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Theoretical Approaches to Transitional Justice and Post-Civil War Peace-building: A Thematic Survey

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Abstract

The main aim in this paper is to dig into the literature that directly addresses theoretical questions associated with 'Transitional Justice and Post-Civil War Peace." To this end, literature that speaks directly to the 'challenges of post-civil war transitions' is reviewed. The main focus here is the theoretical context of intra-state conflict as opposed to the inter-state domain. For starters, the discipline is rich with works that grapple with questions regarding the circumstances under which post-civil war materializes once civil wars are terminated. An analysis of extant theoretical and empirical literature on this topic exhibits main thematic areas- the challenges of post-civil war transitions, sustainability of interventions and the management of such interventions. The paper concludes that no single general approach explains post-conflict transitions and the entailed intricacies of post-conflict transitions all play a key role.

To Understand War is to Understand Peace

The first thematic area has to do with works that address the challenges of post-civil war transitions as predicated on the nature of the civil wars themselves- their underlying causes, actors' interests, ferocity, duration etcetera. These works generally contend that "*before we understand peace, we must first understand why the civil wars [and war in general] occur in the first place*." Social science is not short of literature on war and armed conflict. It is noteworthy however that no single discipline holds the monopoly of knowledge as far as the analysis of conflict is concerned. Some approaches are of the normative character, while others base their predictions on empirical

findings. Modern political science has increasingly tended to lean towards the latter context, where theories have more often than not been judged based not only on their logical consistency, but also their empirical validity and heuristic value. When Waltz wrote *Man, The State and War* in 1959, he proposed three levels of analysis- the individual, state and international- as far as the analysis of conflict is concerned. Following on this tradition, the *levels of analysis argument* has evolved with some works laying more emphasis on the two main levels: national (intra-state) and international (inter-state) as far as the analysis of conflict and war is concerned. As such, this study is interested in the *intra-state* context of conflict. It is noteworthy however that various theorizations associated with the inter-state context of war have found applicability in the analysis of civil wars/ intra-state wars.

Take for instance the general argument that conflict is best understood from as the result of *informational* as well as *commitment* problems. These concepts have been variously invoked to explain why international conflicts happen, why they persist and further how they end and/or can be prevented from recurring. Some theoretical approaches present war as the result of uncertainty occasioned by informational as well as commitment problems (Danilovic and Clare 2010). Various strands of theory illuminate these domains from different premises. On the whole however, conflict (whether inter-state or intra-state) occurs, persists and recurs not because of material and motivational factors *per se*, but because actors have private knowledge on the actual nature, extent and intent behind these factors. This is the province of the theories of deterrence and crisis bargaining, which associate war with the inability to pass information about capabilities, resolve and how much cost adversaries are willing to bear in a conflict. Deterrence theory approaches the information problem by asking: how best can one party credibly convince another to alter their position on a certain action they are planning to take (Schelling, 1966: 35). Sescher (2010, 627) contributes to this debate by arguing that military strength contributes to the information problems that make challengers more likely to underestimate their targets' reputation costs and insufficiently compensate them, thereby undermining the effectiveness of threats. The result to violence is supposed to communicate the resolve and capability of such a state to the adversary and perhaps make the adversary change their mind about the *type* of opponent they are challenging (Chan, 2010). Wagner (2000, 478) however argues that in the context of war, fighting as a source of information can be very costly.

Under conditions of equal chance of winning or losing a contest, informational uncertainties about relative bargaining power are heightened, leading to disagreements about which side is going to win a war (Huth, 1988: 438-439). Further, war can last longer if the bargaining process is unable to resolve informational uncertainties during the war- hence war becomes an extension of the bargaining process. Hence, from a *rationalist* point of view, war results from private information and incentives to misinterpret it (Slantchev, 2003: 123).

Fearon (1994) on the other hand pegs the prevalence of war on the degree to which leaders are able to convey or signal credible commitments and resolve- especially to their domestic

constituencies. Since, they would pay high "audience costs" if they fail on their policy promises and/or stances; democratic leaders are better able to signal resolve, a fact that other democracies would take seriously, hence avoiding war amongst democracies. Non-democratic leaders have little or no "audience costs to pay" and that their policy failures my therefore be inconsequential and neither their non-democratic counterparts, nor democratic adversaries would take them seriously, since their war declarations lack the ability to credibly communicate resolve.

Fearon (1995, 381) singles out miscalculation due to lack of information. War occurs because rational leaders may miss the opportunity for a negotiated settlement when lack of information leads them to miscalculate relative power or resolve. Refining his position further in order to give it stronger empirical validity in terms of causal logic, Fearon (1995, 381) points to lack of private information about the relative capabilities or resolve and incentives to misinterpret such information. The cause of war is not simply lack of information- since the parties to the conflict can in principle communicate to avoid costly miscalculations-but specifically, whatever it is that prevents the disclosure of this information (Fearon, 1995: 391). Incentives to misinterpret military strength can undermine diplomatic signaling, thereby forcing states to use war as a credible means to reveal private information about their military capabilities (Fearon, 1995: 400). To overcome informational barriers, leaders credibly communicate their interests to their adversaries through what he calls "hands tying" or simply employing sunk costs (Fearon, 1997: 68; [see also] Morrow, 1999: 86). This debate is extended further by the likes of Bueno De Mesquita et al (2003) who argue that due to the openness of democratic systems to each other and the ability to read into each other's' intentions [thus better overcome informational problems] by virtue of widely shared democratic values that cut across societies, democratic leaders and their citizens can easily avoid war amongst themselves. Nonetheless, because such qualities may be lacking in non-democracies, war is more probable between them and democracies ([See also] Snyder and Bourghard, 2011).

More importantly this line of theorization soon found its way into the scientific analysis of conflicts at the intra-state level with emphasis being laid on why they persist (civil war duration), how they end (civil war management and/or termination); as well as how to ensure that the peace that obtains thereof is secured in terms of preventing reversion to full-scale war and guaranteeing sustainable peace. Numerous studies utilizing a case study approach have documented human rights atrocities in civil wars- a trend that gained momentum with challenges occasioned by the Cold War and its aftermath (Elbadawi et al, 2008). As Salehyan and Thyne (2012, 196) recall; "Zartman (1989) offered one of the earliest and most influential theories of civil war duration and termination. He argued that the conflict persists until neither side believes that it can achieve unilateral victory and continued fighting is costly. Under [such] conditions, [of] a 'mutually hurting stalemate,' the civil wars [is said to be] 'ripe' for resolutionNonetheless, another body of research that falls within the domain of what Mitchell, Diehl and Morrow (2012) term the "Scientific Study of International Processes (SSIP)" sought to extend this debate by empirically testing similar theories concerning the duration [and termination] of civil-wars, using large-N analyses utilizing replicable datasets.

