

# Systematic violations of human rights law international essay

Law



# CHAPTER 1

## INTRODUCTION

" If humanitarian intervention is, indeed, an unacceptable 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?"- (Kofi Annan, 2003)

### 1. 1 Background

The political trajectory of sub-Saharan African countries has been characterised by turbulent developments ranging from violent change of governments to different types of civil strife, conflicts and wars. In the four decades between the 1960s and 1990s, there have been 80 violent changes of governments in the 48 sub-Saharan African countries with West Africa recording the highest incidence of military coups and interventions in civilian politics(Adedeji 1999: 3). It is interesting to note that this period of political turmoil which largely had external connections, coincided with the cold war suggesting that the foreign policies of some of these sub-Saharan countries were influenced by the cold war superpowers. As the cold war came to an end the foreign policies of most of these superpowers on Africa altered as there was a general paradigm shift in the conduct of global politics.

However, some of the powerful states still maintained close political, and socio-economic and military relations with their allies and former colonies. As a sign of its strategic relations with its colonial masters, " the Republics of cote d'Ivoire, Dahomey (now Benin) and Niger in April 1961 signed a defence pact with France in Paris which even though had military connotations, was

largely exploitative and aimed at protecting the commercial interests of France"(Koulibaly 2012). Cote d'Ivoire is an ethnically diverse society with over sixty different ethnic groups with different languages and dialects with major ones being the Akans (42. 1%), Voltaliques or Gur(17. 6%) Northern Mandes (16. 5%), Krous 11%, Southern Mandes (10%) and other (2. 8%) with a population of 21, 952, 093(CIA 2012). It is largely an agrarian economy with cocoa and coffee as the main drivers but there is a recent discovery of hydrocarbon deposits. The need for labour on the country's huge cocoa, coffee and other cash crops plantations resulted in the influx of migrant workers from neighbouring West African countries such as Burkina Faso, Mali, Niger, Ghana, Guinea and Liberia in the 1960s. This open door policy of its first post-independence President Felix Houphouet-Boigny besides ensuring access to cheap labour on the plantations was also aimed at ensuring the dominance of his Akan ethnic group over other ethnic groups as the Dioulas and Betes as he "relied heavily on the migrant workers for electoral purposes" (Annin, Birikorang and Jaye 2010: 327). President Houphouet-Boigny maintained a single party rule in Cote d'Ivoire for the entire thirty three (33) years he remained in office. His grip on the political system of the country was buoyed by "the relative economic prosperity of the nation largely through high productivity in cocoa production. Signs of his lost on the grip of political power emerged as the country started witnessing low demand for its cocoa and the economic fortunes of the country nosedived. This was further bolstered by the mobilisation of opposition groups into a formidable unit (Ibid 327). His death in 1993 left a political vacuum which was initially exploited by two of his protégé's namely Henri

Konan Bedie then Speaker of Parliament and Alassane Dramane Ouattara, the Prime Minister under Boigny. A radical political activist who had all along been opposed to the ideas of Houphouët Boigny named Laurent Gbagbo also joined the fray. Henri Konan Bedie of Akan extraction like his predecessor eventually became the president of the country in the 1995 elections after disqualifying Ouattara on grounds of nationality. Under his "reign came the question of identity, as to who is a citizen of Côte d'Ivoire and the term "Ivoirite" then became part of the country's political lexicon (Ibid 328). On the eve of Christmas in 1999 exactly ten years after the conflict in Liberia broke out, Côte d'Ivoire experienced its first military coup d'état in its history. This coup which was led by a junior officer Staff Sergeant Ibrahim Coulibaly brought into office General Robert Guei as the Head of State of the country. "Although the coup d'état of 24th December 1999 brought an end to the reign of Bedie, the champion of Ivoirite did not settle the issue. On the contrary "it destroyed everything left of the Boigny compromise and raised an issue of identity" (Ibid 328). This resulted in resentments within the Parti Democratique de Côte d'Ivoire (PDCI) party resulting in the emergence of the Rassemblement des Républicains (RDR) led by Alassane Ouattara, who are largely northerners and other Southern electorates who were opposed to the exclusionists' policies of the ruling class. As the conflict broke out in September 2002, the French permanent forces in the country who had been based in the country since 1961 after the signing of the Defence agreement intervened by creating a buffer zone between the two warring factions and bring an end to the hostilities. By this stage the country had been de facto divided into the two, north and south between the Muslims

and Christians respectively. The intervention of the French forces was at the request of the Ivorian government. Although the French government initially conceived the issue as an internal matter, it reinforced its ground troops from 600 men to 2500 and deployed ostensibly to protect French interest in Cote d'Ivoire citing a principle of customary international law which permits a state to protect its own nationals abroad (Bovcon 2009).

## **Statement of the Problem**

The end of the Cold War marked a shift in global politics and security with conflicts becoming more intra-state than inter-state. This significant change in conflict situations therefore brought to the fore the level of preparedness of states to deal with internal conflicts involving both state and non-state actors and its attendant high civilian casualties. The evolving phenomenal shift in conflict situations also brought about a change in the security architecture of most regions in the world with emphasis now on sub-regional organisations as being the building blocks of the global security architecture. The adoption of security roles by regional organisations in Africa has come about gradually as a result of growing recognition of the need for common defence and security arrangements. This has led to " the idea of layered responses to African crisis whereby the initial response would come from local and national organisation followed by responses at the sub-regional and regional (OAU now AU) levels and finally by those of the United Nations (UN) and the broader international community" (Malan 1999)The Economic Community of West African States (ECOWAS) was established in 1975 as a platform to integrate the economies of fifteen (15) countries in that part of Africa, with the ultimate goal to improve on the living standards of the

