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MASTER OF LAWS (LLM - INTERNATIONAL LAW)

THE RESPONSIBILITY TO PROTECT (R2P): AN ANALYSIS OF THE FULFILLMENT OF THE OBLIGATION BORNE BY THE NIGERIAN GOVERNMENT AND THE INTERNATIONAL COMMUNITY TO PROTECT THE NIGERIAN POPULATION FROM BOKO HARAM.

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Table of Contents

LIST OF ABBREVIATIONS.....	7
INTRODUCTION	8
CHAPTER 1	12
1. THE RESPONSIBILITY TO PROTECT	12
1.2. Pillar I: The Protection Responsibilities of The State	13
1.3. Pillar II: International Assistance and Capacity-Building.....	14
1.4. Pillar III: Timely and Decisive Response	14
CHAPTER 2	16
2.1. THE STATUS OF THE RESPONSIBILITY TO PROTECT (R2P) IN INTERNATIONAL LAW	16
2.1.1. The Responsibility to Protect as Soft Law	17
2.1.2. The Responsibility to Protect as a Reiteration of Existing International Legal Obligations to Protect	19
2.1.3. The Responsibility to Protect as a Rule of Customary International Law	22
2.2. THE PRINCIPLE OF STATE SOVEREIGNTY VERSUS THE RESPONSIBILITY TO PROTECT	23
CHAPTER 3	29
3.1. MASS ATROCITY CRIMES PERPETRATED BY BOKO HARAM	29
3.1.1. Genocide	30
3.1.2. Crimes Against Humanity.....	30
3.1.3. War Crimes	31
3.1.4. Ethnic Cleansing	31
3.1.2. SPECIFIC ATROCITIES PERPETRATED BY BOKO HARAM.....	32
3.1.2.1. CRIMES AGAINST HUMANITY AS THE TYPE OF MASS ATROCITY CRIME COMMITTED BY MEMBERS OF BOKO HARAM	36
CHAPTER 4	43

4.1. FULFILMENT OF THE RESPONSIBILITY TO PROTECT BY THE NIGERIAN GOVERNMENT.....	43
4.1.1. MEASURES TAKEN BY THE NIGERIAN GOVERNMENT TO PROTECT ITS POPULATION -IN RESPONSE TO THE INSURGENCY	44
4.1.2. HUMAN RIGHTS VIOLATION BY THE NIGERIAN SECURITY FORCES IN THEIR COUNTER-INSUGENCY EFFORT	47
CHAPTER 5	50
5.1. FULFILMENT OF THE RESPONSIBILITY TO PROTECT BY THE INTERNATIONAL COMMUNITY	50
5.1.1. THE UNITED NATIONS AND THE RESPONSIBILITY TO PROTECT THE NIGERIAN POPULATION	52
5.1.2. THE AFRICAN UNION AND THE RESPONSIBILITY TO PROTECT THE NIGERIAN POPULATION	56
5.1.3. ECOWAS AND THE RESPONSIBILITY TO PROTECT THE NIGERIAN POPULATION	59
CHAPTER 6	63
CONCLUSION.....	63
BIBLIOGRAPHY	67
PRIMARY SOURCES	67
SECONDARY SOURCES	71

LIST OF ABBREVIATIONS

AU	AFRICAN UNION
CJTF	CIVILIAN JOINT TASK FORCE
ECOWAS	ECONOMIC COMMUNITY OF WEST AFRICAN STATES
HRW	HUMAN RIGHTS WATCH
ICC	INTERNATIONAL CRIMINAL COURT
ICCPR	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
ICESCR	INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
ICISS	INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY
ICTR	INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
ICTY	INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA
MNJTF	MULTINATIONAL JOINT TASK FORCE
OAU	ORGANIZATION OF AFRICAN UNITY
R2P	RESPONSIBILITY TO PROTECT
REC	REGIONAL ECONOMIC COMMUNITIES
SADC	SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
UN	UNITED NATIONS
UNDHR	UNIVERSAL DECLARATION OF HUMAN RIGHTS
UNSC	UNITED NATIONS SECURITY COUNCIL

INTRODUCTION

More than 170 UN Member States convened at the UN headquarters in New York from the 14 to the 16 September 2005 for the UN World Summit.¹ At that summit, all the UN Member States unanimously endorsed the doctrine of responsibility to protect (R2P).² This is a commitment by the UN Member States to protect their populations from genocide, war crimes, crimes against humanity and ethnic cleansing.³ The endorsement of R2P at the UN World Summit was followed by the report of the UN Secretary General which was published in 2009 to provide guidance on how the responsibility to protect should be implemented.⁴ According to the UN Secretary General, the responsibility to protect as contained in the 2005 UN World Summit Outcome Document rests on three pillars.⁵ Pillar I gives every state the primary responsibility to protect its population from the above-mentioned crimes which are of concern to the international community. Pillar II places a duty on the international community to assist the state in reaching and enhancing its capacity to protect its population from those crimes. Pillar III gives a responsibility to the international community to take timely and decisive response when a state is unable or unwilling to protect its population from genocide, war crimes, crimes against humanity and ethnic cleansing. The use of force is also allowed under Pillar III, if it is the only appropriate measure to protect the population from such crimes. However, the use of force to protect under Pillar III must be authorized by the UN Security Council and it must be conducted in compliance with the UN Charter.⁶

The discussion above shows that the responsibility to protect forms a preventative framework to protect populations from mass violations of human rights. If states fulfil their responsibility to protect their populations, and if the international community gives its assistance to states when such an assistance is necessary, perpetration of genocide, war crimes, crimes against humanity and ethnic cleansing will not happen again. The endorsement of R2P at the 2005 UN World Summit

¹ The United Nations 'The 2005 World Summit' available at

www.un.org/en/events/pastevents/worldsummit_2005.shtml, last accessed on 5 February 2017.

² UN General Assembly, *2005 World Summit Outcome: resolution / adopted by the General Assembly*, 24 October 2005, A/RES/60/1, paragraph 138.

³ Ibid.

⁴ UN General Assembly, *Implementing the responsibility to protect: report of the Secretary-General*, 12 January 2009, A/63/677.

⁵ Ibid, page 8.

⁶ Ibid, page 8-9.

is an important move towards the fulfilment of the ‘never again’ promise of the international community.⁷

Nigeria is a member state of the United Nations (UN) and was also represented at the 2005 UN World Summit in New York which unanimously endorsed the doctrine of R2P. Nigeria is a Federal Constitutional Republic found in West Africa, which consists of 36 states.⁸ The population of Nigeria is mainly divided between Christians and Muslims, with most Muslims found in the northern part of the country, while most Christians are found in the southern part of the country.⁹

There has been an increasing level of violence in Nigeria since 2009.¹⁰ Some media houses reported that those violent activities have caused deaths of more than 15000 Nigerians.¹¹ The level of violence increased drastically in 2014.¹² Much of the violence in Nigeria has been attributed to the Islamic extremist militant group named Boko Haram, which has also claimed responsibility for many attacks and abductions.¹³ Boko Haram can roughly be translated to mean that Western education is a sin.¹⁴ The group has an official Arabic name which mean: People Committed to the Propagation of the Prophet's Teachings and Jihad (Jama'atu Ahlis Sunna Lidda'awati wal-Jihad).¹⁵

Boko Haram was established in 2002 in Maiduguri, which is the capital city of the Borno state in the northeastern part of Nigeria.¹⁶ The group has an aim of overthrowing the Nigerian government

⁷ United Nations (5 September 2012) ‘World Not Fulfilling “Never Again” Vow, Secretary-General Tells General Assembly Meeting on Responsibility to Protect’ available at <http://www.un.org/press/en/2012/ga11270.doc.htm>, last accessed on 5 February 2017.

⁸ Article 1(1) & 3 (1), Constitution of the Federal Republic of Nigeria [Nigeria], Act No. 24, 5 May 1999.

⁹ Sampson, I. T. (2014). ‘Religion and the Nigerian State: Situating the de facto and de jure Frontiers of State–Religion Relations and its Implications for National Security’ *Oxford Journal of Law and Religion*, 3(2), 311-339, page 311-313.

¹⁰ Ulf Laessing & Lanre Ola (31 August 2016) ‘Nigerian army commander: only weeks left for Boko Haram’ *Reuters*, available at <http://www.reuters.com/article/us-nigeria-security-idUSKCN116188>, last accessed on 22 January 2017.

¹¹ Ibid.

¹² Ibid.

¹³ Walker, A. (2012) ‘What is Boko Haram?’ (Vol. 17). US Institute of Peace, page 1-3.

¹⁴ Ulf Laessing & Lanre Ola (31 August 2016) ‘Nigerian army commander: only weeks left for Boko Haram’ *Reuters*, available at <http://www.reuters.com/article/us-nigeria-security-idUSKCN116188>, last accessed on 22 January 2017.

¹⁵ BBC News (24 November 2016) ‘Who are Nigeria's Boko Haram Islamist group?’ available at: <http://www.bbc.com/news/world-africa-13809501> last accessed on 5 February 2017.

¹⁶ Yvonne Ndege (30 September 2013) ‘The rise of Nigeria’s Boko Haram -An in-depth look at the shadowy group as violence continues to wrack the West African country's northeast’ available at <http://www.aljazeera.com/news/africa/2013/09/201397155225146644.html>, last accessed on 5 February 2017.

and establishing a fully Islamic state.¹⁷ In 2009, Boko Haram resorted to more violent means to achieve its aim.¹⁸ This includes destroying villages and towns, killing people indiscriminately¹⁹ and targeting Christians sometimes,²⁰ abducting women and children and subjecting them to abuse²¹ and using them as suicide bombers or as human shields.²² On 26 July 2009, Boko Haram attacked a police station in the northern state of Bauchi, Nigeria.²³ This led to a five-day armed struggle between the militant group and the Nigerian security forces. More than 800 people, of whom some are members of Boko Haram, were killed during the clashes that sparked more violence which spread to other states such as Yobe, Kano and Borno.²⁴ These clashes resulted in the internal displacement of thousands of people in the northern part of Nigerian.²⁵

It is not Boko Haram alone that has been accused of human rights violations, the Nigerian security forces have also been accused of serious human rights violations in their counter-insurgency efforts.²⁶

There is no doubt that the conduct of Boko Haram constitutes a serious threat to the safety and security of the Nigerian population.²⁷ Boko Haram's terror attacks have spread to the neighboring

¹⁷ BBC News (24 November 2016) 'Who are Nigeria's Boko Haram Islamist Group?' available at <http://www.bbc.com/news/world-africa-13809501>, last accessed on 14 February 2017.

¹⁸ The Guardian (2 August 2009) 'Nigeria accused of ignoring sect warnings before wave of killings' available at <https://www.theguardian.com/world/2009/aug/02/nigeria-boko-haram-islamist-sect>, last accessed on 5 February 2017.

¹⁹ Amnesty International Press Release (9 January 2015) 'Nigeria: Massacre possibly deadliest in Boko Haram's history' available at <https://www.amnesty.org/en/press-releases/2015/01/nigeria-massacre-possibly-deadliest-boko-haram-s-history/>, last accessed on 7 January 2017.

²⁰ Associated Press (28 December 2010) 'Radical Islamist sect says it carried out Nigeria church attacks' available at <https://www.theguardian.com/world/2010/dec/28/islamist-sect-responsibility-nigeria-attacks>, last accessed on 6 February 2017.

²¹ Stephanie Busari, Nima Elbagir & Sebastiaan Knoops (14 April 2016) 'Nigeria's missing girls: A glimpse of the stolen' CNN, available at <http://edition.cnn.com/2016/04/13/africa/chibok-girls-new-proof-of-life-video/>, last accessed on 10 January 2017.

²² The Associated Press (4 January 2017) '3 girl suicide bombers gunned down in Nigeria' *CBC News*, available at: <http://www.cbc.ca/news/world/boko-haram-suicide-bombing-1.3921989>, last accessed on 6 January 2017.

²³ Williams, D., & Guttschuss, E. (2012). *Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria*. Human Rights Watch, page 32-34.

²⁴ Ibid.

²⁵ International Displacement Monitoring Centre (19 November 2009). *Nigeria: No End to Internal Displacement*. Geneva, Switzerland: Norwegian Refugee Council, page 35.

²⁶ Amnesty International (15 Oct 2013) 'Nigeria: Deaths of hundreds of Boko Haram suspects in custody requires investigation' available at <https://www.amnesty.org/en/latest/news/2013/10/nigeria-deaths-hundreds-boko-haram-suspects-custody-requires-investigation/>, last accessed on 19 January 2017.

²⁷ Financial Times (28 January 2016) 'Timeline: Boko Haram's deadly evolution - The Islamist Terror group's attacks have menaced Nigeria for more than five years' available at <https://ig.ft.com/sites/2015/boko-haram-timeline/>, last accessed on 5 January 2017.

countries such as Cameroon, Niger, and Chad.²⁸ This means that the acts of terror by Boko Haram are no longer a domestic issue but a threat to regional peace and security.²⁹

This dissertation will discuss whether the atrocities perpetrated by Boko Haram against the Nigerian population fall within the scope of the responsibility to protect, and if so, it will investigate whether those that bear the responsibility to protect the Nigerian population from such human rights violations have lived up to their responsibility.

This dissertation will also investigate the status of the responsibility to protect within public international law. In other words, it will analyze the legal character of the responsibility to protect, its legal basis if it has any and the type of obligations it creates. It will also ascertain how the responsibility to protect seeks to prevent or stop human rights violations. It will then answer the question whether the principle of state sovereignty prohibits the intervention of the international community, when a certain state has failed to protect or it is the one perpetrating such human rights violations against its people. I will then identify and discuss the international crimes that members of Boko Haram have committed. After that, I will investigate the sources of obligation of the Nigerian government and the international community to protect and analyze the measures which the Nigerian government and the international community have adopted in the fulfilment of such a responsibility to protect the Nigerian population from the atrocities being perpetrated by Boko Haram. Lastly, I will determine whether they have successfully fulfilled their responsibility to protect.

²⁸ Onuoha, F. C. (2014). *A Danger Not to Nigeria Alone: Boko Haram's Transnational Reach and Regional Responses*. Friedrich-Ebert-Stiftung Regional Office, page 7.

²⁹ *Ibid*, page 9.

CHAPTER 1

1. THE RESPONSIBILITY TO PROTECT

The responsibility to protect was promulgated by the International Commission on Intervention and State Sovereignty (ICISS) in its report of 2001.³⁰ The report says that the primary responsibility to protect lies firstly with the sovereign state which must uphold and protect the rights of its citizens. Then secondly, the responsibility shifts to the domestic authorities working together with external actors and lastly the responsibility then shifts to the international community.³¹ This arrangement gives the international community a ‘fallback responsibility’ by only allowing it to intervene when the sovereign state that has the primary responsibility is unable or unwilling to protect its population.³²

After the report of the International Commission on Intervention and State Sovereignty (ICISS), the concept of R2P was discussed at the 2005 UN World Summit, which led to the unanimous endorsement of the responsibility to protect by more than 170 UN Member States.³³ The responsibility to protect was included in the 2005 UN World Summit Outcome document under paragraph 138 and 139. That document was adopted by the UN General Assembly through Resolution 60/1.³⁴ The states represented at the 2005 UN World Summit agreed that if the national authorities fail to protect their populations from war crimes, crimes against humanity, genocide, and ethnic cleansing, then ‘collective action’ should be taken in compliance with Chapter VII of the UN Charter, if peaceful measures have proven to be inadequate. The type of action to be taken should be determined on a case by case basis and it should be taken in cooperation with relevant regional organizations.³⁵

³⁰ The International Commission on State Sovereignty and Intervention is a panel of international experts that was formed by the Canadian government.

³¹ International Commission on Intervention, State Sovereignty (2001). *The responsibility to protect - Report of the International Commission on Intervention and State Sovereignty*. Ottawa, Canada: International Development Research Centre (IDRC), page 49.

³² Peters, A. (2009). ‘Humanity as the A and Ω of Sovereignty’ *European Journal of International Law*, 20(3), 513-544, page 513.

³³ UN General Assembly, *Implementing the responsibility to protect: report of the Secretary-General*, 12 January 2009, A/63/677, page 17.

³⁴ UN General Assembly, *2005 World Summit Outcome: resolution / adopted by the General Assembly*, 24 October 2005, A/RES/60/1.

³⁵ *Ibid*, page 31.

The 2005 UN World Summit Outcome Document limited the scope of R2P to five crimes which have been established by international customary law and gave a default responsibility to act on the international community.³⁶ The 2005 UN World Summit Outcome Document also brought R2P within the legal parameters set by the UN Charter by asserting that it is only the UN Security Council that has the power to authorize intervention.³⁷

Influential figures such as the Pope and the UN Secretary General also endorsed the responsibility to protect.³⁸ The UN Secretary General encouraged the implementation of the responsibility to protect by the international community.³⁹ The following part of this chapter will discuss the content of the three pillars of the responsibility to protect as contained in the 2009 report of the UN Secretary General titled: *Implementing the Responsibility to Protect*.⁴⁰ The three pillars will later guide me in determining how the responsibility to protect was implemented in Nigeria.

1.2. Pillar I: The Protection Responsibilities of The State

Under this pillar, every state has a responsibility to protect all people within its territory regardless of their nationality from international crimes which are most heinous, such as genocide, war crimes, and crimes against humanity, as well as ethnic cleansing. States also have a responsibility to protect their populations from the incitement of these crimes. The responsibility to protect populations from the incitements of these crimes can work as an effective and timely preventative strategy. This means that if the state fulfills its responsibility to protect its population from the incitement of these crimes, such crimes will not occur.⁴¹

Furthermore, the responsibility to protect under this pillar finds its roots in paragraph 138 of the 2005 UN World Summit Outcome Document. Under this paragraph, the heads of State and

³⁶Bellamy, A. J. (2008). 'The Responsibility to Protect and the problem of military intervention' *International Affairs*, 84(4), 615-639, page 621, See also UN General Assembly, *2005 World Summit Outcome: resolution / adopted by the General Assembly*, 24 October 2005, A/RES/60/1, page 31.