Collier et al (2004) for instance used hazard function regressions to test a wide range of hypotheses that empirically explored the duration of civil war. Similar works include, Karl and Sobek (2004), Fearon and Laitin (2003), Fearon (2004), and Hegre (2004), Walter (2004) as well as Humphreys and Weinstein (2008). Fearon and Laitin (2003) examined questions to do with ethnicity; while Fearon (2004) asked "why some civil wars lasted longer than others." Humphreys and Weinstein (2008) grappled with issues to do with why those who choose to participate in these deadly conflicts do so. Further, the ferocity of conflicts and the "issues at stake," say territory, contention over precious minerals such as oil and diamonds (DeMerrit and Young 2013, 100-102).

The degree of ethnic fractionalization, regime type and the presence and/or interference of third parties (local and/or international) have been invoked to explain whether or not the peace that obtains will hold (Gurses and Rost, 2013: 469-475). Though these works do not directly speak to assorted issues associated with post-conflict peace, they constitute important reference points for a scholar interested in understanding how to address the challenges associated with theoretically explaining and accounting for transitions from war to peace.

It is noteworthy that the normative theoretical perspectives on peace are worth discussion too. Some classical peace theorists contend that peace is not simply about the absence of war. "True peace" is about the *positive* aspects of peace. When the structural and/or deep sources and/or roots of conflict such as poverty, inequality and general human insecurity are present, then peace is lacking, and such a state of affairs is a sure recipe for conflict. On the other hand, *negative* peace is about the basic and/or minimum pre-conditions for peace-situations where there is no physical violent attrition between actors. To the normative peace theorists, more often than not, conflict managers and empiricist arguments for peace at times "miss the point" by stressing only what can be measured and evaluated quantitatively; thereby failing to appreciate the positive aspects of peace (Galtung, 1996:14).

Sustainability of Peace is Dependent on the Dynamics of Conflict Termination

The second major thematic area in this literature is associated with works that address issues revolving around the idea that "*how the peace is made, or better still, how the war ends will likely determine how far the peace that obtains lasts*." Various themes characterize the literature on the durability of post-civil war peace, why it fails or prevails (Hartzell and Yuen, 2012). It is important to keep in mind that civil wars (and wars in general) can end in ways and under different circumstances. It can be a one-sided victory, where one party prevails in imposing its will on the other and dictating the terms of the peace that follows. In similar fashion other cases a challenger may succeed to overthrow the status quo and compel its adversary to toe the line and abide by the new terms. However, for the most part (which is why many tend to assume is always the case), many civil wars end-up in some form of truce, concession making and mutual compromises- peace agreements. Nonetheless, in many cases, the processes of arriving at these compromises and their implementation can be quite convoluted and may not end-up achieving "water-tight" peace outcomes (Desiree, 2008; De Rouen Jr. et al, 2010).

In this direction, many works have paid special attention to how the management and resolution of the conflicts has been handled. Here, issues such as informational uncertainty and concomitant commitment problems on the part of the warring parties have been raised. By extension, specific issues such as third party presence and/or intervention as well as questions of mediator bias have featured in these debates (Balch-Lindsay et al, 2008). Most of these works tend to argue that disputants abrogate peace agreements due to a commitment problem (Hartzell and Hoddie, 2003). When armed conflicts break out (whether inter-state or intra-state), international efforts to either forcefully or peacefully bring the conflicts to an end are usually made. Peaceful third party involvement through mediation is one such process (Crocker et al 2005:21; Bercovitch and Gartner, 2005:5; Beber, 2012). Mediation has been found to be a favorable process in settling armed conflicts (Gartner and Bercovitch, 2006; Dixon 2009; Beber, 2012:397). It is noteworthy that mediation is just but one of the channels of third party intervention in a conflict; be it inter-state or intra-state in nature. Nonetheless, debate on whether or not mediators (and/or other third party interveners) should be biased is rife in recent works on conflict management and resolution (Bercovitch 1996; Gartner and Bercovitch; 2009; Benson and Kathman, 2013).

Beber (2012, 399) for instance notes that; "while scholars such as Fisher (2005), Rauchhaus (2006) and Gent and Shannon (2011) find mediator bias unfavorable for effective dispute resolution, others such as Touval (1982; 1985), Touval and Zartman (1989), Kydd (2003; 2006), Zartman and Touval (2007), Savun (2008) argue that "biased mediation can be and often is effective" (Beber, 2012: 399). Others such as Favretto (2009) contend that a biased mediator-particularly a powerful one[see also, Regan 2002]- can successfully facilitate negotiations; while Svensson (2007) maintains that in the context of an intra-state conflict, a government oriented bias on the part of the mediator may be more fruitful than one oriented towards the rebels. According to Beardsley and Lo (2013, 2) " when asymmetric concessions are needed to resolve a dispute, this creates, inter alia, stark commitment problems for the defending side and stark audience constraints for the challenging side." They argue that third party conflict management- especially that involving dispute resolution and mediation of the mutual concession but binding kind- has the potential of enabling disputants to agree to certain terms that they would not have otherwise agreed to (asymmetric concessions); and this is because they enable the leaders and/or key actors in the dispute to overcome commitment problems through the provision of political cover.

Taking on the trend of theorizing set by the likes of Zartman (1989) as well as, Walter (2002) argued that once actors experience the "hurting stalemate" and an agreement is negotiated, implementation problems set-in; and these are due to commitment problems. Further, Steadman et al (2002) reiterated that this line of theorizing emerged in the 1990s when various scholars engaged in debates to do with "*why peace agreements fail or succeed*". Most of these works took a case-by-case approach to the topic. Also, they were based on the theoretical premises associated with how to overcome the security dilemma and related commitments problems revolving around

building confidence and trust among the warring parties in civil war situations (Steadman, Rothchild and Cousens, 2002). One such work by Hampson (1996) for instance, approached the question of 'why some peace agreements fail while others succeed' by attempting a "controlled comparison of five case-specific scenarios. Two (Angola and Cyprus) failed, while two (Namibia and El Salvador) succeeded, with the fifth (Cambodia) being treated as a partial failure. From this study, Hampson (1996) associated success of peace agreements with a couple of important factors. He singled out an enabling international environment in terms of nurturing the peace as crucial to the success of peace agreements. By extension he argued that the position of the more powerful states (say regional and/or international hegemonies) would also count. The other issue raised was the timing of the agreement; thus, "was the conflict ripe for settlement?" and finally, "how inclusive is the agreement?" In other words, "does it factor-in some power-sharing arrangement or not?"

