02pm

[47] Salima T., (2012). *"The limits of military intervention". El Watan (in French).* Retrieved from *https://socialscienceresearch.org/index.php/GJHSS/article/download/1846/1784/* 5th April, 2015 at 4.02pm

independence was no longer a realistic goal and that they must concentrate on fighting the rebels[48].

On 16th November 2012, Tuareg MNLA forces launched an offensive against Gao in an attempt to retake the town. However, by the end of the day, the Tuaregs were beaten back by the MOJWA forces after the groups laid an ambush for them. A Malian security source said that at least a dozen MNLA fighters were killed while the group suffered only one dead. An MNLA official stated that their forces killed 13 MOJWA fighters and wounded 17, while they suffered only nine wounded.[49]

On 19th November 2012, MOJWA and AQIM forces took over the eastern town of Ménaka, which had previously been held by the MNLA, with dozens of fighters from both sides and civilians killed. On the first day of fighting, the MNLA claimed its forces killed 65 rebel fighters, while they suffered only one dead and 13 wounded. The rebels on their part stated they killed more than 100 MNLA fighters and captured 20[50].

Following requests from both the Mali Government and ECOWAS for foreign military intervention on 12th October, 2012 the United Nations Security Council unanimously, under Chapter VII, Article 39 of the United Nations Charter passed a French resolution approving an African-led force to assist the army of Mali in combating the militants[51].

While authorizing the planning of force, and dedicating UN resources to this planning, UN Security Council Resolution 2071 did not authorize the deployment of

[48] Brahima O., (2012). *"Mali's secular Tuareg rebels splinter, new group says independence unrealistic".* Retrieved from https://ipfs.io/ipfs/QmXoypizjW3WknFiJnKLwHCnL72vedxjQkDDP1mXWo6uco/wiki/National_Movement_for_the_Liberation_of_Azawad.html 5th April, 2015 at 4.42pm

[49] Ibid

[50] Thomson Reuters Foundation. "Mali Tuareg separatists suspend participation in peace process". Trust.org. Retrieved from *www.ucmun.com/uploads/1/0/7/8/10785069/sc_2014.pdf* 5th April, 2015 at 5.11pm

[51] https://www.un.org/press/en/2013/sc10987.doc.htm retrieved on 7 April, 2015 at 3.22pm

force[52]. However, UN Security Council Resolution 2085, passed on 20th December 2012, "authorized the deployment of an African-led International Support Mission in Mali (AFISMA) for an initial period of one year[53]."

On 10th January 2013, rebel forces captured the strategic town of Konna, located 600km from the capital, from the Malian army. Later, an estimated 1,200 rebel fighters advanced to within 20 kilometers of Mopti, a nearby Mali military garrison town. The French military then launched *Opération Serval*, intervening in the conflict[54].

The Government of Mali asked for foreign military help to re-take the north. On 11th January 2013, the French military began operations against the insurgents[55].

> ("The day after the beginning of Operation *Serval*, the French President declared that France at the request of the President of Mali and in compliance with the Charter of the United Nations has committed herself to supporting the Malian army in the face of the terrorist aggression threatening the whole of West Africa. Our Mission consists in preparing the deployment of an African intervention force to enable Mali to regain her territorial integrity, in line with the Security Council resolutions".
>
> In a more detailed way the French MFA Laurent Fabius declared to the press that the legal justifications for the intervention are**:** firstly, the appeal and the request made by Mali's legitimate government, so here this is a

[52] Ibid

[53]"UN Security Council Resolution 2085" .United Nations. 20th December 2012. Retrieved from *www.un.org/en/sc/documents/resolutions/2012.shtml* 6th April, 2015 at 8.09am

[54]The French government relied on UNSC resolution 2071 adopted on December 5, 2012 and Article 51 of the UN Charter as justification for this military intervention in Mali after the Malian government invitation. This particular action has legal consequences which the researcher in the course of this work had earlier criticized. As in his view do not conform with the required legal legislation for France's intervention.

[55]André N., et al (eds) (2014). *Principles of Shared Responsibility in International Law.* Cambridge University Press, London. Pp. 283 – 285

case of legitimate self-defense; and secondly, all the United Nations Security Council resolutions (2071, 2085 and 2100), which not only allow but require those countries capable of doing so to support the fight against the terrorists in this matter. To this legitimacy, drawn from Article 51 – to the legitimacy drawn from the United Nations resolutions.

In other statements M. Fabius insisted that France intervened within the context of Resolution 2085 and of article 51 of the Charter. France thus proposed three legal arguments: 1) Collective self-defense under article 51 of the UN Charter; 2) The consent of the legitimate government of Mali; and 3) Authorization by the UNSC")[56]

Regarding the reasons why France unilaterally intervened in the Malian crisis as postulated above and relying on them as justification, in the researcher's view, is misleading and highly objectionable on the following grounds:

i. The French government relied on UNSC Resolution 2071 of October 12th, 2012 and UNSC Resolution 2085 of 20th December, 2012 as some of its legal backing she applied to intervene in the crisis. But, according to the introductory paragraph of Resolution 2071 it states that the Malian Army is responsible and that all military intervention must be Malian led. Paragraph 6 of same resolution also states that the Security Council was ready to respond to the request of the transitional authorities

[56] Christakis T., et al (2013). *French Military Intervention in Mali: Its Legal but…why?* Part I. Blog of the European Journal of International Law. Retrieved from https://www.ejiltalk.org/french-military-intervention-in-mali-its-legal-but-why-part-i/#more-7483 on 10th June, 2016 at 9.11am. See also generally Mali, Statement by M. Francois Hollande, President of France, following the Select Defence Council Meeting, DIPLOMATE FRANCE (Jan. 12, 2013). http://basedoc.diplomatie.gouv/fr/vues/Kisoque/FranceDiplomatie/kiosque.php/fichief=bean2013-01-14.html

in Mali for international military assistance in recovering the occupied regions in the north of the country. Also, in paragraph 7 of the same resolution, it states that the Security Council would provide military and security planners to assist ECOWAS and AU in close connection with Mali and neighboring countries. In paragraph 9, the resolution requests that member states aid, expertise and training to Malian forces.

From the excerpts of this resolution, it is clearly evident that France intervened unilaterally in Mali not having acted to reinforce Malian forces or having been led by them. France intervened outside the scope of this resolution making their intervention illegal and should not rely on them.

ii. UNSC Resolution 2085 of 20 December, 2012 reinstated the same guidelines found in resolution 2071 highlighted above. This resolution initiated a deployment of African led International Support Mission to Mali which was to contribute to the building of the capacity to the Malian defense and security forces in coordination with other international forces to support Malian authorities in recovering the areas in the northern region under terrorist control, support Malian authorities in their primary responsibilities to protect the population amongst others…

In summary, the text of UNSC Resolution 2085 refers explicitly to the deployment of AFISMA military forces and made no mention of the deployment of French forces.

iii. The French also relied on UNSC Resolution 2100 of 23rd April, 2013 as retroactive approval which created the United Nations

Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). This resolution was passed months after France unilateral military intervention in Mali. Thus, she shouldn't rely on this resolution as it cannot serve as a sufficient justification under international law as doing so will allow countries to violate international law first and later seek the assent of the United Nations for their wrongdoings. The recourse to this resolution is also strongly objected on the following grounds.

a. That there is no basis for retroactive approval of a violation of international law

b. It is structurally impossible for UNSC to pass resolution retroactively validating the previous military action of a singular state.

c. Even if resolution 2100 did not mention any violation of international law by France, its silence must not be construed as consent. Let's not forget that France being one of the permanent members of the UNSC has a power to veto any resolution before the council to her advantage. For it is inconceivable to think that France will veto resolution condemning her actions. UNSC Resolution 2100 did not specifically mention France and did not provide any legal ground for justifying her unilateral military intervention in Mali – from the language of the Security Council instrument, it is clear that the Security Council did not intend to approve unilateral French military intervention in Mali crisis.

iv. Another ground within which France relied upon was that the then Malian interim government invited her to so do. This argument lacks foundation.

In the situation of internal war of a sovereign state, a request for intervention must come either from a legitimate government or the effective government. The question of legitimacy of intervention often arises when the legitimacy of the inviting party is itself in question. In the Malian situation, the intervention was allegedly requested by the interim president whose legitimacy was disputed by different faction groups. The interim government sought help from France after the coup d'tat. However, since the government of the President Traore was not fully recognized internationally, the position of international consent is unattainable (researcher's view). Because, apart from France and some small number of African countries, there was no other evidence of external recognition of Traore. Another element to consider on evaluating consent is whether the argument has dominion over the territory it purports to control and can fulfill its governmental functions there. In the Malian situation, the interim government was not in full control of the country hence, its invitation to France to intervene could not have been validly made.

v. Another justification with which French Government relied upon in unilaterally intervening in Malian crisis was the principles of collective self-defense of the United Nations Charter under Article 51. Article 51 states "nothing in the present charter shall impair the inherent right of individual of collective self-defense if an armed attack occurring a member state of the United Nations until the Security Council has taken measures necessary to maintain an international peace and security"

As haven been earlier mentioned, there was no armed attack on Mali from external aggressors therefore, the prong of the test for self-defense was not satisfied. Mali was not being attacked by external military forces but was instead on the brink of civil war. The presence of rebels outside Mali territory is not an external attack and does not permit the exercise of self-defense. Moreso, the Security Council had begun taking action regarding Mali as soon as the French government began negotiation in 2012.")[57]

On 16th January, 2013 French Special Forces, along with the Malian army, began fighting small and mobile groups of insurgents inside the city of Diabaly but the French defense minister denied the presence of French troops fighting in Diabaly[58].

On 17th January, Banamba was put on alert after rebels were reportedly spotted near the town. The Malian army immediately deployed 100 soldiers to the town, which were reinforced later. A convoy of rebels reportedly left Diabaly and was heading towards Banamba on the same day but no fighting ultimately took place in the town[59].

On 18th January, 2013 the Malian Army released a statement, claiming to have complete control of Konna again[60].

On 19th January, 2013 11 militants and 7 hostages were killed in a final assault to end the standoff. In addition, 16 foreign hostages were freed, including 2 Americans, 2 Germans, and 1 Portuguese[61].

[57] Researcher's objection on the reasons postulated by France for unilaterally intervening in the Malian crisis
[58] https://www.revolvy.com/main/index.php?s=Northern%20Mali%20conflict&item_type=topic 5th April, 2015 at 3.10pm
[59] Ibid
[60] Ibid

On 26th January, French Special Forces took over the airport and an important bridge in the city of Gao which was largely rebel-held. The troops reported "harassment" from rebel forces but no solid resistance to their operations. The city was taken by a French backed Malian force later that day[62].

On 27th January, 2013 French and Malian forces encircled Timbuktu and began securing the city. After gaining the airport on 27th January, the next day, Malian and French military sources claimed that the entire area between Gao and Timbuktu was under government control and access to the city was available. The city was fully taken by French and Malian forces by the next day. Also on the same date, the African Union held a summit in Addis Ababa, Ethiopia. Outgoing AU Chairperson Thomas Boni Yayi, the President of Benin, told fellow Heads of State their response to conflict in Mali had been too slow, and thanked France, the country's former colonial ruler, for taking the lead in its military intervention there. African leaders were expected to stay behind for a donor conference on 29th January, 2013 to drum up support for the African-led Mission in Mali. After the meeting, the AU gave its member countries one week to deploy ground troops to Mali.

On 8th February, 2013 French and Chadian troops announced that they had occupied Tessalit near the Algerian border, the seat of one of the last airports still not controlled by the Malian government and its allies[63].

Insurgent's forces were reported to have retreated to the *Adrar des Ifoghas*, rugged badlands in northeastern Mali. Knowledge of and control over local sources of water is expected to play a vital role in continuing conflict in that area[64].

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[61] Goh M., (2013). *"Hostages, Militants Reported Dead After Assault Ends Standoff:* The Two-Way". NPR.19th January. Retrieved from *www.npr.org/sections/thetwo.../hostages-militants-reported-dead-in-algerian-assault* 6th April, 2015 at 10.05am

[62] Ibid

[63] Shurkin, M. (2014) France's War in Mali: Lessons for an Expeditionary Army. Rand Corporation, Santa Monica, Calif. p. 22

On 19th February, 2013 insurgents attacked a French parachute regiment of 150 soldiers supported by a heavy vehicle patrol and Mirage fighter jets. One French commando, a sergeant, was killed and so were 20 militants[65].

U. S. President Obama announced on 22nd February, 2013 that about 100 American troops had been sent to Niger, which borders Mali, to aid the French in Mali[66]. The most recent U. S. troops were sent to help set up a new air base, from which to conduct surveillance against Al Qaeda. 40 U. S. Air Force logistics specialists, intelligence analysts and security officers arrived in the capital of Niger on 20th February 2013, bringing the total Americans deployed in Niger to 100[67].

Upon the promulgation of UNSC Resolution 2085 and Article 51 of the UN Charter, a Memorandum of Understanding (MOU) between ECOWAS and the troop contributing countries of AFISMA(Benin, Cote d'Ivoire, Ghana, Guinea, Liberia, Nigeria, Senegal Togo and Chad) representing a coalition comprising of some 6,000 troops from ECOWAS member States and Chad served under AFISMA between January and June 2013 were deployed to Mali which terms of involvement includes among others the restoration of peace and curbing humanitarian crisis[68].

A peace deal between the government and Tuareg rebels (MNLA) was signed on 18th June 2013[69], brokered by Burkina Faso's President Blaise Compaore in the Burkina capital, Ouagadougou but on 26th September 2013 the rebels pulled out of the peace agreement and

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[64] Ibid

[65] Ibid

[66] Trevithick, J. (2017). What You Need to Know About Why U.S. Special Operations Forces Are In Niger (Updated). Retrieved from http://www.thedrive.com/the-war-zone/14923/what-you-need-to-know-about-why-u-s-special-operations-forces-are-in-niger on 4th January, 2018 at 5.04pm

[67] Antonio M. (2013). U.S. Sets Up Drone Base in Niger, Further Expansion of War for Africa

[68] ECOWAS Press Release (2013). ECOWAS Salutes AFISMA Troops Contributing Countries. Retrieved from http://news.ecowas.int/presseshow.php?nb=230&lang=en&annee=2013 on 23 August, 2016 at 5.21pm

[69] Iakovos A., (2016). *The Al-Qaeda War Against France*. Smashwords Edition. Retrieved from http://www.pdb-ebooks.com/_/_/652854/the-al-qaeda-war-agaisnt-france on 21 June, 2014 at 4.09pm

claimed that the government had not respected its commitments to the truce. Fighting continued even though French forces were as at then scheduled for withdrawal[70].

In the wake of the French deployment, ECOWAS said that it had ordered troops to be deployed immediately to Mali, the UN Security Council said that the previously planned UN-led force would be deployed in the near future, and the European Union said it had increased preparations for sending military training troops into Mali. The MNLA also offered to join the offensive against the rebels.

As earlier mentioned, on January 17, 2012, MNLA forces attacked and captured the northern town of Menaka, near the border with Niger. In the weeks that followed, Tuareg rebels established control over much of northern Mali, including Gao, which contains the largest military base in northern Mali and a strategically significant military base at Tessalit. Shortly after the March 21 coup in which members of the Malian military over-threw the government of President Touré, the MNLA established control over Timbuktu[71]. Outrage by some members of the Mali military over the government's failure to properly equip troops to fight the heavily armed Tuareg force was a factor in the coup led by Captain Amadou Sanogo[72]. The coup members accused President Touré of "incompetence in the fight against terror[73]." The coup, and the subsequent collapse of Mali's military presence in the north, benefitted the MNLA and enabled consolidation of their gains. However, the secular MNLA eventually found itself pushed aside by AQIM and its affiliate, Ansar Dine.

Though many of the underlying causes of Mali's complex security challenge have existed for decades, the overthrow of Gaddafi's regime and the return of heavily armed Tuareg fighters

[70] Ibid
[71] Stewart J., (2013). *What is next for Mali? The Roots of Conflict and Challenges to Stability*. Strategic Studies Institute and U.S. Army War College Press. p 33
[72] Ibid
[73] Ibid

from Libya upset the precarious balance of power in northern Mali[74]. The wave of change, often referred to as the Arab Spring, which swept through North Africa also reenergized the Tuareg's long-standing quest for greater autonomy, or perhaps independence, in a geographic area that includes much of northern Mali.

Libyan leader Muammar Gaddafi had long employed Tuaregs in his military, utilizing them in conflicts both in Libya and Chad, and further afield in Afghanistan and Lebanon. In 1980, he declared Libya the natural homeland of all Tuaregs and offered them Libyan nationality[75]. When Gaddafi lost power in October 2011, an estimated 2,000 to 4,000 Malian Tuareg fighters returned home[76]. These fighters were heavily armed; the looting and sale of weapons from the Libyan government's arsenal created a sudden influx of heavy weaponry in the region[77]. Of specific concern were the 20,000-man operated portable air defense systems (MANPAD) the Libyan government had in its arsenal prior to the revolution. Of these, 5,000 have been secured by a multinational team under implementation of a UN disarmament, demobilization, and reintegration program. An unknown number are thought to have been destroyed during conflict, but fears remain that some of the weapons have been transported outside of Libya and may be in the hands of armed groups[78]. The operational condition of these weapons is not known, as weaponry were often poorly maintained by Gaddafi's forces, but operational MANPADs pose a significant threat to aircraft.