³⁷Hehir, A. (2010). 'The Responsibility to Protect: "Sound and Fury Signifying Nothing"?' *International Relations*, 24(2), 218-239, page 225.

³⁸Otto Spijkers (19 April 2008) 'Pope embraces Responsibility to Protect' *Netherlands School of Human Rights Research*, available at <http://invisiblecollege weblog.leidenuniv.nl/2008/04/19/pope-embraces-responsibility-to-protect/>, last accessed on 10 February 2017.

³⁹UN-Secretary General (31 January 2008). *Address to the Summit of the African Union*. Addis Ababa, Ethiopia.

⁴⁰UN General Assembly, *Implementing the responsibility to protect: report of the Secretary-General*, 12 January 2009, A/63/677.

⁴¹Ibid, page 8-9.

Government made a declaration that they ‘accept that responsibility and will act in accordance with it.’⁴² Hence, the primary responsibility to protect lies with the state.⁴³

In addition to the above, the responsibility to protect not only derives from the recent endorsement of the responsibility to protect, but it emanates from the nature of state sovereignty and various legal obligations already imposed upon states.⁴⁴ Every sovereign state owes its population protection.⁴⁵

1.3. Pillar II: International Assistance and Capacity-Building

Under this pillar, the international community has a duty to assist states in fulfilling their obligations to protect their populations. The international community, in this case, refers to the United Nations (UN) and sub-regional organizations such as SADC⁴⁶ and ECOWAS,⁴⁷ as well as regional organizations such as the African Union (AU).⁴⁸ The same duty is also borne by civil society and the private sector as well as governments, more especially the UN Member States.⁴⁹ A preventative strategy built on Pillar I and Pillar II is more effective in fulfilling the responsibility to protect.⁵⁰

1.4. Pillar III: Timely and Decisive Response

Pillar III says that the international community has a duty to act collectively in a timely and decisive way, when a certain state has failed to protect its population or when such a state is the one perpetrating such atrocities against its own population. As noted above, Pillar III gives the international community a ‘fallback’ position because it is only when the state that has the primary

⁴²UN General Assembly, *2005 World Summit Outcome: resolution / adopted by the General Assembly*, 24 October 2005, A/RES/60/1, paragraph 138.

⁴³UN General Assembly, *Implementing the responsibility to protect: report of the Secretary-General*, 12 January 2009, A/63/677, page 8-9.

⁴⁴*Ibid*, page 9.

⁴⁵ Gareth, E., & Mohamed, S. (2002). ‘The responsibility to protect’ *Foreign Affairs*, 81(6), 99-110, page 101.

⁴⁶ Treaty of the Southern African Development Community (SADC), 32 ILM 116, 5 AJICL 418.

⁴⁷ Treaty of the Economic Community of West African States (ECOWAS), 28 May 1975.

⁴⁸ Constitutive Act of the African Union, OAU Doc. CAB/LEG/23.15 (2001).

⁴⁹UN General Assembly, *Implementing the responsibility to protect: report of the Secretary-General*, 12 January 2009, A/63/677, page 9.

⁵⁰*Ibid*.

responsibility to protect its population has failed to do so, that the international community can exercise its responsibility to protect by taking the permissible appropriate action.⁵¹

The international community can take such an action to prevent or stop the perpetration of such heinous crimes against the population of the state concerned. The type of collective action to be taken depends on the merits of every unique case. Pillar III requires that any measure to be taken should be tailored to the needs of the specific situation.⁵²

The types of measures that can be taken include those that appear under Chapter VI, VII and VIII of the UN Charter. Under Pillar III, coercive measures such as the use of force are allowed if peaceful measures prove ineffective. The use of force must be authorized by the UN Security Council and it must be carried out in accordance with the UN Charter. Pillar III requires that in the process of determining and implementing the appropriate collective measures, the provisions, principles, and objects of the UN Charter should be respected.⁵³

To sum up the above discussion, it is important to note that the UN Security Council has the primary responsibility to maintain international peace and security. The regional organizations like the African Union and regional economic communities (REC) such as ECOWAS are required to use force for peace and security purposes once they have obtained the authorization of the UN Security Council.⁵⁴ The adoption and implementation of protection measures by regional organizations are therefore affected by the authority of the UN Security Council.

⁵¹ Peters, A. (2009). 'Humanity as the A and Ω of Sovereignty' *European Journal of International Law*, 20(3), 513-544, page 513.

⁵² UN General Assembly, *Implementing the responsibility to protect: report of the Secretary-General*, 12 January 2009, A/63/677, page 9.

⁵³ Ibid.

⁵⁴ Hehir, A. (2010). 'The Responsibility to Protect: "Sound and Fury Signifying Nothing"?' *International Relations*, 24(2), 218-239, page 225.

CHAPTER 2

2.1. THE STATUS OF THE RESPONSIBILITY TO PROTECT (R2P) IN INTERNATIONAL LAW

Prior to the 2005 UN World Summit, the responsibility to protect was a mere proposal by the International Commission on Intervention and State Sovereignty (ICISS). The 2005 UN World Summit gave an endorsement to the responsibility to protect because all the UN Member States re-affirmed their commitment to that responsibility. The acceptance of the responsibility to protect advanced the responsibility to protect and gave it international legitimacy.⁵⁵

Paragraph 138 of the 2005 UN World Summit Outcome Document reads as follows:

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.⁵⁶

Notwithstanding the fact that the responsibility to protect was accepted by all the UN Member States, the 2005 UN World Summit Outcome Document which encapsulates the responsibility to protect and the report of the International Commission on Intervention and State Sovereignty (ICISS) cannot be classified as international legal instruments, hence they are not sources of law.⁵⁷ Both documents do not fall under any of the categories of 'traditional' sources of international law listed under Article 38 (1) of the Statute of the International Court of Justice (ICJ).⁵⁸ They are not

⁵⁵ Bellamy, A. J. (2009). *Responsibility to Protect: The Global Effort to End Mass Atrocities*. Cambridge: Polity Press, page 95.

⁵⁶ UN General Assembly, *2005 World Summit Outcome: resolution / adopted by the General Assembly, 24 October 2005, A/RES/60/1*.

⁵⁷ Article 38 (1) (a), Statute of the International Court of Justice, 3 Bevens 1179; 59 Stat. 1031; T.S. 993; 39 AJIL Supp. 215 (1945).

⁵⁸ Article 38 (1), Statute of the International Court of Justice, 3 Bevens 1179; 59 Stat. 1031; T.S. 993; 39 AJIL Supp. 215 (1945). That Article says that: 'The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states ; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations ; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.'

treaties, therefore they cannot create rights and legal obligations because they lack the capacity to establish international legal rules.⁵⁹

However, the 2005 UN World Summit Outcome Document does not lack authority because the UN General Assembly adopted it through Resolution 60/1.⁶⁰ But this adoption does not make the 2005 UN World Summit Outcome Document a source of international law nor does the Resolution create international legal obligations. Even though there is no creation of legal obligations, the adoption of the 2005 UN World Summit Outcome Document by the UN General Assembly through a Resolution was a significant step in the advancement of the responsibility to protect.⁶¹

The adoption of the 2005 UN World Summit Outcome Document was followed by several UN Security Council Resolutions which reaffirmed the content of the 2005 UN World Summit Outcome Document. Reference can be made to UN Security Council Resolution 1674⁶² and Resolution 1706⁶³ which all re-affirmed the provisions of paragraph 138 and 139 of the 2005 UN World Summit Outcome Document.

Because of the adoption of the 2005 UN World Summit Outcome Document by the UN General Assembly and the reaffirmation of the responsibility to protect by the subsequent UN Security Council Resolutions, some scholars have argued that the responsibility to protect is an example of soft law.⁶⁴

2..1.1. The Responsibility to Protect as Soft Law

There are certain norms of international law which have less or limited normative force and do not fall under any category of the 'traditional' sources of international law as listed under Article 38

⁵⁹ Welsh, J. M., & Banda, M. (2010). 'International Law and the Responsibility to Protect: Clarifying or Expanding States' Responsibilities?' *Global Responsibility to Protect*, 2 (3), 213-231, page 229.

⁶⁰ UN General Assembly, *2005 World Summit Outcome: resolution / adopted by the General Assembly*, 24 October 2005, A/RES/60/1.

⁶¹ Welsh, J. M., & Banda, M. (2010). 'International Law and the Responsibility to Protect: Clarifying or Expanding States' Responsibilities?' *Global Responsibility to Protect*, 2 (3), 213-231, page 229.

⁶² UN Security Council, *Security Council resolution 1674 (2006) [on protection of civilians in armed conflict]*, 28 April 2006, S/RES/1674 (2006).

⁶³ UN Security Council, *Resolution 1706 (2006) Reports of the Secretary-General on the Sudan*, 31 August 2006, S/RES/1706 (2006).

⁶⁴ Welsh, J. M., & Banda, M. (2010). 'International Law and the Responsibility to Protect: Clarifying or Expanding States' Responsibilities?' *Global Responsibility to Protect*, 2 (3), 213-231, page 213.

(1) of the Statute of the International Court of Justice (ICJ).⁶⁵ The norms that fall under any of the categories of ‘traditional’ sources of international law constitute hard law because of their legally binding force.⁶⁶ The norms with limited normative force cannot be enforced by international institutions but they influence conduct or behavior of states or international organizations within international law.⁶⁷ Hence, such norms have legal significance. In the ongoing debate, some scholars have concluded that such norms constitute soft law, which is a form of international law.⁶⁸ Soft law seems to be part of international law because it consists of promises which are contained in quasi-legal documents such as declarations, resolutions and other documents which are not legally binding but guide and influence the conduct of states that have adopted such documents.⁶⁹

Abbott and Snidal⁷⁰ have provided guidance on how soft law can be determined. They said that a distinction can be drawn between soft law and hard law based on three criteria, which are: obligations, precision, and delegation.⁷¹ They said that soft law imposes weaker or no legal obligations while hard law imposes a higher level of legal obligations. Regarding precision, Abbott and Snidal asserted that hard law is written in a more precise language compared to soft law which its wording is usually general, vague or abstract. The last criterion is that of delegation. The interpretation and enforcement of hard law is usually delegated to a third party which can be an international tribunal or court, while the interpretation and enforcement of soft law is usually kept within the parties, thereby allowing more room for political maneuvering.⁷² These criteria can be used to determine whether the responsibility to protect is soft law.

Welsh and Banda⁷³ have argued that the responsibility to protect can be classified as soft law. They asserted that the content of paragraph 138 and 139 of the 2005 World Summit Outcome

⁶⁵ Van Hoof, G. J. H. (1983). *Rethinking the Sources of International Law*. Kluwer Law and Taxation Publishers: Deventer, page 66.

⁶⁶ Ibid.

⁶⁷ Kunig, P., Akkerman, R. J., Van Krieken, P. J., & Pannenberg, C. O. (1979). *Declarations on Principles: A Quest for Universal Peace*. Springer Netherlands, page 252.

⁶⁸ Ibid.

⁶⁹ Bryan H. Duzin (31 August 2016) ‘Why does Soft Law have any Power anyway’ *Asian Journal of International Law* 1-18, Published Online, page 1-2.

⁷⁰ Abbott, K. W., & Snidal, D. (2000). ‘Hard and soft law in international governance’ *International Organization*, 54(03), 421-456, page 421-424.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Welsh, J. M., & Banda, M. (2010). ‘International Law and the Responsibility to Protect: Clarifying or Expanding States’ Responsibilities?’ *Global Responsibility to Protect*, 2 (3), 213-231.

Document can be construed to constitute soft law because those paragraphs are ‘open-ended’, the language used is malleable and the implications of those paragraphs have led to disagreements on the implementation of the responsibility to protect.⁷⁴ I argue that the responsibility to protect has met all the criteria set by Kenneth Abbott and Snidal⁷⁵ for it to qualify as soft law in respect of the obligation it has given to the international community to respond to human rights abuses. This is also due to the fact that the enforcement of the responsibility to protect has not been delegated to a third party, but it has been left to the international community to decide on when and how it can respond to fulfil its responsibility. It is also important to note that R2P has an influence on the conduct of the international, regional, and sub-regional organizations and on how they interpret their existing treaty obligations to maintain peace and security in their respective territories/regions.

2.1.2. The Responsibility to Protect as a Reiteration of Existing International Legal Obligations to Protect

Some scholars have argued that the responsibility to protect as contained in the 2005 UN World Summit Outcome Document possesses legal character because it is a reiteration of existing international legal obligations in which it is anchored.⁷⁶ They have contended that the 2005 UN World Summit Outcome Document did not create new obligations but the obligation to protect as contained therein already exists in treaty law and customary international law.⁷⁷ The responsibility to protect exists in treaty law and international customary law as an obligation to prevent or stop human rights violation which can take place in the form of genocide, war crimes, crimes against humanity and ethnic cleansing.⁷⁸

⁷⁴ Welsh, J. M., & Banda, M. (2010). ‘International Law and the Responsibility to Protect: Clarifying or Expanding States’ Responsibilities?’ *Global Responsibility to Protect*, 2 (3), 213-231, page 230.

⁷⁵ Abbott, K. W., & Snidal, D. (2000). ‘Hard and soft law in international governance’ *International Organization*, 54(03), 421-456.

⁷⁶ Genser, J., & Cotler, I. (2012). *The responsibility to protect*. Oxford University Press, page 23.

⁷⁷ Payandeh, M. (2010). ‘With Great Power Comes Great Responsibility-The Concept of the Responsibility to Protect within the Process of International Lawmaking’ *Yale J. Int’l L.*, 35, 469, page 485.

⁷⁸ UN General Assembly, *Implementing the responsibility to protect: report of the Secretary-General*, 12 January 2009, A/63/677, page 9. The report says that: ‘The responsibility derives both from the nature of State sovereignty and from the pre-existing and continuing legal obligations of States, not just from the relatively recent enunciation and acceptance of the responsibility to protect.’

These legal obligations to stop or prevent human rights violations are contained in several treaties ratified by a significant number of UN Member States. Some of these treaties are the UN Charter,⁷⁹ Convention Against Torture,⁸⁰ the International Covenant on Civil and Political Rights,⁸¹ the International Covenant on Economic, Social and Cultural Rights,⁸² the Geneva Conventions,⁸³ the African Charter on Human and Peoples' Rights,⁸⁴ the Rome Statute⁸⁵ and the Genocide Convention.⁸⁶ These treaties are all legally binding upon their respective states parties.⁸⁷

Professor Jennifer Welsh, who was appointed as the Special Adviser to the UN Secretary General on the responsibility to protect, said the following in an interview with the Canadian International Council:

No new legal obligations were created when R2P was endorsed in 2005. Instead, the 2005 Summit Outcome Document paragraphs on R2P represented an authoritative interpretation of the UN Charter, and other existing legal obligations to protect populations from mass atrocity crimes. The statement was important, nonetheless, because it signaled a political

⁷⁹ See Article 39, United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, 59 Stat. 1031; TS 993; 3 Bevans 1153.

⁸⁰ See Article 2, UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85. Article 2 (1) says that: 'Each state shall take effective legislation, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.'

⁸¹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171. In the preamble of that Covenant, the States Parties have acknowledged that they have an obligation under the UN Charter to promote universal respect for, and observance of, human rights and freedoms.

⁸² See the Preamble, UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

⁸³ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287., and the International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3.

⁸⁴ Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982). The preamble of the Charter says that the states parties 'firmly convinced of their duty to promote and protect human and people' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa;' have agreed under Article 1 of that Charter that: 'The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.'

⁸⁵ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90.

⁸⁶ See Article 1, UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277.

⁸⁷ See Article 34, United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331.

commitment on the part of states to act on their responsibilities with respect to mass atrocity crimes.⁸⁸

An example of how these treaties have imposed an obligation to protect upon their respective contracting parties can be taken from the Genocide Convention. Article 1 of that Convention says that ‘the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.’⁸⁹ That Article has imposed a legal obligation to protect upon the contracting parties to that Convention. In confirmation of that contention, the International Court of Justice (ICJ) ruled in the case concerning the application of the Genocide Convention that the states parties to the Genocide Convention have an obligation under international law to act in order protect their populations from such a crime by preventing it.⁹⁰

In that case, the Court limited its ruling to the crime of genocide only because it is the one that was within its jurisdiction at that time, but the same interpretation followed by the ICJ can also be applied to other treaties with similar provisions giving obligations to states parties to protect their populations from other mass atrocities.

Thus, I conclude that the 2005 UN World Summit Outcome Document contains political statements made by the all the individual UN Member States and those statements are a re-affirmation of their commitment to their existing international legal obligations to prevent or stop human rights violation which can occur in the form of genocide, war crimes, crimes against humanity and ethnic cleansing.⁹¹ The states parties to those treaties have legal obligations derived from those international legal instruments to prevent or stop such human rights violations in their respective territories. In that case, the responsibility to protect exists in a form of hard law because the individual states parties to those treaties have a legal obligation to protect populations in their

⁸⁸ Canadian International Council (21 August 2013) ‘CIC: Interview with Jennifer Welsh, New Special Adviser on RtoP: Where R2P Goes From Here’ available at <http://www.responsibilitytoprotect.org/index.php/component/content/article/136-latest-news/4974-cic-interview-with-jennifer-welsh-new-special-adviser-on-rtop-where-r2p-goes-from-here>, last accessed 27 December 2016.

⁸⁹ See Article 1, UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277.

⁹⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, International Court of Justice, Judgment of 26 February 2007, paragraph 427.

