

Public and Private International Law Bulletin

Research Article

Open Access

The Legal Scope of the Responsibility to Protect, Between Controversies and Reality

Tartışmalar ve Gerçeklik Arasında Koruma Sorumluluğunun Hukukî Kapsamı

Ferdinand Mbirigi¹  



¹ University of Burundi, Faculty of Political and Legal Sciences, Bujumbura, Burundi

Abstract

Since its establishment by the United Nations, the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity known as mass atrocities (R2P) has given rise to controversies. This emerging norm did not escape doctrinal and politico-diplomatic controversies like its predecessor known as the right of intervention. The question is whether R2P is a real legal norm aimed at protecting people or a political doctrine serving Western imperialism. Some states and scholars perceive R2P as a legal norm while others see it as a political doctrine with a hidden agenda. This article discusses the relevance of the arguments of both its proponents and opponents to identify a common understanding. Our starting assumption is that R2P is an autonomous norm whose application is subject to its debtors' interests and power balance. Using a documentary analysis of legal instruments, judicial proceedings, official documents, and scholarly works, this research paper highlights that R2P is a relatively well-established autonomous norm gathering several existing conventional and international customary norms. It demonstrates that R2P implementation remains subject to political will, state interests, and balance of power. This clarification should contribute to R2P effectiveness and pave the way for the liability of responsible actors for failure to protect populations from mass atrocities.

Öz

Toplulukları soykırım, etnik temizlik ve insanlığa karşı suçlar gibi kitlesel zulümlerden korumayı amaçlayan koruma sorumluluğu (R2P), Birleşmiş Milletler tarafından açıklanışından beri tartışmalara yol açmıştır. İnsani müdahale hakkı olarak bilinen kendi selefi gibi, bu yeni norm da doktrin ve siyasi -diplomatik tartışmaların dışında kalamamıştır. Burada sorun R2P'nin insanları korumayı amaçlayan gerçek bir norm mu, yoksa Batı emperyalizmine hizmet eden politik bir doktrin mi olduğudur. Bazı devletler ve akademisyenler R2P'yi bir hukuk normu olarak görürken, bazıları onu gizli bir ajandası olan politik bir doktrin olarak düşünmektedir. Bu makalede, ortak bir kanaat tespit etmek üzere, ilkenin lehinde ve aleyhinde olanların argümanlarının değişik yönlerini tartışılmaktadır. Burada başlangıçtaki varsayımımız R2P'nin, uygulandığı bu yükümlüden sorumlu olanın menfaatlerine ve güçler dengesine tabi olan özerk bir norm olduğudur. Hukuki metinlerin, yargı kararlarının, resmi belgelerin ve akademik çalışmaların belgesel bir analizi kullanılarak, bu makalede R2P'nin mevcut birkaç ahdî ve uluslararası teamülî normu bir araya toplayan göreceli olarak yerleşik hâle gelmiş özerk bir norm olduğunun altı çizilmektedir. Aynı zamanda R2P'nin uygulanmasının siyasi irade, devlet menfaatleri ve güçler dengesine tabi olduğu da gösterilmektedir. Bunun açıklığa kavuşturulması R2P'nin etkinliğine katkıda bulunacak ve bununla yükümlü olan aktörlerin insanları kitlesel zulümlerden koruyamamaları hâlinde sorumlu tutulmalarına yol açacaktır.

Keywords

Global politics · balance of power · responsibility to protect · R2P boosters · R2P sceptics · R2P criticism · state logic

Anahtar Kelimeler

Küresel siyaset · güç dengesi · koruma sorumluluğu · devlet mantığı · R2P'i destekleyenler · R2P'ye şüpheyile yaklaşanlar · R2P eleştirisi



“ Citation: Mbirigi F, 'The Legal Scope of the Responsibility to Protect, Between Controversies and Reality' (2025) 45(1) Public and Private International Law Bulletin 89. <https://doi.org/10.26650/ppil.2025.45.1.1524113>

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✉ Corresponding author: Ferdinand Mbirigi ferdinandmbirigi@gmail.com



I. Introduction

The responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity known as mass atrocities (R2P) was conceptualised for the first time by the International Commission for Intervention and State Sovereignty (ICISS). The concept was proposed as a response to the concern expressed by Kofi Annan on how we should respond to gross and systematic violations of human rights that affect every precept of our common humanity.¹ It was then endorsed by the High-Level Panel on Threats, Challenges, and Change², the International Organisation of Francophonie (OIF)³, the African Union (AU)⁴, and the United Nations (UN) Secretary-General⁵ before being enshrined in paragraphs 138 and 139 of Resolution A/RES/60/1 of 16 September 2005 known as the 2005 World Summit Outcome Document (WSOD).

Meanwhile, R2P has given rise to contradictory and heated debates and reflections in political, diplomatic, and academic circles. For instance, the Global Responsibility to Protect journal published more than 328 scholarly works dealing with R2P and related themes including a detailed R2P bibliography of 121 pages between January 2009 and December 2023. For its part, the UN Secretary-General issued 16 Thematic Reports as of 30 June 2024. If the establishment of the R2P was perceived as a diplomatic and normative incontestable success,⁶ this emerging norm did not escape doctrinal and politico-diplomatic controversies like its predecessor known as the right of intervention or humanitarian intervention.⁷ The question is whether R2P is a real legal norm, a norm of soft law, or a political doctrine.⁸ Views are built on three R2P broad schools of thought - R2P boosters, R2P sceptics, and R2P criticism.⁹

Globally, some scholars consider R2P as a well-established legal norm¹⁰ while others perceive it as a political principle¹¹. For instance, Sandholtz underscores that '*R2P consists of multiple norms, with some*

¹ICISS, *The Responsibility to Protect* (IDRC 2001).

²Report of the High-Level Panel on Threats, Challenges, and Change, 'A More Secure World: Our Shared Responsibility' (2 December 2004) UN Doc A/59/565, para. 201 <<https://documents.un.org/doc/undoc/gen/n04/602/31/pdf/n0460231.pdf?token=PrtZeoSUDqyzZfoek&fe=true>> accessed 26 April 2024.

³Déclaration de Ouagadougou (adopted 27 November 2004) para. 80 <https://www.francophonie.org/sites/default/files/2019-10/Declaration_SOM_X_27112004.Pdf> accessed 26 April 2024.

⁴African Union Executive Council, 'The Common African Position on the Proposed Reform of the United Nations: the Ezulwini Consensus' (7-8 March 2005) AU Doc Ext/EX.CL/2 (VII) 7 <<https://old.centerforunreform.org/sites/default/Files/Ezulwini%20Consensus.pdf>> accessed 26 April 2024.

⁵UN Secretary-General, 'In Larger Freedom: Towards Development, Security and Human Rights for All' (2005) UN Doc A/59/2005, para 132 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/270/79/PDF/N0527079.pdf?OpenElement>> accessed 13 July 2023.

⁶Evans Gareth, 'R2P: The Dream and the Reality, Speech Originally Delivered on 26 November 2020 at the European Centre for the Responsibility to Protect's Annual Lecture, at Leeds University' (Global Centre for the Responsibility to Protect, 26 November 2020) <<https://www.globalr2p.org/publications/r2p-the-dream-and-the-reality/>> accessed 9 August 2023; Mario Bettati, 'Du droit d'ingérence à la responsabilité de protéger' (2007) 3 *Outre-Terre* 381, 381 <<https://www.cairn.info/revue-outre-terre1-2007-3-page-381.htm>> accessed 26 April 2022.