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[74] Ibid
[75] Ibid
[76] Stewart S., (2012). "*Mali Besieged by Fighters Fleeing Libya," Stratfor*, available from *www.stratfor.com/weekly/mali-besieged-fighters-fleeing-libya*. Retrieved on 21 June, 2016 at 3.20pm

[77] Ibid
[78] Stewart J., (2013*). What is next for Mali? The Roots of Conflict and Challenges to Stability*. Strategic Studies Institute and U.S. Army War College Press.p37

The MLNA claimed to have 1,000 well-armed fighters[79]; while government forces, prior to the 2012 coup, were estimated at 7,350[80]. The level of military experience and weaponry possessed by the current rebels may distinguish it from previous, less well-armed and organized rebellions. The MNLA leaders, Ag Mohamed Najem and Bilal Ag Acherif, held the rank of colonel in Gaddafi's army. Also, other members obtained significant military experience in earlier rebellions and the Libyan civil war[81]. Some high-ranking officers from the Malian army, such as Lieutenant Colonel Ag Mbarek Kay and Colonel Ag Bamoussa, also bring significant experience to the group[82]. The MNLA had assembled an impressive arsenal, accumulated over a number of years of planning and fortified by heavy weaponry brought by fighters returning from Libya. They also had experience implementing long-range guerrilla tactics over distances of hundreds of miles[83].

The speed at which rebel forces were able to consolidate their hold over the cities in the north and begin to push into other areas factored into France's decision to unilaterally take action rather than awaiting the arrival of regional force (this position has earlier on been countered by the researcher). In December 2012, the UN authorized deployment of an African-led security force to Mali, providing a legal international mandate for the use of force in Mali. The AFISMA was to be composed of forces, drawn primarily from ECOWAS countries, with a 1-year mandate[84]. However, creation of the force would take time and their level of capability was a concern. According to the then French foreign minister, "France had little choice but to intervene urgently or rebel forces might have made it to Bamako[85]"

[79] Ibid
[80] Warner L., (2012*). "Instability in Mali Complicates Regional Approach to AQIM," World Politics Review*, p. 1.
[81] Stewart J., (2013). What is Strategic Studies Institute and U.S. Army War College Press. p39
[82] Ibid
[83] Masters J., (2013). "*Al Qaeda in the Islamic Maghreb (AQIM)," Council on Foreign Relations*, available from *www.cfr.org/north-africa/al-qaeda-islamic-maghreb-aqim/p12717*. Retrieved on 22 June, 2016 at 4.21pm
[84] Ibid
[85] Stewart J., opcit p.199

These reasons given by the French minister is also misleading as they used the supposed eminent attack by insurgents as a smoke screen to further accentuate their true intentions which was to protect their own interests in the Malian state. The French interest which has for decades been a norm perpetrated in her ex colonies was clearly revealed by Charbonneau in his book the following facts:

> …when Sekou Toure of Guinea triggered the abandonment of France, three thousand Frenchmen left the country, taking all their possessions and destroying all that could not be moved: schools, nurseries, buildings of the public administration were destroyed, cars, books, medicines, instruments of the research institute, the tractors were crushed and sabotaged; horses, cows on farms were killed, and stored foods were burned or poisoned. The aim of this scandalous act was obviously to send a clear message to all the other colonies about the consequences of France's rejection. The fact is that little by little, fear seized the African elites, and after these events no other country ever found the courage to follow the example of SékouTouré, whose slogan was "We prefer freedom in poverty to opulence in slavery ". For the then newly independent countries it was necessary to find compromises with France.

> Sylvanus Olympio, the first president of the Republic of Togo, a small country in West Africa, found a solution likely to calm the French: Not wanting to continue to undergo French domination, he

refused to sign the colonial pact proposed by De Gaule, but agreed in return to pay an annual debt to France for the so-called benefits obtained during the French colonization. These were the only conditions for France not to destroy the country before leaving. However, the amount estimated by France was so large that the reimbursement of the so-called "colonial debt" was close to 40% of the country's budget in 1963.

Consequently, the financial situation of just independent Togo was very unstable, and in order to get out of this situation, Olympio decided to leave the monetary system set up by colonial France the FCFA (franc of the French colonies of Africa), and created the currency of the country.

On January 13, 1963, three days after he began printing the new bills, a squad of soldiers (supported by France) seized and killed the first elected president of independent Africa: Olympio was executed by an ex French legionnaire, the sergeant of the army Etienne Gnassingbe who, at the same time, received a bonus of 612 dollars from the local French embassy for the success of his mission. Olympo's dream was to build an independent and autonomous country. But the idea did not correspond to the French wishes.

On June 30, 1962, Modibo Keita, the first president of the Republic of Mali, also decided to withdraw from the CFAF monetary system (imposed on 12 newly independent African countries). Indeed, for the Malian president, who leaned more towards a socialist economy, it was clear that the colonization that was lasting with this pact with France became a trap, a burden for the development of the country. On November 19, 1968, like Olympio, Keita will be the victim of a coup led by another former French legionary of foreign affairs, Lieutenant Moussa Traoré.

In fact, during this turbulent period when Africa was struggling to free itself from the yoke of European colonization, France will repeatedly use mercenaries formerly affiliated with the foreign legion to carry out fist operations against the newly elected presidents:

On 1 January 1966, Jean-Bedel Bokassa, a former French legionnaire, waged a coup against David Dacko, the first president of the Central African Republic.

On January 3, 1966, Maurice Yaméogo, the first president of the Republic of Upper Volta, today called Burkina Faso, was the victim of a blow by Aboubacar Sangoulé Lamizana, a former French legionnaire who fought with French troops in Indonesia and Algeria against these countries independence On 26 October 1972 Mathieu Kérékou, who was a security guard to President

Hubert Maga, the first president of the Republic of Benin, carried out a coup against the president, after having attended the French military schools from 1968 to 1970. In fact, over the last 50 years, a total of 67 coups have occurred in 26 countries in Africa, 16 of which are former French colonies, which means that 61% of coups d'etat in Africa were initiated in former French colonies. In March 2008, former French President Jacques Chirac said:

"Without Africa, France will slide down into the rank of twenty-third power [of the world]"The predecessor of Jacques Chirac François Mitterrand had already prophesized in 1957 that: "Without Africa, France will have no history in the 21st century"

The author further revealed that, 14 African countries are obliged by France, through the colonial pact, to put 85% of their reserves in the central bank of France under the control of the French Ministry of Finance. So far, in 2014, Togo and about 13 other African countries still have to pay the colonial debt to France. African leaders who refused are killed or victims of coup d'etat. Those who obey are supported and rewarded by France with a sumptuous lifestyle, while their populations endure misery and despair. Such an evil system is denounced by the European Union, but France is not ready to do without this colonial system which offers it a cash of about 500 billion dollars from Africa, and by year.

We often accuse African leaders of corruption and serve the interests of Western nations, but there is a clear explanation for this behavior. They behave this way because they are afraid of being killed or being the victim of a coup. They want to ally themselves with a powerful nation to save themselves in case of aggression or difficulties. But, unlike friendly protection, the protection of the West is often offered in exchange for giving up serving their own people or the interests of nations.

African leaders would work in the interest of their people if they were not constantly harassed and intimidated by the colonial countries. In 1958, scared of the consequences of his choice of independence from France, Léopold Sédar Senghor said: "The choice of the Senegalese people is independence, they want it to take place only in friendship with France. France, not in dispute. "France has therefore accepted an "independence on paper" for its colonies, but has signed in parallel "cooperation agreements", specifying the nature of their relations with France, especially the ties to the currency (the Franc), the French education system, military agreements and trade preferences.[86]

[86] Charbonneau B., (2008*). France and the New Imperialism: Security Policy in Sub-Saharan Africa.* Ashgate Publishing, Ltd. Available at https://books.google.com.ng/books/about/France_and_the_New_Imperialism.html?id=s71AUHSEWPMC&redir_esc=y Retrieved 5th October, 2016, at 4:30pm.

On January 11, 2013, French air strikes on Mali launched Operation SERVAL. France deployed nearly 4,000 troops to Mali, including Special Forces. Working alongside Malian troops, they quickly forced the insurgents out of the region's major cities. Troops from neighboring Chad also deployed, taking heavy casualties in the fight for Kidal[87]. The cost of Operation SERVAL as of April 16, 2013, had reached €205 million. The total included €91 million for strategic transport, €55 million for personnel and €59 million in miscellaneous costs[88]. The United States provided logistical, technical, and intelligence support to Operation SERVAL, including air tankers to refuel French jets and transport planes[89]. Though the Barack Obama administration had initially declared they would not provide any ground troops in support of the French April 2013 operation, they confirmed they had deployed a small number of troops (approximately 22) in non-combat liaison roles to French and African troops[90]. In addition, the United States provided air tanker refuelers and transport planes[91]. Deciding intervention was in its national interests, Canada provided a C-17 aircraft, 25 percent of Operation SERVAL's strategic lift, to transport French armored vehicles, trucks, and troops[92].

France began to withdraw its force in April 2013 and plans to have no more than 1,000 troops in the country by the end of 2013. Their duties are transitioning to the regional African force, AFISMA, which numbered approximately 6,300 in late April[93]. The size of the force, following the approval of a revised concept of operations by the African Union's (AU) Peace and Security Council, will be 9,620 personnel, including 171 civilians, 590 police officers, and

[87] Stewart J., (2013). *What is next for Mali? The Roots of Conflict and Challenges to Stability.* Strategic Studies Institute and U.S. Army War College Press.
[88] Ibid
[89] Ibid
[90] Ibid
[91] Entous A., (2013). "U*.S. Agrees to Support French in Mali with Plane Refeuling," The Wall Street Journal*, available from *online.wsj.com/article/SB10001424127887324039504578266893897303204.html*. Retrieved on 22 June, 2016 at 7.21am
[92] Pugliese D., (2013) *"Canadian Forces Mission to Mali 'Ends with a Bit of Whimper'," The Ottawa Citizen Publication. p. 32*
[93] Stewart J., opcit p.200

8,859 military personnel[94]. However, it will take some time for AFISMA to reach full deployment. Mali, with the support of ECOWAS and the African Union, requested the UN transition the force to a peacekeeping operation when possible. A subsequent report by the UN Secretary General ruled out this option, in-stead proposing either:

> Beefing-up the current multidimensional presence in Bamako and transforming it into an integrated political presence with a better resourced AFISMA. AFISMA would then have "an offensive combat and stabilization mandate, focusing on extremist armed groups," together with bilateral military efforts. AF-ISMA would then transition to a UN stabilization mission once certain critical benchmarks are met. The second option advocates for an integrated stabilization mission with a military strength of 11,200 under Chapter VII alongside a parallel force to conduct counter-terrorism operations beyond the scope of the UN's mandate[95].

[94]Security Council Report (2013)., "Mali: April 2013 Monthly Fore-cast," from *www.securitycouncilreport.org/monthly-forecast/2013-04/mali_6.php*. Retrieved on 27 June, 2016 at 8.21am
[95] Ibid

From the discussion above, and after haven highlighted the reasons and the unjustifiable grounds, the French government hinged upon in its unilateral military intervention in Mali prior to the deployment of AFISMA and other UN bodies. It is imperative to specifically investigate the responses of EOCWAS, AU and UNSC concerned in stabilizing this Mali crisis so as to fully ascertain the role each and every one played, the challenges encountered, and legal mechanism relied upon in executing this daunting task. The next chapter sheds light on the issues raised.

CHAPTER FIVE

THE ROLE OF THE UNITED NATION IN MALI

5.1 INTRODUCTION

The Economic Community of West African States (ECOWAS) is a regional organization of 15 West African countries[1] established on 28 May 1975 by a treaty. Its main goal being the promotion of economic integration among its members, raise the living standard of its people, maintain an enhanced economic stability, foster relation among member states and contribute to the progress of the African continent. ECOWAS is one of the five regional pillars of the African Economic Community (AEC). ECOWAS has three official languages: English, French, and Portuguese.

It is widely believed that the Community has not satisfactorily achieved its aims and objectives of economic integration[2] due to one conflict or the other that engulfed the community and its inability to effectively handle the conflict situations. The community has witnessed and intervened in some of these conflicts. For instance, the dissension in Northern Benin Republic, the border tension between Liberia and Sierra Leone, Ivory Coast and Mali, Guinea Bissau, Senegal and Mauritania, which resulted in expulsion and repatriation of citizens. There was also a minor border disputes between Togo and Benin, Ghana and Togo which resulted in border closure and the conflict between Ghana and Nigeria which resulted to the expulsion of several thousands of Ghanaians from Nigeria[3].

The ECOWAS interventions in these conflicts attracted so much controversy at various international fora because the organization whose main aim is to foster economic integration

[1]Benin, Burkina Faso, Cape Verde, Côte D'ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togohttp://www.ecowas.int/member-states/ retrieved on 2nd May, 2016 at 1.18pm

[2] Article 3 (1) of the ECOWAS Revised Treaty 1993 (as amended)

[3]Omoigui, N. (1998). *Military Defence Pacts in Africa. Nigeria Socio-Economic and Political Issues*. Retrieved from https://www.dawodu.com/omoigui1.htm on 23rd July, 2016 at 3.11pm

lacked the capacities to assume responsibility for mutual security. These position the researcher believes is obsolete because under the new mechanism, (protocol relating to the mechanism for conflict prevention, management, resolution, peacekeeping and security) in its Article 10, provides for ECOWAS member states to intervene when there are security breaches among its members.

In addition, Allien[4] supports the position to deploy Economic Community of West African States Monitoring Group (ECOMOG) to these missions especially in Liberia. He further states in his book that ECOWAS though being in violation of the normative order as established by the United Nation Charter as without the consent of the security council, ECOWAS were in breach of their obligation regarding the use of force as member state of the United Nation while the organization itself was in violation of Article 53 of the UN Charter, which makes clear that no enforcement action shall be taken without the authorization of the security council. That haven been said and although there was no legal basis for the ECOWAS intervention under the UN Charter. It was supported by the United Nations and the whole of the international community. While the council tacitly accepted the role of West African States in Liberia, for more than two years it declared its support openly for ECOWAS in November 1992, when by virtue of Security Council Resolution 788, it commended ECOWAS for its effort to restore Peace Security and stability in Liberia.

This chapter is an effort to highlight the regional mechanism framework of the United Nation in the Malian conflict. Even though the Malian conflicts is considered one of the devastating conflicts on the African continent little attention have been given in the academic literature to accessing the various conflict resolution mechanism adopted by UN, ECOWAS and AU under its Peace and Security architecture, how these mechanisms are operationalized and the

[4]Allain, J. et al (2004*). The Challenges of the United Nations System of Use of Force: The Failures of Kosovo, Iraq and the Emergence of the African Union.* Max Planck UNYB (8). P. 261

challenges they face. This chapter aims to highlight this gap. The overreaching objective is to analyze how the collaboration between the Non-African bodies and the regional and sub-organizations played out in the resolution of the conflict in Mali.

5.2 REGIONAL LEGAL FRAMEWORK

The United Nations Charter of 1945 recognizes the importance of regional organizations in maintaining international peace and security. Thus, in Chapter VIII it made detailed provisions for the involvement of regional organizations in the maintenance of international peace and security.

> Article 52 clearly stated that "nothing in the Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security, as are appropriate for regional actions provided that such actions are consistent with the purpose and principles of the United Nations"[5].

> Article 53 however provides that "no such regional enforcement action shall be undertaken without the authorization of the Security Council. All measures taken by the regional arrangements in maintaining international peace and security shall at all times be duly reported to the Security Council".

Chapter II, Article 10 of the ECOWAS protocol relating to the mechanism for conflict prevention, management, resolution, peace-keeping and security provides that, the mediation and Security Council shall take decisions on issues of peace and security in

[5] www.monitor.upeace.org/archive.cfm?id_article=61#_edn1 retrieved on 4th May, 2015 at 3.06pm

the sub-region on behalf of the authority. it shall also implement all the provisions of this protocol

A combined reading of the provisions of Chapter VIII Article 52 of UN Charter and Chapter II, Article 10 of ECOWAS Mechanism indicate an unambiguous mandate to regional organizations to use all pacific means to settle disputes within their regions, but all enforcement actions by regional organizations must be with the authorization of the Security Council[6].

5.2.1 Evolution of ECOWAS Conflict Resolution Mechanism

5.2.1.1 1981 Protocol on Mutual Defense Assistance

The first major conflict resolution agreement executed under the auspices of ECOWAS was the *1981 Protocol on Mutual Defense Assistance* signed in Freetown, Sierra Leone in 1981 which provided for a non-standing military force for the purpose of mutual military assistance to members of the Community attacked by external aggressors[7].The Protocol provides for collective response when external forces attack a member state and when such attack is likely to endanger the peace and security of other member states[8]. In Articles 13 and 14, the Protocol made provisions for the nature and composition of the non-standing army called, *allied Armed Forces of the Community (AAFC).* Under this arrangement each member state was required to designate and set-aside a unit of its armed forces for emergency situations, and to be placed under the service of the Community. The operations and functions of the AAFC were for peacekeeping and intervention. Although the Protocol was invoked during the Liberian crisis the AAFC never materialized, (it is the researcher's opinion that the reasons for this could be lack of

[6]Proceedings of the Inaugural Symposium on the United Nations System in the Twenty-first Century 21-22 November 1995, UNU Headquarters, Tokyo, Japan

[7] Article 1 of the ECOWAS Treaty, ECOWAS Commission, Abuja.

[8] Articles 5 and 6 of the Protocol on Mutual Defence Assistance

non-full commitment of some member nations) rather some ECOWAS countries set-up the Economic Communities of West African States Monitoring Group (ECOMOG)[9].

5.2.1.2 ECOWAS Cease Fire Monitoring Group (ECOMOG)

The second stage in the evolution of the ECOWAS conflict resolution mechanism was the establishment and deployment of ECOMOG in direct response to the crisis in Liberia. The establishment of ECOMOG was essentially sequel to the request of President Samuel Doe for ECOWAS intervention. ECOWAS could not accede to this request through the AAFC because of the deep divide between the Anglophone and Francophone countries. (Anglophone countries were in support of Charles Taylor, while the Francophone countries were in support of Samuel Doe). To get over this hurdle, ECOMOG was established under the auspices of the ECOWAS Standing Mediation Committee established in 1989 and was dominated by Anglophone countries (Nigeria, Ghana, and Gambia). The Standing Mediation Committee met in Banjul, the Gambia and agreed to send a military force, named ECOMOG to Liberia[10]. This scenario when compared to the Malian crisis is quite different. The crisis in Liberia as at that time was not viewed as a purely international concern which did not attract the major powers in the UNSC. Liberia too not being colonized by any colonial master was strictly left for ECOWAS to deal with unlike the Malian crisis which had the French backing being a former colony. This in the researcher's view is a practical example of an application of double standard by the UNSC on the same scenario applied in different countries.