⁹¹ Genser, J., & Cotler, I. (2012). *The responsibility to protect*. Oxford University Press, page 23.

respective territories.⁹² In addition to that, Constitutions of some countries have also explicitly spelt out the obligation of the state to protect its population.⁹³ Regarding the obligation of the international community to respond to gross violations of human rights in other states, the responsibility to protect exists in a form of soft law because there is no legal obligation imposed upon the international to react in such cases. Organizations such as the UN, AU and ECOWAS only have a legal basis upon which they can intervene to protect if they are willing to do so. But the responsibility to protect as contained in the 2005 UN World Summit Outcome Document can influence the conduct of the international community in situations of massive violations of human rights. Hence, the responsibility to protect constitutes soft law with regard to the obligation of the international community to respond to such situations.

2.1.3. The Responsibility to Protect as a Rule of Customary International Law

Some scholars have contended that the responsibility to protect is gradually metamorphosing from soft law to a rule of customary international law.⁹⁴ According to the Statute of the International Court of Justice, an international custom is a source of international law.⁹⁵ The existence of an international custom is proven by evidence which shows that there is a general practice which has been accepted as law.⁹⁶ Thus, before a customary rule develops, there must be a general practice (*usus*) which has been accepted as law (*opinio iuris sive necessitatis*).⁹⁷ In order to prove the existence of a customary rule, the custom must be used or executed continuously (constantly) and uniformly. In other words, there must be a settled practice or way of behaving.⁹⁸ The *opinio iuris* requirement prescribes that the state should comply with the settled practice because it feels legally compelled to do so. In other words, it must believe that non-compliance will result in an international 'wrong'.⁹⁹ The state should not comply with the settled practice merely because it

⁹² Payandeh, M. (2010). 'With Great Power Comes Great Responsibility-The Concept of the Responsibility to Protect within the Process of International Lawmaking' *Yale J. Int'l L.*, 35, 469, page 485.

⁹³ For example, Article 14 (2) (b) of the Constitution of the Federal Republic of Nigeria [Nigeria], Act No. 24, 5 May 1999.

⁹⁴ See Eaton, J. (2010). 'An Emerging Norm-Determining the Meaning and Legal Status of the Responsibility to Protect' *Mich. J. Int'l L.*, 32, 765, page 766-767.

⁹⁵ Article 38 (1) (b), Statute of the International Court of Justice, 3 Bevans 1179; 59 Stat. 1031; T.S. 993; 39 AJIL Supp. 215 (1945).

⁹⁶ *Ibid.*

⁹⁷ Dugard, J. (1994). *International law: A South African perspective*. Kenwyn: Juta & Co., page 27-32.

⁹⁸ *Asylum Case (Colombia v. Peru)*, I.C.J. Reports 1950, p. 395. International Court of Justice (ICJ), 20 November 1950.

⁹⁹ Dugard, J. (1994). *International law: A South African perspective*. Kenwyn: Juta & Co., page 27-32.

feels that it is morally obliged to do so.¹⁰⁰ For the responsibility to protect to be classified as a rule of customary international law, it must meet all the requirements discussed above.

Evidence to prove that a state believes that it is legally obliged to comply with a certain custom can be found in the political statements that the head of state or senior officials of that government have made.¹⁰¹ In this case, the unanimous endorsement of the responsibility to protect at the 2005 UN World Summit can prove the *opinio iuris* of the UN Member States. It shows that they feel legally obliged to comply with the responsibility to protect. But this is not enough to establish a customary rule, there must be a settled practice amongst the UN Member States. Currently, it seems that there is no constant or uniform compliance with the responsibility to protect yet. This is because there are cases in which the international community did not intervene when certain situations fell entirely under Pillar III of R2P.¹⁰² Because of the absence of a settled state practice in support of the responsibility to protect, I conclude that it has not become a rule of customary international law yet.

2.2. THE PRINCIPLE OF STATE SOVEREIGNTY VERSUS THE RESPONSIBILITY TO PROTECT

It is important to determine whether sovereignty prohibits intervention by the international actors when a state has failed to fulfill its responsibility to protect its population from human rights violations. Does such an intervention constitute a violation of the principle of sovereignty? Should the international community just stand by and watch as human rights violations take place?

Sovereignty is a concept that has never been rigid, but it refers to supreme authority over a specific territory.¹⁰³ Oppenheim defines sovereignty as ‘supreme authority, an authority which is independent of any other earthly authority. Sovereignty in the strict and narrowest sense of the

¹⁰⁰ *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)*, I.C.J. Reports 1969, p.3, International Court of Justice (ICJ), 20 February 1969.

¹⁰¹ *Ibid.* See also the *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America); Merits*, International Court of Justice (ICJ), 27 June 1986, I.C.J. Reports 1986, p. 14; General List No. 70.

¹⁰² Adams, S. (2015). ‘Failure to Protect: Syria and the UN Security Council.’ *Global Centre for the Responsibility to Protect*, Occasional paper series, page 3.

¹⁰³ Genser, J., & Cotler, I. (2012). *The responsibility to protect*. Oxford University Press, page 4.

term includes, therefore, independence all around, within and without the borders of the country.’¹⁰⁴

The concept of sovereignty has roots in the Peace of Westphalia of 1648.¹⁰⁵ The Westphalian principle of sovereignty spread with the influence of Europe to other parts of the world. That led to the entrenchment of the principle of sovereignty in public international law.¹⁰⁶ The practice of sovereignty established the norm of non-interference in the domestic affairs of an independent state by external actors.¹⁰⁷

However, a need to adjust the traditional definition of the principle of state sovereignty to address various threats to human security arose.¹⁰⁸ There are various threats to international peace and security, and if the traditional definition of state sovereignty, which excludes intervention in the domestic affairs of a state, remains intact, there will be no protection of civilians in situations of mass violation of human rights.¹⁰⁹ This will result in mass atrocities being committed against populations without interference by external actors who may have the capacity to prevent or end such human rights violations.¹¹⁰

Today, internal conflicts and acts of terrorism which can result in the commission of genocide, war crimes, crimes against humanity and ethnic cleansing are some of the major threats to international peace and security.¹¹¹ Such situations force people to flee from their home countries and the perpetration of such crimes can spread to neighbouring countries.¹¹² Thus, it is of paramount importance to allow intervention by the international community in order to protect innocent people from such atrocities, even if sovereignty may be construed to prohibit such an

¹⁰⁴ Oppenheim L. & Ronald Roxburgh (2005). *International Law: A Treatise, Volume 1*. Clark, New Jersey: The Law Exchange, Ltd., 1920, page 127.

¹⁰⁵ Nagan, W. P., & Haddad, A. M. (2011). ‘Sovereignty in theory and practice’ *San Diego Int’l LJ*, 13, 429, page 446.

¹⁰⁶ Kissinger, H. A. (2014). 6. *World Order: Reflections on the character of nations and the course of History*. London, United Kingdom: Penguin Books Ltd., page 1-5.

¹⁰⁷ Gareth, E., & Mohamed, S. (2002). ‘The responsibility to protect’ *Foreign Affairs*, 81(6), 99-110, page 102.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*, page 102-103.

¹¹⁰ Genser, J., & Cotler, I. (2012). *The responsibility to protect*. Oxford University Press, page 3-4.

¹¹¹ Bellelli, R. (Ed.). (2016). *International Criminal Justice: law and practice from the Rome Statute to its review*. Routledge, page 25.

¹¹² Malekian, F. (2014). *Jurisprudence of International Criminal Justice*. Newcastle upon Tyne, England: Cambridge Scholars Publishing, page 40.

intervention. The world cannot just stand by and watch as mass crimes that shock the conscience of humankind are committed.¹¹³

Francis Deng and his co-authors¹¹⁴ contended that responsibility should be regarded as the essence of sovereignty.¹¹⁵ They argued that sovereignty should not be a prevention of intervention. They further asserted that responsibility as the essence of sovereignty should be the basis on which the state is accountable to both domestic and international communities. Deng and his co-authors pointed out that some sovereign states in Africa have failed to protect the welfare of their citizens during internal conflicts.¹¹⁶ It is, therefore, justified that when a state has failed to fulfill such a responsibility of protecting the welfare of its citizens, sovereignty should not prevent the intervention of the international community to help that state in fulfilling its responsibility.

Deng and his co-authors formulated a theory of intervention to justify the exercise of governmental roles by the international community. They argued that the State has an obligation ‘to preserve life-sustaining standards for its citizens.’¹¹⁷ They further stated that obligation is a ‘necessary condition of sovereignty.’¹¹⁸

Deng and his co-authors said that a government must be able to guarantee both security and justice for it for it to be recognizable as the lawful authority over a territory. They argued that a government must meet certain standards for it to qualify for the name of government. They said that all the standards that should be met involve certain limitations on the use of power.¹¹⁹ The

¹¹³ Annan, K. A. (2000). *We the Peoples: The Role of the United Nations in the 21st Century, Report of the Secretary-General to the 54th session*. New York, USA: United Nations Department of Public Information. (Millennium Report), page 48. In that report, the then Secretary General of the UN, Kofi Annan said that: ‘If humanitarian intervention is indeed an assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica - to gross and systematic violations of human rights that offend every precept of our common humanity?’ See also: Annan, K. A. (2002). *What is the international community? Problems without passports*. Foreign Policy 132, page 30-31.

¹¹⁴ Deng, F. M., Kimaro, S., Lyons, T., & Rothchild, D. (2010). *Sovereignty as responsibility: conflict management in Africa*. Brookings Institution Press, page 1-2.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid, page 1-3.

¹¹⁸ Ibid, page XVIII.

¹¹⁹ Ibid, page 4.

international community has a responsibility to ensure that the states have met these standards and that they are willing and able to guarantee protection to their citizens.¹²⁰

Nigeria became the 99th member state of the United Nations on 7 October 1960.¹²¹ By becoming a member of the United Nations, Nigeria accepted certain obligation to respect and protect human rights and also accepted certain restrictions on its conduct.¹²² By joining the UN and endorsing the responsibility to protect at the 2005 UN World Summit, Nigeria acknowledged sovereignty as a responsibility to protect and if it realizes that it is failing to live up to its responsibility to protect, it should consent to the assistance which the UN may offer in order to assist it in reaching its capacity to protect its population. In this case, sovereignty cannot be a barrier to intervention with the aim to stop gross human rights violations.

Article 2 (7) of the UN Charter says that the UN has no right to intervene in matters which are essentially within the domestic jurisdiction of any state.¹²³ Article 2 (7) further requires that such principle of non-intervention shall not prejudice the application of enforcement measures under Chapter VII.¹²⁴ The UN Charter under Chapter VII gives certain powers to the UN Security Council. In terms of Article 24 of the UN Charter, the UN Security Council has the responsibility to maintain international peace and security.¹²⁵ This is a responsibility that all the UN Member States have conferred upon it and have also given it authority to act on their behalf in taking prompt and effective action to maintain international peace and security.¹²⁶ Article 2 (7) of the UN Charter formalized the norm of non-intervention within the UN system and it is this Article that can be invoked to defend the inviolability of sovereignty.¹²⁷ However, sovereignty and its companion, non-intervention as encapsulated in Article 2 (7) of the UN Charter, do not prevent the UN Security from exercising its powers under Chapter VII of the UN Charter to maintain or restore international

¹²⁰ Deng, F. M., Kimaro, S., Lyons, T., & Rothchild, D. (2010). *Sovereignty as responsibility: conflict management in Africa*. Brookings Institution Press, page 6.

¹²¹ United Nations 'Member States' available at <http://www.un.org/en/member-states/index.html>, last accessed 27 December 2016.

¹²² Article 4 (1), United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

¹²³ *Ibid*, Article 2 (7).

¹²⁴ *Ibid*.

¹²⁵ *Ibid*, Article 24.

¹²⁶ *Ibid*.

¹²⁷ Genser, J., & Cotler, I. (2012). *The responsibility to protect*. Oxford University Press, page 6.

peace and security, by adopting and implementing appropriate measures for as long as it is done in a manner consistent with the provisions of the UN Charter.¹²⁸

It is on that basis I assert that, today sovereignty entails an obligation to preserve life.¹²⁹ International actors can intervene if those that are claiming authority over a certain country have failed to protect their population. In such a situation, the claimants, who can be the government, rebel leaders or militia leaders cannot use sovereignty as a shield to prevent intervention by the international community.¹³⁰

Just like Deng and his co-authors, the International Commission on Intervention and State Sovereignty (ICISS) in its report also proposed significant changes to the concept of state sovereignty. The ICISS contended that there is a need to re-characterize sovereignty.¹³¹ It says that sovereignty should no longer be seen as control but as responsibility.¹³² Sovereignty as responsibility ‘implies that the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare.’¹³³ When a state lacks the power, the capacity or the will to meet its functions of protecting its citizens and promoting their welfare, then the need for international action is activated.¹³⁴

The ICISS report ascertained the situations in which the international responsibility to protect may arise. The ICISS report says that ‘where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.’¹³⁵

¹²⁸ Article 24 (2), United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

¹²⁹ Deng, F. M., Kimaro, S., Lyons, T., & Rothchild, D. (2010). *Sovereignty as responsibility: conflict management in Africa*. Brookings Institution Press, page 6.

¹³⁰ Ibid, page XVI.

¹³¹ International Commission on Intervention, State Sovereignty (2001), *The responsibility to protect - Report of the International Commission on Intervention and State Sovereignty*. Ottawa, Canada: International Development Research Centre (IDRC), page 13.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Ibid, page 17.

¹³⁵ Ibid, page XI.

Pillar III of the responsibility to protect contained in the report of the UN Secretary General¹³⁶ corresponds with the above quote from the report of the ICISS. They both recognize the primary responsibility borne by every state to ensure the safety and welfare of its population. If a state fails to do so, or due to some reasons it is unable or unwilling to fulfill its obligation to protect its population from mass human rights violations that triggers the intervention of the international community. In such a situation, the principle of sovereignty and its accompanying norm of non-intervention does not prevent the international community from intervening with the genuine intention to fulfil its obligation to protect the affected population by taking the appropriate measures to stop the commission of crimes against humanity, war crimes, genocide, and ethnic cleansing.¹³⁷

¹³⁶UN General Assembly, *Implementing the responsibility to protect: report of the Secretary-General*, 12 January 2009, A/63/677.

¹³⁷ Annan, K. A. (2000). *We the Peoples: The Role of the United Nations in the 21st Century, Report of the Secretary-General to the 54th session*. New York, USA: United Nations Department of Public Information. (Millennium Report), page 48. In that report, the then Secretary General of the UN, Koffi Annan said that: ‘If humanitarian intervention is indeed an assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica - to gross and systematic violations of human rights that offend every precept of our common humanity?’ See also: UN General Assembly, *Implementing the responsibility to protect: report of the Secretary-General*, 12 January 2009, A/63/677, page 9.

CHAPTER 3

3.1. MASS ATROCITY CRIMES PERPETRATED BY BOKO HARAM

The responsibility to protect seek to address various forms of human rights violations. The 2005 World Summit Outcome Document referred to genocide, war crimes, crimes against humanity and ethnic cleansing. Those crimes have sometimes been referred to as ‘mass atrocity’ crimes, which is an umbrella concept.¹³⁸ It is therefore correct to say that the scope of R2P as accepted at the 2005 UN World Summit is limited to those four categories of mass atrocity crimes.¹³⁹ Several international legal instruments have defined the four crimes which fall within the scope of R2P. An example of an international legal instrument that has defined some of those crimes is the Rome Statute, which is a legally binding document upon states parties that created the International Criminal Court (ICC).¹⁴⁰

At this point, it is important to note that Nigeria ratified the Rome Statute on 27 September 2001. The International Criminal Court therefore has jurisdiction over Nigerians or people of other nationalities who commit crimes which are of concern to the international community, such as war crimes, crimes against humanity and genocide within the territory of Nigeria.¹⁴¹ Hence, the ICC can investigate and prosecute such mass atrocity crimes if its jurisdiction has been triggered through referral by states parties to the Prosecutor, referral by the UN Security Council to the ICC or through *proprio motu* investigations by the Prosecutor.¹⁴² If members of Boko Haram have perpetrated any of those crimes, they can be indicted by the ICC in compliance with the complementarity principle.¹⁴³

¹³⁸ End Impunity (26 January 2012) ‘Defined: Mass Atrocity’ available at <http://endimpunity.com/2012/01/26/defined-mass-atrocity/>, last accessed on 5 January 2017.

¹³⁹ UN General Assembly, 2005 World Summit Outcome: resolution / adopted by the General Assembly, 24 October 2005, A/RES/60/1, paragraph 138 and 139.

¹⁴⁰ Article 6, 7 & 8, UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90.

¹⁴¹ International Criminal Court (11 March 2003) ‘Assembly of States Parties - States Parties to the Rome Statute’ available at https://asp.icc-cpi.int/en_menus/asp/states%20parties/african%20states/Pages/nigeria.aspx, last accessed on 5 January 2017.

¹⁴² Article 13, 14 & 15, UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90.

¹⁴³ *Ibid*, Article 1 & 17.

Paragraph 138 and 139 of the 2005 UN World Summit Outcome Document which, limited the scope of R2P to crimes against humanity, war crimes, genocide and ethnic cleansing, did not provide a definition of those crimes. I will therefore discuss the legal definitions of these mass atrocity crimes as defined by the Rome Statute and other international legal instruments. Later, I will determine the type of crimes that members of Boko Haram have committed.

3.1.1. Genocide

Genocide was defined in the 1948 Convention on Prevention and Punishment of the Crime of Genocide¹⁴⁴ and the Rome Statute¹⁴⁵ of the ICC. They both refer to actions which are taken ‘with intent to destroy in whole or in part, a national, ethnical, racial or religious group.’¹⁴⁶ The Rome Statute and the Genocide Convention say that such acts include ‘killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group and forcibly transferring children of the group to another group.’¹⁴⁷

3.1.2. Crimes Against Humanity

According to the Rome Statute, crimes against humanity include acts such as ‘murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture, rape; sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in [Article 7 of the Rome Statute] or any crime within the jurisdiction of the ICC; enforced disappearance of persons; the crime of apartheid and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical

¹⁴⁴ Article 2, UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277.