people (ECOWAS). However, for the over three decades of its existence, ECOWAS has spent about twenty years resolving and managing conflicts. Since its interventions in the Liberia 1990, ECOWAS has been involved in managing conflicts in Sierra Leone, Guinea Bissau, and Cote d'Ivoire. These intervention efforts, have provoked interesting debates regarding the relationship between sovereignty of states, which is one of the cardinal principles in public international law and the issue of intervention in the domestic affairs of member states that are captured both under article 2. 7 of the United Nations Charter and Article 2 of the ECOWAS Protocol on Non-Aggression 1978. The United Nations Charter provides that " nothing contained in the present charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter but their principle shall not prejudice the application of enforcement measures under chapter VII of the U. N. Charter" (United Nations Charter 1945). Chapter VIII of the UN Charter specifically Articles 52, 53 and 54 acknowledges and endorses the establishment of regional organisations for the purposes maintain international peace and security but requires of such organisations to at all times seek the consent of the National Security Council and also inform the latter of all of its activities (Ibid). However, recent debates on the concept of responsibility to protect which seeks to lay emphasis on the need for states to protect its citizens from humanitarian catastrophe in times of conflict has raised questions about the relevance of the principle of non-intervention. The concept of responsibility to protect seeks to legitimize intervention once the basis of an

imminent humanitarian catastrophe is established. This means that the principle of non-intervention becomes subservient to international responsibility to protect when there is substantial evidence that a state has lost its ability to protect its citizens. Article 7(e) of the African Union (AU) Protocol on the Peace and Security Council affirms this position. It states that the council can " recommend to the Assembly(of Heads of States) intervention on behalf of the Union in a member state in respect of grave circumstances, namely war crimes, genocide and crime against humanity, as defined in relevant international conventions and instruments"(Constitutive Act of the AU 2002). As the conflict broke out in Cote d'Ivoire, the Ivorian authorities requested military intervention by France in line with the existing military pact. The Ivorian authorities maintained that the insurgents had been armed by several neighbouring countries particularly Burkina Faso, Sierra Leone and Liberia. Although France believed it was an internal matter and not an act of external aggression which required France's intervention, it deployed the troops to end the hostilities. But France later came under criticism from both of the government of President Gbagbo and the rebels accusing the French forces of supporting either side. Again, in the wake of the stalemate after the November 2010 elections, the UNSC under resolution 1975 of 30th March 2011, while recognising AlassaneDramaneOuattarra as the president of Cote d'Ivoire also authorised the UNOCI to ' use all necessary means" to protect the civilians(UN security Council Resolution 1975, 2011). The use of the phrase " all necessary means" seeks to emphasise the imperative to protect civilians once there is a situation of humanitarian catastrophe irrespective of whether it is a domestic matter or

not. But this has raised concerns about possible abuse of the principle of responsibility to protect by powerful states who most often have the necessary logistical wherewithal and political muscle to intervene in conflict situations. Using the Ivorian situation as a case, this study therefore seeks to assess the relevance of the principle of non-intervention, in contemporary regional conflict resolution.

## **Hypothesis**

The nemesis of Cote d'Ivoire conflict was as a result of the incessant interventions of the external forces and in particular the French forces which had been established in the country since 1961.

### **1. 4 Objectives of the study**

The objectives of this study will be to: Examine the principle of non-intervention and its applicability in sub-regional conflict resolution mechanisms in West Africa. Evaluate ECOWAS conflict prevention, management and resolution mechanisms and its effectiveness, with emphasis on the Ivorian conflict. Investigate the complicity or otherwise of the UNOCI, ECOWAS and French forces in the post-electoral crisis.

### **1. 5 Research Questions**

-What was the legal basis for ECOWAS' initial intervention/mission in Ivory Coast (ECOMICI)?-Did the Ivorian Government of the time or any of the other actors in the conflict oppose ECOWAS' intervention in Ivory Coast?-To what extent was the first ECOWAS (ECOMICI) intervention successful?-What were the legal, political, operational and logistical challenges that confronted the

ECOWAS mission in Cote d'Ivoire?-Was the French intervention in the conflict legal?-Was the UNOCI complicit in the post-election crisis?

## **1. 6 Justification of the Study**

Research work on conflicts in Africa is a widely explored area of study. In fact numerous scholars have sought to diagnose both the remote and proximate causes of the conflicts in Africa and further assessed the effectiveness of African sub-regional organisations in the prevention, management and resolution of conflicts. Most of these studies have sought to assess the effectiveness of sub-regional organisations in resolving conflicts. As the most politically turbulent region in terms of conflicts, a lot of scholars have undertaken in depth studies of the various conflict situations in West Africa from Liberia to Sierra Leone, Guinea Bissau and Cote d'Ivoire with the view not only to examine the causes of the various strife but their impact on the economic development of the region as well as the effectiveness of ECOWAS in dealing with the situations. What so far appears to be lacking in the various discourse on conflicts in sub-Saharan Africa has been an interrogation of the implications of these armed intervention in conflict resolution on the principle of sovereignty, which is one of the cardinal principles in public international law. Given the evolving phenomenal change in global politics and the dynamics of conflicts in a post cold war era where there is growing emphasis on civilian protection in times of conflict as espoused by International Humanitarian law, it has become imperative to interrogate the somewhat ambivalence between sovereignty and intervention. The Republic of Cote d'Ivoire was chosen as case of reference in view of the dynamics of the conflict as having lasted for about ten(10)

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years, attracted various international actors such as the French forces, ECOWAS and the United Nations. A significant aspect of the conflict which has also provoked interest in the study is the support given by the French-led UN forces in Cote d'Ivoire to pro - Ouattarrarebel forces and the threat of use of force by ECOWAS, in events leading to the arrest of President Laurent Ghagboin 2011. These developments raises concerns not only about the legitimacy of the intervention but also the relevance of the principle of non-intervention as espoused in the ECOWAS protocol on Non-Aggression of 1978 and article 2. 7 of the UN Charter. In this regard the study will examine the various ECOWAS protocols and conventions on conflicts as well as other instruments on peace and security such as the AU Protocol on the Peace and Security Council, the Constitutive Act of the AU, and other relevant articles of the UN charter etc. Using most of these international conventions and instruments on peace and security as reference materials, this study will seek to establish the nexus if any, between the principle of non-intervention and customary international law. More importantly the study will interrogate the complicity and legitimacy of the UN forces in aiding pro-Ouattarra forces to oust President Gbagbo. In doing so, efforts will be made to clarify the ambivalence between the principle of sovereignty and the intervention question. This will perhaps enrich the ongoing arguments regarding the contemporary relevance of the principle of non-intervention in regional conflict resolution.