[9] Mitikishe M., (2000). *The Evolution of the Conduct of ECOMOG Operations in West Africa*. Monograph No44. Institute for Security Studies, South Africa, p2

[10] http:/www.monitor.upeace.org/archieve.cfm retrieved on 4th May, 2015 at 3.06pm

5.2.1.3 ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security

What could be regarded as the third phase in the evolution of conflict resolution mechanism in West Africa took place in 1999 with the adoption of the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security. The Protocol provides for the establishment of various organs and mechanism for conflict prevention, mechanism, management and resolution in West Africa. This latest conflict resolution mechanism is the current legal framework which ECOWAS under its article 10 contributed troops to African Led International Support Mission to Mali (AFISMA) was resorted to.

5.3 INSTITUTIONS OF THE MECHANISM

Following the relative success of ECOMOG operations in Liberia and Sierra Leone and drawing from the experience of these operations, ECOWAS leaders were encouraged to move towards the creation of a much more comprehensive arrangement for conflict prevention and resolution. Pursuant to this aspiration, ECOWAS leaders met in Lome, Togo on December 17th,1999 and approved a suggestion for the creation of a mechanism for conflict prevention, management, resolution, peace keeping and security.

The Protocol[11] laid the foundation for a new era in conflict resolution in West Africa, and according to Article 3 of the Protocol, the objectives of the mechanism are:

1. To prevent, manage and resolve internal and inter-state conflict;
2. To implement the relevant provisions of Article 58 of the revised treaty;
3. Implement the relevant provisions of the Protocol on non-Aggression, mutual assistance in defense, free movement of persons, the rights of residence and establishment;

[11] Articles 5 and 6 of the Protocol on conflict Prevention, Management, Peacekeeping and Security

4. Strengthen cooperation in the areas of conflict prevention, early warning, peace keeping operations, the control of cross border crime, international terrorism and proliferation of small arms and anti- personnel mines;
5. Maintain and consolidate peace, security and stability within the Community;
6. Establish institutions and formulate policies that would allow for the organization and coordination of humanitarian relief mission;
7. Promote close cooperation among member states in the areas of preventive diplomacy and peace keeping;
8. Constitute and deploy military force to maintain and restore peace within the sub-region, whenever the need arises, and;
9. Formulate and implement policies on anti-corruption, money laundering and illegal circulation of fire- arms.

The objectives of the mechanism cover all material aspects of modern conflict resolution, such as conflict prevention, early warning, peace keeping, strengthening of cooperation to tackle joint security problem, establishment of institutions to tackle security issues, humanitarian and relief operations and the constitution of a civilian and military peace keeping force.

To implement the Protocol, ECOWAS Heads of States authorized the establishment of the following Institutions of the Mechanism:

1. The Authority;
2. The Mediation and Security Council;
3. The ECOWAS Commission;
4. Any other institution as may be established by the Authority

Under Article 17, the Protocol establishes supporting organs to assist the institutions established in Article 4 in carrying out their functions. These organs are:

5. The Defense and Security Commission;
6. The Council of Elders;
7. The ECOWAS Cease fire Monitoring Group (ECOMOG)

We will now discuss each of these institutions:

5.3.1 The Authority

This is established under Article 4. It is the main political institution under the Protocol and is composed of Heads of States and Governments of member states. It is the highest decision-making body authorized to act on all matters concerning conflict prevention, management and resolution, peace keeping, security, humanitarian support, peace building, control of cross-border crimes, proliferation of small arms as well as all other matters covered by the mechanism[12]. The Mechanism shall be put into effect upon the decision of the Authority, the Mediation and Security Council.

5.3.2 The Mediation and Security Council

This is composed of ten members (Burkina Faso, Ghana, Guinea, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo). The Council is the technical or implementation body of the mechanism authorized to take decisions on issues of peace and security in the sub- region on behalf of the authority and to implement all provisions of the Protocol.

Pursuant to Article 7 wherein the Authority mandated the Mediation and Security Council to take on its behalf appropriate decisions for the implementation of the provisions of the Protocol, the Mediation and Security Council shall according to Article 10 decide on all

[12] http://www.icidr.org/ijalsg_vol3no3_dec2012/ExpositionofthePrincipleofCollectiveSecurityUndertheEcowasTreatyof201993.pdf retrieved on 8th May, 2015 at 1.17pm

matters relating to peace and security in the sub-region. It is its duty or power to prevent, decide and implement all policies for conflict prevention, management and resolution, peace keeping and security, authorize all forms of intervention and decide particularly on the deployment of political and military missions, other functions includes, approve and review the mandate and terms of reference for such mission, and on the recommendations of the Executive Commission appoint Special Representatives and the Force Commander.

The deliberations of the Mediation and Security Council shall be held at three levels, namely:

i. Heads of State and Government

ii. Ministerial and

iii. Ambassadorial levels.

Each level has distinct operational powers and is mandated to meet at specified period to monitor and appraise security situation in the sub-region[13].

The establishment of the Mediation and Security Council is meant to quicken decision-making and implementation during crisis situation such as by urgently agreeing to intervene in a situation and ordering the early deployment of troops. It is also meant to build wider sub-regional support for ECOMOG Peace keeping operations and to ensure that decision to deploy troops has the support of all members of the Council. A current example is the resolution of the West African Leaders meeting which included Nigerian President Mohammadu Buhari, Senegal President MackySall, Liberian President Ellen Johnson Sirleaf, Sierra Leone Vice-President Victor Foh and former Ghanaian president John Mahama who mediated in the Gambia political crisis aimed at persuading President Yahaha Jameh to step down after he lost the Gambian presidential election in 2016.The researcher note with dismay that this approach by ECOWAS in

[13]Peacekeeping Best Practices Unit Department of Peace keeping Operations United Nations December 2003

the Gambia political crisis was not strictly senso applied to Mali at its initial stage of the crisis. ECOWAS in the researcher's view did not show much commitment as it did in Gambia in 2016.

5.3.3 The ECOWAS Commission

The President of ECOWAS Commission is vested with powers to initiate actions for conflict prevention, management, resolutions, peacekeeping and security in the sub-region. He also recommends the appointment of the Special Representative and the Force Commander for approval by the Mediation and Security Council; appoints members of the Council of Elders; has responsibility for political, administrative and operational activities and provides logistic support for the mission, prepares periodic reports on the activities of the mechanism for the mediation missions on the basis of his assessment of the existing situation; convenes, in consultation with the Chairman of the Authority, all meetings of the mediation and Security Council, Council of Elders and Defense and Security Commission, and implements all decisions of the Mediation and Security Council[14].In implementing the provisions of the mechanism, the President of the Commission is assisted by the Commissioner in charge of Political Affairs, Defense and Security. All these responsibilities of the president on paper evidently are encouraging. However, the problem the researcher observes is its full implementation of the responsibilities of this office by the occupants.

[14] Article 1 of Decision A/Dec. 1/06/06. Retrieved from http://documentation.ecowas.int/…/Protocol%20Relating%20to%20the%20Mechanism%20f… on 19 July, 2016 at 8.22am

5.3.4 The Council of Elders

This is made of eminent elders who on behalf of ECOWAS can use their good offices and experience to play the roles of mediators, conciliators and facilitators. The Council could be requested by the Executive Secretary of ECOWAS or the Mediation and Security Council whenever the need arises to deal with any given conflict situation.

The establishment of the Council of Elder is an attempt to tackle conflict issues from an African perspective and methodology. In most African societies' opinion of elders in decision-making and conflict resolution is highly regarded and respected.

Whether the counsel of ECOWAS Council of Elders would be respected in the present times when arguably, the main factors behind most conflicts are the desire for political and economic powers is in doubt. Attempts made to involve elders in mediation and conciliation in Liberia, Sierra Leone and Guinea Bissau did not yield much fruit, because warlords were more interested in political and economic interest than the council of elders[15]. Moreso, this body has had no direct impact on the situation in Mali. It looks only good on paper and has no practical effect on ground in Mali.

5.3.5 ECOWAS Cease Fire Monitoring Group (ECOMOG)

Article 21 gave a formal and legal backing to the creation of ECOWAS Cease Fire Monitoring Group (ECOMOG) which has been in existence since 1990.The new ECOMOG established by Article 21 of the Protocol is structured as multipurpose units in their countries of origin, and ready for immediate deployment.

[15] http://www.monitor.upeace.org/archive.cfm?id_article=61 retrieved on 21st May, 2015 at 6.20am

The Force is charged, among others, with observation and monitoring, peacekeeping and peace restoration, humanitarian intervention, enforcement of sanctions, preventive deployment, peace building, disarmament and demobilization.

5.3.6 Methods of Conflict Resolution

The methodology of ECOMOG operations could be classified into five, namely, intervention, peacekeeping, peace enforcement, disarmament and mediation[16]. These methods have been applied at various stages of conflicts in West Africa.

5.3.7 Interventions

Intervention is an attempt to reduce suffering within a state through peacekeeping or peace enforcement methods. This is often orchestrated by one or many persons or international bodies to wade into crisis.

Intervention operations of ECOMOG were based on express invitation of legitimate governments of ECOWAS member states who were victims of armed attack by rebel groups, and ECOMOG troops were deployed to prevent total breakdown of law and order. ECOMOG intervention missions have involved combat operations against insurgents or factions, which resists the authority of the government. Such intervention operations were aimed at securing a cease-fire, creating conducive atmosphere for negotiation and the protection of non-combatants through the establishment of safe- havens under direct ECOMOG protection. For example, as witnessed in Liberia, Sierra Leone and Cote D'ivoire[17]. With these successes recorded by ECOMOG in these countries, the researcher is inclined to ask why ECOMOG was not deployed to Mali at the early stages, and why did the Malian state not exercise her right under Article 4(J)

[16] Ibid
[17] Eboe H., (1999) *The ECOMOG Experience with Peace Keeping in West Africa*. Free Press, London. p.1

of AU constitutive Act. Upon investigation, it was discovered that ECOMOG deployment is dependent on the invitation of the state engulfed in a particular crisis. As regards the Malian situation, the government did not formally request for ECOMOG intervention but instead called on France her former colonial Master to assist her.

5.3.8 Peace Enforcement

Peace enforcement is a practice of ensuring peace in an area or region. It is sometimes considered to be the midpoint between peacekeeping and peacemaking[18].

ECOMOG operations in Liberia, Sierra Leone and Equatorial Guinea began with interventions in response to request by the governments of the respective countries and gradually transformed to peace enforcement when the parties could not reach a peace agreement towards the settlement of the disputes. The objective of all ECOMOG peace enforcement operation were to compel the warring parties to adhere to any agreement reached among them, most times involving massive use of force against any of the parties that had broken the agreement[19]. In ECOMOG operations in Liberia and Sierra Leone, the application of force by ECOMOG led to the further escalation of the conflict as the rebel groups engaged ECOMOG in direct combat and employed various unconventional tactics including deliberately targeting and maiming civilians during the conflict.

5.3.9 Peacekeeping

Peacekeeping refers to the activities that tend to create conditions that favor lasting peace[20]. ECOMOG operations in Liberia, Sierra Leone and Equatorial Guinea followed this

[18] Dictionary of Military and Associated Terms.US Department of Defense, 2005.
[19] Ibid
[20] United Nations Peacekeeping. www.un.org/en/peacekeeping/Retrieved 20May, 2015 at 3.45pm

pattern of transformation from intervention, peace enforcement and eventually peace keeping. The only exception was the then ongoing ECOMOG mission in Cote d' Iviore, which progressed from intervention to peace keeping.

The major obstacle to the success of ECOMOG peacekeeping operations was to convince the parties that the force had actually transformed from a peace enforcement force to a peacekeeping force. This was no mean task, which ECOMOG had performed with different degree of success. To date ECOMOG has held peacekeeping operations in Liberia, Sierra Leone, Equatorial Guinea, Cote de Iviore and Burkina Faso[21].

5.3.10 Mediation

Mediation is used to settle disputes. When two parties are unable to settle a dispute, they will often use mediation in order to reach an agreement. When two parties agree to use mediation, a neutral third party will work with the two parties in a dispute in order to develop a settlement agreement. The neutral third party is known as the mediator[22].

In the application of this method of resolution, as was witnessed when former Nigerian President Goodluck Jonathan's visit to Burkina Faso's capital Ouagadougou as a member of The Three-Man Delegation of Head of State and Government raised by ECOWAS to facilitate the speedy solution to the country's then political crisis. It will be recalled that there was a military coup in that country which saw Lt. Col. Isaac Zida emerging as the Head of State of the country ousting a democratically elected government in the country. The three-man delegation spoke with opposition leaders, members of civil society and other political stakeholders in the country

[21] https://www.hrw.org/reports/1993/liberia/ retrieved 20 May, 2015 at 3.29pm
[22] www.gvsu.edu/mediation retrieved on 21st May, 2015 at 4.00pm

all aimed at restoring peace[23]. The resultant effect being that peace was eventually restored without resorting to military intervention.

5.3.11 Disarmament

To disarm means to take weapons away from someone, or to give up weapons[24].After the ECOMOG success in Liberia, Sierra Leone and Cote D'iviore, combatants were forcefully dispossessed of their arms so as to enforce the peace in these regions. In some cases, after peace treaties have been signed, combatants willingly relinquished their arms to abide by the peace accord entered into.

5.4 ANALYSIS OF THE APPLICATION OF ECOMOG MECHANISMS ON CONFLICT RESOLUTIONS ON SOME MEMBER STATES

This researcher finds it necessary to analyze the application of the mechanism through ECOMOG peace keeping and peace enforcement operations in Liberia (1990-1997), Sierra Leone (1996-1999), Guinea Bissau (1998-1999), Cote d' Iviore and Burkina Faso (2014).

5.4.1 Liberia (1990- 1998)

In December 1989 soldiers of the *National Patriotic Front of Liberia (NPFL)* under the command of *Charles Ghanky Taylor* launched an attack on Liberia from the Cote d' Ivorian boarder with Liberia[25]. Within months the fighting had escalated with the NPFL making steady and continuous military progress toward Monrovia. By March 1990, law and order had virtually

[23]https://www.un.org/press/en/2012/sc10840.doc.htm retrieved on 21st May, 2015 at 4.02pm
[24]www.dictionary.cambridge.org/.../british/disarm retrieved on 22nd May, 2015 at 4.08pm
[25]Linus, M. (2003). *Collective Peacekeeping in West Africa. Special Report.* University for Peace and Conflict Monitor.

broken down in most parts of Liberia (Monrovia was clearly threatened) as various rebel groups, which had sprang up fought for control for different parts of the country.

The Economic Community of West African States in response to the total breakdown of law and order in the country, the humanitarian catastrophe and the growing threat to sub-regional peace and security met in Banjul, the Gambia and established a Standing Mediation Committee to resolve the crisis. Efforts at peace agreement failed. By August 1990 ECOWAS deployed 3,000 strong West African troops made up of contingents from Nigeria, Ghana, Guinea, Sierra Leone and the Gambia to Liberia.

ECOMOG deployment was vehemently opposed by Charles Taylor who saw ECOMOG as a ploy by some West African countries (particularly Nigeria) to deprive him from taking over Monrovia. NPFL then launched immediate attack on ECOMOG as the troops landed in Monrovia. In response, ECOMOG was forced to change its operational mandate from peace keeping to peace enforcement within a month of deployment with specific order to create a buffer zone between NPFL forces and Monrovia[26].

While in Liberia, ECOMOG were involved in various types of missions for example peace keeping, peace enforcement, mediation, disarming of rebel groups, and the protection of humanitarian aids. ECOMOG peacekeeping operation ended in February 1998, but contingents of 5000 troops remained behind in capacity building roles.

Following the Abuja I and II Peace Agreement among the major warlords and other interest groups, a cease -fire was declared, and a time-table set for election which was held on

[26]www.globalsecurity.org/liberia 1989 retrieved on 23rd May, 2015 at 4.11pm

July 19, 1997. The elections were overwhelmingly won by Charles Taylor of the National Patriotic Party (NPP) with about 75.3% of the votes cast in the presidential election and21 out of 26 seats in the Senates and 49 out of 60 seats in the House of Representatives[27]. After this, ECOMOG had succeeded in enthroning democracy which paved way for peace and reconciliation forthwith but the peace did not endure.

5.4.2 Sierra Leone (1996-1999)

The intervention of ECOMOG forces in Sierra Leone occurred following the overthrow of President Ahmed Kabbah. In February 1998, ECOMOG troops with contingents from Ghana, Guinea, Mali and Nigeria restored constitutional legality and reinstated the government of the democratically elected government of President Kabbah[28].At the peak of the operations ECOMOG had 13,000 troop in the country which conducted both peacekeeping and peace enforcement operations[29].All the warring factions and the government later signed a peace agreement in Lome in September, 1999 ending the Sierra Leonean crises. In 1999, the United Nations Peace keeping force United Nations Mission in Sierra Leone (UNAMSIL) replaced ECOMOG and lasted till December 2005[30].

5.4.3 Guinea Bissau (1998-2000)

In June 1998, units of the armed forces of Guinea Bissau led by General Antonio Indjai, the former Chief of Defense Staff rebelled against the government of President Joao Bernardo Vieira. Relying on a bilateral defense between Guinea Bissau, Senegal and Guinea, the President

[27] www.africanelections.tripod.com/lr.html retrieved on 24th May, 2015 at 4.13pm
[28] www.hrw.org/.../sierra/sierle99-04int retrieved on 24th May, 2015 at 4.18pm
[29] Ibid
[30] www.un.org/en/peacekeeping/unamsil/-22ndOctober, 1999. retrieved on 24th May, 2015 at 4.20pm

requested for military assistances from the countries and they obliged him[31]. Also, at the request of the President, and to offer support to the legitimate government of the country, ECOWAS leaders met in July 1998 and approved a peace plan for the country, which involved among others, the deployment of ECOMOG troops from Niger, Benin and Togo, and a master plan for supervision and control of the Cease- Fire Agreement. However, ECOMOG intervention did not save the President, as the rebel group forcefully removed him from power.