To Walter (1999; 2001) however, one of the major problems bedeviling the implementation of peace agreements was "the inability of the parties to it, to commit" especially when it came to the critical questions of "disarmament and demobilization" in the immediate period following the civil war. Further, she argues that one of the major problems that face actors in such situations is some kind of "insecurity." To overcome the said "insecurity," the presence of a third party who plays the role of an "assurance guarantor" is of the essence. Nonetheless, Walter (1999, 2001) cautioned that addressing the underlying grievances and/or issues behind a conflict does not always guarantee that the parties to the conflict will honor a peace agreement. Hence, beyond the underlying issues such as land and the resources in it and power-sharing etcetera, the thought that downing their tools of war would render one vulnerable in the eyes of their adversaries can easily put the entire peace agreement implementation in jeopardy. Yet other works within this cohort pointed to the importance of proper coordination during the mediation process and implementation of peace agreements; as well as the need to be aware and to address the potential impact of "spoilers" in the process of implementation of the peace process. These are actors who for material, ideological or political-strategic reasons seek to prevent the fruition of the peace agreement (Steadman, 1997: 5; Steadman et al 2002). Several works have empirically sought to address issues of the informational problem demonstrating how informational asymmetries can be overcome (Mitchell and Regan, 2010). Some conflict management techniques or strategies can be more effective in helping disputants overcome informational asymmetries. The most potent in this direction are communication, mediation and adjudication (Dixon, 1996: 676). In an empirical examination of the causal underlying mechanisms of mediation, Rauchhaus (2006) offers an alternative explanation for the effectiveness of mediation by pegging it to the informational problem. Upon setting forth a formal model and quantitative analysis to explore the relationship between mediation, asymmetric information and war his analysis reveals that mediation is a highly effective form of conflict management. An important gain of this work is that mediation targets asymmetric information, thereby transmitting critical information about disputant's reservation points. By so

doing, the mediator can help the disputants avoid bargaining failures that result form asymmetric information (Rauchhaus, 2006: 223-224).

Favretto (2009) shows how the relationship mediation and military coercion can be used to understand how powerful biased third parties may help convey private information about their resolve under conditions of uncertainty and the extent to which this information can influence the resolution of crises. On the contrary, to Berber (2012, 400) biased mediators are relatively less effective at resolving disputes than their unbiased counterparts because only an unbiased mediator can credibly share conflict relevant insights. Greig and Diehl (2005) contend that peacekeeping circumvents informational problems which would have otherwise been made clear if the conflict is let to run its full course as well as "easing" the hurting stalemate effect that makes conflicts costly (Greig and Diehl, 2005: 629). Gent, Stephen, and Shannon (2010) show how the relationship between bias and effectiveness can be better understood by examining a wider range of conflict management strategies.

Fortna (2004) explores the causal mechanisms through which peacekeepers might affect the durability of peace by empirically examining whether peace lasts longer when peacekeepers are present than when they are not. As far as the informational problem is concerned, the study is applicable only to the extent that peacekeepers- by playing the role of referee- are able to facilitate information between disputants following the signing of a ceasefire agreement thereby enhancing the possibilities of a lasting peace; and also, they play an inherent mediation and day-to-day conflict resolution role (Fortna, 2004: 585-486).

Doyle and Sambanis contend that successful and unsuccessful peace efforts to resolve civil wars are influenced by three key factors that characterize the environment of the postwar civil peace: "One; the degree of hostility of the factions (measured on terms of human costs-deaths and displacements- the type of war, and the number of factions); two, the extent of local capacities remaining after the war (measured for example in per capita GDP or energy consumption), and; three, the amount of international assistance (measured in terms of economic assistance or the type of mandate given to a UN peace operation and the number of troops committed to the peace effort)" (Doyle and Sambanis, 2006: 63-68).

On the other hand, issues such as inclusiveness of peace agreements have been central to such endeavors, with peace agreements that ostensibly fail to bring on board all the actors in the conflict and their grievances and/or interests being blamed for the failure of the peace agreements borne out of the negotiations thereof, hence poor design of peace agreements (Steadman, 1997; Mattes and Savun, 2010). However, other works are specifically interested in the question of why peace agreements fail or succeed; as well as to account for factors behind the sustainability (or lack of thereof) of peace following the formal agreements between warring parties. Most of these works tend to argue that disputants abrogate peace agreements due to a commitment problem (Hartzell, Caroline and Mathew Hoddie, 2003).

Meernik (2005, 271) notes that the reconstruction and maintenance of peaceful communities in the aftermath of conflicts is one of the most critical areas of academic and policy concern. In his study of how "internationally provided justice contributes to the maintenance of peaceful societies" Meernik investigated the efforts of the International Criminal Tribunal for the former Yugoslavia in providing justice to the people of Bosnia and Herzegovina. Meernik's study utilized "event data from the Kansas Event Data System to investigate the extent to which the arrests and prosecution of war criminals had on the improving relations among Bosnia's ethnic groups." To this end, he found no statistically significant effect of such retributive measures on peace in Bosnia

A similar study by Kanavou (2006) sought to understand how decisions to sign peace agreements are reassessed by the by former signatories and how conflicting parties adapt to the demands of the peace processes from the context of value-frames held by the stakeholders representing ethnic groups in a particular conflict. Other works are dedicated to understanding the actual mediation process (Svensson, 2007; Blach-Lindsay et al, 2008). Collier et al (2008) undertook a study to determine the circumstances under which there is high or low risk of post-conflict societies reverting back to war. They found that the severity of risk of renewed war after the signing of a peace agreement is predicated on factors such as income levels, external military presence and political design in the immediate post-conflict period.

While employing survival models Hartzell and Hoddie (2003, 18-23) for example find that the more aspects of power sharing are factored in the negotiations for peace, the more likely the peace would endure; while (Gurses and Rost, 2013: 469) find that ethnic fractionalization may negatively impact on peace duration but their findings discount the effect of the "ferocity" of conflict. To Mates and Savun (2012, 511), the duration of post-civil war agreements can also be determined by the degree to which the peace agreements so designed, help the warring parties to reveal information to an extent that they are certain about each other's military capabilities- hence, the less the uncertainty, the more likely the peace will last.

Sustainability of Peace is Dependent on the Management of Transitions from Civil War

The third main emergent thematic area on the 'challenges of post-civil war transitions discourse' is one that somewhat partly raises issues associated with the first as well as the second themes afore discussed. It links issues to do with "*how the civil wars are conducted, and who they affect*" on one hand, with "*how the effects of such conduct is factored into the peace that is supposed to follow the immediate end of the war; which in turn determines if the peace holds or not."* This debate is associated with a particular area within the broader international human rights and humanitarian law discourse-*the transitional justice-peace nexus.*

It is noteworthy that the theme of transitional justice is just but one among many areas and/ or subjects that constitute the broad rubric of human rights, international humanitarian and/or human rights law (Paige, 2009:328-334). Human rights issues are a major area of concern in the analysis

of war, its termination and short-to- long -term ramifications; with various rules and standards of engagement and procedural matters being engrained in international humanitarian law in general and human rights law in general, during the post- Second World War period. For starters, there appears to be not much contention in the literature about how the concept of transitional justice came about.