## **1. 7Theoretical /Conceptual Framework**

Given the varying dynamics of conflict situations in Africa and West Africa to be precise, an appreciation of a particular conflict demands a sound

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understanding of the concepts and theories that underpins the situation. The Economic Community of West African states (ECOWAS) was established in 1975 with the view to " promote co-operation and integration in economic, social and cultural activity ultimately leading to the establishment of an economic and monetary union through the total integration of the national economies of the member states"(ECOWAS Treaty 1975). The organisation was therefore established purposely to advance the economic development of the region through the integration of markets of member states to create a Free Trade Area (FTA), a Customs Union, adopt a common currency and eventually emerge as an economic community with the end view of raising the living standards of the people. The *raison d'être* of ECOWAS regionalism was therefore market integration and economic co-operation guided by the economic liberalist theory and this is manifested in the promulgation of the ECOWAS Trade Liberalisation Scheme (ETLS) in 1979(ETLS 1979). From the political stand point, " ECOWAS regionalism was assumed to serve as an instrument for foreign policy and a collective political bargaining bloc and a motivation for south-south co-operation and factors relating to the maintenance of regional peace and security(Francis 2009: 92). Historically, ECOWAS was created immediately after the attainment of independence of all the member states and this period coincided with the peak of the cold war. In anticipation of external threats to the security of the states, ECOWAS signed the protocols on Non-Aggression in and the Protocol on Mutual Assistance on Defence(PMAD) 1981 and the Accord de Non-Aggression et d'Assistance en Matieres de Defence (ANAD) the francophone version of the defence pact (Ibid 92). Acknowledging the nexus between development

and security the head of state of Senegal Leopold Senghor argued that "development cannot be secured in a climate of insecurity" and that there was the imperative that "we must among ourselves, establish a genuine West African pact to guard against external aggression" (Adebi 2002: 115). The endorsement of the pact was therefore aimed at preventing external aggressors notably the cold war superpowers from unduly interfering in the internal affairs of the states. This was perhaps as an indication to the outside world that the bloc had a sense of security and is capable to resolve its security challenges without external influence. The signing of the pact thus signalled the creation of a security community. Deutsch (1957: 5) defines a security community as 'a group of people who have become 'integrated". By integration we mean the attainment, within a territory, of a "sense of security" and of institutions and practices strong and widespread enough to assure.... dependable expectation of "peaceful change" among its population. By sense of community we mean a belief.... that common social problems must and can be resolved by process of peaceful change'.

However, Francis(2009: 92) argues that 'security was perceived by ECOWAS leaders in the traditional frameworks of military, national level-oriented external security threats' and so neglected internal security threats emanating from ethno-religious conflicts, bad governance, political repression and insecurity created by the states' military and security apparatus as they were deemed not to be threats to national and regional security. The outbreak of conflict in Liberia in 1989 therefore served as the test case to examine the organisation's preparedness to address conflicts as well as its commitment to the various protocols and conventions relating to

conflict and the maintenance of regional peace and security. Following from its initial experience in Liberia ECOWAS developed its peace and security architecture through the endorsement of the Mechanism for conflict prevention, management, resolution and security of 1999. ECOWAS has since been involved in the resolution and management of conflicts in the sub-region spending over two decades maintaining peace and security (ECOWAS 1999). The adoption of the ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security 1999, can be regarded as the Organization's constitution on collective security in the West African sub-region (Ademola 2002: 211).

Schwarzeberger (1964) describes Collective Security as a "machinery for joint action in order to prevent or counter any attack against an established international order". Van Dyke (1957) on the other hand describes collective security as a "system in which member states are bound to engage in collective efforts on behalf of each other's individual security" connoting the 'institutionalisation of global police force against abuse of order and breaches which can lead to insecurity'. It is "an arrangement in which all states cooperate collectively to provide security for all by actions of all against any state within the groups which might challenge the existing order using force" (Eke 2007). Under such arrangements individual member states lose certain rights as the organisation may intervene once it is established that civilian rights and life are threatened. Parker and Perkins (2007) asserts that for collective security to be effective it must be strong enough to cope with aggression from any power or combination of powers and it must be invoked if an aggression occurs. This means that there must be

willingness and commitment of the members to apply punitive measures such as sanctions as and when necessary and even go to war under such arrangements. Collective security could therefore realise its objective if the member states in the organisation are prepared to threaten with sanctions and fight the aggressor. Unlike the Protocol on Non-Aggression (PNA) of 1978 and the protocol on Mutual Assistance on Defence (PMAD) of 1981, the Mechanism has a wider scope which mandates the organisation to intervene in domestic conflicts once the rights of the citizens and the general peace and security of the sub-region were threatened. Bah (2005: 37) argues that "the domestic nature of warfare in the 1990s, coupled with the emergence of amorphous non-state actors who operate across porous borders, raises fundamental questions about the weight and importance of sovereignty, especially when the central government has all but lost its capacity for governance or is complicit in perpetrating violence against the civilian population". This development has brought to the fore debate over the concepts of sovereignty and non-intervention especially against the backdrop of the preservation of humanitarian values. The concept of sovereignty and the principle of non-intervention are both grounded in the normative theoretical thinking. Although Jean Bodin (1520-1596) did not invent the concept of sovereignty, he was certainly the first to give it a serious consideration and conceptualised it in a systematic manner (Hoffman 1998: 35). Bodin argues that 'the sovereign must be able to simultaneously make laws and break them at his own discretion and that the sovereign cannot be his own subject otherwise he ceases to be sovereign' (Ibid 35). Sovereign power is therefore 'absolute and indivisible' according to

Fuller(1966: 19). Sovereignty is indeed a very fluid concept which has undergone several developments but traditionally viewed as inalienable rights of states to jurisdictional exclusivity within its borders granting limited recognition and rights and legitimacy to non-state actors, another state or group of states and institutions. Art and Jervis (1992: 2) contend that " no agency exists above the individual states with authority and power to make laws and settle disputes". Art and Jervis thus seek to posit that no institution or state has a supranational authority above an independent state to make its laws and intervene to settle disputes which are deemed internal.