¹⁴⁵ Article 6, UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90.

¹⁴⁶ Ibid. See also Article 2, UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277.

¹⁴⁷ Ibid.

health.¹⁴⁸ The Rome Statute requires that such acts must be committed with the knowledge of such widespread and systematic attack.¹⁴⁹ The Rome Statute also requires that such acts must constitute widespread or systematic attack directed against any civilian population pursuant to or in furtherance of a State or organizational policy to commit such attack.¹⁵⁰

3.1.3. War Crimes

War crimes refer to the serious violations of international humanitarian law of armed conflict as contained in international customary law and in the Four Geneva Conventions of 12 August 1949 and their Additional Protocols of 1977.¹⁵¹ War crimes may be committed during international or non-international (internal) armed conflicts.¹⁵²

The Rome Statute has defined war crimes to include ‘certain acts that are directed against property or persons protected in terms of the relevant provisions of the Geneva Conventions.’¹⁵³ Some of these acts are murder, torture, hostage-taking, mistreating prisoners of war, intentionally starving someone, targeting civilians, pillage, rape and sexual slavery, enforced prostitution, forced pregnancy and other forms of sexual violence, as well as using children to participate actively in hostilities.¹⁵⁴ The Rome Statute prescribes that the ICC should have jurisdiction over war crimes if they have been committed as part of a plan or policy or as part of a large-scale commission of such crimes.¹⁵⁵

3.1.4. Ethnic Cleansing

Unlike the other three crimes I have discussed above, the crime of ethnic cleansing is not covered or defined by the Rome Statute or any other international legal instrument as an independent or

¹⁴⁸ Article 7 (1), UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*, Article 7 (2) (a).

¹⁵¹ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287., and the International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3.

¹⁵² Article 8, UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90.

¹⁵³ *Ibid.*, Article 8 (2) (a).

¹⁵⁴ *Ibid.*, Article 8 (2) (a) (i-vii) and Article 8 (2) (e) (i-xv).

¹⁵⁵ *Ibid.*, Article 8 (1).

stand-alone crime. But the United Nations has an official definition of this crime. The United Nations Commission of Experts that was formed through the UN Security Council Resolution 780 defined ‘ethnic cleansing’ in its final report of January 1993 to the UN Security Council.¹⁵⁶ In paragraph 130 of that report the commission said that ethnic cleansing refers to ‘a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.’¹⁵⁷

Even though the Rome Statute did not define ‘ethnic cleansing’, the unlawful deliberate acts mentioned in the official definition of ethnic cleansing by the UN can amount to crimes against humanity as defined by Article 7 of the Rome Statute. That Article says that crimes against humanity includes acts such as deportation or forcible transfer of population or an act of persecution against any identifiable group or collectivity on religious, ethnic or cultural grounds. The Rome Statute requires that those acts be part of a widespread and systematic attack directed against a civilian population with the knowledge of the attack for them to constitute crimes against humanity. The acts that constitute the crime of ethnic cleansing in the official UN definition can therefore be prosecuted as crimes against humanity.

3.1.2. SPECIFIC ATROCITIES PERPETRATED BY BOKO HARAM

For the purpose of determining the type of mass atrocity crime that members of Boko Haram have perpetrated, it is important to first look at the type of some specific attacks by Boko Haram and the manner in which they were conducted, for one to determine the legal definition of the international crimes which such acts have best complied with.

On 24 December 2010 (Christmas Eve), Boko Haram bombed churches before and during Christmas Eve services in Jos and Maiduguri. The group killed at least 38 people in those church attacks.¹⁵⁸ In June 2011, a first suicide bombing by Boko Haram took place at the police

¹⁵⁶ UN Security Council, *Security Council resolution 780 (1992) [Former Yugoslavia]*, 6 October 1992, S/RES/780 (1992).

¹⁵⁷ UN Security Council, *Report of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780 (1992)*, 27 May 1994, S/1994/674, page 33.

¹⁵⁸ Associated Press (28 December 2010) ‘Radical Islamist sect says it carried out Nigeria church attacks’ available at <https://www.theguardian.com/world/2010/dec/28/islamist-sect-responsibility-nigeria-attacks>, last accessed on 6 February 2017.

headquarters in Abuja. The bomb blast killed at least six people, including the suicide bomber.¹⁵⁹ In the year 2011, Boko Haram killed 114 people in 32 attacks.¹⁶⁰

About 185 people were killed on 20 January 2012, in the attacks which were mainly directed to police facilities across the city of Kano, Nigeria.¹⁶¹ Members of Boko Haram who disguised themselves in police uniforms attacked police barracks and killed police officers.¹⁶² On 8 April 2012, a car bomb blast that took place near a church that was having an Easter service in Kaduna, Nigeria killed about 38 people.¹⁶³ On 26 April 2012, a suicide car bomb attack on the offices of a private newspaper called 'ThisDay' in Abuja took place.¹⁶⁴ On the same day, another bomb blast took place outside the offices of the same newspaper in the northern city of Kaduna.¹⁶⁵ Both attacks killed 7 people.¹⁶⁶ Boko Haram claimed responsibility for those attacks.¹⁶⁷ Five Muslims were also killed in July 2012 in a suicide bombing of a mosque in Maiduguri.¹⁶⁸ In 2012, 910 people died in 148 attacks by Boko Haram.¹⁶⁹

Boko Haram killed 44 Muslims on 11 August 2013 when they attacked a mosque in Konduga during prayers.¹⁷⁰ That was followed by another attack in Gujba, Nigeria on 29 September 2013

¹⁵⁹ BBC News (17 June 2011) 'Nigeria's Boko Haram Islamists 'bombed Abuja police HQ' available at <http://www.bbc.com/news/world-africa-13805688>, last accessed on 5 February 2017.

¹⁶⁰ Kevin Uhrmacher & Mary Beth Sheridan (3 April 2016) 'The Brutal Toll of Boko Haram's Attacks on Civilians' *The Washington Post*, available at <https://www.washingtonpost.com/graphics/world/nigeria-boko-haram/>, last accessed on 7 January 2017.

¹⁶¹ Ryan Mauro 'Special Report: Boko Haram-Nigeria Islamist Group. Prepared by The Clarion Project National Security Analyst' available at http://www.clarionproject.org/sites/default/files/ClarionProject_FactSheet%20-%20BOKO%20HARAM.pdf, last accessed on 7 January 2017.

¹⁶² Williams, D., & Guttschuss, E. (2012). *Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria*. Human Rights Watch, page 41-44.

¹⁶³ BBC News (9 April 2012) 'Nigerian Easter bomb kills many in Kaduna' available at <http://www.bbc.com/news/world-17650542>, last accessed on 9 March 2017.

¹⁶⁴ Vanguard (27 April 2012) 'This Day, Sun, The Moment bombed' available at <http://www.vanguardngr.com/2012/04/thisday-sun-the-moment-bombed/>, last accessed on 7 January 2017.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ BBC News (13 July 2012) 'Nigeria suicide bomber targets Maiduguri Mosque' available at: <http://www.bbc.com/news/world-africa-18834387>, last accessed on 7 January 2017.

¹⁶⁹ Kevin Uhrmacher & Mary Beth Sheridan (3 April 2016) 'The Brutal Toll of Boko Haram's Attacks on Civilians' *The Washington Post*, available at <https://www.washingtonpost.com/graphics/world/nigeria-boko-haram/>, last accessed on 7 January 2017.

¹⁷⁰ BBC News (13 August 2013), 'Nigeria unrest: "Boko Haram" gunmen kill 44 at mosque' available at: <http://www.bbc.com/news/world-africa-23676872>, last accessed on 7 January 2017.

where Boko Haram's gunmen attacked a college and killed 44 teachers and male students.¹⁷¹ In the year 2013, Boko Haram killed 1008 people in 108 attacks.¹⁷²

On 15 February 2014, a Christian village in Izghe was stormed by Boko Haram and they killed about 106 people.¹⁷³ In the same month, Boko Haram attacked Buni Yadi College, near the capital city of Yobe state, called Damaturu and killed 59 male students in their sleep.¹⁷⁴ Boko Haram carried out more attacks in the same year. A bomb blast by Boko Haram killed 88 people and injured more than 200 people in Abuja in April 2014.¹⁷⁵ Again in the same month, Boko Haram abducted 276 girls from a college in Chibok, Borno state on 14 April 2014 and forced them to convert to Islam.¹⁷⁶ More merciless and indiscriminate killings took place in May. Boko Haram militants massacred about 300 people on 5 May 2014, in the town of Gamboru Ngala.¹⁷⁷ On 20 May 2014, car bombs killed about 118 villagers in the city of Jos.¹⁷⁸ Boko Haram killed 3425 people in 220 attacks in the year 2014.¹⁷⁹

¹⁷¹ BBC News (29 September 2013) 'Nigeria attack: Students shot dead as they slept' available at <http://www.bbc.com/news/world-africa-24322683>, last accessed on 8 January 2017.

¹⁷² Kevin Uhrmacher & Mary Beth Sheridan (3 April 2016) 'The Brutal Toll of Boko Haram's Attacks on Civilians' *The Washington Post*, available at <https://www.washingtonpost.com/graphics/world/nigeria-boko-haram/>, last accessed on 7 January 2017.

¹⁷³ Nigeria Correspondent (17 February 2014) 'Boko Haram Islamists Massacre Christian Villagers in Borno State, Nigeria' *Morning Star News*, available at <http://morningstarnews.org/2014/02/boko-haram-islamists-massacre-christian-villagers-in-borno-state-nigeria/>, last accessed on 10 January 2017.

¹⁷⁴ Sneha Shankar (26 February 2014) 'Boko Haram, Nigerian Islamist Group, Kills 59 students in Their Sleep In Attack On Boarding School In Yobe State' available at <http://www.ibtimes.com/boko-haram-nigerian-islamist-group-kills-59-students-their-sleep-attack-boarding-school-yobe-state>, last accessed on 10 January 2017.

¹⁷⁵ Kinglsey Omonobi (14 April 2014) '88 killed over 200 injured in Abuja bombing' *Vanguard*, available at <http://www.vanguardngr.com/2014/04/88-killed-200-injured-abuja-bombings/>, last accessed on 10 January 2015.

¹⁷⁶ Stephanie Busari, Nima Elbagir & Sebastiaan Knoops (14 April 2016) 'Nigeria's missing girls: A glimpse of the stolen' *CNN*, available at <http://edition.cnn.com/2016/04/13/africa/chibok-girls-new-proof-of-life-video/>, last accessed on 10 January 2017.

¹⁷⁷ CBS News (7 May 2014) 'Nigeria militants killed "hundreds" in remote village' available at <http://www.cbsnews.com/news/nigeria-boko-haram-militants-killed-hundreds-in-12-hour-raid-on-remote-village/>, last accessed on 10 January 2017.

¹⁷⁸ Adamu Jonah & Anamesere Igboeroteonwu (20 May 2014) 'Bombings kill at least 118 in Nigerian city of Jos' *Reuters*, available at <http://www.reuters.com/article/us-nigeria-violence-idUSBREA4J0QL20140520>, last accessed on 5 January 2017.

¹⁷⁹ Kevin Uhrmacher & Mary Beth Sheridan (3 April 2016) 'The Brutal Toll of Boko Haram's Attacks on Civilians' *The Washington Post*, available at <https://www.washingtonpost.com/graphics/world/nigeria-boko-haram/>, last accessed on 7 January 2017.

Boko Haram continued with its abductions in the year 2015. In March 2015, they abducted more than 400 women and children in Damasak.¹⁸⁰ The group continued with attacks and killed about 6006 people in 270 attacks in the year 2015.¹⁸¹

In 2016, Boko Haram killed about 65 people and injured 135 people on the outskirts of Maiduguri and in several villages in Dalori in different attacks which took place for two days, from 27 to 28 January.¹⁸² In 2016, Boko Haram killed 422 people in 36 attacks.¹⁸³

Boko Haram continued with its attacks in the year 2017. On 4 January 2017, Boko Haram attempted an attack on a market in the city of Madagali, northeastern Nigerian. The three girls who were being used as suicide bombers were gunned down before they could detonate their vests.¹⁸⁴ After that attempt, Boko Haram killed at least five soldiers on 7 January 2017, when the militants attacked a military base called Buni Yadi in Yobe state. The army retaliated and killed 15 militants of Boko Haram.¹⁸⁵

Since 2009, Boko Haram abducted women and children and directed violent attacks to schools, churches, police stations, media outlets and journalists.¹⁸⁶ The number of deaths caused by Boko Haram in Borno state alone were estimated to be above 20 000 by the Council on Foreign

¹⁸⁰ Nick Logan (24 March 2015) 'Boko Haram kidnapped over 400 children, women from Nigeria town: report' *Global News*, available at <http://globalnews.ca/news/1900940/boko-haram-kidnapped-over-400-children-women-from-nigeria-town-report/>, last accessed 15 January 2017.

¹⁸¹ Kevin Uhrmacher & Mary Beth Sheridan (3 April 2016) 'The Brutal Toll of Boko Haram's Attacks on Civilians' *The Washington Post*, available at <https://www.washingtonpost.com/graphics/world/nigeria-boko-haram/>, last accessed on 7 January 2017.

¹⁸² Iliya Kure & Dionne Searcey (1 February 2016) 'Boko Haram Raid in Nigeria Kills at Least 65' *New York Times*, available at <https://www.nytimes.com/2016/02/02/world/africa/brutal-boko-haram-raid-in-nigeria-kills-as-many-as-100.html>, last accessed on 3 January 2017. See also Sunday Isuwa & Dionne Searcey (31 January 2016) 'Boko Haram Burns villages in Northeastern Nigeria' *New York Times*, available at <https://www.nytimes.com/2016/02/01/world/africa/boko-haram-kills-dozens-in-northern-nigeria-military-says.html>, last accessed on 3 January 2017.

¹⁸³ Kevin Uhrmacher & Mary Beth Sheridan (3 April 2016) 'The Brutal Toll of Boko Haram's Attacks on Civilians' *The Washington Post*, available at <https://www.washingtonpost.com/graphics/world/nigeria-boko-haram/>, last accessed on 7 January 2017.

¹⁸⁴ The Associated Press (4 January 2017) '3 girl suicide bombers gunned down in Nigeria' *CBC News*, available at <http://www.cbc.ca/news/world/boko-haram-suicide-bombing-1.3921989>, last accessed on 6 January 2017.

¹⁸⁵ Ananya Roy (9 January 2017) '5 Nigerian soldiers, 15 attackers killed in Boko Haram attack on army base in Yobe state' *International Business Times*, available at <https://ca.news.yahoo.com/5-nigerian-soldiers-15-attackers-063324450.html>, last accessed on 6 January 2017.

¹⁸⁶ Institute for Security Studies (June 2014) 'Peace and Security Council Report, Issue 59 -Country Analysis: Nigeria' available at http://www.issafrika.org/uploads/PSC59_%20June_14English.pdf, last accessed on 4 January 2017.

Relations.¹⁸⁷ The abduction of school girls in Chibok, Borno state in 2014 by Boko Haram is just one of many cases where Boko Haram kidnapped girls and subjected them to sexual, physical, and psychological abuse. The kidnapped young girls have also become victims of forced marriages and some have been sold as sex slaves.¹⁸⁸ Boko Haram has also used children who are as young as 12 years old as soldiers.¹⁸⁹ Some reports said that children make up 40 per cent of the group's fighters.¹⁹⁰ Boko Haram has forced Christians and other non-Muslims to convert to Islam.¹⁹¹ Some members of Boko Haram have married Christians by force.¹⁹²

Taking into consideration the nature of Boko Haram's activities in comparison with the legal definitions of the mass atrocity crimes within the scope of R2P, I have determined that the violent activities by members of Boko Haram may constitute crimes against humanity or war crimes. I will discuss this in details in the following section.

3.1.2.1. CRIMES AGAINST HUMANITY AS THE TYPE OF MASS ATROCITY CRIME COMMITTED BY MEMBERS OF BOKO HARAM

The Rome Statute has defined crimes against humanity to include acts such as 'murder, imprisonment, or other severe deprivation of physical liberty in violation of fundamental rules of international, as well as persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in Article 7 (1) or any crime within the jurisdiction of the Court.'¹⁹³ The Rome Statute says that those acts must be

¹⁸⁷ The Council on Foreign Relations. 'The Nigeria Security Tracker – Mapping Violence in Nigeria' available at <http://www.cfr.org/nigeria/nigeria-security-tracker/p29483>, last accessed on 6 February 2017.

¹⁸⁸ Premium Times Nigeria (27 February 2014), 'Group asks Nigerian government to rescue 20 'kidnapped' female students in Borno' available at <http://www.premiumtimesng.com/news/155894-group-asks-nigerian-government-to-rescue-20-kidnapped-female-students-in-borno.html>, last accessed 5 January 2017.

¹⁸⁹ Al Jazeera (29 Nov 2013) 'Nigeria's Boko Haram 'uses child soldiers' – Africa' available at <http://www.aljazeera.com/news/africa/2013/11/nigeria-boko-haram-uses-child-soldiers-201311291435525502.html>, last accessed on 5 January 2017.

¹⁹⁰ Jola Sotubo (16 November 2014) 'Boko Haram: Terrorist Group Has 60,000 Fighters – Report' *Pulse News*, available at <http://pulse.ng/news/boko-haram-terrorist-group-has-60-000-fighters-report-id3275661.html>, last accessed on 5 January 2017.

¹⁹¹ Africa -News and Analysis (17 November 2013) 'Nigeria – reports of forced conversion and marriage of Christians by Boko Haram' available at <https://africajournalismtheworld.com/2013/11/17/nigeria-reports-of-forced-conversion-and-marriage-of-christians-by-boko-haram/>, last accessed on 5 January 2017.

¹⁹² Ibid.