5.4.4 Burkina Faso (2014)

After 27 years in power, Burkina Faso's President, Blaise Compaore was suddenly ousted by popular uprising on 30th October, 2014. Haven kept himself in power since the riots of 2011 through brutal repression, he swiftly resigned and fled to Cote d Ivioire. He had announced his intention to amend Article 37 of the Basic Law to allow him run again in 2015 to continue in office.

ECOWAS then stated that the international community should refrain from imposing its own sanctions on the country. ECOWAS then appointed Senegalese President, Macky Sall to lead its mediation efforts in Burkina Faso. He was one of three leaders who travelled to the capital, Ouagadougou for the talks, which led to the one-year transition agreement. The talks are continuing as the various parties attempt to reach an agreement on a civilian interim leader. Some opposition parties do not want Mr. Compaore's former governing party to be involved in the discussions. Col. Zida then agreed to hand over power to civilians, but later he stated that he was not concerned by the African Union deadline[32]. Certainly not satisfied with the role of African Union, Col. Zida said: "We have waited on the African Union in moments when it

[31] ECOMOG Operations on Guinea Bissau (June, 1989 – April, 1999). www.globalsecurity.org/…/guinea-bisau retrieved on 24th May, 2015 at 4.27pm

[32] Peace and Security Report. Institute for Security Studies. https://www.files.ethz.ch/isn/186166/PSCReport64.pdf *retrieved on 25th May, 2015 at 4.32pm*

should have shown its fraternity and its friendship, but instead was not there," he said. "It's unfortunate but it's not too late.[33]"

Ghana's President John DramaniMahama thought that the threat of sanctions would be avoided. He said "I am certain that we will not reach the stage where the international community will have to impose sanctions.[34]" AU sanctions could also include a travel ban on military officials. The AU's Peace and Security Council has been meeting and applying both the mediation and interventions methods to manage the crisis. Dr. Mr. Roch Marc Christian Kabore was elected president of the country since 29th December, 2015.

5.4.5 Cote d' Iviore

On the 19th of September 2002, about 750 troops allegedly recruited by the former President of Cote d'Iviore Mr. Robert Guei, attacked three strategic cities including Abidjan in a revolt aimed at removing the government of President Lawrence Gbagbo from power. This attempt failed, but the rebels succeeded in taking control of the southern parts of the country.

In September 2002, France sent in a contingent of 1000 soldiers (later increased to 4000), while in December 2002 ECOWAS sent 1,200 soldiers to the country. The French and ECOMOG troops kept the peace in the country relying on UN Resolution1464 (2003) that authorized a peace keeping and enforcement operation. On the 13th of May 2003 the Security Council decided to establish a UN Mission in the country which was known as United Nations Mission in Cote d'Ivioire (MINUCI). It built efforts of the French and ECOWAS troops and implemented the Linas- Marcoussis Agreement[35]. Intervention, peacekeeping and peace enforcement methods were used both by the ECOWAS, UN and AU to manage the crises.

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[33] Ibid

[34] Hosted.ap.org/dynamic/...homesite retrieved on 25th May, 2015 at 4.44pm

[35] http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/cote_divoire_01242003en.pdf retrieved on 25th May, 2015 at 4.52pm

As the researcher had earlier stated, ECOMOG was never deployed to quell the Malian crisis because the Malian state did not expressly invite it to intervene, instead, she called for the help of her former colonial master (France) to assist it due to the nature of the crisis, weaponry and the swiftness the insurgent deployed in carrying out their attacks. This is the researcher's view as the main reason ECOMOG wasn't in Mali, thus, representing the lack of text of its activities in Mali. Notwithstanding, ECOMOG still remains a force within the African sub-region and it is still carrying out its task in member states that invited it till date.

5.5 ECOWAS SUB-REGIONAL PEACE AND SECURITY OBSERVATION SYSTEM, APPLICATION OF ITS EARLY WARNING SYSTEM

The reality of state formation in post-colonial Africa is that, in many countries, the apparatus of governance began to crumble even before it could be fully consolidated[36]. A combined effect of misrule, widespread poverty and violent armed conflicts has produced a series of inter-linked crisis that question the continued reliance on orthodox state actors for bringing about social progress. Some of the searching solutions to these challenges have, on one hand, activated the case for regionalization[37] to tackle transnational security and economic development challenges, while civil society organizations, on the other hand, continue to gain recognition as partners in peace building[38].

The Protocol in Chapter IV of the ECOWAS Mechanism establishes a Regional Peace and Security Observation System known as the Early Warning System (hereinafter called the

[36]Bratton, M. (1999). *Beyond the State: Civil Society and Associational Life in Africa. World Politics,* Vol XLI, no.3 p407-430

[37]Charter of the United Nations: We the Peoples of the United Nations –United for a Better World. Available on the UN website at: http://www.un.org/aboutun/charter/ (Retrieved: 22 February 2007, Chapter VIII; See also: Cooperation between the United Nations and Regional Organizations/Arrangements in a Peacekeeping Environment: suggested principles and mechanisms, March 1999. Available at: http://www.globalpolicy.org/security/peacekpg/region/0399cooperation.pdf(Retrieved : 22 February 2016 at 4.30

[38]Constitutive Act of the African Union, 2002. Available at: http://www.au2002.gov.za/docs/key_oau/au_act.htm (Retrieved: 21 February 2016). See also. United Nations General Assembly, A/58/817, 11 June 2004.

System) for the purposes of conflict prevention. The System consists of an Observation and Monitoring Center located at the Secretariat and Observation Centers in four reporting zones as follows:

1. Banjul, this covers Cape Verde, Gambia, Guinea Bissau and Senegal
2. Cotonue, this consists of Benin, Nigeria, and Togo
3. Monrovia, this consist of Ghana, Guinea, Liberia, and Sierra Leone
4. Lastly Ouagadougou, which takes care of Burkina Faso, Cote d' Iviore Mali, and Niger.

According to the arrangement, all material information on regional peace and security are collected and analyzed by the zonal offices and transmitted to the Secretariat which records, analyzes and takes further and necessary action on any sign of impending breakdown of good relations between member states or any brewing crisis in a member state. The zonal offices are expected to assess indicators relating to political (human right, democracy), economic (food shortage), social (unemployment), security (arms flow, Civil- military relations), and environment (draught, flooding)[39].

The System is collaborating with a coalition of West African NGOs called West African Network for Peace Building (WANEP) in this area. The involvement of civil society in the system is expected to be valuable, because collection of political data relating to human rights abuses in most West African states is a delicate and sensitive issue which would be better done by civil society groups and not by secretariat staff who are bogged down by bureaucracy and who serve at the behest of government. The establishment of the Center is a significant milestone in the development of ECOWAS conflict prevention and resolution mechanism.

[39]http://www.i4pinternational.org/files/203/8.+overview+of+conflict+prev+capacities. retrieved on 21st May, 2015 at 3.17pm

The Mechanism is strengthened by a Supplementary Protocol on Democracy and Good Governance[40], adopted in 2001, which addresses structural issues such as injustice and bad governance underlying violent conflicts. As the primary security instrument that outlines the security architecture and strategy for the sub-region, the Mechanism and its Supplementary Protocol addresses the requirement of Article 58(3) of the Revised Treaty of ECOWAS (1993) which states that "detailed provisions governing political cooperation, regional peace and stability shall be defined in the relevant Protocols".

Regarding the recognition of civil society organizations (CSOs) in this context, a United Nations report describes CSOs as "the prime movers of some of the most innovative initiatives to deal with emerging global threats[41]."

Again, the preamble of the Constitutive Act of the African Union (AU) mentions, among other things, that the AU would be "guided by our common vision of a united and strong Africa and by the need to build a partnership between governments and all segments of civil society, in particular women, youth and the private sector, in order to strengthen solidarity and cohesion among peoples"[42].

Furthermore, Article 24 of the AU's Common African Defense and Security Policy (CADSP) of 2004, highlighting the roles of its implementing organs, states that the AU's "Peace and Security Council shall encourage non-governmental organizations, and community-based and other civil society organizations, particularly women's organizations, to participate actively

[40]ECOWAS: Protocol on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security Dakar, December 2001 http://www.sec.ecowas.int/sitecedeao/english/protocoles/Protocol%20on%20good-governance-and-democracy-rev-5EN.pdf. Retrieved 19th May, 2015 at 6.03pm

[41] United Nations General Assembly, A/58/817, 11 June 2004.

[42]Constitutive Act of the African Union, 2002. Available at: http://www.au2002.gov.za/docs/key_oau/au_act.htm Retrieved 19th May, 2015 at 6.07pm

in the efforts aimed at promoting peace, security and stability in Africa; and that when required, such organizations may be invited to address the Peace and Security Council[43]."

ECOWAS has since 2001, taken steps to operationalize its conflict early warning system by soliciting the technical expertise of relevant CSOs. However, the implementation of the ECOWAS Early Warning System has not translated into the attainment of a sub-regional capacity to respond promptly to emerging conflicts or stop on-going ones. While the system is able to gather the needed early information, certain structural hurdles continue to frustrate the anticipated complimentary relationship between early warning information and the design and implementation of early response strategies in the sub region.

5.6 AFRICAN UNION CONSTITUTIVE ACT

On July 9, 2001, the OAU made the decision to transform itself into a continental African Union (AU) following the 2000 signing and ratification by fifty Heads of State and Government of the Constitutive Act of the African Union (hereafter, "the Act") in Lusaka, Zambia. However, it remains to be seen whether the AU will build on the capacity of its predecessor in the area of conflict prevention, management, and resolution. Unlike the OAU Charter, the Constitutive Act of the AU allows for interference in the internal affairs of member states in cases of unconstitutional changes of governments, genocide, and conflicts that threaten regional stability[44]. Furthermore, the Act also provides for the participation of African civil society actors in the activities of the organization, establishes a Pan-African Parliament, and provides for an Economic and Cultural Commission.

[43]Solemn Declaration on a Common African Defence and Security Policy, African Union 28 February 2004. Available at:
http://www.africaunion.org/News_Events/2ND%20EX%20ASSEMBLY/Declaration%20on%20a%20Comm.Af%20Def%20Sec.pdf Retrieved 19th May, 2015 at 6.13pm

[44]Herbst J., et al (2003). The future of Africa: A new order in sight? Oxford/New York. Adelphi Paper. p.361

5.6.1. Peace and Security Council

After the establishment of the new union, African Heads of State and Government adopted a protocol relating to the establishment of the Peace and Security Council (PSC) in Durban, South Africa. The council replaced the former OAU Mechanism for Conflict Prevention, Management, and Resolution, incorporating relevant structures and methods in order to serve as the continent's collective security and early-warning mechanism. The Protocol Relating to the Peace and Security Council of the African (hereafter, "PSC Protocol") states the rationale for and delineates the interlocking components of the African Union Peace and Security Architecture (APSA), in which the PSC is the principal decision-making organ for conflict prevention, management ,and resolution and is supported by a Continental Early warning System (CEWS), a panel of the Wise (POW), a Special (Peace) Fund (the Fund), an African Standby (Peacekeeping) Force (ASF), including a Military Staff Committee (MSC), and the AU Commission (AUC),through the chairperson of the AUC, along with the Commissioner for Peace and Security and his/her Peace and Security Directorate (PSD).

In return, the PSC Protocol requests the UN's acknowledgement of the role and obligations of regional organizations in the management of regional conflict. According to Article 7 of the PSC Protocol, the PSC, in consultation with the chairperson of the AU Commission, is mandated to:

1. Anticipate and prevent disputes and conflicts, as well as policies that may lead to genocide and crimes against humanity;
2. Undertake peacemaking and peace building functions to resolve conflicts where they have occurred;
3. Authorize the mounting and deployment of peace support missions;

4. Intervene on behalf of the AU in a member state's conflict under grave circumstances, namely those involving war crimes, genocide, and crimes against humanity, as defined in relevant international conventions and instruments;
5. Institute sanctions whenever an unconstitutional change of government takes place in a member state, as provided for in the Lome Declaration, Gambia, Democratic Republic of Congo and Cote d'vioure.
6. Implement the common defense policy of the African Union;
7. Follow-up on the progress made towards the promotion of democratic practices, good governance, the rule of law, protection of human rights and fundamental freedoms, respect for the sanctity of human life, and the upholding of international humanitarian law by member states; and
8. Support and facilitate humanitarian action in situations of armed conflicts or major natural disasters (UN, 2004).

The PSC has been granted the authority to make decisions on its own on a wide-range of security related issues in Africa, ranging from preventive diplomacy to post-conflict peace building. However, in serious crisis situations such as those specified under Article 4(h) or when action is needed in a non-consenting member state, it is only the AU assembly that can make the ultimate decision regarding whether or not to intervene based upon the PSC's recommendations. The council is also responsible for facilitating close collaboration with the Regional Economic Communities (RECs)/Regional Mechanisms (RMs)[45]and the UN.

Since its inauguration, the PSC has made crucial political decisions in response to peace and security challenges in Africa, with the mixed result of both shortcomings and achievements.

[45]RECs refer to all the eight Regional Economic Communities recognized by the African Union. The RMs refers to Regional Mechanisms for Conflict Prevention, Management and Resolution in Africa

It should be understood that most of these responses have been in the areas of condemning violence and the use of political and economic sanctions against unconstitutional changes of government, particularly the coup d'état in the Central African Republic (2003), Guinea Bissau (2003 and 2012), Sao Tome and Principe (2003), Togo (2005), Mauritania (2005 and 2008), Guinea (2008), Madagascar (2009), and Niger (2010), the post-election crisis in Cote d'Ivoire (2010-2011), and the post-election violence in Kenya(2013). The council has also been able to authorize peace operations in Burundi, Somalia, Sudan, and the Comoros.

5.6.2 African Union Peace and Security Architecture

The African Union Peace and Security Architecture has evolved over a period of four decades, the period from the formation of the OAU in 1963 to the 4th Extraordinary Summit of the OAU in September 1999 in Sirte[46] (where African leaders agreed to transform the OAU to AU) could be described as The African Union and the Conflict in Mali background context of the establishment of Africa's new security mechanism. The approval of the Constitutive Act of the African Union in July 2000 and the creation of the AU represents a significant milestone in the vision, goals, and responsibilities entrusted to the new pan-African institution. The AU still upholds the principles that directed its weak predecessor that placed a premium on sovereignty, "African solutions to African problems," non- interference in member states' internal affairs, and non-use of force for the peaceful settlement of African disputes.

However, the Act brought with it significant normative changes, particularly in the areas of peace and security, human rights and democracy, respect for the sanctity of human life, the condemnation and rejection of unconstitutional governments, and an openness to intervention. It is instructive to note that with the transformation from the OAU to AU, the maintenance of peace

[46]Sharkdam W., (2008). *In Search of Greater Unity: African States and the Quest for an African Union Government. Journal of Alternative Perspectives in the Social Sciences (2009) Vol 1, No 3, p. 645-671*

and security became the primary issue on the AU agenda. These new norms and standards form the basis on which the PSC Protocol and the Common African Defence and Security Policy (CADSP) were enacted.

One aspect of the African Union that represents a clear departure from the OAU is the principle of the AU's right of intervention. According to Article 4(h) of the Constitutive Act of the African Union, the AU has the right to intervene in member states' activities in cases of grave circumstances, namely war crimes, genocide, and crimes against humanity. Furthermore, the article was amended in 2003 by the Protocol on Amendments to the Act to include other serious conditions under which the AU could intervene, particularly those that included threats to legitimate order. In such cases, according to the amendment, the AU was permitted to restore security to any AU member state based on the recommendation of the PSC. Specifically, Article 4(j) provides for "the right of member states to request intervention from the Union in order to restore peace and security."

The researcher is inclined to ask, what then would be the position of AU if a particular member states emphatically relies on article 4(j) as highlighted above and refuse to heed to intervention from member states in cases of security crisis? The researcher opines that should this scenario occur the AU should view first and foremost, study the security breach in that member state and the effect it has on the citizenry, and if satisfied of security breaches shall also be emphatic in the strict application of Article 4(J) to curb the security breach in such member state.

5.6.3 Continental Early Warning System (CEWS)

The PSC Protocol calls for the establishment of a Continental wide Early Warning System (CEWS) as part of the APSA to "facilitate the anticipation and prevention of conflicts" The African Union and the Conflict in Mali through gathering and analysis of information that will help the AU to prevent conflicts in a timely manner. The CEWS, which operates as the early warning component of the APSA, builds on the RECs/RMs' early mechanism. The idea behind it is to boost the AU capacity to prevent conflict by providing the chairperson of the AU commission with information and to enable him/her to use the data gathered to advise the PSC on potential conflicts and threats to African peace and security and, finally, to recommend the best course of action to be used by the Peace and Security Council[47].

Structurally, the CEWS consists of the Observation and Monitoring Centre (OMC), known as "The Situation Room," housed at the Conflict Management Division (CMD) at the AU Commission, and the Observation and Monitoring Units (OMUs) of the RMs. According to Article 12 (2b) of the PSC Protocol, the Situation Room is to be linked directly to the RMs' OMUs through appropriate means of communication. The OMUs are to continuously collect and process data at their respective levels and transmit all data to the Situation Room. The AU takes prompt actions in response to a threat of any violent conflict that has the propensity to disturb African peace and security.

Based on the above legal and institutional framework AU opted to unfold its efforts to deal with situation of the Malian crisis in spite of the fact that the events were too complicated to be handled in such institutional capacity. The researcher believed that the French intervention in Mali once again exposes the limitations of African states and regional organizations in dealing with continental problems. However, both AU and the regional organization (ECOWAS) had

[47] Ibid

tried to be involved in the mediation and resolution of the Malian crisis from its beginning. With the outbreak of the secessionist rebellion and military coup, both bodies imposed a range of political, diplomatic and economic sanctions on the "illegal" regime in Mali and mobilized international support not to recognize both the separatist Azawad state and the military junta in a bid to force the military regime to return the country to civilian democratic and constitutional rule[48].

