

THE UNITED NATIONS IN THE PREVENTION OF GENOCIDE IN AFRICA:
THE CASE OF SOUTH SUDAN

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Abstract

This research examines Africa's enduring susceptibility to intra-state conflicts that can be traced back to colonial legacies and entrenched tribal and national tensions. Despite international initiatives, the United Nations' Responsibility to Protect (R2P) principle has not effectively mitigated crises, as demonstrated by the situations in Rwanda, Darfur, Sudan, and South Sudan. This thesis focuses specifically on South Sudan, investigating the impact of international human rights law on civic protection while contributing valuable insights to the discussions surrounding the aftermath of genocide. The objective is to deepen the understanding of the origins of these conflicts, thereby assisting regional and global organizations in formulating targeted strategies to address human rights violations in affected areas of Africa.

The research highlights the critical need for the R2P framework to be operationalized in South Sudan, a nation plagued by violence and systemic atrocities. Through this analysis, the concept of Rapid Genocide Intervention (RGI) is presented as an actionable approach to prevent and respond to genocide and other mass atrocities. RGI advocates for prompt intervention to disrupt plans of mass violence before they escalate into larger, more severe conflicts. Drawing on historical instances of genocide and military strategy, the author of this chapter illustrates that conventional military strategies may be inadequate when confronting contemporary military challenges.

Additionally, the roles of the United Nations, the African Union, and regional organizations in ensuring accountability and determining intervention strategies are discussed. This underscores the necessity of dedicating efforts to guarantee that humanitarian support and long-term peacebuilding initiatives can occur in a secure environment. Ultimately, the thesis

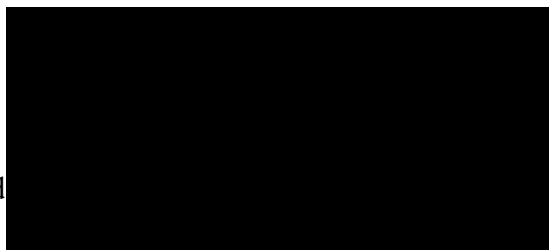
proposes a cohesive global strategy that prioritizes immediate lifesaving actions while simultaneously addressing the root causes of conflict in South Sudan.

By thoroughly investigating Rapid Genocide Intervention, this research contributes to the ongoing discourse regarding effective responses to humanitarian crises and delineates the responsibilities associated with safeguarding vulnerable populations.

DECLARATION OF AUTHENTICITY

DECLARATION OF AUTHENTICITY I, Matueny Marial Luke Kerding, declare that the Doctor of Philosophy thesis entitled: The United Nations in the Prevention of Genocide In Africa: The Case of South Sudan is no more than 80,000 words in length including quotes and exclusive of tables, figures, appendices, bibliography. Reference, and footnotes. This thesis contains no material that has been submitted previously, in whole or in part for the award of any other academic degree or diploma. Except where otherwise indicated, this thesis is my own work. I have conducted my research in alignment with the Australian Code for the Responsible Conduct of Research Policy and Procedures

Signed



31 July 2025

DEDICATION

I dedicate this PhD thesis to my children and to all Africans who have suffered from human rights violations across the continent.

I extend my gratitude to my life coaches, my late father and late uncle, whose influence and support have been instrumental in my journey.

To my forever-supportive late father, Marial Luke, I appreciate your unwavering interest in my endeavours, even if you may not have fully understood the details in Heaven.

To my late uncle Sultan Achol Luke, I reminisce fondly about our engaging conversations in 2002 in South Sudan, before my educational journey to Nairobi, Kenya, and subsequently to Australia on March 17, 2006.

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I hope that the United Nations will continue to protect and promote human rights in Africa

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I am profoundly grateful for their insightful comments and recommendations, which led me to refine my research focus to the United Nations in the Prevention of Genocide in Africa: The Case of South Sudan.

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CHAPTER ONE

INTRODUCTION, HISTORY, OBJECTIVES, RESEARCH QUESTION, SIGNIFICANCE, AND METHODOLOGY

1.0 Introduction

Africa has become and is still prone to intrastate conflicts because regional and international agencies in charge of security have not come up with strategies that ensure the safeguarding of civilians from such crimes as genocide. For instance, in the 1994 Rwandan Genocide, there was a serious delay in actions by the international community, including the United Nations, in preventing mass atrocities, which once again proved incapable of preventing mass atrocities. This tragedy later motivated the United Nations and African Union in 2005 to come up with the Responsibility to Protect (R2P) framework aimed at avoiding such violence and protecting vulnerable populations.¹

Even so, armed violence remains profound in various regions of Africa. Post World War, it was no longer a guerrilla war but more complex in motive: political ambition and extraction of resources. Power and money, the remnants that fuel much of the violence today, make rebel groups fight to gain control of scarce natural resources, enforce ideology, or force governments into acting on any of their demands. All these have brought much human suffering, destruction

¹ United Nations General Assembly, 2005 World Summit Outcome, GA Res 60/1, UN GAOR, 60th sess, Agenda Items 46 and 120, UN Doc A/RES/60/1 (24 October 2005) paras 138–139.

of socio-economic systems, and declining health and education standards across the continent.

².

Such prolonged exposure to these violent conflicts has brought African populations severe and profound physical and psychological injuries, thereby further hampering prospects of growth and stability in socioeconomic. ³.

Significantly, the Genocide Convention established in 1948 by the United Nations is among the first global human rights tools. This project looks to examine two matters of great significance. Firstly, the thesis will try to emphasize the failures of the United Nations in carrying out its mandate, analysing the atrocious crimes committed during the Rwanda genocide and Sudan War.⁴ Secondly, the thesis will explore the United Nation's present position in dealing with crimes against humanity, genocides, human rights violations, and war crimes before they happen. The Responsibility to Protect is being incrementally implemented within Africa as international organisations, such as the United Nations, the African Union, and other law enforcement bodies, through case law regarding genocide, crimes against humanity, and human rights violations.⁵ However, the model used by the international body is not made-to-order to deal with the continent's challenges. Notably, during the high-profile UN World Conference in 2005, member countries eventually devoted themselves to the accord of the responsibility to protect by incorporating the Principle in the result report of the meeting (A/RES/60/1). Despite the idea missing some elements previously recommended by the

² Ighobor, Kingsley. 2019. "Work in Progress for Africa's Remaining Conflict Hotspots". Africa Renewal. <https://www.un.org/africarenewal/magazine/december-2019-march-2020/work-progress-africas-remaining-conflict-hotspots>.

³ "Five Major African Wars and Conflicts of the Twentieth Century". 2017. Norwich University Online. <https://online.norwich.edu/academic-programs/resources/five-major-african-wars-and-conflicts-of-the-twentieth-century>.

⁴ · Aning, Kwesi, and Fiifi Edu-Afful. 2016. "African Agency in R2P: Interventions by African Union and ECOWAS in Mali, Cote D'ivoire, and Libya." *International Studies Review* 18 (1): 120–33

⁵ . Janssen, Dieter. 2008. "Humanitarian Intervention and the Prevention of Genocide." *Journal of Genocide Research* 10 (2): 289–306. DOI: 10.1080/14623520802075213.

International Commission on Intervention and State Sovereignty (ICISS), it still holds its basic features regarding alleviation of and action to severe abuse of international human rights and humanitarian law.⁶

This thesis is structured around a set of clearly aligned research questions and objectives. Each research question corresponds directly to a specific research objective and is addressed within designated chapters of the thesis. This alignment ensures analytical coherence and methodological consistency throughout the thesis.

1.1 Main Research Questions

- i. What is the legal framework governing genocide prevention and the Responsibility to Protect in Africa, including the conceptual development and formal adoption of the Responsibility to Protect at the 2005 United Nations World Summit?
- ii. What is the legal status of the United Nations under international law, and what powers and instruments are vested in it to address genocide, crimes against humanity, and war crimes in Africa?
- iii. What roles do other international and regional organisations, particularly the African Union, play in preventing genocide and enforcing the Responsibility to Protect in Africa?
- iv. How have the United Nations and other relevant international and regional organisations applied genocide prevention and the Responsibility to Protect in the context of South Sudan?
- v. What legal, institutional, and practical limitations in the law on genocide and the Responsibility to Protect are revealed through the case of South Sudan?

⁶ United Nations. "United Nations Office on Genocide Prevention and the Responsibility to Protect". Un.Org. Accessed July 12. <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>.

1.2 Major Research Objectives

The primary objectives of this thesis are to:

- i. Analyse the development of international law on genocide and the Responsibility to Protect, with reference to its evolution and formal endorsement at the 2005 United Nations World Summit.
- ii. Examine the legal status, mandates, and enforcement powers of the United Nations under international law in relation to genocide prevention and the Responsibility to Protect in Africa.
- iii. Assess the role of other international and regional organisations, particularly the African Union, in preventing genocide and operationalising the Responsibility to Protect in Africa.
- iv. Evaluate the practice of the United Nations and other relevant organisations in South Sudan to determine the effectiveness of international intervention in preventing or responding to genocidal violence.
- v. Identify and critically assess the legal and institutional shortcomings of the genocide prevention and Responsibility to Protect frameworks as exposed by the South Sudan case study.

1.3 The UN History

The League of Nations set up in 1919 after World War 1, is the UN's predecessor. The League of Nations was established within the Treaty of Versailles "to promote international cooperation and to achieve peace and security." Even though the institution was prosperous in the past, it failed to alleviate the Second World War. The organisation was removed entirely in April 1946, passing over all of its property to the UN and giving the new institution full access

to its Library and archives.⁷ One could trace the origins of the United Nations Charter back to the Atlantic Charter, which was ratified on August 14, 1941. Around this time, British Prime Minister Winston Churchill and US President Franklin D. Roosevelt declared certain shared policies for their respective nations' national policies, which served as the foundation for their dreams for a brighter future for the globe.

During a 1942 conflict involving twenty-six countries and the Axis Powers, the US, UK, China, and the USSR adopted the customary strategy of purposes and standards incorporated in the Atlantic Charter, later referred to as the "Declaration by United Nations." Notably, a further twenty-one countries abided by the Declaration later. This Declaration by the UN included the initial application of the word 'United Nations,' which was crafted by the then US President Franklin D. Roosevelt.⁸ When the Second World War was coming to a stop in 1945, many countries were destroyed, and the globe was in dire need of peace. The UN called for a summit in San Francisco where officials from fifty countries met to discuss the International Organisation. The summit was held for almost two months running from April to June that same year. The officials began to write and ratify the UN Charter, which formed a new international institution called the United Nations.

The new body was expected to alleviate another world war similar to the one they had experienced.⁹ Eventually, after four months and the closing down of the summit in San Francisco, the UN legitimately started to function on October 24, 1945, after an endorsement by the organisation's veto power states and several other participants.¹⁰ Even after seventy-five years of existence, the organisation strives to keep worldwide peace and security, provide

⁷ United Nations. n.d. "Predecessor: The League of Nations | United Nations". United Nations. Accessed August 31. <https://www.un.org/en/about-us/history-of-the-un/predecessor>.

⁸ United Nations. n.d. "Preparatory Years: UN Charter History | United Nations". United Nations. Accessed August 31. <https://www.un.org/en/about-us/history-of-the-un/preparatory-years>.

⁹ Ibid.

¹⁰ Ibid.

humanitarian aid to those in need, safeguard human rights, and support international law. Simultaneously, the institution carries out duties not envisaged by the founders during its setup. With most of its success stories behind it, the organisation focuses on the future and new successes.

The UN was formed to provide various functions that included sustaining worldwide peace and security by applying practical control techniques to alleviate and eradicate threats while also overpowering actions of violence or other abuses. This is meant to be carried out peacefully and in line with justice and international law standards. Secondly, the UN was created to establish beneficial relations among countries grounded on respect for equality and self-rule of populations and carry out other suitable controls to promote international peace. Thirdly, it was meant to obtain universal collaboration in combating global economic, social, ethnic, or humanitarian challenges. Consequently, it was meant to foster and stir up regard for human rights and basic privileges for everyone without racial, gender, tribal, or religious discrimination. Lastly, the UN was purposed to be the focal point for coordinating the activities of countries in the achievement of similar goals.¹¹

Essentially, United Nations Peacekeeping missions assist nations in walking through a challenging situation from war to peace. However, more often, there have been difficulties in offering comprehensive and practical definitions and understanding of peacekeeping missions since their start. Since peacekeeping continues to be a feature that has grown into a more practical method, it is essential to point out that its definition progressively widens. Currently, the UN has installed more than fifty thousand forces for peacekeeping missions in Africa, and thousands more installed in regionally conducted missions in nations where civil fighting and rebels have murdered populations and endangered the neighboring areas. Six of the twelve

¹¹ Lowe, Vaughan. 2008. *The United Nations Security Council and War*. New York: Oxford University Press.

peacekeeping missions sanctioned by the UN are in Africa: UNISFA, MINUSCA, MONUSCO, MINUSMA, UNMISS, and MINURSO.¹²

Significantly, the peacekeeping responsibilities vary according to the scope and level of the fighting and the sector or agency supervising the task. The United Nations installs peacekeeping troops to safeguard the citizens in armed disputes, alleviate or suppress the war, preserve the areas where the war has stopped, assist in executing peace agreements, and help in democratic changes. The troops obtain these objectives by taking part in several exercises of peacebuilding exercises that include:

- De-escalation and rehabilitation of ex-rebels,
- landmine removal.
- reestablishment of the rule of law.
- safeguarding and fostering of human rights; and,
- electoral help.

Notwithstanding, professionals point out that United Nations peacekeeping responsibilities have been broadened over time, and the forces' duties tend to be unclear. Theo Neethling of the University of Free State pointed out that Peacekeeping tasks, among them MINUSMA and AMISOM, are successfully choosing edges and getting involved in various kinds of actions, like the safeguarding of properties and infrastructure, fighting insurgents and effective military operations, as opposed to overseeing peace as agreed upon by parties in dispute, as the UN did during the Cold War until the late 1980s.¹³

¹² Felter, Claire, and Danielle Renwick. 2021. "The Role of Peacekeeping in Africa". Council On Foreign Relations. <https://www.cfr.org/background/role-peacekeeping-africa>.

¹³ Felter, Claire, and Danielle Renwick. 2021. "The Role of Peacekeeping in Africa". Council On Foreign Relations. <https://www.cfr.org/background/role-peacekeeping-africa>.

The leading authority for approving and managing international peacekeeping operations is the United Nations. When deploying peacekeepers, it usually adheres to three principles: the major players in the dispute should give their approval; peacekeepers should be unbiased but not neutral. Peacekeepers are only permitted to use force in self-defense, according to their mission. However, not all of the key actors have approved the deployment of UN peacekeepers to war zones, such as Mali and the Democratic Republic of the Congo (DRC).

1.4 The State of Sudan

With a total area of over 2,505,813 km², Sudan is the second-largest republic on the African continent. It is made up of a large plain that is surrounded by the Dongotona and Imatong Mountains, the Didinga Hills on the south, the Red Sea Hills on the east, and Jabal Marrah on the west. The vast Sudan plain stretches from north to south and is made up of important regions with distinct characteristics. The Ironstone Plateau, the southern hill, the central clay plains, the northern and western Sudan, and the central clay plains are among them. Notably, the two distinct regions of the Nile and Desert comprise Northern Sudan, which is between Khartoum and the Egyptian border. The Libyan Desert is to the west of the Nile, and the Nubian Desert is to the east. The term "Western Sudan" broadly refers to Darfur and Kordofan. The term "land of dunes" also refers to the southern part of western Sudan. In contrast to the northern area, the area is often characterized by grass cover throughout the rainy season and has multiple reliable supplies of water because of the boreholes and artificial reservoirs.

Located in East-Central Africa, South Sudan is a landlocked country. The estimated population of the nation as of 2021 was 10.75 million.¹⁴ Ethiopia to the east, Sudan to the north, the Democratic Republic of the Congo to the southwest, Uganda to the south, and Kenya to the southeast are the country's neighbors. The total size of the nation is roughly 644,329 square kilometers (248,777 square miles).¹⁵ South Sudan is larger than certain African countries, such as Somalia and the Central African Republic. The country is well-known for its diverse topography, which includes rainforests, marshes, and grasslands. The country is situated between latitudes 3°N and 13°N above the equator. As a result, it has a tropical climate with a distinct May to October rainy season. The longest river in the nation, the White Nile, passes through Juba, the capital. The three main lakes there are Shambe, Ambadi, and No.

The country is proud to have a variety of plateaus, mountains, and plains. Large expanses of wetlands, like the Sudd formed by the White Nile's Baḥr al-Jabal portion, dominate the largely flat center region. But there are highland places in South Sudan as well, especially near its borders. The Ironstone Plateau, which crosses the Central African Republic's western border, is one example. As a result, the Imatong Mountains are situated in the south, close to Uganda's border. Mount Kinyeti is part of South Sudan's most prominent mountain range. The city of Juba is home to South Sudan's tallest mountain, reaching a height of 3,187 meters (10,456 feet).¹⁶

To completely understand Sudan as a state or other distinct matters like the war in Darfur, economic issues, and the political uncertainty that has been witnessed since gaining autonomy; it demands an acknowledgment of its physical extensiveness, cultural and

¹⁴ South Sudan (no date) South Sudan - Place Explorer - Data Commons. Available at: https://datacommons.org/place/country/SSD?utm_medium=explore&mprop=count&popt=Person&p;hl=en (Accessed: January 11, 2023).

¹⁵ Geography (2022) South Sudan map, GIS Geography. Available at: <https://gisgeography.com/south-sudan-map/> (Accessed: January 11, 2023).

¹⁶ Ibid.

demographic uniqueness that surpasses those of all yet minimal number of countries worldwide. It practically embraces every physical feature, from the expansive brutal deserts to the significant rain forests emerging on its boundaries to the south. Like many nations in Africa, the country is described by borders established at the end of the nineteenth century by the European colonial powers.¹⁷

When the Anglo-Egyptian colonial regime was set up in 1899, it insisted on the indirect leadership by sheiks and community leaders, even though racial discrimination was significantly eroded as a regulatory institution between 1885 and 1898, the Mahdist era. The diminishing of loyalties aggravated the issues in the leadership structure and management and the population's Sudanese identity. Today, loyalty continues to be subdivided among the family, clan, ethnic factions, and religion. Thus, it makes it challenging for the leadership to build up national unity due to the vastness of the land, which allows most of the country's cultural factions to stay moderately separated from each other and far from the central government's reach.

Despite the Sudan people being connected by at least some reliability on the Nile River, they are uniquely split up by race, language, and religious dissimilarities. Most of the northern population are Arabs and communicate using Arabic; however, Sudanese "Arabs" are exceptionally distinguished. For years now, these populations have blended with the natives at differing levels and are more precisely referred to as "Afro-Arab." The disagreement between North and South has usually given rise to brutality. A conflict of cultures has caused continuous fighting spanning over one and a half centuries. Dominant geographical and ethnic disputes have prevented the country's development and promoted civil fighting in the South, which has constantly boiled since gaining self-rule. Although, there was peace between 1972 and 1983

¹⁷ Deng, Francis M. 2001. "Sudan - Civil War and Genocide". Middle East Forum 8 (1).

and at the beginning of the 21st century. Whether prominent or ordinary, the mistrust between the North and South Sudanese has never changed during the perennial years of brutality. Notably, the cost of fighting has depleted valuable national resources sacrificing health, education, and welfare in the two jurisdictions.¹⁸

The state of Sudan has experienced two stints of war before and after gaining independence from the British. The first fighting between the Northern and the Southern zones happened for at least a dozen years running from 1955 and 1972. This fighting started just a year before Sudan became a self-ruling country from Great Britain. The primary actors in the fighting include the nation's central government and the Southern Sudan Liberation Movement (SSLM). While several international states such as Great Britain, Egypt, and the Soviet Union backed the leadership of the ruling regime, countries like Ethiopia, Uganda, and Israel offered their support to the SSLM. It is approximated that around half a million citizens were murdered during the fight. The causes of the fighting can be tracked down to 1953 when the UK and Egypt agreed that the country would be autonomous in 1956. The thesis notes that in 1955, the Equatoria Corps, comprising more British Colonial military from southern Sudan, tried to scatter demonstrators in Torit, Sudan. However, the army seemed to be compassionate to the demonstrators. This action provoked the central leadership in Khartoum to substitute them with soldiers from the northern side. Angered by their replacement, the southern troops revolted and murdered 336 people from the North, including military and civilians. The information about the Torit revolt stretched wide, and the southern armies across Sudan rebelled.¹⁹

Other several aspects also contributed to the fighting. Notably, the Northern region, which accounts for two-thirds of Sudan, was entirely Muslim, while the South consisted

¹⁸ Deng, Francis M. 2001. "Sudan - Civil War and Genocide". Middle East Forum 8 (1).

¹⁹ Momodu, Samuel. 2020. "First Sudanese Civil War (1955-1972) •". Blackpast.Org.

primarily of Christianity or indigenous religions. Culturally, the Northern population spoke Arabic and associated themselves with Arabic nations to the North of the continent. On the other hand, the Southern population associated themselves with Ethiopia and other self-ruling Sub-Saharan countries. As a result of lacking firepower and structures to initiate a powerful attack against the North, the Southern military resolved to a guerrilla war.

Additionally, they were the first rebels to round up children as forces. With the war continuing, the rebels from the south split into two groups called the Sudan African National Union (SANU) and the Anya Nya. SANU was created as well as steered by William Deng, whose origin was the Dinka sect. In contrast, Joseph Lagu created and marshaled the Anya Nya, with most soldiers coming from the Madi faction. This fighting also caused issues for the leadership in Khartoum. As a result of the Northern troops not successfully ending the revolt, various coups created new regimes. It is essential to point out that after a decade of fighting, the interim leadership of Prime Minister Muhammad Ahmad Mahgoub offered to forgive the insurgents from the south on the condition that they stop the aggression. However, his offer was turned down, and the war progressed.²⁰

Almost two decades passed during the Second Civil War between the SPLA and the central leadership. Fighting started in the southern part of Sudan and spread to other locations, including the Blue Nile and the Nuba Mountains. The thesis notes that at least two million individuals died in the fighting. Despite this, the fighting led to the independence of South Sudan in 2011. However, there were several instances of violations of the terms of the Addis Ababa treaty of 1972, which put an end to the first civil war.

²⁰ Momodu, Samuel. 2020. "First Sudanese Civil War (1955-1972) •". Blackpast.Org.

A good example is when President Gaafar Nimeiry attempted to control the newfound oil fields found at the boundary areas between North and South in 1978. Also, President Nimeiry breached the accord in 1983 by forcing the Sharia Law across the country and eliminating the predominantly Christian Southern Sudan self-ruling area. Many of the South Sudanese population and other non-Muslim persons staying in the North were persecuted by Sharia Law. With anger to retribute the action by the government, the South Sudan insurgents created the SPLA group commanded by John Garang. In a similar scenario like in the initial dispute, children were rounded up as forces by both players. However, they were customarily used by Garang's group, the SPLA.²¹

President Nimeri was removed from power by a coup that happened in April 1985. The newly formed leadership revoked Nimeri's 1983 order and developed other introductions to unite the North and South. Subsequently, in May 1986, the newly formed Sadiq al-Mahdi government held its first meeting with the Garang-led SPLA group. Simultaneously, the rebel group and some political entities held meetings in neighboring Ethiopia and developed the Koka Dam Declaration, which required the eradication of the Sharia law and called for a constitutional summit throughout the country. Also, the rebel group, alongside the Democratic Unionist Party, held a meeting in 1988. The meeting's consensus was to call for a truce and cut off soldiery arrangements with Egypt and Libya. The ratification of the peace agreement by the Sadiq al-Mahdi government was done in February 1989.

Nevertheless, the war carried on into the last decade of the 20th century with obscenity and violation of human rights happening from the two ends. The Machakos Protocol was unanimously embraced by the Sudan leadership and the SPLM in July 2002. The discussions spilled into the subsequent year, and eventually, on January 9, 2005, both sides ratified the

²¹ Momodu, Samuel. 2018. "Second Sudanese Civil War (1983-2005) •". Blackpast.Org.

detailed Peace Agreement that brought the fighting to a stop. The peace deal also demanded the formation of South Sudan in 2011.²²

However, in 2011, fresh fighting commenced in the region and washed away the peace created by the SPLM and the central government of Sudan six years ago.²³ It was later reported by the human rights department of the UNAMIS that alleged war crimes were happening during this time of fighting. The allegations were later backed up by eyewitnesses and international Non-Governmental Organisations that talked of well-planned targeting of the citizens by the Sudan military, National Intelligence, Security Services, and paramilitary forces. The Sudan military later squashed these claims by the report alongside President Al Bashir's ruling party, backing up the use of force as a required and appropriate action towards armed insurgents.

Initially, the thesis notes that both arguments made sense despite having unique structural references in international law against domestic law and R2P against state sovereignty. Regardless of this and the query about which side initiated the war, it is evident that fighting has been conducted with senseless brutality against unarmed populations, specifically, the Sudan Military and their supporters.²⁴ Significantly, the emergence of this fighting did not shock close developmental observers in the region despite not being able to reliably foresee the actual place or timing of the violence. Too much anxiety contributing to the likelihood and the inescapable turn to brutality has engulfed the area for many years.

The country continues to be significantly intertwined in a hostile political system that stifles unaggressive plans and blocks successful competition among factions with varying

²² Ibid.

²³ UNAMIS Report on the Human Rights Situation During the Violence in Southern Kordofan, Sudan. UNAMIS Human Rights Section, Khartoum, Sudan, June 2011.

²⁴ Rottenberg, Richard, Guma K Komey, and enrico Ille. 2011. "The Genesis of Recurring Wars in Sudan: Rethinking The Violent Conflicts In The Nuba Mountains/South Kordofan". University of Halle.

interests and other actors with suitable answers to the state's challenges. One of the major issues is that both conflicting parties, the SPL and the ruling party of Sudan, were founded on a military basis. Their reasoning was and continues to be a military power. Essentially, the two parties do not in any way stand for democracy for the many populations. Notably, the system has gained an unlimited steadiness that unaggressive plans might not likely be set up within the political system.²⁵

However, the fighting is not the only horrific thing happening in the country, it is the root of the recurring fights. Backtracking to when the country obtained its independence in 1956, it experienced a complicated socio-political system that led to prolonged civil fighting in the continent. The troubled political scenario continues, exposing the unavoidable demonstration of a broken country and a weak nation-building exercise. Independent Sudan cannot maintain its stranglehold on aggression and offer uniform government services throughout the country if it fails to make guarantees that the lives of its citizens are better and protected by the law.²⁶ Rather than fostering national integration and unity in line with socio-cultural diversity, political leaders often decided to impose national unity via compelled uniformity. Consequently, the country remains a greatly disputed nation, whose ruling leaders carry on with aggressive fighting to extend their time in leadership roles against the country's population, entangled in never-ending patterns of civil fighting and weak peace deals.²⁷

The desire for self-rule by South Sudanese citizens as a peaceful political objective of the protracted conflict in Sudan has been a legitimate source of concern for Sudanese political groups and powers ever since the historic Nasir Statement of August 28, 1991. To find a

²⁵ Rottenberg, Richard, Guma K Komey, and Enrico Ille. 2011. "The Genesis of Recurring Wars in Sudan: Rethinking the Violent Conflicts in The Nuba Mountains/South Kordofan". University of Halle.

²⁶ Ibid.

²⁷ Rottenberg, Richard, Guma K Komey, and Enrico Ille. 2011. "The Genesis of Reoccurring Wars in Sudan: Rethinking The Violent Conflicts in The Nuba Mountains/South Kordofan". University of Halle.

resolution to the dispute, the SSIM/A, formerly known as the SPLM/A-United, participated in multiple peace efforts alongside the National Islamic Front (NIF) leadership at the time. The following were among the peace initiatives: The Frankfurt Talks on January 25, 1992; the Abuja Peace Talks in May/June 1992, facilitated by Nigeria; the May/June 1993 Discussions in Nairobi; and the Intergovernmental Authority on Drought and Development (IGADD)-mediated Peace Talks, which took place from January 6, 1994, to September 19, 1994. During these discussions, the SSIM/A demonstrated its commitment to the pursuit of just and lasting peace in South Sudan. Furthermore, the SSIM/A highlighted the right of South Sudanese citizens to self-govern as the cornerstone of a solution that would satisfy their sincere desires.²⁸

The people of South Sudan have long been denied this freedom by successive regimes that have ruled the nation after the adoption of its constitution. Either way, it is imperative that peace in South Sudan can only flourish if its people acknowledge and accept their inherent right to self-governance. However, even though Sudan's ethnic, faith-based, language and past differences have been widely recognized, these differences have not been used to strengthen and fortify the country's unity; instead, they have been exploited by the Arab wealthy individuals in the North to mistreat, enslave, and profit from South Sudanese, resulting in conflicts and wars.²⁹

1.4.1 South Sudan Historical View Point

It is crucial to briefly discuss South Sudan's colonial past as the regional entity claiming its constitutional right to self-governance to understand the South Sudanese government's motivation for waging war. Sudan was made up of various Provinces and ethnic groups before

²⁸ Machar, R. (no date) South Sudan: A history of political domination - a case of self-determination, (Riek Machar), South Sudan: A History of Political Domination - A Case of Self Determination, (Riek Machar). UNIVERSITY OF PENNSYLVANIA. Available at: https://www.africa.upenn.edu/Hornet/sd_machar.html (Accessed: January 22, 2023).

²⁹ Ibid

the Turko-Egyptian invasion of 1821; these regions did not have the modern forms of administration that exist today. Sudan was never established in its current form as a result. The Ottoman Empire's aspirations for advancement and its hunger for riches and markets facilitated its conquest in 1821. Gold, ivory, wood, and slaves were the main items of interest. The main supplier of these items was South Sudan and her relatives. Together, the Turko-Egyptians and the North Sudanese launched attacks on South Sudan in search of slaves, which resulted in the kidnapping of many South Sudanese people into servitude in the Bedouin and New World.³⁰ Even though it lasted for nearly sixty years, Turko-Egyptian authority was not exclusive to Sudan. Particularly, the assaulting foreign power did not fully subjugate South Sudan to its structure. Furthermore, the Mahdist movement of 1883–1898 was unable to impose its whole expert system throughout South Sudan.

In 1892, the Belgians established the Lado Area as a part of the Belgian Congo after moving forward from the former Belgian Congo (now Zaire) to Western Equatoria and Mongalla. Large swaths of South Sudan (Bahr el Ghazal, Western Upper Nile up to Fashoda) were inhabited by the French under Major Marchand's leadership during the same period (1892), and by 1896, they had established a stable organisation in this region. An additional French attempt to link the Fashoda campaign with a journey via Ethiopia and the Baro and Sobat Waterways, which began in Djibouti in 1897, was a failure. To fully occupy French territory in West Africa, South Sudan had to be included. However, the English and French caused a global conflict over South Sudan, which is sometimes referred to as the Fashoda Occurrence.³¹

³⁰ Machar, R. (no date) South Sudan: A history of political domination - a case of self-determination, (Riek Machar), South Sudan: A History of Political Domination - A Case of Self Determination, (Riek Machar). UNIVERSITY OF PENNSYLVANIA. Available at: https://www.africa.upenn.edu/Hornet/sd_machar.html (Accessed: January 22, 2023).

³¹ Machar, R. (no date) South Sudan: A history of political domination - a case of self-determination, (Riek Machar), South Sudan: A History of Political Domination - A Case of Self Determination, (Riek Machar).

After the Sudan was defeated once more in 1898 by a coalition of Egyptian and English forces, the English and Egyptians came to an understanding known as the Condominium Agreement, which gave them dominion over the Sudan within its present borders. A deal between the British and the French was finalized in Europe in 1899, forcing the French to leave South Sudan and cede their portion of the country to the government who were in authority of North Sudan at the time. Similar events happened in 1910 when the Belgians left the Lado Territory following the conclusion of an agreement in 1896 that said the Area would be turned over to the British following the death of Ruler Leopold. The emperor died in 1910. The English gained control of South Sudan when the French and Belgians left the country.³²

1.4.2 The British Separate Administration Policy (1898-1947)

Based on the differences in North and South Sudan's geography, politics, history, and cultures, the British came up with a plan for separate governments for the two countries. The British enacted the Closed Districts Ordinances in the 1920s to guarantee the sustainability of the various administrative plans. The Passports and Permits Ordinance was established in 1922 in conjunction with this tactic. This regulation mandated that travellers between North and South Sudan must use their passports and travel permits. The purpose of the passports was to record the details and motivations behind the visits.³³ The trade order and permissions approved in 1925 further strengthened the Immigration Policy. According to this rule, North Sudanese citizens would be required to obtain licenses in order to conduct business in South Sudan. South Sudan finally developed and put into effect a Language Policy in 1928. In addition to supporting the use of the neighboring dialects—Dinka, Bari, Nuer, Latuko, Shilluk, and Zande—this strategy recognized English as the official language of South Sudan. In South

UNIVERSITY OF PENNSYLVANIA. Available at: https://www.africa.upenn.edu/Hornet/sd_machar.html (Accessed: January 22, 2023).

³² Ibid.

³³ Ibid.

Sudan, Arabic was utterly disregarded as a language. The language policy, along with trade and immigration restrictions, worked together to maintain South Sudan's distinction from North Sudan. Instead of traveling to Khartoum, Pilgrim lead delegates from South Sudan opted to attend regular administration sessions in East Africa.³⁴

Following the establishment of Condominium rule, the British continued to bolster their position in North Sudan by establishing significant political and administrative institutions. The North Sudan Advisory Council Ordinance was created in 1943 to enable North Sudan to rule itself. The Khartoum, Kordofan, Darfur, Eastern, Northern, and Blue Nile regions were among the six North Sudanese districts that were included in the statute. This committee was authorized to provide recommendations to the leasehold authority regarding the best way to administer North Sudan in certain, designated areas. Every member of the Advisory Council was a native of North Sudan. The South Sudanese region was not affected by the mandate in any way. Until now, the English and Egyptians were thought to have conquered North and South Sudan as different countries.³⁵

1.4.3 North Sudan Gets Authority to Colonize South Sudan from British

Regrettably, the decisions made at the executive assembly in Khartoum in 1946 surprisingly reinforced North Sudan's annexation of South Sudan, instead of establishing a council of experts similar to that of North Sudan. It ought to be noted, however, that the British administrators from South Sudan did not attend and that the gathering was exclusively meant for North Sudanese administrators, upholding the decision against the wishes of the populace in that country. This unexpected outcome later revealed the plot between the British and the

³⁴ Machar, R. (no date) South Sudan: A history of political domination - a case of self-determination, (Riek Machar), South Sudan: A History of Political Domination - A Case of Self Determination, (Riek Machar). UNIVERSITY OF PENNSYLVANIA. Available at: https://www.africa.upenn.edu/Hornet/sd_machar.html (Accessed: January 22, 2023).

³⁵ Ibid.

North Sudanese, supported by Egypt, to cede South Sudan to North Sudan as a colonial territory. Undoubtedly, the South Sudanese and their supporters had a negative reaction to this initiative.³⁶

The shameful Juba summit of 1947 was the completion of the British sellout of the South. The purpose of the conference was undoubtedly to tell the leaders of South Sudan of the decision to permanently hand over the country to the incoming colonial authorities originating from North Sudan. The Sudan Legislative Assembly was established in 1948 in remembrance of this unpopular decision. Thirteen South Sudanese representatives were carefully chosen and forced to attend the meeting on their behalf. The 1953 Cairo Agreement was not exempt from the provision either. North Sudan's secession from South Sudan was planned by the colonial powers of England and North Sudan, posing as members of national political parties and ostensibly assisted by the Egyptian government. The South Sudanese people were purposefully excluded under the pretense that they were not affiliated with any political parties.³⁷ Using the false and illogical assumption that Sudan is a single entity, this seemed to be just another ploy by the political parties in North Sudan to obtain participation for South Sudan. The people of South Sudan eventually regard themselves as "internally colonized people." One of the biggest errors in British colonial history's diplomacy may have been the deliberate transfer of South Sudan to North Sudan. If, as is possible, the British had believed that South Sudan was not yet ready to become an autonomous state without outside assistance, they should have allowed North Sudan to become autonomous like they did with North Rhodesia or should have turned over governance of the territory to an international organisation like the UN instead of North Sudan. Consequently, the British currently need to

³⁶ Machar, R. (no date) South Sudan: A history of political domination - a case of self-determination, (Riek Machar), South Sudan: A History of Political Domination - A Case of Self Determination, (Riek Machar). UNIVERSITY OF PENNSYLVANIA. Available at: https://www.africa.upenn.edu/Hornet/sd_machar.html (Accessed: January 22, 2023).

³⁷ Ibid.

support the South Sudanese population's demand for unconditional independence to rectify this grave error of judgment that has resulted in several South Sudanese deaths.³⁸

1.4.4 The Relationship Between the North and South After Colonization

It is important to note that the citizens of South Sudan did not perceive the North's secession from the British as something more than a shift in governance as the North took over as the country's governing body. It was the leaders of North Sudan who failed to create legislation that would have brought stability and unity to the country. As a result, Sudan has fallen into an endless state of political, constitutional, military, and economic chaos up until now. The South Sudanese people faced resistance and denials from several regimes and administrations in Khartoum, which prevented them from enjoying freedom, equality, and effective participation in national governance. In conclusion, ever since the North and South gained autonomy, their relationship has been.

In summary, the history of North-South ties since autonomy may be characterized as follows: political exclusion of the South through prejudice, under-representation, and other restrictions that prevented South Sudanese from managing multiple key constitutional positions of power; deliberate obstruction and neglect of South Sudan's prosperity as all financial growth projects are gathered in North Sudan; and cultural subjugation through the imposition of Arabic and Islamic values on South Sudanese people in a deliberate attempt to eradicate their African culture and legacy.

South Sudanese were reduced to second-class citizens when the present regime declared Sudan to be an Islamic country. In a hybrid state like Sudan, the weight of social and

³⁸ Machar, R. (no date) South Sudan: A history of political domination - a case of self-determination, (Riek Machar), South Sudan: A History of Political Domination - A Case of Self Determination, (Riek Machar). UNIVERSITY OF PENNSYLVANIA. Available at: https://www.africa.upenn.edu/Hornet/sd_machar.html (Accessed: January 22, 2023).

religious laws, or Islamic sharia, nullifies the concept of the right to citizenship, which may serve as the foundation for equality, national cohesion, and civil rights. The North's definition of Sudanese integrity through the lens of Islam and Arabity is another reason for the national identity problem. Political electors in the North see Sudanese citizenship as a step toward a healthy absorption into Arab identity. This undermines the fundamental liberties of the significant African majority population, whose identity should be fully represented in the character of the government.

Fundamentally, there was also the violation of fundamental human rights by the populace of South Sudan, as evidenced by the erasure of the country's population through the war and the widespread mass murders of innocent people by various North officials. Examples of these atrocities include the 1964 murders of Yei, Maridi, and Kodok by the Abboud government; the 1965 killings of Juba, Wau, Torit, Warajwok, Bor, and Akobo, which were masterminded by Mohammed Ahmed Mahgoub; the 1987/88 Dhaein Massacre, in which roughly 3,000 South Sudanese were executed by government infantry and police; and the 1989/90 Jebelien Massacre, in which over 2000 South Sudanese were killed by military.

Furthermore, there were sporadic bombings and raids against the general populous settlements, which led to a large-scale eviction of residents from their homes. Currently, over 3 million South Sudanese are living in substandard conditions on the outskirts of Khartoum and other major North African cities, denying them basic human rights and using food as a weapon to convert to Islam. To increase the importance of Islam and Arabic, the educational system in the South was likewise forced to become more Islamized and Arabized, eradicating the local languages and traditions. In addition, there were political killings, wrongful

detentions, and kidnappings of South Sudanese citizens in towns under government control.

Lastly, this conflict saw the return of slavery and the slave trade.³⁹

The above violations and practices are legitimate affirmations of the two groups' inability to live in harmony and coexistence as a unit of government. The people that are affected by this tragic situation are the South Sudanese. The previous attempts to find a long-term solution to the South Sudan crisis with the various Khartoum administration systems that came to prominence were all fruitless. General Numeiri unilaterally renounced the Addis Ababa Memorandum in 1983, plunging Sudan back into conflict, even though it had brought some peace and stability to the South in 1972.

1.4.5 The Political Parties and The Right of Self-Rule for The Sudanese People

Recall that there was a breakthrough achieved in the relationship between the NIF government and the SSIM/A, formerly known as SPLM/A-United, particularly with the Frankfurt Agreement of January 25, 1995, and the Nairobi meeting in May 1993, where the NIF government turned over its authority to the people of South Sudan. The fact that the same NIF administration has not given attention to the concerns that were agreed upon in the Frankfurt or Nairobi Talks, nevertheless, is concerning. It is unlikely that the regime's steadfast approach would put an end to the terrible conflict, distress, and misery in Sudan.

The Umma Party, the Sudan People's Liberation Movement/Army, the Democratic Unionist Party (DUP), the National Islamic Front, and the Communist Party, among others,

³⁹ Machar, R. (no date) South Sudan: A history of political domination - a case of self-determination, (Riek Machar), South Sudan: A History of Political Domination - A Case of Self Determination, (Riek Machar). UNIVERSITY OF PENNSYLVANIA. Available at: https://www.africa.upenn.edu/Hornet/sd_machar.html (Accessed: January 22, 2023).

have largely opposed granting South Sudanese citizens full autonomy over their affairs. Regardless, after the historic Nasir Declaration of August 28, 1991, several groups started to publicly discuss self-rule. Since 1983, the Sudan People's Liberation Movement/Army (SPLM/A) has been at odds with several South Sudanese factions that have called for the right of each South Sudanese citizen to exercise independence. This was demonstrated by the intense battles the SPLM/A waged from 1983 to 1991 against the Anyanya II "separatist" and, since 1991, against the SPLM/A's Nasir faction.

Although the SPLM/An had been aggressive toward the SSIM/A, it was only reluctantly that it recognized the right to self-assurance in the Abuja I Peace Talks, the Washington Declaration, and the Common Agenda for IGADD Peace Talks. While discussing the notion for some years, the Communist Party of Sudan has never been required to put it into practice. The Chukudum Agreement between the Umma and the SPLM/SPLA and the Sayyed Sadiq el Mahdi Discussion Thesis dated November 10, 1993, expresses the self-assurance that the Umma Party has taken steps to perceive. Moreover, every Sudanese opposition party present at the Bonn meeting accepted this premise, except the DUP, which incorporated a caveat. Even though the DUP has consistently opposed South Sudanese citizens' right to self-assurance, it acknowledged the idea at subsequent meetings in Asmara.

1.5 Explaining Genocide

The term "genocide" was first used by Polish Jewish jurist Raphael Lemkin in the 1943 thesis "Axis Rule in Occupied Europe." He did so by combining the Greek word "genos," which refers to race or tribe, with the Latin word "cide," which implies the act of killing. Lemkin argues that unless the swift devastation of a country is caused by the deliberate killing of its

whole population, it is not always seen as the product of genocide. The intention behind it is to entirely demolish the basic foundations of national groups' survival through a carefully planned series of actions.

This scheme aims to eradicate the economic, cultural, linguistic, national sentiment, and religious aspects of national groups. The personal safety, independence, health, and respect of those who are part of such communities would likewise be targeted for destruction, along with their lives. His documentation of Nazi tactics to destroy national and cultural groups, which included the systematic extermination of European Jews, is credited with coining the phrase.

More so, when he proposed a consensus to combat genocide to the UN in 1945, he described the act as "The crime of genocide should be recognized therein as a conspiracy to exterminate national, religious or racial groups. The overt actions of these conspiracies could include assaults on a member's life, liberty, or property due to their membership in these organisations. Lemkin further explained how such a crime may be conceptualized as follows: Genocide is committed by anybody who attacks the lives, freedom, or possessions of individuals of a national, ethnic, or faith-based organisation while taking part in an attempt to annihilate said group."⁴⁰ Recognizing that the term "genocide" refers to a traditional practice in its contemporary incarnation, he went on to define crime as a well-thought-out scheme of various acts intended to destroy the fundamental bases of national groups' existence with the ultimate goal of eradicating the groups themselves. In 1946, the International armed forces inquiry held at Nuremberg, Germany, prosecuted the leadership of Nazis with "crimes against

⁴⁰ Lemkin, Raphael. 1944. *Axis Rule in Occupied Europe*. Washington.

humanity." Here, the term "genocide" was included in the charge; however, it was applied as a descriptive rather than a legal word.⁴¹

According to the definition provided by the UN, "genocide" is defined as any of the following acts committed with the intent to completely or partially destroy a national, race, ethnic, or faith-based group, including (a) murdering individuals from the group; (b) causing severe mental or bodily injury to its members; and (c) intentionally imposing circumstances of life determined to bring about the group's utter ruin in completely or in part. (d) enforcing policies that aim to stop childbearing among the group by moving group members' children forcefully to another group.⁴²

Notably, the word genocide has been severely reviewed and enhanced and even put through debates by social scientists who have demonstrated that all expansive killings are not genocide⁴³. Nevertheless, one might also come up with genocide in the absence of killings but other acts like rape and torture.⁴⁴ Notwithstanding, several scholars find issues with the genocide definition by the UN. Chalk and Jonassohn debate that the Genocide Convention's explanation of genocide "is responsible for much of the confusion that plagues scholarly work in the field" due to inaccuracy.⁴⁵ Subsequently, Muberanziza, argues that when an exercise is conducted to ruin a sect entirely or in part, it adds up to genocide. At the same time, the number of affected persons does not count.⁴⁶

⁴¹ See "What Is Genocide?". n.d. Encyclopedia.Ushmm.Org. Accessed September 1. <https://encyclopedia.ushmm.org/content/en/thesis/what-is-genocide>.

⁴² See United Nations, n.d. "United Nations Office on Genocide Prevention and The Responsibility to Protect". Un.Org. Accessed September 1. <https://www.un.org/en/genocideprevention/genocide.shtml>.

⁴³ Staub, E. 1992. Roots of evil: The origins of genocide and other group violence. Cambridge, Cambridge University Press.