¹⁹³ Article 7 (1) (a-k), UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90.

committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack,¹⁹⁴ pursuant to or in furtherance of a state or organizational policy to commit such attack.¹⁹⁵ The Rome Statute further says that ‘attack directed against any civilian population’ refers to a course of conduct involving the multiple commission of acts referred to in Article 7 (1) of the Rome Statute.¹⁹⁶

The International Criminal Tribunal for Rwanda (ICTR) has defined what constitutes a ‘widespread or ‘systematic’ attack. The ICTR said that ‘widespread’ refers to ‘massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims.’¹⁹⁷ It defined a ‘systematic’ attack to be one that is ‘thoroughly organized and following a regular pattern on the basis of a common policy involving substantial public or private resources.’ It is a requirement that there should be a preconceived plan or policy but this policy does not need to be adopted formally as the policy of a state.¹⁹⁸ The difference between the two concepts is that- an attack is widespread if it is ‘directed against a multiplicity of victims’,¹⁹⁹ while an attack may be regarded as systematic if it is ‘carried out pursuant to a preconceived state or organizational policy or plan to commit such attack.’²⁰⁰

The attacks perpetrated by Boko Haram are widespread because they have a course of conduct which involves the multiple commission of acts such as murder, persecution on the basis of religion of Christians and Muslims, and the abduction of girls and women, which have been directed against a multiplicity of victims, with the population found in the northeastern part of the country being the most affected.²⁰¹ Those acts have been carried out frequently and on a large scale,

¹⁹⁴ Article 7 (1), UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90.

¹⁹⁵ *Ibid.*, Article 7 (2) (a).

¹⁹⁶ *Ibid.*, Article 7 (2) (a).

¹⁹⁷ *Akayesu*, (Trial Chamber), September 2, 1998, para. 580. *See also Rutaganda*, (Trial Chamber), December 6, 1999, para. 69; *Musema*, (Trial Chamber), January 27, 2000, para. 204; *Ntakirutimana and Ntakirutimana*, (Trial Chamber), February 21, 2003, para. 804.

¹⁹⁸ *Akayesu*, (Trial Chamber), September 2, 1998, para. 580. *See also Rutaganda*, (Trial Chamber), December 6, 1999, para. 69; *Musema*, (Trial Chamber), January 27, 2000, para. 204.

¹⁹⁹ *Kayishema and Ruzindana*, (Trial Chamber), May 21, 1999, para. 123, *See also Bagilishema* (Trial Chamber), June 7, 2001, para. 77.

²⁰⁰ *Ibid.*

²⁰¹ The Office of the Prosecutor (5 August 2013). *Situation in Nigeria: Article 5 Report*. International Criminal Court., page 22.

affecting many Nigerians in different parts of the country, especially those that are in Borno, Yobe, Katsina, Kaduna, Bauchi, Gombe and Kano states.²⁰² The attacks were carried out in a systematic manner because the attacks, which involve bomb blasts and gun shootings for which Boko Haram claimed responsibility all appear to have been conducted in a coordinated and organized manner. The attacks occurred repeatedly and they are conducted in a similar manner.²⁰³

Boko Haram has an aim to overthrow the Nigerian government and establish an Islamic state.²⁰⁴ To achieve that, Boko Haram adopted a policy to attack the Nigerian civilian population. All the attacks that the members or militants of Boko Haram have directed against the Nigerian civilian population, the security forces and the government infrastructures were all conducted pursuant to that policy. It is a plan of the group to commit such attacks in order to achieve their aim of creating an Islamic state.²⁰⁵

It is of relevance to determine whether Boko Haram qualifies as an organization for the purpose of Article 7 (2) (a) of the Rome Statute, that can adopt a policy for the commission of crimes against humanity. In 2010, the Pre-Trial Chamber of the International Criminal Court ruled in the case concerning the situation in Kenya²⁰⁶ that whether a certain group qualifies as an organization for the purpose of Article 7 (2) (a) of the Rome Statute depends on a number of factors and such a determination is made based on a case-by-case analysis. In making such a determination, the Court may take into account some or all of the following considerations:²⁰⁷

- (i) whether the group is under a responsible command, or has an established hierarchy;
- (ii) whether the group possesses, in fact, the means to carry out a widespread or systematic attack against a civilian population;
- (iii) whether the group exercises control over part of the territory of a State;
- (iv) whether the group has criminal activities against the civilian population as a primary purpose;

²⁰² The Office of the Prosecutor (5 August 2013). *Situation in Nigeria: Article 5 Report*. International Criminal Court, page 21.

²⁰³ *Ibid*, page 22.

²⁰⁴ *Ibid*.

²⁰⁵ *Ibid*.

²⁰⁶ The Situation in the Republic of Kenya, Pre-Trial Chamber II, International Criminal Court, March 31, 2010, Case No. ICC-01/09, para. 93.

²⁰⁷ *Ibid*.

- (v) whether the group articulates, explicitly or implicitly, an intention to attack a civilian population;
- (vi) whether the group is part of a larger group, which fulfills some or all of the abovementioned criteria.

In the light of the above-listed considerations, although Boko Haram is a non-state organization, its leaders or members can be held responsible for crimes against humanity because the group has a sufficient degree of organization.²⁰⁸ The group is under a responsible command because it has Abubakar Shakur as its leader.²⁰⁹ It should be presumed that Boko Haram has a leadership structure because there is no evidence to the contrary.²¹⁰ Boko Haram has exercised control over part of the territory of Nigeria because various reports have indicated that it has been in control of 70 per cent area of Borno state.²¹¹

Boko Haram has committed criminal acts against the civilian population as its primary purpose. Its leader, Abubakar Shakur has on several occasions explicitly articulated the intention of the group in several videotaped addresses to attack the civilian population in order to achieve the aim of the group. In April 2014, Abubakar Shekau gave a videotaped address saying that ‘we know what is happening in this world, it is a Jihad war against Christians and Christianity. It is a war against Western education, democracy, and constitution. This is what I know in Quran. This is a war against Christians and democracy and their constitution. Allah says we should finish them when we get them.’²¹²

In 2014, after the abduction of Chibok girls by Boko Haram, Abubakar Shekau claimed responsibility for the abduction and said the following in his video address: ‘If we meet infidels,

²⁰⁸ Williams, D., & Guttschuss, E. (2012). *Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria*. Human Rights Watch, page 75.

²⁰⁹ Christopher Bartolotta (19 September 2011) ‘Terrorism in Nigeria: The Rise of Boko Haram’ *The World Policy Institute*, available at <http://www.worldpolicy.org/blog/2011/09/19/terrorism-nigeria-rise-boko-haram>, last accessed on 4 January 2017.

²¹⁰ Vesselin Popovski & Benjamin Maiangwa (2016) ‘Boko Haram’s attacks and the people’s response: A “fourth pillar” of the responsibility to protect?’ *African Security Review*, 25:2, 159-175, page 165.

²¹¹ Africa -News and Analysis (8 January 2015) ‘Boko has 70% of Borno’ available at: <https://africajournalismtheworld.com/tag/boko-has-70-of-borno/>, last accessed on 4 January 2017.

²¹² CKN Nigeria (7 May 2014) ‘Full English Transcript of Boko Haram Leader Abubakar Shekau’s Latest Video’ available at <http://www.cknnigeria.com/2014/05/full-english-transcript-of-boko-haram.html>, last accessed on 7 January 2017.

if we meet those that become infidels, according to Allah, there is no any talk except hitting of the neck. I hope you, chosen people of Allah, are hearing. This is an instruction from Allah. It is not a distorted interpretation, it is from Allah himself.’²¹³ In those videos, the leader of Boko Haram has explicitly articulated the intention of the group which is under his command, to attack the Nigerian civilian population. Hence, Boko Haram has criminal activities against the civilian population as its primary purpose.

Boko Haram possess the means to carry out widespread and systematic attack against the civilian population. Boko Haram has vehicles, motor bikes, guns, and bombs and militants to execute their plans. Boko Haram qualifies as an organization because it has fulfilled the consideration that requires the group to have means to commit acts pursuant to its policy.²¹⁴

Boko Haram perpetrated widespread and systematic persecution of Christians and Muslims whom they alleged to have collaborated with the government or condemned their cruel acts.²¹⁵ Boko Haram has murdered thousands of Christians and Muslims in attacks in the northern and central regions, with Borno state being the state that is most affected by the insurgency.²¹⁶ Following what their leader articulated in his videotaped addresses, members of Boko Haram attacked Christian villages and bombed more churches in different parts of Nigeria on days that are of importance to Christians such as Christmas Day and Easter Sunday. On those days, a lot of Christians attend church services, hence, Boko Haram has succeeded in killing a lot of Christians through bombings and gun attacks on churches.²¹⁷

The atrocities perpetrated by members of Boko Haram may also constitute war crimes because there is a non-international armed conflict between the Nigerian security forces and Boko Haram.²¹⁸ For a situation to amount to a non-international armed conflict, it should reach a certain

²¹³ CKN Nigeria (7 May 2014) ‘Full English Transcript of Boko Haram Leader Abubakar Shekau’s Latest Video’ available at <http://www.cknnigeria.com/2014/05/full-english-transcript-of-boko-haram.html>, last accessed on 7 January 2017.

²¹⁴ The Office of the Prosecutor (5 August 2013). *Situation in Nigeria: Article 5 Report*. International Criminal Court, page 23.

²¹⁵ Ibid, page 22.

²¹⁶ Ibid.

²¹⁷ Ibid, page 22 & 25.

²¹⁸ Article 8 (2) (e), *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90.

threshold.²¹⁹ The Rome Statute says that ‘situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature’ do not amount to non-international armed conflicts.²²⁰ The International Criminal Tribunal for the former Yugoslavia (ICTY) has formulated a test that can be used to determine whether a certain situation amounts to an armed conflict. In the *Tadic case*, the ICTY Appeals Chamber said that ‘an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.’²²¹ Using that test, I can conclude that the situation in Nigeria amounts to a non-international armed conflict because of the protracted armed violence between the Nigerian security forces and Boko Haram, which is an organized militant group.

During such a conflict, various acts which have been listed by the Rome Statute under Article 8 have been perpetrated against the protected groups such as civilian population and protected properties such as religious buildings and education facilities.²²² That includes the direction of attacks against the Nigerian civilian population, destruction of churches and schools, willful killings, taking of hostages, recruitment of children as soldiers and all other forms of sexual violence or abuse committed by members of Boko Haram.²²³

Thus, I agree with the findings of the Prosecutor of the International Criminal Court²²⁴ the UN Security Council,²²⁵ and the Human Rights Watch (HRW)²²⁶ who have also determined that the activities of Boko Haram may constitute crimes against humanity. The acts committed by members of Boko Haram constitute crimes against humanity and war crimes as defined in the Rome Statute

²¹⁹ Article 8 (2) (f), *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90.

²²⁰ *Ibid*, Article 8 (2) (d).

²²¹ *Tadic* (Appeals Chamber), October 2, 1995, para. 70. See also Article 8 (2) (f), *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90.

²²² Article 8 (2) (e) (iv), *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90.

²²³ The Office of the Prosecutor (12 November 2015). *Report on Preliminary Examination Activities*. International Criminal Court, paragraph 196-209 & 222.

²²⁴ UN General Assembly, *Report of the International Criminal Court*, 19 August 2016, A/71/342, page 6-7.

²²⁵ UN News Centre (19 January 2015) ‘Security Council condemns escalating Boko Haram attacks, warns of ‘crimes against humanity’, available at <http://www.un.org/apps/news/story.asp?NewsID=49843#.WJiFam99601>, last accessed on 6 February 2017.

²²⁶ Williams, D., & Guttschuss, E. (2012). *Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria*. Human Rights Watch, page 75, 76 & 75.

of the International Criminal Court and as defined in terms of the case law of various international criminal tribunals.

Because the crimes committed by Boko Haram constitute crimes against humanity and war crimes as defined in Article 7 and 8 of the Rome Statute, the situation in Nigeria falls within the scope of the responsibility to protect, which gives the Nigerian government the primary responsibility to protect its population from crimes against humanity and war crimes being perpetrated by Boko Haram. The next chapter will discuss other sources of this obligation, identify, and discuss measures adopted by Nigeria to protect and discuss whether such measures were effective in protecting the Nigerian population.

CHAPTER 4

4.1. FULFILMENT OF THE RESPONSIBILITY TO PROTECT BY THE NIGERIAN GOVERNMENT

The Nigerian government re-affirmed its commitment to protect its population from mass atrocities at the 2005 UN World Summit by endorsing the responsibility to protect. Paragraph 138 of the UN World Summit Outcome Document reads as follow:

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.²²⁷

The 2005 UN World Summit Document is not the only source of responsibility for Nigeria to protect its civilians from heinous crimes committed by members of Boko Haram. The obligation of the Nigerian government to protect its population from mass atrocity crimes perpetrated by members of Boko Haram existed prior to the 2005 UN World Summit. The obligation to protect emanates from the human rights treaties that Nigeria has ratified.²²⁸ These are the International Covenant on Civil and Political Rights,²²⁹ the International Covenant on Economic, Social and Cultural Rights²³⁰ and the Convention Against Torture.²³¹ The obligation to protect also derives from the relevant provisions of the Constitution of the Federal Republic of Nigeria which is the

²²⁷ UN General Assembly, *2005 World Summit Outcome: resolution / adopted by the General Assembly*, 24 October 2005, A/RES/60/1, paragraph 138.

²²⁸ Article 14 (2) (b), Constitution of the Federal Republic of Nigeria [Nigeria], Act No. 24, 5 May 1999.

²²⁹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171. In the preamble of that Covenant, the States Parties have acknowledged that they have an obligation under the UN Charter to promote universal respect for, and observance of, human rights and freedoms.

²³⁰ Preamble, UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

²³¹ Article 2, UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85. Article 2 (1) says that: 'Each state shall take effective legislation, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.'

supreme law of the land.²³² Article 14 (2) (b) of the Nigerian Constitution provides that ‘the security and welfare of the people shall be the primary purpose of government.’²³³ That Article has given a responsibility to the Nigerian government to protect all people within its jurisdiction. On that basis, the Nigerian government has a legal obligation to fulfil its primary purpose as defined by the Constitution because Boko Haram pose a threat to the security and welfare of the people of Nigeria. In fulfilment of this obligation, the Nigerian government resorted to several measures that I will discuss in the following section.

4.1.1. MEASURES TAKEN BY THE NIGERIAN GOVERNMENT TO PROTECT ITS POPULATION -IN RESPONSE TO THE INSURGENCY

On 11 March 2014, the speaker of the House of Representatives, Aminu Waziri Tambuwal addressed the federal lawmakers. He said the following during that address: ‘Nigeria is running out of excuses for our failure to live up to our responsibility to protect our citizens.’²³⁴ He urged the lawmakers to act in order to end the violence.²³⁵ Through that speech, the speaker of the House of Representatives acknowledged the obligation borne by the Nigerian government to protect its population from gross human rights violations but at the same time acknowledged the fact that at the time of his address, the Nigerian government did not do enough to protect its citizens. By asking the members of the House of Representatives to act, he is telling them to come up with strategies to stop the violence directed against the Nigerian population by Boko Haram. The Nigerian government took the following steps in their attempt to do so.

4.1.1.1. Declaration of States of Emergency

The Nigerian government through its officials first tried to initiate peace talks with the representatives of Boko Haram but such initiatives failed. The peace talks broke down because the group has clearly indicated that it is not prepared to negotiate. The group continued perpetrating extensive violence.²³⁶

²³² Article 1 (1), Constitution of the Federal Republic of Nigeria [Nigeria], Act No. 24, 5 May 1999.

²³³ Ibid, Article 14 (2) (b).

²³⁴ Ini Ekott (11 March 2014) ‘Boko Haram killings: Nigerian government has exhausted its excuses -Tambuwal’ *Premium Times*, available at <http://www.premiumtimesng.com/news/156559-boko-haram-killings-nigerian-government-exhausted-excuses-tambuwal.html>, last accessed on 15 January 2017.

²³⁵ Ibid.

²³⁶ Uchehara, A. K. E. (2014) ‘Peace Talks Initiatives between the Boko Haram and Nigerian Government’ *International Journal of Business and Social Science*, 5(6),130-138, page 130,1 32-134.

After an increase in violence characterized by the attacks of five churches on 25 December 2011 in Jos, Damaturu, Madalla and Gadaka²³⁷ the then President of the Federal Republic of Nigeria, Goodluck Jonathan declared a state of emergency in Borno, Yobe, Plateau and Niger states in December 2011.²³⁸ The state of emergency resulted in the closure of international borders that are close to the affected areas and permitted security forces to conduct searches without warrants, and to effect arrests without evidence.²³⁹ After the first declaration of emergency, a series of further attacks that took place led to a declaration of another state of emergency in May 2013.²⁴⁰ The state of emergency of 2013 applied to three northern states, namely, Adamwa, Borno, and Yobe state. This declaration of a state of emergency led to a deployment of more soldiers to the states in the northeastern part of the country.²⁴¹ However, despite the two declaration of states of emergency, the attacks by Boko Haram continued.²⁴²

4.1.1.2. Proscription of Boko Haram

In 2013, former President of the Federal Republic of Nigeria, Goodluck Jonathan approved a proscription order against Boko Haram to tackle the insurgency, pursuant to section 2 of the Terrorism Prevention Act of 2011.²⁴³ Consequently, the activities of Boko Haram were declared unlawful and acts of terrorism.²⁴⁴ The Terrorism Prevention Act says that an act of terrorism refers to a deliberate act that ‘may seriously harm or damage a country or an international organization’,²⁴⁵ that is intended or that can reasonably be regarded as having been intended to force a government or an international organization to carry out or abstain from carrying out a

²³⁷ Monica Mark (25 December 2011) ‘Hell on Christmas day: Nigeria’s deadly bombings’ *Time Magazine*, available at <http://content.time.com/time/world/article/0,8599,2103091,00.html>, See also CNN Wire Staff (26 December 2011) ‘Christmas carnage in Nigeria; 5 churches bombed’ *CNN*, available at <http://edition.cnn.com/2011/12/25/world/africa/nigeria-church-bombing/>, last accessed on 13 February 2017.