⁷See Brendan Simms, DJB Trim (ed), *Humanitarian Intervention: A History* <https://is.muni.cz/el/fss/jaro2021/IREb2005/110828317/Humanitarian-Intervention-A-History-Simms-Trim_3773_.pdf> accessed 25 January 2024; ICISS (n 1); Hajer Gueldich, *Droit d'ingérence et interventions humanitaires: état de la pratique et du droit international* (Université de Carthage 2008) <https://www.ceja.ch/images/CEJA/theses/Droit_ingérence_interventions_humanitaires.pdf> accessed 30 January 2024.

⁸Fabien Terpan, 'L'Union Européenne et la Responsabilité de Protéger : les Raisons d'un Engagement Modéré' (2017) XVII *Annuaire Français des Relations Internationales* 475, 475-476.

⁹Philip Cunliffe, 'The Doctrine of the Responsibility to Protect as a Practice of Political Exceptionalism' (2017) 23 *European Journal of International Relations* 466 <<https://kar.kent.ac.uk/55842/>> accessed 26 April 2022; Adrian Gallagher and Jason Ralph, 'The Responsibility to Protect at Ten' (2015) 7 *Global Responsibility to Protect* 239 <https://brill.com/view/journals/gr2p/7/3-4/article-p239_2.xml> accessed 26 April 2024.

¹⁰Laurence Boisson de Chazournes & Ligu Condorelli, 'De la responsabilité de protéger, ou d'une nouvelle parure pour une notion déjà bien établie' (2006) 110 (1) *Revue générale de droit international public* 11; S Aggar 'La responsabilité de protéger : un nouveau concept?' (PhD Thesis, Université de Bordeaux 2016); C Winston, 'Norm Structure, Diffusion and Evolution: a Conceptual Approach' (2017) 24 (3) *European Journal of International Relation* 638; P I Kabaka and V Amouzou *La souveraineté des Etats aux prises du droit d'ingérence internationale. Etude de la portée de la responsabilité de protéger en droit international des droits de l'homme* (2020) <<https://hal.science/hal-02508823v1/document>> accessed 29 April 2024; Natalie Zähringer, M Brosig, 'Organised Hypocrisy in the African Union : The Responsibility to Protect as a Contested Norm' (2020) 27 (1) *South African Journal of International Affairs* 1, 1

¹¹Nabil Hajjami, 'La Responsabilité de protéger' (PhD Thesis, Université d'Angers et Université Libre de Bruxelles 2012); Malik Özden and Maëli Astruc, 'Responsabilité de protéger : progrès ou recul du droit international public ?' (2013) 12 *Cahier critique* 1; Jennifer M Welsh, 'Norm



aspects not even having achieved the status of a norm'¹² whereas Kurtz and Rotmann underline that 'many in the Global South have long viewed R2P as an all-out attack on sovereignty.'¹³ In a similar vein, some states perceive R2P as a 'means of legitimising humanitarian intervention'.¹⁴ They fear that R2P would be used as a pretext to promote political objectives.¹⁵

However, R2P derives from the nature of state sovereignty.¹⁶ It rests on three pillars outlined in the 2009 UN Secretary-General Report.¹⁷ Pillar one focuses on a state's responsibility to protect people from mass atrocities. In contrast, the second pillar entails international assistance to countries where tensions exist before a crisis or conflict erupts. The third pillar consists of the onus to respond timely to mass atrocities occurring elsewhere when states are failing or unwilling to do so. As Zähringer underlines, 'the responses under pillar three may take various forms, from mediation and sanctions to the use of military force'.¹⁸

Even though some scholars believe 'R2P does not create any new legal obligations',¹⁹ there is evidence that R2P is a kind of container gathering several existing conventional and customary norms of international human rights law (IHRL), international humanitarian law (IHL), international criminal law (ICL) and general international law. It is also understood as an extension of a well-known rule of domestic criminal law in some states; the incrimination for failure to assist persons in danger.²⁰

Accordingly, this research paper seeks to examine the consistency of the arguments advanced by both sides to establish a common understanding of the legal scope of R2P. The question that arises is: To what extent the arguments of both R2P proponents and R2P opponents would be relevant in light of international law as well as international relations ethics?

The reflection seeks to answer the following leading question: To what extent should R2P be considered as a legal norm?

Our starting assumption is: 'R2P is a relatively autonomous legal norm whose implementation remains under the influence of state logic'. The clarification of the scope of R2P should contribute to its effectiveness and pave the way for the liability of its obligators for failure to protect populations from mass atrocities.

Methodologically, this reflection is based on documentary analysis. In this regard, scholarly works, UN official documents, ICISS report, legal instruments, official documents from Global Centre for the Responsibility to Protect (GCR2P), AU documents, African Commission on Human and Peoples' Rights official document, OIF declarations, cases and proceedings before the International Court of Justice (ICJ) and the International Criminal Court (ICC) as well as ICRC document have been gathered and analysed to highlight

Robustness and the Responsibility to Protect' (2019) 4 (1) Journal of Global Security Studies 53, 53; Jennifer M Welsh 'The Responsibility to Protect after Libya & Syria' (2016) 145 (4) American Academy of Arts & Sciences 75.

¹²Wayn Sandholtz 'Norm Contestation, Robustness, and Replacement' (2019) 4(1) Journal of Global Security Studies 144.

¹³Gerrit Kurtz and Philipp Rotmann 'The Evolution of Norms of Protection: Major Powers Debate the Responsibility to Protect' (2006) 30(1) Global Security 6.

¹⁴For an overview, see Vesselin Popovski, Angus Francis and Charles Sampford, *Norms of protection: responsibility to protect, protection of civilians and their interaction* (UN University Press, 2012) <<https://digitalibrary.un.org/record/742062>> accessed 29 April 2024.

¹⁵André Cabanis et al. *La responsabilité de protéger: une perspective francophone* (2010) 10.

¹⁶For an overview, see Cabanis et al. (n 15) 9; Natalie Zähringer 'Taking Stock of Theories around Norm Contestation: A Conceptual Re-examining of the Evolution of the Responsibility to Protect' (2021) 64 (1) Revista Brasileira de Política Internacional 1, 9; J Sarkin 'The Role of the United Nations, the African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect' (2009) 53(1) Journal of African Law; Ruth Aluoch, 'The Dilemma of Responsibility to Protect in the Great Lakes Region' (2018) 4(1) Journal of African Conflicts and Peace Studies 1, 3.

¹⁷For an overview, see Report of the Secretary-General, 'Implementing the Responsibility to Protect' (2009) UN Doc. A/63/677.

¹⁸Zähringer (n 16) 8.

¹⁹Welsh (n 11) 77.

²⁰For an overview, see Loi n°1/27 du 27 décembre 2017 portant révision du code pénal arts. 497-498, for the case of Burundi; Loi n° 68/2018 du 30/08/2018 déterminant les infractions et les peines en général telle que modifiée à ce jour art. 244, for the case of Rwanda.



the evidence of an *opinio juris* confirming an emerging norm accepted as R2P as well as the precedence of state-consent and state logic over R2P enforcement.

After highlighting that R2P is a relatively autonomous legal norm gathering several existing conventional and customary norms of international law, research outcomes show that R2P enforcement is still under the influence of state logic in an international legal order shaped by global politics and global values.