⁴⁴ Robbins, S. and S. Robbins 2003. Africa, a continent in agony: We accuse! Ann Arbor, MI, Capsal.

⁴⁵ Chalk, F.R. and K. Jonassohn 1990. The history and sociology of genocide: Analysis and case studies. New Haven, Yale University Press.

⁴⁶ Muberanziza, A. 2004. Une définition juridique du génocide. Dialogue, 233, pp. 3–15.

The genocide convention on aversion and prosecution of the crime of genocide was drafted by the United Nations following the repercussions and close to widespread acknowledgment that Adolph Hitler's Nazi Germany endeavored to methodically eradicate the Jewish populace and other minorities, supposed to be outcast groups in lands occupied by the Nazi during World War Two. Winston Churchill, in 1941, pronounced the Nazi's activities to be unethical and thus extreme that they added up to "a crime without a name."⁴⁷ It was the personal experience of Raphael Lemkin, a Polish Jewish legal counselor, and human rights activist caused by the Nazi killing of European Jews, that he authored the term "Genocide" and in this way dedicated his whole post-war life to upholding its eradication.

The Convention on the Prevention and Punishment of the Crime of Genocide was authored soon after the Second World War. The Convention set up a dual responsibility among its signatories.⁴⁸ As the formal title of the Convention demonstrates, treaty members should partake in measures to "prevent" and "punish" genocide. This dual-responsibility or "dual-pronged" treaty has given rise to, by its flexible definition of genocide, challenges in successfully achieving its objective of fulfilling its duty to alleviate future genocides.

This thesis looks at the obligations of the Convention on the Prevention and Punishment of the Crime of Genocide to stop the widespread and intentional killing of defenceless populations who are recognized as members of a group under protection, the limitations of the convention in carrying out this duty, and how the Responsibility to Protect (R2P) principle could be added to the convention's prohibitions on preventative measures in the event of future mass partisan brutality. The thesis attempts to unwrap genocide's legal criminal definition, and

⁴⁷ Rebecca Joyce Frey, *Global Issues: Genocide and International Justice* (New York: Facts on File, Inc., 2009), 12

⁴⁸ Jeffrey S. Bachman, "The Genocide Convention and the Politics of Genocide Non-prevention" (Doctoral dissertation, North-eastern University, 2013), 20,

the Genocide Convention's alleviation duty, and also examines the creation of R2P as a source of backup for nations in the alleviation of the crime of genocide.

1.6 Scope of the Thesis

The scope of research is mainly about establishing the boundaries of the investigation. To put it another way, the scope aims to let the reader know where the thesis starts and stops. Therefore, the scope of this research will concentrate on the role of the United Nations in preventing genocide in Africa using South Sudan as the case thesis. The thesis will delve into both legal and sociological perspectives of genocide and mass atrocities with the premise of South Sudan.

1.7 Statement of Significance

This thesis is interested in critical legal and humanitarian law questions, focusing on practical challenges encountered during its implementation within the context of genocide prevention in Africa, with a special focus on South Sudan. This research will go deeper into the understanding of the complexity of genocide prevention and the Responsibility to Protect on the African continent.

Furthermore, it critically reviews the laws governing genocide and R2P in Africa. A closer look at international treaties, regional agreements, and domestic laws reveals critical gaps, ambiguities, and challenges in the existing legal frameworks. It helps build a perspective on why certain measures of prevention work and why they fail, thereby laying the base for lawyers and practitioners to identify and pinpoint specific areas that need reform.

It further elaborates on humanitarian law and its position in the United Nations and other international institutions in genocides, crimes against humanity, and war crimes in Africa.

The research reflects past actions and interventions, showing failure at an operational level, coordination, and practice. This opens a more subtle understanding of the 'practical' challenges that the implementation of international law faces and brings out the necessity of reform in their legal framework and applications. From this perspective, these gain ground for reasons on legal and procedural remedies to make international bodies more capable of discouraging genocide effectively.

More importantly, research dictates that prevention overshadows post-conflict interventions. Indeed, the merits of pre-emption appear in the context of preventing genocide and mass atrocities. Taking case studies and analysing early intervention strategies demonstrated by the United Nations and its other relevant actors in South Sudan, research provides value to early warning systems, preventive diplomacy, and rapid responses. From the findings made in this thesis, it is argued that if investments go into prevention, then through such intervention, humanity saves much more than after a conflict has already begun.

It looks at the role of complementarity where regional organisations, national law, and local law enforcement play in supporting efforts made by international bodies. It can be seen through the contribution of the African Union and national judicial systems to carry out the suggestions of thesising genocide prevention, both at the global and local levels.

This research contributes to an even more all-round appreciation of the legal, humanitarian, and practical aspects of preventing genocide in Africa. It informs continued debate toward international law and practice reform by pointing out shortcomings and providing actionable recommendations to improve them. In doing so, the thesis appeals for more inclusive approaches toward preventing genocide that are more inclusive in efforts to protect vulnerable people in Africa and the world at large.

1.8 Research Methodology

This thesis employs a qualitative legal research methodology designed to examine the relationship between state formation, genocide prevention, and international intervention in Africa, with a particular reference to South Sudan. The research is grounded in doctrinal legal analysis of international treaties, jurisprudence, and institutional mandates governing genocide and the Responsibility to Protect. In addition, the thesis adopts a comparative constitutional approach, analysing post-conflict legal and constitutional arrangements in South Sudan alongside selected comparative cases, including Bosnia and Herzegovina, Kosovo, Cyprus, Zimbabwe, and Myanmar. A historical–legal method is used to situate contemporary legal frameworks within broader trajectories of decolonisation and post-1945 state formation, while case law analysis examines the evolution and application of genocide jurisprudence in international criminal tribunals.

The data analysis procedure is qualitative, interpretive, and multi-layered. Legal materials are analysed through doctrinal interpretation, thematic legal analysis, structured comparison, and institutional assessment. Treaties, judicial decisions, United Nations and African Union instruments, and authoritative secondary sources are systematically examined and triangulated to identify patterns relating to intent, responsibility, intervention failure, and constitutional design. This integrated methodological approach enables the thesis to move beyond descriptive accounts and provide a critical legal evaluation of the effectiveness and limitations of genocide prevention and international intervention frameworks.

1.8.1 Research Method

Significantly, research methods cite a conceptual approach – a supposition of international law regarding solid issues experienced in the international community. Here, a suitable technique of investigating international law is one that possibly offers an excellent opportunity to assess the role of the UN in alleviating genocide and related crimes in Africa.⁴⁹ Mullerson points out that states' self-rule is a significant matter connected to intervention for human rights intentions. Thus, sovereignty and the assumption of nations' sovereign equality comprise interactions between the law and political issues.⁵⁰ Consequently, using an approach that recognizes the impact of global politics and other pertinent environmental elements is necessary when the African Union executes its forceful intervention responsibilities. A systematic approach also concentrates on the systems and the contextual elements of reciprocity⁵¹.

The United Nations 'intervention structure's operations are not impacted by an individual component but by a group of features ranging from lawful to unlawful factors, thus demanding scrutiny from a systematic outlook. The thesis opts for this investigation approach due to its capability to acknowledge environmental elements' impacts, including global politics in a legal system operationalization like the UN's intervention mechanism. Additionally, the approach also identifies the system's potent interaction of the factors including (principles focused on nations' self-rule and others aimed at intervention for human rights) which are significantly impacted by the goals of the established mechanisms. The technique also recognizes the part played by other non-governmental enablers like NGOs in creating and

⁴⁹ Ratner Steven, and Anne-Marie Slaughter. 1999. "Appraising The Methods of International Law: "A Prospectus for Readers." *American Journal of International Law* 93 (2): 291-292.

⁵⁰ Mullerson, R. A. 2000. *Ordering Anarchy*. Boston, Mass.: Martinus Nijhoff.

⁵¹ Slaughter, Anne-Marie. 1995. "International Law in A World of Liberal States'." *European Journal of International Law* 6 (1): 503.

executing international law.⁵² The systematic approach's fundamental idea theorizes that the topic or item under investigation has many interacting links.⁵³

The thesis notes that principles of a nation's self-rule, non-intervention, and intervention for purposes of human rights are within the international law structure. Additionally, these norms are the main worry of the thesis in the UN's mechanism scenario. It is essential to note that besides international agencies being controlled by international law, the agencies also form international laws. Additionally, the thesis finds it necessary to scrutinize pertinent rules and norms related to international law as a foundation for the actualization of intervention structures set up by the African Union and assess its relationship with international law.

The chapter details the research methodology used in carrying out the inquiry. It also expounds on the philosophical focus and research design of the thesis. Essentially, research methodology shows the numerous techniques in which primary and secondary sources of information are achieved and implemented for the sake of legal studies.

The Methodology embraced in this phase of the examination is exhaustively portrayed in the ensuing segments of this chapter. In synopsis, quantitative exploration strategies were utilised in this stage to perceive essential types of genocide preventive measures. This stage incorporated the gathering and examination of information connected with the review's contextual analysis on preventing genocide. Qualitative research techniques were used in chapter two of the examination which contained the use of secondary sources and literature on genocide. The purpose of using secondary sources was to introduce a more extravagant and more complicated depiction of the discernments and perspectives of the research scholars on

⁵² Van de Kerchove, Michel, and François Ost. 1994. *Legal System Between Order and Disorder*. Oxford [etc.]: Oxford University Press.

⁵³ Shelton, Dinah L., and Alex Kiss. 2007. *GUIDE TO INTERNATIONAL ENVIRONMENTAL LAW*. Boston: Martinus Nijhoff Publishers.

the ongoing moral issues confronting genocide prevention and the factors that the genocide scholars, UN, and other security agencies believe might be affecting genocide prevention.

Chapters two and three of the thesis were viewed as an essential piece of the exploration plan for various reasons. The writing, right off the bat, the literature review of the thesis, talked about presumptive proof of genocide and mass atrocities. In any case, the writing audit attempted for this postulation found several past observational investigations of the essential sorts of unscrupulous genocide preventive measures utilised by the UN that genocide scholars believed were impacting the UN's actions on preventing genocide and mass atrocities.

1.8.2 Stage 1: Details of the Literature Search

The initial phase of the thesis included an exploration of the academic literature linked to the theories to be explored. To undertake this review, the various databases were searched and accessed via the Victoria University Library and several internet search engines, like the Google Scholar. Explorations of the academic literature were carried out periodically between January 2022 and December 2022. The exploration was finished around that time to allow the researcher to focus on the development of the research analysis, summary, and presentation of the results.

Literature explorations related to the law associated with international law, human rights law, and the enforcement and administrative decisions of the United Nations and the determinations.

Media references and other material linked to the current problems in preventing genocide were discovered by searches of media, industry, and government websites carried out oftentimes between April 2022 and August 2022.

1.8.3 Stage 2: Determining the Primary Causes of Genocide and the Types of Preventive Strategies Used by The United Nations

Research question one was about the causes of genocide based on legal definitions and various case studies. Research question two was about if the UN intervention, if necessary, was effective in mitigating the genocide in selected African countries. The two questions did not need hypotheses as no connections were tested in the analysis. However, a quantitative methods research approach was adopted to answer these research questions. This clarification investigation was conducted in stage two of the thesis to provide a clearer understanding of genocide causes and how to prevent it. Additionally, this examination informed the research of the practical application of some of the concepts being utilised by the United Nations.

Phase two of the thesis involved an examination of secondary source material connected to causes and prevention of genocide between 2013 and 2022. The objective of the examination was three-fold. The first objective was to establish the explore the international law of genocide and the development of the R2P Principle as part of Humanitarian Intervention. The second objective was to analyse UN actions and capacities to act under the R2P Principle. The third objective was to explore further development of R2P to enable the UN to prevent future genocides in Africa. This made sure that the topics selected were essential to the prevention of genocide by the United Nations.

Once the data was collected, the analysis was carried out via a content analysis technique in order to establish themes in causes and prevention of genocide from the data. Worth noting is that Content analysis normally involves 15 stages, even though they are not necessarily followed in strict linear order as interaction and overlapping happens and might be

altered (Cavana, Delahaye, and Sekaran 2001). The analysis undertaken for the purposes of this thesis followed a nine-step abridged process outlined below in Table 3.1.

Table 3.1

STEP	PROCESS
Step 1	Identification, preparation, and organisation of the secondary data (causes and prevention measures) from the different sources.
Step 2	Development of the genocide preventive Principles Schedule against which to establish the presence of genocide within the fact situation.
Step 3	Assign a specific source code and abbreviation for each Principle and tracking data.
Step 4	Download copies of all suitable preventive strategies for review and store in electronic files.
Step 5	Review each documented outcome of the preventive strategy used against the definitions allocated to the preventive principles highlighted in the genocide preventive Principles Schedule, to discover shortfalls using a selective coding process and record unethical conduct.
Step 6	Tabulate and code these shortfalls against the coding system set up for this objective.
Step 7	Carry out a continuous comparative examination when second and third themes in relation to the genocide prevention process arise from the data.
Step 8	Develop and retain a list of abbreviations and a brief description of each theme into a data index.
Step 9	Carry out a mapping process to inspect and create correlations across the thematic categories

Subsequently, this procedure was carried out for the case thesis, to examine the data from genocide prevention strategies.

1.8.4 Philosophical Approach

This thesis adopted the interpretivist/constructivist paradigm, which helps the researcher grasp "the world of human experience."⁵⁴ The paradigms also imply that "reality is socially constructed."⁵⁵ Significantly, interpretivists or constructivists suppose that someone should first interpret to comprehend the world of meaning. The researcher should explain the exercise of definition construction and spell out what and how definitions are incorporated in the language and activities of social players.⁵⁶ The thesis adopted these approaches because it intends to demonstrate that contrary to natural occurrences, social happenings like genocide and crimes against humanity possess a symbolic attribute and show the qualities credited to them by the human mind. Additionally, the paradigms also provide the best chance to determine answers to research questions and thesis objectives. Also, the thesis adopted the philosophical approach based on its ability to use a theoretical sampling plan, where research locations, participants, or instances are chosen based on theoretical deliberations, like if they suit the event under research. In this case, genocide, crimes against humanity, ethnic cleansing, and war crimes in Darfur and Rwanda illustrate the successes and failures of the UN.

1.8.5 Research Design

⁵⁴ Cohen, L., & Manion, L. (1994). *Research methods in education*. (4th ed.) London: Routledge.

⁵⁵ Mertens, D.M. (2005). *Research methods in education and psychology: Integrating diversity with quantitative and qualitative approaches*. (2nd ed.) Thousand Oaks: Sage

⁵⁶ Schwandt, Thomas A. 1998. *The Landscape of Qualitative Research: Theories and Issues*. Sage Publications.

According to Almalki, the thesis design is how research is organized and carried out.⁵⁷ Subsequently, It is also the processes and methods deployed to provide answers to research problems. Essentially, Kothari & Garg state that thesis design is a plan of action that gives the researcher directions on acquiring, scrutinizing, and elucidating data.⁵⁸ Moreover, other scholars like Sekaran & Bougie argue that a research design is an insightful framework of evidence that permits a researcher to extract conclusions about contributing connections among the variables being examined.⁵⁹

There are several research designs categorized based on several points of view. The usual perspectives on which research designs are categorized are research goals, the strategy adopted for data collection, and the time horizon of the research. Crucially, the accessibility of data sources, the urgency of the decision, and the cost of getting the data dictate the design technique selected⁶⁰. The research design must offer confidence that the results obtained from following the design consider the validity and have high levels of reliability⁶¹. Vitally, the research design highlights the potential conclusions that the researcher may reach by particularly proposing the statistical tests that can be made.⁶² Therefore, this research debates that a research design is a logical strategy for planning research processes and giving proof for knowledge growth.

The proposed research project intends to use the descriptive qualitative research model and a multiple case thesis design to achieve the project's objectives. This model will thus mandate the researcher to adopt a desktop review approach. Essentially, a case thesis is an audit

⁵⁷ Almalki Sami. (2016). Integrating quantitative and qualitative data in mixed methods research-challenges and benefits. *Journal of Education and Learning*; Vol. 5, No. 3; Canadian Center of Science and Education 288

⁵⁸ Kothari. R., & Garg Gaurav. (2014). *Research methodology: Methods and techniques* (3rd Ed), New Delhi, New Age International (P) Ltd Publishers

⁵⁹ Sekaran, U & Bougie, R (2016). *Research methods for business: A skill-building approach*, (7th ed) Chi Chester, West Sussex, United Kingdom: John Wiley & Sons.

⁶⁰ Sekaran, U & Bougie, R (2016). *Research methods for business: A skill-building approach*, (7th ed) Chichester, West Sussex, United Kingdom: John Wiley & Sons.

⁶¹ Ibid.

⁶² Ibid.

of systems studied with an in-depth insight by one or various techniques.⁶³ The case thesis design approach does not focus on scrutinizing cases. However, it is a suitable method to explain instances and explore a thesis setting to grasp them.⁶⁴ "The case thesis method "explores a real-life, contemporary bounded system (a case) or multiple bounded systems (cases) over time, through detailed, in-depth data collection involving multiple sources of information... and reports a case description and case themes".⁶⁵

The principal sources used in obtaining data will include laws, protocols, and treaties established by international bodies in aiding genocides, crimes against humanity, and war crimes in Rwanda and Sudan Darfur. The research set out to analyse international laws and procedures mainly adopted by the AU and the UN. The thesis will employ both primary and secondary sources, international instruments and rules, internet resources, and case reports to achieve the thesis's objectives and answer research problems.

Additionally, the literature currently exists on genocides, crimes against humanity, and war crimes. The International Criminal Tribunal for the former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR) significantly helped inform this thesis. The thesis will also make numerous references to a series of case laws within the subject in question, precisely Rwanda and Sudan Darfur, to support the findings of the thesis.⁶⁶ On the other hand, secondary sources such as journals, published thesiss, editorials, and periodicals will be employed to grasp better an array of issues related to the subject in question. The research will equally integrate the law and sociological model as its conceptual framework in underscoring

⁶³ Thomas, G. (2011). A typology for the case thesis in social science following a review of definition, discourse, and structure. *Qualitative Inquiry*, 17(6), 511- 521.

⁶⁴ Cousin, G. (2005). Case Thesis research. *Journal of Geography in Higher Education*, 29(3), 421-427.

⁶⁵ Creswell, J. W. (2013). *Qualitative inquiry and research design: Choosing among five approaches*. Thousand Oaks, CA: Sage.

⁶⁶ . Ibid. 9.

the effects of the culture of impunity over time and its impact.⁶⁷. Given the wealth of information from varied authors on the subject of thesis, condensing the findings may pose a challenge, establishing the researcher's need to integrate measures that do not confine the collection of data from works of literature.

Given the wealth of information from varied authors on the subject of thesis, condensing the findings may pose a challenge, establishing the researcher's need to integrate measures that do not confine data collection from works of literature. Therefore, the thesis tries to properly comprehend the UN's role in preventing genocide, war crimes, crimes against humanity, human rights violations, and ethnic cleansing. Therefore, it utilises a qualitative methodology to investigate genocide's prominence in international law and how it affects individual players in the legal process. Firstly, the thesis begins with discussing defendants who are obtained from the ICTR. The main focus was only on cases completed by the ICTR and scrutinized to control the research. Secondly, the thesis targets victims and witnesses of the disputes addressed, specifically in Rwanda. That is the 1994 genocide in Rwanda.

The qualitative techniques in this thesis are extensively utilised to examine the effect of genocide prominence on victims and witnesses. Because this group is not on trial, it is hard to measure their experiences from law courts set up for atrocious crimes. The central aspect of this research is the legal vocabulary, and descriptions courts use for casualties and the rights and security they are given within the courts' regulation. Constitutional rights granted to casualties and witnesses will be investigated in the ICTR and ICC. As a result of the inaccessibility of documents from tribunals, this inquiry investigates the influence of tribunals on victims and witnesses via secondary sources. It conducts a thesis on the significance of

⁶⁷. Rothenberg, Richard, Sung-Joon Park, and Andrea Behrends. 2014. *Traveling Models in African Conflict Management: Translating Technologies of Social Ordering*. Africa-Europe Group for Interdisciplinary Studies

genocide sentences for civil societies back to their independence and justice in the after-effects of the fighting. The thesis uses the national courts in Rwanda as a case in point to inspect and illustrate the effect of social scales in international criminal law on civil groups and if the groups felt that the courts gave justice to the victims. Essentially, International criminal law utilises the idea of subjectively enforcing convictions premised on the accused's position in society. Instead of abiding by the notion of similar judgment for similar felonies, the status of the accused; largely influences their conviction periods. Because of that, genocide perpetrators tend to get convicted for more extended periods than those charged with crimes against humanity, human rights violations, or war crimes.⁶⁸

1.8.6 Case Studies

Here, the thesis uses the case thesis South Sudan war crimes, and violations of human rights are a prerequisite to pragmatically illustrate the African Union's succeeding responses in the circumstance of their coercive intervention responsibility with linkage to its ongoing connection with the United Nations. The thesis chose the two case scenarios to demonstrate the basis for coercive intervention by the African body appeared to be extremely low to have been certified by the Crimes Against Humanity Council. However, the security agency did not succeed in executing its directive.

1.9 Organisation of the Thesis

There were four chapters in the thesis. The introduction, history, and methodology for the thesis and the research problem were presented in Chapter 1. The chapter also covered the

⁶⁸ Edmonds, Chloe. 2016. "The Crime of All Crimes: Genocide's Primacy in International Criminal Law." Masters, Georgetown University.

thesis's scope, objectives, and research questions. The purpose of Chapter Two was to review the Legal and Sociological Materials on Genocide using relevant theories and concepts in the thesis. The chapter discussed the thesis's theoretical stances and the connections between the notions of comprehending and stopping genocide, mass crimes, human rights violations, and ethnic cleansing by the UN. The chapter also included a summary, gaps that had been found, and empirical works.

In Chapter 3, the Legal and Sociological Analysis of Genocide in South Sudan and the UN Response was addressed. The chapter discussed the UN's mechanisms and efforts to stop the genocide in South Sudan were examined. In chapter four, the thesis's main conclusions and findings were summarized. The chapter also covered the thesis's shortcomings, suggestions for future research, and implications for management, theory, policy, and practice.

1.10 Data analysis procedure

1.10.1 Nature and sources of data

This thesis adopts a qualitative legal data analysis approach. The data analysed consists primarily of legal and institutional sources, rather than quantitative or empirical datasets. These sources of data included the international treaties and conventions, including the Convention on the Prevention and Punishment of the Crime of Genocide and the Rome Statute of the International Criminal Court. United Nations instruments, resolutions, reports, mandates, and policy documents, particularly those relating to the Responsibility to Protect (R2P) and peacekeeping operations. African Union legal instruments and policy frameworks relevant to genocide prevention and intervention. Also, the thesis leveraged on the use of decisions and judgments of international and internationalised courts and tribunals, including the ICTR, ICTY, and ICC, Constitutional texts and peace agreements from selected comparative case studies (Bosnia and Herzegovina, Kosovo, Cyprus, Zimbabwe, Myanmar, and South Sudan).

More so, it used secondary scholarly literature, that comprised academic books, journal articles, and authoritative policy analyses.

1.10.2 Analytical Framework

The data analysis procedure employed in this thesis is interpretive, thematic, and comparative, grounded in established legal research methodologies. Analysis is conducted through four interrelated stages: doctrinal interpretation, thematic coding, comparative synthesis, and evaluative legal assessment.

1.10.3 Doctrinal and Textual Legal Analysis

The first stage of analysis involved doctrinal legal interpretation. Here, legal texts were examined to identify their normative content, scope, and legal implications. This included interpreting treaty provisions in accordance with the rules of treaty interpretation under the Vienna Convention on the Law of Treaties, analysing the legal elements of genocide, particularly the requirement of *dolus specialis*, examining the legal status, scope, and limitations of the Responsibility to Protect as articulated in UN General Assembly and Security Council documents. Stage one primarily focused on clarifying what the law formally requires, what powers are conferred, and where ambiguities or gaps exist within the legal framework.

1.10.4 Thematic Legal Analysis

Following doctrinal interpretation, the thesis applied a thematic legal analysis to both primary and secondary sources. This involved identifying recurring legal and institutional themes across texts, including but not limited to intent and evidentiary thresholds in genocide law, sovereignty versus intervention in R2P discourse, mandate design and operational constraints in peacekeeping missions, accountability mechanisms and enforcement failures, and the relationship between constitutional design and mass atrocity risk. Legal materials were grouped according to these themes, allowing for structured comparison across different legal regimes, institutional settings, and historical contexts.

1.10.5 Case Law Analysis

A distinct component of the data analysis procedure is case law analysis. Judicial decisions from international criminal tribunals were examined to assess how legal norms relating to genocide and responsibility have been interpreted and applied in practice. The exercise involved analysing how courts have defined and applied *dolus specialis*, examining judicial approaches to command responsibility and individual criminal liability, and assessing the extent to which jurisprudence has influenced prevention, deterrence, and accountability. Additionally, case law was analysed comparatively to identify doctrinal consistency, divergence, and evolution over time.

1.10.6 Comparative Legal and Constitutional Analysis

The thesis employed a structured comparative analysis to examine constitutional and legal arrangements in post-conflict and post-genocide states. Comparative cases were analysed using a consistent analytical framework focusing on constitutional design and power-sharing arrangements, transitional justice provisions, international supervision or intervention mechanisms and the entrenchment of ethnic, military, or elite dominance. The adoption of this method allowed the thesis to identify patterns of “negative peace,” where constitutional settlements formalise stability without addressing underlying drivers of mass violence.

1.10.7 Instrumental and Institutional Analysis

The data analysis procedure also included instrumental analysis of international institutions. United Nations missions, particularly UNMISS, and proposed mechanisms such as the Hybrid Court for South Sudan are examined to assess, mandate formulation and legal authority, institutional capacity and political constraints, compliance with international legal obligations and the practical effectiveness in preventing or responding to genocidal violence. This analysis mainly focused on the gap between legal mandate and operational reality.

1.10.8 Triangulation of Legal Sources

To enhance analytical rigor, the thesis employed triangulation by cross-referencing multiple types of legal sources. Treaty texts, jurisprudence, institutional reports, and scholarly commentary were analysed together to ensure that legal conclusions were not based on a single source or perspective. Triangulation was particularly important in assessing contested areas such as the legal status of R2P, the effectiveness of peacekeeping mandates and the feasibility of internationalised justice mechanisms

1.10.9 Evaluative and Critical Legal Assessment

The final stage of data analysis involved critical evaluation. The findings from doctrinal, thematic, comparative, and institutional analysis were synthesised to assess the effectiveness of existing legal frameworks, structural weaknesses in genocide prevention mechanisms and the extent to which law has been shaped or constrained by political realities. Crucially, this evaluative approach allowed the thesis to move beyond description and provide normative legal critique, identifying areas where legal reform or institutional redesign may be necessary.

1.10.10 Reliability, Validity, and Limitations

The reliability of the data analysis was ensured through the use of authoritative legal sources and established methods of legal interpretation. Validity was strengthened through triangulation and comparative analysis. However, the thesis was limited by its reliance on publicly available legal materials and does not include empirical fieldwork or interviews. Significantly, this limitation was mitigated by the depth and breadth of legal analysis undertaken.

CHAPTER TWO

LAW AND THEORIES OF STATE FORMATION, GENOCIDE AND GENOCIDE PREVENTION.

2.0 Introduction

The previous chapter introduced the background of this thesis and its primary goals, purpose, contribution to knowledge, and importance. This research examines the United Nations in preventing genocide in Africa: the case of South Sudan. The theoretical basis for the thesis relates to the social components that lead to the emergence and prevention of genocide.

A thesis of the literature was done to shed light on what is already known and provide a more comprehensive understanding of the constructions and linkages that need to be investigated. To determine the research gaps, this chapter reviews and discusses pertinent knowledge.

Additionally, this thesis will borrow from Campbell's work on "Genocide as a Degree of Social Control." Campbell's main aim was to regard genocide and other occurrences as variables. This provides a hypothesis defining various variable elements of genocide and its happening and alterations in genocide acts like who takes part in it mainly, who is the victim, and who is saved from the attacks or not attacked.⁶⁹ For instance, taking part in genocide is a variable, and more so than insinuated by conventional categorizations of persons as culprits, onlookers, or lifesavers. Further to the existence of levels of taking part and saving lives, some

⁶⁹ Campbell, B. 2009 'Genocide as Social Control,' *Sociological Theory* 27(2): 150–72.

persons might undertake conflicting conduct as they may engage as both culprits and rescuers at the same time.⁷⁰ He also talks of another essential element of genocide variation: the dissimilarity between genocide cases, while he illustrates genocide as a matter of degree. He points out that scientific explanations are assessed in line with their benefits. One feature of this is the simplicity of using the description.⁷¹ Notably, most of the past genocide definitions pose challenges in using them in real scenarios because they describe particular intentions or objectives on the roles of culprits that are hard or impracticable to monitor.

2.1 Conceptual Framework

As a law thesis, the legal framework forms a crucial component of the conceptual framework. This section will comprehensively address the legal principles, treaties, and customary international law relevant to evaluating the events in South Sudan.

Atrocious crimes specifically genocide do not just occur randomly, instead, they undergo a development process for a certain period. Therefore, it is implied that the long process of development will make it likely to establish early warning signs that may occur and make it possible to prevent genocide through the understanding of root causes.⁷²

Since the project focuses on the investigation of genocide preventative measures, the literature about the many genocide theories that inform the research is introduced at the beginning of the chapter. Subsequently, an exploration of the practical prevention principles will be highlighted and also defined for the research. The chapter will then review the literature related to genocide prevention and analyse the theoretical link between the theories. The review

⁷⁰ Campbell, B. 2010 'Contradictory Behavior During Genocides,' Sociological Forum 25(2): 296–314

⁷¹ Campbell, Bradley. 2011. "Genocide as a Matter of Degree." The British Journal of Sociology 62 (4).

⁷² United Nations, "United Nations Office on Genocide Prevention and The Responsibility to Protect", Un. Org (Webpage, 2022) <<https://www.un.org/en/genocideprevention/prevention.shtml>>.

will help to establish a broad range of characteristics and constructs suggested to be pertinent to the thesis of genocide prevention by the United Nations. The thesis seeks to discuss several approaches used by the United Nations in preventing genocide. This will include discussions on Humanitarian Intervention, and the principle of responsibility to Protect.

2.1.1 The Law of Genocide

An organized set of guidelines regulating the interactions and behaviour of nations and other global stakeholders is provided by international law. accords, conventional international law, and the fundamentals of humanitarian law worldwide form the core of this body of legislation. The defence of fundamental freedoms and the avoidance of mass crimes, such as genocide, are two important facets of international law.

One of the main pillars of international attempts to prevent genocide is the Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention"), which was adopted on December 9, 1948, and went into effect on January 12, 1951. Not only does the Geneva Convention define genocide, but it also requires the contracting parties to stop and penalize such acts, whether they are carried out during peacetime or armed conflict.⁷³

2.1.1.0 Legal Frameworks on Genocide

The formalization of genocide as a worldwide crime is largely dependent on the Genocide Protocol. According to Thesis I of the Convention, member nations are required by international law to safeguard against and sanction genocide.⁷⁴ Thesis II defines genocide, as listing specific acts such as killing, causing serious bodily or mental harm, deliberately

⁷³ Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951).

⁷⁴ Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951) art I, art II.

inflicting life conditions calculated to destroy a group, preventing births, and forcibly transferring children.⁷⁵ This definition has guided international legal proceedings and interventions aimed at genocide prevention and accountability. An example of the application of the Genocide Convention is the prosecution of individuals responsible for the 1994 Rwandan Genocide by the International Criminal Tribunal for Rwanda (ICTR). The ICTR, established by the United Nations Security Council, relied on the definition of genocide under Thesis II of the Convention to convict individuals for crimes such as mass killings, sexual violence, and other acts committed with the intent to destroy the Tutsi ethnic group.

For instance, in *Prosecutor v Jean-Paul Akayesu*, the ICTR found Akayesu guilty of genocide and crimes against humanity, marking the first time an international court convicted someone specifically for genocide under the Convention (*Prosecutor v Akayesu (Judgment)* (International Criminal Tribunal for Rwanda, Trial Chamber I, Case No ICTR-96-4-T, 2 September 1998)). This case reinforced the

2.1.1.1 International Jurisdiction and the Role of International Courts

Countries can pursue culprits of genocide irrespective of where the crime was committed thanks to the universal authority granted by international law, which includes customary international law. The International Criminal Court (ICC) and the International Court of Justice (ICJ) are crucial to the interpretation and implementation of the Genocide Agreement. The ICC charges people for war crimes, crimes against humanity, and genocide, whereas the ICJ resolves disagreements between governments over charges of genocide.⁷⁶ The Rome Statute of the ICC, particularly Thesis 28, extends criminal liability to military

⁷⁵ Ibid.

⁷⁶ International Court of Justice, 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide' (*Bosnia and Herzegovina v Serbia and Montenegro*) [2007] ICJ Rep 43.

commanders and other superiors, holding them accountable for failing to prevent or punish acts of genocide committed by subordinates.⁷⁷ A good example is the prosecution of Bosnian Serb leaders by the International Criminal Tribunal for the former Yugoslavia (ICTY). In *Prosecutor v. Radislav Krstić* (2004), the ICTY found General Krstić guilty of aiding and abetting genocide for his role in the Srebrenica massacre, where over 8,000 Bosniak men and boys were killed. The case showed how a military commander was held accountable for failing to prevent or punish genocide.

Similarly, the Rome Statute has been invoked in cases related to Sudan. In 2009, the International Criminal Court (ICC) issued an arrest warrant for Sudanese President Omar al-Bashir, charging him with genocide, war crimes, and crimes against humanity in Darfur. The indictment was based on his role in directing forces that committed mass atrocities against the Fur, Masalit, and Zaghawa ethnic groups. Although Sudan resisted the ICC's jurisdiction, the case highlighted how the Rome Statute can be used to hold state leaders accountable under international law.

2.1.1.2 Case Studies and Practical Applications

The ongoing conflict in South Sudan provides a poignant context for evaluating the efficacy of these legal frameworks. Numerous allegations of genocidal acts and crimes against humanity have been reported. References to pleadings such as those in the *Republic of South Africa v Israel* offer insights into the practical challenges and judicial interpretations that shape the enforcement of genocide prevention laws.⁷⁸

⁷⁷ Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187, UNTS 3 (entered into force 1 July 2002) art 28.

⁷⁸ *Republic of South Africa v Israel* [2010] ICJ Pleadings

Pleadings from the Republic of South Africa v Israel

Legal arguments in the Republic of South Africa v. Israel case highlighted important tenets of international law, particularly those about state accountability and the avoidance of mass crimes like genocide. These pleadings offer a perceptive viewpoint on the legal tools at the disposal of international law to make states legally responsible.

The *Republic of South Africa v Israel* case centered around allegations that Israel's actions in the Occupied Palestinian Territories constituted violations of international law, including breaches of the Genocide Convention. South Africa argued that Israel's conduct amounted to systematic discrimination and persecution of the Palestinian population, which could be classified as acts of genocide as defined by the Genocide Convention.⁷⁹

In its pleadings, South Africa invoked several key international legal instruments and principles. Firstly, it referred to the Genocide Convention, particularly emphasizing Thesis I, which obligates states to prevent and punish genocide, and Thesis II, which defines genocide as acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.⁸⁰ South Africa contended that Israel's actions met this definition, citing instances of killing members of the Palestinian group, causing serious bodily or mental harm, and deliberately inflicting conditions of life calculated to bring about the physical destruction of the group.⁸¹

The principle of universal jurisdiction was also emphasized in South Africa's pleadings, wherein it was claimed that any government may pursue offences against mankind and genocide, irrespective of the location of the accused crimes. This claim to universal jurisdiction

⁷⁹ Ibid.

⁸⁰ United Nations General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, adopted 9 December 1948, entered into force 12 January 1951, 78 UNTS 277, arts 1-2.

⁸¹ Ibid art 2.

was founded on the understanding that these serious crimes pose an imminent danger to the whole world community and call for coordinated action.⁸²

The pleadings also cited rulings and recommendations from the International Court of Justice (ICJ), specifically the 2004 advisory decision on the legal implications of the Construction of a Wall in the Occupied Palestinian Land. The International Court of Justice (ICJ) determined that Israel's wall-building project contravened multiple international rules, such as those prohibiting the forced relocation of populations and property destruction. South Africa contended that these violations aided in the conduct of genocide.⁸³

South Africa also made use of the Rome Statute of the International Criminal Court (ICC), which contains clauses related to crimes against mankind, war crimes, and genocide. Because it subjects leaders and other subordinates to criminal culpability for offenses performed by the persons that fall under their operational command and control, Thesis 28 of the Rome Statute was especially pertinent. According to South Africa, Israeli superiors who fail to stop or discipline their subordinates' behaviour could face criminal charges under this clause.⁸⁴

Aside from written rules that have developed by continuous state action and are regarded as enforceable, conventional international law was also included in the pleas in the Republic of South Africa v. Israel case. Jus cogens, or the obligatory norm of international law, according to South Africa, states that the prohibition against genocide is unchangeable and

⁸² Ibid.

⁸³ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136.

⁸⁴ Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187, UNTS 3 (entered into force 1 July 2002), art 28.

globally obligatory. The willingness of the global community to stop and deal with genocide is demonstrated by this status.⁸⁵

Thesising how the UN prevented genocide in Africa, especially in South Sudan, is relevant to the case of the Republic of South Africa v. Israel. It highlights the difficulties in obtaining justice and responsibility and shows how worldwide legal norms and institutions might be used to hold states accountable for mass atrocities. The pleadings emphasize how important strong legal frameworks and the political will to uphold them are to the successful application of the Responsibility to Protect (R2P) and other international conventions meant to stop genocide and safeguard those most at risk.

2.1.1.3 The Responsibility to Protect (R2P)

The UN-endorsed Responsibility to Protect (or "R2P") Principle emphasizes the duty of all nations to stop mass crimes, particularly genocide, and to respond to them. R2P is based on the knowledge that exercising sovereignty includes a duty to defend every population against crimes against humanity and mass atrocities. This idea has greatly influenced how the world has responded to disasters in Africa, particularly South Sudan.⁸⁶

The Origin of Responsibility to Protect

The International Commission on Intervention and State Sovereignty's 2001 report is credited with introducing the concept of Responsibility to Protect.⁸⁷ At the same time, some people feel that the ideology was brought about by Kofi Annan, the then UN Secretary-General. This was during his push for the international community should devise a response to horrific

⁸⁵ International Law Commission, 'Draft Thesiss on Responsibility of States for Internationally Wrongful Acts, with commentaries' (2001) 2 Yearthesis of the International Law Commission 26, art 53.

⁸⁶ United Nations, '2005 World Summit Outcome' (Resolution adopted by the General Assembly on 16 September 2005, UN Doc A/RES/60/1).

⁸⁷ International Commission on Intervention and State Sovereignty the Responsibility to Protect: Research, Bibliography and Background (2001, International Development Research Council).

human rights abuses.⁸⁸ In 1995 Mr. Francis Mading Deng, a Sudanese diplomat, scholar, and author suggested the concept of “sovereignty as a responsibility.” which posits that the sovereignty of a state is not only about authority and control but also about the responsibility to protect its citizens. This concept calls into question conventional wisdom regarding total state sovereignty by highlighting the responsibility of governments to eradicate and address violations of human rights occurring within their boundaries. It is maintained that the entire world has a duty and right to step in and safeguard the impacted population if a nation's government neglects these responsibilities.⁸⁹ More so, in a statement by the OAU's Secretary-General in 1998, Salim Ahmed asserted that there should be a discussion on how governments must be held responsible for their actions and their obligations on a national and global level. He continues to state that by doing so, sovereignty shall be redefined in the long run⁹⁰ That same year during the OAU conference Burkina Faso, the late South African President Nelson Mandela also asserted that “Africa has a right and a duty to intervene to root out tyranny ... we must all accept that we cannot abuse the concept of national sovereignty to deny the rest of the continent the right and duty to intervene when behind those sovereign boundaries, people are being genocide to protect tyranny”.⁹¹ Essentially, the principle of R2P, either way, gets its foundations much earlier. Its genesis might be located in other areas such as the Genocide Convention which mandates all states to “prevent and punish,” genocide culprits. A good example is Thesis 8 of the genocide convention, which gives authority to nations to urge the UN to partake in suitable actions within the UN Charter in circumstances of looming genocide.

⁸⁸ Annan K “Balance state sovereignty with individual sovereignty!” (Speech at the UN General Assembly on 20 September 1999). See also K Annan's “Two concepts of sovereignty” (1999) 18 *The Economist* 49.

⁸⁹ Deng F “Frontiers of sovereignty” (1995) 8=2 *Leiden Journal of International Law* 249.

⁹⁰ C Landsberg “The fifth wave of Pan Africanism” in A Adebajo and IOD Rashid West Africa's Security Challenges: Building Peace in a Troubled Region (2004, Lynne Rienner)

⁹¹ Africa's Responsibility to Protect (2007, Cape Town Centre for Conflict Resolution)

The International Commission on Intervention and State Sovereignty report defines the R2P principle as follows: the principle of non-intervention gives way to the international responsibility to protect when a population is seriously harmed due to internal conflict, revolt, persecution, or failure of government and the authority in question is incapable or unwilling to stop it.⁹² At the same time, certain conditions should be achieved, which will comprise; reasonable cause, appropriate motive, and comparable techniques. However, it should be the last option as there should be a reasonable likelihood of ending the conflict or crimes, as well as one should first get permission from the United Nations Security Council (UNSC) to exercise Humanitarian Intervention (HI). Crucially, due to NATO's intervention in Kosovo and the US capture of Iraq, many people feel that the predominance of the UN in deciding when intervention happens is diminishing. These actions have highlighted that other international actors can and do take unilateral or coalition-based interventions without UN authorization. As a result, the authority of the UN as the sole body responsible for sanctioning international interventions has been called into question. On the African continent, this trend is evident with organisations like the African Union (AU) and sub-regional groups such as the Economic Community of West African States (ECOWAS) increasingly taking the lead in addressing regional conflicts and crises. These bodies have, at times, acted independently or with limited coordination with the UN, responding more swiftly to emergent threats. The AU's interventions in places like Somalia and the ECOWAS-led efforts in Liberia and Sierra Leone exemplify this shift. These regional organisations argue that their deeper understanding of local dynamics and faster decision-making processes make them more effective in handling regional problems. Consequently, the landscape of international intervention is becoming more

⁹² ICISS The Responsibility to Protect,

multipolar, with the UN being one of several entities exercising decision-making power in global and regional security matters.⁹³

Significantly, alleviation, handling disputes where they happen, and aiding after the end of the fighting should be part and parcel of the responsibility to protect principles. It is noted that there are many faces to these problems and also several factors from the R2P. Through many systems and initiatives, African regional bodies and nations have achieved noteworthy progress in moderating and regulating contentious crises. Establishing and empowering sub-regional entities like the Intergovernmental Authority on Development (IGAD), the Economic Community of West African States (ECOWAS), and the Southern African Development Community (SADC) has been one important strategy. Other key approaches include the African Union (AU) and other regional organisations. These organisations can adopt a proactive approach to resolving conflicts by establishing structures and procedures for avoiding conflicts, management, and resolution.

A good example is ECOWAS, which has been instrumental in mediating political crises and conflicts in West Africa, as seen in its interventions in Liberia, Sierra Leone, and, more recently, in The Gambia during the 2016 political standoff. Similarly, the AU has played a crucial role in peacekeeping and mediation efforts, such as in the conflict in Darfur, Sudan, and the ongoing conflict in Somalia through the African Union Mission in Somalia (AMISOM). Moreover, individual African states have also taken on leadership roles in mediation efforts. Countries like South Africa have been actively involved in peace negotiations, such as those in Burundi and the Democratic Republic of Congo. Kenya has mediated conflicts in South Sudan, while Ethiopia has played a key role in negotiations in Somalia and Sudan.

⁹³ Sarkin, Jeremy. 2009. "The Role of the United Nations, The African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and The Responsibility to Protect". *Journal of African Law* 53 (1): 1-33.

These attempts by regional institutions and states are driven by a recognition of the need for African-driven answers to the continent's problems, leveraging their understanding of local contexts and dynamics. They also underscore a growing commitment to reducing reliance on external interventions and promoting homegrown strategies for peace and stability on the continent. However, there are several instances where mediation or other arbitrary responses have not been fruitful, or the nations where the phenomenon is happening refuse to grant authority for external intervention. More specifically, the Responsibility to Protect principle also includes advancing and implementing democracy, defending and advancing the rights of people, good governance, the rule of law, anti-corruption measures, and other associated issues. The burden is on the nations to ensure these standards are ingrained on theory and practically. The duties of alleviation and response should also address the roots of disputes and why human rights abuses happened. The R2P principle ought to be applied to socio-economic rights since it is commonly linked primarily with political and civic liberty. This extension makes sense because it recognizes the critical role that socioeconomic rights play in averting mass catastrophes. Violations of socio-economic rights, such as widespread poverty, inequality, and lack of access to essential services like food, healthcare, and education, often contribute to the conditions that lead to large-scale violence and conflict. Protecting these rights should be seen as a fundamental part of the R2P framework.

For instance, if a state is unwilling or unable to provide its population with basic socio-economic rights, this neglect could lead to instability and mass suffering, conditions that could escalate into crimes like genocide, ethnic cleansing, or other mass atrocities. Under the R2P doctrine, the international community could then justify intervention to address these socio-economic rights violations as part of its mandate to prevent such outcomes.⁹⁴ Furthermore, the integration of socio-economic rights within the R2P framework aligns with the broader

⁹⁴ Bellamy, AJ, *Responsibility to Protect: A Defence* (Oxford University Press, 2015).

understanding of human security, which includes both freedom from fear and freedom from want. By addressing socio-economic disparities and ensuring access to essential resources, the international community can help prevent the conditions that lead to mass atrocities, thus fulfilling the preventative aspect of R2P.⁹⁵

Significantly, in 2004 a top-level UN committee produced a report that supported the concept of R2P by addressing ideologies like that of “collective security” and “collectively endorsed military action.”⁹⁶

This research acknowledges the fact that R2P and POC differ significantly. At the same time, they share the common postulate of trying to safeguard human beings from mass atrocities; POC is a principle of peacekeeping aimed at protecting civilians within war-torn areas founded on the foundation of international humanitarian law. On the other hand, the other hand presents a more holistic international responsibility to prevent and respond to genocide, war crimes, and crimes against humanity.