Hence, the concept of 'transitional justice' came to the fore in the late 1980s and early 1990s in response to the dilemmas occasioned by regime change from various forms of authoritarianism towards more democratic governance. In this regard, the International Centre for Transitional Justice (ICTJ, 2009: 1-2) defines transitional justice *rightly so*, thus:

> *"Transitional justice is a response to systematic and widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over decades." (ICTJ, 2009:1).*

The bone of contention in those years was how to address the gross human rights violations committed by past regimes such as those in former communist Eastern Europe, military juntas in Latin America, and racist regimes such as the apartheid system in South Africa (Malamud-Goti, 1990; Niel, 1995; Linz and Stepan, 1996; Stan and Nedelsky, 2013). As ICTJ (2009, 1-2) notes further "at the time, human rights activists and others wanted to address systematic abuses by former regimes but without endangering the political transformations that were underway. Since these changes were popularly called *transitions to democracy*, people began calling this new multidisciplinary field *transitional justice*." Subsequently, governments were increasingly encouraged to honor their human rights commitments. The 1988 ruling on *Velasquez Rodriguez v Honduras* at the Inter-American Court of Human Rights (IACHR) important responsibilities of governments as far as human rights were reaffirmed; thereby setting pace for "depolitization of the human rights discourse," and further adoption principles in other jurisdictions including the UN Human Rights Commission, and the European Court of Human Rights (Grossman 2007, [in Noyes et al 2007, 104-113]).

In the same vein, a good number of academic works within the neoliberal institutionalism realm (what has come to be termed *compliance literature of* the "regimes and institutions" kind) took a centre stage in the field (Chayes and Chayes, 1993; Moravcsik, 1995; Simmons, 1998; Martin and Simmons, 2001; Simmons, 2005 and Hathaway, 2007). The main bone of contention in these works has over the past two decades or so been whether or not the international commitments states make (say by signing and ratifying human rights treaties) were able to meaningfully alter their behavior more so in the context of enforcing compliance with human rights treaties (Hathaway, 2007); (Hill 2010, 1161-1163). While some works have painted a pessimistic picture as to how far human rights regime commitments can be enforced (Abouharb and Cingranelli, 2006), (Allen and Lektzein, 2012), (Nooruddin and Autumn, 2010); others are quite optimistic that selective compliance enforcement mechanisms such as unilateral economic sanctions hold the

potential to enforce human rights treaty compliance while general multilateral sanctions are found to be much less effective (Von Stein, 2005); (Neumayer, 2005); (Lebovic and Voeten, 2009); (Peksen, 2009).

An important development within this literature came with the establishment of formal international institutional mechanisms, most notably the Rome Statute that in 1998 established the International Criminal Court (ICC), a retributive form of transitional justice in its own right, due to its punitive and/or deterrent quality- *international trials*.

Subsequently, a substantial number of works have over the past decade or so, sought to examine whether or not the presumed deterrent effect of the ICC was likely to improve human rights especially among countries that were emerging from deadly civil wars in the 1990s and after (Gillian 2006; Schabas 2011; Sikkink, 2011; Bikundo, 2012; Dukalskis and Johansen 2013). One important theoretical domain in this line of thinking is that known as the *credible commitments* approach. Precisely, the *credible commitments theory* holds that states sign onto human rights treaties such as the Rome Statute or the International Convention on Civil and Political Rights (ICCPR) in order to convey certain signals concerning their degree of commitment to the issue in question- in this case, human rights compliance (Rodman and Booth 2013, 273-277).

These developments in the literature depict a redefined and broadened conceptualization of transactional justice. It is a conceptualization that not only addresses human rights violations by past regimes, but more importantly, one that also stresses the importance of addressing human rights violations committed during brutal civil wars and to prevent such episodes from recurring (Minow, 1998; Olsen at al, 2010). In reference to Tietel's (1991, 2000) examination of the phases that transitional justice underwent since the early 20th century, Skaar, (2011, 6) notes, "in [its] current phase….transitional justice has become an established component of post-conflict processes." Olsen at al (2010, 803) further add that "societies *emerging from periods of state repression and armed conflict* have pursued a variety of processes. The array of mechanisms available to states [is] collectively referred to as transitional justice." As Barr (2011:11) recalls

> *"The list of mechanisms commonly associated with transitional justice has grown to include: prosecutions at the international, hybrid and national levels; truth and reconciliation commissions; sanctions; customary justice; public apologies; [for example the Gacaca Courts in Rwanda] memories and vetting (or lustration)."*
>
> *Nonetheless, this new outlook within the transitional justice research program has since engendered widespread debate, contention and disagreement about what transitional justice meant in the first place and what it meant to achieve (Call, 2004; Leebaw, 2008). This view is echoed by Skaar (2012, 60) who adds that "transitional justice is now seen as a driver of transition rather than only as interventions that follow a transition. Its goals have become far more ambitious and less easily reconcilable with each other." This paradigmatic shift and controversy in the theoretical conception of the term has been occasioned by the fact that the concept is viewed in some quarters as "once again, threatening" the "sovereignty zone" (as was the case with the regime changes of the late 1980s and 1990s) especially in political systems around the world that resiliently clung-on*

> *to authoritarian and/or pseudo-democratic tendencies (Sikkink, 2011). In such countries, brutal acts of misrule and gross human rights violations directed mostly in civilian populations still remain "a fashionable" means to gain, maintain and sustain power and influence (Thakur and Malcontent, 2004; Kalyvas et al, 2006; Wood, Kathman and Gent 2012).*

As such, two broad but interrelated contexts of transitional justice processes or mechanisms can be identified: retributive and restorative forms of transitional justice. The retributive transitional justice mechanisms of transitional justice mainly constitute trials. For a long time since Nuremberg, these trials took place within the domestic jurisdiction of states. The contentious issue about domestic trials is the extent to which they can be effective and/or genuine given the fact that it is not imaginable that a regime, once it ascends to power following a brutal civil war, can put itself or its sympathizers on trial for crimes against various war crimes and crimes against humanity among other gross human rights violations categorized as international crimes.

More often than not, such trials would only target the opponents of the regimes in power, hence engendering vicious cycles of "victor's justice." Considerations of these eventualities especially in the context of post-civil war transitions, partly informed the establishment of Special Tribunals of the 1990s and ultimately, the ICC which formally began its work in 2002 (Schabas, 2004). In addition to trials, other another form of retributive transitional justice is *lustrations*. Lustrations are formal policies that are meant to vet and "weed-out" and formally disable and discourage persons who have in one way or another been participated in gross violations of human rights especially in the context of civil wars.