In line with the above commitment AU submitted a Strategic Concept for the Resolution of the Crises in Mali to the UN Secretary- General, which supports the bilateral efforts taking place under the auspices of ECOWAS. The strategic concept was presented as an important step toward greater coordination between Mali and the international community in efforts to restore stability in Mali and the Sahel-Sahara region as a whole.

5.7 THE SAHEL REGIONAL SECURITY FRAMEWORK

While much of the focus right now is on the stabilization of the Northern part of Mali, there is an urgent need to examine the overall regional security framework of the Sahel region as Mali is situate within this region and West Africa generally.

In 2002, the U.S. State Department launched the Pan Sahel Initiative (PSI), which later evolved into the Trans Sahara Counter Terrorism Partnership (TSCTP) program. In its first year, the Pan Sahel Initiative spent $6.25 million to conduct training and capacity building in Niger, Mali, Chad, and Mauritania. These partner military forces received training from the U.S.

[48] ECOWAS (1999). Protocol Relating to the Mechanism for Conflict Prevention. Management, Resolution, Peacekeeping and Security, Lome, Togo. Retrieved from www.zif-berlin.org/fileadmin/uploads/.../ECOWAS_Protocol_ConflictPrevention.pdf *on 25 June, 2015 at 4.32pm*

Marines and Army Special Forces and were provided tactical equipment such as night vision goggles[49].

The creation of the TSCTP in 2005 further expanded the extent of the regional security framework, while increasing focus on the underlying socioeconomic and political issues that drive violence and instability. A collaboration between the U.S. State Department and U.S. Department of Defense (DoD), the TSCTP: supports African states' efforts to improve border security capacity while also facilitating regional cooperation, promoting democratic governance, and improving relations with the US.[50]

The regional framework was expanded to include Algeria, Nigeria, Morocco, Tunisia, and Senegal. With an anticipated budget of $100 million for 2007-13, the TSCTP is more heavily funded than the PSI, though the resources pale in comparison with the vastness of the continent. The TSCTP also reflects a shift, at least rhetorically, to a more comprehensive or whole-of-government approach towards terrorism that includes development initiatives. While military operations were still to be a major focus, emphasis was placed on increasing collaboration above the tactical level.

The military training exercise Flintlock launched the TSCTP in 2005. Flintlock is directed by the Chairman of the Joint Chiefs of Staff and the Joint Special Operations Task Force, and conducted by the TSCTP and Special Operations Forces. This multinational exercise regularly draws participants from 16 countries, including those from the Sahel region as well as Canada and European states. Flintlock 2012, earlier scheduled for February 27- March 18 in Mali, was to emphasize military support to humanitarian assistance operation. It was cancelled

[49] Miles, D. (2005). *"New Counterterrorism Initiative to Focus on Southern Africa," Armed Forces Press Service,* May 17, 2005, available from www.eucom.mil/article/21641/New-counterterrorism-initiative-focus-Saharan on 3rd July, 2016 at 4.21pm.

[50] Boudali, L. (2007). The *Trans Sahara Counterterrorism Partnership. The Combating Terrorism Center.* United States Military Academy West Point. P. 4

February 10 due to ongoing clashes between Government forces and rebel in the country's north[51]. The smaller annual exercise, Atlas Accord, took place in Mopti, Mali, from February 7-15, 2012. The exercise focused on enhancing air drop capabilities and drew more than 300 participants from seven countries[52].

In short, the U.S. regional security framework for the Sahel has focused heavily on increasing local militaries capabilities to conduct direct action, not building long-term community and national level institutional capacity and resiliency to combat violent extremism or the development of strong national governance.

With the deployment of AFISMA and ECOWAS troops into Mali, this regional security framework has undergone a de facto expansion—and now includes a far broader range of countries. While this expanded framework brings benefits, not least of which is an African solution to the Mali crisis, it will increase the challenge of coordination and consensus building. These countries, too, are constrained by their national priorities. The Ivory Coast (Côte d'Ivoire) is struggling to recover from a decade- long civil war, while Guinea's politics are marked by coups and cancelled elections. Nigeria, which at 1,200 troops is to make one of the largest contributions to AFISMA, faces a growing conflict between the Government and the militant group, Boko Haram that will dominate its security concerns there.

Today, it is well understood within the DOD that "You can't surge trust. You must build it slowly and deliberately before a crisis occurs[53]." Any regional framework must rest on the creation of long-term partnerships. However, both budgetary constraints and higher priority security issues in other regions will undermine sustained focus on the Sahel.

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[51] "Flintlock 2012 Exercise Postponed," Bamako, Mali: Embassy of the United States, Retrieved from *mali.usembassy.gov/flintlock_2012_posponed.html*. on 21st June, 2016 at 4.21pm

[52] Stewart, J. (2013). What is *next for Mali? The Root of Conflict and Challenges to Stability.* United States Army War College Press. Carlisle Barracks PA. p. 23

[53] Special Operations Forces Operating Concept (2013), McDill Air Force Base, FL: U.S. Southern Command (USSOCOM).

The demise of Gaddafi's regime, hastened by the (so called) NATO-led Operation Unified Protector, was a catalyst that drove the events leading to the crisis in northern Mali. While the Libyan revolution may eventually lead to the development of a stable Government with civil society participation, its current instability in the short term, and the potential for Libya itself to develop into a safe haven will dramatically impact the region's future security framework.

In the future, development of the regional security framework should be broadened to include a focus on security sector reform, including strengthening the civilian institutions that uphold the rule of law, not just security force assistance and tactical level capabilities. Here, African institutions such as the AU and ECOWAS may be able to take the lead or provide a substantial supporting role. The AU developed a common Security Sector Reform framework, and ECOWAS adopted the Code of Conduct for the Armed Forces and Security Services in West Africa. Again, increasing security force capability without institutional development reform could worsen the situation in Mali[54].

However, ECOWAS' earlier mandate in Mali, and its troops' capabilities, is limited. AFISMA is initially authorized to operate only for 1 year, until December 2013. Much of that time will be spent organizing and deploying the troops. Critics in the UN and Europe describe ECOWAS' initial plan for deployment as confused and inadequate, a factor that led to France's action.

The internal chaos in Mali further complicated the deployment of AFISMA troops. Following the coup, the Malian military broke up into various factions, leaving ECOWAS with no single representative to co-ordinate and define the military mission. The armies of ECOWAS

[54]Redding, M (2013) *"Mali: The Importance of SSR in Bamako," Waterloo, Ontario, Canada: Security Sector Reform Resource Center,* retrieved from www.ssrresourcecentre.org/2013/01/09/mali-the-importance-of-ssr-in-bamako/. 12 June, 2016 at 4.20pm

also have primary expertise in forested terrain, not the arid terrain of the Sahel. This notwithstanding, the UN actually responded as the preceding sub-chapter reveals.

5.8 THE ROLE OF ECOWAS IN MALI

Following the March 2012 coup in Mali, ECOWAS's initial response to the crisis in Mali was a sub-regional one. The sub regional body ECOWAS (Economic Community of West African States) responded quickly in condemning both the military coup that had overturned Mali's constitutional order and the occupation of the north by the insurgent, but appeared to prioritize the former. A mediation process was begun under the leadership of Burkina Faso's President Blaise Campaoré. Applying travel and economic sanctions against the military junta at the beginning of April 2012, ECOWAS asked neighboring countries to close common border crossings with Mali and neighboring seaports to all trade, a potentially devastating move given Mali's dependence on foreign trade with its neighbors. It further froze transfers from regional banks to Malian bank accounts, imposed travel bans and froze the assets of junta leaders unless the junta agreed to relinquish power and enable Mali's return to constitutional order[55]. On 6 April, 2012 with ECOWAS mediation, Mali junta leaders signed a framework agreement agreeing to a timetable for the restoration of constitutional order in exchange for amnesty for the junta members and the lifting of sanctions[56]. ECOWAS also declared that it was preparing its military force, the ECOWAS Mission in Mali or MICEMA, to send to Mali. However, the ECOWAS military response encountered more challenges, due to lack of capacities among member states, and opposition from Bamako as well as Algeria and Mauritania. One problem was that ECOWAS preferred a military response to the crisis, but political and military actors (Algerian and Mauritanian government) across the political spectrum in Mali rejected a

[55] Caparini M., (2015*). The Mali Crisis and Responses by Regional Actors.* Norway. Norwegian Institute of International Affairs. p. 3

[56] Ibid

deployment of ECOWAS forces[57]. The junta opposed a mission that prioritized the return to constitutional order in Mali. However other actors similarly raised objections to ECOWAS forces in Mali. In terms of neighboring powers, neither the key regional actors Algeria and Mauritania are members of ECOWAS, nor did they support the idea of an ECOWAS military intervention, due to concerns about the effect such an intervention would have in sending militants back over their borders[58]. Pushing for an ECOWAS intervention without their support raised the risk of regional actors supporting different sides of the conflict[59] (Although these countries are not members of ECOWAS and ECOWAS is not bound to listen to them, they however voiced their dissent over the deployment of any form of military for reasons adduced above). ECOWAS was also not well suited to the early plans to retake northern cities from insurgent groups and the MNLA because ECOWAS does not have Algeria or Mauritania as members, and bringing Algeria into any regional effort to address the Malian crisis was seen as essential by her[60]. Authors and observers argued that ECOWAS was not an appropriate body to assist with reform of the Malian armed forces, given that armies in certain francophone member states have carried out coups within recent memory, and appear to lack a firm ethos of military subordination to civilian rule[61]. Ultimately, MICEMA did not develop beyond the planning stage, and was replaced by a wider AU initiative.

The sub-regional body also announced plans to deploy a 3,000-man strong standby force if the rebels refused to settle the situation peacefully. The following month, an ECOWAS deal forced the resignation of the Malian President, Amadou Toure, and saw the appointment of

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[57] Ibid

[58] Wolfram L., (2013), 'The *Malian crisis and the challenge of regional security cooperation', Stability:* International Journal of Security & Development, Vol. 2, No. 2 p. 3.

[59] Wolfram L., (2012), 'Northern *Mali: Key is Strengthening Bamako; ECOWAS Plan Harbors Risks'*, IPI Global "Observatory, Retrieved 14 September 2012. International Journal of Security & Development, Vol. 1, No. 4 p.3 - 5.

[60] Ibid

[61] Ibid

Dioncounda Traore as interim president. Compaore urged the MNLA and Ansar Dine to negotiate collectively with Bamako. Led by Sanogo, the insurgents, however, continued to wield tremendous influence over the interim government. The Politics of Intervention and the Conflict in Mali Following the March 2012 coup, a support and follow-up group on the situation in Mali, consisting of representatives from ECOWAS, the "core countries" (Algeria, Mauritania, and Niger), the AU, the EU, and key bilateral donors, started to meet regularly. The AU pushed for better coordination of domestic and international efforts and stressed the need to restore state authority, security sector reform, and elections. Even as 412,000 Malians were displaced by the conflict (including 208,000 refugees in Algeria, Burkina Faso, Guinea, Mauritania, Niger, and Togo)[62], by November 2012, tensions erupted between the rebels in the north, with Ansar Dine and MAJAO repelling the MNLA out of the main towns that it had occupied. AQIM notoriously destroyed many historic and cultural sites in Timbuktu. These attacks closed down the country's gold mining industry. ECOWAS' leadership was, at the time Mali crisis erupted, francophone-dominated, allowing France to wield great influence among the conflict's major players. Blaise Compaore, Burkinabe leader who positioned himself as a key mediator in regional conflicts, it was argued, hosted French gazelle helicopters in his country before they were deployed for military combat in Mali in January 2013[63]. The then Chairman of ECOWAS as at February 2012 was Alassane Ouattara, leader of Cote d'Ivoire, whose presidential mandate had been largely restored by the French army. The ECOWAS president as at February 2012 was former Burkinabe Prime Minister and a member of Compaore's Congress for Democracy and Progress (CDP) Party, Kadre Ouedrogo. All these three individuals were, in a sense, closely aligned with France and can be seen as French Trojan horses within ECOWAS. This placed Nigeria in tight

[62]Abiodun J., (2012). *The African Union and the Conflict in Mali: Extra-Regional Influence and the Limitations of a Regional Actor*. Journal of International and Global Studies Vol. 6, No. 1 Pp. 4-7
[63]Ibid

corner since it was diplomatically encircled and linguistically different than its Francophone neighbors. (Notwithstanding that ECOWAS is not dominated by the French countries. The power play which encircled ECOWAS country leadership within ECOWAS place Nigeria in a difficult position). Apart from the power play that has always manifested between France and Nigeria in West Africa, Nigeria's interest in intervening in Mali, the researcher observed that it was to curtail the perceived links between Boko Haram and al-Qaeda's northern African wing. In the words of the former President Goodluck Jonathan, "We believe that if we stabilize northern Mali, not just Nigeria but other countries that are facing threats will be stabilized. The terrorists have no boundaries. They don't respect international boundaries"[64]. Beyond this claim, however, has been Nigeria's attempt in furthering her leadership position in Africa, to serve the strategic best interest of the country.

In June 2012, the ECOWAS commission started to discuss the possibility of deploying a stabilization force to re-establish state authority in northern Mali. The UN and external donors provided support to ECOWAS' planning. The Malian army, ECOWAS, and the AU all requested that the UN Security Council authorize deployment of an ECOWAS stabilization force with a peace-enforcement mandate (under chapter VII of the UN charter) to restore the country's territorial integrity and also to secure its border areas, while the Malian army would attempt to re-establish state authority. The concept behind the operations of the ECOWAS force was refined at two meetings involving senior Malian military officers, ECOWAS, the "core countries" (Algeria and Mauritania,), the AU, the UN, and other partners such as France, the US, and the EU in Bamako in August and October/November 2012[65]. From that emerged a harmonized concept of joint operations, the "strategic operational framework" which sought to

[64] Ibid

[65] https://www.researchgate.net/publication/299645607_Management_of_Edible_Stinkbugs_Encosternum_delegorguei_in_Bikita_District_Zimbabwe retrieved 10 October, 2015.

align the plans of the Malian army with those of a sub-regional force, the African led International Support Mission in Mali (AFISMA). The joint mission would back the poorly-equipped 5,000-member strong Malian army in three phases: to build its capacity; to recover occupied parts of the north of the country and reduce the terrorist threat therein; and to transition to stabilization activities in order to consolidate state authority in northern Mali.

A joint coordination mechanism was established involving the ministers of defense of Mali, ECOWAS troop contributing states, the neighboring "core countries," the AU, the UN, and other international donors[66]. International Organizations and Governments' Intervention in Mali Crisis Both ECOWAS and AU leaders endorsed the plan in November 2012 and asked the UN Security Council to authorize an African-led International Support Mission to Mali (AFISMA) 3,300-member strong African-led international support mission in Mali—with infantry units, air assets, and formed police units—for an initial one-year period. The force was authorized in December 2012[67], with the UN Security Council urging AFISMA forces to take all necessary steps to rebuild Mali's army; help the government to extend its authority to the north; protect civilians; and help stabilize the country after military operations. In order to ensure efficient deployment of AFISMA to Mali, the AU asked for a logistical support package to be provided to the mission through assessed UN contributions, as had occurred with the AU/UN Hybrid operation in Darfur in 2007.

This plan (AU's logistical support package) was great on paper, but it would be difficult to implement in practice given the logistical and financial challenges of sub-regional armies, along with Nigeria's over-commitments with respect to peacekeeping efforts. From Congo crisis,

[66] The Economist, "Sand on Their Boots", http://www.economist.com retrieved 10 June 2014 at 3.30pm

[67] ECS/053/2013 (2013) Final Communique of the Extraordinary Session of the Authority of ECOWAS (2013) "Final Communiqué of the 42nd Ordinary Session of the ECOWAS Authority of Heads of State and Government", ECS/053/2013 of 28 February, 2013, Available at http://www.ecowas.int//presseshow.php/ retrieved 25 January 2015 at 4.32pm.

Nigeria had contributed both military and police personnel to more than forty peacekeeping operations in Africa and across the world[68]. During the onset of the conflict in Mali, Nigeria had a high contingent of military, police, and civilian personnel in Liberia, Sierra Leone and Darfur[69]. Additionally, AFISMA was mandated to train, equip, and provide logistical support to the Malian Army, but it could hardly equip or provide logistics to sustain itself in the field without substantial external assistance. The UN Secretariat and Department of Peacekeeping Operations, headed by the then one Frenchman, Bernard Miyet, had been particularly hostile to the Nigerian peacekeeping presence in Sierra Leone and later (under another Frenchman, Jean-Marie Guehenno) critical of the AU/UN hybrid model in Darfur[70].

Due to its rather severe limitations, the AFISMA mission was received by the UN only lukewarmly, as reflected in Secretary-General Ban Ki-Moon's reports to the UN Security Council even after Security Council Resolution 2085 has been passed. He regarded AFISMA as The African Union and the Conflict in Mali an instrument of "last resort" (despite the fact that it was clearly time for last resort measures, as only military force would clearly dislodge hardened militants in the northern Mali). He continually warned that ill-conceived intervention by AFISMA could worsen the situation on the ground, and he noted that the deployment of such a force could result in human right abuses[71].

He persistently cautioned that AFISMA troops would have to be "held accountable" for their actions and called for UN human rights monitors to be deployed to effectively "police" AFISMA peacekeepers. Instead of providing AFISMA logistics and funding, the UN was more concerned with human rights observance [sic].

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[68] Chilaka F., et al (2015). *Nigerian Peacekeeping Operations* Revisited. Singaporean Journal of Business Economics, And Management Studies Vol.4, No.2. p.4

[69] Ibid

[70] Abiodun J., (2012). The *African Union and the Conflict in Mali: Extra-Regional Influence and the Limitations of a Regional Actor*. Journal of International and Global Studies Vol. 6, No. 1 Pp. 4-7

[71] Ibid

In the researcher's view, this criticism by Ban Ki Moon was completely uncalled for and the reasons given by him are totally baseless – how can he describe a UN resolution (2085 of 20 December, 2013) authorizing AFISMA as an ill-conceived intervention? A resolution that was properly tailored through the UN process and subsequently released by same body? On the second reason given "Human right abuses by AFISMA troops" these too cannot be substantiated given the fact that human right abuses by troops all over the world is nothing new as there are equally steps to curtail such. For example, human right abuses perpetrated by foreign troops in Central African Republic have not stopped the ongoing intervention in that country. It is advisable that future occupants of this seat crosscheck their facts before making sweeping statements that is likely to derail peace effort.