First of all, at the 2005 World Summit, every United Nations member state accepted Responsibility to Protect (R2P), which is a more general global norm. It primarily concentrates on stopping and dealing with the following four mass atrocity crimes: crimes against humanity, war crimes, ethnic cleansing, and genocide. R2P is based on three pillars: the global community's duty to support governments in carrying out their duties to safeguard their citizens, the duty of a nation to defend its people from such offenses, and the international community's commitment to step in when a country is blatantly disregarding the safety of its

⁹⁵ Evans, G, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Brookings Institution Press, 2008).

⁹⁶ *A More Secure World: Our Shared Responsibility: Report of the High-Level Panel on Threats, Challenges and Change* (2005, United Nations).

inhabitants. R2P is therefore inextricably tied to the political and ethical commitment of the international community to stopping and dealing with horrific acts of violence.⁹⁷

POC, on the other hand, specializes in the security and welfare of people during warfare and has its roots in international humanitarian law, notably the Geneva Conventions and their Supplementary Regulations. All parties involved in a war are required under POC to identify militants from civilians, refrain from attacking civilian areas, and adopt the appropriate safety measures to reduce harm to civilians. In times of conflict, the doctrine of POC is globally applicable and enforceable by law irrespective of the existence or absence of catastrophic offenses. Furthermore, whereas R2P may support military action by the international community in situations where a nation is unable to defend its citizens, POC places more emphasis on protecting civilians inside the boundaries of an ongoing war, frequently via peacekeeping operations and humanitarian aid.

POC is more tactical and focuses on the urgent protective requirements of people in war zones, whilst R2P is more ideologically charged and calls for global consensus and action.⁹⁸ However, they are undeniably related concepts. A few years back, the connection between the two ideologies was a center of attraction in discussion within the UN system. The discussions have caused a steady rise of approval while simultaneously also receiving a lot of criticism, particularly regarding the two ideas' contribution to modern UN peacekeeping missions. According to the supporters of either or both ideas and champions of the UN at large, it is essential to properly understand the R2P–POC connection because the unsuccessful safeguarding of the populations will permanently destroy the UN's integrity. Cases of failure continue to show up, possibly most connected to the killings during the end of the 2009 civil

⁹⁷ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Brookings Institution Press, 2008).

⁹⁸ Alex J Bellamy, *Responsibility to Protect: A Defense* (Oxford University Press, 2015).

fighting in Sri Lanka. This was reported as a “systematic failure” by the UN’s Secretary-General.

On the contrary, the protection of civilians’ concept is a mechanism for improving the security of citizens from the adverse impacts of aggressive disputes. The norm is grounded in a persistent and extensive arrangement of legal responsibilities obtained from International Humanitarian Law (IHL), refugee law, and human rights law. The protection of Civilians has been a persistent worry for several global organisations and non-governmental actors. The most recognized one was the International Committee of the Red Cross (ICRC). The ICRC has consistently underscored the importance of adherence to international humanitarian law (IHL) to safeguard civilians during armed conflicts. According to the ICRC, protecting civilians is both a humanitarian concern and a legal obligation under IHL. The organisation stresses that all parties to a conflict must distinguish between combatants and non-combatants and must take all feasible precautions to minimize harm to civilians.⁹⁹

Moreover, the ICRC has pointed out the inadequacies in current mechanisms for civilian protection and has called for more robust implementation of IHL. They argue that while legal frameworks are established, there is often a gap between these legal obligations and their practical enforcement. The ICRC has advocated for improved monitoring and accountability measures to ensure that violations of IHL are effectively addressed and that perpetrators are held accountable.¹⁰⁰ however, the idea was infused into the responsibilities of the United Nations Security Council and the responsibilities for several of its successive peacekeeping missions in 1999. Since February 1999, The Protection of Civilians norm has been regarded as

⁹⁹ International Committee of the Red Cross (ICRC), International Humanitarian Law and the Protection of Civilians (2021) <https://www.icrc.org/en/document/international-humanitarian-law-and-protection-civilians>.

¹⁰⁰ International Committee of the Red Cross (ICRC), The Protection of Civilians in Armed Conflict (2022) <https://www.icrc.org/en/document/protection-civilians-armed-conflict>.

a sectoral matter by the UN Security Council and a topic of clear-cut consideration. Since then, in safeguarding populations, the UN Security Council started several activities.

Achieving the Responsibility to Safeguard the Ordinary Persons

Lawmakers have argued on the type of alterations that might be or must be done to ensure that UN peacekeeping missions in the continent meet the responsibilities of safeguarding the populations. This matter has specifically been outstanding concerning the United Nations Organisation Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) deployed in the Democratic Republic of Congo and the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) positioned in the Central African Republic. These two assignment duties prioritize people safeguarding in the middle of continuing disputes and serious logistics and human resource safeguarding difficulties. Armed sects have continuously killed people near UN working stations. Notably, limitations or conditions put by the Troop-Contributing Countries (TCC) while sending their military forces, regularly credited for imposing safeguarding worries, might hinder the public's safeguarding strives on a few occasions.

2.1.1.4 The Three Pillars of R2P

The Responsibility to Protect (R2P) principle, which delineates the statutory duty of global governments to halt horrific crimes and take appropriate action in response, is underpinned by three key foundations. Pillar One states that protecting its people against offenses against mankind, acts of war, ethnic purges, and genocide is a fundamental responsibility for any governing body. By putting preventive strategies in place and holding

offenders accountable, this pillar highlights the administration's essential role in protecting its people and upholding national stability and safety.¹⁰¹

Pillar Two extends this obligation to the wider global community, which is tasked with encouraging and assisting individual states in fulfilling their protective duties. This assistance can take various forms, including diplomatic support, capacity-building initiatives, and technical aid. By strengthening state structures and promoting good governance, the international community helps build resilient societies capable of preventing mass atrocities before they escalate.¹⁰²

The situation where a country's administration is blatantly ignoring to protect its people is covered by Pillar Three. Under such circumstances, the United Nations Charter mandates that the worldwide community be ready to act collaboratively in a prompt and steadfast approach. This can entail a variety of actions, ranging from monetary penalties and diplomatic coercion to, as the last option, recourse to force. The idea here is that obligation follows from autonomy, not a cloak that allows governments to carry out crimes without consequence. The collective action under Pillar Three must be authorized by the UN Security Council, ensuring that any intervention is legitimate and has broad international support.¹⁰³

The execution of these three pillars reveals both the strengths and challenges of the doctrine. While it establishes a clear framework for international action, practical application is often hindered by political considerations and differing interpretations of state sovereignty. For instance, achieving consensus among UN Security Council members on when and how to

¹⁰¹ United Nations General Assembly, 2005 World Summit Outcome, GA Res 60/1, UN GAOR, 60th sess, Agenda Items 46 and 120, UN Doc A/RES/60/1 (24 October 2005) paras 138–139.

¹⁰² Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Brookings Institution Press, 2008).

¹⁰³ Aidan Hehir, *Hollow Norms and the Responsibility to Protect* (2019) 57-85.

intervene can be difficult, leading to delays in action that can exacerbate crises.¹⁰⁴ Additionally, the balance between respecting state sovereignty and the imperative to intervene remains a contentious issue, with some states viewing R2P as a potential tool for political interference rather than a genuine effort to prevent atrocities.¹⁰⁵

The case of South Sudan illustrates these challenges. Despite international efforts to support the South Sudanese government under Pillar Two, the situation deteriorated into widespread violence and atrocities, highlighting the limitations of international assistance without robust internal commitment and capacity.¹⁰⁶ The international community's response, including sanctions and peacekeeping missions under Pillar Three, has faced obstacles such as logistical difficulties, limited resources, and political opposition both within South Sudan and from influential global actors.¹⁰⁷

In light of these challenges, scholars and practitioners have called for reforms to strengthen the operational capacity of R2P. Recommendations include enhancing early warning systems to detect potential atrocities before they occur, fostering greater collaboration between international, regional, and national bodies to create a more cohesive response, and ensuring that legal frameworks are adaptable to contemporary challenges.¹⁰⁸ Prominent figures like Gareth Evans have emphasized the need for timely and decisive action to prevent mass atrocities and have advocated for the international community to develop more effective mechanisms to support states in fulfilling their protective responsibilities.¹⁰⁹

¹⁰⁴ United Nations General Assembly, 2005 World Summit Outcome, GA Res 60/1, UN Doc A/RES/60/1 (24 October 2005) paras 138–139.

¹⁰⁵ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Brookings Institution Press, 2008).

¹⁰⁶ Aidan Hehir, *Hollow Norms and the Responsibility to Protect* (2019) 57-85.

¹⁰⁷ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Brookings Institution Press, 2008).

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

The global community's devotion to respecting fundamental rights standards and shielding those most at risk from the most heinous atrocities is essentially what determines whether or not Responsibility to Protect (R2P) is successful. By reinforcing the three pillars through comprehensive reforms and stronger international cooperation, the potential for R2P to prevent mass atrocities and promote global stability can be significantly enhanced.¹¹⁰

2.1.1.5 Implementation and Challenges

The implementation of R2P in the context of South Sudan reveals both the potential and the limitations of the norm. Despite its robust legal and moral foundations, the practical application of R2P has faced significant challenges:

Political Will and Consensus: Achieving consensus among UN Security Council members has often been difficult, impeding timely and decisive action.

Sovereignty vs. Intervention: Balancing respect for state sovereignty with the imperative to intervene in cases of mass atrocities remains contentious.

Operational Capacity: The international community's ability to mobilize resources and deploy peacekeeping forces rapidly and effectively has been inconsistent.¹¹¹

Aidan Hehir's critique of R2P provides an in-depth analysis of its normative dimensions. He contends that the definition of norms employed in R2P discussions frequently hides the range of normative typologies found in international law, differences in standard performance, the complicated method by which standards are disseminated and put into practice, and the impact of power imbalances on the development of conventions.¹¹²Hehir

¹¹⁰ United Nations General Assembly, 2005 World Summit Outcome, GA Res 60/1, UN Doc A/RES/60/1 (24 October 2005) paras 138–139.

¹¹¹ Bellamy, Alex J, *Mass Atrocities and Armed Conflict: Links, Distinctions, and Implications for the Responsibility to Prevent* (Stanford University Press, 2016).

¹¹² Hehir, Aidan, "R2P and the Limits of Norms" in *Hollow Norms and the Responsibility to Protect* (Palgrave Macmillan, 2019) 57–85.

contends that while R2P has been successful in raising awareness and establishing a normative framework, its practical implementation is hindered by these complexities.

The duty of regional agencies including the African Union is crucial in operationalizing R2P within the African context. A regional dedication to R2P ideals is reflected in the African Union's Constitutive Act, which contains a clause for involvement in circumstances of acts of war, genocide, and crimes against mankind.¹¹³ National legal frameworks and judicial bodies further support these efforts by ensuring local accountability and adherence to international standards.

Despite the robust legal frameworks, the practical enforcement of genocide prevention laws faces significant challenges. Critics argue that there are notable gaps in international legal instruments and inconsistencies in their application. The thesis of South Sudan highlights these issues, revealing the difficulties in coordination, timely intervention, and effective prosecution.¹¹⁴ Scholars and practitioners have called for reforms to strengthen international legal mechanisms and enhance the operational capacity of international organisations. Recommendations include improving early warning systems, fostering greater collaboration between international, regional, and national bodies, and ensuring that legal definitions and frameworks are adaptable to contemporary challenges.¹¹⁵

2.1.1.6 Regional and National Legal Mechanisms

While international bodies like the UN and ICC play pivotal roles, regional organisations such as the African Union ('AU') and national judicial bodies are equally crucial in the fight against genocide. The AU's involvement underscores the importance of regional

¹¹³ African Union, 'The Role of the African Union in Preventing and Responding to Mass Atrocities'

¹¹⁴ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Brookings Institution Press, 2008).

¹¹⁵ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Brookings Institution Press, 2008).

frameworks tailored to the specific historical, cultural, and political contexts of African states. National laws and enforcement agencies further bolster these efforts by ensuring local implementation and accountability.¹¹⁶

2.1.1.7 Critiques and Calls for Reform

Despite the robust legal frameworks, the practical enforcement of genocide prevention laws faces significant challenges. Critics argue that there are notable gaps in international legal instruments and inconsistencies in their application. The thesis of South Sudan highlights these issues, revealing the difficulties in coordination, timely intervention, and effective prosecution.¹¹⁷ Scholars and practitioners have called for reforms to strengthen international legal mechanisms and enhance the operational capacity of international organisations. Recommendations include improving early warning systems, fostering greater collaboration between international, regional, and national bodies, and ensuring that legal definitions and frameworks are adaptable to contemporary challenges.¹¹⁸

2.1.1.8 Prevention versus Subsequent Enforcement

A recurring theme in the literature is the emphasis on prevention over subsequent enforcement. Proactive measures, including diplomatic efforts, sanctions, and peacekeeping missions, are often more effective in preventing the escalation of violence compared to post-conflict judicial processes. The Genocide Convention's mandate to prevent genocide,

¹¹⁶ African Union, 'The Role of the African Union in Preventing and Responding to Mass Atrocities'

¹¹⁷ Alex J Bellamy, *Mass Atrocities and Armed Conflict: Links, Distinctions, and Implications for the Responsibility to Prevent* (Stanford University Press, 2016).

¹¹⁸ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Brookings Institution Press, 2008).

alongside the operational principles of R2P, underscores the necessity of early and decisive action.¹¹⁹

2.1.2 A Socio-Legal Approach to State Crime and Genocide: Utilizing Kauzlarich's Continuum

The phenomenon of state crime and genocide represents some of the gravest violations of human rights and international law. These crimes, often orchestrated or facilitated by state actors, result in significant human suffering and loss. Understanding the roles that various state actors play in the commission of genocide is crucial for developing effective preventive measures. David Kauzlarich's continuum of state crime offers a framework to conceptualize the involvement of state actors in such crimes, ranging from direct perpetration to passive complicity. This thesis aims to analyse the challenges in preventing genocide using legal measures, with a focus on different points along Kauzlarich's continuum.

Part 1: Understanding Kauzlarich's Continuum

Kauzlarich's continuum of state crime provides a nuanced understanding of how state actors can be involved in criminal activities. The continuum ranges from direct involvement, where state officials actively engage in genocidal acts, to indirect involvement, where state actors may facilitate or ignore such crimes. This approach is vital for comprehending the complex dynamics of state crime and the varying degrees of responsibility.¹²⁰

Direct Perpetrators

¹¹⁹ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (International Development Research Centre, 2001).

¹²⁰ Kauzlarich, David, and Christopher Mullins, "A Complicity Continuum of State Crime," *Contemporary Justice Review* 6, no. 3 (2003): 241-254.

At one end of the continuum, state actors are direct perpetrators, involved in planning, organizing, and executing genocidal acts. These actors are often in positions of power, using state resources and institutions to carry out their crimes. The legal challenge here is to hold these individuals accountable, often complicated by their control over the state apparatus and potential immunity from prosecution.¹²¹ For instance, during the Rwandan Genocide, government officials and military leaders orchestrated and directly participated in the mass killings, leading to significant challenges in legal accountability despite the establishment of the International Criminal Tribunal for Rwanda (ICTR).¹²²

Facilitators

Further along the continuum, state actors may act as facilitators, providing support or resources to non-state actors who carry out the genocide. This support can be logistical, financial, or even in the form of intelligence. Legal frameworks must address the complicity of these facilitators, ensuring they are held accountable for their indirect role in the genocide. For example, in the Bosnian Genocide, the involvement of Serbian officials in providing support to Bosnian Serb forces highlighted the complexities of addressing state facilitation in legal terms.¹²³

Bystanders

At the other end of the continuum are state actors who, while not actively participating or facilitating, are aware of the genocidal acts and choose not to intervene. These bystanders are complicit through their inaction, and addressing this form of complicity is particularly challenging for legal systems. It requires establishing a duty to act and proving that the

¹²¹ Ibid.

¹²² International Criminal Tribunal for Rwanda, "The Prosecutor v. Jean-Paul Akayesu," Case No. ICTR-96-4-T, Judgment, 2 September 1998.

¹²³ United Nations, "Report of the Secretary-General Pursuant to General Assembly Resolution 53/35," 1999.

bystanders had the capability and opportunity to intervene.¹²⁴ The international community's inaction during the Rwandan Genocide serves as a poignant example of the failure to intervene, raising questions about the legal and moral responsibilities of bystander states.¹²⁵

Part 2: Legal Measures and Challenges in Prevention

Preventing genocide through legal measures involves a combination of international treaties, national laws, and judicial mechanisms. Key international instruments include the Genocide Convention, which obligates signatory states to prevent and punish the crime of genocide.¹²⁶ National laws often mirror these international commitments, establishing frameworks for prosecution and prevention.

Effectiveness at Different Continuum Points

Direct Perpetrators: International criminal tribunals, such as the International Criminal Court (ICC), have been established to prosecute direct perpetrators of genocide. However, the effectiveness of these tribunals is often hindered by political considerations, lack of cooperation from states, and issues of jurisdiction and enforcement.¹²⁷ The prosecution of Sudanese President Omar al-Bashir by the ICC illustrates these challenges, as his indictment for crimes in Darfur has faced significant obstacles due to non-cooperation by Sudan and other states.¹²⁸

Facilitators

Legal measures targeting facilitators are less developed. The challenge lies in proving the intent and direct contribution to the genocidal acts. Cases such as those prosecuted by the ICTR have set important precedents, but gaps remain in holding facilitators accountable.¹²⁹

¹²⁴ Kauzlarich and Mullins, above n 1.

¹²⁵ Power, Samantha, *A Problem from Hell: America and the Age of Genocide* (Basic Thesis, 2002).

¹²⁶ United Nations, "Convention on the Prevention and Punishment of the Crime of Genocide," 1948.

¹²⁷ International Criminal Court, "Rome Statute of the International Criminal Court," 1998.

¹²⁸ Human Rights Watch, "Sudan: ICC Judges Issue Arrest Warrant for Al-Bashir," 4 March 2009.

¹²⁹ International Criminal Tribunal for Rwanda, above n 3.

The conviction of Jean Kambanda, the Prime Minister of Rwanda during the genocide, for aiding and abetting genocidal acts, marks a significant step in addressing facilitation but highlights the need for more robust legal frameworks.¹³⁰

Bystanders

The most significant challenge lies in addressing the role of bystanders. Establishing a legal duty to intervene and proving culpability for inaction are complex legal issues. Strengthening international norms and national laws to include a clear duty to prevent genocide is crucial for addressing this challenge.¹³¹ The failure of the international community to act during the Srebrenica massacre underscores the need for clearer legal obligations and mechanisms to enforce the duty to prevent genocide.¹³²

Part 3: Genocide Case Scenario

Examining the examples of genocides in Rwanda and Bosnia provides insights into the varying roles of state actors and the legal challenges encountered. These cases highlight the difficulties in prosecuting not only the direct perpetrators but also those who facilitated or failed to prevent the crimes.

Rwanda

The ICTR has prosecuted numerous individuals for their roles in the genocide, including government officials and military leaders. However, the tribunal has faced significant challenges in ensuring justice for all levels of involvement, particularly in addressing the roles of facilitators and bystanders.¹³³

¹³⁰ Ibid.

¹³¹ United Nations, above n 4.

¹³² Ibid.

¹³³ International Criminal Tribunal for Rwanda, above n 3.

Bosnia

The International Criminal Tribunal for the former Yugoslavia (ICTY) has similarly struggled with prosecuting facilitators and bystanders. The cases of Radovan Karadžić and Ratko Mladić, both convicted of genocide, illustrate the complexities of addressing state involvement in facilitating genocidal acts.¹³⁴

The prevention of genocide through legal measures is a multifaceted challenge that requires addressing the roles of state actors across Kauzlarich's continuum. Strengthening international and national legal frameworks, enhancing cooperation among states, and ensuring robust mechanisms for accountability are essential steps. A comprehensive approach that includes both legal and non-legal measures is necessary to effectively prevent and respond to state crime and genocide.

2.1.3 The Dolus Specialis (Particular Intent) Of Genocide: Totten and Bartrop's Genocide Classification – (Doctrinal Legal Concepts)

There are arguments regarding the utilization of "Dolus Specialis (specific intent)" in contemporary law-making on genocide. For example, Goldsmith asserts that using a qualification like it is inappropriate because, "regardless of an individual's expressed intentions, he/she is still actively involved in genocide and plays a crucial part. Likewise, Irvin-Erickson argues that the original understanding of genocide used by Lemkin considered reasons preceding the deeds as immaterial to international jurisprudence since "every individual who participated in a program to destroy a nation would have different reasons for doing so."¹³⁵ Goldsmith and Irvin-Erickson maintain that putting prominence on the dolus Specialis

¹³⁴ International Criminal Tribunal for the former Yugoslavia, "The Prosecutor v. Radovan Karadžić," Case No. IT-95-5/18-T, Judgment, 24 March 2016.

¹³⁵ Irvin-Erickson, Lemkin.

(particular intent) behind genocide is impractical to genocide definitions. The individuals' rationale for being part of such exercises differs significantly. For instance, the individual's rationale might not be propelled by beliefs of hatred for a different sect but for "benefits gained through genocide"¹³⁶ like natural resources or wealth benefits.

Contrary to Goldsmith and Irvin-Erickson, the scholar of law William Schabas champions incorporating purpose. He debates that it is a crucial part of worldwide law-making that advances "the stigmatization of genocide as the 'crime of crimes' for which the highest level of evil and malicious intent is presumed."¹³⁷ Kai Ambos's thesis about the lawful meaning and implementation of purpose in global genocide pursuit introduces these arguments as disputes between a specific motive against broader ideas of a conditional reason, conditional intent, that hardly demands a similar load of evidence. However, it considers the felony as a sect deed that distinct culprits can utterly be conscious of the phenomenon but might certainly share the specific motive of faction wrecking.¹³⁸ Notwithstanding, the legislation as initiated internationally holds that intent is a significant feature in establishing genocide as a purposeful gesture to ruin a sect.

Understanding motives behind genocide as entirely disastrous activities is not just sociologically and ancestrally essential but also for lawful repercussions of prosecution. Totten and Bartrop argue that genocide is a reasonable tool to accomplish a goal, not just a passionate statement.¹³⁹ They categorize five kinds of genocide, discussing why they may push the specific purpose to wreck in different situations. The first form of genocide, as detailed by Totten and Bartrop, is called "retributive genocide." This nature of genocide is where

¹³⁶ Ibid.

¹³⁷ William Schabas, *Genocide in International Law: The Crimes of Crimes* (New York: Cambridge University Press, 2010), 227

¹³⁸ Kai Ambos, "What Does 'Intent to Destroy' In Genocide Mean?" *International Review of the Red Cross*, 91, No. 876 (2009), 84.

¹³⁹ Totten and Bartrop, *Genocide*, 40.

vengeance and mistreatment are employed as the only necessary vindications for assault.¹⁴⁰ Customary to many such phenomena before, the two scholars debate that revenge is a "way of blaming the victim," which "flows from the dehumanization fastened to the victims before they are attacked."

The concept of genocide has been extensively examined in legal and scholarly discourse, with debates focusin on its definition, intent, and application in international law. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) remains the foundational legal instrument, establishing genocide as a punishable crime under international law. A key area of discussion is the requirement of *dolus specialis* (specific intent), which demands that perpetrators act with the deliberate intention to destroy a group, in whole or in part. Scholars such as Totten and Bartrop argue that this high threshold complicates prosecutions, as proving intent can be challenging in judicial proceedings. Conversely, critics like Goldsmith contend that focusing on intent overlooks the structural and systematic nature of genocide, where individuals play critical roles regardless of their expressed motivations. Furthermore, the Rome Statute of the International Criminal Court (ICC) expands accountability through the principle of command responsibility under Thesis 28, ensuring that leaders and military commanders can be prosecuted for failing to prevent or punish genocide committed by subordinates. These legal and theoretical debates continue to shape contemporary responses to genocide, influencing case law and international policy.

A good instance would be to consider the elements of dispute that happened in Rwanda as retributive genocide. The crumbling of uneven power structures after colonization meant that the Tutsi, who were one-time dominant politically and socially, got attacked by the Hutu

¹⁴⁰ Ibid.

somewhat as revenge for the inequity they perceived to have endured during colonial rule. The second categorization is called "institutional genocide," here, the government or attacking corporation uses genocide as an instrument to "manage" an identified population. Both scholars also debate that "retributive genocide" received acknowledgment as a "universal aspect of conquest" frequently deployed by primitive as well as mid-stone age nations and eventually got "embedded in the very notion of warfare."¹⁴¹ Often utilised as an alternative to political answers that became more resource-demanding and unlikely to offer permanent solutions, this genocide force is mirrored in some of the vicious annihilations during the Crusades. The third kind is known as the "utilitarian genocide" and was noticeable in the colonial era. Detailing this kind as "a combination of ethnocentrism and simple greed,"¹⁴² "utilitarian genocide" mainly entails the limitation, suppression, or murdering of native groups to ease up the process of obtaining land and resources.

Notably, most previous phenomena of genocides occurred outside the executing nation and concentrated on obtaining land and other valuable resources. Here, Totten and Bartrop contend that contemporary genocides can happen as part of the interior, domestic matters. They detail it as a monopolistic genocide which becomes their fourth typology. "Monopolistic genocide," regarded as social management, is frequently demonstrated in internal power fights and implementing a considered state recognition. Most of the "monopolistic genocides" happened during the past century. A good case in point is what transpired in the Balkans, where consequences owing to the split of the Soviet bloc caused brutal oppression of distinct groups of persons, most evidently in the former Yugoslavia. Finally, the last classification is genocide-powered ideological vindication. They contend that in the occurrence of genocide, this intent possesses a high probability of accommodating

¹⁴¹ Ibid.

¹⁴² Ibid.,42

exorbitant killing techniques. An example is, while South America experienced intrusion and habitation as part of an imperial project, the religious thought utilised in explaining the handling of native persons signified their consistent brutalization and conviction to lives of labor, sexual slavery, or murder.

These few genocide classifications help the thesis demonstrate how genocide is powered via dissimilar forces, either "institutional, utilitarian, monopolistic, ideological," or a mixture of all. The propellers and vindications deployed to genocide actions notwithstanding, similar outcomes are obtained, including ruining a chosen population. Given this circumstance, whether particular or conditional intent exists, it does not affect the phenomenon, even though it might affect legislation outcomes based on the international law language used. The two scholars finally combine their categorizations and define genocide as a continuous intentional gesture by the executor to physically ruin a population entirely. This destruction can occur either directly or indirectly, via the prohibition of sect members' biological and social reproduction, persistent nonetheless of the submitting or absence of threat provided by the casualties.¹⁴³

2.1.3.1 The Centrality of Specific Intent in Genocide Law

The defining feature that distinguishes genocide from other international crimes is the requirement of *dolus Specialis*, or specific intent. Under Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, the prohibited acts must be committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such.¹⁴⁴ This elevated men's rea requirement has been consistently affirmed in international jurisprudence and remains the cornerstone of genocide's legal definition.

¹⁴³ Totten and Bartrop, *Genocide*, 54

¹⁴⁴ Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951) art II.

The rationale for *dolus specialis* lies in the gravity of genocide as an international crime. By requiring proof of intent to destroy a protected group, the Convention seeks to distinguish genocide from widespread or systematic violence that may otherwise fall within crimes against humanity or war crimes.¹⁴⁵ However, this doctrinal precision has also rendered genocide uniquely difficult to establish in practice.

2.1.3.2 Jurisprudential Development and Critique

International tribunals have elaborated the meaning of *Dolus Specialis* through case law. In *Prosecutor v Akayesu*, the ICTR held that genocidal intent may be inferred from patterns of conduct, including the scale and systematic nature of atrocities.¹⁴⁶ Similarly, the ICTY in *Krstić* recognised that intent may be deduced from circumstantial evidence where direct proof is unavailable.¹⁴⁷

Despite these developments, scholars have criticised the continued reliance on specific intent as an impediment to both

¹⁴⁵ William A Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge University Press, 2nd ed, 2009) 243–245.

¹⁴⁶ *Prosecutor v Akayesu* (Judgment) (International Criminal Tribunal for Rwanda, Trial Chamber I, Case No ICTR-96-4-T, 2 September 1998).

¹⁴⁷ *Prosecutor v Krstić* (Judgment) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber I, Case No IT-98-33-T, 2 August 2001).

accountability and prevention. Totten and Bartrop argue that perpetrators who knowingly contribute to the destruction of a group may escape liability if specific intent cannot be conclusively established.¹⁴⁸ Schabas similarly observes that the reluctance of international actors to label situations as genocide often stems from the evidentiary and political burdens associated with proving *dolus specialis*.¹⁴⁹

2.1.4 Naming and Shaming as a Genocide Preventive Measure as Mandated by International Law:

Fighting genocide is not merely a commitment, but the obligation itself. Genocide is not merely a global crime, it is a global criminal activity.¹⁵⁰ This definitive pronouncement by Christian Tams, Lars Berster, and Björn Schiffbauer is not only a dedication to the outright prevention of genocide but subsequently and firstly mirrors the foundation of the 1948 Genocide Convention. The quotation certainly highlights what the responsibility to alleviate genocide is all about in international law: It is not only a section of the undeniable *jus cogens*. Imperatively, it is among the most paramount sovereign responsibilities within international law since it impacts the most basic circumstances of the very existence of the international community. Schiff Bauer asserts that no government, institution, or any moral individual might

¹⁴⁸ Samuel Totten and Paul R Bartrop, *The Genocide Studies Reader* (Routledge, 2009) 23–25.

¹⁴⁹ Schabas (n 2) 18

¹⁵⁰ Schiffbauer, Björn, "The Duty to Prevent Genocide Under International Law: Naming and Shaming As A Measure Of Prevention" (2018) 12(3) *Genocide Studies and Prevention*

deny that genocide is one of the most dreadful international felonies, concerning Raphael Lemkin regularly and constantly regarded as the “crime of crimes”.¹⁵¹

The thesis continues to outline that it is a basic condition of both international law and the very existence of persons that any exercise or any action of assisting, supporting, or carrying out genocide should be prevented immediately. It is worth noting that the genocide convention became active on January 12, 1951, and for the first time, gave a lawful definition of genocide in Thesis II. Since then, the definition has been debated about its interpretative details. Consequently, the legal definition has been refined further by governmental activities on indicting genocide actions in domestic and international law. Notwithstanding, the major components of what composes genocide have never been exceptionally debated. This is demonstrated in the modern international exercise on treaty-making where the common comprehension of what comprises genocide in legal terms continues to be unchanged since 1948: “the destruction of (at least) a national, ethnical, racial or religious group of human beings, which must be prevented and punished without exception.”

The Genocide Convention’s Thesis I have chiselled this necessity to mankind in stone: The Contracting Parties affirm that genocide, regardless of whether carried out during peace or war, is a felony within international law that they undertake to avert and prosecute. Even though it took quite a long time before the legal status of the Genocide Convention conditions became as strong as the text of Thesis I never balked to insinuate, at least the governments’ actions from the twentieth century up to date have established that the aversion of genocide is beyond a basic political intent. The thesis notes that currently, most global member states of the UN have set up criminal laws to fight genocide. This action shows that the international law obligation to hold génocidaires criminally responsible appears to be extensively exercised.

¹⁵¹ Ibid

2.1.4.1 The Legal Approach to Preventing Genocide

The Agreement on Genocide does not address methods of preventing subsequent acts of genocide, in contrast to prosecuting and condemning those responsible for genocide, according to Björn's thesis "The Duty to Prevent Genocide under International Law: Naming and Shaming as a Measure of Prevention." The phrase "may" readily demonstrate that those suggestions are optional in the context of politics and do not legally require the member nations to comply with Thesis VIII, notwithstanding the convention's Thesis VIII expressing that governments "may contact the qualified organs of the United Nations" to participate in the activities to avert genocide.¹⁵²

Essentially, the follow-up execution of treaty implementation, Thesis VIII has played a significant role in several institutional and political advancements inside the United Nations, yet it has not exhibited to improve the content of the final government responsibility to avert genocide. Noting that governments continue to be oblivious of even the least legal content of the mandate to avert genocide as honoured in Thesis I UNGC, he affirms that an exhaustive legal interpretation of Thesis I of the Genocide Convention is crucial to guarantee how governments may or should achieve their common responsibility to avert genocide to fulfil this essential international *jus cogens*.

Björn continues to highlight that, taking into consideration the responsibility to prevent, the casual meaning of the wording given by the Genocide Convention Thesis I is unequivocal: governments "undertake to prevent" genocide. The statement implies that every government party has to conduct sensible control activities to avert genocide.¹⁵³ Moreover, also the

¹⁵² Björn Schiffbauer, "Thesis VIII" in *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary*, ed. Christian Tams et al. (Munich, Oxford, Baden-Baden: C.H. Beck, Hart, Nomos, 2014),

¹⁵³ Schabas, *Genocide in International Law*, 521moreso

incorporating object and intent of the Genocide Convention is incontestable: “to avert situations of genocide from unfolding (or at least continuing).” Notwithstanding, the impressions only affirm that governments should take action to avert genocide, but they continue to lack the solutions to the concerns of how the aversion of genocide should be undertaken. Without discrimination to this still unanswered problem, the outcome that genocide should not occur is vital as well as undisputed across the Genocide Convention. It is therefore appropriate to provisionally assume that the Genocide Convention is completely result-orientated when it comes to genocide aversion. Regardless, this should not be mystified with a probable success (or failure) of government actions carried out in conformity with the mandate to prevent.

According to William Schabas, governments owe some control against genocide, however, if adequate controls were undertaken, then they cannot be blamed for the unsuccessful outcome.¹⁵⁴ Notwithstanding, the primary intention of the Genocide Convention continues to be that genocide should not occur as a result. This means that the goal and intention of the Genocide Convention and government duties to act in conformity to its goal and intent might fail. On the contrary, Schabas states that the Genocide Convention requires an exhaustive outcome as a principled objective that mirrors its goals and intentions. In reverse, governments may not be blamed if the outcomes are exhaustive, that is, they do not achieve the goals of the convention provided that they attempted to achieve them. To begin with, being result-orientated implies that actions for prevention must commence as early as possible, which might comprise taking inconsequential management of precautions regardless of any particular genocidal threat. The thesis gives an instance of creating practical local laws on genocide

¹⁵⁴ Ibid.

aversion without discrimination to more specific criminal law conditions congruent to the responsibility to punish agreeable to Thesis V of the Genocide Convention.

This is important for the thesis since Thesis V of the Geneva Agreement requires member nations to pass the required laws to execute the agreement's clauses, especially the provision of severe punishments for genocide perpetrators.¹⁵⁵ By stressing the creation of local laws that align with these international standards, the statement highlights the necessity for South Sudan to develop a robust legal framework consistent with its international obligations. The UN's role is pivotal in assisting and monitoring compliance with international norms to prevent genocide.¹⁵⁶

Furthermore, the emphasis on workable local legislation emphasizes how crucial it is to guarantee that global commitments are successfully carried out and upheld domestically government level. For South Sudan, this means that laws about the avoidance and sanctioning of genocide should be tailored to the exact legal as well as social context of the nation. The UN's role includes providing technical assistance, resources, and guidance to help South Sudan develop these laws, ensuring they are functional and effective.¹⁵⁷

Also, advocating for laws that avoid discrimination and align with specific criminal law conditions emphasizes the need for an inclusive and equitable legal framework. This is particularly crucial in a diverse and conflict-prone country like South Sudan, where ethnic and political divisions have historically fuelled violence.¹⁵⁸ The UN can support the development

¹⁵⁵ United Nations, Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951) art 5.

¹⁵⁶ United Nations, Report of the Secretary-General on the Responsibility to Protect: From Early Warning to Early Action (2018).

¹⁵⁷ United Nations Mission in South Sudan (UNMISS), 'UNMISS and OHCHR Release New Human Rights Report on South Sudan' (2020) <https://unmiss.unmissions.org/unmiss-and-ohchr-release-new-human-rights-report-south-sudan>.

¹⁵⁸ African Union Commission of Inquiry on South Sudan, Final Report of the African Union Commission of Inquiry on South Sudan (2014).

of such laws, ensuring they are applied fairly and do not exacerbate existing tensions or injustices.¹⁵⁹ Developing practical local laws requires significant capacity building and institutional support. The UN's involvement in South Sudan can be instrumental in strengthening the judiciary, law enforcement, and other relevant institutions to ensure they have the capability and resources to implement these laws effectively. This includes training, logistical support, and ongoing monitoring to ensure that the laws serve their intended purpose of preventing genocide.¹⁶⁰

Ensuring that local laws align with the Genocide Convention is essential for holding perpetrators accountable and delivering justice to victims. In South Sudan, where impunity has often been a barrier to peace and reconciliation, establishing such laws is a crucial step towards accountability. The UN's role in supporting the development and enforcement of these laws is vital for ending cycles of violence and fostering a culture of accountability.¹⁶¹ Finally, integrating local laws into a broader genocide prevention strategy is crucial. The UN's role in South Sudan includes not only supporting legal frameworks but also addressing the root causes of conflict, promoting human rights, and facilitating dialogue among communities. By ensuring that local laws are part of a comprehensive approach to prevention, the UN can help build sustainable peace in South Sudan.¹⁶²

Alleviating and preventing an imaginary threat calls for softer and more conventional actions like having genocide awareness training or teaching the components of the Genocide Convention. On the other hand, a particular danger or even the existence of a genocidal

¹⁵⁹ UNMISS, 'UNMISS and OHCHR Release New Human Rights Report on South Sudan' (2020) <https://unmiss.unmissions.org/unmiss-and-ohchr-release-new-human-rights-report-south-sudan>.

¹⁶⁰ United Nations Development Programme (UNDP), 'Strengthening the Rule of Law and Human Rights to Achieve Peace and Stability in South Sudan', UNDP South Sudan (2020).

¹⁶¹ Human Rights Watch, 'South Sudan: Soldiers Target Ethnic Group in Unity State', Human Rights Watch (2017) <https://www.hrw.org/news/2017/04/26/south-sudan-soldiers-target-ethnic-group-unity-state>.

¹⁶² UNMISS, 'UNMISS and OHCHR Release New Human Rights Report on South Sudan' (2020) <https://unmiss.unmissions.org/unmiss-and-ohchr-release-new-human-rights-report-south-sudan>.

environment with apparent features as to location and time will instead demand assertive and physical control measures. Therefore, it is right to say that any control exercise taken by states with the responsibility to avert genocide is guided by the concept of proportionality. Worth noting is that many of the control activities playing a role in the outcome that genocide does not occur are appropriate, however, the details rely on the particular circumstance.

2.1.5 Linking Humanitarian Intervention with The Responsibility to Protect to Establish Contributions made by the United Nations, the African Union, and Africa's Sub-Regional Organisations in Addressing the Continent's Human Rights Problems

Focusing on the United Nations provides a comprehensive lens through which to evaluate international efforts in genocide prevention. However, there is also merit in examining the successes and failures of multilateral regional bodies. The African Commission on Human and Peoples' Rights, the Organisation of African Unity (OAU), and its successor, the African Union (AU), along with the Mechanism for Conflict Prevention, Management, and Resolution, offer valuable insights into regional responses to mass atrocities.

Conventional ideas about a state's sovereignty restrict the domestic matters of that government within the confines of that country, irrespective of its impunity, no matter how inhuman, towards its citizens. The concept of sovereignty, which was once thought to be a nation's total control over its borders and people, has experienced significant changes. Historically, the principle of non-interference was sacrosanct, but over time, global norms have evolved to permit and even mandate intervention in certain circumstances. This shift reflects a growing recognition that state sovereignty is not absolute, particularly when fundamental human rights are at stake. Examining the historical trajectory of this evolution and the associated tensions through the lens of state criminality provides insights into current international legal and political dynamics.

Historically, sovereignty was regarded as inviolable. The Thirty Years' War in Europe concluded in 1648 with the Peace of Westphalia, which is frequently credited with founding the current system of statehood by adopting the values of autonomy and non-interference. However, even in the 1800s, certain acts were considered egregious enough to warrant international intervention, irrespective of state sovereignty. For instance, piracy and the slave trade were universally condemned and subjected to international scrutiny and action. Similarly, breaches of minority rights occasionally prompted international concern and intervention.¹⁶³ These instances demonstrate an early recognition that certain crimes transcended national boundaries and required a collective response.

The tension between state sovereignty and international intervention is particularly pronounced when considering the criminality of the state itself. This concept, explored by scholars like Dawn L. Rothe and Christopher W. Mullins, highlights how states can engage in actions that are criminal, necessitating international responses.¹⁶⁴ For example, the international community's response to the transatlantic slave trade and piracy in the 19th century can be seen as early forms of holding states accountable for criminal activities, even if it meant infringing on their sovereignty.

Rothe and Mullins argue that state crimes, including genocide, war crimes, and crimes against humanity, require a re-evaluation of traditional notions of sovereignty. These crimes, by their nature, often involve the complicity or direct involvement of state apparatuses, making internal mechanisms of accountability ineffective. Consequently, international mechanisms and interventions become necessary.¹⁶⁵

¹⁶³ Grotius, Hugo, *De Jure Belli ac Pacis* (The Law of War and Peace) (1625).

¹⁶⁴ Rothe, Dawn L., and Christopher W. Mullins, *State Crime: Current Perspectives* (Rutgers University Press, 2010).

¹⁶⁵ *Ibid.*

South Sudan presents a contemporary example of these tensions. The country has experienced severe internal conflict, characterized by ethnic violence and mass atrocities. The United Nations and other international actors have been involved in various capacities, from peacekeeping missions to humanitarian interventions, aimed at preventing further violence and promoting stability.¹⁶⁶ This involvement often clashes with South Sudan's claims to sovereignty, illustrating the ongoing tension between respecting state sovereignty and addressing state criminality.

The international community's role in South Sudan reflects a broader trend towards conditional sovereignty, where the legitimacy of state authority is contingent upon the state's adherence to international norms and human rights standards. The UN's actions in South Sudan, including the imposition of sanctions and the establishment of investigative bodies, demonstrate an evolving understanding that sovereignty cannot shield states from accountability for crimes against humanity.¹⁶⁷

2.1.5.1 Successes and Failures of Multilateral Regional Bodies

The African Commission on Human and Peoples' Rights' Achievements

The Commission plays a crucial role in promoting equality and justice throughout the region and keeping an eye on adherence to the African Charter on Human and Peoples' Rights. Its periodic reports and special rapporteurs have brought attention to human rights abuses and pressured states to improve their records. More so, the Commission has contributed to the development of a robust legal framework for human rights in Africa, including the adoption of

¹⁶⁶ United Nations Mission in South Sudan (UNMISS), 'UNMISS and OHCHR Release New Human Rights Report on South Sudan' (2020) <https://unmiss.unmissions.org/unmiss-and-ohchr-release-new-human-rights-report-south-sudan>.

¹⁶⁷ United Nations, 'Report of the Secretary-General on the Responsibility to Protect: From Early Warning to Early Action' (2018).

additional protocols and the establishment of mechanisms like the African Court on Human and Peoples' Rights.

On the flip side, the commission faces enforcement Challenges. The Commission lacked enforcement power, relying on state cooperation to implement its recommendations. This often leads to non-compliance and limits the impact of its decisions. Additionally, limited financial and human resources hinder the Commission's ability to effectively monitor and respond to human rights violations across the continent.

Achievements made by the Organisation of African Unity and the Mechanism for Dispute Alleviation, Handling, and Resolution

The OAU established an early warning system to detect potential conflicts and facilitate timely interventions. This mechanism aimed to prevent conflicts before they escalated into large-scale violence. The agency also played a significant role in mediating conflicts through diplomatic channels, promoting peaceful resolutions and political settlements in various African countries.

Conversely, the OAU's capacity to swiftly step in in cases of egregious violations of constitutional rights and internal tensions was frequently constrained by its strict devotion to the rule of non-interference in the domestic affairs of its member nations. Similar to the African Commission, the OAU struggled with enforcing its decisions and ensuring member state compliance, leading to limited success in conflict prevention and resolution.

African Union (AU): Successes

The establishment of The Peace & Security Council (PSC) has provided the AU with a structured mechanism for conflict prevention, management, and resolution. The PSC has been proactive in addressing conflicts through various interventions, including peacekeeping missions and diplomatic efforts. The AU's Constitutive Act empowers it to intervene in

member states in cases of war crimes, genocide, and crimes against humanity. This has allowed the AU to take decisive action in crises such as the intervention in Darfur and the AU Mission in Somalia (AMISOM). The AU has successfully partnered with the United Nations and other international bodies to enhance its capacity for conflict prevention and resolution. Joint missions and collaborative frameworks have strengthened the AU's effectiveness.

However, the AU's peacekeeping and intervention efforts are often hampered by inadequate financial and logistical resources. This limits the scope and sustainability of its missions. Also, achieving consensus among member states on intervention strategies can be challenging, often leading to delays or inaction. The lack of political will among some member states to support AU interventions undermines the effectiveness of the organisation. Despite robust frameworks and policies, the AU faces challenges in translating these into effective action on the ground. Implementation gaps, bureaucratic delays, and coordination issues often impede timely and effective responses.

Comparative Analysis between the African Union and the United Nations:

Although the United Nations continues to be the principal worldwide body for peace and security, local organisations such as the African Union serve a vital supplementary function. These multilateral regional entities' achievements and shortcomings offer important lessons for enhancing global institutions for conflict avoidance and resolution. The AU's ability to intervene in member states for humanitarian purposes and its establishment of the PSC are significant advancements in regional conflict management. These successes highlight the potential for regional bodies to act swiftly and decisively, sometimes more so than global organisations due to their proximity and better understanding of regional dynamics.