Oppenheim (2008: 428)also argues that the prohibition of intervention " is a corollary of every state's right to sovereignty, territorial integrity and political independence". In this context, questions could arise as to the legitimacy of ECOWAS's and other regional organisation's intervention efforts in conflict situations. Former US Secretary General Javier Perez de Cuellar (1991) touching on the ambivalence between the concept of sovereignty and the intervention question, observed that " we are witnessing what is probably an irreversible ...shift in public attitudes towards the belief that the defence of the oppressed in the name of morality should prevail over frontiers and legal documents". He further queries that " does (intervention) not call into question one of the principles of international law, are diametrically opposed to it, namely, the obligation of non-interference in the internal affairs of states? However, former United Nations Secretary General Boutros BoutrosGhaliin his famous report " An Agenda for Peace", Boutros Ghali argues that " the time of absolute and exclusive sovereignty has passed" adding that " its theory was never matched by reality", and that there is a

compelling need for states to " find a balance between the needs of good internal governance and the requirements of an ever more interdependent world" (Boutros Ghali 1992). The thoughts of Boutros Ghali seek to contradict Fuller's perception of the absoluteness of the concept of sovereignty and highlight the dynamism of the concept. The question therefore arises as to whether the principle of non-intervention is gradually becoming a misnomer? As alluded to by Francis(2009: 92) the decision of West African states to adopt the Protocols on Non-Aggression 1978 and Mutual Assistance on Defence 1981 was borne out of fears of possible threats emanating from the international security environment and the fact that most of them were also ruled by " weak and divided" states . This implied that there were fears of possible spill over of conflict across borders seeking to underscore the fact there is a feeling of realisation of belonging to a security complex. Buzan (1991) defines a security complex as " a group of states whose primary security concerns are so closely intertwined that their national securities cannot meaningfully be understood in isolation from one another". According to Buzan the concept is predicated upon patterns of " amity" and " enmity" which are shaped by multiplicity of factors including territorial disputes, cross border ethnic distribution, ideological orientations, suspicion and fear and long standing historical links of genuine friendship and expectations of protection or support (Ibid). The ECOWAS, Mechanism for the Prevention, Resolution and Management of conflict of 1999 spells out clearly the procedures that need to be adopted in addressing conflict situations in the sub-region. However, it is imperative to make a distinction between conflict resolution and conflict management. " Conflict resolution refers to the

elimination of the causes the underlying conflict, generally with the agreement of the parties. Conflict management on the other hand refers to the elimination, neutralisation and control of the means of pursuing either the conflict or the crisis. Conflict resolutions rely accomplished by stint action and is achieved only over long periods of time although the proximate aspects of conflict can sometimes be eliminated by agreement among the parties" (Zartman 1985). Kieh(2002) identifies three types of conflict resolution theories, peace-making, peace keeping and peace enforcement. " Peace-making theories involve peaceful methods of conflict resolution inquiry, good offices, negotiation, mediation, arbitration and adjudication. Good offices entail an impartial third party serving as a conduct for the transmission of information between or among the parties to the conflict. In an enquiry, the third party does not offer proposals for the settlement of the conflict. In negotiations there is the holding of face to face discussion between or among the parties to the conflict. When there is mediation, there is the intervention of a neutral third party in the conflict for the purpose of preferring solutions for the peaceful resolution of the conflict. Peace keeping involves the legitimate collective intervention aimed at avoiding the outbreak of resurgence of conflict between the disputants".

## **1. 8 Literature Review**

In spite of the numerous scholarly on conflicts in Africa, most authors and writers have not made attempts to define the term. As a result of this various terms such as civil war, violent conflict, civil strife, hostility, war and political instability, had been used interchangeably in the definitional polemic.

Bujra(2002: 3), in his attempt to diagnose the complexity of conflicts in

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Africa described conflict as " a violent and armed confrontation and struggle between groups, between the state and one or more groups, and between two or more states. In such confrontation and struggle some of those involved are injured and killed. Such a conflict can last anything from six months to over twenty years. Bujra's definition connotes that conflicts are violent, involve the use of arms prosecuted by either states or non-state actors and result in casualties or humanitarian crisis. His definition however does not point out why conflicts break out or precisely the objectives or motives behind conflicts. However, Salim(1996) in his classification of conflicts based on objectives identified five main types of conflicts in Africa namely; ' boundary and territorial conflicts, civil wars and internal conflicts having international repercussions, succession conflicts in territories decolonised political and ideological conflicts and others including those related to trans-humane and irredentism'. Bujra on the other hand classified conflicts based on actors and grouped conflicts into two main categories ' inter-state and internal conflicts'. Under internal conflicts he identified the following types of conflicts; ' a rebellion to overthrow a government, secessionist rebellion, coup d'état, cold war sustained conflicts and many sided conflicts to seize state power'(Bujra 2002: 5). Within the context of Bujra's classification of conflicts which is based on the actors, the Ivorian crisis could be described as an internal conflict which initially started as a rebellion by armed disgruntled civilians to overthrow a government but subsequent developments led to a coup d'état by a section of the military. Goulding(1998: 41) contends that " because the causes of internal conflicts are complex and often socio-economic in nature, conflicts can only be

prevented if the international community can organize and implement programmes that integrate all the different kinds of actions required to eradicate the root causes". Goulding's views suggest that the best way to prevent conflict is to apply an all-encompassing approach by tackling both of the remote and proximate causes of the conflict and adopting non-military and military intervention efforts when necessary. This position is articulated in Article 10 (2c) of the ECOWAS Protocol Relating to the Mechanism for conflict Prevention, Management, Resolution, Peace-Keeping and Security, which provides that the Mediation and Security Council shall authorise all forms of intervention and decide particularly on the deployment of political and military mission(ECOWAS 1999). Article 25 of the protocol permits the council to become active when violent conflicts emerges, humanitarian threats evolve, the sub-region is destabilised and serious and massive human rights violations take place as well as in situations where a democratically elected government is overthrown or will be overthrown(Ibid). More importantly Article 45 of the ECOWAS Protocol on Democracy and Good Governance (2001) makes provision for the possibility of intervening in the case of coups against a democratically elected government(ECOWAS 2001). This provision seeks to legitimize the intervention of ECOWAS in case of military insurrection against a democratically elected government as the case was in Cote d'Ivoire during the ouster of President Konan Bedie by General Robert GueiThe ECOWAS Mechanism for conflict Prevention, Management, Resolution, Peacekeeping and Security of 1999, is the formal attempt to outline the institutional provision and legal mandate for ECOWAS' response to peace and security. A notable feature of the mechanism is that it