Restorative mechanisms on their part include *truth commissions, reparations and amnesties*. These mechanisms are non-punitive and reconciliatory in character. It is noteworthy that just like in the case of trials; amnesties have also been variously contested due to the fact that they can be abused to the advantage of the very persons behind human rights crimes (Elster, 2006; Nagy, 2008). The debate in the literature has been on whether or not these mechanisms should be applied separately, sequentially or concurrently. Further, more critical questions have been posed concerning if "*transitional justice is really just*" and how do we tell that justice has been achieved and within *what timeframes*, since "transitions cannot be indefinite. In the same vein, critical questions of *transition from what to what* also pervade the literature (Call, 2004). Yet another important issue is that of the *levels of transitional justice*. Here, qualms have been raised concerning how domestic transitional justice mechanisms such as local trials [and alternative local justice systems such as the *Gacaca* Courts in Rwanda] or truth mechanisms and wider institutional reforms are in harmony with international process including purely trial settings such as the ICC as well as hybrid tribunals (Schabas, 2003; Apatel, 2009; Steiner, Alston and Goodman, 2007:1243-1379).

From the foregoing three major *competing* theoretical approaches to transitional justice have emerged- the *legalist, emotional-psychology* and the *pragmatic* (Vinjamuri and Snyder, 2004; Nobles, 2010). Some scholars such as Olsen et al (2010) and Rieter et al (2012) have referred to

the legalist approach as "*maximalist*" and the emotional-psychological approach as "*minimalist*"; while the *pragmatic* argument is referred to as "*moderate*." In other quarters, some works go beyond the pragmatist or moderate arguments and argue for a *"holistic"* approach, which somewhat proffers a combined and complementary effect of the legalist (maximalist) and emotional psychology (minimalist) and pragmatic (moderate) views. From a holistic standpoint, every mechanism counts and is best seen as complementary to the other. It appears therefore that the pragmatist approach prescribes various permutations and/ or combinations of the both retributive and restorative mechanisms, while the holistic approach argues for an exclusion of none and inclusion of all.

According to the *legalist* approach, justice for the victims is only met when the perpetrators of human rights atrocities during civil wars are prosecuted and punished through retributive mechanisms- mainly local and international trials (Vinjamuri and Snyder 2004, 346-352); (Nobles, 2010). On the other hand, according to the *emotional psychology* approach, true justice is reconciliatory and restorative. This is best guaranteed when both victim and perpetrator reconcile- a process that is made possible through restorative mechanisms that include truth commissions, reparations and amnesties. After all, they argue, it is not practically possible to put everyone on trial (Vinjamuri and Snyder 2004, 357-359).

Finally, according to the *pragmatist* approach to transitional justice the reality of *post-civil war justice and peace* is that it must strike a delicate balance between justice (in the more general negative peace sense), and the more crucial positive- sustainable peace (Vinjamuri and Snyder in, Steiner, Alston and Goodman, 2007:1333-1334). The pragmatist approach somewhat builds on the strengths of both the legalist and emotional psychology approaches. While perpetrators of human rights violations in the civil war must be punished; justice and lasting peace must also consider the fact that specific political and economic aims of elites who fund and sustain civil wars must be considered. Further, reparations for victims are important, while minimizing (but not doing away with) on trials among other punitive measures, and maximizing on healing and reconciliation (Vinjamuri and Snyder 2004: 352-357); United States Institute for Peace-USIP, 2008).

While "*justice*, *truth* and *peace* in a post-conflict are often presumed to be mutually reinforcing goals; unfortunately during [such precarious and potentially insecure periods, these goals] often come into conflict" (Binningsbo et al, 2012:732). It is imperative upon any student of conflict analysis to be aware of the fact that these approaches present competing logics, with each presenting a counter argument against the other. Hence, depending on "who you ask," several arguments may be made that either paint one of the approaches in the positive or negative or otherwise (in relation to the other). For instance, there is the argument that arrests, indictments and jail sentences may cause perpetrators and their supporters to fuel more conflict by inciting fresh spates of violence.

Further, while on trial, the perpetrators of human rights abuses in past wars may whip-up emotions among their supporters and re-ignite violent conflict and further undermine the peace. At times, high profile personalities under trial may be portrayed as "martyrs" and symbols of "collective victimization or alienation" (Thoms, Ron and Paris, 2008:7); of their tribes, community, ethnic group, region and so on. Further, other potential perpetrators (spoilers) of human rights violations may take advantage to "spoil" for the peace and blame it on the trial of "important" personalities.

> *Another argument may befloated thus: holding a few persons individually criminally responsible may be an indirect exoneration of many others who acted under their supervision and/or command…hence creating an escape route from justice- a counterproductive move. Conversely, the arguments may be made that: at times, the truth and justice processes may actually provide "cover" for human rights abusers to continue with their schemes and use them as "escape routes" from retribution for past atrocities. In other cases, amnesties (especially blanket ones) have been seen as avenues of convenience to circumvent justice. In fact, such amnesties are not permitted in international law especially where they involve war crimes, torture, genocide and other serious international crimes (USIP, 2008; ICTJ, 2009).*

To yet others, telling the truth and setting the record straight may also be counterproductive as it may open "healing wounds" by rekindling "unwanted" emotions and threaten to or actually lead to a resurgence of violence and abuse of human rights. In other instances amnesties have been said to "undermine long-term peace and contribute to recurrence of violence" especially if they are undertaken to circumvent justice (Skaar, 2011:15). Finally, TJ processes in general may suffer procedural and contextual bottle-necks and/or flaws, thereby having a counter-productive effect especially when they fall short of meeting their goals (Thoms, Ron and Paris, 2008).

All in all; in an examination of "the field's state of empirical knowledge as far as the impact of transitional justice on human rights and peace was concerned, Thoms, Ron and Paris (2008: 4) noted:

> *"there is little evidence that TJ [Transitional Justice] produces either beneficial [positive] or harmful [negative] effects. Few rigorous analyses of TJ have been completed to date, and the best of these studies acknowledge the difficulty of reaching any strong conclusions about the effects of TJ across cases due in part to the limitations of existing data."*

Nonetheless, in their analysis of the research trends, Thoms, Ron and Paris (2008:5), remained optimistic in that "future TJ [was] likely to produce more reliable findings." Hence, the trend in the literature over the past decade or so has been around the analysis of a particular transitional justice mechanism using either qualitative or quantitative research designs based mostly on small-*n* case-specific/country-to-country analyses (Olsen et al, 2010:804; Binningsbo et al, 2012:732). Subsequently, others have sought to examine various research questions associated with the retributive context of transitional justice with some examining local prosecution processes while others have examined regional and/or international prosecutions. The main debate in these works

has been "to prosecute or not to prosecute? Between prosecuting and pardoning, [or both] which best delivers justice?" (Pion-Berlin, 1994; Osiel, 2000).