²³⁸ Bashir Adigun (31 December 2011) ‘Nigeria calls state of emergency over sect attacks’ *Associated Press*, available at <http://www.sandiegouniontribune.com/sdut-nigeria-calls-state-of-emergency-over-sect-attacks-2011dec31-story.html>, last accessed on 12 January 2017.

²³⁹ *Ibid.*

²⁴⁰ BBC News (15 May 2013) ‘Nigeria: Goodluck Jonathan declares emergency in states’ available at <http://www.bbc.com/news/world-africa-22533974>, last accessed on 12 January 2017.

²⁴¹ *Ibid.*

²⁴² Azad Essa (11 August 2014) ‘Report-Nigerian Hostage Crisis: The Likelihood of Western Intervention’ *Al-Jazeera Centre for Studies*, page 3.

²⁴³ Vanguard (4 June 2013), ‘Jonathan clamps down on terrorist groups, proscribes Boko Haram, Ansaru’ available at <http://www.vanguardngr.com/2013/06/jonathan-clamps-down-on-terrorist-groups-proscribes-boko-haram-ansaru/>, last accessed on 14 February 2017.

²⁴⁴ Section 1, Terrorism (Prevention) (Proscription Order) Notice 2013.

²⁴⁵ See Section 1 (2) Terrorism (Prevention) Act No. 10 of 2011.

certain act, ‘to seriously intimidate a population’ or to ‘seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization.’²⁴⁶

The proscription order cautioned the public against participating or being involved in the activities of Boko Haram because that is in contravention of the Terrorism Prevention Act.²⁴⁷ Section 5 (1) of the Act says that ‘any person who knowingly, in any manner, directly or indirectly, solicits or renders support for the commission of an act of terrorism or to a terrorist group’ should be sentenced to an imprisonment term of not less than 20 years. For the purpose of section 5 (1) support was defined as the ‘incitement to commit a terrorist act through the internet, or any electronic means or through the use of printed materials or through the dissemination of terrorist information...’²⁴⁸

The proscription of Boko Haram was a significant step on the part of the government in the strengthening of the fight against Boko Haram and fulfilling its responsibility to protect its population.²⁴⁹ This is partly because the heavy sentence that comes with such a proscription order could have a deterrent effect. The fear of such a sentence can result in the decrease of attacks. But political parties such as the Action Congress of Nigeria (ACN) criticized this measure by the government to combat Boko Haram. ACN gave reasons such as that the definition of ‘support’ is too vague and open-ended, and this will not pass the constitutional test as it might result in the violation of fundamental human rights and freedoms which are entrenched in the Nigerian Constitution.²⁵⁰ They looked at this measure as a way to suppress the freedom of the media and to violate the constitutional right of freedom of expression. ACN also feared that the measure is susceptible to abuse because the government can use it to suppress the opposition political parties.²⁵¹

²⁴⁶ See Section 1 (2) Terrorism (Prevention) Act No. 10 of 2011.

²⁴⁷ Section 2, Terrorism (Prevention) (Proscription Order) Notice 2013.

²⁴⁸ Section 5 (1), Terrorism (Prevention) Act No. 10 of 2011.

²⁴⁹ The Citizen (9 June 2013) ‘The proscription on Boko Haram’ available at <http://thecitizenng.com/the-proscription-on-boko-haram/>, last accessed on 14 February 2017.

²⁵⁰ Vanguard (10 June 2013) ‘Proscribing Boko Haram, Ansaru wrong, says ACN’ available at <http://www.vanguardngr.com/2013/06/proscribing-boko-haram-ansaru-wrong-says-acn/>, last accessed on 14 February 2017.

²⁵¹ Ibid.

4.1.1.3. The Second Regional Security Summit

As part of the efforts of the Nigerian government to defeat Boko Haram, President Muhammadu Buhari called for the second regional security summit in Abuja, Nigeria on 14 May 2016.²⁵² The Abuja summit was a follow-up to the first summit that was held in Paris, France on 17 May 2014. The Paris Summit aimed at strengthening regional cooperation between Cameroon, Benin, Chad, Niger and Nigeria in the fight against Boko Haram, while the Abuja summit aimed at evaluating the regional response to the threat posed by Boko Haram.²⁵³ The states represented at the Abuja summit also had an aim to adopt a comprehensive strategy to address the governance, security, development, socioeconomic and humanitarian dimensions of the crisis.²⁵⁴ The Abuja summit was seen as the right move in the direction of a coordinated response of affected African countries to the threat posed by Boko Haram. But it was criticized to be about 'more talk but less action,' because despite all the resolutions adopted, there was not effective implementation of those resolutions. This was because some of the resolutions were either not viable or not feasible in their implementation. As a result, extensive attacks by Boko Haram did not decrease.²⁵⁵

4.1.2. HUMAN RIGHTS VIOLATIONS BY THE NIGERIAN SECURITY FORCES IN THEIR COUNTER-INSUGENCY EFFORT

In their counter-insurgency effort, the Nigerian security forces have violated human rights.²⁵⁶ The Security forces supported the establishment of vigilante groups such as the Civilian Joint Task Force (CJTF), which was formed by disgruntled civilians who felt that the protection by the Nigerian security forces is not adequate.²⁵⁷ The CJTF recruited children below the age of 18 to

²⁵² Aljazeera (15 May 2016) 'Nigeria hosts summit on battling Boko Haram' available at: <http://www.aljazeera.com/news/2016/05/nigeria-hosts-regional-summit-battling-boko-haram-160514101705166.html>, last accessed 18 January 2017.

²⁵³ Ibid.

²⁵⁴ Tanwa Ashiru (20 May 2016) 'Abuja regional security summit: Was it helpful and what next?' *The Guardian*, available at <http://guardian.ng/business-services/abuja-regional-security-summit-was-it-helpful-and-what-next/>, last accessed on 18 January 2017.

²⁵⁵ Ibid.

²⁵⁶ Rosie Collyer (23 November 2011) 'Nigeria - report - Civilians killed in Nigerian military's fight with Boko Haram, claim rights groups' available at <http://en.rfi.fr/africa/20111122-military-might-brings-misery-maiduguri>, last accessed on 19 January 2017.

²⁵⁷ Ashionye Ogene (31 May 2014) 'Nigerian vigilantes aim to rout Boko Haram' *Al Jazeera English*, available at <http://www.aljazeera.com/indepth/features/2014/05/nigerian-vigilantes-aim-rout-boko-haram-2014526123758444854.html>, last accessed on 19 January 2017.

work at the checkpoints in Borno and Yobe state.²⁵⁸ In some cases this was done forcefully.²⁵⁹ There might be more human rights abuses from members of the CJTF in their effort to protect their communities from Boko Haram because they are not trained law enforcement officials.²⁶⁰

On 15 October 2013, Amnesty International reported that some detainees who were suspected to be militants of Boko Haram were tortured to death in custody.²⁶¹ The number of suspects who died in detention facilities before mid-2013 was estimated to be at 950.²⁶² The report also revealed that some suspected Boko Haram militants were killed before or during the arbitrary dragnet arrests conducted by the Nigerian military and police force. Amnesty International recommended a probe or inquest into such deaths.²⁶³

Amnesty International also reported that until early 2016, about 8000 people were killed in detention facilities that are under the control of the Nigerian military and the police force.²⁶⁴ Both the 2015/16 Annual Report of Amnesty International²⁶⁵ and the 2017 World Report of Human Rights Watch for the events of 2016²⁶⁶ identified the same forms of human rights violations by the Nigerian security forces. These include arbitrary arrests, unlawful detentions, torture, and extrajudicial/unlawful killings by members of the Nigerian military and police force. The reports further went on to say that the police officers responsible for such unlawful killings seem to be

²⁵⁸ Human Rights Watch (29 November 2013) 'Nigeria: Boko Haram abducts women, Recruits Children' available at <https://www.hrw.org/news/2013/11/29/nigeria-boko-haram-abducts-women-recruits-children>, last accessed on 19 January 2017.

²⁵⁹ The Office of the Prosecutor (12 November 2015). *Report on Preliminary Examination Activities*. International Criminal Court, paragraph 215.

²⁶⁰ Alexis Okeowo (5 November 2014) 'Inside the vigilante fight against Boko Haram' *The New York Times*, available at https://www.nytimes.com/2014/11/09/magazine/inside-the-vigilante-fight-against-boko-haram.html?_r=0, last accessed on 25 January 2017.

²⁶¹ Amnesty International (15 Oct 2013) 'Nigeria: Deaths of hundreds of Boko Haram suspects in custody requires investigation' available at <https://www.amnesty.org/en/latest/news/2013/10/nigeria-deaths-hundreds-boko-haram-suspects-custody-requires-investigation/>, last accessed on 19 January 2017.

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ The Economist (5 February 2016) 'Another brutal attack by Boko Haram highlights the weakness of Nigeria's military' available at <http://www.economist.com/news/middle-east-and-africa/21690136-recent-attack-reflects-badly-military-reforms-boko-back>, last accessed on 20 January 2017.

²⁶⁵ Amnesty International (2016). *Amnesty International Annual Report 2015/16 -The State of the World's Human Rights – Federal Republic of Nigeria*. United Kingdom, page 274-278.

²⁶⁶ Human Rights Watch (2017) 'World Report 2017 – Nigeria -Events of 2016' available at <https://www.hrw.org/world-report/2017/country-chapters/nigeria#37d3fe>, last accessed on 20 January 2017.

immune to prosecution because it is just a few of them that have been held accountable while any people responsible for unlawful killings dating as early as 1999 have not yet been prosecuted.²⁶⁷

The Nigerian government tried to protect its population from atrocities being perpetrated against it by Boko Haram but it has proven to be willing but unable to do so. It has manifestly failed to contain the insurgency. Despite all the measures employed, the Nigerian government failed in fulfilling its responsibility to protect its population from large-scale attacks by Boko Haram.²⁶⁸ To make matters worse, its military also contributed to human rights violations.²⁶⁹ With the Nigerian government failing to live up to its legal obligation to protect its population from atrocities directed against it by Boko Haram, a situation results that falls under Pillar II and partly under Pillar III of the responsibility to protect as contained in the 2009 report of the UN Secretary General. The intervention of the international community is encouraged under Pillar III when the state has failed to protect, or when it is the one perpetrating human rights violations against its population. Pillar III is therefore applicable to the situation in Nigeria to a lesser extent because the government is also involved in human rights violation, although it has not completely abandoned its obligation to ensure the security and welfare of its people. The assistance of the international community to Nigeria is therefore important because the violations of human rights by Boko Haram and the Nigerian security forces need to be stopped. The Nigerian government needs assistance from the international community in order to enhance its capacity to contain the insurgency. This can be achieved by adopting measures that are tailored to the type of situation in Nigeria.

²⁶⁷ Amnesty International (2016). *Amnesty International Annual Report 2015/16 -The State of the World's Human Rights – Federal Republic of Nigeria*. United Kingdom, page 274-278.

²⁶⁸ Ananya Roy (9 January 2017) '5 Nigerian soldiers, 15 attackers killed in Boko Haram attack on army base in Yobe state' *International Business Times*, available at <https://ca.news.yahoo.com/5-nigerian-soldiers-15-attackers-063324450.html>, last accessed on 6 January 2017. See also The Associated Press (4 January 2017) '3 girl suicide bombers gunned down in Nigeria: Boko Haram, which has a history of using children as suicide bombers, believed behind attempted attack' *CBC News*, available at <http://www.cbc.ca/news/world/boko-haram-suicide-bombing-1.3921989>, last accessed on 6 January 2017. The Associated Press reported that 'Nigeria's president declared that Boko Haram had been crushed last month, but there's unlikely to be a swift end to the suicide bombings and attacks on remote villages and army outposts.' Ulf Laessing & Lanre Ola (31 August 2016) 'Nigerian army commander: only weeks left for Boko Haram' *Reuters*, available at <http://www.reuters.com/article/us-nigeria-security-idUSKCN116188>, last accessed on 22 January 2017. They reported that: 'Despite the set-backs, Boko Haram still manages to stage regular suicide bombings in Nigeria and neighboring Chad, Niger and Cameroon. Since 2009, more than 15,000 people have been killed, 2.3 million displaced and the local economy decimated.'

²⁶⁹ Amnesty International (2016), *Amnesty International Annual Report 2015/16 -The State of the World's Human Rights – Federal Republic of Nigeria*. United Kingdom, page 274-278.

CHAPTER 5

5.1. FULFILMENT OF THE RESPONSIBILITY TO PROTECT BY THE INTERNATIONAL COMMUNITY

The 2005 UN World Summit Outcome Document recognizes the responsibility to protect of the international community. Paragraph 139 of that document reads as follows:

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.²⁷⁰

The international community has a duty to support the Nigerian government in living up to its primary responsibility to protect its population, and when it has manifestly failed to do so, the international community has a responsibility to take appropriate measures to protect the Nigerian population from the gross violation of human rights directed against it by Boko Haram. The 2005 UN World Summit Outcome Document is not the only source of this responsibility. The responsibility of the international community to protect the Nigerian population can also be derived from the provisions of the constitutive documents of various international organizations. For example, Article 4 of the Constitutive Document of the African Union²⁷¹ of which Nigeria is a member state says that the Union should function in accordance with the following principles: ‘The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in

²⁷⁰ UN General Assembly, *2005 World Summit Outcome: resolution / adopted by the General Assembly*, 24 October 2005, A/RES/60/1., paragraph 138.

²⁷¹ Constitutive Act of the African Union, OAU Doc. CAB/LEG/23.15 (2001).

respect of grave circumstances, namely: war crimes, genocide and crimes against humanity,²⁷² ‘the right of Member States to request intervention from the Union in order to restore peace and security,²⁷³ and ‘the respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities.’²⁷⁴

The Nigerian government is willing to protect its population but it has failed to protect it successfully because it was unable to. Because Nigeria is unable to protect its population adequately, the responsibility of the international community to assist Nigeria in living up to its responsibility to protect is then activated.²⁷⁵ In terms of Pillar II of R2P, the international community is obligated to heed Nigeria’s call for such assistance.²⁷⁶ The international community therefore has a responsibility to encourage and assist the Nigerian government in order to increase its capacity to protect its population from tragic and merciless atrocities being perpetrated by Boko Haram.²⁷⁷ Pillar III of R2P applies to the situation in Nigeria to a lesser extent because from the measures used by Nigeria to protect its citizens, it can be inferred that Nigeria is willing to fulfil its responsibility but unable to protect adequately, therefore what the Nigerian government needs is the assistance of the international community in fulfilling its protection obligation.

Nigeria seems to accept that sovereignty entails responsibility, because when the government realized that it was failing to live up to its responsibility to protect its citizens from abhorrent human rights violation by Boko Haram, it requested assistance from the international community.²⁷⁸ In this case, there was no contention or dilemma between sovereignty and intervention with the aim to protect because the Nigerian government consented to the intervention of the international community. Had the Nigerian government not consented to the intervention of the international community when it had manifestly failed to protect its population, this would have been construed to mean that it does not understand its sovereignty as a responsibility to

²⁷² Article 4 (h), Constitutive Act of the African Union, OAU Doc. CAB/LEG/23.15 (2001).

²⁷³ Ibid, Article 4 (j).

²⁷⁴ Ibid, Article 4 (o).

²⁷⁵ Vesselin Popovski & Benjamin Maiangwa (2016) ‘Boko Haram’s attacks and the people’s response: A “fourth pillar” of the responsibility to protect?’ *African Security Review*, 25:2, 159-175, page 165.

²⁷⁶ UN General Assembly, *Implementing the responsibility to protect: report of the Secretary-General*, 12 January 2009, A/63/677, page 9.

²⁷⁷ Ibid.

²⁷⁸ Ibrahim Ahmed & Mike Eckel (27 January 2015) ‘Nigerian governors plead for foreign intervention amid Boko Haram onslaught’ *VOA’s English Web Desk*, available at <http://www.voanews.com/a/nigeria-election-boko-haram/2615696.html>, last accessed on 7 February 2017.

protect its people and therefore it would have resulted in an entire Pillar III situation, which would not have prevented the international community from using the appropriate means to protect human life in Nigeria.²⁷⁹

In this chapter, I will discuss how the international community attempted to fulfill its responsibility to protect the Nigerian population and determine whether they have succeeded in doing so, with specific reference to the United Nations (UN), the African Union (AU) and the Economic Community of West African States (ECOWAS).

5.1.1. THE UNITED NATIONS AND THE RESPONSIBILITY TO PROTECT THE NIGERIAN POPULATION

The UN has been directly affected by the activities of Boko Haram when the group attacked the UN headquarters in Abuja on 26 August 2011 through a suicide car bomb. The bomb blast killed 25 people and injured more than 100 people. Boko Haram took credit for that attack.²⁸⁰

As part of its efforts to protect its people from Boko Haram, the Nigerian government asked the UNSC Committee on Al-Qaeda Sanctions to designate Boko Haram as a terrorist group, which would result in the imposition of sanctions.²⁸¹ The UN Security Council supported the efforts of the Nigerian government to combat Boko Haram by responding positively to the request. On 22 May 2014, the UNSC Committee on Al-Qaeda Sanctions approved sanctions to be imposed upon Boko Haram.²⁸² The sanctions imposed were in the forms of a travel ban against its leaders, freezing of assets and an arms embargo as set out in the UN Security Council Resolution 2083 (2012), adopted in compliance with Chapter VII of the UN Charter.²⁸³ Some analysts have criticized this approval as a merely symbolic move by the UN Security Council and may not be able to have practical effects because Boko Haram is an informal organization and its members do

²⁷⁹ Vesselin Popovski & Benjamin Maiangwa (2016) 'Boko Haram's attacks and the people's response: A "fourth pillar" of the responsibility to protect?' *African Security Review*, 25:2, 159-175, page 164.