attempts to shift the ECOWAS from conflict management (reactive fire-brigade type of intervention) to conflict prevention (Francis 2009: 93). The protocol was adopted based on lessons learnt from the challenges the organisation faced during the Liberian intervention. ECOWAS thus have the necessary protocols that seek to prevent conflict and also legitimise the intervention of the organisation in various theatres of war. These are grounded in the humanitarian protection imperatives. But that notwithstanding conflict broke out in Cote d'Ivoire in September 2002 and this has raised questions about the effectiveness of the protocol in preventing conflicts in the sub-region and more importantly its early warning system ECOWARN which is quite critical in conflict prevention. The UNSC Resolution 1975 of March 2011, which authorised the UN forces in Cote d'Ivoire to intervene in the wake of the November 2010 electoral stalemate, was ostensibly aimed at protecting civilians. But as observed by Bellamy and Williams(2011: 835) " the use of force by UN peacekeepers and French troops blurred the lines between human protection and regime change and raised questions about the role of the UN in overriding Cote d'Ivoire's constitutional council, about the proper interpretation of Resolution 1975, about the place of neutrality and impartiality in UN peacekeeping". Zounmenou (2011: 30) also argues that " the UN peacekeeping forces went beyond its mandate to protect civilians, mainly because of the active and aggressive role played by the French troops in arresting former President Gbagbo" Zounmenou asserts that hinges that " France had almost for a decade struggled to engineer a regime change in Cote d'Ivoire as a means of re-establishing its stranglehold on the country, which it appeared to have

lost under the Gbagbo presidency" (Ibid). This means that the humanitarian protection imperative which is central to the principle of responsibility to protect is subject to abuse by peacekeeping forces and by extension their sponsors.

## **1. 9Methodology**

This study adopted a qualitative research approach in the conduct of the research. This was based on descriptive content analysis of primary and secondary sources of information.

### **1. 9. 1 Sampling Method**

A purposive or judgemental sampling method was adopted to select respondents from the KAIPTC and WANEP because of their in-depth knowledge on the subject matter. These two institutions have conducted numerous research and studies on conflicts in the West African sub-region and have held series of training for peacekeeping officers from the region.

### **1. 9. 2 Research Instruments**

An unstructured questionnaire (attached as appendix A) was developed to gather qualitative data from the respondents. The unstructured questionnaire was used as a guide to interview respondents at the above named institutions in Ghana.

### **1. 9. 3Data Collection Procedure**

Secondary data was gathered from sources such as the ECOWAS notably its communiqué, reports, protocols and other official documents for review. Other literature and library materials on the subject as well as responses

from respondents were reviewed to arrive at conclusions. Two informant interviews were conducted with Mr. Ernest Lartey (Research Assistant KAIPTC, Accra Ghana) and Francis Acquah (Research Fellow, WANEP)

### **1. 9. 4 Data Analysis**

In view of the nature of the study, the findings were analysed using a qualitative content analysis and judgments were based on a broad range of observations. This involved extrapolation of information that answered the research questions.

### **1. 10 Limitations**

The researcher was not able to travel to the ECOWAS secretariat in Abuja, Nigeria to conduct interviews with key personnel with expertise on conflict due to logistical constraints. However, efforts were made to conduct interviews with research fellows at the Kofi Annan International Peacekeeping Training Centre in Accra, Ghana and the West Africa Network of Peace Building (WANEP).

### **1. 11 Delimitations**

The study will mainly focus on the outbreak of the conflict from September 2002 beginning with a brief political history of the country from independence to the death of its premier President Felix Houphouet-Boigny in 1993, through the staging of the country's first coup d'état in 1999 developments leading to the conflict. However, particular emphasis will be on the various intervention efforts by the international actors being, ECOWAS, France and the United Nations in resolving the conflict from 2002

September to April 2011 when Alassane Ouattara was installed as president of the country.

## **Chapter 2**

### **Analysis of Cote d'Ivoire in the International System**

#### **2. 1The Principle of Non-Intervention and the Ivorian Conflict**

Although not explicitly stated in the United Nations charter, the text of the principles contained in Article (2) of the charter impliedly acknowledges the principle of non-intervention in the conduct of relations among states. While Article 2(1) emphasises on the ' principle of sovereign equality among member states' Article 2(3), calls for the ' peaceful settlement of international disputes'. Article 2(4) prohibits ' the use of force in the settlement of disputes among states where as Article 2(7) on the other hand direct the ' UN to respect the domestic affairs of states and refrain from interfering in the affairs of states' (UN Charter 1945). The interpretation of Article 2(4) serves as the basis for discussion on unilateral military interventions. Non-intervention connotes " the rights of a sovereign state empowered by international law, to exercise exclusive and total jurisdiction within its territorial borders and other states have the corresponding duty not to intervene in its internal affairs" (Evans and Sahnoun 2002: 102).

Closely linked with the concept of non-intervention is the subject of sovereignty of states which are inalienable rights of states to absolute exercise of territorial jurisdiction without external interference. Bellamy holds the view that sovereignty and non-intervention are often " the only protection that weak states have against the strong [.....]". Interventionism is

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thus " illegal and illegitimate because it offends against the constitutive norms of international society"(Bellamy 2003: 324). The converse of non-intervention, intervention on the other hand is defined as ' organised and systematic activities directed across recognised boundaries and aimed at affecting the political authority structures of the target'(Young 1947).