To yet others, both restorative and retributive mechanisms when employed concomitantly can achieve justice and lasting peace (USIP, 2008; Skaar, 2011). Subsequently, a cottage industry around these themes has grown, mainly based on case-specific single country studies of both the qualitative or quantitative kind; but also fewer large-*n* multi-country empirical works: Hayner, 1994; Roht-Arriaza 1995; Mendez, 1997; Gates et al, 2003; Schabas, 2003; Vinjamuri and Snyder, 2003; Mendeloff, 2004; Wilson 2005 and Zoglin, 2005; Gillian, 2006; Sikkink and Walling, 2007; Ratner, 2009; Clark and Kaufman, 2009; Kim and Sikkink 2010; Olsen at al, 2010; Bikundo, 2011; Bratton, 2011; Sikkink 2011; Ross and Sriram, 2012 Rieter et al, 2012; Clark, 2012; Rodman and Booth 2013, to mention but a few.

Hayner (1994) for instance carried out a comparative case study of Truth Commissions across fifteen countries between 1974 and 1994. Employing a descriptive qualitative approach, this study eloquently brought to light the pros and cons of truth telling and reconciliation as a restorative transitional justice mechanism. Important questions to do with "whose truth, when, how and to whom it is told" are brought to light; and so did those to do with the human, material and institutional challenges that have faced such processes. As similar study was conducted by Brahms (2006) who examined the effect of truth commission on human rights and democracy in a cross-national study involving 78 countries for the period 1980-2003.

He came to the conclusion that truth commissions had only a marginal effect on human rights. Snyder and Vinjamuri's (2003) analysis of truth and justice processes however revealed a more positive impact as far as human rights was concerned (*See also*, Thoms, Ron and Paris, 2008:13). Bratton (2011:353) employed a national probabilistic survey on Zimbabwe that sought to determine "what determines people's willingness to consider punishment for human rights abusers." Bratton established that the proclivity to talk and share views and deep feelings on the part of ordinary citizens depends not only on their experiences in the conflicts but also on the political circumstances- a factor that is utilized by critics of the emotional psychology (minimalist) approach's restorative argument. Skaar (2012, 57) adds that "no existing statistical study has attempted to gauge the impact of transitional justice mechanisms on reconciliation [adding that]; this is where the scholarly knowledge of…stands at the moment."

The work by Gillian (2006) was perhaps the first in the field to test the legalist approach using quantitative techniques of the *formal modeling* kind. It also extended the general human rights compliance debate- *though not explicitly*- into the transitional justice domain. In an article published in a leading journal in the field, Gillian took note of the sentimental debate in scholarly circles as to whether enforcement mechanisms were necessary to make international human rights regime effective. He expressly declared that his work provided "a model of the ICC in which the Rome Statute regime held the potential to alter states behavior even though it possessed no

enforcement mechanisms." His model helped answer several prominent criticisms of the ICC. One particular criticism that Gillian's work potentially proved inaccurate was the claim that the ICC was at best futile because it lacked the power to apprehend the criminals it is meant to prosecute and because it induced atrocious leaders to cling on to power for fear of prosecution on the part of the core regime members. Gillian offered a "rational choice model of an international institution that alters states' behavior even though it is not enforced by trigger strategies or any other external mechanism" (Gillian, 2006:938).

The regime modeled by Gillian "did not guarantee failure to comply but provided compelling evidence that compliance can occur to the extent of deterring atrocities at the margin." In short Gillian's model contributed to both policy debate and theoretical literature on human rights compliance enforcement, with specific reference to the ICC. As such, "while the model offered no hope that the creation of the ICC would bring about a world free of atrocities, it did offer a set of conditions under which there would be marginally fewer atrocities thanks to the presence of the ICC" (Gillian, 2006:938).

Sikkink and Walling (2007), attempted an empirical examination of both trials and truth commissions in the context of Latin America. Their findings seemed to challenge the notion long held in the literature, that trials could jeopardize peace processes and that they could not be administered alongside restorative mechanisms particularly truth and justice processes. As a follow-up to this study, using a new data set that included 100 transitional countries, Kim and Sikkink (2010:939) sought to explore the deterrent effect of human rights prosecutions on repression. Their theoretical argument was informed by the premise that "the impact of prosecutions is the result of both normative pressures and material punishment." Their findings suggested that human rights prosecutions hold the potential to improve human rights in transitioning countries-including 16 states that were transitioning from civil war- by "enforcing existing human rights laws" (Kim and Sikkink, 2010: 957). As far as this study is concerned, these early works by Sikkink and Walling as well as Kim and Sikkink (2010) served as valuable pointers in providing a basis for broader investigations on the singular and/or collective effect of various retributive and restorative transitional mechanisms or both.

The findings by Sikkink and Walling (2007) were echoed by Bikundo (2012:21-41) who made an empirical investigation into the causal link between international criminal trials and the prevention of human rights atrocities through what he termed "exemplary justice" in the African context. Of specific interest to this study in the question he charges thus "how the prosecution of those bearing the greatest responsibility binds recurrent conflict." In this direction, Bikundo points to two important domains of inquiry that have dominated the retributive transitional justice research program in the past half-decade or so. One; the "question of whether or not a criminal trial relying on individual criminal responsibility can prevent the recurrence of mass violence [….and gross violations of human rights]; and Two; "the ambiguity of how a universal court….only has cases from a single continent" (Bikundo, 2012:22). While this second domain of inquiry is interesting,

it is not of specific concern to this research. However, the first sheds light into the core question under investigation herein. Is it true that this new instrument of retributive transitional justice- ICC- has any real influence on state sovereignty?

Further, is it possible that due to the establishment of this robust sub-regime that can "topple governments, jail once-powerful presidents, and cause tyrants to pause before committing war crimes" (Call, 2004:102); human rights trends have improved among states whose cases have been handled by the ICC as well as all other states that fall within its jurisdiction? In this direction Dukalskis and Johansen (2013) recently developed a measure to help understand the nuances associated with the acceptance by states, of the ethos behind key human rights treaties, particularly the Rome Statute which established the ICC. To this end, they developed the Normative Disposition Indicators (NDI); a 30-point (-15 to 15)scale, and applied it to five major contexts-the US, and four Asian states- in terms of their stances towards the Rome Statute. The import of this study is that it makes a worthy contribution as far as probing the degree of compliance (or otherwise) non-compliance with the international human rights treaties states commit to.