Contrary to that, the challenges faced by the AU, such as resource constraints and political divisions, mirror some of the UN's difficulties in maintaining international peace and security. These shared challenges underscore the need for enhanced collaboration, capacity-building, and political commitment to support effective intervention and conflict resolution efforts.

Contributions Made by International Law

International law has increasingly recognized the necessity of intervention in cases of state criminality. This change is embodied in the creation of concepts like the Responsibility to Protect. The Concept states that when an individual nation is incapable of or unwilling to stop widespread acts of violence on its citizens, the global community must step in to stop them.¹⁶⁸ This philosophy, which is consistent with the chronological trend of restricted involvement noted in the 19th century, marks a considerable divergence from conventional ideas of absolute sovereignty.

Although the principle of state sovereignty has not been completely abandoned, it has been washed away in the past few years. Crucially, as the typical international legal principle of sovereignty is unchanged, a state's sovereignty in reality varies with ever-changing government responsibilities. An example is when governments minimize their sovereignty by endorsing international agreements and working with international institutions.

The significance of sovereignty in Africa has lately been questioned. "In the case of many African states, without effective control over the entirety of their territories and with their legitimacy challenged among significant elements of their populations, sovereignty is more

¹⁶⁸ International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (2001).

legal fiction than practical reality”.¹⁶⁹ unquestionable, African governments’ membership of the African Union has decreased their sovereignty considering that, by joining, they have indirectly agreed on the reduction of particular rights. The African Union has opted to reduce the significance of sovereignty by designating it as “conditional and defined in terms of a state’s capacity and willingness to protect its citizens”.¹⁷⁰

Colonialism has profoundly shaped the concept of sovereignty in Africa. European powers drew arbitrary borders, grouping diverse ethnicities and cultures within single political entities, often without regard for existing social and political structures. The result was a patchwork of states with limited internal cohesion and varying degrees of administrative control. Upon gaining independence, many African states inherited these borders and the associated challenges of governing diverse populations within them.

The colonial legacy also left African states with differing capacities for exercising sovereignty. Some countries emerged from colonial rule with relatively strong administrative structures, while others struggled with weak institutions and internal conflicts. This disparity in state capacity has influenced how sovereignty is exercised and perceived across the continent. For many African states, sovereignty has been a contested and fragile concept, further complicated by the legacy of external interference and internal divisions.

The formation of the African Union marked a significant shift in the understanding of sovereignty on the continent. By joining the AU, member states implicitly agreed to certain limitations on their sovereign rights. The AU's principle of "conditional sovereignty" requires

¹⁶⁹ Project Ploughshares Project Ploughshares R2P: East, West, and Southern African Perspectives on Preventing and Responding to Crises (2005, Project Ploughshares)

¹⁷⁰ K Powell “The African Union’s emerging peace and security regime: Opportunities and challenges for delivering on the responsibility to protect” (2005) 119 Institute for Security Studies Monograph Series 1

states to demonstrate their capacity and willingness to protect their citizens as a precondition for full sovereign recognition.

This redefinition of sovereignty reflects a pragmatic response to the realities faced by many African states. The AU has adopted a more interventionist stance, recognizing that the traditional notion of absolute sovereignty is inadequate in the face of widespread human rights abuses and internal conflicts. The AU's commitment to principles such as the Responsibility to Protect (R2P) indicates a willingness to intervene in cases where states fail to protect their populations from mass atrocities, including genocide, war crimes, and crimes against humanity.

The application of the Genocide Convention has also highlighted the conditional nature of sovereignty in Africa. Historically, the international community has often focused on African states when invoking the Genocide Convention. High-profile cases, such as the Rwandan Genocide in 1994 and the Darfur conflict in Sudan, have brought international attention and intervention to the continent. These instances have underscored the international community's willingness to override national sovereignty in the face of mass atrocities.

Critics argue that the Genocide Convention has been applied selectively, disproportionately targeting African countries while ignoring or downplaying genocides and mass atrocities in other parts of the world. This selective application has raised concerns about the fairness and impartiality of international legal frameworks. It has also contributed to a perception among some African leaders that sovereignty is more readily compromised in Africa than elsewhere.

The AU's approach to sovereignty and its willingness to intervene in member states' affairs reflect a broader trend in international relations. The principle of conditional sovereignty, as embraced by the AU, aligns with global norms that prioritize human rights and

the protection of civilians over the inviolability of state borders. This shift is evident in international legal doctrines such as R2P, which assert that the international community has a responsibility to intervene when states fail to protect their populations from genocide and other mass atrocities.

However, the application of these principles in Africa must be understood within the context of the continent's unique historical and political landscape. The legacy of colonialism, the varying capacities of states to exercise sovereignty, and the selective application of international legal frameworks all contribute to the complexity of sovereignty in Africa. The AU's efforts to redefine sovereignty and promote regional stability must navigate these historical legacies and contemporary challenges.

Humanitarian Intervention

For quite some time, there has been great discourse about Humanitarian Intervention and its validity within international law. The notion has been defined as "the use of force, threatened with the use of force, by a state or group of states to protect fundamental human rights, especially the right to life, of citizens of and residing on the territory of other states; such protection occurring without the sanction of the relevant UN bodies or the invitation of the lawful administration of the target state."¹⁷¹ Therefore, the lack of authorization by the government in which the intervention happens is a vital factor. Although, sometimes, the two principles might intersect. The right to implement the Humanitarian Intervention might be located in treaty law, the Genocide Convention, international customary law, and the UN Charter, even though the provisions are also set up in other tools like the AU Charter. The UN Charter is regularly viewed as the essential tool in ascertaining if Humanitarian Intervention is

¹⁷¹ D Kritsiotis "Reappraising policy objections to humanitarian intervention" (1998) 19 Michigan Journal of International Law 1005 at 1021.

allowed under international law. It is believed that Humanitarian Intervention is allowed only if conducted under the procedures set out in the UN Charter.

Following the end of the Second World War, the law of intervention grew very fast.¹⁷² Well, within the customary international law, the non-intervention standard was abided by, which insinuates that a nation must not step in, whether directly or indirectly, in the local matters of another nation. While backing up the traditional principle of non-intervention, according to Oppenheim's thesis, the interference should be coercive, authoritarian, or forceful in some other way, so robbing the state that intervened of its authority over the topic at hand. Simple interference is not the same as intervention. He continued asserting that non-intervention is vital for respecting all nations' supremacy, territorial integrity, and self-autonomy. Vital to note is that within current international law, the non-intervention creed is a worldwide legal standard found in Thesis 2(4) and Thesis 2(7) of the United Nations (UN) Charter.¹⁷³

As stated earlier in the above sections of the thesis, the two crucial thesiss connecting with the non-intervention standard found within the UN Charter are Thesis 2(4)¹⁷⁴ and Thesis 2(7). These thesiss forbid the United Nations and member nations from taking actions in the internal matters of other nations besides the collective action stipulated within Chapter VII of the UN Charter.¹⁷⁵ One of the controversial concerns that have emerged in discussions in this alternating worldwide situation and need attention is, "Is there any exception to this general principle of non-intervention mentioned under the UN Charter?" Currently, the principle has grown to be a *jus Cogen* within international law. However, it is put through to two exceptions as stated in the UN Charter. Essentially, these two exceptions include collective Intervention

¹⁷² Jennings, S. R., Watts, S. A. (1996). Oppenheim's International Law. Intervention, 1, 430-449

¹⁷³ Rattan, Jyoti. 2019. "Changing Dimensions of Intervention Under International Law: A Critical Analysis". SAGE Open 9 (2): 215824401984091. doi:10.1177/2158244019840911.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

under Chapter VII (Thesiss 39-51), where there is danger, violation of peace, forceful action, and second, self-defense by a nation. Thus, the thesis intends to first comprehend the types of intervention before grasping what intervention by the UN or a nation is. Essentially, there are two kinds of intervention; direct intervention and indirect intervention.¹⁷⁶

Within conventional international law, direct intervention is traditionally understood as the deployment of forces into a conflict region to impose control, demonstrate power, establish barriers, seize properties, detain foreigners, or expel diplomats from the affected nation. This intervention, whether through military force or coercive methods, is ostensibly forbidden under Thesis 2(4) of the United Nations Charter, which aims to protect the sovereignty, territorial integrity, and political independence of states. However, the reality of international relations and the complexities of global politics often challenge this legal prohibition, revealing a more nuanced landscape of intervention.

Thesis 2(4) of the UN Charter explicitly prohibits the threat or use of force against the territorial integrity or political independence of any state, emphasizing the principle of non-interference in the internal affairs of sovereign states.¹⁷⁷ However, this prohibition is not absolute. There are recognized exceptions under international law, such as interventions authorized by the UN Security Council under Chapter VII of the UN Charter, which permits the use of force to maintain or restore international peace and security.¹⁷⁸ Additionally, interventions may be justified under the doctrine of humanitarian intervention or the Responsibility to Protect (R2P) when a state is unable or unwilling to prevent mass atrocities within its borders.¹⁷⁹

¹⁷⁶ Ibid.

¹⁷⁷ United Nations, Charter of the United Nations, 26 June 1945, 1 UNTS XVI, art 2(4).

¹⁷⁸ United Nations, Charter of the United Nations, 26 June 1945, 1 UNTS XVI, ch VII.

¹⁷⁹ International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (2001).

While legal frameworks provide a basis for understanding intervention, the realities of global politics and the specific contexts of conflicts introduce significant complexities. Humanitarian crises, such as genocide, ethnic cleansing, and severe human rights violations, often create moral imperatives for intervention. The international community faces a dilemma between respecting state sovereignty and acting to prevent or stop atrocities. The principle of R2P reflects this tension, asserting that sovereignty is not a shield for governments that fail to protect their populations.¹⁸⁰ However, interventions under humanitarian pretexts can be controversial, sometimes perceived as a guide for pursuing geopolitical interests.

Interventions are often influenced by the strategic interests of powerful states. The actions of major powers in regions like the Middle East, Africa, and Eastern Europe illustrate how geopolitical considerations can drive interventions that ostensibly aim to restore peace or protect human rights. For example, the NATO intervention in Libya in 2011 was framed as a humanitarian mission to protect civilians but also aligned with the strategic interests of Western powers.¹⁸¹

The legitimacy of intervention is crucial and often contested. Interventions perceived as unilateral or lacking broad international support can lead to accusations of neocolonialism or imperialism. The intervention in Iraq in 2003 by the United States and its allies, conducted without explicit UN Security Council authorization, remains a contentious example of the complexities surrounding the legitimacy of intervention.¹⁸²

Regional organisations, such as the African Union (AU) and the European Union (EU), play significant roles in interventions. The AU's intervention in Sudan's Darfur region and the

¹⁸⁰ Ibid.

¹⁸¹ NATO, 'Operation Unified Protector: Protection of Civilians and Civilian-Populated Areas under Threat of Attack' (2011).

¹⁸² Koh, Harold Hongju, 'On American Exceptionalism' (2003) 55(5) Stanford Law Review 1479.

EU's involvement in the Balkans demonstrate how regional bodies can both support and complicate international interventions. These organisations often have better regional understanding and legitimacy but can also be constrained by their member states' politics and capacities.¹⁸³

Interventions can have profound and lasting impacts on the domestic situations of the affected countries. While they may provide immediate relief or stop violence, they often lead to long-term instability, power vacuums, and unintended consequences. The interventions in Afghanistan and Iraq have shown how foreign military presence can lead to prolonged conflicts, insurgencies, and challenges in nation-building.¹⁸⁴

South Sudan exemplifies these complexities. The UN Mission in South Sudan (UNMISS) was established to protect civilians and support peace processes following the country's independence in 2011.¹⁸⁵ Despite its mandate, the mission has faced significant challenges, including limited resources, political interference, and the delicate balance between protecting civilians and respecting South Sudan's sovereignty. The persistent violence and humanitarian crises in South Sudan illustrate the difficulties in implementing effective and legitimate interventions.

Significantly, the improved collaboration amongst states created room for the nations to step into another nation's matters without aggression indirectly. However, a contradiction

¹⁸³ African Union, 'African Union Mission in Sudan (AMIS)', Peace and Security Department (2004).

¹⁸⁴ Bacevich, Andrew J., *The Limits of Power: The End of American Exceptionalism* (Macmillan, 2008).

¹⁸⁵ United Nations Mission in South Sudan (UNMISS), 'UNMISS and OHCHR Release New Human Rights Report on South Sudan' (2020) <https://unmiss.unmissions.org/unmiss-and-ohchr-release-new-human-rights-report-south-sudan>.

emerged between interference in terms of cooperation and the requirement to safeguard a state's sovereignty and self-rule.

The cumulative intervention found in Chapter VII of the UN charter gets special treatment compared to the traditional standard of non-intervention stated in Thesis 2(7). Here the UN Security Council is authorized to partake in cumulative actions when and where there is potential danger of peace, peace violation, or strenuous activities. Nonetheless, the charter lays down the procedures to be followed. Firstly, within Thesis 39 of Chapter VII, the UN Security Council establishes any danger to peace or violation of peace. It also finds out if any strenuous activities have been carried out and proposes resolutions on what response actions should be conducted to preserve or reinstate international peace and security.

Subsequently, if it is proven beyond doubt that there is potential danger and violation of peace, then the agency is mandated to utilise provisional control methods.¹⁸⁶ Even so, in situations where the approaches used tend to show failure, the UN might undertake these actions via air, sea, or land forces of the member nation as they are vital in preserving international peace and security.¹⁸⁷ This intimates that the UN will not automatically engage in forceful intervention when carrying out collective interventions but will install military personnel where and when the provisional techniques fail to yield success. Therefore, during a collective intervention, the agency's security council might authorize the utilization of aggression by regional bodies like the North Atlantic Treaty Organisation (NATO) or "coalitions of the willing." Hence, these bodies will sanction peacekeeping assignments implemented and sponsored by UN member states to undertake the exercise.

¹⁸⁶ Rattan, Jyoti. 2019. "Changing Dimensions of Intervention Under International Law: A Critical Analysis". SAGE Open 9 (2): 215824401984091. doi:10.1177/2158244019840911.

¹⁸⁷ Thesis 42 of the UN Charter.

2.1.5.2 The Responsibility to Protect: Normative Promise and Legal Indeterminacy

The Responsibility to Protect emerged as a response to the perceived failures of the international community in Rwanda and the former Yugoslavia. Formally endorsed at the 2005 World Summit, R2P reframed sovereignty as entailing responsibilities toward populations rather than absolute control.¹⁸⁸ It rests on three pillars: state responsibility, international assistance, and collective action where a state manifestly fails to protect its population. Despite its normative appeal, R2P remains legally indeterminate. It is not codified in a binding treaty and relies heavily on Security Council authorisation for coercive measures.¹⁸⁹ As a result, its implementation is shaped by political considerations rather than legal obligation. While R2P has influenced diplomatic discourse, it has rarely resulted in timely or decisive intervention.

In Africa, the application of R2P has been particularly constrained. Regional organisations, including the African Union, have expressed rhetorical support for civilian protection while remaining reluctant to authorise coercive measures against member states.¹⁹⁰ This tension highlights the gap between R2P's aspirational language and its operational reality.

2.1.5.3 Early Warning Without Escalation

In South Sudan, warning signs of mass atrocity were present well before the outbreak of full-scale violence in December 2013. Ethnic polarisation, militarised governance, and political fragmentation were widely documented.¹⁹¹ United Nations reporting mechanisms identified risks of large-scale violence, yet preventive measures remained limited to diplomatic engagement and mediation. Under Pillar II of R2P, the international community is obligated to

¹⁸⁸ United Nations General Assembly, 2005 World Summit Outcome, GA Res 60/1, UN Doc A/RES/60/1 (24 October 2005) paras 138–139.

¹⁸⁹ Alex J Bellamy, *Responsibility to Protect* (Polity Press, 2009) 160–165.

¹⁹⁰ African Union Constitutive Act art 4(h).

¹⁹¹ African Union Commission of Inquiry on South Sudan, *Final Report* (2014).

assist states in preventing atrocity crimes. However, assistance in South Sudan primarily took the form of technical capacity-building and peace negotiations, rather than structural reform or coercive deterrence. The failure to escalate from Pillar II to Pillar III illustrates a central weakness in R2P implementation: the doctrine provides no objective threshold for determining when collective action becomes mandatory rather than discretionary. The decision to intervene remains subject to political calculation rather than legal compulsion.

2.1.5.4 Security Council Fragmentation and Selective Enforcement

Operationalising R2P requires Security Council authorisation for coercive measures, including sanctions, arms embargoes, or military intervention. In South Sudan, Council responses were cautious and incremental. While UNMISS's mandate was strengthened to emphasise civilian protection, more forceful measures were delayed or diluted.¹⁹² Geopolitical considerations, including concerns about sovereignty, regional stability, and strategic interests, constrained consensus among Council members. The selective application of coercive measures in other contexts has further complicated R2P's credibility.¹⁹³ The South Sudan case demonstrates that R2P's enforcement is neither automatic nor rule bound. Instead, it operates within a framework of discretionary politics, where major power agreement determines the scope of action. This undermines the doctrine's claim to universal application.

2.1.5.5 Sovereignty as Resistance Mechanism

Although R2P reframes sovereignty as responsibility, it does not displace the foundational principle of non-intervention. In South Sudan, the government consistently invoked sovereignty to resist external pressure, including accountability mechanisms and

¹⁹² United Nations Security Council Resolution 2155, UN Doc S/RES/2155 (27 May 2014).

¹⁹³ Mahmood Mamdani, *Saviors and Survivors* (Pantheon Books, 2009) 272–275.

stronger peacekeeping enforcement.¹⁹⁴ The African Union's Constitutive Act recognises a right of intervention in grave circumstances, including genocide and crimes against humanity.¹⁹⁵ Yet this principle has rarely been operationalised against sitting governments. Regional actors often prioritise regime stability over coercive intervention.

2.1.5.6 The Protection–Stability Trade-Off

2.1.6 Challenges facing prevention of genocide

One of the primary things to note is that prevention against genocide, war crimes, ethnic cleansing, and crimes against humanity is not a one-off exercise but a continuous one. The process demands a sustained effort for a long period to develop the tenacity of communities to atrocious crimes by making sure that the rule of law is adhered to and that all human rights are safeguarded, without discrimination. This can be achieved through the creation of genuine and accountable government agencies, stopping corruption, controlling diversity constructively, and championing a robust and diverse civil society and a multicultural media. As per international law, the main responsibility to prevent atrocious crimes falls on the shoulders of individual governments. This is also reiterated in the Genocide Convention of 1949, and overall international human rights law treaties that compel Member countries to avert those crimes or breaches, including by making sure that the respect for the standards incorporated in them is maintained.

The principle of the Responsibility to Protect was taken up by member countries during the 2005 World Summit. The principle reasserts the main duty of the government to safeguard its citizens from mass atrocities and also their incitement. Nonetheless, the accord also emphasizes the duty of the international community to avert mass atrocities by helping

¹⁹⁴ African Union Commission of Inquiry on South Sudan, Final Report (2014).

¹⁹⁵ Constitutive Act of the African Union art 4(h).

governments to build the capacity to safeguard their people and helping countries under stress “before crises and conflicts break out”. Essentially, the prevention of mass atrocities must be a precedence for all. This is because prevention is the only way to stop the loss of human life, trauma, and physical injury. That notwithstanding, there are other essential reasons to concentrate on prevention. According to The United Nations Security Council, various resolutions state that severe and gross violations of international human rights and humanitarian law create a potential danger to international peace and security. Thus, aversion to atrocious crimes not only plays a significant role in ensuring national peace and stability, but it also serves the wider regional and international peace and stability agenda.

Beyond political hesitation, R2P faces structural limits within the UN system. The Security Council retains exclusive authority to authorise coercive intervention, yet veto power enables permanent members to block action.¹⁹⁶ This institutional design embeds geopolitical considerations within atrocity prevention. Furthermore, R2P lacks independent monitoring and enforcement mechanisms. Unlike treaty bodies or judicial institutions, it does not provide formal avenues for adjudicating state failure. As a result, implementation remains reactive and situational. In South Sudan, this structural design translated into incremental adjustments rather than decisive preventive measures. The doctrine functioned as a framework for diplomatic engagement rather than a trigger for enforcement.

The South Sudan case reveals a transformation of R2P from a preventive doctrine into a conflict-management tool. Rather than preventing atrocities through early coercive deterrence, R2P was operationalised through mediation, humanitarian assistance, and peacekeeping containment. This evolution raises fundamental questions about the doctrine’s

¹⁹⁶ United Nations Charter art 27(3).

future viability. If R2P cannot compel timely and decisive action in contexts of manifest state failure, its preventive credibility is weakened. The doctrine's normative authority depends not merely on endorsement, but on consistent and effective implementation.

2.1.7 Theoretical Gaps

Looking at both Campbell's and Martin's work, the theories attempt to describe genocide from the sociological aspect premised on the social theory. Campbell's theory has successfully borrowed from suppositions of social management to give subsequent explanations about genocide as a degree of social control. Also, Martin argues that genocide is a type of social action and social relationship and explains its typical connections with other types of social action and structure. On the other hand, besides borrowing from the two scholars' theories, this thesis will incorporate both the social and legal aspects of genocide with an attempt to bring forth the connection and develop new knowledge about mass atrocities and most particularly genocide. Also, the studies gave a general account of genocide occurrences mostly dwelling on the international scene contrary to the current thesis that looks to focus on South Sudan as its point of reference.

Also, it is significant to note that Genocide research has dramatically advanced in hypothetical seclusion from the comprehensive research of political violence. However, the distinct paths are suitable to some level: several genocide researchers seek to separate genocide and create explanations for it. The thesis notes that as the acknowledgment of the genocide specificity continues, research of its occurrence must be incorporated into broader research of kin happening, specifically political brutality.¹⁹⁷ This is so because of attempting to comprehend the specificity of the occurrence and the reasoning behind genocide. In line with

¹⁹⁷ Scott Straus, "Contested Meanings and Conflicting Imperatives: A Conceptual Analysis of Genocide," *Journal of Genocide Research* 3, no. 3 (2001): 349–375.43. For some recent

Strauss's argument, it must be clear what attributes are distinct to genocide and what attributes are shared with other occurrences. Genocide specification must result in more accurate and broken-down theorizing and comparative thesis designs.

Subsequently, both practically and hypothetically, the occurrence of genocide is comparable with other types of brutality. Given that a popular outcome is that genocide is a type of brutality that happens during war, particularly civil war, it implies that a reasonable link must be there in research violence in war, specifically civil war. Of late, describing sequences of brutality against civilians during wartime has been the target of many studies.¹⁹⁸ Likewise, suppose a regular result is that some forms of unrealistic and discriminative conceptualizations propel genocide. In that case, a reasonable hypothetical correlation must be present to the research of terrorism, which comprises brutal targeting of populations and where some acquired attention likewise to fierce ideas at the leadership level. Lastly, due to substantial discord in the social-scientific explanation of genocide, maintaining its uniqueness in the seclusion of connected happenings is impractical in its distinctiveness in the isolation of related phenomena. To this end, the thesis seeks to provoke the long-lasting question in genocide research: how to define genocide, a problem that several scholars wish to overlook yet. It usually demands discourse due to the term "genocide" being controversial.¹⁹⁹

2.1.7.1 Theoretical Debates

It is essential to point out that the legitimate criminal definition falls under two widespread classes of global regulation: Obligation erga omnes and jus cogens. The previous are wrongdoings that override any singular state's lines and address a danger to all mankind.

¹⁹⁸ Jason Lyall, "Are Coethnics More Effective Counterinsurgents? Evidence from the Second Chechen War," *American Political Science Review* 104, no. 1 (2010): 1–20.

¹⁹⁹ Straus, Scott, "'Destroy Them to Save Us': Theories of Genocide and The Logics of Political Violence" (2012) 24(4) *Terrorism and Political Violence*

The last option *jus cogens* are violations that by no means states or their nationals can carry out, paying little mind to urgent conditions: Crimes like genocide, subjugation, and robbery; comprise activities that undermine the government assistance, everything being equal. The global local area has considered these ways of behaving unlawful and unethical in unendingness under each situation. The lawful lawbreaker comprehension of annihilation has turned into the referent definition researchers have utilised for quite a long time, regardless of three restrictions.²⁰⁰

In the first place, the Genocide Convention lays out a double command of signatories to forestall and rebuff people's plans to obliterate one of the four safeguarded gatherings: National, ethnic, racial, or strict gatherings. Deciding aim requires the "establishment for certain [of] the fitting method of obligation or type of cooperation by the blamed in the important wrongdoing," at the end of the day, the plain depiction past an objective limit that an individual has set out to deliberately kill unarmed regular folks on a gigantic scale. The necessity for laying out purpose preceding the ways of behaving related to the massacre under the focus of Thesis II has driven states to deny complicity in this criminal demonstration missing composed or settled upon documentation of orders that unequivocally require the eradication of a gathering. The topic of aim has turned into a controversial issue in global relations where denounced culprits deny claims in light of this necessity. It has likewise turned into a typical political and legitimate guard in ongoing many years (for instance, the discussion in Turkey over the term genocide to portray the genocide of Armenians during World War I).²⁰¹ The trouble in demonstrating expectation, continuously, has made an overwhelming undertaking for the global local area; subsequently, this command restricts the viability of

²⁰⁰ Karazsia, Z., 2019. An Unfulfilled Promise: The Genocide Convention and the Obligation of Prevention. *Journal of Strategic Security*, 11(4), pp.20-31.

²⁰¹ Vahakn N. Dadrian and Taner Akçam's Judgment at Istanbul: The Armenian Genocide Trials (New York: Berghahn Theiss, 2011), 4-5;

counteraction techniques to retroactivity and not simultaneous with critical conditions. This true, retroactive course of anticipation does close to nothing to prevent destructions from arising, as does the governmental issues of massacre affirmation.

Second, the Genocide Convention restricts the use of genocide to four safeguarded gatherings, that is to say, public, ethnic, racial, and strict gatherings. The prohibitive use of the term was achieved through extensive talks and discussion among permanent UN Security Council individuals and different drafters of the Convention's text, ultimately concurring upon these four determined bunches as procuring the situation with insurance under worldwide law.²⁰² The UN's moderate definition rejects bunches that structure on account of political connection, orientation, sexual direction, or other classifications and restricts these gatherings from guaranteeing defensive freedoms under the Genocide Convention. The thin legitimate meaning of destruction, as gone ahead in the 1948 show, prompted a lacuna between lawful comprehension researchers might interpret genocide and the foundation's conceptualization. This dissimilarity between the legitimate wrongdoing and social cycles laid out by scholastics has kept down our aggregate comprehension of what can be destruction for quite a long time.

Third, the expression "mental mischief" creates difficulties in utilization under Thesis II, Point B of the convention.²⁰³ The classification of mental damage is immense, laying out causality from ways of behaving related with focuses a through e under Thesis II is troublesome, especially in estimating culprit impacts on survivors' psychological state. Point b requires "serious substantial or mental mischief to individuals from the gathering" be done; no edge is set for laying out mental damage (or different markers). This disjuncture between

²⁰² David Shea Bettwy, "The Genocide Convention and Unprotected Groups: Is the Scope of Protection Expanding Under Customary International Law?" *Notre Dame Journal of International & Comparative Law* 2, no. 1 (2011), 167, <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&thesis=1009&context=ndjicl>.

²⁰³ Karazsia, Z., 2019. An Unfulfilled Promise: The Genocide Convention and the Obligation of Prevention. *Journal of Strategic Security*, 11(4), pp.20-31.

individual mischief and gathering hurt is dangerous makes ill-defined situations under worldwide regulation and limits the capacity of courts to rebuff such concealed impacts from said violations. The deficiencies of the legitimate criminal meaning of massacre have driven researchers to reclassify the operationalized definition for a long time beginning around 1948.

As talked about above, in a nutshell, First, there is an ID issue. Under the Genocide Convention part conditions (of the UN) should demonstrate the "plan" that exists inside the personalities of the culprits for the show to produce results. Subsequently, demonstrating expectations can be a laborious undertaking. Demonstrating expectation makes anticipation in the transient troublesome and close to unthinkable. For instance, the 1994 Rwanda massacre consumed somewhere in the range of 500,000 and 800,000 Tutsi and moderate Hutu lives combined with around 200,000 passings related to the simultaneous nationwide conflict. The Rwanda case is a notable disappointment for some reasons, one of which is the worldwide local area's inability to perceive massacre from nationwide conflict or ethnic struggle and to keep such activities from happening on a gigantic scale.¹⁵ Additionally, the issue of demonstrating expectation held up approved mediation powers from conveying to the disaster area and taking part in finishing the carnage. Demonstrating expectation before activity is the Achilles impact point of the Genocide Convention

More so, any investigation of genocide should start with characterizing the idea to be inspected. There are countless meanings of massacre, particularly when one enters the sociology field. The legitimate meaning of genocide presented by the United Nations and utilised by most nations is "any of the accompanying demonstrations committed with a plan to obliterate, in entire or to some extent, a public, ethnical, racial or strict gathering, thusly: (a) Killing individuals from the gathering; (b) Causing serious substantial or mental mischief to individuals from the gathering; (c) Deliberately incurring for the gathering states of life determined to achieve its actual obliteration in entire or to some extent; (d) Imposing measures

expected to forestall births inside the gathering; (e) Forcibly moving offspring of the gathering to another gathering."

Hence, looking through Campbell's work, he additionally changed the lawful definition to fit the reasons for his review. He characterizes annihilation as "uneven, ethnically based mass killing". This definition consequently restricts the demonstration of annihilation to demonstrations of killing — overlooking different techniques for genocide perceived by the UN (see (b) - (e) above). This restriction appears to be legit because when the public considers annihilation, they generally consider mass killings. Different strategies for annihilation are more uncommon and less surely known. Indeed, even those reviews that remember all techniques for massacre for their definition will generally zero in on the killing perspective.²⁰⁴

The other constraint raised by Campbell's definition alludes to what gatherings would fit the bill for the destruction mark. Campbell restricts his definition to ethnically based mass killings. However, he involves nationality in an extremely wide sense. Nationality is utilised to allude to "social gatherings described by a thought of normal drop" (p. 205). Under this definition, each of the similar gatherings safeguarded by the UN definition would be covered by Campbell also, including race, identity, ethnicity, and religion. His contextual analyses cover the greater part of these gatherings, truth be told. The broad utilization of the word identity is suitable, however, sadly Campbell's meaning of nationality is concealed in the notes segment of the thesis toward the end. For such a significant idea as a vital term in a definition, this ought to have shown up in the fundamental text. The people who renounce the endnotes will probably be confounded by the utilization of the term nationality when Campbell begins talking about strictly and racially based massacres.²⁰⁵

²⁰⁴ Pruitt, William R., "THE GEOMETRY OF GENOCIDE: A THESIS IN PURE SOCIOLOGY - Criminal Law and Criminal Justice Thesis Reviews", *Criminal Law and Criminal Justice Thesis Reviews* (Webpage, 2017) <<https://clcjthesiss.rutgers.edu/thesiss/the-geometry-of-genocide-a-thesis-in-pure-sociology/>>

²⁰⁵ Ibid

The core of the math of destruction is to be tracked down in unadulterated social science. As made sense of by the creator, unadulterated social science focuses just around the social, and avoids different factors like brain research. "Unadulterated social science makes sense of the human way of behaving with its social math: its area and heading in friendly space and social time" (p. 8). Social space alludes to how individuals connect; individuals can be insider or outsiders given their social space. An adjustment of social time is a social change like an increment or reduction in closeness. Taken together, changes in friendly space and social time make sense of the event of annihilation.

2.1.7.2 Gaps in Empirical Studies

Despite the presence of the R2P principle and growth in its adoption by several nations across the world, the major gap that exists is that Sarkin doesn't outline any structure of its presence. Rather, no one can tell precisely what the principle looks like. Notably, there has been intense support for its execution in a few events, however, just once has the guideline been applied. Both Sarkin and Schiffbauer give general coverage in the prevention of genocide while slightly referencing the Rwandan genocide of 1994 which might extensively have most of the similarities with the case thesis for this thesis but in reality, the situations are different. Hence, to bridge the gap, the researcher will primarily focus on the issues and causes of genocide and how best to prevent genocide in Africa and particularly South Sudan.

Björn's work describes what the member states of the UN should do under the genocide convention to ensure that prevention is achieved. Yet, contrary to punishing and indicting the culprits of genocide it does not give solutions to governments on how to prevent future

genocide acts. Thus, this thesis looks to incorporate the historical and present knowledge acquired to offer recommendations on how states should respond to future threats that might lead to genocide. While Jeremy attempts to define the different Humanitarian Interventions under the genocide convention including the R2P, the current research will seek to address the significance of the Responsibility to Protect principle by all states and propose new approaches to how it can be achieved seamlessly.

2.2 Sociological Theories of Genocide

This thesis will be grounded on several theories that include Bradley Campbell's "Genocide as A Degree of Social Control", Shaw Martins's "War and Genocide: A Sociological Approach", "The Dolus Specialis (Particular Intent) Of Genocide" by Totten and Bartrop's classification of Genocide. This will help bring out a clear picture of what entails genocide and also give definitions of genocide and proposed ways of preventing atrocious crimes by using "The Approaches of Genocide: Stanton's Phases of Genocide" and Galtung's "Direct, Cultural, and Structural Brutality Involved in Ruining a Sect in Its Significant Stages of Human Existence." That said, the thesis will start with a succinct summary of the relevant theories to the thesis.

2.2.1 Genocide as a Degree of Social Control.

Developed by Bradley Campbell, the theory's main objective was to regard genocide and other occurrences as variables. This provides a theory of defining various variable elements of genocide and its happening and alterations in genocide acts like who takes part in it mainly, who is the victim, and who is saved from the attacks or not attacked. For instance, taking part in genocide is a variable, and more so than insinuated by conventional categorizations of

persons as culprits, onlookers, or lifesavers. Further to the existence of levels of taking part and saving lives, some persons might undertake conflicting conduct as they may engage as both culprits and rescuers at the same time. The theory also discusses another essential element of genocide variation: the dissimilarity between genocide cases, while illustrating genocide as a matter of degree. The theory points out that scientific explanations are assessed in line with their benefits. One feature of this is the simplicity of using the description.²⁰⁶ Notably, most of the past genocide definitions pose challenges in using them in real scenarios because they describe particular intentions or objectives on the roles of culprits that are hard or impracticable to monitor.

The hypothesis is supported by various scholars like Black who believe that every aspect stated by Campbell's genocide definition is a variable social management feature related to specific geometrical attributes. Campbell's theory has successfully borrowed from suppositions of social management to give subsequent explanations about genocide as a degree of social control.

2.2.2 War and Genocide: A Sociological Approach

Shaw Martin asserts that the thesis of genocide has generally been framed by legal and historical, rather than sociological perspectives. He notes that Historical studies account for most of the genocide research and have provided the main foundations for our knowledge. Yet law often provides very narrow a focus, separating genocide from the "crimes against humanity" and "war crimes" with which it is intimately linked, and concerned with individual criminal responsibility rather than explanation. Historical studies tend to highlight the particularity of certain events rather than the commonalities that lead us to define a range of

²⁰⁶ Campbell, Bradley. 2011. "Genocide as a Matter of Degree." *The British Journal of Sociology* 62 (4).

actions, by collective actors in situations separated by time and space, as “genocide.” Indeed, the majority of historical studies deal with a particular episode, the Holocaust, whose commonality with other genocides is often questioned by historians. He debates that it requires a sociological framework specifying that genocide is *a type of social action and social relationship* and explains its *typical connections with other types of social action and structure*. He attempts to discuss various elements of genocide such as the loss of the connection between war and genocide, connections of context and causality, connections of meaning, and the changing structures of warfare and contemporary genocide.

Worth noting is that Martin’s technique relates genocide intimately to war. He notes that genocide was initially acknowledged in a war context. Acknowledging that the term genocide was first coined by Lemkin to explain the mass atrocities against populations, he states that from its definition, genocide was “a concentrated and coordinated attack upon all the elements of nationhood” among the several occupied civilians. Genocide was a warlike campaign, happening in the context of war, yet contrasting from genuine warfare. Quoting Lemkin’s work from the famous thesis “Axis Rule in Occupied Europe” Martin states “Genocide is the antithesis of the ... doctrine which holds that war is directed against sovereigns and armies, not against subjects and civilians. In its modern application in civilized society, the doctrine means that war is conducted against states and armed forces and not against populations. It required a long period of evolution in civilized society to mark the way from wars of extermination, which occurred in ancient times and the Middle Ages, to the conception of wars as being essentially limited to activities against armies and states.”²⁰⁷

More so, he asserts that the creative statement above highlighted the reality that recognizing genocide as a criminal act different from war continued to rely on the

²⁰⁷ Ibid.

contemporary differentiation between “civilized” and “uncivilized” warfare. He narrates that the link between genocide and war, about context and meaning, continues to be the main focus of the initial legal uses of the concept. He states that Genocide as an act implies something closely related to war, besides that it is guided by one kind of actor towards another very distinct kind whereas in “normal” war the different actors are of the same well-structured military type, however else they might contrast. Nevertheless, just as war is not simply something that one actor undertakes to another, so genocide comprises connections between the armed and unarmed actors. Genocide is normally conceptualized as something “perpetrators” do to “victims,” yet in actuality it is also a kind of social dispute, however unequal and crooked, so that culprits should appreciate the victims’ feedback and vice versa.²⁰⁸

2.2.2.1 The Dolus Specialis (Particular Intent) Of Genocide: Totten and Bartrop's Genocide Classification.

There is debate over the use of *Dolus Specialis* (particular intent) in the modern legislation on genocide. Goldsmith, for instance, contends that such a requirement is unsuitable because “regardless of an individual’s expressed intentions, he/she is still actively involved in genocide and plays a crucial part.” Similarly, Irvin-Erickson argues that Lemkin’s original conception of genocide regarded the motives behind the act as irrelevant to international law as “every individual who participated in a program to destroy a nation would have different reasons for doing so.”¹⁶ Both Goldsmith and Irvin-Erickson contend that emphasizing the *Dolus Specialis* (particular intent) behind Genocide is unhelpful to definitions of genocide as the reasons why people participate in such an act vary greatly. For example, it may be driven not by an ideological hatred for another group but for the “benefits gained through genocide”¹⁷ such as resource or economic gain. Understanding the intent of genocide as a wholly

²⁰⁸ Ibid.

destructive act is important not just sociologically and historically, but for the legal consequences of prosecution. Totten and Bartrop argue that “rather than being simply an expression of passion, genocide is a rational instrument to achieve an end.” They classify five types of genocide, discussing the rationale that might drive the particular intent to destroy in different circumstances.

- Retributive genocide- where revenge and punishment are used as the key justification for an attack.
- Institutional genocide – Here genocide is used as a tool of the state or attacking organisation to “manage” a target population
- Utilitarian genocide- this is a combination of ethnocentrism and simple greed.” Utilitarian genocide often involves restriction, subjugation, or killing of Indigenous groups to simplify the acquisition of land and resources
- Monopolistic genocide- is about social ordering and it is often reflected in internal power struggles and the enforcement of a perceived national identity
- Genocide driven by ideological justification. This motive, they argue, is much more likely to incorporate extreme methods of extermination during a genocide

2.2.2.2 Genocide as A Degree of Social Control

As described by Black, typical brutal fights in every aspect stated by Campbell's genocide definition are a variable social management feature related to specific geometrical attributes. In the recent past, he has successfully borrowed from suppositions of social management like Black.²⁰⁹ To give the subsequent explanations: Genocide is most probably

²⁰⁹ Black, D. 1998 *The Social Structure of Right and Wrong* (Revised Edition), San Diego: Academic Press

like the way cultural disputes are distinguished by motionlessness, social spacing, and inequity. Simultaneously, these injustices are aimed at the lesser classes instead of the first classes or equals.²¹⁰ However, as he illustrates in his work, the definition of genocide is not only applicable to differentiating genocide from other events and elucidating its happening. It is also relevant in differentiating genocide from each other and expounding on their dissimilarities. Notably, genocides might comprise more or reduced collective murders, sing-sidedness, and cultural impediments. Thus, these attributes of genocide might also create a foundation for the categorization of genocide. Campbell emphasizes that to grasp and elucidate genocide, people must give a chance for variation.

Additionally, genocide should be seen as an issue of degree as the classification allows. For instance, some intellects see the holocaust as an isolated event somehow. Nevertheless, the uttermost scenario of genocide continuation was also regarded as a "hyper genocide" credited with maximum levels of collective murders, single-sidedness, and cultural impediment. It was unique from the rest in degree but not type, likewise to genocide. Campbell states that genocide is typical social management with variable aspects, not one of them being different or strange. Like war, genocide comprises collective execution such as lynching, which is also one-sided. He also adds that it aims toward persons grounded on their ethnicity, similar to cultural cleansing. Therefore, as the aspects of genocide differ, they isolate the phenomenon from the other types of social control and isolate genocides from one another. Given that the disparity is somehow foreseeable with the pure sociology of social management, one might elucidate genocide happenings and what shapes they take.²¹¹

On the contrary, Horowitz and other scholars like Jaret, Mann van den Berghe, and Weber²¹² debate that Campbell's definition of genocide only focused on ethnic groups and did

²¹⁰ Campbell, B. 2010 'Contradictory Behavior During Genocides,' Sociological Forum 25(2): 160

²¹¹ Campbell, Bradley. 2011. "Genocide as A Matter of Degree." The British Journal of Sociology 62 (4).

²¹² Bradley Campbell, "Genocide as Social Control" (2009) 27(2) Sociological Theory.

not consider the populations killed on grounds of class or political identity. They assert that the term “ethnic group” has been utilised broadly to describe the cultural sects characterized by the perspective of the same lineage. they continue stating that the sects referred to as ethnic groups include tribes, castes, nationalities, and language groups, and are mostly identified by race or religion which are distinct from other factions considering that identity is usually assigned at birth and relatively unalterable. Additionally, the aver that the definition of genocide used by Bradley does not consider the culprits’ motive, intention, objective, or any other psychological state. They also argue that it is not a must for genocide to be conducted by the government as stated by Campbell.²¹³

2.2.3 Genocide, Mass Atrocity, and Theories of Crime: Unlocking Criminology’s Potential

Amazingly, scholars researching atrocious crimes and genocide have oftentimes neglected criminological theories and concepts. However, in their review, Susanne, Hollie, and Laura C. Frizzell analyse the potential of criminological theories to provide explanations for and avert atrocious crimes and genocide, to shed light on criminological insights from the research of these crimes, and open the existing criminological knowledge base for utilization in the context of these crimes. They start by defining how mass atrocities and genocide are the same as other crimes that criminologists have habitually studied. They then turn toward frameworks of structural causation, concentrating on the government and community levels. Moreso, they address micro-level theories that explain reasons that make persons commit such brutality using different theories like theories of choice, the life course, and techniques of neutralization to social learning theory and theories of desistance from crime.

213 Bradley Campbell, "Genocide as Social Control" (2009) 27(2) Sociological Theory.

An especially enormous area of disregard is the use of criminological hypotheses in the investigation of decimation and mass outrage, by both crime analysts and different scientists. researchers have seldom applied center speculations to the investigation of genocide and mass monstrosity, including social learning, strain control, and life-course theories. This oversight is amazing, as the idea of barbarity wrongdoing incorporates atrocities, violations against humankind, and annihilation, all violations of international law.²¹⁴ Moreover, the activities that comprise genocide and mass atrocities such as murder or sexualized viciousness are violations as indicated by criminal codes around the world. Additionally, this savagery bears numerous similitudes to different sorts of wrongdoing, going from state and corporate wrongdoing to group-related viciousness and disdain wrongdoing, and it similarly inflicts damage, lining up with meanings of wrongdoing that underscore harm over lawful codes.

2.2.3.1 Positioning Genocide and Mass Atrocity Within Present Classifications of Crime

Given the run of the run-of-the-mill contribution of the state and different associations in genocide and mass monstrosity, these violations share a lot with aggregate types of wrongdoing, like state wrongdoing, white-collar and corporate wrongdoing, and other coordinated wrongdoing. Every one of these violations includes aggregate readiness, collaboration, and association that, for the instance of genocide and mass outrage, can be conceptualized along a continuum. Toward one side are the intricate organisations, authoritative connections, and orders addressed by the endless state offices, like the military. At the opposite end are approximately coordinated bunches like dissident gatherings, state armies, and paramilitaries.²¹⁵ A significant string of criminology tries to comprehend the reason why crime happens. To do such, crime analysts have analysed the relates of crime at different

²¹⁴ Scheffer D. 2006. Genocide and atrocity crimes. *Genocide Stud. Prev.* 1(3):229–50

²¹⁵ Karstedt S. 2013a. Contextualizing mass atrocity crimes: moving toward a relational approach. *Annu. Rev. Law Soc. Sci.* 9:383–404

reasonable levels, zeroing in a great extent on state, local area, and individual elements as well as on how these levels work all the while. In this part, the review centered around state and local area-level primary gamble factors related to mass outrage and genocide. As states are ordinarily the culprits of genocide and mass atrocities, investigations of state-level variables laying out this brutality as a homegrown peculiarity have moreover been noticeable, albeit these examinations have to a great extent been embraced by researchers in various disciplines.²¹⁶ This examination has distinguished political upheaval and danger to people with significant influence as the most grounded risk factors for annihilation and mass monstrosity.

In line with the thesis objectives, it is evident that two criminological theories are specifically appropriate to comprehending the state-level risk elements of decimation and atrocious crimes: the institutional anomie hypothesis and the control balance hypothesis. The institutional anomie hypothesis shares a lot of practical speaking with the broadly utilised grievance model of mass atrocities, and there is a firm shared conviction between the crisis model of state friability and control balance theory.