Oppenheim (1955) also defines interventions as " dictatorial interference by a state in the affairs of another state for the purpose of maintaining or altering the actual condition of things. While Young's definition emphasises on the systematic behaviour of the actors, Oppenheim's description of the act of intervention as dictatorial connotes the flagrant abuse of procedures and excludes invitation. For the purposes of this study multilateral intervention will refer to the active participation in fighting or direct military assistance given by the national forces of several states or regional organisations, acting in or with each other in the internal conflicts of another state. Le Mon (2003) contends that " the sovereign right of a government to invite foreign troops onto its soil is never questioned when there is civil strife and that the legality of such interventions only become a problem when the legitimacy of the inviting party is called to question". Brownlie(1963) on the other hand notes that " the difficulty arises when the legal status of the government which is alleged to have given consent is a matter of doubt". This brings to fore one of the key principles of public International law which is the subject of recognition. As espoused in International law, the traditional determination of a government's legality as representative for its state asks whether the government exerts de facto control over the state's territory. Lautherpatch (1947) argues that " the effective control test invites no legal

inquiry into how the putative government gained control; if it can fulfil the functions of the state it will be considered the legal government".

Kinacioglu(2005)also asserts that in " accordance with international law the stance of outside powers with respect to a civil conflict must depend on the scale of the conflict". If the conflict is characterised as having the status of a " rebellion", then the government in power is still considered to be legal and it can suppress the rebellion according to its domestic regulation(Ibid).

Therefore external assistance to the government upon request is permitted but aid to rebels is prohibited. At the outbreak of the Ivorian conflict, President Gbagbo was both the de jure and de facto head of the government of the country and was as such recognised by the international community. His request for the French forces to intervene in the crisis was thus legal in line with the existing peace accord. Such invited unilateral intervention focuses on the consent of the inviting state to justify action that wouldnot constitute an illegal use of force by a state within the territory of another. The expectations of the Ivorian authorities were that all the international actors in the conflict notably the French and ECOWAS were thus expected to support the government to suppress the rebellion. Instead, the French forces decided to remain neutral, a situation which most Ivorian authorities believed was a breach of the military agreement signed in 1961. In the post-election violence of 2011, ex-President Gbagbo following the declaration of Ouattarra by the International Community as the winner of the elections had lost recognition and legitimacy to even request for foreign intervention. Gbagbo could not have in anyway invoked the principle of non-intervention to prevent the UN backed onslaught that led to his arrest. Another significant

requirement of the UN Charter as regards intervention in the domestic affairs of states could be found in Articles 39 and 53 of the Charter. Article 39 expressly states that " the Security Council, and not individual states, will determine whether there has been a threat to the peace and when a threat has been established, the Security Council shall take measures to maintain or restore international peace and security"(UN Charter 1945). Article 53 on the other hand requires that " states and regional organizations seek Security Council authorization prior to intervening in the domestic affairs of sovereign states" (Ibid). In the context of the Ivorian conflict therefore, the French government notwithstanding its pact with Cote d'Ivoire should have in line with the above mentioned provisions of the charter, sought prior approval from the United Nations Security Council. The approval the French involvement was given later through resolution 1464 of February 2003(UN Security Council 2003). Clearly the humanitarian imperative to save lives necessitated the prompt intervention of the French forces and this was largely informed by the need to save French interest in Cote d'Ivoire both population and property. This thus calls to question the relevance of the various provisions of the charter that seeks to prohibit the illegal intervention in the domestic affairs of states. Another dimension to the intervention debate as it relates to the Ivorian conflict is the socio-economic cost of the war on other West African countries. The Republic of Cote d'Ivoire shares borders with five other west African states namely, Ghana, Burkina Faso, Liberia, Guinea and Mali most of whom have quite appreciable number of migrant workers in that country by virtue of the open door policy embarked upon by its first President Felix Houphouet-Boigny. For the period between

1950 and 1998 the population of foreigners living in Cote d'Ivoire as percentage of the total population of the country increased from 5% to 26% making it one of the top twelve destinations for International migrants in the world (World Bank 2009). The economic prosperity witnessed by Cote d'Ivoire from the 60s to the 80s is partly attributed to the high influx of cheap labour offered by the migrant workers mostly from Benin, Burkina Faso, Niger, and Togo. These migrant workers established strong economic links with their native countries through trade, investment and remittance. The war therefore had negative consequences on most of these countries that hitherto had positive economic linkage with Cote d'Ivoire. On the average " being a neighbour of a failing state at peace—meaning a state which is not experiencing outright civil war —reduces the growth rate by 0. 6 percentage points per year" (Chauvet, Collier and Hoeffler 2007). Collier and O'Connell (2008) also argue that " a country's growth rate increases by 0. 4% if all of its neighbours grow by 1%". It has been estimated that the effect of a country's civil war on growth is felt up to 800 Km radius (Murdoch and Sandler 2002). This implies that instability in a region where there is high level of economic interconnectedness among the countries, as the case was between Côte d'Ivoire and several West African countries had a potential negative effect on the economic growth rate of the individual countries in the region. The effect of such instability does not only affect the immediate contiguous states but also others in the region depending of the level of economic interdependence among the countries. For instance Niger is a country which receives about 95 percent of its exports from Cote d'Ivoire by road since it is a landlocked country. When the war broke out in 2002, Niger

diverted its trade from the Abidjan port to Lomé and Cotonou ports. Only 30% of Niger's international trade as of 2011 passed through the port of Abidjan' (UNDP 2011). Although 'diverted trade from Cote d'Ivoire benefited other countries in the region, the cumulative trade losses for intra-WAEMU trade were estimated at close to \$9 billion due to the instability in Cote d'Ivoire. Actual trade during this period was about \$15 billion. Thus, 'without instability in Côte d'Ivoire, intra-WAEMU trade could have been 60 percent higher than it actually was' (Ibid). The impact could also be sometimes direct. For instance in early February 2011, Côte d'Ivoire defaulted on a \$29 million Eurobond interest payment. The bonds had been placed only in April of 2010. Yields on Ghana's Eurobonds jumped from less than 6.3 percent to more than 6.8 in four days following the default in Côte d'Ivoire (Ibid). The instability in the region also has the potential to increase the political risk profile of the entire region as investors might be scared losing their investment in a politically turbulent area. In the light of the above most West-African states and governments felt the need in view of their various interests, to support the intervention cause of not only ECOWAS but other actors such as France and the United Nations. This implies that interventions in conflict situations are much more likely to prevail over sovereignty considerations when the interests of states and other actors are at stake.