II. R2P as a Relatively Autonomous Legal Norm Gathering Several Existing Conventional and Customary Norms of International Law

The analysed documentary resources highlight that §§ 138 and 139 of the WSOD gather several norms codified so far in the framework of IHRL, IHL, ICL and 1945 Charter of the United Nations (here after designed UN Charter)²¹. R2P is therefore not only a legal norm with a very specific scope but also a relatively well-established autonomous norm of international law. This order of views is reflected in the ICISS report, UN official documents, legal instruments, ICJ cases, ICC cases, GCR2P official documents, AU official documents, and ICRC official documents.

A. A Legal Norm with a Specific Scope

In the wording of the ICISS, R2P entails '*providing protection and assistance to populations at risk and involves not only the responsibility to respond to an actual or human disaster feared but also the responsibility to prevent it and the responsibility to rebuild after the event.*'²²

This extensive conception that refers to the protection of populations from any humanitarian disaster, did not find the consent of the Heads of state and government attending the 2005 World Summit. The World Summit opted for the protection of populations against only four serious harms to human rights - genocide, crimes against humanity, ethnic cleansing, and war crimes.²³ The WSOD circumscribes the scope *ratione personae*, *ratione loci*, *ratione materiae* and *ratione temporis* of this emerging legal norm as well as the modalities of its implementation.

Regarding the scope *ratione personae*, the WSOD specifies that R2P obligators are states and the international community. The primary responsibility rests with the states acting individually or as part of collective action undertaken under the provisions of the UN Charter while the subsidiary responsibility lies with the international community acting through the UN as well as regional and sub-regional organisations. Though the international community is understood as a moving system including sovereign states, international organisations, non-state entities, as well as individuals, the wording of the WSOD refers to a community of entities holding rights and obligations under international public law, *inter alia* states and international organisations. The expected protection is extended to all populations under the jurisdiction of each state regardless of their nationality²⁴. Moreover, the proceedings before the ICJ in the *Belgium v Senegal* case²⁵, *Gambia v Myanmar* case²⁶, *Ukraine v Russia* case²⁷ as well as *South Africa v Israel*²⁸ show that protecting

²¹United Nations Charter, XV UNCIO 335, amendments in 557 UNTS 143, 638 UNTS 308 and 892 UNTS 119 (opened for signature 26 June 1945 and entered into force 24 October 1945) XV UNCIO 335, amendments in 557 UNTS 143, 638 UNTS 308 and 892 UNTS 119.

²²ICISS (n 1) para. 2.32.

²³2005 World Summit Outcome, UNGA RES 60/1 (16 September 2005) paras. 138–139.

²⁴UN Doc. A/63/677 (2009) (n 17) para. 11.

²⁵*Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (Request for the Indication of Provisional Measures: Order) [2009] ICJ Rep 139.

²⁶*Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (Request for the Indication of Provisional Measures: Order) [2020] ICJ Rep 178.



the victims of mass atrocities in other states, does not require a dispute *stricto sensu* between them and the defendant states. In this regard, the ICJ observed that the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)²⁹ as well as the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention)³⁰ generated obligations *erga omnes partes* in the sense that each state party has an interest in compliance with them³¹, which means that any state party to these instruments, and not only a specially affected state, may invoke the responsibility of another state party.³²

Regarding the scope *ratione materiae*, the WSOD specifies that R2P imply the protection of populations from mass atrocities. According to the wording of the WSOD, R2P seeks to protect people from genocide, war crimes, ethnic cleansing, and crimes against humanity. Genocide is understood as ‘any acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such’ as specified by Article II of the 1948 Genocide Convention, and Article 6 of the 1998 Rome Statute of International Criminal Court (Rome Statute)³³. The crime against humanity is defined as ‘any of the acts listed in Article 7 of the Rome Statute’ when ‘committed in the context of a widespread or systematic attack on any civilian population and with knowledge of this attack’. As David underscored, the notion of a widespread or systematic attack directed against a civilian population does not necessarily imply the existence of an armed conflict *stricto sensu*.³⁴ A war crime is understood as ‘any of the grave breaches or grave violations listed in Article 8 of the Rome Statute’ when ‘committed in the context of an international armed conflict or a non-international armed conflict’. Ethnic cleansing is not in itself a crime under international law but it is recognized that acts of ethnic cleansing may constitute a crime of genocide, a crime against humanity or a war crime.³⁵

Concerning the scope *ratione temporis* and the modalities of R2P implementation, the WSOD highlights that R2P obligators should use the tools and methods under the UN Charter. The R2P implementation may take the form of preventing the targeted crimes, responding to the targeted crimes, or post-conflict reconstruction with a preventive perspective. It is based on three pillars. As Lwabukuna underlines, ‘Pillar One assigns the main responsibility for the welfare and safety of civilians (...) to their states.’³⁶ In a similar vein, the UN Secretary-General underscored that implementing Pillar One may entail a variety of actions or measures including the ratification of relevant international instruments, the domestication of the provision of these legal instruments, the collaboration with conventional and extra-conventional human rights bodies, the cooperation with international prosecuting mechanisms of mass atrocities, the establishment of independent institutions and mechanisms with a mandate to promote and protect human rights, the strengthening of the capacities of human resources responsible for enforcing the law and leading the legal proceedings, and the promotion of a vibrant civil society and independent press capable of contributing

²⁷Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v Russian Federation*) (Request for the Indication of Provisional Measures: Order) [2022] ICJ Rep 182 paras. 13, 15, 17, 19, and 21.

²⁸Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*South Africa v Israel*) (Request for the Indication of Provisional Measures: Order) [2024] ICJ Rep 192.

²⁹Convention on the Prevention and Punishment of the Crime of Genocide (opened for signature 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 (Genocide Convention).

³⁰Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 9 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (Torture Convention).

³¹*Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (Judgment) [2012] ICJ Rep 144 para 68; *Gambia v Myanmar* case (n 25) paras. 40 and 41.

³²*Gambia v. Myanmar* case (n 25) paras. 40, and 41.

³³Rome Statute of International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (Rome Statute).

³⁴Eric David *Principes de droit des conflits armés* (4^e ed, Bruylant 2008) 829.

³⁵UN Doc. A/63/677 (n 17) para. 3.