2.2.3.2 Institutional Anomie Theory and Control Balance Theory

The institutional anomie hypothesis by Messner and Rosenfeld²¹⁷ tends to social and financial emergencies, as well as fast change, as significant reasons for crime. Expanding on exemplary anomie and strain hypothesis, Messner and Rosenfeld recognize anomie as an outcome of institutional irregular characteristics that happen when one social foundation rules others by forcing its qualities and standards to the detriment of different organisations. Thus,

²¹⁶ Shaw M. 2012. From comparative to international genocide studies: the international production of genocide in 20th-century Europe. *Eur. J. Int. Relat.* 18(4):645–68

²¹⁷ Messner SF, Rosenfeld R. 2008. *Crime and the American Dream*. Belmont, CA: Wadsworth Publ. 4th ed.

institutional irregular characteristics by and large block open doors for gatherings and people and produce the impression of unfairness between gatherings. Albeit a few crime analysts have inexactly associated anomie and genocide.²¹⁸ Theories attached to anomie and institutional anomie remain generally untested. By the by, research proposes that these speculations would be exceptionally pertinent to genocide and mass atrocities. For example, the avoidance of specific ethnic gatherings from power is related to annihilation. Contextual analyses have also underscored how financial separation drawbacks gatherings and blocks the accomplishment of their objectives²¹⁹, and land debates and quick monetary change have been normal antecedents of annihilation too.²²⁰ In this way, even though reviews have not expressly applied anomie hypotheses to destruction and mass abomination, exact proof attached to complaints recommends that the utilization of institutional anomie hypothesis might give significant prescient power. It would likewise act as a basic evaluation of an at present undertested criminological hypothesis. Bit's control balance hypothesis places that a control irregularity inspires degenerate demonstrations by the two people and associations (counting states) to rebalance command over their activities. Control unevenness is characterized as the divergence in the proportion between how much control an individual or association applies and the sum to which they are subject, and both control shortages and control overflows can prompt crime. Albeit barely any examinations apply the control balance hypothesis to state viciousness, the hypothesis might be especially appropriate to address what can be named the conundrum of state strength and shortcomings²²¹ or the way that both solid and feeble states carry out

²¹⁸ Anderson K. 2017. *Perpetrating Genocide: A Criminological Account*. Abingdon, UK: Routledge

²¹⁹ Karstedt, S., Brehm, H.N. and Frizzell, L.C. (2020) Genocide, mass atrocity, and theories of Crime: Unlocking criminology's ..., *criminol.annualreviews.org*. Available at: <https://www.annualreviews.org/doi/10.1146/annurev-criminol-061020-022050> (Accessed: December 25, 2022).

²²⁰ Verwimp P. 2013. *Peasants in Power: The Political Economy of Development and Genocide in Rwanda*. New York: Springer

²²¹ Karstedt S. 2013a. Contextualizing mass atrocity crimes: moving toward a relational approach. *Annu. Rev. Law Soc. Sci.* 9:383–404

decimation. To be sure, states that have greater limits might have a more noteworthy capacity to satisfy their will, which could incorporate perpetrating slaughter and mass monstrosity²²²

In a dictator or extremist nation, the public authority and state offices have a huge control surplus over the populace with little oversight or restriction by common society gatherings. Such a control excess is accomplished in two ways: first, by decreasing the control level of different entertainers, especially polite society entertainers, with the overwhelming technique of spreading dread, and second, by blessing state organisations with unlimited power and opening institutional spaces where wrongdoings are perpetrated on an efficient premise.²²³ This control excess gives systems the power important to design, coordinate, and execute mass abominations and annihilation, as was confirmed by Nazi Germany and the Khmer Rouge in Cambodia. Conversely, control shortages happen when the state and its organisations miss the mark on the ability to control viciousness, which can prompt genocide and mass atrocities in no less than two ways. To start with, legislatures can involve brutality as a procedure to upgrade and recover control. For example, in Indonesia, mass killings began following the tactical upset in 1965.²²⁴ Expanding government brutality likewise followed every one of the repetitive shifts in power in Guatemala.²²⁵ In any case, a control balance shortfall of state foundations can prompt uncontrolled brutality by local armies and other nonstate entertainers, tip-top gatherings who mean to get their status, or security powers following up on their own. Such circumstances are the reason new states, fractional vote-based systems, and states with low pay per capita

²²² Colaresi M, Carey SC. 2008. To kill or to protect: security forces, domestic institutions, and genocide. *J. Confl. Resolut.* 52(1):39–67

²²³ Weerdesteijn M. 2016. The rationality of dictators: towards a more effective implementation of the responsibility to protect. PhD Thesis, Tilburg Univ., Tilburg, Neth.

²²⁴ Robinson GB. 2018. *The Killing Season: A History of the Indonesian Massacres, 1965–66*. Princeton, NJ: Princeton Univ. Press

²²⁵ Rothenberg D. 2012. *Memory of Silence: The Guatemalan Truth Commission Report*. New York: Palgrave Macmillan

have a more serious gamble of mass outrage and slaughter.²²⁶ Marks of unsteadiness in feeble states, for example, upsets and unfavourable shifts in power, conspicuously in existing gamble factor examinations of genocide and mass atrocities. On balance, control shortages appear to be more helpful for contemporary genocide and mass atrocities than the control overflow of serious areas of strength for a state. Future trials of this hypothesis ought to zero in on how various signs of control overflows and shortages — and entertainers' procedures to accomplish, address, and adapt to them lead to assorted sorts of mass brutality and shape long-haul crusades in which actors utilise focused on and unpredictable savagery reciprocally.²²⁷

2.2.3.4 Choice and Decision-Making Theories

Rational choice theory focuses on individuals' ability to decide. This hypothesis sets that choices to perpetrate crimes depend on a course of gauging the apparent expenses and advantages of doing so.²²⁸ Likewise, analyse the overall likelihood of the crime's prosperity or disappointment, and when the advantages of a given felony offset the expenses, weighted by the apparent likelihood of progress, individuals decide to carry out crimes.²²⁹ Analysts have straightforwardly utilised the rational choice theory to break down the top-ranking individuals in organisations, military, police, and security powers; here, predominant speculations stress the essential worries that lead to regular citizens focusing on and taking part in mass atrocities.²³⁰ This focus is often part of a general procedure, particularly during struggles under

²²⁶ Anderton CH, Carter JR. 2015. A new look at weak state conditions and genocide risk. *Peace Econ. Peace Sci. Public Policy* 21(1):1–36

²²⁷ Uzonyi G, Hanania R. 2017. Government-sponsored mass killing and civil war reoccurrence. *Int. Stud. Q.* 61(3):677–89

²²⁸ Elffers H. 2017. Multiple interpretations of rationality in offender decision making. In *The Oxford Handthesis on Offender Decision Making*, ed. W Bernasco, J-L van Gelder, H Elffers, pp. 52–66. New York: Oxford Univ. Press

²²⁹ Nagin DS. 2013. Deterrence: a review of the evidence by a criminologist for economists. *Annual. Rev. Econ.* 5:83–105

²³⁰ Schwartz RA, Straus S. 2018. What drives violence against civilians in civil war? Evidence from Guatemala's

the surface. On the contrary, choice theories have seldom been applied to the "infantrymen"²³¹ at the lower part of the association who are entrusted with executing mass savagery on the ground. Theories on individual contribution and direct commitment to mass brutality center less around procedure and on second thought draw from the worldview of common men in exceptional circumstances.

Milgram's renowned examinations on dutifulness and the ability of normal individuals to cause uncommon agony were massively compelling in laying out this viewpoint; as ordinary men surrender to authorities; they commit appalling brutality more "from inattention rather than from intention."²³² Accordingly, albeit the model of reasoned decision-making is applied to planning actors at the highest point of the association, actors straightforwardly engaged with mass brutality are viewed as being driven by "reactive decision making" and less thinking and as "influenced by habit, heuristics, and social desirability."²³³ Nonetheless, research shows that these people simply decide, even though their decisions are frequently compelled by orders and, as ongoing examinations have called attention to, dread that they or their families will pay a definitive expense on the off chance that they don't consent²³⁴. Modern criminological choice theories coordinate the two sorts of dynamics in a general model of wrongdoer direction²³⁵ and see the two kinds of discernment as vital and responsive as basic to understanding the cycle by which guilty parties assess the expenses related to culpable choices. With regards to mass atrocities and genocide, culprits whether at the top and remote from the brutality, coordinating

conflict archives. *J. Peace Res.* 55(2):222–35

²³¹ Brants C. 2007. Gold-collar crime. In *International Handthesis of White-Collar and Corporate Crime*, ed. HN Pontell, G Geis, pp. 309–26. Boston: Springer

²³² Reicher S, Haslam SA. 2012. Obedience: revisiting Milgram's shock experiments. In *Social Psychology: Revisiting the Classic Studies*, ed. JR Smith, SA Haslam, pp. 106–25. Los Angeles: SAGE

²³³ van Gelder JL. 2017. Dual-process models of criminal decision making. In *The Oxford Handthesis on Offender*

Decision Making, ed. W Bernasco, J-L van Gelder, H Elffers, pp. 166–80. New York: Oxford Univ. Press

²³⁴ Straus S. 2006. *The Order of Genocide: Race, Power, and War in Rwanda*. Ithaca, NY: Cornell Univ. Press

²³⁵ Elffers H. 2017. Multiple interpretations of rationality in offender decision making. In *The Oxford Handthesis on Offender Decision Making*, dew Bernasco, J-L van Gelder, H Elffers, pp. 52–66. New York: Oxford Univ. Press

at the center level, or straightforwardly involved are then viewed as judicious actors who endeavour to expand a common objective. The accomplishment of this objective will give rewards to the aggregate as well concerning people, going from professional success and securing products from casualties to procuring assets for joining a paramilitary power²³⁶; viciousness itself could likewise be capable as genuinely fulfilling.²³⁷

Besides, people's decisions might shift over the long haul from direct association to swearing off brutality or in any event, safeguarding others, given the particular powers and settings in which they end up during progressing mass atrocities.²³⁸ Criminological choice theories are overwhelmed by two hypotheses, classical deterrence and situational crime prevention theory. Deterrence theory centers around how the seriousness, celerity, and sureness of formal assents like justice responses and casual authorizations such as reputational harm, influence rational decision-making.²³⁹ Studies have commonly found that the certainty of punishment is a significant obstacle element in crime avoidance and have maintained the general significance of impediment factors while thinking about corporate crimes²⁴⁰ and psychological oppression. However, methodical trials of deterrent theory about annihilation and mass atrocities are uncommon. In one prominent review, Sikkink found that basic freedoms arraignments diminished state viciousness and restraint.²⁴¹ However, her proportion of state viciousness and constraint covers a scope of atrocious crimes, delivering the ends for genocide

²³⁶ Karstedt S. 2018. "I would prefer to be famous": comparative perspectives on the re-entry of war criminals sentenced at Nuremberg and The Hague. *Int. Crim. Justice Rev.* 28(4):372–90

²³⁷ Karstedt S. 2019. "Violence is difficult, not easy": the emotion dynamics of mass atrocities. In *Emotions and Crime: Towards a Criminology of Emotions*, ed. M H viid Jacobsen, S Walk late, pp. 60–76. New York: Routledge

²³⁸ Luft A. 2015. Toward a dynamic theory of action at the micro level of genocide: killing, desistance, and saving in 1994 Rwanda. *Sociol. Theory* 33(2):148–72

²³⁹ Nagin DS. 2013. Deterrence: a review of the evidence by a criminologist for economists. *Annu. Rev. Econ.* 5:83–105

²⁴⁰ Schell-Busey N, Simpson SS, Rorie M, Alper M. 2016. What works? A systematic review of corporate crime deterrence. *Criminol. Public Policy* 15(2):387–416

²⁴¹ Sikkink K. 2011. *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*. New York: WW Norton

and mass atrocities dubious. Besides, a couple of existing investigations of deterrence analysing genocide and mass atrocities have tracked down blended results.

In particular, Krain's examinations of the effects of military mediation²⁴² and naming and disgracing²⁴³ both tracked down substantial deterrent consequences for the greatness of annihilation. However, Krain's²⁴⁴ examinations have additionally found no impact attached to the expenses, terms, or completeness of financial and conciliatory approvals. The apparent reputational harm of such measures could likewise cause a shift from the open use of mass brutality to additional covert crimes like disappearances, as Aguilar and Kovras²⁴⁵ find for Chilean fascism. These disparate outcomes, as well as criminological experiences, recommend zeroing in on deterrent strategies on security powers as opposed to law enforcement mediation. A bunch of policing rehearses named lever-pulling policing have shown promising outcomes as far as diminishing viciousness related principally to gang activity.²⁴⁶ These practices depend on standards of "dynamic concentration of deterrence."²⁴⁷ Moving these standards to mass atrocities and genocide infers that aimless savagery can effectively be met by specific and centered prevention techniques, as Krain has exhibited for military mediations.²⁴⁸

²⁴² Krain M. 2005. International intervention and the severity of genocides and politicides. *Int. Stud.Q.* 49(3):363–87

²⁴³ Krain M. 2012. J'accuse! Does naming and shaming perpetrators reduce the severity of genocides or politicides? *Int. Stud. Q.* 56(3):574–89

²⁴⁴ Krain M. 2017. The effect of economic sanctions on the severity of genocides or politicides. *J. Genocide Res.* 19(1):88–111

²⁴⁵ Aguilar P, Kovras J. 2019. Explaining disappearances as a tool of political terror. *Int. Political Sci.Rev.* 40(3):437–52

²⁴⁶ Braga AA, Weisburd DL. 2012. The effects of focused deterrence strategies on crime: a systematic review and meta-analysis of the empirical evidence. *J. Res. Crime Delinquency* 49(3):323–58

²⁴⁷ Karstedt S. 2013a. Contextualizing mass atrocity crimes: moving toward a relational approach. *Annual. Rev. Law*

Soc. Sci. 9:383–404

²⁴⁸ Krain M. 2005. International intervention and the severity of genocides and politicides. *Int. Stud. Q.* 49(3):363–87

Situational crime prevention theory recommends inflating expenses and endeavours to guilty parties by decreasing open doors and making the execution of the crime in general more troublesome.²⁴⁹ The hypothesis centers around general instead of distal or underlying drivers, consequently tending to the series of activities and decisions that guilty parties make when they see their activities from the outset as far as possible. Critically, philosophical inspiration is doled out as an unimportant job as opposed to the "immediate motive"²⁵⁰ that drives perpetrating the crime and may be very not the same as broad philosophical psyche outlines.²⁵¹ Rather, culprits' decisions are coordinated by how they are coordinated and by working with conditions in their current circumstance, including prizes, backing, and underwriting inside assemblages and the more extensive local area, or by the defenses accommodated mass murders.²⁵² According to this viewpoint, explicit occasions and types of cooperation, as opposed to genocide or mass atrocities as a general rule, are the subject of examination. Predictable with this hypothetical methodology are standards of avoidance and intervention that target impeding open doors, safeguarding targets, and decreasing working conditions.

Discoveries from research on mass atrocities and genocide support the essential cases of situational crime prevention hypothesis. Studies show how lead culprits decisively draw in with the environment in seeking after their general objective. Proof from the Guatemala Police Chronicles²⁵³ or the mass murders in Indonesia²⁵⁴ records a progression of choices taken by top- and middle-level culprits. These choices are informed as much by quick intentions as by

²⁴⁹ Felson M. 1998. *Crime and Everyday Life*. New York: Sage

²⁵⁰ Hsu HY, Newman GR. 2017. The situational approach to terrorism. In *The Handthesis of the Criminology of Terrorism*, ed. G LaFree, JD Freilich, pp. 150–61. Oxford, UK: Wiley

²⁵¹ Anderson K. 2017. *Perpetrating Genocide: A Criminological Account*. Abingdon, UK: Routledge

²⁵² Fujii LA. 2009. *Killing Neighbors: Webs of Violence in Rwanda*. Ithaca, NY: Cornell Univ. Press

²⁵³ Schwartz RA, Straus S. 2018. What drives violence against civilians in civil war? Evidence from Guatemala's conflict archives. *J. Peace Res.* 55(2):222–35

²⁵⁴ Robinson GB. 2018. *The Killing Season: A History of the Indonesian Massacres, 1965–66*. Princeton, NJ: Princeton Univ. Press

all-encompassing points and worked with by apparent hierarchical objectives. For example, in Indonesia as well as in Cambodia²⁵⁵, authoritative tensions coming about because of mass detainment were significant activities of waves of mass murders. At the lower level, culprits' support is driven by valuable open doors, regarding closeness to the two targets (casualties) and different culprits and co-wrongdoers.²⁵⁶ In Rwanda, exposure to radio misleading publicity corresponded with elevated degrees of nearby support for mass murders, as defence and endorsement of the murders spread in villages.²⁵⁷ The examples of mass murders in Rwanda were in this way connected with the qualities of guilty parties, designated casualties, and working with conditions.²⁵⁸ Mass atrocities and genocide follow non-random sequences across reality, like the normal criminal occasions that are the focal point of situational crime prevention theory. As more disaggregated information on mass atrocities and genocide becomes accessible, this criminological hypothesis offers a wealthy proof base and colossal potential for risk evaluation, counteraction, and intervention, especially on the local level.

2.3 Summary of Major Theories

Theory	Pioneers	Proposition	Critics	Relevance to Your Topic
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²⁵⁵ Tyner JA. 2018. The Politics of Lists: Bureaucracy and Genocide under the Khmer Rouge. Morgantown, WV: W. Va. Univ. Press

²⁵⁶ McDoom OS. 2014. Predicting violence within genocide: a model of elite competition and ethnic segregation from Rwanda. Political Geogr. 42:34–45

²⁵⁷ Yanagizawa-Drott D. 2014. Propaganda and conflict: evidence from the Rwandan genocide. Q. J. Econ. 129(4):1947–94

²⁵⁸ Verwimp P. 2013. Peasants in Power: The Political Economy of Development and Genocide in Rwanda. New York: Springer

War and Genocide: A Sociological Approach	Shaw Martin	Genocide studies need a sociological framework detailing that genocide is a kind of social action and social connection and describing its usual links with other kinds of social action and structure		The theory provides a sociological perspective of genocide giving a deeper insight into how genocide can occur
The Dolus Specialis (Particular Intent) Of Genocide:	Totten And Bartrop's Genocide Classification	Grasping motives behind genocide as entirely disastrous activities is not just sociologically and historically essential but also for lawful repercussions of prosecution. Totten and Bartrop argue that genocide is a reasonable tool to accomplish a goal, not just a passionate statement.	Goldsmith, Irvin-Erickson, William Schabas	The supposition attempts to define and give reasons as to why genocide might occur. Thus, in this thesis, the theory will use the basis of the definition used to attempt and identify techniques for preventing genocide
Genocide as A Degree of Social Control	Bradley Campbell	regard genocide and other occurrences as variables. The theory describes various variable elements of genocide and its happening and	Horowitz, Jaret, Mann van den Berghe and Weber	The theory provides a sociological aspect of genocide and how it is used as a measure of control by governments and politicians.

		alterations in genocide actions like who takes part in it mainly, who is the victim, and who is saved from the attacks or not attacked.		Therefore, it contributes to the thesis by giving some root causes of genocide
Genocide, Mass Atrocity, and Theories of Crime: Unlocking Criminology's Potential	Susanne Karstedt, Hollie Nyseth Brehm, and Laura C. Frizzell ²	The annual review attempts to analyse genocide and mass atrocities through criminology using both organisational and individual theories to explain genocide		The review offers very vital theories to the thesis that attempt to explain why genocide and mass atrocities occur using both organisational and personal-based theories.

2.4 Major empirical work

This section highlights the various studies by different researchers on the issues of the prevention of genocide in Africa. It will comprise researchers such as Jeremy Sarkin, Björn Schiffbauer, Julia Klaus, and others who attempt to give a clear picture and origin of genocide prevention from legal and social perspectives. The section will start by discussing “The Duty to Prevent Genocide under International Law: Naming and Shaming as a Measure of Prevention,” by Björn Schiffbauer.

2.5 Summary of major empirical work done by various authors

Theme	pioneers	proposition	critics	Relevance to your topic
Positive	Jeremy Sarkin	Conventional ideas about a state's sovereignty restrict the domestic matters of that government within the confines of that country, irrespective of its impunity, no matter how inhuman, towards its citizens	Glover, Nicholas, "A Critique of The Theory and Practice of R2p" [2017] <i>E-International Relations</i>	The thesis gives insights into, the growth and transition of the R2P principle which will help provide vital guidance throughout the thesis
Negative	Björn Schiffbauer	The thesis "The Duty to Prevent Genocide under International Law: Naming and Shaming as a Measure of Prevention," by Björn notes that contrary to punishing and indicting the culprits of genocide, the Genocide Convention does not talk about the ways of averting	Chalmers, William, <i>Never Again: The Genocide Convention in Review</i> (Masters, Seton Hall University, 2015)	The thesis outlines that it is a basic condition of both international law and the very existence of persons that any exercise or any action of assisting, supporting, or carrying out genocide should be prevented immediately. It gives a legal aspect of preventing genocide

		future acts of genocide		
Neutral				

2.6 Summary of the Chapter

The chapter has attempted to reveal the existing knowledge and give a more insightful view surrounding the constructs and the relationships carried out by several studies. a review of the literature was conducted as below:

2.6.1 Major theories covered

1. Genocide as A Degree of Social Control
2. The Dolus Specialis (Particular Intent) Of Genocide: Totten and Bartrop's Genocide Classification
3. War and Genocide: A Sociological Approach

2.6.2 Key empirical research

1. The Duty to Prevent Genocide under International Law: Naming and Shaming as a Measure of Prevention
2. The Role of the United Nations, the African Union, and Africa's Sub-Regional Organisations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect

2.6.3 Connection to Other Chapters

Imperatively this chapter is significant in providing necessary information for other chapters of the project. A good example is that it will provide a basis for recommendations by the researcher to the UN, governments, and other security agencies on the prevention of Genocide, implementation of different preventive apparatus, and deep understanding of genocide causes. Additionally, through the evaluation of different historical and current

materials, the chapter will help identify issues and objectives under examination. Therefore, the researcher will be in a better position to choose the appropriate research methodology, data collection tools, and also analysis tools for the thesis.

2.7 The Prevention processes

According to the Budapest Center for Mass Atrocities, The Atrocity Prevention Lens has at least four reasons for embracing an atrocity prevention lens as clear from conflict prevention, the latter of which broadly deals with aggressive disputes between armed party actors.²⁵⁹ the first reason is that mass atrocities might happen beyond customary outfitted struggle or escalate once a truce has been ended.²⁶⁰ Even though atrocities beyond armed brutality contain a minority of circumstances, they are still adequately normal to warrant the improvement of atrocity counteraction techniques unmistakable from conventional dispute resolution. The second one is that mass atrocities are by definition felonies, and in this manner generally unlawful. A similar regulating judgment does not hold for all contentions, where the legitimacy of the utilization of vicious power is authorized and controlled (in principle, if not in practice) by international law. The third one is, that prevention does not end when the massacres commence, regardless of whether the extent of activity is seriously restricted; there might be valuable chances to minimize civilian distress and give help,

regardless of whether the armed conflict continues. The fourth and last reason is that alleviating mass atrocities involves creating predictive apparatus and violence-escalating models that do not guarantee to track straightforwardly predicting armed conflict. States might quell regular citizen populaces without confronting any outfitted opposition, and in this

259 Verdeja, Ernesto, "Critical Genocide Studies and Mass Atrocity Prevention" (2019) 13 Genocide Studies and Prevention 111

260 Bellamy, Alex, Mass Atrocities and Armed Conflict: Links, Distinctions, and Implications for the Responsibility to Protect' (Policy Analysis Brief, Stanley Center for Peace and Security, January 2011)Stanleycenter.org < <https://stanleycenter.org/publications/pab/BellamyPAB22011.pdf>>.

manner, standard conflict counteraction hypotheses are not effectively applicable.²⁶¹ Given these justifications for an emphasis on atrocious crimes as unique from the armed dispute, what are the essential components of current liberal atrocity alleviation? Albeit specific phrasing and conceptualization might contrast, contemporary atrocity counteraction has chosen a somewhat steady arrangement of practices.²⁶² modern prevention is ordinarily separated into two overall areas: structural and operational. The former concentrates on the perennial alleviation of harm, for example, by carrying out risk evaluations, advancing liberal democracy, dealing with significant economic and political inequalities, promoting the rule of law and order, empowering incorporation into the worldwide industrialist economy, and supporting human welfare and advancement, among different techniques. The latter, that is Operational prevention concerns circumstances where mass atrocities are happening or liable to do as such. The strategies here might incorporate early warning surveillance, diplomatic pressure on state leaders, peace negotiations, economic sanctions, humanitarian help for the endangered populaces, and at its limit, military intervention.²⁶³

Another area of significance is the one that deals with the alleviation and the recurrence of atrocious crimes, and it is broadly the understanding of transitional justice, political reconciliation, and perennial societal peace-building. Inside every area, the set of accessible strategies might be pretty much or less forceful to motivate changes in conduct and not all methodologies will be utilised. More than two decades of examination and practice have helped sharpen and calibrate them, and the accessible blend outlines the turn of events and development of prevention thinking.²⁶⁴ We presently have a better comprehension of the short

261 Waller, James, *Confronting Evil: Engaging Our Responsibility to Prevent Genocide* (Oxford University Press 2016)

262 Verdeja, Ernesto, "Critical Genocide Studies and Mass Atrocity Prevention" (2019) 13 *Genocide Studies and Prevention* 111

263 Waller, James, *Confronting Evil: Engaging Our Responsibility to Prevent Genocide* (Oxford University Press 2016)

264 Rosenberg et al (eds), *Reconstructing Atrocity Prevention* (Cambridge University Press 2016)

and midterm drivers of brutalities, more noteworthy information on the essential signs of onset, and awareness of the significance of supporting "upstream" counteraction strives. By the by, the predominant atrocity counteraction lens contains various constraints that have pragmatic outcomes. These restrictions require critical examination and involve: the removal of worldwide and territorial contextualization in Favor of the country state as the object of investigation and treatment; the over-lap between counteraction and securitization; restricted conceptualizations of savagery; the accentuation on expert knowledge above concrete, embedded, confined and historical information; and profoundly particular commitment with common society and nearby actors.

Given the several components introduced above, various vital mandates for prevention follow. The chapter recognizes some areas that are core to a genocide studies strategy for prevention. The list is not intended to be comprehensive as in various circumstances, a critical technique advances a shift in our analytical point of view on the methods in which various prominent suppositions conceal significant worldwide power relations and patterns that might fuel brutality. In different cases, the points beneath concern developing or broadening claims that are as of now found in prevailing prevention work -, for example, privileging the significance of civil society actors - however doing such in manners that might make transformative impacts. It is noteworthy that, on the off chance that we keep on utilizing the language of a prevention lens, then questions about what is in focus and what stays obscured continue to linger in our minds.

2.7.1 International Global and Regional Contextualization

genocide counteraction should extend its utilization of worldwide and territorial scrutiny. Louise Wise highlights the significance of "complex structural analysis of the local and regional contexts of genocidal violence together with their insertion into global power

relations”²⁶⁵ as a critical beginning stage of prevention thinking. He convincingly contended that the sites of genocidal brutality have gotten across borders of the earth as per historical changes in worldwide power arrangements brought about by imperialism, the breakdown of empires, and the Cold War.²⁶⁶ In the modern day, prevention demands substantial focus on, and mitigation of, these enormous cycles of savagery displacement by creating and upgrading apparatus that limit the military, political, and financial impropriety of strong nations. The propensity in counteraction practice of regarding nations as discrete, secluded cases risks regenerating a focus on the (very real and brutal) side effects of local stresses, weakness, and crumbling at the cost of looking at their bigger primary causes and empowering influences. This does not imply zeroing in solely on worldwide variables. Contrastingly, it demands evaluating systematically the methods by which the variables

Instead, it requires examining systematically how these factors overpower regional, national, and local sources of strength. Shaw notes that two points follow for alleviation purposes: maiden one is to investigate how modern worldwide political dynamics organize and propel regional and domestic brutality, comprising the duties of “wars against terrorism,” struggles among strong nations and alliances over spheres of impact across Asia, Europe, Latin America, North Africa and the Middle East, and global economic and environmental/climactic stresses that debilitate the already weak nations in the worldwide south. Ameliorative prevention initiatives classic to liberal methodology look to contain national outbreaks of annihilation or extensive murders, yet frequently just hastily recognize and afterward 'bracket out' how territorial and worldwide power legislative issues may give rise to or intensify localized brutality. All things considered, the thesis of worldwide power governmental issues ought to be at the focal point of atrocity prevention. Atrocity counteraction ought to

265 Louise Wise, 'Genocide in Sudan as Colonial Ecology' (2020) 14(2) *International Political Sociology* 129.

266 Horkheimer, Max and Matthew J O'Connell (eds), “Traditional and Critical Theory” in *Critical Theory: Selected Essays* (Continuum,1995) 188

straightforwardly challenge, for example, the United States of America, Russian, and Chinese global strategies that act as drivers of political brutality in various regions, as well as examine how the United Nations and regional administration associations might legitimize the interests of strong states in a ploy to get their transient help.

The thesis also noted that counteraction to atrocious crimes demands more focus on issues of unequal worldwide economic integration that might enfeeble local institutions, as well as how environmental destabilization may fuel up domestic sources of brutal fighting where governance institutions continue to be frail. At the center of all, this includes critiquing, and reconsidering, what is implied by that empty signifier, "international community," that infrequently works to legitimize brutality and the inconsistent appropriation of global power. As pointed out by one Nigerian civil society activist, The Europeans, and particularly the Americans, discuss the awful brutality of African [jihadi] factions, yet they do not question, 'how did our actions in Libya worsen these problems? How are our counter-terrorism programs across the region encouraging state repression and harming civil society?'²⁶⁷

More so, the UN needs to put more focus on how, and under what circumstances, brutality moves over state jurisdictions. Atrocious crimes are not kept within neat political borders. Violence frequently follows a contagion impact, spreading to adjoining regions and subverting them. The practitioner community is very much aware of this, obviously, however, cross-national examinations frequently still honor one nation and include appraisals of worldwide and transnational elements to the degree that those elements influence the primary state. Further examination is expected for understanding how these viciousness elements impact each other, and consequently what extra prevention techniques are vital yet might be

267 Thaler, Mathias, *Naming Violence: A Critical Theory of Genocide, Torture and Terrorism* (Columbia University Press 2018)

disregarded. More prominent consideration regarding areas of viciousness, and not just nation cases, can help this. Important to note that a portion of this is now occurring: The United States Institute of Peace's project evaluating Africa's Lake Chad locale - as opposed to Nigeria, Niger, Chad, and Cameroon separately or dyadically - is giving more noteworthy experiences into how various vectors of brutality require various techniques for counteraction and peace-building,²⁶⁸ while current thesis projects breaking down brutality in the African Great Lakes region have created cross-border surveillance and prevention.²⁶⁹

States are the ones responsible for defining the Securitization Atrocity response. Regularly, politicians take on a national safety litmus test to survey the practicality, and subsequently esteem, of counteraction as far as whether it promotes specific vital national interests - riches, influence, validity, and at last security - as opposed to as far as an ethical shame to minimize human suffering somewhere else. This methodology is still with us today: the Central Intelligence Agency's (CIA) occasional "Worldwide Threat Assessment of the US Intelligence Community" is one of the most effective developments of prevention that anyone could hope to find from a national safety point of view. A public outline of the discoveries of seventeen intelligence organisations, the 2018 report for example expresses that its charge is to give insight expected to "protect American lives and America's interests anywhere in the world"²⁷⁰.

It is in this setting that "violent even regime threatening instability and mass atrocities" is introduced as a threat to the vital interest of the United States of America, and consequently any counteraction work ought to be conducted to promote, or possibly safeguard, those

268 Keucheyan, Razmig, *The Left Hemisphere: Mapping Critical Theory Today* (Verso 2013)

269 Verdeja, Ernesto, "Critical Genocide Studies and Mass Atrocity Prevention" (2019) 13 *Genocide Studies and Prevention* 111

270 Martin Shaw, "The Concept of Genocide: What Are We Preventing?" in *Genocide, Risk and Resilience: An Interdisciplinary Approach*, eds., Bert Ingelaere, et al. (New York: Palgrave Macmillan, 2013), 31

interests.²⁷¹ Worth noting is that the National Security approach has forever been unequivocal in tying the decrease of human suffering internationally to advancing significant national.²⁷² What requires more noteworthy parsing is the way from the September 11, 2001, terrorist attack, the liberal way to deal with atrocious crimes has become to some degree divided, with one strand turning out to be strongly motivated by security talk, inspirations, and goals. A significant number of intergovernmental and nongovernmental associations (NGOs) actually participate in practical as well as policy-focused atrocity counteraction established in liberal standards, yet counteraction has likewise been mostly reclassified and instrumentalized somewhere else as a part of national safety.

Securitization is particularly obvious in peace-building conversations about the Middle East and North Africa, where the "resurgence of the state-centric security agenda" has "appropriated peacebuilding,"²⁷³ comprising of prevention, however, it is not restricted exclusively to this region. The outcome is a restriction of what meets the criteria of peacebuilding, and its combination with political steadiness and dispute management. The strains between these two strands of liberal counteraction endeavors give no indications of decreasing.

It is in this context that "violent even regime threatening – instability and mass atrocities" is presented as a danger to core US interests, and thus any prevention work should be carried out to advance, or at least protect, those interests.²⁷⁴ The national security approach has always been explicit in tying the reduction of human suffering abroad to promoting core

271 Martin Shaw, *Genocide and International Relations: Changing Patterns in the Transitions of the Late Modern World* (Cambridge: Cambridge University Press, 2013)

272 Verdeja, Ernesto, "Critical Genocide Studies and Mass Atrocity Prevention" (2019) 13 *Genocide Studies and Prevention* 111

273 Ibid.

274 Office of the Director of National Intelligence, "Worldwide Threat Assessment of the US Intelligence Community" (Washington, DC: Office of the Director of National Intelligence, 2018), 2

national interests.²⁷⁵ What requires greater parsing is how since the September 11, 2001 terrorist attacks, the liberal approach to atrocity prevention has become somewhat bifurcated, with one strand becoming heavily influenced by security discourse, motivations, and objectives. A substantial number of intergovernmental and nongovernmental organisations (NGOs) still engage in practical and policy-focused atrocity prevention rooted in liberal norms, but prevention has also been at least partly redefined and instrumentalized elsewhere as an aspect of national security. Securitization is especially evident in peace-building discussions about the Middle East and North Africa, where the “resurgence of the state-centric security agenda” has “appropriated peacebuilding,”²⁷⁶ including prevention, though it is not limited only to this region. The result is a narrowing of what qualifies as peacebuilding, and its conflation with political stabilization and conflict management.²⁷⁷ The tensions between these two strands of liberal prevention efforts show no signs of decreasing.

A good instance of this narrowing between security and liberal debates can be seen in a compelling genocide prevention report from the Obama era. Following the acknowledgment of how genocide is “horrific” and a “direct assault on universal human values,” Madeline Albright and William Cohen’s *Preventing Genocide* asserts unconditionally that, “genocide and mass atrocities also threaten core US national interests.” they continue to state that genocide and atrocious crimes depend on and propel other dangers in countries that are fragile and condone corruption, with high-risk over-spill impacts that have no regards to boundaries. Therefore, if the United States does not take part in alleviating these felonies, then the state will imminently suffer huge expenses in providing food for the millions of refugees and

²⁷⁵ Fabian Klose, ed., *The Emergence of Humanitarian Intervention: Ideas and Practice from the Nineteenth Century to the Present* (Cambridge: Cambridge University Press, 2016)

²⁷⁶ Necla Tschirgi, “Securitization and Peacebuilding,” in *Routledge Handthesis of Peacebuilding*, ed., Roger MacGinty (New York: Routledge, 2013), 208

²⁷⁷ Edward Newman, “Peacebuilding as Security in Failing and Conflict Prone States,” *Journal of Intervention and State building* 4, no. 3 (2010), 305-322

attempting to control perennial catastrophes. They continue to state that on top of the large costs and management of crises, the United States of America's reputation and authority are endangered when it fails to join hands with other worldwide stakeholders to alleviate genocide and mass atrocities.²⁷⁸

Preventing Genocide legitimizes counteraction as well as intervention on both humanitarian and national security grounds. The later upsetting pattern in certain countries including the United States, toward dictator populism and xenophobic, racist legislative issues has altered prevention legitimization further away from humanitarianism toward national security and counterterrorism.²⁷⁹ Fundamental counteraction work must investigate this digressive expulsion, which compares Securitization and peacebuilding including prevention, and look at exhaustively its functional results. For example, what are the particular security goals that outline strong states' choice of atrocity cases and prevention interests? What are the practical results of these decisions - in other words, which cases are forgotten about, and why? How are liberal standards and talk appropriated to propel security interests and kill revolutionary studies of state power?

Additionally, there are a bunch of sub-national institutional inquiries around securitization. States are not solid, and different government organisations might conflict with each other in moving toward counteraction as well as human rights advocacy.²⁸⁰ imperatively, there can be a ton of departmental conflicts, however, that would also imply that there is a variety of conclusions on what national security implies and the general weight that ought to

278 Albright and Cohen, *Preventing Genocide*, xv

279 Verdeja, Ernesto, "Critical Genocide Studies and Mass Atrocity Prevention" (2019) 13 *Genocide Studies and Prevention* 111

280 Verdeja, Ernesto, "Critical Genocide Studies and Mass Atrocity Prevention" (2019) 13 *Genocide Studies and Prevention* 111

be given to human rights internationally. There is not only one point of view that everybody has. Given these internal distinctions, various inquiries follow: how do different government organisations figure out their prevention portfolios? Who settles conflicts between contending alleviation needs, and utilizing what standards? What are the formal and casual regulatory components for settling conflicts, and what is preserved and what is thrown away? How could human rights protection standards be protected from risky securitization pressures in policy creation and implementation?

2.7.3 Enlarging the brutality spectrum

Significantly, extensive murders and escaping civilians continue to propel substantial levels of political consideration and hence worldwide prevention needs. This short-term, reactive methodology is surely a consequence of media framing, popular pressure, and the constrained acknowledgment of leaders, yet it is not just this; likewise, there is a more profound hypothetical near-sightedness that contributes straightforwardly to this issue. Taking on a dialectical sensitivity to our basic ideas urges us to investigate predominant plans of atrocious crimes and extend the sorts of damages that need consideration from the counteraction community.²⁸¹ One result of a dialectical methodology is an exhaustive examination of prevailing hypothetical definitions of major ideas and their risky viable outcomes. Benjamin Meiches, for instance, has influentially investigated the "hegemonic" comprehension of genocide that underscores extensive murders above different types of viciousness, generally static collective personality classifications, and an exorbitantly thin comprehension of intentionality- for abandoning conversations regarding what sorts of brutality require judgment and what factions of persons merit safeguarding.

281 Laura Collins, "Rethinking Genocide, Mass Atrocities and Political Violence in Africa," *Genocide Studies and Prevention* 13, no. 4 (2019), 2-13

According to Benjamin, hegemonic comprehension “is thus the effort to normalize and depoliticize destructive processes that do not fit with dominant perceptions about identity, violence, and history.”²⁸² Generally, the risk is that dominant plans of our essential ideas like genocide may thusly limit the significance of different types of brutality. For example, current atrocity counteraction work considers underlying viciousness, those profoundly entrenched and systematic harms against weak populaces that are recreated after some time. This sort of viciousness is structural since it is woven into a general public's economic, political, and social correlations, reaffirmed through proper strategies and casual practices, and legitimized by the standards and values of the more extensive culture. Structural brutality ordinarily shows up as a type of social anomie, where gatherings carry on with uncertain lives marked by high levels of destitution, joblessness, healthiness, poor mental well-being, displacement, emotional and physical uncertainty, high death rates, and debilitated social bonds.²⁸³ It is routinized and in this manner naturalized - treated as a piece of the given, if tragic, situation - making it challenging to pinpoint a particular arrangement of dependable agents, regardless of whether its ramifications are desperate and even genocidal.²⁸⁴ It is evident that the prevention specialists are all aware of the several prolonged, structural causes of mass atrocities, yet they largely concentrate on the actual outbursts of brutality, murders, ethnic cleansing, torture, and many more. Subsequently, it is challenging to consider the questions about poverty and perennial discrimination in prevention, apart from in the most casual ways. This is a result of not having the resources to do the task and also not being able to frankly prioritize it. A good example is the case of the United Nations Security Council's focus on the Rohingya killings and major

282 Benjamin Meiches, *The Politics of Annihilation: A Genealogy of Genocide* (Minneapolis: University of Minnesota Press, 2019), 13

283 Paul Farmer, “An Anthropology of Structural Violence,” *Current Anthropology* 45, no. 3 (2004), 305-325; Johan Galtung, “Violence, Peace, and Peace Research,” *Journal of Peace Research* 6 no. 3 (1969), 167-191.

284 Sheri Rosenberg and Everita Silina, “Genocide by Attrition: Silent but Effective,” in *Genocide Matters: Ongoing Issues and Emerging Perspectives*, eds., Joyce Apsel and Ernesto Verdeja (New York: Routledge, 2013)

displacements of the people. Worth noting is that in particular, the routinization of these crimes is what makes them unseen apart from the periodic moments when the government exerts more distinct brutality, killings, torture, and abductions to strengthen structures of repudiation and alienation. Critically, structural brutality frequently happens throughout a significantly longer period. This is most clear in the treatment of native populaces in settler societies, where the course of genocidal weakening happens over a period traversing many years or hundreds of years and on certain occasions proceeds to this day.²⁸⁵ Vitally, structural viciousness can likewise bring about later cases of genocide, to the extent that the fundamental states of social activity are obliterated over the long haul and the collective identity of the faction vanishes.

Therefore, the United Nations must utilise a strategic methodology that calls for assessing how the prominent ideas of brutality meticulously eliminate such kinds of damages and experiences as well as results in accentuating serious structural brutality. This implies focusing on the current structural counteraction aspect by dedicating more noteworthy consideration regarding how fundamental and long-haul cycles of abuse, alienation, weakness, and cultural imperialism, utilise Iris Marion Young's terms,²⁸⁶ are connected to the different types of direct brutality that overwhelm the consideration of the prevention community. It likewise implies moving past the reasoning of these damages simply as antecedents to atrocities and alternatively viewing them as critical on their own, demanding prompt attention.

285 Verdeja, Ernesto, "Critical Genocide Studies and Mass Atrocity Prevention" (2019) 13 *Genocide Studies and Prevention* 111

286 Ibid.

CHAPTER THREE

DECOLONISATION, STATE FORMATION, GENOCIDE AND INTERVENTION 1945 TO 2011

3.1. Introduction

The purpose of this thesis was to investigate the role played and efforts forged by the United Nations in combating genocide in Africa (Melvern., 2020). The case of South Sudan within the Responsibility to Protect Accord. It was also to emphasize the disputes that emerged within Africa to address the domestic wars in South Sudan. In doing so, this chapter will briefly describe the various tribunals, that is the ICTR as an example set up by the security agency (United Nations) and other approaches such as the deployment of the UNMISS, spearheading the implementation of the principle of responsibility to protect and the facilitation of the formation of the Hybrid Court of South Sudan to prevent genocide.

3.2 State Formation and Decolonization (1945–2011)

The post-1945 era witnessed an unprecedented wave of decolonization, particularly in Africa, as former colonies gained independence from European powers. This process was largely driven by the weakening of colonial empires following World War II, rising nationalist movements, and international pressure from institutions such as the United Nations (UN). The establishment of the UN in 1945 and the adoption of the UN Charter played a crucial role in facilitating self-determination, leading to a significant decline in direct colonial rule.²⁸⁷

Between 1950 and 1980, most African states achieved independence, starting with Libya in 1951, followed by Ghana in 1957 under Kwame Nkrumah's leadership, and subsequently a series of independence declarations across the continent. However, the

²⁸⁷ Martin Meredith, *The Fate of Africa: A History of Fifty Years of Independence* (PublicAffairs, 2005) 89.

decolonization process did not always result in stable governance. Many new states inherited arbitrary colonial borders that ignored ethnic, linguistic, and religious divisions, leading to internal conflicts.²⁸⁸

3.2 Genocides in Post-Colonial States

The post-independence period in Africa and other regions saw numerous genocides, largely driven by ethnic tensions, political instability, and weak governance structures. Some of the most devastating cases include:

The Rwandan Genocide (1994) – The most infamous case of post-colonial genocidal violence, where the Hutu-led government orchestrated the mass killing of an estimated 800,000 Tutsi and moderate Hutu civilians over 100 days. The genocide was the result of long-standing ethnic divisions exacerbated by colonial rule and a failure of international intervention, as the UN Assistance Mission for Rwanda (UNAMIR) lacked the mandate to prevent the killings.²⁸⁹

The Sudanese Genocide in Darfur (2003–Present) – The Sudanese government, under President Omar al-Bashir, launched attacks on non-Arab ethnic groups in Darfur, resulting in over 300,000 deaths and widespread displacement. The International Criminal Court (ICC) later issued an arrest warrant for Bashir, citing crimes against humanity and genocide (Alex J Bellamy, *Mass Atrocities and Armed Conflict: Links, Distinctions, and Implications for the Responsibility to Protect*.²⁹⁰

²⁸⁸ Ibid.

²⁸⁹ Harper Perennial, 2002. 329.

²⁹⁰ Policy Analysis Brief, Stanley Centre for Peace and Security, January 2011) 5.

The Ethiopian Red Terror (1976–1978) – Following the fall of Emperor Haile Selassie, the Derg military regime engaged in widespread political killings, with estimates of up to 500,000 people being executed or forcibly disappeared, reflecting the dangers of authoritarian rule in newly independent states.²⁹¹

The Biafran War and Famine (1967–1970) – In Nigeria, ethnic tensions led to the secession of Biafra and a brutal civil war. The Nigerian government's blockade of the region led to a devastating famine that killed over one million people. While not classified as a genocide by all scholars, it remains a crucial example of post-colonial ethnic violence.²⁹²

3.3 International Interventions and Their Effectiveness

Despite numerous instances of genocidal violence, the international community has struggled to effectively prevent or mitigate mass atrocities in post-colonial states. Some key interventions include the UN's Failure in Rwanda (1994). The United Nations Assistance Mission for Rwanda (UNAMIR) was deployed but had an extremely limited mandate, preventing it from effectively intervening to stop the genocide. The lack of action remains one of the UN's most widely criticized failures

3.3.1. The ICTR in Rwanda

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens

²⁹¹ Kjetil Tronvoll and Richard Reid, *The Ethiopian Red Terror Trials: Transitional Justice Challenged* (James Currey, 2009) 57

²⁹² John de St. Jorre, *The Nigerian Civil War* (Hodder & Stoughton, 1972) 245.

responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as "the International Tribunal for Rwanda") shall function by the provisions of the present Statute.