By March 2013, the consolidated appeals process to secure funding for the AFISMA mission to support Mali had received only $73.3 million, representing only 20 percent of its $368 million target[72]. While the UN Secretary-General was hesitant to provide the logistical support package that AFISMA was requesting, the provision of such support would have been in the interest of not just the West Africans but of the entire international community, including particularly powerful western states like France and the US[73].

Undermining AFISMA viability, Ban Ki-Moon called for funding of its military operations to be done by bilateral or voluntary contributions: a clearly unsustainable approach for such a dangerous mission. Similarly, he authorized France to intervene only if the UN troops are "under imminent and serious threat and at the demand."

The Strange Reappearance of the French strategic interests in West Africa clearly informed its influence over the UN's Ban Ki-Moon. First, France has historical and structural

[72]UNSC (2013) Report of the United Nations Secretary-General on the Situation in Mali, S/2013/338, 14. Retrieved from www.un.org/en/sc/documents/sgreports/2013.shtml *on 28 July 2015 at 6.33pm*

[73]UNSC (2013) Security Council Report, Monthly Forecast, "Mali," retrieved from www.securitycouncilreport.org/monthly-forecast/2013-02/mali_4.php *on 28 July 2015 at 6.39pm*

relations with regimes and elites in the sub-region. Second, it also has deep economic interest and extensive economic ties and she regards the region as falling under French geopolitical influence.

This combination of facts has lent credence to claims that France's "finger-prints" are to be found over several of the UN Secretary-General's reports. The history of France's involvement in the region is lengthy. As earlier stated on 10thJanuary 2013, as militants from Ansar Dane, MUJAO, and AQIM came to within 680 kilometers of Bamako, routing weak and demoralized Malian government forces, President Dioncounda Traore requested French assistance to prevent a march on the capital. The fact that a supposedly sovereign African country was turning to a former colonial power to protect its sovereignty was itself the greatest indictment of pan Africanism.

> The same day of this attack, Paris pushed the UN Security Council to declare Mali's crisis a "threat to international peace and security" which was eventually passed under UNSC Resolution 2071 of 12October, 2012. Thus, appearing to legitimizing France's impending military actions. However, in resolution 2071, the researcher observes that legal backing to intervene by France using this particular resolution even before the deployment of AFISMA was not justifiable…
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> > Because, according to the introductory paragraph of Resolution 2071 it states that the Malian Army is responsible and that all military intervention must be Malian led. Paragraph 6 of same resolution also states that the Security Council was ready to respond to the request of the transitional authorities in Mali for international military assistance in recovering the occupied regions in the north of the country. Also, in paragraph 7 of the

> same resolution, it states that the Security Council would provide military and security planners to assist ECOWAS and AU in close connection with Mali and neighboring countries. In paragraph 9, the resolution request that member states aid, expertise and training to Malian forces.

From the excerpts of this resolution, it is clearly evident that France intervened unilaterally in Mali not having acted to reinforce Malian forces or having been led by them. France intervened outside the scope of this resolution and should not rely on it. Emphasis the researcher.

The then French President Francois Hollande, confronted with low domestic poll ratings, pledged that France would stay in Mali as long as it took to defeat the terrorists[74]. He argued in January 2013 that "Mali would have been entirely conquered and the terrorists would be in a position not only to force ... the Malian population to submit to a regime it did not want but (also) to put on pressure on all countries of West Africa"[75]. This placed France in a position enviable to that of Nigeria, as the former was no longer seen solely as a guarantor of peace in Mali[76] but in West Africa as a whole. Despite the popularity of *Operation Serval*, a critical analysis of France's foreign policy efforts in Mali may not be unconnected to its economic interests in Mali. With 14 percent of France's imports coming from Mali in 2012[77], France had reason to want to protect both the social stability and the industrial productivity of Mali. Indeed, French foreign minister

[74]Abiodun J., (2012). *The African Union and the Conflict in Mali: Extra-Regional Influence and the Limitations of a Regional Actor*. Journal of International and Global Studies Vol. 6, No. 1 Pp. 4-7
[75]Economic Intelligence Unit (2013) Country Report in Mali, Second Quarter, 2013, 9.
[76]Abiodun J., (2012). *The African Union and the Conflict in Mali: Extra-Regional Influence and the Limitations of a Regional Actor*. Journal of International and Global Studies Vol. 6, No. 1 Pp. 4-7
[77]Ibid

Laurent Fabius' announced that Paris would maintain a 1,000-man strong garrison in Mali[78] did not come as a surprise to many observers.

The long-delayed AFISMA deployment moved into Mali by February 2013, following assurances of the logistical and financial support that had previously been withheld. By March 2013, a 6,288-member strong AFISMA force (smaller than the originally authorized force of 9,500) was expanding its presence in parts of north and central Mali under the leadership of Nigeria's General Shehu Abdulkadir[79]. Other ECOWAS troop-contributing countries include Benin, Burkina Faso, Ghana, Guinea, Niger, Senegal, and Togo. Predictably, the troops faced logistical challenges including the securing of food, fuel, and water, requiring bilateral donor support to overcome these deficiencies[80]. A hastily-created UN Trust Fund provided AFISMA with $26.7 million by March 2013[81] and in April, the UN officially formed the United Nations Multidimensional Integrated Stabilization Mission in Mali (Mission multi dimension *nelleintégrée des Nations unies pour la stabilisation au Mali*), MINUSMA. By June 2013, five logistics bases were established in Mali and Niger to supply, in addition to the military, intelligence and logistical support provided by key Western nations: Britain, Belgium, Canada, and the US[82]. Serious questions were raised in Africa as to why these arrangements had not been put in place to support the regional troops before the French military intervention. The AFISMA mission's struggle to mobilize troops served only to legitimize the cynicism of the Western countries. In June 2013, the UN Secretary General confirmed what everyone had known all along—that AFISMA lacked the enabling units to act as an effective military intervention force.

[78]Rice X., (2013). *"French Troops Bolster Flagging Ground Campaign,"* Financial Times, 17 January 2013, 5. Retrieved from www.lindenwood.edu/files/resources/106-120.pdf *16 June, 2016 at 5.09pm*

[79] Ibid

[80]Melly P., et al (2013). *A New Way to Engage*? French Policy in Africa from Zarkozy to Hollande. London: Chatham House p12.

[81]Economic Intelligence Unit (2013) Country Report in Mali, Second Quarter, 2013, 9. Retrieved from *country.eiu.com/Mali on 29 July, 2015 at 6.12pm*

[82]Francis D., (2013). "*The Regional Impact of the Armed Conflict and French Intervention in Mali",* Norwegian Peace building Result Center. p. 36

The troops were given four months to reach UN standards[83]. A surprising voice of support for French efforts in Mali came from Nigeria's then foreign minister, Olugbenga Ashiru, who noted in April 2013, "If the French had not intervened at the time they did, the situation in Mali would have been different today. Nigeria and indeed all members of the AU are grateful for the intervention"[84]. At their summit in the Ivorian town of Yamoussoukro in February 2013, ECOWAS leaders also expressed "profound gratitude" to Paris for its "decisive action".

In the researcher's view, this particular statement issued by leaders of these countries is very unfortunate because they ought to have known the difficulties AFISMA faced right from inception which paved way for France to hide under and use as an excuse to perpetrate their interest. If these leaders have been pushful enough, AFISMA would have been deployed quickly to stem the tide which would not have given France the justification to move in upon the so-called invitation by Mali. This particular statement in the researcher's view should be an indictment of these leaders.

Despite this favorable press, however, France's intervention in the conflict in Mali, especially its role in pressuring the UN Security Council, has tended to strengthen its hegemonic stance in West Africa, particularly with respect to Nigeria.

Mali provides a good example of the machinations and the politics behind peacemaking missions. Far from being altruistically motivated, interventions in conflict in Africa are often colored with parochial and self-serving interests. In the case of the role played by France in Mali,

[83]UNSC (2013) Report of the United Nations Secretary-General on the Situation in Mali,10 June 2013, S/2013/338, 14. Retrieved from www.un.org/en/sc/documents/sgreports/2013.shtml *on 29 July 2015 at 6.35pm*

[84]Abiodun J., (2012*). The African Union and the Conflict in Mali:* Extra-Regional Influence and the Limitations of a Regional Actor. Journal of International and Global Studies Vol. 6, No. 1 Pp. 4-7

one cannot fail to see how the former sought to multilateralism its past discredited unilateral interventions on the continent. While stability may have occurred as a result of some of these efforts, it was incidental to primary French interest of maintaining its own economic stakes in the area.

It is the researcher's opinion that although the objective of setting up AFISMA was clearly noble, it was inevitable that AFISMA would not achieve its mandate. Apart from being grossly underfunded, it had inadequate military troops and weaponry to match the strength of the rebels. It could thus better be described as a "phantom force" that was dead on arrival in Mali and had to be resurrected as the UN's MINUSMA. The question of why ill-equipped African peacekeepers was allowed to flounder before their well-equipped counterparts from Europe were deployed complicates the puzzle. Additionally, knowing that the AFISMA force lacked the size, logistics, and financing to sustain itself in the field also begs the question why it was deployed in the first place. The fact that after the French military intervention in 2013, the UN authorized a force that was four times as large as the proposed African AFISMA force exposed the apparent insincerity of the Western-dominated Security Council. Its initial strength of 3,300 was tripled to 9,500 as soon as the French intervention occurred[85], and the support that had previously been denied it suddenly appeared. As with previous African-led missions in Liberia, Sierra Leone, Burundi, and Darfur, the Africans felt that the UN's efforts in the region served to steal the glory of victory after the Africans themselves had attempted to conduct tortuous regional peace making and military intervention efforts that the world body failed properly to recognize.

The undesirable trend in which organizations lacking the necessary capabilities are left to bear the brunt of peacekeeping efforts in maintaining peace within their region (particularly with

[85]Abiodun J., (2012). *The African Union and the Conflict in Mali: Extra-Regional Influence and the Limitations of a Regional Actor*. Journal of International and Global Studies Volume 6, Number 1. Pp. 106 – 120

respect to providing an initial response), while other, more capable international entities only engage after sufficient losses have been sustained or other political interests are at stake have been condemned[86]. The approach of first deploying ill-equipped African peacekeepers and then transforming peacekeeping efforts into a larger, better-resourced UN operations[87] had previously been practiced with the conversion of a 13,000 ECOWAS force in Sierra Leone into a UN force of 20,000 by the year 2000 to quell the civil war in the country[88]; an AU force of 2,645in Burundi into a UN force of 5,650 by 2004 to put an end to the security challenges[89]; and an AU force of 8,000 in Darfur into a UN/AU hybrid force of 26,000 by 2008 deployed to end the violence in Dafur region[90]. In all of these cases, the Western world only belatedly supported the deployment of sufficient forces after ill-equipped and poorly funded regional peacekeepers had been outgunned. No immediate offers of international support or funding were forthcoming (despite the serious nature of the violence in each of these cases) until regional efforts had imploded. This hesitance to provide support was also evident in the deployment of AFISMA in Mali.

[86] Adebajo A, (2011). *UN Peacekeeping in Africa: From the Suez Crisis to the Sudan Conflicts, New York:* Lynne Rienner Publishers. p 12.
[87] Ibid
[88] Abiodun J., (2012). *The African Union and the Conflict in Mali: Extra-Regional Influence and the Limitations of a Regional Actor*. Journal of International and Global Studies Volume 6, Number 1. Pp. 106 – 120
[89] Ibid
[90] Ibid

5.8.1 From Regional to International Response: AFISMA and MINUSMA

The French engagement in Mali was intended to be short and would require a rapid follow-on stabilization mission. ECOWAS and the AU began an accelerated deployment of AFISMA forces from Senegal, Burkina Faso and Nigeria to Mali beginning in January rather than the originally projected September, funded by voluntary contributions agreed at during an emergency donors meeting in Addis Ababa at the end of January[91]that, AFISMA be replaced by a robust UN mission, which would have the advantage of more secure funding than AFISMA, to handle the subsequent stabilization of Mali. The notion of re-hating was endorsed by ECOWAS and the AU on 7 March 2013, subject to several conditions, including consultation by the UN with the AU and ECOWAS on the appointment of the Special Representative of the Secretary-General, with an expectation of 'continuity' in leadership of the mission and contingents[92]. On 21 April 2013 the UN Security Council authorized the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) to replace AFISMA with a mandated strength of up to 11,200 military personnel and 1440 police personnel[93]. The AU suggestions were ignored by the Security Council in authorizing and mandating MINUSMA, prompting a sharply-worded rebuke by the AU Peace and Security Council that it had not been appropriately consulted in the drafting of the resolution for the takeover of AFISMA by MINUSMA[94]. There was also resentment that AFISMA should have been provided with the logistical and financial means before the eventual re-hating to the UN mission, and that there should have been greater continuity in military and civilian leadership from AFISMA to MINUSMA (i.e. military

[91]Arthur B., et al (2013). *'Disagreements over Mali could sour more than the upcoming African Union celebration'*, IPI Global Observatory. www.IPIgolobalobservatory.org/ retrieved on 15 May, 2015 at 4.30pm

[92]Communiqué of the 358th meeting of the Peace and Security Council of the African Union (AU) on the situation in Mali, 7 March 2013, para 13 (ii).

[93]United Nations Security Council Resolution 2100 (2013), 25 April 2013.

[94]African Union Peace and Security Council, Communiqué, PSC/PR/COMM.(CCCLXXI), 25 April 2015, para. 10. Retrieved from www.peaceau.org/uploads/psc-371-com-mali-25-04-2013-doc.pdf *21 May 2015 at 4.09pm*

commander and head of mission positions)[95]. On 1 July 2013 AFISMA was replaced by MINUSMA with the re-hating of some 6500 African peacekeepers.

Despite multiple rounds of negotiations since 2014, a peace agreement with the main northern Tuareg rebel groups has not yet been achieved, but is a necessary prerequisite to undertake governance and security sector reforms, and enable focusing the attention of international and Malian security forces on combating jihadist and other extremist groups in the north. Clashes between members of the Coordination and Platform armed groups in the north has in the meantime increased, linked by the UN to competition over control of strategic commercial and trafficking routes in the region[96]. With the continuing failure to achieve a peace agreement between Bamako and the main armed opposition groups in the north, MINUSMA has been subject to repeated attacks by rebel and insurgent groups; due to the rate of casualties among its personnel, is considered the deadliest UN mission[97].

MINUSMA is operating in parallel with French forces that have a regional (Sahelien) counterterrorism role through Operation Barkhane. MINUSMA also faced declining confidence among Malians, especially in the north. According to a public opinion poll conducted under the auspices of the Friedrich Ebert Foundation, only 28% of northern Malians in Gao, Kidal and Ménaka held a positive view of MINUSMA[98].

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[95]Cecilia H., et al (2015). The *Regionalization of Peace Operations in Africa: Advantages, challenges and the way ahead,* FOI-R-4031-SE. p. 30.

[96]UN Security Council, Report of the Secretary-General on the Situation in Mali, S/2015/219, 27 March 2015, para. 16. Retrieved from www.un.org/en/sc/documents/sgreports/2015.shtml *at 9.05am*

[97]Between 1 July 2013 and 1 May 2015, the mission has experienced 49 fatalities.
MINUSMA Facts and Figures, 1 May 2015, http://www.un.org/en/peacekeeping/missions/minusma/facts.shtml. retrieved 20 June, 2015 at 3.32pm

[98]Marina C., (2015). *The Mali crisis and responses by regional actors.* Norwegian Institute of International Affairs. Norway p.7

The trajectory of the sub-regional and regional responses to the crisis in Mali suggests several lessons about the impact and influence of regional actors. First, the responses of ECOWAS and the AU demonstrated limitations of the African Peace and Security Architecture. While ECOWAS was initially quick to respond to Mali's crisis, it was limited in what it could do due to its membership (which did not include the key state of Algeria and to a lesser extent Mauritania) and its resources (lacking the capacities and funding to mount an intervention without external means of support). And yet, ECOWAS is considered an important body among the Regional Economic Communities/Regional Mechanisms (RECs/RMs) both in terms of preparing its brigades for the African Union's Standby Force, which is supposed to be operational in 2015, as well as due to the ECOWAS' prior experience in conducting interventions in various crises that have affected the sub-region. However, that experience and advanced capacities were not sufficient to provide a solution for the Mali crisis[99].

The African Union's efforts to reframe the multilateral context for the African intervention from sub-regional to continental demonstrated how the AU could complement and collaborate with a REC in a conflict management initiative. However, AU-ECOWAS relations also suffered from lack of coordination and occasional tensions that delayed arriving at a consensus. The AU's AFISMA plan also ran into similar challenges of capacity and funding that ECOWAS' MICEMA had encountered, relying on the UN to provide financial and logistical support to sustain their planned deployments.

[99] Ibid

5.9 THE ROLE OF AFRICAN UNION IN MALI

The AU Mechanism for Conflict Resolution in its 1990 declaration, the OAU/AU Heads of State and government recognized that the prevalence of conflicts in Africa was seriously impeding their collective and individual efforts to deal with the continent's economic problems. Consequently, they resolved to work together toward the peaceful and rapid resolution of conflicts. During the OAU now AU Summit held in Cairo in 1993, African leaders established the Mechanism for Conflict Prevention, Management, and Resolution (MCPMR). In doing so, they recognized that the resolution of conflicts is a precondition for the creation of peace and stability, and a necessary precondition for social and economic development[100].