³⁶Olivia Lwabukuna, ‘The Responsibility to Protect Internally Displaced Persons in Africa’ (2021) 65(S1). *Journal of African Law* 73, 75.



to the mass atrocities prevention as well as promoting a resolute and timely response to the occurrence of such atrocities.³⁷

Pillar Two builds on the commitment made by the international community to assist states in enforcing their obligations. It is based on the cooperation of states, regional and sub-regional agreements, initiatives of civil society, and the private sector as well as on the institutional strengths and relative advantages of the UN system.³⁸ According to the UN Secretary-General, this kind of assistance may take the form of *'encouraging states to fulfil their responsibilities under [P]illar [O]ne, helping states to exercise this responsibility, helping states to equip themselves with the means to protect their populations and to provide assistance to countries in which tensions exist before a crisis or conflict erupts.'*³⁹ Pillar Two may also include *'persuasive measures and positive incentives, but also military assistance to help states in difficulty to confront armed non-state actors who threaten both the state and its population.'*⁴⁰ Therefore, international assistance may take the form of confidential or public moral pressure or measures of education, training, and /or assistance.⁴¹ The actions and measures undertaken within the framework of the Pillars One and Two may also involve structural efforts *inter alia* legal and institutional reforms aimed at building the state's resilience to atrocity crimes as well as operational efforts like preventive diplomacy, human rights observers, and fact-finding missions on atrocity crimes.⁴²

Pillar Three aims to respond timely to mass atrocities occurring elsewhere when it is found that states are failing or unwilling to do so. In this regard, the UN Charter's Chapter VI specifies a range of non-coercive means that may be undertaken as responses to crises. These responses may take the form of negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional arrangements, or other peaceful means. Some of these efforts may be undertaken by the UN Secretary-General in his good offices' role or by regional and subregional arrangements under article 52 of the UN Charter, without the explicit authorisation of the UN Security Council. Chapter VII provides for collective measures that may be authorised by the UN Security Council under Articles 41 and 42 as responses to mass atrocities. Collective measures under Article 41 may take the form of economic, military and diplomatic sanctions namely freezing financial assets, imposing travel bans; suspending credits, aid and loans from international financial institutions; restricting the provision of other financial services to government or individual officials; controlling the availability of weapons and related materials and high-value commodities; limiting diplomatic contact of States with a target entity; applying embargoes on participation in international sporting events, and imposing restrictions on scientific and technical cooperation. Collective measures under Article 42 entail the use of force which may take the form of the deployment of multinational forces for establishing security zones, imposition of no-fly zones, the establishment of a military presence on land and at sea for protection or deterrence purposes, or any other means determined by the Security Council. In case of deadlock, the UN General Assembly may exercise a range of related functions under Articles 10-14 and undertake the uniting for peace procedure pursuant to Resolution 377 (V).⁴³ Chapter VIII paves also the way for dealing with such matters relating to the maintenance of international peace and security under regional and sub-regional

³⁷UN Doc. A/63/677 (n 17) paras. 14, 16, 17 and 19.

³⁸UN Doc. A/63/677 (n 17) para. 11.

³⁹Ibid. para. 28.

⁴⁰Ibid. para. 29.

⁴¹Ibid. paras. 30, 33 and 38.

⁴²For an overview, see UN Secretary-General 'The Role of Regional and Sub-regional Arrangements in Implementing the Responsibility to Protect' (2011) UN Doc. A/65/877- S/2011/393 para. 21; UN Secretary-General 'Responsibility to Protect: State Responsibility and Prevention' (2013) UN Doc. A/67/929- S/2013/399; UN Secretary-General 'Responsibility to Protect: Timely and Decisive Response' (2012) UN Doc. A/66/874-S/2012/578 paras. 11-12; UN Secretary-General 'Implementing the responsibility to protect: accountability for prevention' (2017) UN Doc. A/71/1016-S/2017/556.

⁴³UN Doc. A/63/677 (n 17) para. 11.



arrangements with the approval of the UN Security Council. It follows that pillar three may also activate the regional and sub-regional organisations.⁴⁴ These organisations can, among other things, encourage the governments of the region or the sub-region to recognize the obligations placed on them by international legal instruments, and then, eliminate the sources of friction within their society before the situation turns into violence or atrocities. They provide a framework for the development of norms, criteria, and institutions aimed at promoting tolerance, transparency, accountability and the constructive management of diversity. They play a role to reduce the damaging effects of man-made or natural disasters and help to ensure that information and analytical results reach decision-makers at the global level in a timely and unaltered manner, while reducing the risk of misunderstandings, errors and deliberate distortions.⁴⁵ In this regard, the International Conference for the Great Lakes Region adopted on 15 December 2006 a relevant instrument providing for the prevention and punishment of mass atrocities.⁴⁶

In light of what is highlighted above, it is important to note that the implementation of R2P may take the form of timely and decisive collective action for prevention and post-conflict peace building. Finally, implementing R2P also ensure respect for all civil and political rights as well as all economic, social, and cultural rights. In this prospect, Özden and Astruc underscore that the R2P doctrine goes beyond armed intervention⁴⁷ while Sarkin underlines that R2P efforts must address the causes of conflicts and the occurrence of human rights violations⁴⁸.

B. A Relatively Well-Established Autonomous Norm of International Law

The analysis of documentary resources shows that R2P is a kind of container norm, gathering several well-established conventional and customary norms of international law. Even though R2P is not codified in a specific treaty, there is evidence that its core principles are enshrined, in various aspects, in several international legal instruments. This is reflected in the ICISS report, the 2013 UN Secretary-General Report, and scholarly works.

The ICISS highlights that R2P's foundations lie in obligations inherent in the concept of sovereignty, the responsibility of the Security Council under Article 24 of the UN Charter, specific legal obligations under numerous legal instruments of human rights, as well as in the developing practice of states, regional organisations and the UN Security Council.⁴⁹ In a similar vein, the UN Secretary-General observed that R2P is in a straight line with the obligations binding any state under IHL, IHRL, and refugee law.⁵⁰ Likewise, De Chazournes and Condorelli notice that the legal components of the 'R2P' concept or 'right to intervene' were consolidated since 1945,⁵¹ while Helen and Wynne-Pope point out that the authority of R2P derives from existing regimes of international law, including IHL and ICL.⁵² Sarkin underlines that the origins of R2P can be found in the Martens clause, as well as in various UN Security Council Resolutions.⁵³ Zähringer notes that

⁴⁴UN Doc. A/65/877- S/2011/393 (n 38) paras. 3-7.

⁴⁵Ibid. paras. 17, 23 and 27.

⁴⁶Pact on Security, Stability, and Development in the Great Lakes Region (adopted 15 December 2006, entered into force 21 June 2008) art. 8.

⁴⁷Özden and Maëli Astruc (n 11) 15, 16.

⁴⁸Jeremy Sarkin, 'The Role of the United Nations, the African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect' (2009) 53(1) *Journal of African Law* 1, 11-12.

⁴⁹ICISS (n 1) XI.

⁵⁰UN Doc. A/67/929- S/2013/399 (n 38) para. 6.

⁵¹De Chazournes and Condorelli (n 10) 13.

⁵²H Durham and P Wynn-Pope, 'The relationship between international humanitarian law and responsibility to protect: From Solferino to Srebrenica' in P Vesselin *et al.* (n 14) 185-189.

⁵³Sarkin (n 48) 9-15.



R2P encourages states to act on what they have already agreed to in principle⁵⁴. For their part, Ahouansou and Aluoch emphasize the legal instruments that lay the groundwork for R2P in Africa.⁵⁵

In this regard, our research outcomes show that R2P comprises various norms in the following legal instruments: the 1945 United Nations Charter,⁵⁶ the 1966 International Covenant on Civil and Political Rights,⁵⁷ the 2006 Convention for the Protection of Persons from Enforced Disappearance,⁵⁸ the 1984 Convention against Torture and other Cruel, Inhuman Treatment, Degrading or Punishment,⁵⁹ the 1989 Convention on the Rights of the Child,⁶⁰ the 1949 Geneva Conventions on IHL (GC I, GC II, GC III, and GC IV),⁶¹ the 2000 AU Constitutive Act,⁶² the 1948 Genocide Convention,⁶³ the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid,⁶⁴ the 1968 Convention on the Non-applicability of Statutory Limitations to War crimes and Crimes Against Humanity,⁶⁵ the 1977 Additional Protocols I and II to the GC I-IV,⁶⁶ the 2000 Optional Protocol to the Convention on the Rights of the Child concerning the Involvement of Children in Armed Conflict⁶⁷, the 1998 Rome Statute, the 2006 Pact on Security, Stability and Development in the Great Lakes Region and its Protocols (2006 Pact on the Great Lakes Region)⁶⁸, and the 2014 AU Protocol amending the Protocol relating to the Statute of the African Court of Justice and Human Rights (2014 AU Protocol)⁶⁹.