Sikkink's own *The Justice Cascade* (2011) introduced an interesting twist in to the transitional justice program. Sikkink's work challenged earlier beliefs that retributive forms of transitional justice (mainly local, international and hybrid trials) had a negative effect on human rights compliance. Sikkink's study reveals that retribution not only punishes and deters potential human rights abusers, be they sitting governments or rebels seeking to capture power; but also engenders more institutionalized national, cross-regional and global value systems that fortify a fast solidifying human rights culture- a situation that obtains less repression and peace through enhanced compliance with the human rights treaty obligations of states (*See also* Vinjamuri, 2012; Sandholtz, 2012:17). As Mendeloff (2012, 289) in a review of Sikkink's *The Justice Cascade* notes:

> *"Relying on a dataset of human rights prosecutions in transitional countries from 1980-2004, she [Sikkink] challenges the skeptical view that national and international prosecutions are potentially destabilizing and should be avoided in favor of amnesties allowing for smoother transitions from…civil war. She finds to the contrary that states with transitional human rights prosecutions have lower levels of repression than those without them."*

Perhaps the first large-*n* quantitative study, in which the duration of peace in particular, was the outcome variable as predicated on a wide range of transitional justice mechanisms; was that conducted by Lie, Binningsbo and Gates (2007). Utilizing a dataset consisting 187 countries for the period 1946-2003, they arrived at findings that suggesting that on the whole, transitional justice had a weak effect on the longevity of post-conflict peace, though in the context of authoritarian regimes, trials did exhibit the potential to achieve longer periods of peace. Nonetheless, a major weakness associated with the study was that its definition of conflict was rather too restrictive, in

that in their coding for 'a civil war', the conflict had to involve at least 25 battle-related deaths and in which government had to be an actor. To the likes of Mani (2005) and Skaar (2011; 2012) for instance, this seminal work fell-short of the mark by restricting their definition of intra-state conflicts that only included governments, hence undermining its generalizability.

Nonetheless, another groundbreaking study of the *large-n* quantitative kind within the transitional justice research program that is seen to have overcome the shortcomings of earlier works (such as Lie, Binningsbo and Gates, 2007) was undertaken by Rieter et al (2010; 2012). These scholars were the first in the field to build a transitional justice database (TJDB) suitable for large-*n* quantitative studies on the subject (Binningsbo et al, 2012:732). Using the UCDP/PRIO Armed Conflict Dataset definition of civil wars (which included both minor and major civil wars; that is 25-999 battle-related deaths in the case of the former, and at least 1000 battle-related deaths in the case of the latter) they coded 151 cases of internal armed conflict in a total of 91 countries. Further, using the Transitional Justice Database (TJDB), an original cross-national database consisting of all countries in the world for the period between 1970 and 2007; they went ahead to test several theoretical arguments associated with the degree to which the duration, ferocity, management and termination of civil wars determine the kind of transitional justice mechanisms employed during the conflict and in the immediate post-civil war period. They came to the general conclusion that amnesties were more prevalent than trials both during and after conflict; and that following the end of civil wars, the ferocity and duration of the conflict would mostly determine which transitional justice mechanism is best suited. More importantly, they concluded that no particular transitional justice mechanism jeopardizes the peace process, and made a case to the effect that amnesties may be the most effective transitional justice mechanism in ending intra-state conflict (Reiter et al, 2012, 164-65).

Conclusion

This paper set-out to examine the current state of theorization in the context of transitional justice and post-civil war peace building. The discussion laid emphasis on the more current and empirical domain of understanding how civil wars end, how the transitions from civil war to peace are addressed, and how the peace attained thereof can be fully sustained. Yet the analysis of theories of transitional justice and peacebuilding are intricately interrelated. One cannot truly understand the sustainability of peace without understanding the dynamics of conflict, both of the intra-state and inter-state kind.

Again, the levels and units of analysis across space and time also help to better understand and internalize the theoretical aspects under consideration. That said, theories are best tested; and some theories do register more heuristic value compared to others. Yet that is not to say that some theories count more than others- both normative and empirical approaches to questions of transitional justice and peacebuilding do have a contribution to make to this discourse; for in the

final analysis, no single general approach and/or theory has provided all the answers the complex questions do with post-civil war peace and its sustainability.

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police, 1,050 personnel of formed police units and appropriate civilian, judiciary and correction component. Retrieved February 23, 2015 from http://www.un.org/en/ga/ search/view_ doc.asp?symbol=S/RES/1925%282010%29. On 28 March 2013, SCR 2098 (re-confirmed by Resolution 2147 of 28 March 2014) decided that MONUSCO would, for an initial period of one year and within the authorized troop ceiling of 19,815, include an "Intervention Brigade" consisting inter alia of three infantry battalions, one artillery and one Special force and Reconnaissance company. Retrieved February 23, 2015 from http://www.un.org/en/ peacekeeping/missions/monusco/facts.shtml

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Traditional peacekeeping operations involved authorized military operations undertaken with the consent of the major parties to a dispute that were designed to monitor and facilitate implementation of peace agreements e.g. a ceasefire, truce etc. Peacekeeping was also aimed at supporting diplomatic efforts to reach long-term political settlements. Second generation peacekeeping operations are more complex and multidimensional where in addition to traditional military functions, police and civilian components are an integral part of the

operation. The three components are tasked with different assignments that contributes towards sustainable settlement of the factors giving rise to conflict including the facilitation of the: protection of civilian populations; observance of Human Rights; security and management of refugee issues; disarmament, demobilization, and reintegration (DDR) programs; security sector reforms; election monitoring; conflict resolution efforts; restoration and practice of the Rule of Law among others. Second generation peacekeeping operations are also often referred to as Peace Support Operations (PSOs). (See Haidi Willmot and Scott Sheeran.2014.'the protection of Civilians mandate in UN peacekeeping operations: reconciling protection concepts and practices'. *International Review of the Red Cross* (2013). 95 (891/892), 517-538. Multinational Operations and the law. Dol:10.1017/S1816383114000095)

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SCR 1270, 22 October 1999, para. 14 (ECOMOG stands for the Economic Community of West African States Monitoring Group).