This court was established to punish genocide perpetrators locally. This development did not work in the accused Favor because only the Hutu culprits were prosecuted as members of the RPF who conducted the same felonies went scot-free.²⁹³ The RPF is the governing political party in the Republic of Rwanda under the leadership of President Paul Kagame (Arieff and Terrell., 2018). The party is also accredited to end genocide by subduing the army and perpetrators of genocide. Notably, the Tutsi hold the lion's share of the RPF. they were the primary target when genocide occurred. Institutions like Human Rights Watch have detailed the indecent assaults of international law carried out by the party, comprising killings of people to stop the genocide and set up the party's superiority afterward via collective murdering of persons. The part is also detailed to have carried out human rights mistreatment before and throughout the genocide (Donnelly and Whelan., 2020). Allegedly, the UN Commission for refugees received The Gersony report, which detailed the human rights violations committed by the RPF.

However, the agency, with the backing from the US leadership, resolved to not publish it because of the volatile situation of the then Rwandan state. From this perspective, the UN was working within a political demand that would reveal human rights violations (Ackerly., 2018). Members of the RPF were guarded by the political pressures between the Rwandan authority, the United Nations, and the US and would not be prosecuted at the UN ad hoc court

²⁹³ Sluiter, Goran, and Koen Vriend. "Defending the 'Undependable'? Taking Judicial Notice of Genocide." *The Genocide Convention: The Legacy of 60 Years*. Netherlands: Martinus Nijhoff, 2012. 81-93. Print.

for Rwanda. Thus, as much as there is the lawful existence of genocide's precedence, political demands also dictate who is charged for these atrocious crimes.

The thesis looks into Kambanda's case, who was the Rwandan prime minister and was charged with genocide (Sebarenzi., 2018).²⁹⁴ Schabas affirms that "genocide was generally committed under the direction or, at the very least, with the benign complicity of the State where it took place".²⁹⁵ Documented as a creed to control and impose permissiveness, it was one in hardly anywhere government leaders were not only likely to be punished but regularly the most probable to be prosecuted for the felony of genocide.²⁹⁶ For instance, in case no. ICTR 97-23-S, Prosecutor v. Kambanda in the ICTR. This was not only the first time the accused admitted to carrying out genocide but was also the first time a state leader got charged with genocide, thus being sentenced to life imprisonment (Magnarella., 2018).²⁹⁷

The initial genocide court cases by the ICTR in 1997 aroused definitions of the Geneva Conventions, creating an exemplar in the case of Jean-Paul Akayesu and affirming that rape is regarded as a genocide instrument (Zipfel, and Mühlhäuser et al., 2019).²⁹⁸ Declared guilty of genocide on September 2, 1998, Akayesu became the first to be sentenced in an international tribunal.²⁹⁹ The court case became a milestone case for international law because of the chamber verdict explaining the genocide convention. In the course of the Akayesu case, the tribunal decided to uphold the original intentions of the treaty authors, declaring that it is

²⁹⁴ United Nations Mechanism for International Criminal Tribunals." Home. ICTR. [Http://Unictr.Unmict.Org](http://Unictr.Unmict.Org).

²⁹⁵ Schabas, William A. *Genocide in International Law: The Crime of Crimes*, 2nd Edition.55 Cambridge: Cambridge University Press, 2000.

²⁹⁶ Ibid.

²⁹⁷ United Nations Mechanism for International Criminal Tribunals." Home. ICTR. [Http://Unictr.Unmict.Org](http://Unictr.Unmict.Org).

²⁹⁸ Ibid.

²⁹⁹ See "Rwanda: The First Conviction for Genocide." United States Holocaust Memorial Museum. United States Holocaust Memorial Council, June 20, 2014. [Http://www.ushmm.org/Wlc/En/Thesis.Php?Moduleid=10007157](http://www.ushmm.org/Wlc/En/Thesis.Php?Moduleid=10007157).

essential to honor their intent. This intention, as stated in the travaux préparatoires, was clearly to guarantee the safety of every stable and permanent group.³⁰⁰

This explanation of a sect is broader and all-round, permitting factions that debatably are not found within the four classes to be safeguarded within the Convention (Martin., 2018). The chamber's explanation of the section equally borrows from Lemkin's notion before enlisting particular factions as part of the law and when the initial purpose was to safeguard any sect that lived in a physical, cultural, and social manner. Trials like that of Prosecutor v. Akayesu offer rationale as to why genocide is sternly indicted regularly.

Essentially, cases of genocide with the conviction of state leaders set examples in international criminal law. Akayesu, who was a former teacher, got assigned bourgmestre and thus had the authority of his community, law enforcement officers, and the gendarmes available in every community .as the headman throughout the genocide, he promoted rape as an instrument of genocide.³⁰¹

From 1945 to 2011, the process of decolonization resulted in the formation of numerous new states, particularly in Africa. However, the legacy of colonial rule, coupled with political instability and ethnic divisions, has led to repeated instances of genocidal violence. While international interventions have been attempted in various cases, their effectiveness has been mixed, with failures such as Rwanda overshadowing limited successes like Kosovo. The independence of South Sudan in 2011 marked a significant moment in state formation but also underscored the persistent risks of post-colonial violence and instability.

³⁰⁰ Chamber I: Judgment". United Nations International Criminal Tribunal for Rwanda. ICTR, September 2, 1998. [Http://Www.Unictt.Org/Sites/Unictt.Org/Files/Case-Documents/Ictr-96-4/Trial-Judgements/En/980902.Pdf](http://www.unictt.org/sites/unictt.org/files/case-documents/ictt-96-4/trial-judgements/en/980902.pdf).

³⁰¹ "ICTR, The Prosecutor V. Jean-Paul Akayesu." ICRC. ICRC, August 20, 2015. Web. [Https://Www.Icrc.Org/Casethesis/Doc/Case-Thesis/Ictr-Akayesu-Case-Thesis.Htm](https://www.icrc.org/casethesis/doc/case-thesis/ictt-akayesu-case-thesis.htm).

3.4 Genocide Jurisprudence and the Limits of Legal Accountability

Since 1945, genocide jurisprudence has developed incrementally and reactively. Although the Genocide Convention was adopted in 1948, meaningful judicial interpretation did not emerge until the establishment of ad hoc tribunals in the 1990s. The ICTR and ICTY marked the first sustained efforts to operationalise genocide law, producing landmark judgments that clarified elements such as intent, group protection, and individual criminal responsibility.³⁰² Despite these advances, genocide jurisprudence has been characterised by delay and selectivity. Tribunals have typically been created only after atrocities have already occurred, limiting their capacity to deter or prevent future violence.³⁰³ Moreover, prosecutions have overwhelmingly focused on politically marginal or defeated actors, reinforcing perceptions of victor's justice and undermining the legitimacy of international criminal law.³⁰⁴

The jurisprudence of the International Court of Justice further illustrates the constraints of genocide adjudication. In *Bosnia v Serbia*, the Court confirmed that genocide occurred at Srebrenica, yet declined to attribute direct responsibility to Serbia, instead finding a failure to prevent genocide.³⁰⁵ This cautious approach reflects the Court's reluctance to impose far-reaching legal consequences on states, even in the face of grave violations. Taken together, genocide jurisprudence reveals a persistent gap between legal recognition and effective

³⁰² Antonio Cassese, *International Criminal Law* (Oxford University Press, 2nd ed, 2008) 98–105.

³⁰³ Payam Akhavan, 'Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?' (2001) 95 *American Journal of International Law* 7.

³⁰⁴ Mahmood Mamdani, *Saviors and Survivors* (Pantheon Books, 2009) 272–275.

³⁰⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Judgment) [2007] ICJ Rep 43.

accountability. While courts have refined doctrinal standards, their interventions remain temporally and politically limited, reinforcing the reactive nature of genocide law.

CHAPTER FOUR

COMPARATIVE CONSTITUTIONAL ANALYSIS OF POST-CONFLICT AND POST-GENOCIDE STATES

4.1 Introduction

4.1.1 Constitutional Design and the Risk of Mass Atrocity

Post-conflict constitutions are frequently presented as instruments of peace, reconciliation, and state consolidation. In societies emerging from mass violence or genocide, constitutional settlements are often negotiated under intense international pressure and framed as mechanisms to prevent a recurrence of atrocities. However, comparative experience since 1945 demonstrates that many post-conflict constitutional arrangements entrench political fragility rather than resolve it. This chapter argues that constitutional design in post-genocide and post-conflict states often institutionalises ethnic division, elite dominance, and external dependency, producing what may be described as systems of negative peace formal stability without substantive reconciliation or accountability.

Situating South Sudan within a broader comparative framework, this chapter examines constitutional arrangements in Bosnia and Herzegovina, Kosovo, Cyprus, Zimbabwe, and Myanmar. These cases are selected because they exhibit varying combinations of ethnic fragmentation, international intervention, power-sharing arrangements, and weak accountability mechanisms. Through comparative analysis, the chapter demonstrates that constitutional settlements negotiated in the aftermath of conflict frequently fail to address the structural drivers of mass violence and, in some cases, actively reproduce them³⁰⁶.

³⁰⁶ Johan Galtung, 'Violence, Peace, and Peace Research' (1969) 6(3) *Journal of Peace Research* 167.

4.2 The Concept of “Negative Peace” in Constitutional Design

The concept of negative peace defined as the absence of direct violence without the presence of justice, accountability, or social integration—provides a useful analytical framework for assessing post-conflict constitutions. While such arrangements may halt immediate hostilities, they often prioritise elite accommodation over structural reform. In doing so, they freeze political identities, reward perpetrators, and marginalise victims³⁰⁷. From a legal perspective, constitutions constructed under conditions of negative peace tend to exhibit several common features: extensive executive power, weak judicial independence, limited accountability for past crimes, and constitutional recognition of ethnic or communal divisions. These characteristics are particularly pronounced in states where international actors play a decisive role in constitutional drafting yet lack long-term enforcement mechanisms³⁰⁸.

4.3 Bosnia and Herzegovina: The Dayton Constitution and Frozen Ethnicity

Bosnia and Herzegovina represents one of the most prominent examples of externally imposed constitutional design in the aftermath of genocidal violence. The 1995 Dayton Peace Agreement, which ended the Bosnian War and the genocide at Srebrenica, established a highly complex constitutional structure premised on ethnic power-sharing between Bosniaks, Croats, and Serbs³⁰⁹. While Dayton successfully ended large-scale violence, it constitutionalised ethnic identity as the primary basis of political representation.

The Bosnian constitution entrenched a fragmented state structure, dividing sovereignty between two entities and multiple layers of government. This design has produced chronic political paralysis and has prevented meaningful accountability for wartime atrocities³¹⁰.

³⁰⁷ Johan Galtung, ‘Violence, Peace, and Peace Research’ (1969) 6(3) *Journal of Peace Research* 167.

³⁰⁸ Alex J Bellamy, *Mass Atrocities and Armed Conflict: Links, Distinctions, and Implications for the Responsibility to Protect* (Stanley Center for Peace and Security, 2011) 4–6.

³⁰⁹ General Framework Agreement for Peace in Bosnia and Herzegovina, opened for signature 14 December 1995 (entered into force 14 December 1995) annex 4 (Constitution of Bosnia and Herzegovina).

³¹⁰ *Prosecutor v Krstić* (Judgment) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber I, Case No IT-98-33-T, 2 August 2001).

Despite the presence of international supervision through the Office of the High Representative, Bosnia remains characterised by weak central authority and persistent ethnic nationalism. From a genocide-prevention perspective, the Dayton Constitution demonstrates how constitutional settlements can stabilise violence without dismantling the ideological and institutional foundations that enabled genocide³¹¹.

4.4 Kosovo: International Trusteeship and Conditional Sovereignty

Kosovo presents a contrasting but related model of post-conflict constitutionalism. Following NATO's intervention in 1999 and the establishment of UN administration, Kosovo developed under a regime of international trusteeship before declaring independence in 2008³¹². Its constitution reflects heavy international involvement, incorporating extensive minority protections and international oversight mechanisms³¹³.

³¹¹ David Chandler, *Bosnia: Faking Democracy after Dayton* (Pluto Press, 2nd ed, 2000) 45–50.

³¹² United Nations Security Council Resolution 1244, UN SCOR, 54th sess, 4011th mtg, UN Doc S/RES/1244 (10 June 1999).

³¹³ Constitution of the Republic of Kosovo (adopted 15 June 2008).

While Kosovo has avoided large-scale renewed violence, its constitutional system remains fragile and heavily dependent on external support. Ethnic divisions between Albanians and Serbs persist, and accountability for wartime crimes has been uneven. The Kosovo case illustrates the limitations of externally driven constitutional design when domestic political reconciliation remains incomplete. It further underscores the difficulty of translating international legal norms into sustainable domestic governance structures³¹⁴.

4.5 Cyprus: Constitutional Deadlock and Permanent Division

Cyprus offers an example of constitutional failure without recent genocide but with enduring ethnic division and political stalemate. The 1960 Constitution, designed to balance Greek Cypriot and Turkish Cypriot interests, collapsed within three years, leading to intercommunal violence and eventual territorial division. Subsequent international efforts have failed to produce a durable constitutional settlement³¹⁵.

The Cypriot case highlights the dangers of rigid power-sharing arrangements that lack mechanisms for adaptation and dispute resolution. Although large-scale violence has been

³¹⁴ Carsten Stahn, 'Constitution without a State? Kosovo under International Administration' (2001) 14 *Leiden Journal of International Law* 531.

³¹⁵ Constitution of the Republic of Cyprus (1960).

avoided for decades, the absence of a unified constitutional order reflects a form of negative peace in which conflict is frozen rather than resolved³¹⁶.

4.6 Zimbabwe: Liberation Constitutionalism and Authoritarian Entrenchment

Zimbabwe illustrates a different trajectory of post-conflict constitutionalism, where liberation from colonial rule resulted in the consolidation of authoritarian power rather than democratic governance. Following independence in 1980, constitutional arrangements gradually concentrated power in the executive, marginalising opposition and undermining judicial independence³¹⁷.

The Gukurahundi massacres of the 1980s, in which thousands of civilians were killed, occurred within this context of unchecked executive authority and weak accountability. Zimbabwe demonstrates how post-liberation constitutions can enable mass violence by insulating ruling elites from legal constraint. The absence of transitional justice mechanisms further entrenched impunity³¹⁸.

4.7 Myanmar: Militarised Constitutionalism and Structural Violence

Myanmar represents one of the most extreme examples of constitutional design facilitating mass atrocity. The 2008 Constitution entrenched military dominance by reserving parliamentary seats for the armed forces and granting the military control over key ministries³¹⁹. This constitutional structure directly enabled the military's campaign of violence against the Rohingya population, which has been widely characterised as genocidal. Myanmar illustrates how constitutional frameworks can actively facilitate mass violence rather than

³¹⁶ James Ker-Lindsay, *The Cyprus Problem: What Everyone Needs to Know* (Oxford University Press, 2011) 38–42.

³¹⁷ Catholic Commission for Justice and Peace in Zimbabwe, *Breaking the Silence: Building True Peace* (1997).

³¹⁸ Brian Raftopoulos and Alois Mlambo (eds), *Becoming Zimbabwe* (Weaver Press, 2009) 215–218.

³¹⁹ Constitution of the Republic of the Union of Myanmar (2008).

prevent it. The case underscores the limits of formal constitutionalism where legal systems are designed to preserve coercive power rather than constrain it³²⁰.

4.8 South Sudan as a Case of Negative Peace Constitutionalism: A Comparative Synthesis

The comparative constitutional experiences examined in this chapter provide a critical framework for understanding South Sudan's post-independence constitutional trajectory. Like Bosnia and Herzegovina, Kosovo, Cyprus, Zimbabwe, and Myanmar, South Sudan emerged from a prolonged period of conflict with a constitutional settlement shaped more by elite accommodation and international urgency than by structural transformation³²¹. The South Sudanese constitutional framework at independence reflected the hallmarks of negative peace constitutionalism: the concentration of executive power, the absence of effective accountability mechanisms, the militarisation of politics, and the deferral of transitional justice.

South Sudan's Transitional Constitution of 2011, while formally establishing democratic institutions and human rights guarantees, failed to meaningfully constrain executive authority or dismantle the wartime political–military networks that dominated the state. As in Zimbabwe and Myanmar, the fusion of political leadership with military command entrenched a system in which violence remained a viable tool of governance. The absence of effective constitutional checks allowed political competition to revert rapidly to armed conflict, with mass atrocities committed against civilian populations along ethnic lines³²².

³²⁰ International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar) (Provisional Measures)* [2020] ICJ Rep 3.

³²¹ Transitional Constitution of the Republic of South Sudan (2011).

³²² African Union Commission of Inquiry on South Sudan, *Final Report* (2014).

Comparatively, South Sudan's constitutional design also mirrors the weaknesses observed in externally supported post-conflict settlements such as Bosnia and Kosovo. Although international actors played a significant role in facilitating South Sudan's independence and constitutional drafting, sustained mechanisms for enforcement, accountability, and institutional development were largely absent. As in Bosnia, international engagement prioritised the cessation of hostilities and the achievement of formal statehood, rather than the construction of resilient legal institutions capable of preventing future mass violence³²³.

The South Sudan case further demonstrates the limitations of constitutional arrangements that postpone justice in the name of stability. The failure to operationalise the Hybrid Court for South Sudan, despite its inclusion in the peace architecture, reflects a broader pattern seen across post-conflict states where accountability is subordinated to political expediency. This dynamic reinforces impunity and undermines the preventive function of international criminal law, particularly in contexts where perpetrators remain in positions of power.

Taken together, the comparative analysis reveals that South Sudan's descent into mass atrocity was not an aberration, but part of a broader structural pattern associated with post-conflict constitutionalism since 1945. Constitutional frameworks that entrench elite dominance, militarised politics, and weak accountability create conditions in which genocidal violence becomes not only possible but predictable. In this sense, South Sudan exemplifies the failure of negative peace constitutional arrangements to prevent mass atrocities, underscoring the need for genocide prevention strategies that engage directly with constitutional design, institutional accountability, and the enforcement of international legal norms³²⁴.

³²³ Alex de Waal, 'When Kleptocracy Becomes Insolvent: Brute Causes of the Civil War in South Sudan' (2014) 63 *African Affairs* 347.

³²⁴ *Ibid.*,

4.9 Constitutional Entrenchment of Genocide Prevention: Comparative Guarantees and the South Sudan Gap

4.9.1 Constitutionalising of Genocide Prohibition as Supreme Law

While post-conflict constitutional design is frequently evaluated in terms of power-sharing arrangements and institutional architecture, a distinct and increasingly significant dimension concerns the constitutional entrenchment of genocide prevention. Since 1945, a growing number of states have incorporated explicit prohibitions of genocide into their constitutional texts. This constitutionalising elevates genocide prohibition from a treaty-based obligation under the Genocide Convention to a norm of supreme domestic law³²⁵. In certain post-genocide or post-conflict contexts, constitutional drafters have treated genocide prevention as a foundational constitutional value rather than merely a criminal offence. For example, the Constitution of Rwanda explicitly prohibits genocide ideology and denial, embedding the memory and prevention of genocide within the constitutional order itself³²⁶. Similarly, Bosnia and Herzegovina incorporates international human rights instruments directly into its constitutional framework, thereby granting constitutional status to obligations arising under the Genocide Convention.³²⁷

In Germany, although genocide is primarily criminalised through statutory law implementing international obligations, the Basic Law's entrenched human dignity clause and binding commitment to international law create a constitutional structure hostile to genocidal

³²⁵ Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951) art I.

³²⁶ Constitution of the Republic of Rwanda (2003, revised 2015) arts 10, 13.

³²⁷ Constitution of Bosnia and Herzegovina (1995) art II(2).

ideology³²⁸. The inviolability of human dignity operates as a constitutional bulwark against state-sanctioned mass violence. These examples illustrate that constitutional entrenchment performs at least three preventive functions: it elevates genocide prohibition to supreme legal status; it strengthens judicial enforceability; and it symbolically redefines the state's foundational commitments.³²⁹

4.9.2 Monism, Incorporation, and the Direct Applicability of International Law

A second-dimension concerns constitutional incorporation of international law. In monist systems, ratified treaties automatically form part of domestic law and may acquire constitutional rank. States such as Ethiopia and Burundi recognise the binding force of international human rights treaties within their constitutional orders³³⁰. This doctrinal structure allows courts to invoke the Genocide Convention directly in domestic proceedings. The preventive significance of incorporation lies in reducing the gap between international obligation and domestic enforcement. Where genocide prohibition exists only at the international level, implementation depends on legislative action and political will. By contrast, constitutional incorporation reduces executive discretion and strengthens the role of the judiciary in enforcing atrocity-prevention norms.³³¹

However, constitutional incorporation alone is not sufficient. Without independent courts, prosecutorial autonomy, and institutional capacity, formal incorporation may remain

³²⁸ Basic Law for the Federal Republic of Germany (1949) arts 1, 25.

³²⁹ Donald P Kommers and Russell A Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany* (Duke University Press, 3rd ed, 2012) 359–366.

³³⁰ Constitution of the Federal Democratic Republic of Ethiopia (1995) art 9(4).

³³¹ Constitution of the Republic of Burundi (2018) art 19.

symbolic.³³² Comparative practice demonstrates that constitutional entrenchment enhances prevention only where institutional safeguards accompany textual guarantees.

4.9.3 Constitutional Memory and Preventive Identity

In certain post-genocide states, constitutional entrenchment functions not merely as legal prohibition but as normative memory. Rwanda's constitutional framework embeds the prevention and punishment of genocide as a central constitutional objective, linking national identity with rejection of genocidal ideology.³³³ This approach reflects an understanding that genocide prevention requires not only criminal sanctions but also constitutional repudiation of the ideological foundations of mass violence. Similarly, the constitutional order of Bosnia and Herzegovina, though structurally fragmented, integrates international human rights norms at the highest legal level. The constitutional recognition of international criminal accountability reflects the legacy of the International Criminal Tribunal for the former Yugoslavia and the jurisprudence concerning Srebrenica³³⁴. These constitutional choices signal that genocide prevention may be embedded as a constitutive principle of the state. In this sense, constitutionalising operates both legally and symbolically, shaping political culture and institutional expectations.

4.9.4 Constitutional Entrenchment and Justiciability

³³² Mark Tushnet, 'The Inevitable Globalization of Constitutional Law' (2009) 49 Virginia Journal of International Law 985.

³³³ Lars Waldorf, 'Instrumentalizing Genocide: The RPF's Campaign against "Genocide Ideology"' in Scott Straus and Lars Waldorf (eds), *Remaking Rwanda* (University of Wisconsin Press, 2011) 48.

³³⁴ *Prosecutor v Krstić* (Judgment) (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber, Case No IT-98-33-A, 19 April 2004).

The preventive value of constitutional guarantees ultimately depends on justiciability. A constitutional prohibition of genocide becomes meaningful only if courts possess the authority and independence to enforce it³³⁵. In systems where judicial review is robust, constitutional entrenchment allows victims to challenge state action or inaction that risks facilitating mass violence. In contrast, in states where constitutional courts are weak or politically constrained, genocide prohibition clauses may remain aspirational. The experience of Republic of the Congo and Angola demonstrates that formal constitutional guarantees do not automatically translate into effective prevention absent institutional independence.³³⁶ Thus, constitutional entrenchment must be analysed not merely as textual inclusion but as part of a broader ecosystem of accountability: separation of powers, prosecutorial independence, civil society freedom, and international cooperation.

4.9.5 South Sudan: Constitutional Silence and Preventive Weakness

Against this comparative backdrop, South Sudan's Transitional Constitution of 2011 reveals a significant omission. Although it contains general human rights guarantees and recognises international treaties, it does not explicitly entrench genocide prevention as a constitutional principle, nor does it elevate the Genocide Convention to supreme domestic status in a manner that ensures direct judicial enforceability.³³⁷ The absence of an explicit constitutional prohibition of genocide reflects a broader pattern of negative peace constitutionalism identified earlier in this chapter. The constitutional settlement prioritised executive authority and political accommodation over structural safeguards against mass atrocity. Unlike Rwanda or Bosnia and

³³⁵ Tom Ginsburg, Zachary Elkins and James Melton, *The Endurance of National Constitutions* (Cambridge University Press, 2009).

³³⁶ Rosalind Dixon and David Landau, *Abusive Constitutionalism* (Oxford University Press, 2021) 112–118.

³³⁷ Transitional Constitution of the Republic of South Sudan (2011).

Herzegovina, South Sudan did not embed genocide prevention within its foundational constitutional identity.

This omission is not merely symbolic. Where genocide prohibition is not constitutionally entrenched, its enforcement depends heavily on legislative initiative and executive will—precisely the actors who may be implicated in mass violence. In contexts of militarised governance and elite dominance, this structural design weakens the preventive capacity of domestic law. Furthermore, the lack of constitutional elevation of international criminal obligations contributes to the accountability gap identified in Chapter Three. Without constitutional grounding, the operationalisation of the Hybrid Court or domestic prosecution of atrocity crimes remains politically contingent rather than legally compelled.

4.9.6 Comparative Implications for Genocide Prevention

The comparative analysis of constitutional entrenchment reveals that genocide prevention operates along a spectrum.³³⁸ At one end are constitutional systems that explicitly prohibit genocide, incorporate international obligations, and empower independent courts to enforce them. At the other are systems where prevention remains dependent on political will, external pressure, or international intervention. South Sudan's constitutional framework aligns more closely with the latter category. The failure to constitutionalise genocide prevention reflects the broader structural weaknesses of post-conflict settlements prioritising stability over transformation. In the absence of entrenched constitutional safeguards, international doctrines such as the Responsibility to Protect and international criminal accountability mechanisms

³³⁸ Genocide Convention art I.

assume disproportionate importance—yet, as demonstrated in earlier chapters, these mechanisms themselves suffer from operational limitations.

Accordingly, constitutional entrenchment should be understood as a critical, though not sufficient, pillar of genocide prevention. It strengthens vertical integration between international norms and domestic enforcement, reduces executive discretion, enhances judicial oversight, and symbolically repudiates genocidal ideology. Where such entrenchment is absent, prevention strategies remain externally dependent and structurally fragile.

CHAPTER FIVE

INDEPENDENCE, CIVIL WAR, GENOCIDE AND INTERNATIONAL INTERVENTION IN SOUTH SUDAN 2011 TO 2025

5.0 Introduction

In chapter four, the findings of the thesis carried out and those that are associated with the United Nations in the Prevention of Genocide in Africa: a case of South Sudan were presented. The chapter explores the major discussion points emanating from these findings and the patterns that have arisen across the different phases of the thesis, about the United Nations in preventing Genocide in Africa and some of the factors either, situational or contextual components that might be affecting the process within the continent.

5.1 South Sudan at Independence

South Sudan gained independence on July 9, 2011, following decades of civil war with Sudan. The independence resulted from the Comprehensive Peace Agreement (CPA) signed in 2005, which ended Africa's longest-running civil conflict.³³⁹ Upon independence, South Sudan became a sovereign state composed of ten states Central Equatoria, Eastern Equatoria, Western Equatoria, Jonglei, Unity, Upper Nile, Warrap, Northern Bahr el Ghazal, Western Bahr el Ghazal, and Lakes.³⁴⁰ These states were governed under a decentralized system, with local

³³⁹ Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army, signed 9 January 2005.

³⁴⁰ Transitional Constitution of the Republic of South Sudan, 2011.

governments playing a role in administration. South Sudan's ethnic diversity, comprising over 60 ethnic groups, including the Dinka, Nuer, Shilluk, Azande, and Bari, significantly influenced its political and military structures.³⁴¹

At independence, the Transitional Constitution of the Republic of South Sudan, 2011, served as the country's supreme law, providing the legal framework for governance³⁴². It established a presidential system of government, with Salva Kiir Mayardit as the first President and Riek Machar as Vice President. The president was both head of state and government and held extensive powers, including appointing governors, judges, and military officers.³⁴³ The constitution also adopted a decentralized governance structure, granting state governments autonomy in administration and resource management.³⁴⁴ Additionally, it included a Bill of Rights, which guaranteed fundamental freedoms such as the right to life, equality, and freedom of speech³⁴⁵. The legal system was a hybrid of statutory, customary, and Sharia law, with statutory law taking precedence at the national level.³⁴⁶

The constitution defined South Sudanese citizenship based on nationality and ancestral ties, allowing for dual citizenship.³⁴⁷ English was declared the official language, replacing Arabic, which had been dominant under Sudanese rule.³⁴⁸ South Sudan was also established as a secular state, ensuring freedom of religion.³⁴⁹ Regarding economic governance, the constitution

³⁴¹ Douglas H Johnson, *The Root Causes of Sudan's Civil Wars* (Indiana University Press, 2003).

³⁴² Transitional Constitution of the Republic of South Sudan, 2011

³⁴³ *Ibid.*

³⁴⁴ *Ibid.*

³⁴⁵ Transitional Constitution of the Republic of South Sudan, 2011.

³⁴⁶ *Ibid.*

³⁴⁷ *Ibid.*

³⁴⁸ *Ibid.*

³⁴⁹ *Ibid.*

recognized that land belongs to the people of South Sudan, with the government overseeing resource management.³⁵⁰ Given that South Sudan is oil-rich, the constitution allocated revenue shares to oil-producing states but placed overall control of resources at the national level³⁵¹.

Despite the significance of the Transitional Constitution, it faced criticism for granting excessive powers to the president. Governance challenges, ethnic divisions, and disputes over resource distribution led to political instability and conflict, particularly during the 2013 civil war.³⁵² Efforts to draft a permanent constitution have since been initiated, aiming to promote federalism, inclusive governance, and long-term peace. As South Sudan continues its state-building process, constitutional reforms remain central to its stability and democratic development.

5.2 Potential Causes for Genocide in South Sudan at Independence

At the time of South Sudan's independence on July 9, 2011, several factors raised concerns about the potential for genocide. These factors included ethnic divisions, political power struggles, economic disparities, and a legacy of conflict. South Sudan is home to over 60 ethnic groups, with the Dinka and Nuer being the largest. Historical grievances and competition for resources have fuelled tensions between these groups, with ethnic identities becoming highly politicized. This mobilization along ethnic lines has increased the risk of large-scale violence.³⁵³

³⁵⁰ Ibid.

³⁵¹ Ibid.

³⁵² Alex de Waal, 'When Kleptocracy Becomes Insolvent: Brute Causes of the Civil War in South Sudan' (2014) 113 *African Affairs* 347.

³⁵³ Douglas H Johnson, *The Root Causes of Sudan's Civil Wars* (Indiana University Press, 2003).

The struggle for political dominance has been a significant source of instability. The rivalry between President Salva Kiir, a Dinka, and Vice President Riek Machar, a Nuer, has exemplified this tension, leading to factionalism within the government and security forces. Deteriorating relations between Kiir and Machar have contributed to delays in the peace process, exacerbating the situation.³⁵⁴ Despite its oil wealth, South Sudan has faced significant economic challenges. Corruption and mismanagement have led to the unequal distribution of resources, fuelling grievances among marginalized communities. The competition over control of oil revenues has been a driver of conflict, as factions vie for access to these lucrative resources. The Enough Project describes South Sudan's leadership as a "violent, greed-fuelled kleptocracy," where corruption is systemic and directly contributes to ongoing conflict.³⁵⁵

Decades of civil war have also left South Sudan heavily militarized, with numerous armed groups and militias. The proliferation of weapons and a culture of militarism have made the escalation of disputes into violent conflicts more likely. Furthermore, the use of ethnic militias to pursue political objectives has entrenched divisions and increased the potential for mass atrocities.³⁵⁶ At independence, South Sudan faced a confluence of factors that heightened the risk of genocide. Addressing these challenges requires comprehensive efforts to promote inclusive governance, equitable resource distribution, and reconciliation among diverse communities. Without such measures, the underlying drivers of conflict may persist, threatening the nation's stability and the safety of its people.

³⁵⁴ Reuters, 'South Sudan Party Partially Withdraws from Peace Process', March 18, 2025

<https://www.reuters.com/world/africa/south-sudan-party-partially-withdraws-peace-process-2025-03-18/>

³⁵⁵ Genocide Watch, 'New Report Identifies Causes of South Sudan's Famine and Potential Genocide', March 21, 2017 <https://www.genocidewatch.com/single-post/2017/03/21/new-report-identifies-causes-of-south-sudan-s-famine-and-potential-genocide/>.

³⁵⁶ Alex de Waal, 'When Kleptocracy Becomes Insolvent: Brute Causes of the Civil War in South Sudan' (2014) 113 *African Affairs* 347

5.3. The United Nations Mission in South Sudan

The United Nations Security Council established the United Nations Mission in the Republic of South Sudan (UNMISS) on 8 July 2011 through the Security Council Resolution 1996. The mission was established to assist the newly formed nation in bringing peace and security; setting up a conducive environment for economic development; governing effectively and democratically; and in nurturing good neighbourly relations (Singo., 2023).³⁵⁷ Despite having an extensive peacebuilding purview, the original duty of UNMISS also stated various ways by which the mission was to assist the South Sudan government in carrying out its mandate for the protection of civilians, comprising of surveying and reporting on human rights violations and probable dangers against the people of South Sudan; counselling and helping the government, military and police in achieving its responsibility to protect civilians. stopping brutality via proactive deployment and patrols in high-risk regions; and, within its power and in its areas of deployment, safeguarding the populations under looming danger of physical brutality (Lamb., 2022).³⁵⁸

This was premised on the postulation that the government and security institutions would be ready partners in strengthening the protection of people and the respect for human rights in the just-formed nation. That notwithstanding, this supposition proved to be too reassuring. As events have developed, it is not just the foreign actors but also government authorities, looking to subjugate ethnic groups and continue enjoying power for a sectarian elite, have committed violence against the ordinary populations, with the national leadership

³⁵⁷ Stamnes, E., 2015. The United Nations Mission in the Republic of South Sudan (UNMISS). Protecting Civilians in a Volatile Environment. Oslo: Norwegian Institute of International Affairs.

³⁵⁸ Stamnes, E., 2015. The United Nations Mission in the Republic of South Sudan (UNMISS). Protecting Civilians in a Volatile Environment. Oslo: Norwegian Institute of International Affairs.

unsuccessfully carrying out its mandate to protect them.³⁵⁹ The hostility that erupted in December 2013 led to the United Nations mission resolve to take actions that were unheard of in the history of civilian protection. The violent crisis was the peak of rising tensions within the SPLM (Onditi., 2022).

The circumstances of the fierce fighting between the two parties resulted to a resolution by the UN mission, faced with the danger of civilian mass murders, to allow the fleeing populations to take refuge in their compounds located in Juba, Bor, Akobó, Bentiu, Malakal and Melut. The military engineers and humanitarian parties acted promptly to ensure that essential facilities were set up within the compounds. Regardless of the number of persons taking refuge at the UNMISS compounds, the situation has put a lot of stress on the resources of the mission and has caused a shift in focus and redistribution of resources (Winger., 2023).

The instant demand for more military forces to safeguard the people and help in offering humanitarian assistance was achieved via intermission cooperation authorized by the Security Council Resolution 2132 of 24 December (Ohazuruike., 2019). increasing the forces to 12,500 and the police to 1,323.³⁶⁰ The mission's responsibility was officially readjusted and now focused on the safeguarding of ordinary persons, human rights monitoring, developing conditions for the delivery of humanitarian assistance, and backing up the execution of the Cessation of Hostilities Agreement in Security Council Resolution 2155 of 27 May 2014.

Among these readjusted mandates, the main objective of the UNMISS was to safeguard the populations. Subsequently, the resolution opted to retain the increased number of forces and police but directed the mission to “use all necessary” methods to carry out its duties. Thus,

³⁵⁹ Lamii Moivi Kroma, 'Caught in the Middle: Civilian Protection in South Sudan', IPI Global Observatory, 23 October 2014 <http://theglobalobservatory.org/2014/10/civilian-protection-south-sudan-poc-idps-html/>.

³⁶⁰ S/RES/2132(2013), 24 December.

UNMISS obtained one of the most powerful Security Council responsibilities to safeguard South Sudan citizens from the danger of physical brutality (Kilroy., 2018).³⁶¹

Due to the considerable increase in brutality during the spring, the United Nations Security Council lengthened the mission duty up to the end of November (Day., 2020). retaining the number of the forces and police. The Council highlighted It underscored serious alarm regarding the deteriorating political, security, and humanitarian catastrophe in South Sudan and showed serious worry concerning allegations that are substantial justification to believe that war crimes and crimes against humanity were being carried out. Furthermore, the council went ahead and warned the state's leadership about its fundamental mandate to safeguard its citizens.

Critically, the UNMISS case characterizes a never-before-seen situation in terms of protecting populations in huge numbers within its compounds. These people are usually sheltered in what is referred to as "Protection of Civilian sites (PoC sites)." Ideally, the PoC sites must not be stupefied with the 'safe havens' of the 1990s, which were massive, pre-organized sections set aside but unsuccessfully providing security to the civilians, or with camps for locally displaced people (IDP camps), that give more considerable humanitarian assistance. The PoC areas are supposed to be short-term last options and to give refuge to populations under immediate danger of physical brutality (Ngwenya., 2023).

This was accentuated in the mission's initial directives for safeguarding civilians in their compounds (Morris., 2020). Worth noting is that the UNMISS Protection of Civilians Strategy highlights the safeguarding activities along three tiers that include 1) Protection through the political process, 2) Providing protection from physical violence and 3) Establishing a protective environment.³⁶² Even though the safeguarding of population

³⁶¹ S/RES/2155 (2014), 27 May.

³⁶² UNMISS Protection of Civilians Strategy, 15 September 2014, para 31

responsibility of UNMISS offers precedence to protection from physical violence, there is no chronological order among these tiers.

Examining the report by Effectiveness of Peace Operations Network drafted in 2019, the report analyses the extent to which the UN Mission in South Sudan (UNMISS) has achieved its strategic goals and what effect the Mission has had on the political and security situation in South Sudan. The report mainly concentrated on the mission responsibility during the 2014 to 2018 period attempting to give a sneak pic of the mission's job across its four core responsibility areas. the "protection of civilians (PoC), facilitation of humanitarian delivery, promotion of human rights, and support to the peace process (Hunt and Zimmerman., 2019).³⁶³

5.3.1 Extension of the UNMISS Mandate

The 15-nation body with 13 in favour and 2 abstentions of China and Russia, decided to extend the United Nations Mission in the Republic of South Sudan's (UNMISS) mandate until 15 March 2024 and to maintain its force levels with a cap of 17,000 troops and 2,101 police officers by passing resolution 2677 (2023) (to be published as document S/RES/2677(2023)) under Chapter VII of the United Nations Charter. The Council instructed UNMISS in the document to carry out activities in four crucial areas: protection of civilians; establishment of conditions favourable to the delivery of humanitarian assistance; support for the implementation of the Revised Agreement; and the Peace Process; urging the Secretary-General to inform it of any challenges and emphasizing that the protection of civilians shall be

³⁶³ Day, A., T. Hunt, D., Yin, D. and Kumalo, L., 2019. Assessing the Effectiveness of the UN Mission in South Sudan (UNMISS). 2. Oslo: Norwegian Institute of International Affairs.

given priority; and monitoring, looking into, and reporting on violations of international humanitarian law and violations and abuses of human rights.³⁶⁴

The Council further instructed UNMISS to ensure efficient, timely, and dynamic protection through an all-encompassing, integrated strategy; promptly and effectively engage any actor credibly found to be planning attacks against civilians, internally displaced persons camps, and the UNMISS protection of civilian sites; and maintain a proactive deployment and a mobile, flexible, robust, and effective posture. The Council emphasized in the text that elections should be viewed as a phased process and that UNMISS should concentrate in the short term on important conditions, such as preventing the escalation of political violence, creating the framework for an inclusive constitutional drafting and review process, and creating the inclusive civil space necessary to hold free and fair elections.³⁶⁵

By the text, the Council also urged the Mission to step up its efforts to prevent and respond to sexual and gender-based violence. It also urged the South Sudanese government to speed up the implementation of its action plan to address this issue and hold those guilty accountable. The Council urged the parties to fully implement the Revitalized Agreement and expressed its great concern over the delays in doing so. It further called for the full, equal, and meaningful engagement of women, civil society, and others in all efforts to resolve disputes and promote peace.³⁶⁶

The Council urged the Government and other relevant parties to, among other things, implement security arrangements by ensuring the timely and adequate payment of salaries to

364 United Nations. (2023, March 15). *Security Council extends mandate of United Nations Mission in south sudan, adopting resolution 2677 (2023) by 13 votes in favour, 2 abstentions* | UN press. United Nations. Retrieved March 30, 2023, from <https://press.un.org/en/2023/sc15227.doc.htm>

365 Ibid.

366 United Nations. (2023, March 15). *Security Council extends mandate of United Nations Mission in South Sudan, adopting resolution 2677 (2023) by 13 votes in favour, 2 abstentions* | UN press. United Nations. Retrieved March 30, 2023, from <https://press.un.org/en/2023/sc15227.doc.html>

the required unified forces, make progress toward creating a political environment that is conducive to elections, and use robust conflict-sensitive analysis to provide security to newly designated civilian protection sites. According to the text's other provisions, the Council asked the Secretary-General to submit a thorough written report every 90 days, which should analyze the risks related to climate change that could negatively affect South Sudan's peace and security as well as the execution of the Mission's mandate. A separate report with a thorough analysis of the political, security, and economic factors delaying the implementation of the Revitalized Agreement, an assessment of the necessary conditions for credible elections, an integrated United Nations transition strategy, and recommendations were also requested from him by no later than October 15, 2023.³⁶⁷

5.3.2 UNMISS Mandate Limitations

The United Nations Mission in South Sudan (UNMISS) was established with a mandate that included the protection of civilians. While this mandate reflects evolving peacekeeping norms, UNMISS has faced severe structural constraints. These include dependence on host-state consent, limited force capacity, and restrictive rules of engagement.³⁶⁸ Although UNMISS provided refuge to civilians through Protection of Civilians sites, it lacked the authority and resources to prevent or halt widespread atrocities.³⁶⁹ This illustrates a broader legal paradox: peacekeeping missions are tasked with protecting civilians in contexts where host governments may themselves be perpetrators of violence.

The UNMISS experience underscores the limits of peacekeeping as a tool of genocide prevention. Without robust enforcement authority or political backing, protection mandates risk becoming humanitarian containment mechanisms rather than instruments of prevention.

³⁶⁷ Ibid.

³⁶⁸ United Nations Security Council Resolution 1996, UN Doc S/RES/1996 (8 July 2011).

³⁶⁹ United Nations Mission in South Sudan, Human Rights Report (2014).

5.3.3 Mandate Design and the Protection Paradox

The United Nations Mission in South Sudan (UNMISS) was established under Chapter VII of the United Nations Charter with an explicit mandate to protect civilians under threat of physical violence.³⁷⁰ While this appears to represent a robust authorisation, the legal structure of the mandate reveals inherent limitations. Peacekeeping missions are fundamentally designed as consent-based operations, even when authorised under Chapter VII. The mandate presumes cooperation from the host state, yet in South Sudan the government itself was frequently implicated in violence against civilians.³⁷¹ This creates what may be termed a protection paradox: UNMISS was legally tasked with protecting civilians from violence that was, in many instances, perpetrated or tolerated by the state whose consent underpinned the mission's presence. The mandate did not authorise regime change, coercive disarmament of government forces, or direct military confrontation with state actors except in self-defence or in defence of civilians under imminent threat.³⁷² Thus, while the language of civilian protection appears expansive, its operationalisation remained legally constrained. The mission's authority did not extend to dismantling the structural conditions enabling atrocity crimes, including elite militarisation, command impunity, and ethnically aligned armed groups.

5.3.4 Rules of Engagement (ROE) and the Threshold of “Imminent Threat”

Rules of Engagement (ROE) further circumscribed UNMISS's capacity to prevent mass atrocities. Although detailed ROE documents are not publicly available, peacekeeping doctrine generally restricts the use of force to situations involving self-defence or defence of civilians facing imminent threat.³⁷³ The requirement of imminence significantly narrows preventive capacity, as it requires a concrete and immediate danger rather than patterns of escalating

³⁷⁰ United Nations Security Council Resolution 1996, UN Doc S/RES/1996 (8 July 2011).

³⁷¹ African Union Commission of Inquiry on South Sudan, Final Report (2014).

³⁷² United Nations Charter art 42.

³⁷³ United Nations, United Nations Peacekeeping Operations: Principles and Guidelines (Capstone Doctrine, 2008).

violence. In South Sudan, violence often unfolded in dispersed, rapid, and retaliatory forms, making it difficult to identify singular imminent threats. Moreover, the fluid nature of armed groups and inter-communal violence complicated the determination of lawful targets. The ROE therefore positioned UNMISS as a reactive rather than preventive force, intervening only after violence had begun or was unmistakably imminent. This legal framing contrasts sharply with the broader preventive aspirations of the Responsibility to Protect doctrine. While R2P emphasises early warning and structural prevention, peacekeeping ROE anchor intervention to specific, immediate threats. The result is a doctrinal mismatch between normative ambition and operational authority.

5.3.5 Structural Constraints: Consent, Capacity, and Political Fragmentation

Beyond mandate language and ROE, structural constraints further limited UNMISS effectiveness.

(a) Host-State Consent and Obstruction

Although UNMISS was authorised under Chapter VII, it remained dependent on host-state consent for logistical operations, troop movements, and access to conflict zones. The South Sudanese government frequently restricted freedom of movement, delayed clearances, and obstructed investigations.³⁷⁴ This significantly undermined the mission's ability to anticipate or respond to violence. The legal doctrine of consent in peacekeeping, while foundational to UN operations, becomes problematic when the host government is itself implicated in atrocities. Yet the Security Council did not revoke consent or escalate the mandate to a more coercive model.