Moreover, our research outcomes highlight that R2P is reflected in the states' practice, as it is evidenced by several ratifications of the above-mentioned international instruments,⁷⁰ the appointment of 63 Focal

⁵⁴Zähringer (n 16) 9.

⁵⁵Wilfred Ahouansou 'Eradiquer la menace terroriste au Nigéria par la coopération régionale : nécessité et moyens d'actions' Policy Brief 12 *L'Afrique des idées*; Aluoch (n 16) 2-3.

⁵⁶UN Charter arts. 2 (2) and 25; Ch VI, VII and VIII.

⁵⁷International Covenant on Civil and Political Rights (adopted 19 December 1966 entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art. 2.

⁵⁸International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3 arts. 3, 4, 6, 7, 8 and 9.

⁵⁹Torture Convention arts. 2, 4 and 5.

⁶⁰Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 preamble and arts. 2, 3, and 4.

⁶¹Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force on 21 October 1950) 75 UNTS 31 (Geneva Convention I) arts. 1 and 63; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85 (Geneva Convention II) arts. 1 and 62; Convention (III) relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 (Geneva Convention III) arts. 1 and 142; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (Geneva Convention IV) arts. 1 and 158.

⁶²Constitutive Act of African Union (adopted 11 July 2000, entered into force 26 May 2001) 2158 UNTS 3 art. 4 (h).

⁶³Genocide Convention arts. I, V, VI, VII, and VIII.

⁶⁴International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entered into force 18 July 1976) 1015 UNTS 243 arts. I and IV.

⁶⁵Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity (adopted 26 November 1968, entered into force 11 November 1970) 754 UNTS 73 arts. III and IV.

⁶⁶Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 07 December 1978) 1125 UNTS 3 art. 1(2); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 07 December 1978) 1125 UNTS 609 preamble.

⁶⁷Optional Protocol to the Convention on the Rights of the Child concerning the Involvement of Children in Armed Conflict (adopted 25 May 2000, entered into force on 12 February 2002) 2173 UNTS 222.

⁶⁸Pact on Security, Stability and Development in the Great Lakes Region (adopted 15 December 2006, entered into force 21 June 2008) art. 8.

⁶⁹Protocol amending the Protocol relating to the Statute of the African Court of Justice and Human Rights (adopted 27 April 2014, not yet in force).

⁷⁰ICRC 'State Parties to the Following International Humanitarian Law and Other Related Treaties as of 27-May-2021' 5 June 2021; < https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=_en > accessed 5 June 2021.



Points for the R2P,⁷¹ the approval of the Security Council Code of Conduct against mass atrocities,⁷² the support of the French-Mexico Political Declaration on the suspension of the right to veto in case of mass atrocities,⁷³ several state self-referrals of mass atrocities to the ICC,⁷⁴ the trial of the former Chadian dictator Hissène Habré,⁷⁵ and the proceedings before the ICJ under the 1948 Genocide Convention and the 1984 Torture Convention⁷⁶. The customary character of the norm is also reflected in the statements of the R2P Group of Friends,⁷⁷ the European Union,⁷⁸ Bolivia,⁷⁹ Tanzania,⁸⁰ South Africa,⁸¹ Georgia,⁸² Argentina,⁸³ Togo,⁸⁴ Israel,⁸⁵ Indonesia,⁸⁶ Albania,⁸⁷ Belgium,⁸⁸ United Kingdom,⁸⁹ Nigeria,⁹⁰ Burundi,⁹¹ Colombia,⁹² Equator⁹³

⁷¹GCR2P, 'Statement on behalf of the Steering Group of the Global Network of R2P Focal Points at the UN Human Rights Council inter-sessional panel on the responsibility to protect' 11 May 2021 <<https://www.globalr2p.org/resources/statement-on-behalf-of-the-steering-group-of-the-global-network-of-r2p-focal-points/>> accessed 15 September 2021.

⁷²GCR2P 'List of Supporters of the Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes elaborated by ACT as Updated on 8 June 2022' <<https://www.globalr2p.org/resources/list-of-signatories-to-the-act-code-of-conduct/>> accessed 9 August 2022.

⁷³GCR2P 'List of Supporters of the French-Mexico Political Declaration on Suspension of Veto as Updated on 13 July 2022' <<https://www.globalr2p.org/resources/list-of-supporters-of-the-political-declaration-on-suspension-of-veto/>> accessed 12 March 2025.

⁷⁴*Decision assigning the situation in the Democratic Republic of Congo to Pre-Trial Chamber I*, ICC-01/04, 5 July 2004; *Decision assigning the Situation in the Central African Republic II to Pre-Trial Chamber II*, ICC-01/14, 18 June 2014; *Case Information Sheet on the Situation in Côte d'Ivoire: The Prosecutor v Laurent Gbagbo and Charles Blé Goudé*, ICC-PIDS-CIS-CIV-04-05/20_Eng, July 2021; *Case Information Sheet on the Situation in the Republic of Mali: The Prosecutor v. Ahmad Al Faqi Al Mahdi*, ICC-PIDS-CIS-MAL-01-09/22_Eng, January 2022.

⁷⁵Decision Assembly/AU/Dec. 3 (VII) on Hissène Habré Trial, 2 July 2006.

⁷⁶For an overview, see *The Gambia v Myanmar*, *Ukraine v Russia Federation*, *Belgium v Senegal* and *South Africa v Israel* cases (n 25, 26, 27 and 28).

⁷⁷For an overview, see 'Statement delivered on behalf of the Group of Friends on the Responsibility to Protect', 26 February 2016 <<https://www.globalr2p.org/resources/statement-on-behalf-of-the-group-of-friends-on-the-responsibility-to-protect-at-the-un-general-assembly-thematic-panel-discussion-from-commitment-to-implementation-ten-years-of-the-responsibility/>> accessed 8 July 2022; 'Statement on behalf of Group of Friends for the Responsibility to Protect at the 17 May 2021 Formal Debate of the General Assembly on the Responsibility to Protect and the Prevention of Genocide, War Crimes, Ethnic Cleansing and Crime against Humanity', 17 May 2021 < <https://www.globalr2p.org/resources/statement-delivered-on-behalf-of-members-of-the-group-of-friends-of-r2p-at-the-2021-un-general-assembly-debate-on-r2p/>> accessed 10 July 2022.

⁷⁸For an overview, see UNGA Verbatim Record (16 September 2019) UN Doc. A/73/PV.107 23; 'Statement by the European Union at the UN General Assembly Thematic Panel Discussion, From Commitment to Implementation: Ten Years of the Responsibility to Protect', 26 February 2016 <<https://www.globalr2p.org/resources/statement-by-the-european-union-at-the-un-general-assembly-thematic-panel-discussion-from-commitment-to-implementation-ten-years-of-the-responsibility-to-protect-26-february-2016/>> accessed 20 July 2022.