²⁸⁰ Williams, D., & Guttschuss, E. (2012). *Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria*. Human Rights Watch, 4 & 5.

²⁸¹ Premium Times (20 May 2014) 'Nigeria formally asks United Nations to blacklist Boko Haram' available at <http://allafrica.com/stories/201405210502.html>, last accessed on 13 January 2017.

²⁸² BBC News (23 May 2014) 'UN committee imposes sanctions on Nigeria's Boko Haram' available at <http://www.bbc.com/news/world-africa-27529566>, last accessed on 13 February 2017.

²⁸³ UN Security Council, *Security Council resolution 2083 (2012) [on extension of the mandate of the Office of the Ombudsperson and the implementation of measures relating to the Al-Qaida sanctions list]*, 17 December 2012, S/RES/2083 (2012), paragraph 1.

not travel with passports nor do they have formal identifiable assets. The sanctions imposed may be of no effect on the operations of Boko Haram.²⁸⁴

On 26 June 2014, the leader of Boko Haram, Abubakar Shekau was added to the list of individuals who are subject to sanctions imposed by the UN Security Council under paragraph 1 of the UN Security Council Resolution 2161 (2014),²⁸⁵ which was also adopted under Chapter VII of the UN Charter. This was also done after the UNSC Committee on Al-Qaeda Sanctions had approved such an addition.²⁸⁶

Despite the imposition of sanctions, Boko Haram committed what might be its largest massacre from 3 to 7 January 2015,²⁸⁷ in the northeastern part of Nigeria, by destroying the town of Baga in which up to 2000 people were killed and about 500 women and children were abducted.²⁸⁸ Boko Haram struck again in the same month when a 10-year old suicide bomber who belonged to the group killed 19 people in a bomb attack at a Monday market in the northeastern city of Maiduguri on 10 January 2015.²⁸⁹ After those attacks, the UN Security Council released a presidential statement on the 19 January 2015 condemning those attacks and the use of children as suicide bombers.²⁹⁰ The statement said that:

The Security Council strongly condemns and deplores all abuses of human rights and, where applicable, violations of international humanitarian law by the terrorist group Boko Haram, since 2009, including those involving violence against civilian populations, notably women and children, kidnappings, killings, hostage-taking, pillaging, rape, sexual slavery and other sexual violence, recruitment of children and destruction of civilian property. The Security Council expresses serious concern over the reported violations and abuses of human rights and large-scale displacements of civilian population, including into

²⁸⁴ BBC News (23 May 2014) 'UN committee imposes sanctions on Nigeria's Boko Haram' available at <http://www.bbc.com/news/world-africa-27529566>, last accessed on 13 February 2017.

²⁸⁵ UN General Assembly, *Security Council resolution 2161 (2014) [on threats to international peace and security caused by terrorist acts by Al-Qaida]*, 17 June 2014, S/RES/2161 (2014).

²⁸⁶ UN Meetings Coverage and Press Releases (26 June 2014) 'Security Council Al-Qaida Sanctions Committee Adds Abubakar Mohammed Shekau, Ansaru to Its Sanctions List' available at <http://www.un.org/press/en/2014/sc11455.doc.htm>, last accessed on 13 February 2017.

²⁸⁷ Amnesty International Press Release (9 January 2015) 'Nigeria: Massacre possibly deadliest in Boko Haram's history' available at <https://www.amnesty.org/en/press-releases/2015/01/nigeria-massacre-possibly-deadliest-boko-haram-s-history/>, last accessed on 7 January 2017.

²⁸⁸ Belfast Telegraph (12 January 2015) 'Nigeria's ignored massacre: 2,000 slaughtered by Boko Haram, 30,000 flee their homes' available at <http://www.belfasttelegraph.co.uk/news/world-news/nigerias-ignored-massacre-2000-slaughtered-by-boko-haram-30000-flee-their-homes-30900028.html>, last accessed on 13 January 2017.

²⁸⁹ BBC News (10 January 2015) 'Nigeria: 'Girl bomber' kills 19 people in Maiduguri market' available at <http://www.bbc.com/news/world-africa-30761963>, last accessed on 13 January 2017.

²⁹⁰ UN Security Council, *Statement [made on behalf of the Security Council, at the 7362nd meeting, 19 January 2015, in connection with the Council's consideration of the item entitled "Threats to international peace and security caused by terrorist acts"]*, 19 January 2015, S/PRST/2015/4.

Nigeria's neighbouring countries. The Security Council recalls its decision to place Boko Haram on the Al-Qaida sanctions list.²⁹¹

The statement further went on to say that 'the Security Council reiterates the primary responsibility of Member States to protect civilian populations on their territories, in accordance with their obligations under international law.'²⁹² Through those presidential statements, the UN Security Council just condemned the atrocities being perpetrated by Boko Haram, but it refrained from taking an effective action, even when it appears that the only appropriate measure to protect the Nigerian population is the use of force against Boko Haram. Instead, the UN Security Council chose to reiterate the obligation of Nigeria under international to protect its population, even when Nigeria was manifestly struggling to contain the insurgency.

With all the broad and sweeping powers vested in the UN Security Council and with its primary responsibility to maintain international peace and security as provided by the UN Charter, the UN Security Council did not do enough to assist Nigeria in fulfilling its protection obligation. There is no doubt that the activities of this insurgent group have caused instability in Nigeria and pose a threat to international peace and security. Apart from the Resolutions that the UN Security Council passed and the presidential statements which the Security Council issued, in which UN Security Council vehemently condemned the activities of Boko Haram and the human rights abuses thereof,²⁹³ the UN Security Council did not take any other action with the aim to protect the Nigerian population from atrocities being perpetrated by Boko Haram. For all the past years that Boko Haram has been terrorizing Nigeria, the UN Security Council did not actively get involved in battling the insurgency, not disregarding the sanctions that the Security Council imposed.²⁹⁴ Instead, the UN Security Council urged the African Union, ECOWAS²⁹⁵ and the Multinational

²⁹¹ UN Security Council, *Statement [made on behalf of the Security Council, at the 7362nd meeting, 19 January 2015, in connection with the Council's consideration of the item entitled "Threats to international peace and security caused by terrorist acts"]*, 19 January 2015, S/PRST/2015/4.

²⁹² *Ibid.*

²⁹³ UN Security Council, *Statement [made on behalf of the Security Council, at the 7692nd meeting, 13 May 2016, in connection with the Council's consideration of the item entitled "Threats to international peace and security caused by terrorist acts"]*, 13 May 2016, S/PRST/2016/7.

²⁹⁴ Dana Ford (23 May 2014) 'UN Security Council slaps Boko Haram with sanctions' *CNN*, available at <http://edition.cnn.com/2014/05/22/world/africa/nigeria-violence/>, last accessed on 15 January 2017.

²⁹⁵ UN Security Council, *Statement [made on behalf of the Security Council, at the 7692nd meeting, 13 May 2016, in connection with the Council's consideration of the item entitled "Threats to international peace and security caused by terrorist acts"]*, 13 May 2016, S/PRST/2016/7. The statement says that 'the Security Council encourages the Economic Community of Central African States (ECCAS) and the Economic Community of West African States

Joint Task Force (MNJTF) to assist Nigeria in stopping or preventing the commission of mass atrocities by Boko Haram and to enhance regional military cooperation and coordination to defeat Boko Haram.²⁹⁶

The response of the UN Security Council to the crisis in Nigeria is different from how it responded to the crisis in Libya in 2011. The sanctions and travel bans which were imposed by the UN Security Council against officials of Muammar Gaddafi's regime were followed by Resolution 1973 which authorized the use of force to 'protect civilians and civilian populated areas under threat of attack.'²⁹⁷ The situation in Nigeria also deserves the same response from the UN Security Council. Coercive measures authorized by the UN Security Council and carried out in accordance with the UN Charter could be more effective in protecting the Nigerian population from attacks by Boko Haram.

Despite having recalled its primary responsibility for the maintenance of international peace and security in its presidential statement S/PRST/2015/14, and having affirmed that 'terrorism in all its forms and manifestations constitutes one of the most serious threats to international peace and security,' and that 'any acts of terrorism are criminal and unjustifiable, regardless of their motivation, wherever, whenever and by whosoever committed,' the UN Security Council appears to be shifting the burden to the regional and sub-regional organizations even when it has also affirmed that 'terrorism can only be defeated by a sustained and comprehensive approach involving the active participation and collaboration of all states and international, regional and sub-regional organizations to counter the terrorist threat.'²⁹⁸

(ECOWAS), in coordination with the African Union, to accelerate joint efforts to adopt a common strategy to combat the threat posed by Boko Haram.'

²⁹⁶ UN Security Council, *Statement [made on behalf of the Security Council, at the 7692nd meeting, 13 May 2016, in connection with the Council's consideration of the item entitled "Threats to international peace and security caused by terrorist acts"]*, 13 May 2016, S/PRST/2016/7. The statement says that 'the Security Council urges the Member States participating in the MNJTF to further enhance regional military cooperation and coordination, particularly to consolidate military gains, deny safe haven to Boko Haram, allow humanitarian access and facilitate the restoration of the rule of law in liberated areas.'

²⁹⁷ UN Security Council, *Security Council resolution 1973 (2011) [on the situation in the Libyan Arab Jamahiriya]*, 17 March 2011, S/RES/1973(2011).

²⁹⁸ UN Security Council, *Statement [made on behalf of the Security Council, at the 7492nd meeting, 28 July 2015, in connection with the Council's consideration of the item entitled "Threats to international peace and security caused by terrorist acts"]*, 28 July 2015.

The burden of protection of the Nigerian population under Pillar II and III of R2P is better shared between the international organizations, regional and sub-regional organizations. An example of a successful burden sharing approach for purposes of protection of civilians which the UN could have employed to fulfil its responsibility to protect in Nigeria, was when the UN responded to the widespread abuses of human rights in Darfur region of Sudan, in which the government was also implicated during the internal conflicts, when the UN joined forces with the AU. The UN Security Council authorized this mission through Resolution 1769 of 31 July 2007.²⁹⁹ This authorization resulted in the transfer of authority from the AU mission which was already executing its mandate in Darfur to the UN-AU hybrid in Darfur (UNAMID). The joint peacekeeping mission was permitted to use force for the protection of civilians and the humanitarian operations. This ‘burden sharing’ approach with permission to use force to protect the Nigerian population from attacks by Boko Haram could have brought about good results in the fight against Boko Haram.³⁰⁰

5.1.2. THE AFRICAN UNION AND THE RESPONSIBILITY TO PROTECT THE NIGERIAN POPULATION

The African Union (AU) is a regional organization that was created by the Constitutive Act of the African Union of 2002.³⁰¹ The Constitutive Act has given authority to the African Union to intervene in the domestic affairs of its member states when there are serious violations of human rights which can occur in the form of crimes against humanity, genocide, and war crimes.³⁰² Article 4 (h) of the Constitutive Act of the African Union, which authorizes such an intervention in a member state pursuant to a decision of the Assembly, has codified the responsibility to protect.³⁰³ The AU Constitutive Act requires that in resolving conflict situations, the use of force should be a measure of last resort.³⁰⁴ It says further that the African Union should first employ diplomatic and peaceful measures such as negotiations to stop human rights violations and restore peace in the territories of its member states.³⁰⁵ The AU Constitutive Act requires that the AU shall

²⁹⁹ UN Security Council, *Security Council resolution 1769 (2007) [on establishment of AU/UN Hybrid Operation in Darfur (UNAMID)]*, 31 July 2007, S/RES/1769 (2007).

³⁰⁰ Mickler, D. (2013) ‘UNAMID: a hybrid solution to a human security problem in Darfur?’ *Conflict, Security & Development*, 13(5), 487-511, page 487-488.

³⁰¹ Constitutive Act of the African Union, OAU Doc. CAB/LEG/23.15 (2001).

³⁰² Article 4 (h), Constitutive Act of the African Union, OAU Doc. CAB/LEG/23.15 (2001).

³⁰³ Kuwali, D., & Viljoen, F. (2013). *Africa and the responsibility to protect: article 4 (h) of the African Union constitutive act*. Routledge, page 100.

³⁰⁴ Article 4 (f), Constitutive Act of the African Union, OAU Doc. CAB/LEG/23.15 (2001).

³⁰⁵ *Ibid*, Article 4 (e).

only intervene in member states if such an intervention has been approved by the Assembly of Heads of State and Government of the Union, and it is in respect of grave circumstance, namely: war crimes, crimes against humanity and genocide.³⁰⁶

The Extraordinary Session of the Executive Council of the African Union adopted the Ezulwini Consensus on UN reform in March 2005 in Addis Ababa, Ethiopia.³⁰⁷ Through this agreement, the AU members acknowledged that the AU and sub-regional organizations such as ECOWAS³⁰⁸ should be able to intervene in the internal affairs of their member states for the purpose of maintaining peace and security. The AU recognized the pre-requisite that the approval of the UN Security Council should be obtained before the AU or sub-regional organizations intervene.³⁰⁹ However, the agreement allows them to intervene without the approval of the Security Council in situations that require urgent action. In such cases, the approval of the UN Security Council may be granted ‘after the fact’.³¹⁰

Nigeria has been a member state of the AU since 25 May 1963 when it joined the AU’s predecessor, the Organization of African Unity (OAU).³¹¹ By virtue of the fact that Nigeria is a member state of the AU, the AU has a responsibility to protect the Nigerian population from human rights violations by Boko Haram. This can be achieved by employing the appropriate measures necessary to put an end to such atrocities,³¹² taking into consideration the fact that the AU Constitutive Act requires that military intervention can only be resorted to if the AU failed through

³⁰⁶ Article 4 (h), Constitutive Act of the African Union, OAU Doc. CAB/LEG/23.15 (2001).

³⁰⁷ African Union Executive Council (March 2005), 7th Extraordinary Session. The Common African Position on the Proposed Reform of the United Nations: ‘The Ezulwini Consensus’. Addis Ababa, Ethiopia.

³⁰⁸ Article 4 (e) and (g), Revised Treaty of the Economic Community of West African States (ECOWAS), 24 July 1993, says that ‘contracting parties to this treaty solemnly affirmed and declared their adherence to the principle of maintenance of regional peace, stability and security through the promotion and strengthening of good neighborliness; and the principle of recognition, promotion and protection of human and peoples’ rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights.’

³⁰⁹ Section B (Collective Security and the Use of Force), African Union Executive Council (March 2005) 7th Extraordinary Session. The Common African Position on the Proposed Reform of the United Nations: ‘The Ezulwini Consensus’. Addis Ababa, Ethiopia.

³¹⁰ Ibid.

³¹¹ African Union ‘Member States of the AU’ available at http://www.au.int/en/AU_Member_States, last accessed on 7 January 2017.

³¹² Article 4 (h), Constitutive Act of the African Union, OAU Doc. CAB/LEG/23.15 (2001).

peaceful measures to put an end to such humanitarian crises.³¹³ Below is a discussion of the measures used by the AU to protect the Nigerian population from attacks by Boko Haram.

5.1.2.1. MEASURES TAKEN BY THE AFRICAN UNION TO PROTECT THE NIGERIAN POPULATION

In January 2015, the African Union Peace and Security Council, with the endorsement of the UN Security Council, authorized a re-purposed Multinational Joint Task Force (MNJTF) which consists of soldiers from Chad, Benin, Niger and Cameroon to protect the Nigerian population under immediate threat of attack.³¹⁴ The MNJTF is a regional military initiative that was formed in 1998 with the mission of curbing crimes within the border areas between Nigeria, Cameroon, Chad, Benin and Niger.³¹⁵ In 2015, the force was mandated to restrain the expansion of Boko Haram within the region and to protect civilians in respect of whom Boko Haram posed an immediate threat of attack.³¹⁶ Under the new mandate, the soldiers were deployed along the Nigerian border.³¹⁷

Even the MNJTF is not safe from the threat posed by Boko Haram. On 3 January 2015, Boko Haram captured its military base before conducting another massacre in Baga.³¹⁸ But there has been success in the efforts of regional actors to destroy Boko Haram. A military operation by Chad killed more than 200 Boko Haram militants along the Cameroon border on 4 February 2014.³¹⁹ The Nigerian army, with the support of about 8700 soldiers contributed by Chad, Benin, Niger and Cameroon under the Multinational Joint Task Force (MNJTF), managed to regain control over 36

³¹³ Article 3 (h), Constitutive Act of the African Union, OAU Doc. CAB/LEG/23.15 (2001).

³¹⁴ Lori-Anne Thérout-Bénoni (10 February 2015) 'Without buy-in from Nigeria on the military response and beyond, no lasting solution to the Boko Haram problem is possible' *Institute for Security Studies*, available at <https://issafrica.org/iss-today/the-fight-against-boko-haram-tangled-up-in-nigerian-and-regional-politics>, last accessed 23 January 2017.

³¹⁵ Zamfir, I. (March 2015) 'African-led counter-terrorism measures against Boko Haram' *European Parliamentary Research Service*, page 2.

³¹⁶ Lori-Anne Thérout-Bénoni (10 February 2015) 'Without buy-in from Nigeria on the military response and beyond, no lasting solution to the Boko Haram problem is possible' *Institute for Security Studies*, available at <https://issafrica.org/iss-today/the-fight-against-boko-haram-tangled-up-in-nigerian-and-regional-politics>, last accessed 23 January 2017.

³¹⁷ Ibid.

³¹⁸ BBC News (4 January 2015) 'Boko Haram seizes army base in Nigeria town of Baga' available at <http://www.bbc.com/news/world-africa-30672391>, last accessed 23 January 2017.