## **2.2 The French Military Cooperation in Africa and the Ivorian Conflict**

The strategic significance of Africa as a source of raw materials for French companies has endeared the continent as a critical component of French Foreign policy. Hansen (2008), claims that the African continent accounts for

5 percent of France's exports. Central to France's relations with Africa and in particular West Africa was its economic interest which is predicated on realist assumption that " states act in accordance with their own interest rather than for reasons of morality or idealism" as espoused by Morgenthau(1978: 4-15). France is Cote d'Ivoire's leading trading partner with more than 400 small and medium sized French enterprises representing about 30 percent of the latter's Gross Domestic Product and accounting for 50 percent of the fiscal revenue(Drame 2007). To enhance the competitiveness of French businesses such as CompaigneFrancaise de l'Afrique Occidental (CFAO, the French West African Company), SCOA (Société Commercial del'OuestAfricain (commercial corporation for West Africa) and Compaigne du Niger-France, a subsidiary of Unilever, France established a banking network such as the Bank of West Africa and the West African Building Loan and the Societe General which were all highly integrated (Ki-Zerbo 1972). According to Vasset (1997)," French policy in Africa have two objectives: securing universal and commercial interests and more importantly protecting and promoting the use of French language which it viewed as an indication of France's international importance". In realising and maintaining these objectives especially its commercial interests, France since " 1960 has maintained military accords with certain African countries and programmes of military cooperation with others ostensibly to protect the territory of France's African allies, protect local population and building and keeping peace". Under the accords the African states were responsible for their external and internal defence but could request to " be assisted by the French Republic". However " the precise

conditions, under which France could provide military assistance to an African country faced with an external threat although included in the accords, remain classified as state secrets". The French military officials define external threat as " every reaction, based on military attacks or not, using conventional military means or not, directed and backed by an external country" (Ibid). Gregory (2000) contends that the standard for military support was contingent on an African leader's willingness to support French interests. Zounmenou(2011: 30) also asserts that ' the cultivation of a close relationship with France has, at times, allowed certain African leaders to gain rewards in the form of military, political and economic support, regardless of their democratic credentials'. It has also ' allowed France to act as an advocate for these countries in the international arena'. During the outbreak of conflict in Cote d'Ivoire in September 2002, after the botched coup attempt, the Ivorian government led by Laurent Gbagbo relying on the 1961 defence agreement with France, made a request to the French government for military assistance to deal with the rebel insurgency. Gbagbo had argued that most of the insurgents were ex-combatants from neighbouring Liberia and Sierra Leone, hence the insurgency constituted an external threat. The inter-positioning of the Licorne forces in the confidence zone though brought a temporary end to the hostilities; it was mainly aimed at protecting the close to 20, 000 French nationals in the country as well as its economic and strategic interest(Bouquet 2005). Although France had sought to maintain a neutral position in the conflict, certain actions of the French government then led by President Chirac and the Licorne forces suggested inconsistency in its policy on the conflict. France was accused by

the rebel forces for providing logistical support to the Ivorian army and also agreed to give them passage which allowed the government forces to attack rebel position in Bouake (Bovcon 2009). Another notable critique which underscores the inconsistency of France's intervention policy was the invitation of representatives of rebel groups to the negotiation table for the LinasMarcoussis agreement and the subsequent allocation of two strategic ministerial positions of defence and internal affairs to them in the Government of National Reconciliation (Ibid). A major point of inflexion in the Franco-Ivorian relation was the November 2004 bombing of rebel positions and the French Military base by the government forces. The aerial bombardment by the Licorne forces leading to the destruction of the Ivorian National Air force provoked protests by " young patriots" loyal to Laurent Gbagbo, who attacked French expatriates and their properties (Marshal-Frattani 2006). Given the twist in events and the strained Franco-Ivorian relationship, " President Gbagbo exploited the youths particularly the young patriots with rhetoric of nationalism, neo-colonialism and anti-French sentiments" (Ibid). According to Zounmenou (2011: 31) " President Gbagbo's neo-colonial sentiments and his penchant to attack every decision made by France and the international community could be attributed to the ambiguous nature of France's relationship with its former colony".

## **2. 3The Principle of Responsibility to Protect and the Ivorian conflict**

At the core of the principle of responsibility to protect is the humanitarian imperative to save the lives of populations in times of conflict. This is a position espoused by international humanitarian law and clearly articulated

in the Geneva Conventions of 1949 and the Additional Protocols of 1977. The report by the International Commission on Intervention and state sovereignty (ICISS) developed in 2001, has been a subject of political and intellectual discourse since its conceptualisation. The draft document which was prepared by the "group of wise men" was finally approved at the UN world summit in 2005 (ICISS 2005). The normative thrust of the principle is that "individuals must be protected from mass killings and other gross violations of their rights and that the state that is sovereign over the territory in which they reside has primary but not exclusive responsibility. If the state does not live up to that responsibility or actively violates it, then it fails the minimum content of good international citizenship and others must take that responsibility rather than allow people to go unprotected" (Ibid). The principle thus renders sovereignty and non-intervention which for long have remained a *carte blanche* for the domestic conduct of governments far less sacred. Sovereignty has thus become a conditional right. According to the International Commission on Intervention and State Sovereignty (ICISS), "R2P is generally premised not only on the importance of prevention, but also on the readiness of the international community's responsibility to protect civilians, with the possibility to undertake coercive military intervention in serious cases of crimes against humanity and threats to international peace and security (Ibid). It is against this background that non-intervention advocates such as Mohammed Ayooob and Aidan Hehir express their apprehension that "powerful states have the tendency to abuse the 'Responsibility to Protect' not only to further their interests but also to dominate weaker nations" (Ayooob 2002: 92; Hehir 2010: 121). However, it is