⁷⁹For an overview, see UNGA Verbatim Record (14 September 2009) UN Doc. A/63/PV.105 5.

⁸⁰For an overview, see 'Statement by Tanzania at the UN General Assembly Thematic Panel Discussion, From Commitment to Implementation: Ten Years of the Responsibility to Protect', 26 February 2016 <<https://www.globalr2p.org/resources/statement-by-tanzania-at-the-un-general-assembly-thematic-panel-discussion-from-commitment-to-implementation-ten-years-of-the-responsibility-to-protect-26-february-2016/>> accessed 25 July 2022.

⁸¹For an overview, see UNGA Verbatim Record (28 June 2019) UN Doc. A/73/PV.95 22.

⁸²Ibid. 25.

⁸³Ibid. 27.

⁸⁴Ibid. 29.

⁸⁵Ibid. 30.

⁸⁶Ibid. 30.

⁸⁷For an overview, see Verbatim Record (18 May 2021) UN Doc. A/75/PV.66 [1] and [2]

⁸⁸For an overview, see 'Statement by Belgium at the 2017 UN General Assembly informal interactive dialogue on the Responsibility to Protect', 6 September 2017 < <https://www.globalr2p.org/resources/statement-by-belgium-at-the-2017-un-general-assembly-informal-interactive-dialogue-on-the-responsibility-to-protect/>> accessed 8 July 2022.

⁸⁹For an overview, see 'Statement by the United Kingdom at the 2017 UN General Assembly informal interactive dialogue on the Responsibility to Protect', 6 September 2017 <<https://www.globalr2p.org/resources/statement-by-the-united-kingdom-at-the-2017-un-general-assembly-informal-interactive-dialogue-on-the-responsibility-to-protect/>> accessed 8 July 2022.

⁹⁰For an overview, see 'Statement Delivered by the Delegation of Nigeria to the United Nations, at the United Nations General Assembly Thematic Panel Discussion on From Commitment to Implementation: Ten Years of the Responsibility to Protect', 26 February 2016 <<https://www.globalr2p.org/resources/statement-by-nigeria-at-the-un-general-assembly-thematic-panel-discussion-from-commitment-to-implementation-ten-years-of-the-responsibility-to-protect-26-february-2016/>> accessed 8 July 2022.

⁹¹For an overview, see 'Statement Delivered by the Delegation of Burundi to the United Nations, at the United Nations General Assembly Thematic Panel Discussion on From Commitment to Implementation: Ten Years of the Responsibility to Protect', 25 February 2016 <<https://www.globalr2p.org/wp-content/uploads/2019/08/2016-TPD-Burundi.pdf>> accessed 8 July 2022.

⁹²UN Doc. A/75/PV.66 (n 87) 4.



delivered during UN General Assembly debates on the R2P. Likewise, there is evidence of the renewed commitments of states to §§ 138 and 139 of the 2005 WSOD as the GCR2P points out.⁹⁴ It is interesting to underscore that, despite some states' (like Russia, China, Venezuela, Cuba, Iran, Sudan, Nicaragua, Syria, Zimbabwe, North Korea, and Myanmar) raise concerns over the third pillar, their statements still show that they believe in the idea of protecting populations from genocide, war crimes and crimes against humanities.⁹⁵ It follows that R2P has seen a convergence of interpretations that covers all regions.⁹⁶

Similarly, there is evidence of the recognition of R2P in the practice of the UN and other international organisations, as evidenced by several UN General Assembly resolutions on the R2P, terrorism, human rights, promotion of peace and tolerance, extrajudicial executions as well as on the situation in Syria, Myanmar, and the Democratic People's Republic of Korea (DPRK)⁹⁷; UN Security Council resolutions on the protection of civilians, children, women and journalists in time of armed conflict, the threat of peace and international security⁹⁸ and Human Rights Council resolutions on the R2P, the human right and transitional justice, the genocide prevention, as well as on the situation in Guinea, Libya, Syria, DPRK, South Sudan, Sudan, DRC, CAR, Ethiopia and Burundi.⁹⁹ Its recognition is also reflected in the UN 2030 Agenda,¹⁰⁰ the 2006 Declaration of Saint-Boniface¹⁰¹, the AU 2063 Agenda,¹⁰² the 2008 Conflict Prevention Framework of the Economic Community of West African States (ECOWAS)¹⁰³, the 2013 ECOWAS Counterterrorism Strategy¹⁰⁴, the 2006 Pact on Security, Stability and Development in the Great Lakes Region and its Protocols, the 2008 Charter of the Association of Southeast Asian Nations (ASEAN) and other relevant documents and agreements,¹⁰⁵ and the appointment of European Union Focal Point for the R2P¹⁰⁶.

In light of what is highlighted above, it should not be erroneous to conclude that R2P is a legal reality embodied in both existing conventional and customary norms. It is not wrongful to consider the statements like *"we accept that responsibility and will act by it"*, *"we are prepared to take collective action, in a timely and decisive manner"*, and *"we also intend to commit ourselves, as necessary and appropriate, to helping states*

⁹³Ibid. 3.

⁹⁴For an overview, see GCR2P, 'Summary of the Informal Interactive Dialogue of the UN General Assembly on the Responsibility to Protect' 6 September 2017 <<https://www.globalr2p.org/publications/summary-of-the-informal-interactive-dialogue-of-the-un-general-assembly-on-the-responsibility-to-protect-6-september-2017/>> accessed 8 July 2022.

⁹⁵For an overview of their commitment to protecting populations from atrocity crimes, see UN Doc. A/73/PV.95 (n 81) 4 and 24 for Cuba and Iran; UN Doc. A/63/PV.105 (n 79) 6 for Sudan; UN Doc. A/73/PV.107 (n 78) 22, 23, 25, 27, 30 and 31 for Syria, Zimbabwe, RPDC, and Myanmar; UNGA Verbatim Record (18 September 2020) UN Doc. A/75/PV.2 8; UN Doc. A/75/PV.66 (n 87) 5 and 7 for Nicaragua, Russia, and Cuba; China's Statement at the 2016 UN General Assembly Thematic Panel Discussion, "From Commitment to Implementation: Ten Years of Responsibility to Protect", [Transcribed], 26 February 2022, as published by GCR2P.

⁹⁶Welsh, 2019 (n 11) 59. In essence, this diversity is reflected by both norm supporters and norm challengers strengthens the R2P. See also Zähringer (n 16) 11.

⁹⁷For an overview, see GCR2P 'R2P References in United Nations General Assembly Resolutions as Updated on 18 April 2022' <<https://www.globalr2p.org/resources/un-general-assembly-resolutions-referencing-r2p-2/>> accessed 10 July 2022.

⁹⁸As well as in the resolutions on situations in the Great Lakes Region, the Democratic Republic of Congo (DRC), Burundi, Sudan, South Sudan, Libya, Yemen, Somalia, Mali, the Central African Republic (CAR), Liberia, and Syria. For an overview, see GCR2P 'R2P References in United Nations Security Council Resolutions and Presidential Statements updated on 8 April 2021' <<https://www.globalr2p.org/resources/un-security-council-resolutions-and-presidential-statements-referencing-r2p/>> accessed 11 July 2021.

⁹⁹For an overview, see GCR2P 'R2P References in United Nations Human Rights Council Resolutions as Updated on 8 July 2022' <<https://www.globalr2p.org/resources/un-human-rights-council-resolutions-referencing-r2p/>> accessed 10 July 2022.