The African peacekeeping missions with direct mandate for PoC include: MONUC (Democratic Republic of the Congo) protection of civilians language was added to the mandate in SC Res. 1291, 24 February 2000, operative para. 8; UNMIL (Liberia): SC Res. 1509, 19 September 2003, operative para. 3(j); UNOCI (Côte d'Ivoire): SC Res. 1528, 27 February 2004, operative para. 6(i); MINUSTAH (Haiti): SC Res. 1542, 30 April 2004, operative para. 7(I)(f); ONUB (Burundi): SC Res. 1545, 21 May 2004, operative para. 5; UNMIS (Sudan): SC Res. 1590, 24 March 2005, operative para. 16(i); UNIFIL (Lebanon) protection of civilians language was added to the mandate in SC Res. 1701, 11 August 2006, operative para. 12; UNAMID (Darfur) protection of civilians language was in the original mandate, SC Res. 1769, 31 July 2007, operative para. 15(a)(2); MINURCAT (Chad and Central African Republic) protection of civilians language was added to the mandate in SC Res. 1861, 14 January 2009, operative para. 7(a)(i); MONUSCO (Democratic Republic of the Congo) protection of civilians language was in the original mandate, SC Res. 1925, 28 May 2010, operative paras. 11 and 12(a); UNISFA (Abyei), SC Res. 1990, 27 June 2011, operative para. 3(d); UNMISS (South Sudan): SC Res.
1996. 8 July 2011, operative para. 3(b); MINUMSA (Mali): SC Res. 2100, 25 April 2013, operative para. 16(c)(i). (See Willmot and Sheeran. 2014. *Op Cit).*

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African Union, Peace Support Operations Harmonized Doctrine (2006)

The Concept of R2P emerged in 2005 from recommendations by the UN International Commission on Intervention and State Sovereignty (ICISS) in view of the setbacks with the full realization of the PoC concept in violent conflicts experienced in the 1990s e.g. in Liberia, Somalia, Rwanda, Sierra Leone, Burundi, the DRC, Sudan among others. The R2P Concept applies in situations atrocious crimes e.g. genocide, crimes against humanity, war crimes, ethnic cleansing are systematic and planed as part of the war strategy. The R2P is conceived under three pillars: (1) The responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk; (2) The responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention; and, (3) The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert (See Hanns Seidel Foundation (HSF), Konrad-Adenauer-Stiftung (KAS), Institute for Security Studies (ISS) and South African Institute of International Affairs (SAIIA). 2012.The Responsibility to Protect – From Evasive to Reluctant Action?: The Role of Global Middle Powers. Retrieved February 20, 2015 from http://www.issafrica.org/ uploads/Book2012R2P.pdf)

Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda, S/1999/1257, 16 December 1999, paras. 50-52

Current peace operations seek to address the root cause of conflict through peacebuilding activities, including electoral assistance, promotion of human rights, disarmament, demobilization and reintegration of combatants, security sector reform, rule of law among others.

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Broadly defined, Small Arms those weapons designed for personal use, and light weapons are those designed for use by several persons serving as a crew (See 1997 'Report of the Panel of Governmental Experts on Small Arms'. *General and Complete Disarmament: The UN* Secretary-General Note: A/52/298 (III), p. 11. New York: United Nations General Assembly. 27 August 1997. http://www. un.org/Depts/ddar/Firstcom/SGreport52/a52298.html).

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Binding protocols and conventions on SALW on the continent include: the SADC Protocol on The Control of Firearms, Ammunition and Other Related Materials, 2001; the Nairobi Protocol on the Control, Prevention and Reduction of Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States, 2004; the Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, their Ammunitions and Other Related Materials, 2006; and the Central Africa Convention for the Control of SALW, their Ammunition and Parts and Components that can be used for their Manufacture, Repair or Assembly, 2010 (African Union. Action Plan for The Implementation of the African Union Strategy on the Control of Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons. Retrieved July 25, 2014 from Http://Www.Peaceau.Org/Uploads/ Action-Plan-En.Pdf

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See Para 58, p.17 APSA Roadmap 2011 quoted in African Union Disarmament, Demobilization and Reintegration Capacity Program (AU DDRCP). Project Document and Funding Proposal, October 2012 p. 14. Retrieved July 24, 2014 from http://www.peaceau.org/uploads/auddrcp-final-project-document.october-2012.signature.pdf

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Organisation for Security and Cooperation in Europe (OSCE). (2003, Chapter 8). Best Practice Guide on Small Arms and Light Weapons (SALWs) in DDR Processes. Handbook of Best Practices on Small Arms and Light Weapons. Vienna: OSCE Secretariat.

See RECSA. (2011). Best Practice Guidelines on Practical Disarmament for the Great Lakes Region, the Horn of Africa and Bordering States. Nairobi: RECSA.

The UN defines combatants as persons who are members of a national army or an irregular military organization; or who are actively participating in military activities and hostilities; or who are involved in recruiting or training military personnel; or who holds a command or decision-making position within a national army or an armed organization; or who arrived in a host country carrying arms or in military uniform or as part of a military structure; or who having arrived in a host country as an ordinary civilian, thereafter assumes, or shows determination to assume, any of the above attributes. Ex-combatants are defined as persons who have assumed any of the responsibilities or carried out any of the activities mentioned in the definition of 'combatants', and have laid down or surrendered his/her arms with a view to entering a DDR process (See (See Operational Guide to the Integrated Disarmament, Demobilization and Reintegration Standards, United Nations, 2010: 24, available at: http://unddr.org/iddrs. aspx

and United Nations Disarmament, Demobilisation and Reintegration Resource Centre available at: http://www. unddr.org/whatisddr.php)

The UN Secretary General defines the rule of law to refer to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (See United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies*, report of the Secretary General, UN doc. S/2004/616 (23 August 2004), para 6).

Security Sector Reform (SSR) refers to a dynamic concept involving the design and implementation of a strategy for the management of security functions in a democratically accountable, efficient and effective manner to initiate and support reform of the national security infra- structure. The national security infrastructure includes appropriate national ministries, civil authorities, judicial systems, the armed forces, paramilitary forces, police, intelligence services, private–military companies (PMCs), correctional services and civil society (See United Nations, *Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS)*, 1 August 2006. www.unddr.org).

In 2007, a UN Secretary-General's Policy Committee agreed on a conceptual basis for peacebuilding to inform UN practice: "Peacebuilding involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundations for sustainable peace and development". Peacebuilding strategies must be coherent and tailored to specific needs of the country concerned, based on national ownership, and should comprise a carefully prioritized, sequenced, and therefore relatively narrow set of activities aimed at achieving the above objectives" (See UN Peacebuilding: an Orientation. September 2010. http://www.un.org/en/peacebuilding/pbso/pdf/peacebuilding_orientation.pdf)

See the example of the Security Council Resolution 1894 (2009) that expressed itself on the need for peacekeeping missions to develop indicators not only to measure the progress with the implementation of mandates but also on their protection strategies.

About Author

Mumo Nzau *is a Fulbright Scholar who holds an MA and PhD in Political Science from the State University of New York at Buffalo. He also holds an MA Degree in International Relations in addition to other graduate-level training in the filed of Peace and Conflict Studies. He is a Senior Lecturer of Political Science at the Catholic University of Eastern Africa (CUEA) and Adjunct Faculty at the United States International University (USIU, Africa); the Institute of Diplomacy and International Studies (IDIS) as well as the Department of Political Science and Public Administration-University of Nairobi. Dr. Nzau has also been a key resource person in the Foreign Affairs, Internal Security and Defence dockets in Kenya. His Consultancy and Research specialties include National Security and Defence Strategy, Conflict Resolution and Management,*

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