From the onset, the issue of peacekeeping on which the AU mechanism was predicated was controversial. It was widely felt within the AU political leadership that peace and security were the preserve of the United Nations, which was mandated to keep peace globally and which possesses more resources than the AU. The AU defined its objective narrowly as that of primarily anticipating and preventing conflicts and left large-scale peacekeeping to the UN and Africa's sub-regional organizations. Nonetheless, with respect to conflict mitigation and resolution, the continental body identified three aims regarding the resolution of those conflicts in which it was willing to become involved. firstly, to anticipate and prevent situations of potential conflict from developing into full-blown wars, secondly, to undertake peacemaking and peace building efforts if full-blown conflicts should arise, thirdly, to carry out peacemaking and peace building activities in post-conflict situations.

While this initiative thrust the AU into the center of conflict management efforts in Africa, the reality is that the pan-African organization never became a principal player in the

[100]UN (2004) A More Secure World: Our Shared Responsibility, Report of the High-level Panel on Threats, Challenges and Change, New York. p1.

peace processes in Africa[101]. Despite its deficiencies, the AU had the potential to coordinate the evolving early warning systems in Africa's various sub-regions. It went further to develop the potential to act as an information bank with sub-regional desks or other alternative systems where information about the activities of each sub-region and its organizations can be coordinated.

The crisis in Mali was a serious violation of the Charters and Constitutive Acts of both AU and ECOWAS relating to respect for the unity and territorial integrity of member states and the outlawing of coup d'états. To this end, the AU, together with ECOWAS, attempted to search for a political settlement of the crisis via a peace mediation process facilitated by the president of Burkina Faso. Furthermore, AU played a central role in the preparation of Peace Plan and Strategic Concept of Operation for Military Intervention which formed the basis for the French-backed UN Security Council Resolution 2085 that authorized a military intervention known by the name African-led International Support Mission in Mali (AFISMA) to end the Malian crisis[102]. The AFISMA project is a comprehensive initiative that includes civilian, military and police concept of operations. Its strategic objectives include:

i. Achieve full operational capability of AFISMA through coordinated support by stakeholders for force generation, training, equipping, technical assistance and funding.

ii. Facilitate mobilization of resources to support the MDSF including coordination of contributions to the Trust Fund for Peace and Security in Mali.

iii. Support the Malian authorities in the restoration of State authority and preservation of Mali's national unity and territorial integrity.

[101]Center for Strategic and International Studies (2004) Rising US Stakes in Africa: Seven proposals to strengthen US-Africa Policy. Washington DC: CSIS

[102]Mehari T., (2013). *African-Led International Support Mission in Mali (AFISMA)*: Military ahead of Politics Al Jazeera Centre for Studies.

iv. Protect the population with respect to international human rights and international humanitarian and refugee law, and with adherence to the United Nations Human Rights Due Diligence Policy.

v. Reduce threats posed by terrorist groups and transnational criminal networks in Mali.

vi. Establish a safe and secure environment in Mali.

vii. Support the Malian authorities in implementing the road map for the Transition.

viii. Assist the Malian authorities in the reform of the defense and security sectors as required and within capability.

ix. Facilitate establishment of conditions for the engagement of the wider international community in Mali.

The overall mission of AFISMA is to conduct security operations in order to recover and stabilize Mali, and contribute to the creation of the necessary conditions for a stable, democratic Malian State exercising authority over its national territory and assuming its responsibilities in the protection of the population, properties and livelihood means, and addressing regional security challenges. The total number of man power envisaged within AFISMA was about 9620 with the corresponding number of Civilians (173), Military (8,859) and the Police (590)[103]. The implementation of the mission is classified into three phases as:

i. Complete deployment

ii. Stabilization

iii. Transition

[103]**Abebe W., (2016).** *Responsibilities and Challenges of the African Union in Maintaining Continental Peace and Security:* A Case Study of the Malian Crisis. Arts and Social Sciences Journal. Retrieved https://www.omicsonline.org/open-access/responsibilities-and-challenges-of-the-african-union-in-maintainingcontinental-peace-and-security-a-case-study-of-the-malian-crisi-2151-6200-1000205.php?aid=77853 on 28 September, 2015 at 6.20pm

Another major issue of concern apart from the organization of AFISMA, was the issue of human right violation, particularly in places that are directly affected by the crisis. Accordingly, the African Commission on Human and People's Rights reflected its deep concern on the situation of human right in Mali in its resolution (217) at its 51st session held from 18 April-2 May 2012 in Banjul, The Gambia[104]. Besides among the decision of the Peace and Security Council of the African Union (AU), at its 327th meeting held on 14 July 2012, directly stated that it

> "Strongly condemns the violations of human rights perpetrated by the various armed, terrorist and criminal groups which occupy the northern part of Mali, and the senseless and unacceptable destruction of the cultural, spiritual and historical heritage of this region, notably in Timbuktu, which is a serious violation of international law, and urges that the perpetrators be brought to justice before the relevant international jurisdictions[105]".

Consequently, AU decided to deploy a team of human right observers within the framework of African- led International Support Mission in Mali (AFISMA). Following the deployment of four Human Rights Observers to the Northern Mali town of Gao, on 07 June 2013[106], a second team of Observers, comprised of two ladies and two men, deployed to

[104]**Abebe W., (2016).** *Responsibilities and Challenges of the African Union in Maintaining Continental Peace and Security: A Case Study of the Malian Crisis.* Arts and Social Sciences Journal. Retrieved https://www.omicsonline.org/open-access/responsibilities-and-challenges-of-the-african-union-in-maintainingcontinental-peace-and-security-a-case-study-of-the-malian-crisi-2151-6200-1000205.php?aid=77853 on 28 September, 2015 at 6.20pm

[105]Constitutive Act of the African Union (2000) Lome Togo.

[106]**Abebe W., (2016*).*** *Responsibilities and Challenges of the African Union in Maintaining Continental Peace and Security: A Case Study of the Malian Crisis.* Arts and Social Sciences Journal. Retrieved from https://www.omicsonline.org/open-access/responsibilities-and-challenges-of-the-african-union-in-maintainingcontinental-peace-and-security-a-case-study-of-the-malian-crisi-2151-6200-1000205.php?aid=77853 on 28 September, 2015 at 2.40pm

Timbuktu, 14 June 2013[107]. The Timbuktu team was accompanied by the Head of the AFISMA Human Rights Component, Ms. Reine Alapini Gansou, a Lawyer and Law Professor from Benin, who is a Member of the African Commission on Human and Peoples' Rights[108], the Special Rapporteur on the situation of Human Rights Defenders in Africa and a Member of the UN Permanent Court of Arbitration[109]. Prior to their deployment on the ground, the Human Rights Observers were briefed on the political, security and human rights situations in Mali; the special situation of vulnerable groups, including women, children and displaced persons; and strategies and techniques for monitoring prisons and detention centers.

Since its establishment the African Union in general and the African Peace and Security Council in particular is promoting the idea of "African Solution for African problem". But the achievement on the ground is far from significant. Ironically most of the problems specially related with peace and security are being addressed by the former colonial powers that are sometimes part of the problem themselves. In this respect the Franco-phone West Africa is a typical example. This state of affair is a result of different but inter-related factors that limited the potential of African states individually and in organized manner, like the African Union to deal with issues of continental peace and security. Among all the question of capacity is by far important that needs due concern. Bewketu further clarifies this in his statement about the limitation of the African union in handling matters of continental peace and security in such a manner that "…. the main constraint of the African union in general and the peace and security council in Particular is the lack of adequate financial resources to support its overall activities[110]". In addition to that Mahamadou Nimaga the then consular of the embassy of Mali in Ethiopia also confirmed the idea that the African Union was short of capacity to deal with the

[107] Ibid
[108] Ibid
[109] Ibid
[110] Buyoya P., (2013). *African Union Perspectives on Mali and the Sahel Africa*. Meeting Summary Chatham House London. p. 33

Malian crisis on timely basis[111]. Amamadou Diongue, an informant from the African union adds that besides the capacity issue there is also commitment problem on member states within the AU to deal with issue of peace and security in the continent[112]. Therefore, as can be inferred from the description of funding for AFISMA, the African Union continues to be fully dependent on donors, such as USA and EU, to finance its institutional apparatus and running cost of its operations. The growing dependence on external funds and expertise implies that actors such as the European Union and the United States are increasingly reversing the prospect of "African solution for African problems".

Again, according to some observers the swift military intervention of the French in an effort to avert the Malian crisis entailed once again the weakness of the AU and ECOWAS to take on responsibility in crisis management. In this respect Mehari says "...Like the Libyan crisis, Africa's failure to deal with its own problem invited external intervention, and France has done what is within its capacity and interest[113]". Although, AU designed *a*n initiative by the name AFISMA in an effort to deal with the security crisis in Mali its actual deployment on ground was slow notwithstanding the emergency nature of the situation. This is due to a number of complicated factors, mostly related with the issue of capacity. Pierre Buyoya, head of the AFISMA recognizes the delay and he attributed it to the logistical and coordination problems of countries providing troops for the project. He further clarifies the logistical difficulties by referring to the insufficient equipment and shortage of transportation facility[114]. According to

[111]**Abebe W., (2016).** *Responsibilities and Challenges of the African Union in Maintaining Continental Peace and Security: A Case Study of the Malian Crisis.* Arts and Social Sciences Journal. Retrieved https://www.omicsonline.org/open-access/responsibilities-and-challenges-of-the-african-union-in-maintainingcontinental-peace-and-security-a-case-study-of-the-malian-crisi-2151-6200-1000205.php?aid=77853 on 30 September, 2015 at 2.30pm

[112] Ibid

[113]Dires B., (2012). *The African Union Peace and Security Council: Challenges and Prospects.* Institute of Peace and Security Studies Addis Ababa University.

[114]African Union (2013). Committee Background Guide Global Classroom London. https://www.omicsonline.org/open-access/responsibilities-and-challenges-of-the-african-union-in-

Mehari a serious challenge for AFISMA is insufficient and unpredictable funding for its operation in the face of organized crime and arms supplies prevalent in northern Mali[115].

Furthermore, another challenge AU is facing in Mali is to strike a balance between the aspirations of different actors, involved in the crisis management. For instance, the interest of regional states may contradict with the wishes of the international forces which prefer military option to deal with issues of organized crime, Terrorism and rebellion in Mali and states like Algeria are anxious about the military solution in light of its national security concern. AU received a total of about 455.53 million US dollar pledge for its operation under AFISMA before its integration under MINUSMA with contributions from Japan (120 USD), USA (96 USD), EU (75 USD), France (63 USD), AU (50 USD), Germany, Bahrain (10 USD), South Africa (10 USD), Ethiopia (5 USD), Nigeria (5 USD) and Ghana (3 USD)[116].

maintainingcontinental-peace-and-security-a-case-study-of-the-malian-crisi-2151-6200-1000205.php?aid=77853&view=mobile retrieved 30 September, 2015 at 5.10pm

[115]Dires B., (2012). *The African Union Peace and Security Council: Challenges and Prospects.* Institute of Peace and Security Studies Addis Ababa University. Pp. 32 – 44

[116]Dires B., (2012). *The African Union Peace and Security Council: Challenges and Prospects.* Institute of Peace and Security Studies Addis Ababa University.

5.10 ROLE OF UNITED NATIONS SECURITY COUNCIL IN MALI

In March 2013, the African Union's Peace and Security Council in collaboration with the United Nation Security council transformed AFISMA into a United Nations peacekeeping force. In response, Resolution 2100 (2013) was hence, passed on 25 April 2013[117], creating the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), composed of 11,200 military personnel and 1,440 police personnel[118]. The resolution was unique, as it gave MINUSMA a rare "peace enforcement" role, authorizing peacekeepers to use "all necessary means" to enforce its mandate, which included the protection of civilians and the promotion and protection of human rights. Under Resolution 2100, MINUSMA being responsible for the protection of civilians "under imminent threat of physical violence"; is tasked with providing "specific protection for women and children" and addressing "the needs of victims of sexual and gender-based violence in armed conflict"; and must monitor, investigate and report to the Council any violations of human rights and international humanitarian law.

On 24 June 2014, the Security Council unanimously adopted resolution 2164, which renewed MINUSMA's mandate for a year and granted the Secretary General's Special Representative to Mali more power[119]. The resolution called on MINUSMA to expand its presence through long range patrols, especially in areas where civilians are at risk. Moreover, the resolution requested that the mission support national political dialogue and reconciliation, reestablish the State authority, rebuild the security sector, and promote the human rights of the Malian people. Examples of MINUSMA's expansion include: The All Source Information Unit

[117] Security Council Establishes Peacekeeping Force for Mali Effective 1 July, Unanimously Adopting Resolution 2100 (2013). Retrieved from https://www.un.org/press/en/2013/sc10987.doc.htm on 3 May 2015 at 4.09pm
[118] Ibid
[119] Ibid

which increases the missions "situational awareness", and four attack helicopters that perform surveillance with a focus in civilian protection[120].

The Security Council on 26th April, 2016 decided to extend the mandate of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) for one year, while maintaining its previous troop level and highlighting such priority tasks as the protection of civilians and support to the country's defense and security forces[121].

Unanimously adopting resolution 2364 (2017), the Council decided to extend MINUSMA's mandate until 30 June 2018 with a composition of up to 13,289 military personnel and 1,920 police personnel. It also urged the Government of Mali, the *Plateforme* and Coordination armed groups to continue to engage constructively with sustained political will and in good faith to accelerate the implementation of the country's Agreement on Peace and Reconciliation, signed in 2015[122]. By the terms of the resolution, the Council urged the parties to continue to uphold the ceasefire agreement of 23 May 2014[123] and other critical agreements, while expressing its readiness to consider targeted sanctions against those who resumed hostilities or took actions to obstruct or threaten the Agreement's implementation. It further demanded that all armed groups in Mali put aside their arms, cease hostilities, reject the recourse to violence and cut off all ties with terrorist organizations, while calling on the Government to finalize a strategy for the development of the north of Mali and a national emergency plan.

With regard to the MINUSMA mandate, the Council decided that the Mission would focus on a number of priority tasks, including support to the implementation of the Agreement

[120] International Coalition for the Responsibility to Protect. Retrieved from http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-mali on 12 October, 2016 at 5.00pm

[121] Security Council Extends Mandate of United Nations Multidimensional Integrated Stabilization Mission in Central African Republic. Retrieved from https://www.un.org/press/en/2016/sc12338.doc.htm on 15 May, 2016 at 5.09pm

[122] Security Council Extends Mandate of Mission in Mali, Unanimously Adopting Resolution 2364 (2017). Retrieved from https://www.un.org/press/en/2017/sc12895.doc.htm on 10 October, 2017 at 4.12pm

[123] Ibid

on Peace and Reconciliation; support to the redeployment of the reformed and reconstituted Malian Defense and Security Forces in the center and north of the country; the protection of civilians, including against asymmetric threats; and countering asymmetric attacks in active defense of its mandate[124].

Additionally, it requested the Secretary-General to develop within 180 days a mission-wide strategic plan articulating a concrete phased approach to the implementation of the Mission's mandate and presenting a transition plan with a view to handing over relevant tasks to the United Nations country team. As Council members took the floor, speakers welcomed the renewal of the Mission's mandate but voiced differing opinions about other elements of the resolution.

Francois Delattre (France), welcoming the constructive negotiations that had led to the text's unanimous adoption, said it underscored the Council's resolute commitment to support Mali and further strengthened MINUSMA's robust mandate, including by giving it the task of providing operational and logistical support to the Malian Security and Defense Forces. Among other things, the resolution also reinforced cooperation between the Mission, the new "Group of 5" (G-5) Sahel force and French forces while respecting their respective mandates. It was now up to the Secretariat and troop- and police-contributing countries to provide the means for MINUSMA to implement its strong mandate on the ground[125].

Luis Bermúdez (Uruguay) said that, while his delegation had joined the consensus, it nevertheless had concerns that the draft had not been submitted to the Council's silence procedure. Citing evidence of recent "systemic failings" and shortcomings in various peacekeeping missions — including the existence of undeclared national restrictions, the absence of command control, failure to obey orders, refusal to protect civilians and a lack of necessary

[124] Ibid
[125] Ibid

equipment — he expressed regret that none of the recently negotiated language calling for consistency in the Council's approval of peacekeeping mandates had been incorporated into today's resolution[126].The researcher commends these steps taken by the UNSC in resolving the Malian crisis and hopes that troops contributing countries honor their pledges as at when due to effectively curb this conflict in Mali.

The role of regional and sub-regional organizations cannot be overstated in conflict resolutions, especially in their sphere of influence. The African Union and The Economic Community of West African States (ECOWAS) have played prominent roles in places like Burundi, Darfur, Chad, Somalia, and Liberia. The successes achieved in these interventions would not likely have been forthcoming if the US, European Union and its member nations, along with the United Nations had not given their support to these regional and sub-regional organizations. In other words, the cooperative, collaborative, and supportive understanding between these non-African bodies and the regional and sub-regional organizations has recorded more success than a unilateral intervention[127] as opined by Allian[128] in his justification over ECOMOG activities in Liberia and other African countries. To elaborate, the support given to ECOWAS in Liberia led to a successful resolution of that country's war, and the AU-UN hybrid operations in Darfur yielded some kind of modest success. The researcher posits that at present, in the resolution of the Malian protracted conflict, there is no substitute for coherent, coordinated intervention by global power and regional and sub-regional organizations. In contrast, unilateral intervention, which, in addition to being wasteful and expensive, can be internationally controversial on the grounds of both legality and legitimacy, especially where the UN has not given its nod. It is also the researcher's view that cooperation between the UN and sub-regional

[126] Ibid
[127] Oluwadare A., (2014*). The African Union and the Conflict in Mali: Extra Regional Influence and Limitations of a Regional Actor.* African Journal of Governance and Development. Vol. 3 (1).
[128] Jean Allen J. Opcit

African organizations should have been applied earlier on to the resolution of Mali's conflict. Even though African regional institutions lack the required expertise, logistics, diplomatic, and financial muscle to singularly mount a successful intervention without support from non-African countries, a swift response from and the immediate engagement of the Western world in the form of willing partnership with regional African organizations would have dramatically improved the outcome of peacekeeping operations in Mali.