¹⁰⁰United Nations *Transforming our world: the 2030 Agenda for Sustainable Development*, UN Doc. A/RES/70/1 (2015), SDG 16.

¹⁰¹Déclaration de Saint-Boniface (adoptée 14 mai 2006), para. 2.

¹⁰²Union Africaine 'Agenda 2063 : l'Afrique que nous voulons' (avril 2015) paras. 27-39.

¹⁰³Conflict Prevention Framework of the Economic Community of West African States (Regulation MSC/REG.1/01/08 adopted on 16 January 2008).

¹⁰⁴Economic Community of West African States Counterterrorism Strategy (adopted February 2013).

¹⁰⁵Noel M Morada, 'Asean and the Rakhine Crisis: Balancing Non-Interference, Accountability, and Strategic Interests in Responding to Atrocities in Myanmar' (2021) 13 *Global Responsibility to Protect* 131, 134.

¹⁰⁶Cristina G Stefan and Edward Newman, 'Europe's Progress and the Road Ahead at R2P's 15th Anniversary' (2020) 12 *Global Responsibility to Protect* 369, 370.



build capacity to protect their populations” employed in §§ 138 and 139 of the 2005 WSOD, as unequivocally expressing states’ consent to protect populations under their jurisdiction. These formulas show the states’ *opinio juris* on a relatively autonomous legal norm. Moreover, the AU, OIF and the UN bodies took up R2P in several resolutions. This express a form of *opinio juris* in international organisations. It follows that the question of the normativity of R2P hardly arises.¹⁰⁷

Accordingly, it is not erroneous to affirm that the R2P’s duty-bearers may be liable for failure to protect populations from mass atrocities under the rules governing the state’s responsibility for internationally wrongful acts, as evidenced by ICJ decisions and proceedings regarding the above-mentioned *Belgium v Senegal*, *Gambia v Myanmar*, *South Africa v. Israel*, and *Ukraine v Russian Federation* cases. This form of liability may be extended to international organisations pursuant to the 2011 International Law Commission Draft of Articles on the liability of international organisations for wrongful acts. However, as shown in the following section, the states’ concerns expressed during the UN discussions and deliberations on R2P may be understood as a reflection of the everlasting opposition between proponents of multilateralism and defenders of state sovereignty. Thus, any analysis of the acceptability and reinforcement of the norms of international law should not obscure the reality that sovereignty and state consent shape, in one way or another, the implementation of those norms.

III. R2P as a Legal Norm Subject to State Logic and Global Politics

The controversies arising among scholars and diplomats on the scope of R2P are connected to the logic of interests and power balance that features international relations. Even though R2P emerged as the concept of human security,¹⁰⁸ its effectiveness remains influenced by state logic and global politics as reflected in the scholarly works as well as in the UN and AU practice.

A. Scholarly Works Overview

Analysis of scholarly works show the amount of the effects of global politics over R2P. In this regard, Jeangene Vilmer considers that states intervene not only for normative reasons but also for political, economic, geostrategic, and prestige reasons.¹⁰⁹ In a similar vein, Crouzatier observes that states invoke or reject R2P to promote their interests.¹¹⁰ According to him, states claim the right to intervene when they deem it beneficial to their policy and their ambitions.¹¹¹

Similarly, Šimonović, Cinq-Mars, and Traub notice that the state calculations shaped the UN responses to the situation in Myanmar, Syria, Sudan, CAR, and Burundi. Šimonović observes that *‘the EU member states and the US as well as different UN entities had opposed views regarding early warning signs and how to react to them in the case of Myanmar’*¹¹². Traub notes that AU was slow to recognize the gravity of the situation in Darfur, and once it did so, the organisation’s response was shaped by a deep reluctance to violate the

¹⁰⁷The R2P’s core principles also emerge with reflections on just war and evolve with the codification of the international human rights protection régime as well as the international criminal justice, David (n 34) 749 ss.

¹⁰⁸Cabanis et al. (n 15) 24 ; Kabaka and Amouzou (n 10) 4.

¹⁰⁹According to him, each state intervenes to give itself a certain ethos, to increase its moral credibility, which presupposes the existence of competition, and emulation so that at least some of the other states act in the same way. See Jeangene Vilmer Jean-Baptiste, ‘Au nom de l’humanité? Histoire, droit, éthique et politique de l’intervention militaire justifiée par des raisons humanitaires’ (Ecole des Hautes Etudes en Sciences Sociales (EHES) et Université de Montréal 2009) 17 – 24 <https://papyrus.bib.umontreal.ca/xmlui/bitstream/handle/1866/4242/Jeangene-Vilmer_Jean-Baptiste_2009_these.pdf?sequence=6&isAllowed=y>.

¹¹⁰Jean Marie Crouzatier ‘Le Principe de la responsabilité de protéger : avancé de la solidarité internationale ou ultime avatar de l’impérialisme’, (2008) 2 Revue ASPECTS 13-32.

¹¹¹Ibid.

¹¹²Ivan Šimonović, ‘Why “Never Again” and R2P Did Not Work in Myanmar’ (2021) 13 Global Responsibility to Protect 389.



wishes of an important member¹¹³. According to Traub, ‘neither the organisation nor prominent members were prepared to criticize Khartoum’¹¹⁴. For his part, Cinq-Mars underscores that ‘the United States was unconvinced throughout 2013 that a UN peacekeeping mission was necessary, while African States, China, and Russia [were] calling for more time and support to be given to MISCA’¹¹⁵, which resulted in a delayed transition from the ECCAS-led MICOPAX¹¹⁶ to the AU-led MISCA’¹¹⁷.

Accordingly, it is important to keep in mind that any reflection on the controversies surrounding the scope of R2P must take into account the voluntarist postulate which places the state at the heart of the normative process. We must not forget that states that endorsed the R2P core principles are the same states that are challenging its implementation. Therefore, all rules of international law are influenced, in one way or another, by states’ fundamental interests and moral values.

It is exactly in this order of views that anyone must circumscribe the understanding of the rhetoric surrounding the R2P enforcement. Much like what happened during the Cold War about human rights, the R2P discourse is a kind of ‘ideological bargaining’.¹¹⁸ The related diplomatic discourse is framed through three positions. The first position emerges from actors (among others the US, the EU and its member states, and the R2P Group of Friends) that are fully committed to R2P in all its pillars. The second position arises from those who are favourable in discourses but condition the R2P enforcement on strict respect for national sovereignty; *inter alia* Russia, China, some African states, the AU as well as the Non-Aligned Movement. The third position is promoted by the permanent objecting states namely Cuba, Iran, North Korea, Sudan, Syria, and Venezuela that perceive R2P as ‘invoked just to advance political agendas’ or used as ‘an excuse to drive regime change’ as well as ‘to plunder the resources of sovereign states’. These controversies are undoubtedly a reflection of the permanent opposition between the advocates of multilateralism and the defenders of state sovereignty.