³¹⁹ BBC News (4 February 2015) 'Boko Haram crisis: Chad kills 'more than 200' in Nigeria' available at <http://www.bbc.com/news/world-africa-31132068>, last accessed on 23 January 2017.

towns that were under the control of Boko Haram.³²⁰ In 2016, the Commander of the MNJTF reported that ‘the force liberated 4,690 hostages in 2016, “taken out” 675 Boko Haram terrorists and arrested a total of 566 terrorists, destroyed 32 terrorist camps and Improvised Explosive Device (IED) making factories and seized an impressive number of vehicles, weapons and equipment.’³²¹ All this remarkable success by the MNJTF did not weaken or destroy Boko Haram because extensive violence by Boko Haram continued.³²²

5.1.3. ECOWAS AND THE RESPONSIBILITY TO PROTECT THE NIGERIAN POPULATION

The Economic Community of West African States (ECOWAS) was created in 1975 by the treaty of Lagos with the aim of promoting economic integration between its member states.³²³ Its headquarters are in Abuja, Nigeria. In 1993, various political developments within the region influenced ECOWAS to revise its scope and powers by expanding them.³²⁴ This resulted in a shift of its focus from economic policies, to the inclusion of peace and security issues in its aims and objectives.³²⁵

The 1993 Revised Treaty of ECOWAS provides in Article 4 that ‘contracting parties to this treaty solemnly affirmed and declared their adherence to the principle of maintenance of regional peace, stability and security through the promotion and strengthening of good neighborliness;’³²⁶ and the principle of ‘recognition, promotion and protection of human and peoples’ rights in accordance

³²⁰ Gbenga Akingbule, (11 March 2015) ‘Nigeria retakes 36 towns from Boko Haram’ *The Wall Street Journal*, available at <https://www.wsj.com/articles/nigers-police-say-military-has-killed-more-than-500-boko-haram-extremists-1426104647>, last accessed on 23 January 2017.

³²¹ Tanwa Ashiru (20 May 2016) ‘Abuja regional security summit: Was it helpful and what next?’ *The Guardian*, available at <http://guardian.ng/business-services/abuja-regional-security-summit-was-it-helpful-and-what-next/>, last accessed on 14 February 2017.

³²² The Associated Press (4 January 2017) ‘3 girl suicide bombers gunned down in Nigeria’ *CBC News*, available at <http://www.cbc.ca/news/world/boko-haram-suicide-bombing-1.3921989>, last accessed on 6 January 2017. The Associated Press reported that “Nigeria's president declared that Boko Haram had been crushed last month, but there's unlikely to be a swift end to the suicide bombings and attacks on remote villages and army outposts.” See also: Ulf Laessing & Lanre Ola (31 August 2016) ‘Nigerian army commander: only weeks left for Boko Haram’ *Reuters*, available at <http://www.reuters.com/article/us-nigeria-security-idUSKCN116188>, last accessed on 22 January 2017. They reported that: ‘Despite the set-backs, Boko Haram still manages to stage regular suicide bombings in Nigeria and neighboring Chad, Niger and Cameroon. Since 2009, more than 15,000 people have been killed, 2.3 million displaced and the local economy decimated.’

³²³ Treaty of the Economic Community of West African States (ECOWAS), 28 May 1975.

³²⁴ ECOWAS ‘History’ available at <http://www.ecowas.int/about-ecowas/history/>, last accessed on 15 February 2017.

³²⁵ *Ibid.*

³²⁶ Article 4 (e), Revised Treaty of the Economic Community of West African States (ECOWAS), 24 July 1993.

with the provisions of the African Charter on Human and Peoples' Rights.³²⁷ I conclude that through Article 4 of the Revised Treaty, the member states of ECOWAS have acknowledged that they have an obligation to protect their populations from human rights violations.

Boko Haram has caused destabilization within the region and poses a serious threat to peace and security in West Africa. The insurgency has also resulted in the violations of several human rights which are guaranteed in the African Charter on Human and Peoples' Rights, such as the right to life and the right to dignity.³²⁸ Article 4 of the Revised Treaty has given ECOWAS the authority to protect the people of Nigeria and those that are found within the territories of other member states affected by the violent activities of Boko Haram. Failure to act on the part of ECOWAS will mean that the member states did not adhere to the principle of maintenance of regional peace, stability and security, and also failed to promote and protect human and peoples' rights within the territories of the member states.

In 1990, ECOWAS formed an intervention force called the Cease-Fire Monitoring Group (ECOMOG).³²⁹ In compliance with the provision of Article 4 of the Revised Treaty of ECOWAS,³³⁰ the ECOWAS member states defined the composition and role of ECOMOG in Article 21 and 22 of the Lome Protocol.³³¹ The Lome Protocol says that ECOMOG can be deployed within the region when there is 'an internal conflict that threatens to trigger a humanitarian disaster, or that poses a serious threat to peace and security in the sub-region, in the event of serious and massive violation of human rights and the rule of law and in the event of an overthrow or attempted overthrow of a democratically elected government.'³³² The Lome Protocol has created a legal framework within which ECOWAS can exercise its responsibility to protect the Nigerian population from grave violations of human rights by the Islamist militant group.

³²⁷ Article 4 (g), Revised Treaty of the Economic Community of West African States (ECOWAS), 24 July 1993.

³²⁸ Article 4 & 5, Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

³²⁹ Africa Watch (June 1993). *Liberia: Waging the War to Keep the Peace: The ECOMOG Intervention and Human Rights*. New York, US. Human Rights Watch, page 1.

³³⁰ Revised Treaty of the Economic Community of West African States (ECOWAS), 24 July 1993.

³³¹ ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security, Dec. 12, 1999, ECOWAS Doc. A/P10/12/99.

³³² *Ibid*, Article 25 (a) & (b).

The activities of Boko Haram have triggered a humanitarian crisis in Nigeria because they are a threat to the safety and wellbeing of the Nigerian population. In pursuing their aim to overthrow the legitimate Nigerian government, they pose a threat to peace and stability in Nigeria and within the central and West African region. The intervention by ECOMOG could have been justified on this basis, but ECOWAS did not exercise this option which could have been effective in defeating Boko Haram and restoring peace in Nigeria.

In 2014, ECOWAS embarked upon a weapon collection programme for Northern Nigeria. The ECOWAS Commissioner for Political Affairs, Peace and Security announced in March 2014 that ECOWAS has partnered with Nigeria and the United Nations in a programme that aims to collect weapons in northern Nigeria because they believe that the increased number of Small Arms and Light Weapons (SALW) amongst the population of northern Nigeria is ‘the root cause of state of insecurity engineered by Boko Haram sect.’³³³ This was a very significant measure in enhancing security but it cannot be pronounced as a successful operation because it did not lead to the disarmament of Boko Haram, which is the main threat to peace and security in Nigeria.

Just like the UN, ECOWAS did not get actively involved in the fight against Boko Haram, despite having a responsibility to protect the Nigerian population. ECOWAS released a number of communiques in which it condemned the violent activities of Boko Haram and called for cooperation within the region and for assistance to be rendered to Nigeria in the fight against Boko Haram.³³⁴ In 2014, ECOWAS decided to ‘to establish a high-level partnership with Central African States to effectively combat terrorism.’³³⁵ In another communique of 2016, the ECOWAS member states expressed their support for the efforts of the Nigerian government and the MNJTF.³³⁶ They decided to ‘to create a special solidarity fund for the victims of terrorism and called on the

³³³ Senator Iroegbu (4 March 2014) ‘West Africa: ECOWAS, UN Partner FG on Weapon Collection Programme for North’ *AllAfrica*, available at <http://allafrica.com/stories/201403040227.html>, last accessed 16 January 2017.

³³⁴ ECOWAS press release (30 May 2014) ‘Final Communique: Extraordinary Session of the Authority of ECOWAS Heads of State and Government’ available at <http://news.ecowas.int/presseshow.php?nb=103&lang=en&annee=2014>, last accessed on 15 February 2017, paragraph 22-30.

³³⁵ ECOWAS press release (30 May 2014), Final Communique: Extraordinary Session of the Authority of ECOWAS Heads of State and Government, available at: <http://news.ecowas.int/presseshow.php?nb=103&lang=en&annee=2014>, last accessed on 15 February 2017, paragraph 28.

³³⁶ ECOWAS (17 December 2016), Fiftieth Ordinary Session of the ECOWAS Authority of Heads of State and Government. Abuja, Federal Republic of Nigeria, paragraph 29, 30 & 31.

international community to support the implementation of the “Buhari Plan” for the rehabilitation and reconstruction of North-East Nigeria.³³⁷ The content of those communiques show that ECOWAS took a non-intervention approach by not getting actively involved, despite having acknowledged that the activities of Boko Haram constitute a violation of human rights. Instead, they chose merely to express their support for the work of the MNJTF and the measures already adopted by the Nigerian government, which surely did not achieve the protection of the Nigerian population from the atrocities being perpetrated by Boko Haram which have continued in the year 2017.³³⁸

³³⁷ECOWAS (17 December 2016), Fiftieth Ordinary Session of The ECOWAS Authority of Heads of State and Government. Abuja, Federal Republic of Nigeria, paragraph 31.

³³⁸ Ananya Roy (9 January 2017) ‘5 Nigerian soldiers, 15 attackers killed in Boko Haram attack on army base in Yobe state’ *International Business Times*, available at <https://ca.news.yahoo.com/5-nigerian-soldiers-15-attackers-063324450.html>, last accessed on 6 January 2017.

CHAPTER 6

CONCLUSION

Although the responsibility to protect was widely and unanimously recognized at the 2005 UN World Summit, this did not make the 2005 UN World Summit Outcome Document a source of international law, hence it cannot create legal obligations but only moral obligations. The responsibility to protect as contained in the 2005 UN World Summit Outcome Document is indeed a commitment by the heads of states and governments to act on their existing legal obligations to protect their populations from mass atrocity crimes as required by the Constitutions of their countries and the international human rights legal instruments which they have ratified. Such legal instruments oblige states parties to act in order to prevent or stop human rights violations which may occur in the form of mass atrocity crimes.³³⁹ In respect of individual states, the responsibility to protect is ‘hard law’ because it is contained in those binding legal instruments. But in respect of the international community, the responsibility to protect constitutes soft law because of its limited normative force and its ability to influence the conduct of international, regional and sub-regional organizations.³⁴⁰

I take the position that R2P is not void of legal character because it did not create new moral obligations, instead it reiterated existing legal obligations which are rooted in the provisions of various domestic and international legal instruments. It is on those legal obligations that R2P has its foundation. The provisions of those international legal instruments give the individual states and the international community the right and duty to protect populations from genocide, war crimes, crimes against humanity and ethnic cleansing. The constitutive documents such as the UN Charter, the Constitutive Act of AU, and the Revised Treaty of ECOWAS leave it to the appropriate organs of those organizations to decide on the type of measure to be taken, and how such measures should be implemented to prevent or stop such human rights violations. Those

³³⁹ UN General Assembly, *Implementing the responsibility to protect: report of the Secretary-General*, 12 January 2009, A/63/677, page 9. The report says that: ‘The responsibility derives both from the nature of State sovereignty and from the pre-existing and continuing legal obligations of States, not just from the relatively recent enunciation and acceptance of the responsibility to protect.’

³⁴⁰ Bryan H. Druzin (31 August 2016) ‘Why does Soft Law have any Power anyway’ *Asian Journal of International Law* 1-18, Published Online, page 1-2.

documents have given those international organizations the legal basis upon which they can exercise their responsibility to protect.

I further contend that the responsibility to protect is an emerging rule of customary international law. The responsibility to protect is not yet a rule of customary international law because, although it is widely accepted, there is no widespread and uniform usage of the norm by the international community yet. But there is willingness on the part of the international community to fulfil its responsibility to protect, although this is not yet done in a uniform and constant manner to constitute a settled practice. It is only the *opinio iuris* requirement that has been met so far, but the *usus* requirement is yet to be met for the responsibility to protect to become a rule of customary international law.³⁴¹

Today, sovereignty should be construed to mean responsibility. When a state that bears the primary responsibility to protect its population from mass atrocity crimes is struggling, has failed to protect its population or is the one subjecting its population to such mass human rights violation, the international community has the right to intervene for the protection of that population without hindrance by the principle of state sovereignty or the norm of non-intervention.³⁴²

Nigeria accepted its primary responsibility to protect its population from mass atrocity crimes but despite all the measures taken at the domestic level, Nigeria did not succeed in protecting its population from the insurgency. Accepting its sovereignty as a responsibility, Nigeria requested assistance from the international community to help in protecting its population. The international community responded to the call for help in various ways. The United Nations, the African Union and ECOWAS have responded to the situation in Nigeria by adopting several measures to protect the people of Nigeria. Although the measures they have taken may not be effective in putting a complete stop to the atrocities being perpetrated by Boko Haram, this is evidence that the international community is willing to act in times of crises, instead of standing by and witness gross violations of human rights. The measures taken by the international community show that the international community is starting to feel legally obliged to fulfil its responsibility to protect in cases of mass violations of human rights. The continued constant and uniform compliance with

³⁴¹ Dugard, J. (1994). *International law: A South African perspective*. Kenwyn: Juta & Co., page 27-32.

³⁴² Deng, F. M., Kimaro, S., Lyons, T., & Rothchild, D. (2010). *Sovereignty as responsibility: conflict management in Africa*. Brookings Institution Press, page 1-6.

the responsibility to protect will elevate its status to a rule of customary international law in the future, and this alone will impose a legal obligation on the international community to act whenever there is a perpetration of crimes that are of concern to the international community and the states in whose territory the violations are taking place is unable or unwilling to protect its population.

The constitutive documents of the United Nations, ECOWAS, and the AU have given authority to those organizations to decide on the appropriate measures to stop human rights violations in the territories of their member states. However, the problem arises when the measures taken are not the most effective ones, like what happened in Nigeria. The international community acted but the measures taken did not achieve the intended purpose, which is supposed to be the protection of the population from the perpetration of crimes against humanity by Boko Haram. The measures taken at the regional and sub-regional level to protect the Nigerian population, which include military operations resulted in little success in battling the insurgency. The assistance given by the international community did not help in defeating Boko Haram. As a result, the merciless killings of Nigerian people by Boko Haram are ongoing.³⁴³

The three-pillar framework of R2P was not successfully implemented to protect the Nigerian population from the human rights abuses by Boko Haram. The Nigerian government did not demonstrate sufficient capacity to deal with serious human rights violations in its territory, hence it failed to live up to its responsibility to protect its population from crimes against humanity perpetrated by members of Boko Haram. Nigeria, in collaboration with its regional partners and the international community at large failed to protect the Nigerian population from crimes against humanity being perpetrated by Boko Haram, with the population living in the north-eastern part of the country being the most affected by the insurgency.³⁴⁴ This continuous failure is evident from the ongoing attacks which Boko Haram continues to undertake and more abduction of girls and women that happened despite the protective measures implemented by the Nigerian government

³⁴³ The Associated Press (4 January 2017) '3 girl suicide bombers gunned down in Nigeria' *CBC News*, available at <http://www.cbc.ca/news/world/boko-haram-suicide-bombing-1.3921989>, last accessed on 6 January 2017. The Associated Press reported that: 'Nigeria's president declared that Boko Haram had been crushed last month, but there's unlikely to be a swift end to the suicide bombings and attacks on remote villages and army outposts.'

³⁴⁴The Economist (5 February 2016) 'Another brutal attack by Boko Haram highlights the weakness of Nigeria's military' available at <http://www.economist.com/news/middle-east-and-africa/21690136-recent-attack-reflects-badly-military-reforms-boko-back>, last accessed on 6 January 2017.

and the international community.³⁴⁵ Boko Haram continues to launch extensive attacks in different parts of Nigeria.³⁴⁶

The United Nations should have replaced the ‘burden shifting or shedding’ approach with the ‘burden sharing’ approach by joining forces with the AU because, the latter form of intervention could be more effective in protecting the Nigerian population from human rights violations by Boko Haram and defeating it.³⁴⁷

Members of the Nigerian security forces need more training so that they can effectively protect the civilians and refrain from human rights violation in their counter insurgency effort. The alleged human rights violation by the security forces need to be investigated and the individuals implicated should be prosecuted. Impunity should not be tolerated if the rule of law is to be upheld, respected and protected. Members of the army and the police force need to be trained on how to adhere to the international human rights standards in the execution of their duties.

The lack of capacity or the inability to protect on the part of the Nigerian government does not relieve it of its obligation to protect its population from the ongoing atrocities being perpetrated by Boko Haram. The responsibility to protect is inherent in every state. If the Nigerian government does not go back to the drawing board to come up with new or modified effective strategies to contain the insurgency and continue handling the situation in the current manner, the intervention/ assistance of the international community is the only hope that the people of Nigeria have. The international community should continue assisting Nigeria in various ways because Nigeria is struggling to uphold its responsibility to protect its population.

³⁴⁵ Ananya Roy (9 January 2017) ‘5 Nigerian soldiers, 15 attackers killed in Boko Haram attack on army base in Yobe state’ *International Business Times*, available at <https://ca.news.yahoo.com/5-nigerian-soldiers-15-attackers-063324450.html>, last accessed on 6 January 2017.

³⁴⁶ See Ulf Laessing & Lanre Ola (31 August 2016) ‘Nigerian army commander: only weeks left for Boko Haram’ *Reuters*, available at <http://www.reuters.com/article/us-nigeria-security-idUSKCN116188>, last accessed on 22 January 2017. They reported that ‘despite the set-backs, Boko Haram still manages to stage regular suicide bombings in Nigeria and neighboring Chad, Niger and Cameroon. Since 2009, more than 15,000 people have been killed, 2.3 million displaced and the local economy decimated.’

³⁴⁷ Neethling, T. (2009) ‘UN-AU Burden-Sharing and Hybridisation in Contemporary Peacekeeping Context with Specific Reference to UNAMID’ *Strategic Review for Southern Africa*, 31(1), 41-64, page 41.

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