It is the contention of this research that France initial military intervention when AFISMA was gearing up to intervene in the security crisis in Mali under resolution 2085 significantly weakened its proactive response to the conflict by ECOWAS and AU.

The same resources used by France could have been more effectively and efficiently utilized if made available to the African Union. - Considering the fact that the African Union lacked the resources to effectively intervene in Mali, making such resources available to the Union would have bolstered its capacity to intervene in Mali. In this case, cooperation not for that mission alone but future missions could have been achieved.

On the strength of the extract of this thesis, the researcher is inclined to advance answers to the research questions he earlier posted.

i. That when the UNSC eventually arrived at the scene in Mali, why was the UNSC not able to bring back the needed peace and security as mandated by Chapter VII, Article 39 of the UN Charter.

ii. If the UNSC was unable to bring back peace. What was the cause?

iii. Where were the regional organizations; AU and ECOWAS when a member of their organization was facing challenges from rebels and insurgents?

iv. And what were the real reasons for France intentional military intervention?

In answering the first question, it is the researcher's humble view that the UNSC could not have immediately restored normalcy to Mali after they arrived at the scene due to many reasons bothering on organizations, funding and internal double standard politics displayed by them as the thesis reveals. This aside, in the long run, the UNSC was still able to stabilize the Malian state and curb the insurgent incursion as its witnessed today.

In answering the second question, it is also the researcher's humble opinion that the UNSC has not been able to fully stabilize the Malian crises, as there are still ongoing attacks even in their very presence. The researcher believes that the reason too for these prevailing attacks is as a result of no-corporation from some of the Malian people who have a lot to gain in bringing this menace to a close. Malians should do more by providing valuable information to the MINUSMA for them to be more pro-active. Other factors that hindered the MINUSMA are already identified and discussed in this thesis.

As to the question of the whereabouts of the Regional and sub-regional Organizations (ECOWAS and AU) when Mali was being engulfed in this crisis.

The researcher re-iterates (as the extract from the thesis reveals) that, even though ECOWAS of which Mali is a member was a bit slow in making their presence felt on the ground, this was also due to lots of reasons which included mostly among others "capacity". The body as at that time of the crisis lacked capacity to intervene and deeply relied on the UNSC support which was not fully given and led to AFISMA's eventual take over by MINUSMA.

Why then was the justification of the unilateral intervention in Mali by France?

From the culled excerpts and revelation of Charbonneau's book above; even though written in 2008, clearly discloses the historical antecedents of the French government towards her ex colonies which came to play in the Malian crisis. It is the researcher's position that France acted solely to protect her interest she has been doing all along in all the countries she once

colonized. Her unilateral military intervention in Mali is illegal as all her reasons given for its justification are baseless.

Notwithstanding this, it is imperative to restate the comments made by the then chairperson of ECOWAS Thomas Boni Yayi wherein he stated "that African response to the crisis in Mali was too slow". This statement though very objective, did not justify the comment made by former Nigerian Foreign Minister, Mr. Olugbenga Ashiru who noted "if the French had not intervened as at the time they did, the situation in Mali would have been different today". As the then foreign minister, part of his job was to conduct research into motives behind foreign government intervention in crisis within West African region especially France. For if he had done his homework properly, he would have seen this glaring fact as earlier revealed by Charbonneau in his book and be better prepared to push African interest instead of making such an unfortunate statement of which he was not even sure what the eventual outcome would have been if France hadn't unilaterally, militarily intervened in the Malian crisis.

The fact that African Union leaders had agreed to UNSC Resolution 2100 of 23rd July 2013, which created MINUSMA is equally of a disappointment. Emphasizes the researcher. More annoying is the fact that they allowed AFISMA to integrate into MINUSMA without them even having any input in the drafting of the bills leading to the creation of MINUSMA, not forgetting the fact that these same persons frustrated the eventual implementation of AFISMA.

It is the researcher's opinion that the bulk of the blame must go to African leaders who always like to seat back and allow western countries like France provide almost 80% of logistics support in solving African problems.

If African countries can cooperate with one another to meet up their obligations, this crisis in Mali would have been nipped in the bud earlier. It is the researcher's humble view again that this singular unilateral action by France should be a wakeup call for ECOWAS countries and

Africa as a whole who intends to be pan-African in solving African security challenges. It is about time we instill confidence in our member states to run to instead of relying on ex-colonial masters who are even part of the problem. The time to act is now!

CHAPTER SIX

SUMMARY AND CONCLUSION

6.1 SUMMARY

Extract from this thesis explored the conceptual discourse on International Peace and Security, the role of the United Nations Security Council Organization in the maintenance of International Peace. Also, the most prominent root causes and global influences that account for the Malian 2012 Malian security crisis, the role the UNSC body played in quelling the crisis. From the discussion made so far, it is possible to understand the fact that the crisis in Mali is identified with diverse and complicated political, religious and ethnic factors. In the political front the rampant corruption within the rank of senior government officials coupled with different forms of mal governance and dissension within the military force due to preferential treatment of individuals with respect to issues of payment and promotion were the dynamics that entailed outbreak of the crisis situation. The religious aspect is defined by the continued influx of ideas of radicalism among groups identified with advancing religious cause in a "secular" state and the emergence of different armed insurgent groups in the relatively "ungoverned" northern region of Mali. The other concern is the age-old Tuareg ethnic issue in northern Mali.

The Tuareg were pressing for self-government since the days of French colonialism of the area. These and other interrelated factors precipitated a political crisis defined by the March military coup and the military confrontation in northern Mali between the government on one hand and the Tuareg ethnic secessionists aligned with different armed insurgent groups on the other. With the outbreak of the turmoil in Mali there had been initiatives generated to deal with the crisis situation. This initiative is classified as regional, continental and international. Economic Community of West African States (ECOWAS) took on the regional response in the

ongoing crisis management effort. But its legitimacy and capacity to address the crisis was repeatedly challenged by different indicators already identified in the thesis. In fact it had little to do practically other than condemning the coup makers in the beginning of the crisis and its institutional resource were not readily available to deal with the emergency situations. The African Union, by virtue of its legitimacy to maintain continental peace and security reacted to the situation in Mali from the outset. As the Constitutive Act of the African Union denies legitimacy for unconstitutional change of Government, the AU swiftly outlawed the coup makers, rebellion and discharged the diplomatic undertaking to mobilize international support for the return of civilian rule in Mali. It also prepared a strategic concept paper jointly with ECOWAS as part of crisis management initiative. But all these efforts were far from stabilizing the chaotic situation in the country in the beginning of the crisis.

The people needed any force that can save them from possible threat of casualties in that emergency situation and the African Union was slow for such an undertaking. This was of course due to the institutional and capacity problems that AU is suffering from which curtailed its commitment from being fully practical in Mali. In fact, together with ECOWAS, AU had taken several steps in the crisis management process in the latter phases of the turmoil both in the political and military front including the project identified as the AFISMA. The other initiative is from the international community. The French unilateral military intervention (though made for their personal reasons) could be thought as the first practical response in the rank of the international community to deal with the crisis situation and that intervention assisted in diverting the military threat in the North. But from the researcher's point of view, that the reason for the French unilateral military intervention has been revealed as earlier captioned in this thesis by Charbonneau whereby Mali being one of France's ex colonies was forced into pact solely

for the benefit of France, hence their intervention in Mali. Therefore it is unlikely to think them as part of the lasting solution to the problem. Finally the United Nation had been instrumental in authorizing missions meant for comprehensive approach to bring about peace and stability to Mali via the passage of UNSC Resolution 2100, 2071 and 2085.

In the face of the complicated crisis Mali is suffering from, there is still plenty of work to be done in order to realize the sociopolitical reconstruction of the nation and bring about sustainable peace that will entail the harmonious co-existence of different ethnic, religious and political groups. In the crisis management initiative the role of various actors is of considerable significance that needs cautious observation given the fact that there are players who are trying to advance their own factional agenda through different units taking part in the ongoing crisis.

With respect to suggesting practical alternatives as a way forward to the problem, the researcher came up with the following findings and recommendations to be considered by the Malian state and the different stake holders who are part of the crisis management initiatives.

6.2 FINDINGS

The researcher in the course of this research discovered (in his humble opinion) why the AU wasn't able to intervene effectively in the Malian crisis is due to the wording in article 4(j) of the AU constitutive Act which is ambiguous.

Article 4(j) states that; the right of Member States to request intervention from the Union in order to restore peace and security".

6.2.1 Double Standards of UNSC in Application of Resolutions on Countries Affected By Crisis

The researcher discovered with dismay the Double Standards of UNSC being displayed by the strong members of the UN Security Council in curbing the security challenges in

Mali. Worthy of note is the approach given to African led mission (AFISMA) and the UN led mission piloted by France (MINUSMA) in curbing the security challenges in Mali. While AFISMA had serious challenges ranging from strength of personnel, logistics and funding of which they had severally written to the UN body for support since they were already on ground which was not taken seriously simply because it was African led, but the moment MINUSMA was floated through France to the UNSC, it got all the requisite logistical and financial support from the UN without delay all because it was piloted by them, notwithstanding that they were both supposed to achieve the same goal.

6.2.2 None Heeding to Early Warning Mechanism

The researcher discovered as the thesis earlier enumerated, that Mali even before the crisis became overblown, has not taken data collated from ECOWAS and Africa early warning mechanism seriously. The mechanisms as this thesis revealed, acts as warning to member nations of looming crisis since it is saddled with compilation of data that could lead to such crisis and possible ways to avert them.

6.2.3 Lack of Team Work or Cooperation among French and Other Peacekeeping Groups on Ground or Mission

When the researcher visited Mali (see appendix I) in the cause of this research work, he noticed how the troops on ground were quartered. To his dismay, he discovered that the French troops were quartered far separately from other troops on ground in Bamako. He discovered also that there was no physical social synergy and interactions between these peacekeepers. He also discovered that in the cause of deploying the troops to flash point areas within the country, they are all airlifted together. The researcher then wondered

how these personnel could actively enforce peace with different commanders dishing orders on the field, and should there be crisis amongst them intelligence-wise, how will they be able to identify themselves in the event of a save our soul (SOS) call requiring physical evacuation/identification of such persons especially when the rebels have tendencies of impersonation.

6.2.4 Mali Crises is Based on Political and Economic Problems (Internal Problems)

The researcher discovered that the crisis in Mali itself is more of an internal political nature which is well fueled by Mali's political leaders who were not making public a well-publicized commitment for peace and reconciliation. More often than not, their utterances had instigated violence and further reinforced division amongst the people and badly jeopardized well needed reforms. The researcher also discovered that among the several problems bedeviling Mali, she's only focusing on insurgency and terrorism alone. While she ignores corruption and poor governance which are more important causes of the crisis than terrorist and insurgency threat.

6.2.5 Lack of Strong financial Support From all of ECOWAS Countries

The researcher discovered the reluctance of other countries in offering support particularly from countries who had pledged support during the Addis Ababa donors conference to the AFISMA troops on ground to operate in the most conducive condition. Also, the researcher finds that Mali's regional and international partners are not doing enough to help persuade the national movement for the liberation of Azawad (MNLA), that its interest are best served by renouncing its arms struggle and participating in the political process.

6.2.6 Unnecessary Delay to End the Crisis

It has been discovered that the Mali crisis is taking a long time to prosecute despite the existence of allied powers i.e. AU, ECOWAS, UNSC, France and other organizations enforcing peace on ground.

6.2.7 Room for Dialogue was not Properly Explored and Employed

The researcher observed that the Malian government mostly is concerned with settling the crisis through military enforcement while doing less in dialoguing with the affected parties. Most often than not, dialogue has always broken down which caused the escalation of crisis.

6.3 RECOMMENDATIONS

In the course of the findings enumerated above, the researcher made the following recommendations:

6.3.1 Amending Article 4(J) of the African Union Constitutive Act

The wording of the sub section of this Article gives a state room not to request the presence of the AU in terms of security crisis. In Mali, the government had to use this discretion to invite France. The question is? What then happens if a state decides not to apply this section to request for help when faced with security challenges? The Article should be amended to remove the discretionary powers given by state to invite member states during crisis. When amended, it will guide policy makers on how to effectively martial out policies that would now be in tandem with this new amended provision.

6.3.2 Sincerity in Approach of the UNSC

That the UNSC in general should try as much as possible to be sincere in their approach when it comes to curbing security challenges bedeviling its members. They should apply

all standards in mitigating security crisis among member nations as this will quicken the resolution of crisis in these areas and help in forestalling the political rigmarole as this thesis revealed concerning AFISMA and MINUSMA in the ongoing Malian crisis.

6.3.3 Heeding to Early Warning Mechanisms

That henceforth, the Malian Nation should place more emphasis on the data collated through early warning mechanism for future considerations so as to nip future crisis in the bud.

6.3.4 Cooperation among Peacekeepers on Ground in Mali

It is recommended that troops on ground be encouraged to bond physically irrespective of the nation that contributed them there. That even though modern security gadgets enhance intelligence sharing, it will still not be enough without constant physical bonding amongst troops. This physical interaction will help fuel trust among them so as to effectively discharge their operations on ground.

6.3.5 Malian Political Class Should Deviate from Overheating the Polity with Inimical Utterances that is Likely to Cause the Breakdown of Law and Order

That even though Mali constitution may guarantee freedom of speech, for now, that aspect of freedom of speech should not be made absolute. Politicians and all other activists should be barred from granting interviews of inflammable nature through the media. They should henceforth be encouraging its people to participate peacefully in the political process so as to reduce tension. A new mechanism for monitoring the media should also be put in place to check the use of inflammatory and divisive language.

6.3.6 Fulfillment of Pledges by Donor Countries and Regional Organizations

That countries who have made pledges to UN bodies on ground be made to redeem them to booster its operations and that leaders in Bamako should avoid imposing conditions that closes the door to dialogue, however discrete. Such dialogue will be vital to give all northern Malians the opportunity to participate in future elections without which the far north could again become a base for armed rebellion.

6.3.7 Speedy end to the Crisis

The researcher recommends that UNSC, the government of Mali and the insurgent group should be compelled to end this crisis as soon as possible. This is necessary for the fact that lives are continually lost and properties are damaged even with the presence of the UN peacekeepers on ground.

6.3.8 Dialogue is Necessary and Imperative

That the Malian government should capitalize on the dialogue initiated since the Ouagadougou agreement by opening inclusive peace talks with representatives of northern communities, including the armed groups that signed the agreement, expedite discussions on disarmament and the future of combatants showing flexibility in organizing negotiations so as to hold meetings outside Bamako, including in major northern cities; and refraining from setting decentralization as the only acceptable basis for negotiations, being open to other institutional arrangements, and implementing measures to facilitate dialogue.

6.4 CONCLUSION

Once the above findings and recommendations are considered very carefully, it is the researcher's ardent hope that the Malian problems will be solved.

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APPENDIX I



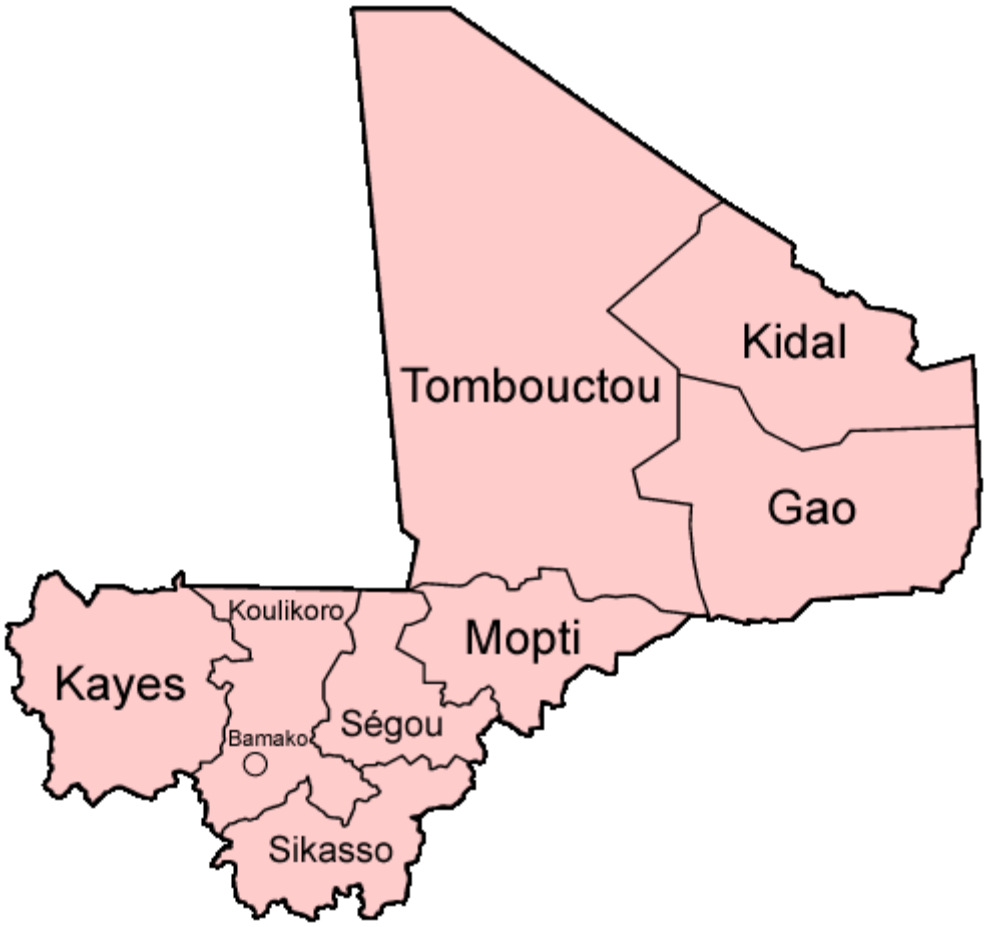
The Researcher at the University of Bamako, Mali

APPENDIX II



MAP OF MALI SHOWING BOARDER COUNTRIES

APPENDIX III



MAP OF MALI SHOWING THE REGIONS