³⁷⁴ United Nations Mission in South Sudan, Human Rights Report (2014).

(b) Force Capacity and Logistical Limitations

UNMISS faced chronic shortages of troops, mobility assets, and rapid reaction capabilities. Protection mandates require rapid deployment and credible deterrence. However, peacekeeping contingents often operate with limited equipment and varying levels of training.³⁷⁵ In South Sudan's vast and underdeveloped terrain, limited air mobility and infrastructure further constrained response times. The gap between mandate ambition and operational capacity illustrates a recurring structural weakness in contemporary peacekeeping: protection language is expansive, but resources are calibrated to traditional monitoring roles.

(c) Security Council Political Divisions

The Security Council's political fragmentation also constrained UNMISS. Member states exhibited reluctance to impose targeted sanctions, arms embargoes, or more forceful measures that could have strengthened deterrence.³⁷⁶ Without unified political backing, the mission lacked the strategic leverage necessary to influence elite behaviour. Peacekeeping effectiveness depends not only on mandate text but on sustained political support from major powers. In the absence of such consensus, UNMISS operated within a narrow operational space.

5.3.6. Protection of Civilians (PoC) Sites: Containment Rather than Prevention

One of UNMISS's most notable interventions was the establishment of Protection of Civilians (PoC) sites, which sheltered hundreds of thousands of internally displaced persons.³⁷⁷ While these sites undoubtedly saved lives, they also reveal a shift from prevention to containment.

PoC sites functioned as defensive enclaves rather than instruments of broader civilian protection. They insulated vulnerable populations but did not address violence occurring beyond their perimeter. Moreover, the long-term maintenance of PoC sites risked normalising

³⁷⁵ Alex J Bellamy and Paul D Williams, *Understanding Peacekeeping* (Polity Press, 2nd ed, 2010) 212–218.

³⁷⁶ Security Council Report, *South Sudan Briefing Reports (2014–2018)*.

³⁷⁷ United Nations Mission in South Sudan, *Protection of Civilians Update* (various reports).

displacement and entrenching parallel governance structures. This reflects a deeper structural reality: peacekeeping missions are institutionally designed to stabilise rather than transform conflict environments. The protective function becomes spatially limited, while systemic drivers of violence remain intact.

5.3.7 Legal and Normative Implications

The UNMISS experience demonstrates that protection mandates, even under Chapter VII, do not equate to enforcement authority. Mandate limitations, restrictive ROE, structural dependence on host-state consent, resource deficits, and political fragmentation collectively constrained the mission's preventive capacity. From a legal perspective, this exposes a fundamental tension within contemporary atrocity prevention frameworks. The Security Council authorises protection yet avoids measures that would fundamentally alter power dynamics within the host state. Peacekeeping thus becomes a mechanism of conflict management rather than structural prevention. In the context of genocide prevention, this limitation is particularly significant. Where violence is state-linked or elite-driven, a consent-based mission cannot credibly deter perpetrators without risking confrontation that exceeds its mandate.

5.4 The International Criminal Court dealing with South Sudan

According to the Rome Statute Thesis 1, the International Criminal Court was created as a permanent institution and will have the authority to practice jurisdiction over people for the most serious felonies of international concern and will also be complimentary to the national criminal jurisdictions. The authority and function of the ICC will be governed by the conditions of the statute.³⁷⁸ Worth noting is that the ICC relates with the United Nations via an

378 *Statute of the International Court of Justice* (1998) United Nations <<https://www.un.org/en/about-us/un-charter/statute-of-the-international-court-of-justice>>

agreement authorized by the Assembly of States Parties to the Rome Statute and thereafter completed by the President of the Court on its behalf.³⁷⁹ The Court's authority will be restricted to the most severe crimes that are of concern to the international community. By this Statute, the following crimes are within the Court's jurisdiction:

- The Crime of Genocide
- Crimes against Humanity
- War Crimes and
- The crime of aggression

Unfortunately, the Court's authority does not extend to non-members such as South Sudan. This implies that the ICC may only start an interrogation if the United Nations Security Council refers to it or if the government of South Sudan asks the Court to intervene.³⁸⁰ As of the moment, none of the situations has occurred. In addition, several African leaders assert that the International Criminal Court is politicized and partisan, especially against the African persons, who have until now dominated its docks. The significance placed on the creation of an "African" hybrid inquiry might be taken as a criticism of the ICC's claimed prejudice, even though some analysts differ with the allegations of anti-African bias.³⁸¹ According to the analysis by McAllister, South Sudanese leaders have likewise made a special effort to go against the hybrid court, in any event, making the stride of employing a U.S. lobbying firm to assist with obstructing its establishment. The 2015 and 2018 deals disqualified people accused

379 Ibid.

380 McAllister, Jacqueline R, *Analysis | South Sudan Promised to Investigate Civil War Atrocities. Why Hasn't That Happened?* (October 6, 2021) The Washington Post
<<https://www.washingtonpost.com/politics/2021/10/06/south-sudan-promised-investigate-civil-war-atrocities-why-hasnt-that-happened/>>

381 Ibid.

or convicted by a court from taking part in the government for "a period determined by the law" and this included the heads of state.³⁸²

The thesis has significantly contributed to a better understanding of the genocide phenomena and related crimes and the roles of the AU and the UN in averting such felonies while assessing their current status and powers given to Africa's security. However, some limitations were experienced throughout the thesis period. Due to the time constraint, the thesis adopted a desktop review based on primary and secondary data sources. However, it did not conduct any physical data collection methods like interviews, focus groups, surveys, or questionnaires. Therefore, the thesis was restricted to data available. Thus, it may offer partial information regarding the roles of the AU and UN in averting genocide, crimes against humanity, war crimes, and ethnic cleansing, as well as their current positions and powers in carrying out their responsibilities. Due to the desktop research, data collected was from public sources available in journals, treaties, laws, and other relevant documents. Thus, may be prone to bias and hence unreliable because ordinances and resolutions change over time while responses to different scenarios by the security agencies differ depending on the situation.

5.5 The Hybrid Court of South Sudan Establishment

Dating back to 2015, the UN Security Council (UNSC) has taken serious action by sanctioning eight individuals. More so, the council has forced an arms embargo since 2018 (Jahn Högler., 2021). On 15 March the council also increased the responsibilities of the UNMISS, asserting that, "South Sudan's government bears the primary responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against

382 Ibid.

humanity.”³⁸³ In a statement issued by Marta Hurtado, who is the spokesperson for the UN High Commissioner for Human Rights, he said “ The United Nations Human Rights Office welcomed the decision by South Sudan to establish Hybrid Court and the Commission on Truth, Reconciliation and Healing to try war crimes committed during the more than six years of conflict.”³⁸⁴

The decision to have the hybrid court emerged from the boiling political tensions and brutality that developed in South Sudan on 15 December 2013 (Magara., 2021). The violence was a result of the attempted arrest of Dr Riek Machar by President Salva Kiir on accusing his deputy (Dr Riek Machar) of an attempted *coup d'état*. *However, this claim was dismissed by the African Union Commission of Inquiry on South Sudan (AUCISS)*. The attempted arrest gave rise to fast-spreading brutality that led to international crimes carried out by the armies loyal to Kiir and rebels loyal to Machar.³⁸⁵ On 17 August 2015, combined efforts steered by the Intergovernmental Authority on Development (IGAD) and backed by the African Union (AU) and other stakeholders led to the development of the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS) on 17 August 2015 (Intergovernmental Authority on Development [IGAD] 2015).³⁸⁶

The Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS) allows for the setup of the Hybrid Court for South Sudan (HCSS), which is one of the transitional justice strategies, and anticipates a major responsibility for the African Union in its formation and operationalisation. The court formation thesis buys into the liberal prosecution structure of transitional justice which stresses the indictment of the international

³⁸³ Global Centre for the Responsibility to Protect. 2022. South Sudan - Global Centre for the Responsibility to Protect. [online] Available at: <<https://www.globalr2p.org/countries/south-sudan/>> [Accessed 31 August 2022].

³⁸⁴ "UN Welcomes South Sudan Move To Set Up Hybrid Court - Xinhua | English. News. Cn", Xinhuanet.Com (Webpage, 2021) <http://www.xinhuanet.com/english/2021-02/03/c_139716722.htm>

³⁸⁵ Owiso, Owiso, "The Proposed Hybrid Court for South Sudan – ACCORD", ACCORD (Webpage, 2018) <<https://www.accord.org.za/ajcr-issues/the-proposed-hybrid-court-for-south-sudan/>>

³⁸⁶ Ibid.

crime's perpetrators (Olásolo., 2018). This section examines the ability of the Hybrid Court of South Sudan to deliver sustainable transitional justice answers to the people of South Sudan and investigates how the AU may assist in its prosperity.³⁸⁷

In the CPA agreement, Justice and accountability were not empirically the priority. As much as it did not cater for amnesty, the CPA was dreadfully mute on the issue of accountability for violations carried out during the Sudan civil war (Witchell-Chibber., 2020). As viewed by Ibrahim,³⁸⁸ THE silence of the CPA on issues of Accountability for violations was an intentional essential amnesty aimed at guaranteeing continuous political goodwill. Nonetheless, the concern of state succession emerged about human rights treaty responsibilities of the new Republic of South Sudan since gaining autonomy in 2011.

Thesis 16 of the Vienna Convention on Succession of States about Treaties seems to back up the 'clean slate' strategy absolving the newly- autonomous nations from their masters' treaty responsibilities (Mares., 2022). Weeramantry champions automatic state succession to human rights treaties because they constitute the basic principles of natural human dignity and look to bypass gaps in protection that could expose previously safeguarded populations to potential brutality.³⁸⁹ Vitally, the UN Human Rights Committee later acknowledged this position in General Comment 26 on the continuity of obligations, specifically for ICCPR rights.

Hence, given that South Sudan may not have been officially admitted to ICCPR, it was mandated to offer effective solutions for the human rights violations since it automatically took

³⁸⁷ Ibid.

³⁸⁸ Ibrahim, Noha 2007. Post CPA: Restructuring and enhancing the Sudanese judiciary as a means of preserving peace. *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, 40 (4), pp. 471–494.

³⁸⁹ Weeramantry, C. 1996. Separate opinion in Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v Yugoslavia*), Preliminary Objections, 11 July 1996. ICJ Reports 595. The Hague, International Court of Justice.

the ICCPR responsibilities of Sudan upon its independence. Moreover, being a member of the UN, the state is bound by the Charter of the United Nations to act towards the UN's common purpose of promoting and respecting human rights (Ramcharan., 2021).

In as much as the personal criminal mandate as a transitional justice mechanism is currently well embraced since the post-World War I failure to attempt to indict Kaiser Wilhelm II of Germany and the shambolic Ottoman trials, and its successful ratification during the International Military Tribunal at Nuremberg in 1946, criminal trials in situations of extensive brutality tend to be, as viewed by Schabas,³⁹⁰ normally time and resource-consuming in a manner that not all culprits maybe can be tried.

A good example of this situation is where the International Criminal Court (ICC), only focuses on persons regarded to have carried the greatest responsibility for international felonies. moreover, criminal accountability cannot independently guarantee legitimate transitional justice, but instead, reconciliation and justice are both vital as the encounters from Rwanda and Sierra Leone have demonstrated.³⁹¹ Hence the ARCSS deals with these particular concerns by allowing the establishment of a Commission for Truth, Reconciliation and Healing (CTRH) and a Compensation and Reparations Authority (CRA) to work hand in hand with the Hybrid Court of South Sudan (Magara., 2021).

The United Nations describes the HCSS as one whose authority and composition are blended, demonstrating both international and national attributes, and is regularly found within

³⁹⁰ Schabas, William 2002. The Rwanda case: Sometimes it's impossible. In: Bassiouni, M. Cherif ed. post-conflict justice. New York, Transnational Publishers. pp. 499–522.

³⁹¹ Sooka, Yasmin, Arnold Tsunga, David Deng and Betty K. Murungi 2006. The way forward for the African Union in South Sudan, January 2006. Available from: <http://www.afrecs.org/The_Way_Forward_for_the_AU_in_South_Sudan.pdf> [Accessed 31 August 2022].

the boundary of the felony (Kraska and Neuman et al., 2020).³⁹² The option of having the hybrid court contrary to an international tribunal is appropriate in circumstances where there are no national structures or the systems are not in a position to deal with extensive brutality and where an exclusively internationalized approach may not get domestic approval.³⁹³ Here, South Sudan exhibits a likewise situation. hence the proposed Hybrid Court of South Sudan, which is on a higher ranking than, and independent of, the South Sudan judiciary.

The hybrid court has a wide temporal authority over international felonies carried out from 15 December 2013 up to the end of the 30-month transition period (Petrich and Burton et al., 2022). In retrospect, there was much wisdom in increasing the court's authority after the signing of the Agreement, particularly considering that many breaches happened after the establishment of the transitional government when Kiir and Machar could not agree again. nonetheless, the periodic restriction of authority prohibits the court from dealing with mass atrocities carried out before 15 December 2013, especially in Jonglei state where well-planned inter-communal brutality was extensive before and after independence.³⁹⁴

The court subject matter authority comprises genocide, war crimes, crimes against humanity, sexual crimes, gender-based crimes, and other horrendous felonies within both international law and South Sudanese law. This extensive authority of the court is structured to make sure that all potential severe felonies carried out during this time are tried. But with regards to South Sudanese law, the ARCSS (IGAD 2015: chap V, 3.1.1) simply states 'and/or applicable South Sudanese law' without any further explanation of the specific laws, be they

³⁹² Office of the United Nations High Commissioner for Human Rights (OHCHR) 2008. Rule of law tools for post-conflict states: Maximizing the legacy of hybrid courts. Geneva, United Nations

³⁹³ Kaleck, Wolfgang 2015. Double standards: International criminal law and the West. Brussels, Torkel Opsahl Academic ePublisher.

³⁹⁴ Johnson, Hilde 2016. South Sudan: The untold story from independence to civil war. London/New York, I.B. Tauris.

significant, systematic, or evidentiary. The applicable domestic law must be explained earlier, preferably by the expected statute, to remove the likelihood of applying laws that might conflict with international standards (Wolfke., 2023).³⁹⁵

With regards to the authority, it is the HCSS's responsibility to leave a 'permanent legacy' in the state of South Sudan, unchanging from the United Nations standpoint that the setting up of the hybrid court should consider what legacy it will leave in South Sudan. In the given circumstances, legacy is the permanent effect the HCSS has on enhancing the country's rule of law.³⁹⁶ According to the 2018 Freedom House Index report 2018, the country is positioned as the second lowest state maintaining the Rule of Law,³⁹⁷ and as such, the court is anticipated to put up a perpetual example for local domestic institutions on accountability and the rule of law (Michel., 2020). Should the court grant immunity or not? This is a concern that lingers in the air and needs to be resolved. Crucially, the ARCSS prohibits the likelihood of immunity or amnesty from criminal responsibility. Non-immunity has long been set up in international criminal law going by the constitutive tools of previous and today international criminal structures.

Additionally, a report by the UNDP survey shows considerable backup by South Sudanese for non-immunity as they ascribe the Adamic of several of their leaders to the 2005 CPA de facto immunities.³⁹⁸ The Agreement moves away from the African Union's supposed position on immunities as proved by the June 2014 Protocol on Amendments to the Protocol

³⁹⁵ Office of the United Nations High Commissioner for Human Rights (OHCHR) 2008. Rule of law tools for post-conflict states: Maximizing the legacy of hybrid courts. Geneva, United Nations.

³⁹⁶ Ibid.

³⁹⁷ Freedom House 2018. Freedom in the world 2018: Table of country scores. Available from: <<https://freedomhouse.org/report/freedom-world-2018-table-country-scores>> [Accessed 14 Sep 2022].

³⁹⁸ United Nations Development Programme 2015. Search for a new beginning: Perceptions of truth, justice, reconciliation and healing in South Sudan. Available from: <<https://radiotamazuj.org/sites/default/files/Perception%20Survey%20Report%20Transitional%20Justice%20Reconciliation%20and%20Healing%20-.pdf>> [Accessed 14 September 2022].

on the Statute of the African Court of Justice and Human Rights which looks to add an international criminal chamber to the HCSS, but which offers individual immunity from trials for heads of state and government and senior government officers. Thus, it is commendable that just after one year of the protocol adoption, an AU-supported mechanism explicitly prohibits any immunities (Nenungwi., 2021).

Moreover, The Agreement for Resolution of Conflict in South Sudan exceptionally states that people charged or sentenced by the court are barred from taking part in government for a duration to be set and beyond that, that any charged individual at long last ‘proven innocent’ will be eligible for compensation.³⁹⁹ The first section of this condition is a genuine effort aimed at allowing South Sudan to move forward under trustworthy and pristine leadership. nonetheless, two concerns require some clarification (Beny., 2018).

First, it must be clearly stated if this purification starts during the trial or sentencing. The assumption of innocence principle goes in Favor of this purification starting with sentencing. Secondly, it will be wise to expressly state if the period of banishment will run synchronously with or later to the conviction. Preferably, this period must take effect after serving a conviction for it to have any significant impact. Moreover, the banishment will imminently need a substantial shake-up of government which Tiitmamer debates that it is probably destabilising.⁴⁰⁰ Notwithstanding, the thesis finds the action necessary to clear out a

³⁹⁹ Intergovernmental Authority on Development (IGAD) 2015. Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS), 17 August 2015. Addis Ababa, IGAD.

⁴⁰⁰ Tiitmamer, Nhial 2016. Transitional justice for stabilising South Sudan: Lessons from global and local perspectives, 21 July 2016. Available from: <<https://www.suddinstitute.org/publications/show/57944dc78f034>> [Accessed 1 September 2022]

state leadership of people accountable for despicable felonies against the people (Darwall and Darwall., 2018).

Looking at the situation in Rwanda and the ICC court, the ICTR wanted to prosecute the culprits that carried out the heinous crimes during the 1994 genocide (Magnarella., 2018). The commission charged at least ninety persons during its tenure after handling cases and hearing from approximately three thousand witnesses and more while setting up a worldwide standard in acknowledging rape as a strategy for carrying out genocide. The setting up of the ICTR showed that the indictment of prominent and influential persons accountable for the inhumanities was possible in Africa as it also offered a forum for ordinary persons to air their grievances and have them listened to by the international community.⁴⁰¹

Even though the South Sudan hybrid court continues to enjoy the same levels of international backup, it should desire to give the people of South Sudan who were victims of brutality the same platform to have their voices heard, and their encounters documented. Just some time back, the International Criminal Court in The Hague charged Dominic Ongwen, a child soldier, who grew to become the head of the Lord's Resistance Army (LRA), with 61 crimes comprising "forced pregnancy". Depending on the testimonials given by 109 witnesses, more than a thousand were reached out to in the creation and compiling of the trial (Dean., 2019). Just like the ICTR, the ICC's case against Ongwen gave ordinary persons and victims of violence a chance to take part and get closure. More so, Dominic Ongwen's case illustrated

⁴⁰¹ Trigg, James, "Hybrid War Crimes Court Promises Justice but Political Rivalry May Impede Pursuit | Global Risk Insights", Global Risk Insights <<https://globalriskinsights.com/2021/03/hybrid-war-crimes-court-promises-justice-but-political-rivalry-may-impede-pursuit/>>

that the international justice system is ready to commit the time and resources required to get the convictions.⁴⁰²

Therefore, in as much as the experience of both the ICTR and ICC are examples to be used, the distinct situation of each of them should also be kept in mind (Chlevickaitė, and Bijleveld et al., 2020). For example, when we look at the scenario in Rwanda, the people who were indicted and charged belonged to the dethroned Hutu leadership that was ousted from power by the Rwandan Patriotic Front (RPF) as it rounded the whole nation and stopped the genocide. Therefore, during the period they appeared before the ICTR, the suspects did not have legal office, rank, or position. Similarly, Ongwen was a subscriber of a stateless sect, condemned by the international community.⁴⁰³

However, under the South Sudan Hybrid Court responsibility, the cases will be about the persons who might still be very close to President Salva Kiir, or the First Vice-President Riek Machar. The members of both leaders are connected to the carrying out of atrocities, thus the hybrid court should defy becoming a politicized place. ultimately, it was the relationship fallout between the two leaders that caused the first conflict. This may be very constraining. For instance, trying so hard to avoid interrupting the fragile peace process may bring about a court where prosecutions are carried forward only when the two parties agree (Malu., 2019).⁴⁰⁴

This may probably cause the most minor culprits to be prosecuted, with both men stepping in to safeguard their closest members. As another option, either can request that the person of the same status and position from the opposite side be tried as a requirement for their

⁴⁰² Trigg, James, "Hybrid War Crimes Court Promises Justice but Political Rivalry May Impede Pursuit | Global Risk Insights", Global Risk Insights <<https://globalriskinsights.com/2021/03/hybrid-war-crimes-court-promises-justice-but-political-rivalry-may-impede-pursuit/>>

⁴⁰³ Ibid.

⁴⁰⁴ Ibid.

agreement to a member of their standing before the court (Sunstein., 2018). In whichever circumstance, the court's authority will be extremely compromised, both before the international community, and particularly the victims of the civil war.⁴⁰⁵

Contemporary methods of alleviating atrocities extensively embrace the prescriptive design that comprises the dedication to progressive values like human equality, freedom, and democratic responsibility (Morrow., 2020). the backing of the human rights authority found within the United Nations Universal Declaration of Human Rights and institutionalized via a rule of law system instituted by several international agreements, summits, laws, and norms; acknowledgment of an international community made up of independent nations and ratified in the UN and several regional institutions; and, a worldwide administration design that restrains the utilization of violent force via processes for arbitrating and solving disputes between countries. This set of allegations is lenient in its underscoring of essential civil and political rights and the rule of law, and since it is planned to be mandatory in all states. It continues to be the supreme position of distinguished worldwide human rights agencies and actors. Most importantly, the modern alleviation of mass atrocities has grown within this

Contemporary atrocity prevention has evolved within this humanistic direction, becoming more professionalized and subtle over the last twenty-five years. Even though its origins may be pinned on the end of the Second World War and the moral shock of the Holocaust, modern prevention hypothesizing, and practice materialized following the effects of the Cold War, the Rwandan and Bosnian genocides. The setting up of the Carnegie Commission on Preventing Deadly Conflict in 1994, mandated to deal with “the looming threats to world peace of intergroup violence” and developing “new ideas for the prevention

⁴⁰⁵ Trigg, James, "Hybrid War Crimes Court Promises Justice But Political Rivalry May Impede Pursuit | Global Risk Insights", Global Risk Insights <<https://globalriskinsights.com/2021/03/hybrid-war-crimes-court-promises-justice-but-political-rivalry-may-impede-pursuit/>>

and resolution of deadly conflict,” assisted to focus the attention on the safeguarding of ordinary persons in a new way.⁴⁰⁶ Come 2001, The Responsibility to Protect report was shared by the International Commission on Intervention and State Sovereignty.

The report was a solution to the then Secretary General the late Kofi Annan’s demand to rejuvenate the United Nations and strive to prevent mass atrocities (Williams., 2018). Crucially, the Responsibility to Protect report redesigned the connection between state sovereignty and human rights via the responsibility to protect (R2P) standard, and gave the restating of the legal, political, and moral reasons for more resilient alleviation and intervention approaches. The consequential approval of the revised version of R2P by the United Nations General Assembly fortified the norm, if inadequately, in international politics.⁴⁰⁷ More so, the setting up and successive expansion of the UN Office on Genocide Prevention and the Responsibility to Protect in 2004 has assisted in getting the place of atrocity alleviation in the highest reaches of the human rights realm.

Worth noting is that modern international atrocity alleviation currently benefits from a union of factors: “that is the evident increase of the UN’s peacebuilding capacity; the preaching of human rights in worldwide political conversations; the emergence of modern graduate programs in peacebuilding, dispute resolution, humanitarianism, and related fields; a professionalized international human rights community; private and foundation funding sources for prevention; and, an increase in the number of foreign ministries in the global north that advocate human rights in their work.”⁴⁰⁸ today’s alleviation exercise involves

⁴⁰⁶ Carnegie Commission on Preventing Deadly Conflict, Preventing Deadly Conflict Final Report (New York: Carnegie Corporation of New York, 1997), 9.

⁴⁰⁷ International Commission on Intervention and State Sovereignty the Responsibility to Protect (Ottawa: ICISS, 2001); United Nations General Assembly, 2005 World Summit Outcome, A/RES/60/1 (October 13, 2005), para. 138-140

⁴⁰⁸ Craig Zelizer, ed., Integrated Peacebuilding: Innovative Approaches to Transforming Conflict (Boulder: Westview, 2013).

comprehensive cross-fertilization between scholarship and practice and a considerable amount of research is propelled by strong policy questions or challenges (Lone., 2019).⁴⁰⁹ Most of this is characterized by policy work those stresses both disputes ending and resolution and the championing of individual human rights, the rule of law, liberal democracy, and a market economy.

5.5.1 Hybrid Court Challenges and Failures

The Hybrid Court for South Sudan was envisaged as a central accountability mechanism under the 2015 peace agreement. Designed as a hybrid tribunal combining international and domestic elements, it was intended to prosecute serious international crimes.⁴¹⁰ However, nearly a decade later, the Court remains unimplemented. Political resistance has been the primary obstacle. Both President Salva Kiir and Vice-President Riek Machar have opposed the Court's establishment, citing sovereignty and stability concerns.⁴¹¹ This resistance reflects a broader pattern in post-conflict states where accountability mechanisms threaten entrenched elites.

The failure to operationalise the Hybrid Court has significant implications for genocide prevention. By entrenching impunity, it undermines deterrence and reinforces cycles of violence. The South Sudan case thus illustrates how legal mechanisms without political enforcement capacity remain ineffective.

5.5.2 Legal Foundation and Jurisdictional Architecture

The Hybrid Court for South Sudan (HCSS) was established under Chapter V of the 2015 Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS).⁴¹² Unlike purely domestic tribunals, the HCSS was conceived as a hybrid mechanism combining

⁴⁰⁹ Ibid.

⁴¹⁰ African Union, Agreement on the Resolution of the Conflict in the Republic of South Sudan (2015) ch V.

⁴¹¹ African Union Commission of Inquiry on South Sudan, Final Report (2014).

⁴¹² African Union, Agreement on the Resolution of the Conflict in the Republic of South Sudan (2015) ch V.

domestic and international elements, to be established by the African Union (AU) in collaboration with the Government of South Sudan. The Court's jurisdiction extends to genocide, crimes against humanity, war crimes, and other serious crimes under international law committed since 15 December 2013.⁴¹³ This broad jurisdiction signals a recognition that domestic courts lacked the independence and capacity to prosecute high-level perpetrators. The hybrid model was intended to balance international standards with regional ownership, reflecting a growing African Union preference for "African solutions to African problems."

However, the Court's legal foundation reveals structural fragility. Unlike tribunals created directly by the United Nations Security Council under Chapter VII, the HCSS depends on cooperation from the very political actors who may be subject to prosecution.⁴¹⁴ Its establishment requires enabling legislation, cooperation agreements, and logistical support from the Government of South Sudan. This reliance on political goodwill significantly weakens its enforceability.

5.5.3. The Problem of Deferred Establishment

Despite its inclusion in the 2015 peace agreement, the Hybrid Court has not been operationalised. Nearly a decade after its proposed creation, it remains unrealised. The African Union Commission of Inquiry had recommended accountability mechanisms as essential to sustainable peace.⁴¹⁵ Yet implementation has been repeatedly delayed. The delay cannot be understood as mere administrative difficulty. It reflects deliberate political resistance by elites who would likely face prosecution. Both President Salva Kiir and Vice-President Riek Machar have publicly expressed opposition to the Court, framing it as destabilising or incompatible

⁴¹³ Ibid art 3.

⁴¹⁴ United Nations Charter art 41–42.

⁴¹⁵ African Union Commission of Inquiry on South Sudan, Final Report (2014).

with peace efforts.⁴¹⁶ This resistance illustrates a broader structural dilemma in transitional justice: when accountability threatens incumbent power structures, implementation becomes politically improbable. The absence of enforcement authority by the African Union further compounds this problem. Unlike the Security Council, the AU lacks coercive mechanisms to compel compliance.

5.5.4 Sovereignty, Elite Entrenchment, and Legal Paralysis

The Hybrid Court's failure reveals the enduring strength of sovereignty as a shield against accountability. Although the peace agreement formally endorses the Court, the South Sudanese government has invoked sovereignty concerns to delay its establishment. This reflects a tension between regional commitment to atrocity prevention and reluctance to confront member states. The African Union's Constitutive Act recognises the right of intervention in grave circumstances, including genocide and crimes against humanity.⁴¹⁷ Yet this principle has not translated into decisive enforcement in South Sudan. The result is a form of legal paralysis: accountability mechanisms exist on paper but lack operational force.

From a doctrinal perspective, this undermines the preventive dimension of international criminal law. The Genocide Convention imposes obligations to prevent and punish genocide.⁴¹⁸ However, where regional institutions lack the capacity or political will to enforce such obligations, the normative framework remains aspirational.

⁴¹⁶ Alex de Waal, 'When Kleptocracy Becomes Insolvent: Brute Causes of the Civil War in South Sudan' (2014) 63 *African Affairs* 347.

⁴¹⁷ Constitutive Act of the African Union art 4(h).

⁴¹⁸ Convention on the Prevention and Punishment of the Crime of Genocide art I.

5.5.5. The Deterrence Deficit

One of the central justifications for international criminal tribunals is deterrence. The prospect of prosecution is presumed to discourage future atrocities.⁴¹⁹ However, deterrence depends on credible enforcement. The prolonged non-establishment of the Hybrid Court signals to political and military elites that accountability is negotiable. This credibility deficit has broader implications. In the absence of prosecutions, cycles of violence may be reinforced rather than disrupted. Impunity entrenches a culture in which political power and military violence are intertwined, particularly in post-conflict states with militarised governance structures. Comparatively, hybrid tribunals such as the Special Court for Sierra Leone demonstrated that accountability is possible where political support and international backing converge.⁴²⁰ The contrast with South Sudan underscores the importance of external leverage and sustained diplomatic pressure.

5.5.6 Peace versus Justice: A False Dichotomy?

Opponents of the Hybrid Court have argued that accountability risks destabilising fragile peace agreements. This reflects a long-standing debate within transitional justice scholarship regarding the tension between peace and justice. However, empirical evidence increasingly suggests that deferring justice in the name of stability often entrenches elite impunity and undermines long-term peace.⁴²¹ In South Sudan, the failure to operationalise the Court has not produced durable stability. Instead, it has perpetuated a governance model characterised by militarisation, ethnic patronage, and elite bargaining. The absence of credible judicial accountability has limited the transformative potential of the peace process.

⁴¹⁹ Payam Akhavan, 'Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?' (2001) 95 *American Journal of International Law* 7.

⁴²⁰ Charles Chernor Jalloh, *The Sierra Leone Special Court and Its Legacy* (Cambridge University Press, 2014).

⁴²¹ Ruti Teitel, *Transitional Justice* (Oxford University Press, 2000).

5.5.7 Normative and Structural Implications

The Hybrid Court's failure illustrates a broader structural weakness in international atrocity prevention: accountability mechanisms that depend on the consent and cooperation of implicated elites are inherently fragile. Without independent enforcement authority, hybrid tribunals risk becoming symbolic rather than functional institutions. This has direct implications for genocide prevention. Where perpetrators calculate that accountability will be delayed, diluted, or abandoned, the deterrent effect of international criminal law diminishes. The South Sudan case thus demonstrates that legal frameworks alone are insufficient; effective prevention requires institutional independence, political backing, and enforcement capacity.

5.6 The UN in Preventing Genocide

Peace and security have been more elusive to most of the populations in Africa. Even though the number of conflicts as examined by the Human Security Report has decreased globally by up to 40 percent, between 1992 and 2005,⁴²² and also the number of African nations with continuing conflicts has reduced, some of the nations in the continent continue to be tormented by genocide, crimes against humanity, murders, abuse, and other civil and political rights abuses. In 2007 Freedom House established that, from the 20 nations across the globe with the lowest protection of civil and political rights, eight of them are found in Africa including Côte d'Ivoire, Equatorial Guinea, Eritrea, Libya, Somalia, Sudan, Swaziland and Zimbabwe). The House also established that of the 45 nations categorized as "not free" globally, 18 of them are in Africa.⁴²³ Therefore eighteen nations from the fifty-three found in Africa are viewed as "not free". In dealing with the various conflicts, the UN and other actors undertake several steps that involve sending peacekeepers to war-torn areas. Whilst the UN

⁴²² Human Security Report 2005: War and Peace in the 21st Century (2005, Oxford University Press) at 22.

⁴²³ "Freedom in the world 2007", available at: <<http://www.freedomhouse.org/template.cfm?page=15>> (last accessed 13 October 2022)

and the AU sent approximately 31,000 peacekeepers to Africa in 2002, the number grew more than double to around 60,000 by 2007 (Kiplagat., 2019.).⁴²⁴

Even though in the past, the fundamentals of non-intervention and sovereignty were believed to prohibit the action of one nation within another under such circumstances. the two ideas are giving rise to two “new” precepts. that is humanitarian intervention (HI) and the “responsibility to protect” (R2P). even though several actors condemn the principle of Responsibility to Protect washing away the equality between countries and specifically the power of weaker states, the principle keeps attracting support and superiority in discourses on the safeguarding of persons from dreadful human rights violations (Baade., 2018).⁴²⁵

This thesis analysed the basis for Human Intervention in the UN Charter though it did not mean to It is not, however, meant to discredit the other premises on which HI can be available. Unquestionably, the right to Humanitarian Intervention arising from the Genocide Convention, that is the responsibility to prevent and prosecute is an essential foundation for the principle and links it to the growing standard of the R2P. The United Nations Security Council has on several occasions, asserted that there are responsibilities on governments to avert and prosecute genocide.⁴²⁶ The R2P tends to be tacit in these resolutions. Just the other day, the UN Security Council resolutions explicitly instituted R2P (Mukuki., 2020).

Additionally, the research analysed the extent to which R2P is acquiring broader support. It concentrates on the UN instruments that authorize HI and examines if intervention may be sanctioned even in the absence of a UN Security Council responsibility (Ruth., 2021).

⁴²⁴ UN Department of Peacekeeping Operations Background Note, available at: <<http://www.un.org/Depts/dpko/dpko/bnote.htm>> (last accessed 13 October 2022).

⁴²⁵ L Holzgrefe and R Keohane (eds) Humanitarian Intervention: Ethical, Legal and Political Dilemmas (2003, Cambridge University Press).

⁴²⁶ UN Security Council Resolution 1325 on Women, Peace and Security (31 October 2000), available at: <<http://www.peacewomen.org/un/sc=1325.html>> (last accessed 13 October 2022).

Sequentially, the thesis also evaluated the principles, usage, and interconnection between R2P, and HI based on the African continent scenario. This evaluation is critical due to the questionable political will and capability of the UN in handling conflict and human rights violations in Africa. Despite there being strives by several actors on the continent and also the UN, the political will, resources, and funding are essential requirements of the UN and several African sub-regional organisations to achieve an exhaustive HI and R2P responsibility.

Vitality, the main duty of the Office on Genocide Prevention and the Responsibility to Protect is to provide backup to the early warning task that the Special Advisers on the Prevention of Genocide and on the Responsibility to Protect carry out, and also their advancement strives to marshal the United Nations system and Member nations to carry out potent action in response to circumstances where civilians tend to be in danger of mass atrocities such as genocide, crimes against humanity, war crimes and ethnic cleansing or where these crimes are continuing.

The UN's Office on Genocide Prevention and the Responsibility to Protect work on early warning of atrocious crimes is founded on the belief that the crimes do not occur out of nowhere. They undergo various steps that need strategizing and getting ready. The thesis notes that there are warning signs, and common risk elements, both structural and dynamic, that may result in or precipitate the start of these heinous crimes.

Consequently, one of the core mandates of the United Nations Office on Genocide Prevention and the Responsibility to Protect is to gather and collect appropriate information on political, human rights, humanitarian, social, and economic advancement in states globally to discover early warning signs of the threats of mass atrocities. The analysts here extract and examine large volumes of data – mainly obtained from the United Nations sources, and also

secondary— against the risk components contained in the Office’s Framework of Analysis for atrocious crimes (Anderton and Brauer., 2021).

The Framework of Analysis for Atrocity Crimes (A/70/741–S/2016/71), is a procedural early warning apparatus created to systematize the gathering of data on the risk components related to genocide, crimes against humanity, war crimes, ethnic cleansing, and subsequently to give constancy in the evaluation of information and the danger of those felonies. After the analysis of a particular situation points to the threat of atrocious crimes occurrence, the Special Advisers can notify the Secretary-General and, via him, the Security Council, in this way acting as a mechanism of early warning. The Special Advisers give prompt advice to the Secretary-General on preventive measures and marshal the United Nations system and other vital partners, considering the urgency of the circumstances, to improve the collaborative capacity to avert such crimes or stop them from happening.

Also, the Special to the Secretary-General can carry out advocacy missions to nations where their participation is thought to be of specific importance to deal with the situations of worry before they grow to become more brutal (Druet., 2022). The research established that there are various methods in which the Special Advisers carry out their early warning duty. This might be done internally, via discussions with the Secretary-General, other United Nations officers, and Member Nations, or publicly, via the media. In circumstances of threatening danger, the Special Advisers can give early warning via briefings to the Secretary-General or directly to the Security Council.

Nevertheless, a significant part of the early warning mandates of the Special Advisers and their Office is exercised outside the public domain. Based on the subject and objective of this thesis, below is a statement by Mr. Adama Dieng, a Special Advisor on the Prevention of Genocide under the Secretary General of the UN, issued during a United Nations Security

Council on the situation of South Sudan “The violence that broke out on 15 December 2013, following a power struggle within the ruling Sudan People’s Liberation Movement (SPLM) between former vice-President Riek Machar and President Salva Kiir, has quickly degenerated into ethnic violence. The recent brutal attacks in Bentiu, Unity state, and Bor, Jonglei state, seem to have changed the trajectory of the conflict and, if such attacks are not immediately halted, could plunge the country into serious violence that could spiral out of control. In the current situation, we see elements that we could categorize as risk factors for genocide and other atrocity crimes (Koursami., 2018).

In Bentiu, more than 200 civilians of Dinka ethnicity were massacred, and more than 400 others were wounded, reportedly by opposition forces allied to former Vice President Riek Machar (Celik., 2018). According to United Nations reports, the attackers separated ethnic Dinka from ethnic Nuer civilians and then executed the Dinka and others perceived to support the government. In Bor, armed elements reportedly affiliated with the Government forced entry into the UNMISS camp, in which displaced persons have been sheltering. They killed more than 50 civilians, mostly of Nuer ethnicity, and wounded around 100 others.

This attack was allegedly carried out in revenge for the capture of Bentiu town by opposition forces (Mutanda., 2019). In our meeting with the IDPs in Bor, they expressed fear that the attacks could reoccur anytime and pleaded with the United Nations to relocate them to somewhere safer, preferably Akobo. They said that they knew some of the perpetrators and they do not feel safe in Bor, where they risk being targeted simply because they are Nuer. The UNMISS commander in Bor corroborated the statements of the IDPs and informed us that the recent attack was well organized and that attackers included individuals in uniforms of the army of South Sudan, the SPLA.

Another cause for serious concern has been the reported use of radio in some areas to spread messages constituting incitement to violence against all those perceived to support the government (Robert., 2018). It was reported that in Bentiu, fighters allied to Dr. Riek Machar incited the civilian population to attack the Dinka, even encouraging their supporters to commit acts of sexual violence against women. This is unacceptable. Mr. President, in our consultations with senior government officials in Juba and with Dr. Machar, we noted with concern that both sides either denied attacks against civilians or justified them because were carried out in self-defence against a vengeful group.

If we are to ensure the protection of the civilian population in this country, the State must acknowledge that it has the primary responsibility to protect all South Sudanese irrespective of nationality, ethnicity, or political affiliation and prioritize this responsibility. Blaming one group or another is simply irresponsible and dangerous. UNMISS is doing its best under very difficult circumstances and should be commended. All leaders in South Sudan must assume greater responsibility to ensure that those under their authority do not commit serious violations of international human rights and humanitarian law. They should send strong messages to call for the unity and respect of all South Sudanese and take immediate measures to end the violence. I am glad that, in our meetings this week, both President Salva Kiir and Dr. Riek Machar affirmed the will to do this. I hope that they will now take concrete steps to act on their commitments (Hertzke., 2019).

Reports of homogenization of security forces by both camps are worrying, as we consider the risk of atrocity crimes (Ibrahim., 2021). The perception that those supporting Riek Machar are predominantly ethnic Nuer and those supporting President Kiir are predominantly Dinka has heightened the risk that individuals could be systematically targeted based on ethnicity. This polarization is further compounded by reports of exclusion/discrimination based

on ethnicity. For example, in Bor, the IDPs reported to us that they have been denied access to medical care by government officials because they are Nuer.

The culture of impunity in South Sudan has contributed immensely to the current crisis. As we search for peace in this young nation, we must also ensure that those responsible for crimes committed there are held to account. There can be no peace without justice. The current culture of impunity will only undermine our efforts. We have learned this the hard way from events in other places, including the genocide that took place 20 years ago in Rwanda. To the survivors of the genocide, we owe a pledge to take all possible measures within our power to protect populations from another Rwanda. There is no excuse for inaction (Totten and Caplan., 2018).

In this regard, I welcome the IGAD mediation efforts and the role of the African Union-led Commission of Inquiry on South Sudan, which aims to end the violence and bring justice to the victims. Both President Kiir and Riek Machar informed us that they are investigating any serious violations committed by their respective forces and that those found responsible shall be held accountable. We should hold them to this commitment. In our meeting with the members of the African Union Commission of Inquiry on South Sudan, I reiterated the expectations of the international community for the work of the Commission to be independent, thorough, and credible and stressed that they should make sure that the Commission seeks not only to pursue measures for reconciliation and national healing but also emphasizes accountability measures. The members of the African Union Commission of Inquiry requested technical assistance from the UN, in particular the Office of the High Commissioner for Human Rights. We should do all we can to support their work. I was encouraged to note from my discussions with IGAD that the IGAD mediation envoys believe that accountability should be part and parcel of any agreement reached to end the fighting.

To conclude, Mr. President, we must continue to follow the situation in South Sudan closely, take whatever measures are most appropriate to protect the population from further suffering, and prevent the situation from spiraling out of control. The risk that it could do so is high, based on the risk factors that I have highlighted today. UNMISS has saved lives by opening its gates to protect the population in Bentiu, Bor, Malakal, and other places. The mission is under stress, however, and troop-contributing countries should expedite the deployment of additional troops as part of the UNMISS force surge to enhance its capacity to protect the population.

If the parties do not demonstrate their will and intention to end the violence and attacks against civilians, including incitement to commit violence, I believe the Council should consider taking additional measures against the parties to prevent the situation from deteriorating further. We should all support efforts aimed at holding accountable those responsible for serious violations. The findings and recommendations of the report of the High Commissioner for Human Rights, which is about to be released, and other human rights reports, must be acted on, including - first and foremost - by the national authorities.

Finally, the issue of weaknesses in governance has to be addressed by development partners. In addition to the seeming disregard for the condition of the population, authorities have turned a blind eye to corruption. This corruption has also created a clear motivation for others to take up arms so that they can access national resources for personal gain (Ojo and Ihemeje et al., 2020).

Today's violence in South Sudan is not motivated by the desire to change the country, but rather by self-interest goals related to accessing oil wealth and development resources. The international community must not be complicit in this agenda. Prevention of further violence

therefore requires a coordinated international response that includes a new posture by development partners. Any resolution should take this into account.

Excellencies, we must uphold our collective responsibility to protect the populations of South Sudan from genocide, war crimes, ethnic cleansing, and crimes against humanity, as well as their incitement. Ethnicity must not be used as a reason to incite violence or demonize, exclude or attack any community or section of the population in South Sudan (Idris., 2019).”⁴²⁷

5.7. The Human Rights Up Front Initiative

In September 2013, Secretary-General Ban Ki-Moon initiated the Human Rights Up Front (HRUF). The HRUF is a significant internal UN Action Plan, founded on the Sri Lanka report outcomes and advancing on the thesis arising from the past reports on UN action in circumstances of severe breaches of international human rights and humanitarian law that accumulate to extensive atrocious crimes.⁴²⁸ The Human Rights Up Front project is focused on bolstering aversion to serious considerations that transcend the UN’s three pillars of peace and security, development, and human rights. The program sought to unify the UN System using a mutually supportive approach, assisting in prevention, and prioritizing human rights. In the worst scenarios, the plan looks to avert the most severe life-threatening breaches. The HRUF looks to bring about a cultural change in the UN system (DUTSE).

Here, all United Nations employees and institutions are required to carry out their duties with an awareness of their broader mandate to support the UN Charter and overall UN responsibilities. The initiative inspires the employees to take a righteous position and to act

⁴²⁷ United Nations Office on Genocide Prevention and the Responsibility to Protect United Nations & It; <https://www.un.org/en/genocideprevention/early-warning.shtml>>.

⁴²⁸ Strauss, Ekkehard, “The UN Secretary-General’s Human Rights Up Front Initiative and the Prevention of Genocide: Impact, Potential, Limitations” (2018) 11 Genocide Studies and Prevention 48

with moral courage to avert gruesome and extensive violations and authorizes Headquarters support for the culprits. Additionally, the initiative pursues for operational shift, and a shift in UN interaction with Member countries.⁴²⁹

Worth noting is that, with a look at the constrained execution rate of thesis in previous panel reports, the senior most UN personnel including the former Secretary-General Ban and the DSG, led and supported the execution of the HRUF program via intense individual interactions. As the thesis may pick from the documents available, eighteen execution measures of the HRUF program have been significant as of March 2014 and have involved actions to clearly state the UN vision and mandate for averting and dealing with severe violations of international human rights and humanitarian law, the UN interaction with Member countries, UN action at state level, and UN headquarters coordination, in an endeavor to kedge HRUF forever in the UN. The commitment to ensure the continuous implementation of the initiative was occasionally renewed by the Secretary-General Ban to the people and objectives of the UN with Member countries (Müller., 2021).⁴³⁰

Moreso, the researcher notes that several fundamental steps and structures were set up for improved coordination of early warning and early response at UN headquarters (Imperiale and Vanclay., 2019). For better planning its early warning and crisis control system, the HRUF program seeks to design strategies for distinct nations via a Regional Quarterly Review (RQR). The RQR is a structure via which the officials of UN system regional divisions at headquarters screen all nations in their specific jurisdiction every three months for early warning signs (developmental, political, humanitarian, or explicitly human rights) after which they

⁴²⁹ United Nations, Human Rights Up Front: A Summary for Staff, accessed December 30, 2017, <http://www.un.org/News/dh/pdf/english/2016/Human-Rights-up-Front.pdf>.