significant to note that although the humanitarian imperative of saving lives requires the immediate provision of aid to people whose survival are threatened it must not compromise the respect of a state's sovereignty. In the face of the intervention dilemma regarding situations of internal displacement, Deng (1997) recast sovereignty as a form of state responsibility to one's displaced population and that if a state did not want international involvement with its internal domestic affairs then it should provide for the security and well-being of its population. A state claiming to be sovereign in the light of Deng's argument, must therefore be accountable and responsible to its population to avoid the intervention of the international community. This implies that states can only enjoy full sovereignty when they abide by the norms established by the international community. Given the humanitarian imperative to save the lives of populations in conflict, the principle of responsibility to protect has thus evolved as a popular norm adopted by the international community as a justification to intervene in conflict situation. However, this has provoked debates regarding the nature of humanitarian crisis that can pre-empt intervention, at what stage the intervention should occur and who carries out the intervention. In the Ivorian conflict, the initial intervention of the French Forces in the creation of the buffer or confidence zone greatly reduced hostilities occurred three days after the outbreak of the conflict. As alluded to by Deng, the government, in this case the Gbagbo administration had the responsibility to protect the internally displaced persons when the conflict broke out but its inability to carry out that obligation necessitated his request for the French to intervene. By " November 2002, almost 40, 000

people had been displaced from thirteen shantytowns a development that drew the attention of the international community "(UNHCR 2002). Similarly, in the wake of the 2010 controversial elections the UN Security Council adopted resolution 1975 among other things mandated the " UNOCI and the French forces to use all necessary means to protect populations and properties" but that necessarily did not mean the intervening forces were to support one party to the conflict (UN Security Council resolution 1975). The " law concerning the legality of use of force the jus ad bellum specifically prohibits intervention on the side of rebels and authorises collective self-defence to support a government with a specific invitation" on the he condition that the government controls the majority of its territory (Breau 2011). By April 2011, Laurent Gbagbo had lost his legitimacy and authority as the Head of state of the country to protect the citizens. Thus by Deng's argument Cote d'Ivoire by April 2011 needed to be intervened by the international community. However, Zounmenou(2011: 31) contends that " the UN interpretation of the Responsibility to Protect (R2P) has been biased in favour of Ouattarra, given the fact that the world organisation took sides to allegedly protect the electoral process and its outcome, and also to protect those civilians who might have been targeted by pro-government forces".

## **2. 4 The ECOWAS Collective Security System and the Ivorian Conflict**

The failure of the ECOWAS Protocol Relating to Non-Aggression (PNA) 1978 and the Protocol Relating to Mutual Assistance on Defence (PMAD), 1981, to prevent the conflict in Liberia, necessitated the need to have a robust

conflict resolution mechanism that is proactive enough to deal with conflicts. Indeed the challenges that confronted by the intervention force put in place by ECOWAS called the ECOWAS Monitoring Group (ECOMOG) in Liberia, provoked debates not only about the relevance of the PNA and PMAD in contemporary conflict resolution mechanisms but also about the level of preparedness and capability of the sub-regional organisation to resolve conflicts. Renewed efforts by ECOWAS to address post-cold war security challenges of the sub-region began with the inclusion of certain important provisions in the Revised ECOWAS Treaty of 1993. Article 58 of the Revised Treaty urges member-states to establish and strengthen collective security mechanisms for conflict prevention and resolution (ECOWAS revised Treaty 1993). The creation of the ECOWAS conflict resolution mechanism was therefore an indication of the evolution of the ECOWAS security architecture as collective security arrangement. Realising the inadequacy of the mechanism to address the issue of democracy and good governance, the absence of which has been identified as being part of the underlying causes of conflict in the region, ECOWAS in 2001 adopted a Supplementary Protocol on Democracy and Good Governance to the Mechanism (ECOWAS 2001). This idea is underpinned by the Pro-Democratic Intervention (PDI) principle. The Pro-Democratic Intervention principle has been defined as " the use of force to restore a democratically elected government which has been removed from power by unconstitutional means" (Breau 2011). By extension the definition of the PDI also connotes " the use of force to install a democratically elected government after the incumbent refuses to relinquish power to the democratically elected government" (Ibid). In the context of

Ivorian conflict, Alassane Ouattara of the RDR was declared by the Ivorian electoral commission with certification by the UN as the winner of the run-off elections presidential election. He was duly recognised by the ECOWAS, the African Union (AU) and the wider international community but Gbagbo refused to relinquish power. In view of this political stalemate, the ECOWAS heads of state met at an emergency summit in Abuja, Nigeria and resolved to use "legitimate Force" to remove Gbagbo from office (ECOWAS 2010). ECOWAS' resolve to use violence as the last resort to remove Gbagbo from office was in part informed by the humanitarian imperative to save lives in view of the growing number of internally displaced persons and casualties. According to a UN report, as of April 2011, over 1000 civilians had died, 500,000 internally displaced and 94,000 fled to neighbouring Liberia (UNHCR 2011). The 1999 ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security 1999 and other ECOWAS instruments, establishes a Mediation and Security Council that by a two-thirds vote may authorize "all forms of intervention including military option, in the event that an internal development in a member state has the potential to trigger a humanitarian disaster, poses a threat to regional security, result in mass human rights violations and the unconstitutional seizure of power"(Breau 2011). The ECOWAS threat of use of force was thus in line with its legitimate responsibility to save lives and also signal its impatience with constitutional usurpation by political leaders in the sub-region as espoused in the collective security framework. However, ECOWAS failed to intervene leading to rising humanitarian casualties resulting from clashes between loyalists of the main protagonists in the

political imbroglio. ECOWAS' failure to intervene is in part attributed to raging domestic issues in Nigeria notably its security situation due to oil militancy and elections that was on the horizon (Cook 2011). Also Ghana, which is also another major contributor of troops for peacekeeping operations cited reasons of overburdened international force deployments and decided not to contribute troops (Ibid). After ECOWAS failed to resolve the political stalemate following the intransigence of President Gbagbo, it requested the UN to take responsibility of Cote d'Ivoire, a development which culminated in the adoption of UN Security Council Resolution 1975 . The resolution , while condemning the supporters of both Gbagbo and Ouattarra for their complicity in the gross human rights violations, authorised the imposition of targeted sanctions against Gbagbo and his acolytes and reaffirmed the mandate of the UN Operations in Cote d'Ivoire to " use all necessary means to protect life and property"(UN Security Council Resolution 1975). The adoption of the resolution though saved ECOWAS from the dilemma of having or not to intervene militarily in the conflict in the wake of the political stalemate and growing humanitarian crisis, it exposed the organisation's inadequacy to decisively prevent , resolve and manage conflicts which happens to be the raison d'être of the mechanism.