⁴³⁰ United Nations, "Deputy Secretary-General's Remarks at Briefing of the General Assembly on Rights Up Front" (remarks, New York, December 17, 2013), accessed December 30, 2017, <https://www.un.org/sg/en/content/dsg/statement/2013-12-17/deputy-secretary-generals-remarks-briefing-general-assembly-rights>.

exhaustively deliberate on those situations that are “evolving” and may forecast the risk of grievous violations and disaster. In regions where there is a UN state presence, the senior UN officer is conferred by the RQR co-chairs (DPA and Regional UNDG) on the situation. In circumstances where the danger of grievous violations of international human rights and humanitarian law has escalated, the senior UN officer on the ground or headquarters may request for the setting up of an Inter-Agency Task Force (ITF), which then acts as the main coordination platform at headquarters.⁴³¹

5.8. The Emerging Normative and Institutional Framework in Africa

In Thesis 4(h) of the Constitutive Act of the African Union, the AU dedicates itself to intervening militarily in any member country to stop genocide, mass atrocities, and violations against humankind (Vambe., 2021). It is mostly hence that the African Standby Force (ASF) was formed in 2000. The 6th " mission scenario " illustrated in the ASF's policy framework is stepping in, in genocide circumstances when the international community doesn't act expeditiously. Musila,⁴³² Believes that by codifying humanitarian intervention, the Constitutive Act kicks off something new, being the sole multilateral treaty to do as such. At the UN, the option to intervene militarily in these circumstances has arisen out of practice. A standard of conventional international law yet its execution is not steady.⁴³³

⁴³¹ United Nations, “Deputy Secretary-General’s Remarks at Briefing of the General Assembly on Rights Up Front” (remarks, New York, December 17, 2013), accessed December 30, 2017, <https://www.un.org/sg/en/content/dsg/statement/2013-12-17/deputy-secretary-generals-remarks-briefing-general-assembly-rights>.

⁴³² ‘Preventing Genocide: Africa’s Evolving Normative and Institutional Framework’, Africa Center for Strategic Studies <<https://africacenter.org/spotlight/preventing-genocide-africas-evolving-normative-institutional-framework/>>

⁴³³ Ibid.

The normative commitment to forestall genocide and indict culprits is upheld by an institutional structure moored in the AU's Peace and Security Council (PSC). The resolutions to step in militarily in a member country in the event of "grave circumstances" to stop genocide and other worldwide violations are made by the Assembly of Heads of State and Government (AHSG), as informed by the PSC. They are authorized as well as have without a doubt practiced the power to punish nations that disregard concurred standards, including those about unconstitutional change of government. This has a preventive aspect since challenges for power in Africa can prompt struggles in which serious human rights infringement and violations happen. Besides, the risk of genocide is rarely far, with ethnic marshaling a vital element in numerous specific situations. Notwithstanding, while the AU progressively acts decisively in Africa's contention zones, its job in the field of global peace and security is fairly encompassed by Thesiss 53 and 54 of the UN Charter, which subdues them to the UN Security Council (Nyandong., 2023).

This partially makes sense of an obvious pattern toward the hybrid AU/UN peacekeeping missions (Spandler., 2020). In any case, the AU has frequently been the first of collective endeavors to manage disasters and forestall genocide in Africa. In 1998, the African countries assumed a significant part in the making of the International Criminal Court, itself a result of the ever-evolving endeavors recharged by the international reactions to the monstrosities perpetrated in Rwanda in 1994 and in the former Yugoslavia in 1993. Situated in The Hague, eight of the Court's open cases include Africa, involving one regarding the circumstance of Darfur, Sudan, for which President Al Bashir was arraigned for genocide, atrocities, and crimes against humankind. Other AU organs carry out significant roles zeroed in on the counteraction of genocide. The proposed African Court on Human Rights and Criminal Justice, birthed by the Malabo Convention adopted in 2014, would prosecute people

for decimation and different violations, and the AHSF and PSC would have the option to refer a situation to the Court for investigation.⁴³⁴

Since its establishment in 1986, the African Commission on Human and People's Rights has turned into a significant platform for casualties that have been liable to mass atrocities like genocide. Besides other different functions, the Commission is authorized to carry out fact-finding missions and has done as such on account of Darfur in 2004 and Burundi in December 2015. The Commission uncovered serious infringement of human rights and the commission of international crimes, and its reports have become significant sources for the prosecutor of the International Criminal Court on account of Darfur and for global investigations into Burundi.⁴³⁵

Preventive diplomacy, which is on the opposing side of humanitarian Intervention on the range of options, is a fundamental device for mediating in dispute circumstances (Akiba., 2020). The UN and regional agencies have made diplomatic undertakings a necessity in the continent's trouble spots. Following the contested presidential elections in Kenya in 2007, the opportune stepping in by regional political leaders, and the AU and UN, also stopped the inter-ethnic brutality. The Kofi Annan-drove mediation might have been the first utilization of the principle of responsibility to protect to frame the international community's reaction to a disaster.

⁴³⁴ 'Preventing Genocide: Africa's Evolving Normative and Institutional Framework', Africa Center for Strategic Studies <<https://africacenter.org/spotlight/preventing-genocide-africas-evolving-normative-institutional-framework/>>

⁴³⁵ 'Preventing Genocide: Africa's Evolving Normative and Institutional Framework', Africa Center for Strategic Studies <<https://africacenter.org/spotlight/preventing-genocide-africas-evolving-normative-institutional-framework/>>

The normative and institutional framework for responding to genocide whether to alleviate it or put an end to the carrying out of mass atrocities has resulted to be substantially well-grounded since the Rwanda massacre of 1994 (SáCouto and Viseur et al., 2019). Forward steps have been made, for instance, on early warning mechanisms that alert political leaders on the danger of a flare-up of conflicts and to variables, for example, hate speech and incitement that set the pace for genocide to happen. Musila asserts that what is most frequently missing is not the material ability to intervene, but the mental fortitude to use political and diplomatic capital to do as such. Cooperation among regional and international agencies is vital.⁴³⁶ The acknowledgment that genocide is not an occasion, but a process ought to make policymakers take intermediate actions like prosecuting and arms bans seriously. The absence of an agreement to settle on the resolution to use these and other resources just reinforces the ability of adversaries to cause damage on a large scale.⁴³⁷

5.9 Summary of the Chapter

This lesson taught us a lot about the laws and social effects of killing in South Sudan. Focusing on how the United Nations (UN) responded, it did this by putting it in the bigger picture of international and regional efforts to stop and punish murder. It was Chapter VII of the UN Charter that made the International Criminal Tribunal for Rwanda (ICTR) possible. In the first part of the lesson, the ICTR was used as an example of how to bring into court people who have killed people in genocide. The ICTR could punish many people who took part in the Rwandan genocide in 1994, but it also had political limits. For example, it did not charge people who were part of the Rwandan Patriotic Front (RPF). It was clear from this that it is hard for foreign activities to keep politics and the law in check.

⁴³⁶ Ibid.

⁴³⁷ 'Preventing Genocide: Africa's Evolving Normative and Institutional Framework', Africa Center for Strategic Studies <<https://africacenter.org/spotlight/preventing-genocide-africas-evolving-normative-institutional-framework/>>

The next part of the lesson was about UNMISS, which stands for the UN Mission in South Sudan. As of now, the civil war in South Sudan is still going on. UNMISS was made to help protect people. Before, UNMISS's job was to help build states and keep the peace. But when it was asked to protect big groups of people, its job changed. It was an important example of how the UN can help stop big crimes, even though the mission did not have enough resources, the violence was getting worse, and the government wasn't sure what would happen.

The Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS) set up the South Sudan Hybrid Court, which we also talked about. This court was made to deal with crimes that happened during the Civil War. The ICTR and other foreign courts were compared to see how well they did their job. Some people are still not sure if it can bring charges against high-level officials who are still in office. It's less useful and looks worse because of this.

5.10 Findings and Results

The particular goals of the thesis comprised: carrying out specific objectives of the research on the part played by the United Nations in combating breaches of human rights, specifically in genocide, crimes against humanity, and war crimes within the Responsibility to protect accord, scrutinizing present position of the UN and their power instruments offered to them in dealing with genocides, crimes against humanity, and war crimes in Africa and underlining the disputes that emerged within Africa in attempts to addresses the domestic wars in South Sudan to provide a chance in finding out the shortfalls of the security agency in aiding issues predicted to facilitate unstable situations in days ahead.

This research establishes a new position, facing the supposition that genocide is the “crime of all crimes.” Genocide was not implied as a provocative term applied to indicate forced intervention; it was a crime constitutionalized to breach the vacuum in international criminal law and safeguard a sect's self-independence. The assessment carried out solidly insinuates that genocide has prominence over other crimes and that this supremacy has been demonstrated in treaties by both international and state courts. Nonetheless, genocide’s distinction has substantial effects on the casualties, witnesses, and the accused’s constitutional rights and security which should be investigated more.⁴³⁸

The thesis was set to examine the United Nations mandate in alleviating genocide, war crimes, crimes against humanity, and ethnic cleansing in Africa: the case of South Sudan. The research's first goal was to investigate the parts played by the United Nations in combating human rights violations, specifically in genocide, crimes against humanity, and war crimes within the Responsibility to Protect Accord. Here, the findings reveal that the UN played a significant role in averting human rights violations by doing away with the element of state sovereignty after cases of human rights abuse escalated. Additionally, the two agencies do their best to ensure that there is peace in Africa by ensuring that nations endorse the rule of law at both domestic and global levels.

Also, this thesis notes that warlords are sometimes defiant to the established peace deals achieved through arbitration on various occasions. In such a situation, a combat's task and functions become an option; and forces requirements should be well grasped. More so, the principle of Responsibility to Protect (R2P) continues to be a wonder that significantly flopped in meeting the African states' anticipated standards in dealing with genocide, crimes against

⁴³⁸ Edmonds, Chloe. 2016. "The Crime of All Crimes: Genocide's Primacy in International Criminal Law. " Masters, Georgetown University.

humanity, and war crimes. This is because the guide to protection has several components and unauthorized actions and interventions enshrined in it.

The second objective was to analyse the UN's current status, and the power instruments granted to these bodies in addressing genocides, crimes against humanity, and war crimes in Africa. The thesis outcomes indicate that failure to provide information on the amount of force used in peacekeeping missions by the UN Security Council has given rise to the mission armies using excessive force and thus being penalized, which may also cause prolonged wars in the conflict zones. Additionally, the Rwanda genocide, frequent fights in the Democratic Republic of Congo, and the conflicts in Sudan are a few scenarios of the regional agencies' incapability to undertake their mandates while also demonstrating the UN's and international community's reluctance to combat and act on such crimes.

Additionally, the thesis reveals that achieving sustainable peace through peacebuilding has had little success, more so through international interventions. Richmond explains that the peace models of western have been implemented in post-conflict nations but with low achievement. Implementation of peace agreements has been dependent on third-party actors such as the UN, whose work is insufficient. International peace-building interventions involving different actors have also been dismissed on allegations that they do not reflect the local actors' interests, needs, and rights, what Haider calls "conflict management imperialism." The predominance of donors and other external actors presents a high chance of neglecting local changes and failing to develop sustainable answers. Emstorferet argues that such dynamics have led to indigenous methods to address post-conflict management strategies.

The third objective of this thesis was to underline the disputes that emerged within Africa in attempts to address the domestic wars in South Sudan to provide a chance to find out the shortfalls of the two bodies in aiding issues predicted to facilitate unstable situations in days

ahead. Thus, the thesis findings demonstrate that the UN Security Council is claimed to frequently sanction Chapter Four of the UN Charter when acting on disputes in Africa. However, these circumstances hardly suit the descriptive selection of conventional peacekeeping assignments. It must be noted that most of these disputes occur internally. The clashing and involved groups do not give the authorization to manage the missions, peace deals are shattered, and disputes continue or restarted in the wake of setting up the process.

CHAPTER SIX

CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

When talking about humanitarian action in Chapter 5, the social and political situations in South Sudan, which is in a crisis, are considered. This is talked about in more detail in the context of earlier talks about the ongoing violence and the requirement for international response structures to act quickly to stop atrocities and stop the conflict from getting worse. As things get worse, it's clear that the old ways of thinking about military tactics aren't working to stop genocide and other mass atrocities that happen all the time.

Rapid Genocide Intervention is the idea that this thesis presents as the only way to stop genocide right away and with absolute determination. RGI stresses how important it is to move right away to break up and take down the active structures of assault before they reach dangerous levels. Because of this, the chapter will break down past examples and use military strategy to help make a unified plan for humanitarian intervention that not only saves lives but also builds the groundwork for long-term security. In the sections that follow, we'll talk in more depth about strategies, specific problems, and the important role that foreign players play in making RGI work. This will show again why it is both urgent and necessary for the whole world to work together to stop the atrocities in South Sudan.

6.2 Summary of Findings

The UN's failure to devise and implement the R2P principle effectively has contributed to the principle's unsuccessfulness in providing intervention during the genocide, war crimes, crimes against humanity, and ethnic cleansing. Noteworthy, the AU cannot manage genocide and other related crimes without the UN or the international community's help. The thesis also concludes that the two agencies have always deployed Western peace models in post-conflict

nations in Africa. These models have failed to deliver because the implementation of the peace agreements and international peace-building interventions involving different actors are alleged not to reflect the local actors' interests, needs, and rights, what Haider calls "conflict management imperialism." The predominance of donors and other external actors presents a high chance of neglecting local changes and failing to develop sustainable answers. Emstorferet argues that such dynamics have led to indigenous methods to address post-conflict management strategies.

Subsequently, this thesis notes that the current structures set up by the security institutions on averting genocide and related crimes do not distinguish dispute indicators from probable appalling crime signifiers. This factor dramatically stifles the likelihood of setting up a logical and harmonious political and diplomatic reaction during the atrocious crimes. Moreover, the thesis concludes that peacekeeping remains a phenomenon primarily guided by varied doctrines and established theories. Significantly, the thesis confirms that the security bodies more often respond to conflicts in Africa because of the pressure put on them by the international community and want to show that they are acting but with no clear intentions or willingness to prevent these atrocities from happening. Furthermore, it is notable that the security bodies have not fully grasped the genocide phenomena from its root causes to prevent it and other related crimes.

Notably, the principle of R2P status has extraordinarily grown in the recent past. Simultaneously, the recognition given to the R2P accord might be slightly above rhetorical; in implementation, nations still being unwilling to promote the use of Humanitarian Intervention. Somehow, various countries partly encourage the use of R2P due to its indistinct definition. There remains a high level of theoretical uncertainty regarding the meaning and

implementation of the principle of R2P.⁴³⁹ For instance, Alex de Waal debates that failure to obtain the principle of R2P in Darfur “owes much to the inadequate conceptualization of the R2P”.⁴⁴⁰

The thesis also points out that politics between lifelong members of the Security Council is a significant element in deciding if a solution to an issue brought forth to the Council will get to the floor, not caring about the resolution’s wording, type of actions to be taken, if need be, its requirements and if the solution is taken up. Notably, while the AU has designed a system to combat its various human rights challenges, it will take several years before obtaining the objectives of providing security to the African populations immersed in disputes and everyday violations of their human rights.

6.3 The Challenges facing the formation of the Hybrid Court

Subsequently, Both Kiir and Machar have more than once stood in opposition to the establishment of the hybrid court, rather supporting a "national truth and reconciliation commission," a methodology that may protect them from criminal indictment and consequently keep them in power.⁴⁴¹ The government of South Sudan still does not seem to completely endorse the several legal instruments important to lay out the court officially.⁴⁴² It is not surprising to encounter this kind of unwillingness. Scholars such as Samuel Huntington have for a long time debated those indictments of those accused of atrocious felonies, which might subvert these leaders' authority, are doubtful to happen in settings where they remain in office. Perhaps more surprising is the apparent waning of regional and international support for the

⁴³⁹ Sarkin, Jeremy. 2009. "The Role of The United Nations, The African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and The Responsibility to Protect." *Journal of African Law* 53 (1): 1-33. DOI: 10.1017/S0021855309000011.

⁴⁴⁰ De Waal, Alex. 2007. "Darfur and the Failure of the Responsibility to Protect." *International Affairs* 83 (6).

⁴⁴¹ Sudans Post, 'Hybrid Court Will Not Solve South Sudan Problems, Kiir Says' (Online, 8 July 2021) <https://www.sudanspost.com/hybrid-court-will-not-solve-south-sudan-problems-kiir-says/>.

⁴⁴² De Waal, Alex. 2007. "Darfur and the Failure of the Responsibility to Protect." *International Affairs* 83 (6)

hybrid court in South Sudan.⁴⁴³ The African Union has the power to officially create the Hybrid court in line with the 2018 peace deal, even though the United States has been a major contributor to the establishment of hybrid courts elsewhere. South Sudan's neighbours have been blamed by activists for maintaining an "environment of silence," which has hampered efforts to establish the court. To overcome the resistance from national authorities and establish the hybrid court at this point, it may necessitate ongoing pressure from security institutions both domestic and international. However, nongovernmental organisations, both inside and outside of South Sudan, continue to demand accountability for the crimes committed during the civil war there. According to this thesis, war crimes tribunals might still happen in the days to come as long as there is a demand for accountability.⁴⁴⁴

Significantly, this research established that there will be nothing close to immediate resolutions to the South Sudan issues. The researcher asserts that the hybrid court will not be successful in delivering the punishments and closure that are anticipated unless it has a powerful and independent prosecutor and a bench of non-partisan judges. In the personal politics of South Sudan, this is probably going to prove to be politically awkward. Resetting expectations is also necessary for those looking for a quick solution to these issues. Any prosecutions will be very long and complicated due to the scale of the destruction and brutality caused by the civil war.⁴⁴⁵ For instance, the trial of Ongwen began in December 2016 and lasted just over four years.⁴⁴⁶ The hybrid court's achievements will heavily rely on the African Union

⁴⁴³ Samuel P Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (University of Oklahoma Press, 1991).

⁴⁴⁴ Jason Burke, 'South Sudan General among Dozens Killed in Attack on UN Helicopter' (Online, 8 March 2025) *The Guardian* <https://www.theguardian.com/world/2025/mar/08/south-sudan-general-among-dozens-killed-in-attack-on-un-helicopter>.

⁴⁴⁵ Trigg, James, *Hybrid War Crimes Court Promises Justice but Political Rivalry May Impede Pursuit* (March 7, 2021) *Global Risk Insights* <<https://globalriskinsights.com/2021/03/hybrid-war-crimes-court-promises-justice-but-political-rivalry-may-impede-pursuit/>>

⁴⁴⁶ *Prosecutor v Ongwen (Trial Judgment)* (International Criminal Court, Trial Chamber IX, Case No ICC-02/04-01/15, 4 February 2021).

demonstrating the same determination and vision that the organisation demonstrated when it originally supported the court's creation, as political interference from the GOSS is probable as both parties look to restrict their guiltiness or acquire an upper hand against their rival-cum-ally.

6.4 The Responsibility to Protect, and Sovereignty

While the concerns about Human rights protection and promotion have in the past been framed by non-interference since at least the 19th century, there has been a decline in the superiority of sovereignty. The Responsibility to Protect has reached an exceptional level of prominence in the past few years. However, the recognition given to R2P might be nothing but rhetorical; Nations are still reluctant to extend the utilization of Humanitarian Intervention practices. Moreover, the R2P appears to be partially supported by various nations due to its ambiguity.⁴⁴⁷ The researcher notes that there is still a lot of theoretical confusion about what R2P stands for and when it may be used. For instance, Alex de Waal debates that the failure to implement R2P in Darfur "owes much to the inadequate conceptualization of the R2P"⁴⁴⁸

Standardization of the problems could be helped along by embracing various rules. Even though this could happen at a given point in time, it might not happen right away, particularly if nothing else catastrophic happens, like what happened in Rwanda in 1994 or the former Yugoslavia. These occurrences prompted the establishment of international criminal tribunals. As a result, R2P will likely become a relevant and significant international law norm, though the rate of expansion is still unknown. The reality is that several major powers, such as those with the UN Security Council veto, are likely to prevent the use of force where it is

447 Sarkin, J. (2009). The role of the United Nations, the African Union and Africa's sub-regional organizations in dealing with Africa's human rights problems: Connecting Humanitarian Intervention and the responsibility to protect. *Journal of African Law*, 53(1), 1–33.
<https://doi.org/10.1017/s0021855309000011>

448 Ibid.

needed. As a result, R2P has not been utilised to its full potential in places like Burma and Darfur where HI is most needed. Politics and the global divide between the North and South remain major roadblocks to using the principle to alleviate and resolve disputes with more efficacy.⁴⁴⁹

The Latest instances of international opposition to R2P occurred at the beginning of 2007 when the United States and the United Kingdom presented the UN Security Council with a draft resolution on the appalling violations of human rights in Burma. Russia and China vetoed the resolution, which was approved by a 9:3 vote on the Security Council. The resolution was supported by Slovakia, the United Kingdom, France, Belgium, Italy, Ghana, Peru, the United States, and Panama. Even though the rejection of the resolution was not unexpected, it was still frustrating because it did not contain anything that the international community should have objected to, especially given Burma's failure to fulfil its international human rights obligations. The Burmese's non-compliance was not mentioned in any way. There were also no requests for any kind of intervention, peacekeepers, or sanctions. China, Russia, and South Africa, the states that voted against it, argued that the Security Council was not the appropriate forum for addressing such issues and instead the General Assembly or other UN bodies like the Human Rights Council were best fit to address the matter. The UN Security Council's indecision regarding Burma demonstrates the reluctance of at least some nations and international organisations to even make statements regarding certain nations where grave violations of human rights take place.⁴⁵⁰

The thesis notes that the success in resolving the crisis in Kenya in February 2008, as well as the intervention of the international community through the inclusion of Francis Deng, the United Nations special adviser on the prevention of genocide, may lend some confidence

449 Ibid.

450 Ibid.

to the idea that principles are attainable in Africa. As they compete for a permanent seat on the UN Security Council, Nigeria, and South Africa have already played a significant role in establishing peace or reducing conflict across the continent. However, not everyone sees their roles and motives in the best light. For instance, South Africa's policy of quiet diplomacy has not been particularly successful, and its position regarding Zimbabwe is contentious. Some people believe that South Africa is not an honest broker because it reaps political and economic benefits from the problems in Zimbabwe. Individual African leaders have also contributed significantly to the reduction of conflict or its potential. Kofi Annan, Graça Machel, and Benjamin M'Kapa, as well as several other former African leaders, have contributed positively to a variety of conflict settings on behalf of the African Union.⁴⁵¹ A serious problem happens when intercession or different cycles are fruitless, similarly as with Zimbabwe or Sudan. The civilian population has been severely impacted by years of conflict there. If peace is not achieved, HI, as envisioned in the AU Charter, or other institutions must eventually become necessary. The AU's March 2008 intervention in the Comoros indicates a willingness to use HI at some level. Nonetheless, Humanitarian Intervention is probably going to be utilised seldom. Be that as it may, an inability to go past the putting of peacekeepers on the ground may, assuming deficient outcomes are accomplished, discredit the AU with a similar brush used to criticize the OAU for its inaction and insufficient obligation to take care of Africa's numerous human rights issues. Even though the AU is involved in a lot more places than the OAU was, it still has to make difficult decisions and show that it has the political will to deal with places where there is still wilful conflict.⁴⁵²

Even though the obligation to prevent and react looks obvious, R2P sometimes has little value without HI and action to punish those who commit major violations of human rights.

451 Ibid.

452 Ibid.

Since more than 100 nations now have universal jurisdiction, prosecutions can be brought in states even if there is no direct connection to the crimes that were committed. For R2P to be meaningful and relevant to those impacted by human rights violations, institutions must fulfill their responsibilities to react and rebuild. The efforts of Africa's continental and regional institutions and mechanisms can promote the use of HI and R2P to capitalize on such positive developments and alleviate the suffering of many across the continent with sufficient political will, resources, and training. It is largely contingent on the political will of the diverse African actors who have the potential to contribute. Even though the African Union and other sub-regional institutions have transitioned from "non-interference to non-indifference" in Africa, "non-indifference" can still refer to inaction and inactivity. If individuals in Africa can anticipate steps being taken to restrict gross human rights infringement, R2P should likewise mean, if fundamental, howdy utilizing force. R2P cannot refer to non-intervention and non-intrusion when violations are serious, systematic, or ongoing. R2P will imply that those in positions of authority in states where human rights abuses are widespread will continue to do so without being held accountable. They are less motivated to address their human rights issues. These nations will continue to massively violate human rights and ignore the concerns of the international community as well. Therefore, R2P may necessitate prompt and forceful humanitarian intervention in some instances. By implication, a commitment to HI must accompany a commitment to R2P.⁴⁵³

453 Sarkin, J. (2009). The role of the United Nations, the African Union and Africa's sub-regional organizations in dealing with Africa's human rights problems: Connecting Humanitarian Intervention and the responsibility to protect. *Journal of African Law*, 53(1), 1–33.
<https://doi.org/10.1017/s0021855309000011>

6.5 Intervention in Africa by the international community

A summary of the strategic and operational lessons learned from Somalia emphasizes the idea that complicated contingency operations should always start with the adoption of a desired end state. If the goal is long-term stability, the mission entails not only a thorough intervention centred on political reorganisation, reconciliation, and disarmament but also conflict and combat. Despite efforts to avoid it, nation-building keeps coming back as the only long-term fix, however, how despised it is. Of course, this is the very objective that US forces in Afghanistan and Iraq are presently working on.⁴⁵⁴ Does this represent a possible future?

US strategy toward Africa is still influenced by the US experience in Somalia. The Battle of Mogadishu serves as a poignant reminder of the challenges and risks involved in African engagement for those who oppose peace operations, interventions, and the UN. At the same time, US policy at the moment is eager for the United States' primary goal of upholding human dignity and its strategic priority of thwarting international terrorism are both threatened by the geopolitical situation in much of Africa. In sub-Saharan Africa, the US military has carried out 31 contingency actions since 1991. Also, by 2015, America would import more oil from West Africa than it does now, surpassing the amount coming from the Persian Gulf.⁴⁵⁵ As a result, Africa is still caught in an odd dilemma. Although the United States is least involved in it, it is expected to become the next area of attention in the worldwide battle against terrorism. Its need for intricate contingency plans is the largest, but its influence over American lawmakers and the populace is the least.

As a result, the US will likely provide little in the way of actual troops while providing a lot in the way of overhead for future operations in Africa. To support American support, firepower, and intelligence assets, complex contingency operations committed to long-term

454 Kuperman, *The Limits of Humanitarian Intervention*, 76.

455 Kuperman, *The Limits of Humanitarian Intervention*, 16.

success would require significant regional human contributions. Although many African military have extensive peacekeeping expertise and strong leadership skills, US planners must understand that few of them have specialist units in addition to their baseline requirements, and many lack the requisite knowledge and tools. All but South Africa, and to a lesser extent Ghana and Nigeria, are incapable of conducting prolonged, intense combat operations or projecting force across a wide geographic area.⁴⁵⁶

The upkeep of sophisticated equipment, strategic mobility, cutting-edge command, control, and intelligence, as well as air power and naval power, are all areas where the sub-Saharan African military is particularly lacking.⁴⁵⁷ Thankfully, the American military is very strong in these fields. For the United States, the African Standby Force (ASF) represents an exceptional chance to combine these capabilities with Using African labour, Operation Restore Hope's shortcomings can be addressed by an intervention force. The African leaders, acting through the African Union (AU), endorsed the ASF's policy framework in July 2004. According to the plan, the AU will have a combined standby capacity of 15,000–20,000 troops thanks to five regional standby brigades (each with 3,000–4,000 soldiers). The core of every brigade will be located in one of the five areas of Africa, and the principal will be able to quickly mobilize, deploy, and act to stop any first hostilities before they escalate into full-scale war. According to the plan, each brigade will include four light infantry battalions, four helicopters, and a range of light to medium vehicles in addition to the necessary engineering, communications, reconnaissance, military police, logistical, and medical support units.⁴⁵⁸

The AU based its concept on six missions: intricate contingency peace operations, genocide intervention missions, standalone observer missions, chapter 6 regional peacekeeping missions, and regional observer missions deployed in tandem with the United Nations. The

456 Ibid., 76.

457 Prunier, Rwanda Crisis, 291.

458 Prunier, Rwanda Crisis, 291.

military components of each operation are supposed to be deployed within 30 days of receiving an AU mandate, except for genocide missions, which deploy within 14 days. The ASF also has 240 civilian police and a list of civilian experts to handle human rights, humanitarian, governance, demobilisation, disarmament, repatriation, and reconstruction issues to ensure a coordinated effort from the beginning of each operation. The operational status target date for the first four missions stated above was June 2005, while the operational status target date for the final two missions was June 2010. The AU is having problems raising money for a program that is extraordinarily ambitious by African standards despite major gains. At the 2003 Group of Eight (G8) meeting, leaders of developed nations accepted the idea of an AU, but they did not specifically commit financial support because they were concerned about the scope and cost of the framework. Instead, they backed a weakened version of the initial idea.¹²⁶ In 2004, the G8 made a hazy pledge to train 50,000 African peacekeepers over a five- to six-year period.⁴⁵⁹

6.6 The Problems of Military Intervention

There are inherent difficulties in using military force to halt or prevent genocide. The political will to act in genocide is frequently insufficient, especially if there is any risk involved and especially when the potential interveners' national interests are not in danger. Even if action is taken, the time needed to gather support can lead to killings that could have been avoided with a quicker response. There have never been conceptual frameworks created to cope with genocide since the idea of killing people for no other reason than that they exist is so foreign to the majority of people.⁴⁶⁰ When their national interests are not at risk, governments are hesitant to send troops into combat abroad. When considering intervention, most government officials think primarily in terms of realism. The Weinberger doctrine is a crystal-clear realism

459 Peifer, D. C. (Ed.). (2008). *Stopping Mass Killings in Africa Genocide, Airpower, and Intervention*.

460 Ibid

declaration that conflicts must threaten crucial US interests before American forces are committed to battle overseas. It was written after 241 marines were murdered during peacekeeping operations in Beirut.⁴⁶¹ While not a part of any official policy, this way of thinking persisted long after Weinberger left his position, having a particular impact on the Clinton administration. The iconic images of Somalis dragging the bodies of US Rangers through the streets of Mogadishu undoubtedly supported Weinberger's perspective on peripheral conflicts. More than the fact that thousands of people were saved from famine, those images poisoned the public's perception of humanitarian intervention in America.

As Americans witnessed Rwandan death squads slaughter approximately 800,000 Tutsis and Hutu moderates in under 100 days six months later, the same realism prevailed.⁴⁶² To dispel concerns about military intervention, the American authorities played down the massacre. Even the Clinton administration shied away from using the word "genocide" in public for fear of reminding others of their moral duty to intervene.⁴⁶³ Research suggests that by delaying the designation of the events in Rwanda as genocide early on, its perpetrators and leaders who were sensitive to international attention and susceptible to pressure may have grown more confident.⁴⁶⁴

The stark reality is that there was no threat to national interests. Nations could lose a great deal by intervening, but they had nothing to gain. With the recent memories of Somalia, the Clinton administration had good reason to predict a response if America had interfered in Rwanda. Even when trying to switch to a value-driven worldview, the world is frequently unappreciative or even hostile. Even though thousands of Kosovar lives were spared, a group of attorneys from many democratic nations tried to accuse NATO leaders before the UN War

⁴⁶¹ Ibid

⁴⁶² Peifer, D. C. (Ed.). (2008). *Stopping Mass Killings in Africa Genocide, Airpower, and Intervention*.

⁴⁶³ Samantha Power, "A Problem from Hell": America and the Age of Genocide (Harper Perennial, 2013).

⁴⁶⁴ Peifer, D. C. (Ed.). (2008). *Stopping Mass Killings in Africa Genocide, Airpower, and Intervention*.

Crimes Tribunal in The Hague of breaking international law. In the end, the panel decided to drop the accusations. Contrary to expectations, Human Rights Watch gave Operation Allied Force a harsh review and advocated for strong limitations on future military participation.⁴⁶⁵

What drives nations to switch from a realist worldview to a value-driven one?

Military involvement can start right away, but delaying action in times of crisis frequently leads to avoidable casualties during the interim. After 800,000 people had been killed, it took the United Nations six months to fully deploy its forces in Rwanda, which was far too late to accomplish anything other than helping the few moderate Tutsis and Hutus who were still alive after the RPF overthrew the extreme government. The reason for the sluggish response was not a lack of competence to quickly deploy, but rather a lack of political will that encouraged the realist sections of society to drag their feet.⁴⁶⁶

Even when awareness of killings finally increased, the absence of a situation in which to respond quickly led to a large number of further fatalities. By the time the public saw the violence on television coming from Rwanda and demanded action, the Hutu militia had run out of victims. No US president has ever borne the consequences of not prioritizing genocide intervention, according to Harvard professor Samantha Power.⁴⁶⁷ The deaths in Rwanda did not originally pique the public's interest in a significant way; Congress did not receive a tsunami of letters or phone calls pleading for action.⁴⁶⁸ Despite the tragedy's enormous extent, even the media paid little attention. While just 15 journalists covered the entire genocide at its height, 2,500 journalists descended on South Africa during the genocide to cover Nelson Mandela's election.⁴⁶⁹ This was mainly because news editors believed that since the United States would never act, it was not particularly significant. This led to a sad dilemma where the president

465 Samantha Power, "A Problem from Hell": America and the Age of Genocide (Harper Perennial, 2002) 462.

466 Barnett, *Eyewitness to a Genocide*, 140.

467 Power, *A Problem from Hell*, xxi.

468 Ibid.

469 Ibid.

would only act if there was widespread outrage over the murders reported in the media. Yet, the media would only cover the deaths extensively if they believed the administration might step in.⁴⁷⁰ But even if it had been decided to go in, could a military force with conventional training have stopped 8,000 people from dying every day? The "Western style of war," which is how most Westerners approach conflict, categorizes military goals according to whether they are attained by victory or defeat in "decisive battles."⁴⁷¹ Intervention against genocide may not be possible in this situation. Reluctance to act is also influenced by perceived shortcomings in the Western approach to warfare.⁴⁷²

It might be challenging to define success in military operations motivated by social objectives rather than national goals. In humanitarian missions, finding victory conditions occasionally involves applying different standards. Even though the Somalia intervention saved tens of thousands of lives, Princeton University professor Jeffrey Herbst and Walter Clarke, deputy chief of the US Embassy during Operation Restore Hope, argue that the public did not view it as a significant victory; instead, they believed the United States had "lost" when 18 soldiers were killed.

Moreover, adversary objectives could not fall under the traditional concept of war. Warfare, according to Clausewitz, is the act of "obliging an enemy to do one's will." Yet genocide offenders do not force their victims to take any action. Alongside the Tutsi, the Hutu were not seeking B. H. Liddell Hart's "better condition of peace." The political goals are unimportant in the immediate and short term yet are crucial for a long-term solution. Even if the Hutu had justified political concerns, how they were addressed was sufficient justification for international action. As a result of this misunderstanding of "victims," incorrect and inefficient responses to the situation in Rwanda were developed.

⁴⁷⁰ Ibid.

⁴⁷¹ Echevarria, *An American Way of War or Way of Battle*.

⁴⁷² Ibid.

The United Nations explored three possibilities for intervention: enforcing peace using "all necessary means," establishing safe havens within the nation, and establishing refugee camps on the frontiers.⁴⁷³ The first option was considerably worse because the United Nations was fully aware it had no preparation in place if the intervention force came into conflict with the Rwandan Army. The latter two would have saved just a small number of lives.⁴⁷⁴ There needs to be a strategy for stopping genocides in the middle or before they start

It is unrealistic to expect nations to "step up to the plate" for the benefit of humanity. Moreover, coalition building takes time, requires little cooperation among members, and frequently leads to poor choices or crucial delays. Therefore, it is feasible to develop a practical operational concept that are motivated by principles, moves quickly to make important decisions, and can maintain its resolve in the face of inevitable and potent political opposition.

6.7. Limitations

The thesis has significantly contributed to a better understanding of the genocide phenomena and related crimes and the roles of the UN in averting such crimes while assessing their current status and powers given to Africa's security. However, some limitations were experienced throughout the thesis period. Due to the time constraint, the thesis adopted a desktop review based on primary and secondary data sources. However, it did not conduct any physical data collection methods like interviews, focus groups, surveys, or questionnaires. Therefore, the thesis was restricted to data available. Thus, it may offer partial information regarding the roles of the AU and UN in averting genocide, crimes against humanity, war crimes, and ethnic cleansing, as well as their current positions and powers in carrying out their responsibilities. Due to the desktop research, data collected was from public sources available in journals,

473 Barnett, *Eyewitness to a Genocide*, 136.

474 Barnett, *Eyewitness to a Genocide*, 136.

treaties, laws, and other relevant documents. Thus, may be prone to bias and hence unreliable because ordinances and resolutions change over time while responses to different scenarios by the security agencies differ depending on the situation.

6.8 Rapid Genocide Intervention

Traditional militaries are designed to defeat foes who pose a danger to the interests of the country. Genocide, however, is not conventional combat. It is a methodical method of killing a bunch of people just because they are there.⁴⁷⁵ Although conventional military action may stop genocide, as in Operation Allied Force or World War II, it takes a significant amount of political will, logistical planning, and time to mobilize the requisite forces. The likelihood of saving lives is decreased by the time commitment. To stop the killing during a genocide, early intervention is required.

The Rapid Genocide Intervention goal is to swiftly and effectively stop the killing process while fostering the more challenging and time-consuming endeavour of addressing the underlying causes of mass killing. According to Rapid Genocide Intervention, genocide is a system with distinct, crucial components that can be undermined or eliminated to cause paralysis. As soon as this happens, a secure environment may be created where local governments, nongovernmental organisations, and intergovernmental organisations can cooperate to improve and then eradicate the economic, political, and social conditions that caused genocide.

The pace of employment and the scope of its objectives distinguish Rapid Genocide Intervention from standard intervention ideology. A genocidal system's paralysis is the aim of Rapid Genocide Intervention. Any weakening of the murderous apparatus that causes paralysis

475 Peifer, D. C. (Ed.). (2008). *Stopping Mass Killings in Africa Genocide, Airpower, and Intervention*.

is a triumph. RGI refers to the quick stoppage of genocide to protect innocent lives and give space for a more traditional civil/military response to look for longer-term answers.

Separating the command structures of RGI troops from the longer-term response forces is vital since stopping the killing is the immediate goal. The RGI answer will be slowed considerably by any connecting of the two. Rwanda's system for committing genocide was incredibly effective. Less urgent action is needed to preserve lives under less effective genocidal systems. The simultaneous deployment of RGI forces and long-term response forces may be permitted by low-genocide systems, which could lead to even more positive outcomes. But the importance of saving lives will never be surpassed.

An RGI force is designed to interfere with genocide mechanisms. The doctrine has been created by military strategists including J. F. C. Fuller, Brig Gen William L. "Billy" Mitchell, Col. John Warden, and others based on the idea that an adversary system can be crippled by eliminating particular logistical, industrial, command-and-control, or other strategic "nodes." Ervin Staub, a psychology professor at the University of Massachusetts, did an in-depth thesis to demonstrate that almost all genocides in the 20th century including those in Armenia, the Holocaust, Cambodia, and Rwanda only took place within extremely submissive and hierarchical civilizations. ⁴⁷⁶Professor Christian Scherrer of Hiroshima City University continued by demonstrating how the Rwandan people's particularly deeply rooted culture of mindless obedience to authority played a key role in the effectiveness of that genocide regime.

With several organisational tiers of control and a culture of not challenging authority, the society was reminiscent of Stalin-era Russia. Several priests were forced to spy on the Tutsi members of their congregations because of the extreme obedience culture in Rwanda. ⁴⁷⁷

⁴⁷⁶ Mills and Brunner, *The New Killing Fields*, 108.

⁴⁷⁷ Scherrer, *Genocide and Crisis in Central Africa*, 113–14, 118.

The RGI needs precise and timely information on an imminent genocide to put an immediate stop to the slaughter. The essential warning indicators are discernible by adequately qualified analysts during a crucial period just before the implementation of an effective genocide system. Some symptoms have been recorded. Even effective genocide systems often start slowly before picking up speed as their many mechanisms become more effective. The Rwandan system started with targeted killings in the nation's capital, Kigali, and then spread to the countryside.⁴⁷⁸ The mentally handicapped persons were the Holocaust's earliest casualties, and as time went on, Slavs, Gypsies, Jews, and other groups were added. 40 Similar to how the Cambodian genocide started with the expulsion of everyone from Phnom Penh, it first killed the elderly, the young, and the weak.

Of course, the effectiveness of the genocidal system is inversely correlated with the quantity of victims in a given time frame. The goal is to preserve life while creating a secure environment for the significant, albeit slower, international response to solve long-term stability challenges. Any decrease in a genocidal system's effectiveness will result in the preservation of a large number of lives. The media misinformed concluded that the Rwandan genocide's organisation was just as basic as the crude weapons that were frequently employed in it.⁴⁷⁹ There was nothing false than that. The genocidal system in Rwanda was the definition of a well-oiled killing machine. There were critical instances when the effectiveness of the system may have been compromised by a tiny, well-prepared Rapid Genocide Intervention force.

478 Des Forges, *Leave No One to Tell the Story*, 5, 213.

479 Destexhe, *Rwanda and Genocide in the Twentieth Century*, 33.

6.9 Recommendations and Conclusions

The gap between the responsibilities within the Genocide Convention and their actualization should be filled. This will include governments developing extensive surveillance and analysing structures. It will also encompass being accountable for their genocide checks and using them to apprise control measures. In a globe where genocide continues to happen, notwithstanding the "Never Again" vows, non-intervention is not a choice. Governments must ascertain that they are well prepared to avert genocide and other related crimes because permitting it to occur is too expensive: it is an expense of human lives and humanity.⁴⁸⁰

Governments have the mandate to alleviate genocide. In line with the ICC, this responsibility is to be prompted when governments "learn of, or should normally have learned of, the existence of a serious risk that genocide will be committed." This implies that governments should have active surveillance, assessment, and decision-making structures already set up. It is easy for governments that have not established such systems to escape their duty to respond on the grounds of inadequate information. However, this is in contrast to the responsibility to avert and the spirit of the Genocide Convention. Fundamentally, governments should set up local structures tasked to carry out regular risk investigations. To scrutinize the risk elements, governments should embrace the "UN Atrocity Crimes Framework and the JBI's Compilation of Risk Factors and Legal Norms" to alleviate genocide. These systems are developed to assist nations in figuring out circumstances that create a significant risk of genocide.⁴⁸¹

Crucial challenges emerge when arbitration or other exercises fail, like in Sudan, where wars have been continuous for many years with significant impacts on the citizens. Here, the

⁴⁸⁰ Ochab, Ewelina. 2021. "The UN Intersessional Meeting on the Prevention of Genocide." In The UN Intersessional Meeting on the Prevention of Genocide. Coalition for Genocide Response.

⁴⁸¹ Ibid.

thesis recommends that as envisioned in the African Union and the United Nations Charter, Humanitarian Intervention should be required if peace is not obtained.

Subsequently, as the task to avert and respond looks distinct, the absence of Humanitarian Intervention to prosecute the culprits for mass human rights abuse in several instances makes the principle of R2P less valuable. In most countries, the origin of worldwide authority implies that punishment for culprits might be conducted in governments even when the felonies undertaken have no direct link to the governments. Therefore, the thesis proposes that the AU, the UN, and other international security institutions should abide by the responsibilities to respond and reconstruct for R2P to be meaningful and pertinent to the people putting up with the impacts of human rights abuse.

Moreover, the thesis also acknowledges that the existence of sufficient political will, resources, and training, strives by the African and other regional organisations and structures, might further utilise HI and R2P to take advantage of these positive advancements and prevent many populations in Africa from hurting. While the African Union and other sub-regional agencies have shifted from "non-interference to non-indifference," non-indifference might continue to imply unresponsiveness and inaction. Therefore, If the African population can hope for efforts to be undertaken to restrict the abuse of human rights, then the principle of Responsibility to Protect should also imply that if required, Human Intervention should involve force. If abuse is very weighty, organized, or continuous, then the R2P accord does not imply non-intervention and non-intrusion. If that is true, then the principle will be suggesting that individuals with authority in the governments where the acts of human rights abuse are happening will continue behaving with impunity because of no motivation to manage the issues. That said, the thesis recommends that several scenarios, therefore, should imply instant

and coercive humanitarian intervention. Dedication to the principle of R2P should also by inference indicate adherence to HI.

To guarantee that the R-ARCSS is fully implemented, the international community must continue to apply consistent diplomatic pressure on all of its signatories. Regardless of rank or position, the UNSC should apply additional targeted penalties against anyone who obstructs or undermines the South Sudanese peace process. The African Union (AU), IGAD, and surrounding nations should take a leading role in enforcing and overseeing the arms embargo.

The AU and the government should swiftly set up the Hybrid Court and make sure it has the resources necessary to look into and bring cases against those accountable for previous atrocities. Regardless of organisation or position, all those who commit such crimes should be held accountable.

The international community should adopt institutions and practices that can combat innate impulses toward political realism to make military intervention in genocide a realistic option. But even if this is done, a lack of political will on the part of the country may render interventions useless or irrelevant.

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