B. UN and AU Practice

Analysis of UN and AU official documents highlights that states’ interests and power balance have been and are still shaping the R2P development as well as its enforcement. For example, UN Resolution S/RES/1706 (2006) on the situation in Sudan was adopted with 12 affirmative votes and 3 abstentions from Russia, China and Qatar, while Resolution S/RES/1973 (2011) on the situation in the Libyan Arab Jamahiriya was adopted with 10 votes in favour and 5 abstentions from China, Russia, Germany, Brazil, and India. Literature review shows that these states abstained from supporting Resolution S/RES/1706 (2006) because this resolution disregarded Sudan’s consent and the Security Council did not take into account their request to postpone the adoption of the resolution for creating a conducive environment to its smooth implementation.¹¹⁹ However, the diplomatic support to Sudan’s authorities has influenced the enforcement of the UN Security Council resolutions on the country. On the other hand, the abstaining states did not approve Resolution S/RES/1973 (2011) for various reasons. Germany abstained because of the high risks

¹¹³James Traub ‘Unwilling and Unable: The Failed Response to the Atrocities in Darfur’ (2010) 1, Global Centre for Responsibility to Protect Occasional Paper Series 25-26.

¹¹⁴Ibid.

¹¹⁵French acronym meaning «Mission internationale de soutien à la Centrafrique» established under the auspices of the African Union.

¹¹⁶English acronym meaning The Mission of Consolidation of Peace in Central African Republic under the auspices of the Economic Community of Central African States.

¹¹⁷Evans Cinq-Mars ‘Too Little, Too Late: Failing to Prevent Atrocities in the Central African Republic’ (2015) 7 Global Centre for Responsibility to Protect Occasional Paper Series 14.

¹¹⁸Jean Jacques Gaudino *Anthropologie sur les droits de l’homme* (Librio 1998) 5.

¹¹⁹UNSC Verbatim Record (31 August 2006) UN Doc. S/PV.5519 5, 7 and 9.



of the use of military force and its considerable consequences in terms of loss of life.¹²⁰ India abstained due to the lack of credible information regarding the situation on the ground in Libya and details of the coercive measures including the participants in the operation, the means and modalities of implementation of these measures on the one hand and the adverse consequences of the proposed financial measures on the economic interests of the Libyan population and other populations that depend on trade and economic ties between Libya and several states on the other hand.¹²¹ Brazil abstained because it was not convinced that the use of force would bring an immediate end to the violence and protect civilians and it feared that such measures could exacerbate tensions on the ground and thus do more harm than good to the very civilians they were intended to protect.¹²² Russia abstained because the wording on the adopted text did not conform to the established practice of the UN Security Council.¹²³ China abstained to express solidarity with Libyan regime as well as to the position of regional actors on the situation in Libya. China's ambassador underscored that, not only, his country was against the use of force in international relations, but it was also in favour of the Arab League position on the establishment of a no-fly zone over Libya, as well as the AU and African countries position over the settlement of this conflict.¹²⁴

Decision 73/572 on the inclusion of R2P on the formal agenda of the UN General Assembly sessions was adopted with 121 votes in favour, 13 votes against, and 32 abstentions while Decision 74/584 on the same topic was adopted with 101 votes in favour, 13 votes against, and 22 abstentions. Resolution A/RES/75/277 (2021) on R2P and prevention of genocide, war crimes, ethnic cleansing, and crimes against humanity was adopted with 115 votes in favour, 15 votes against, and 28 abstentions. The records of meetings highlight that these states abstained or voted against Decisions 73/572 and 74/584 as well as Resolution A/RES/75/277 because they were concerned about the use of the rules of procedure governing the inclusion of items on the UN General Assembly agenda and the states controversies on the scope of R2P.¹²⁵

Similarly, Resolution S/RES/2303 (2016) on the situation in Burundi was adopted with 11 votes in favour, and 4 abstentions from Angola, China, Egypt, and Venezuela. The record meeting shows that these states abstained from supporting this resolution for various reasons. Egypt abstained because the resolution did not take into account its concerns and imposed an option contested by Burundian authorities.¹²⁶ Angola abstained for four reasons. First, Angola was satisfied with the AU's active engagement in Burundi and the fact that the Burundian authorities had agreed to the deployment of 200 human rights observers and military experts on their territory. Second, Angola believed that coordination and cooperation with the Burundian government were essential to ensure that the work would lead to the restoration of peace in Burundi and, therefore, the progressive deployment of a UN police component should be done in consultation with the Burundian government. Third, the resolution should make a tangible contribution to the political dialogue that was to be put in place, based primarily on strengthening cooperation between the Burundian government, the East African Community mediator and facilitator, and the Special Advisors on the Responsibility to Protect and the Prevention of Genocide. Fourth, Angola's proposals for a broadly acceptable compromise were not sufficiently reflected in the adopted resolution.¹²⁷ China abstained because the reso-

¹²⁰UNSC Verbatim Record (17 March 2011) UN Doc. S/PV.6498 5.

¹²¹Ibid. 6.

¹²²Ibid. 7.

¹²³Ibid. 8.

¹²⁴Ibid. 10.

¹²⁵For an overview, see UNGA Verbatim Records UN Doc. A/73/PV.95 (n 81) 25, UN Doc. A/73/PV.107 (n 78) 22, 23, 25, 26, 27, 29, 30, and 31; UN Doc. A/74/PV.63 [20]; UN Doc. A/75/PV.2 (n 95) 9-10, and UN Doc. A/75/PV.66 (n 87) 6 -7.

¹²⁶For an overview, see UNSC Verbatim Record (29 July 2016) UN Doc S/PV.7752 3.

¹²⁷Ibid. 4.



lution disregarded the principles that UN peacekeeping operations and special political missions should be deployed based on close consultations with the concerned country and respect the principle of host country consent.¹²⁸ Venezuela abstained due to the lack of Burundi's consent to the adopted measures.¹²⁹

In a similar vein, the AU adopted more than ten decisions that challenge the exercise of universal jurisdiction as well as some ICC proceedings¹³⁰ and a protocol that grants immunities to African public authorities from the criminal jurisdiction of the African Court of Justice and Human Rights.¹³¹ AU defied the ICC proceedings against Omar Al Bashir¹³², Mohammar Khaddafi¹³³ as well as Kenyan official.¹³⁴ AU repeatedly called on the ICC and Western states to respect the sovereignty of African states.¹³⁵ According to the AU and some of its member states, the indictments of African leaders were aimed at destabilizing the continent.¹³⁶ They believe that the ICC is pursuing a double standard of justice, one for the poor, one for the rich, and exploiting the doctrine of universal jurisdiction to selectively indict African leaders.¹³⁷ The AU's former chairman, Jean Ping has accused the ICC of bullying Africa into submission¹³⁸ and targeting Africans ignoring the alleged perpetrators of atrocity crimes occurring in Gaza, Caucasus, Colombia, and Iraq¹³⁹.

However, the African Commission on Human and Peoples' Rights (ACHPR) adopted a resolution to strengthen R2P in Africa.¹⁴⁰ ACHPR called on the African states, AU, and UN to expedite the operationalization of the UN/AU hybrid operation in Darfur¹⁴¹ and urged the parties to the conflicts in north-east DRC, Chad, and CAR to respect their obligations under IHRL and to ensure that they respect the fundamental human rights of the civilian population, in particular the rights of women, children, and internally displaced peoples.¹⁴²

In light of what is highlighted above, it is not erroneous to conclude that '*R2P and veto power are inseparable*'.¹⁴³ The disagreements between the five permanent members of the UN Security Council often lead to the Council ineffectiveness.¹⁴⁴ Similarly, the misguided solidarity between African leaders is still

¹²⁸Ibid. 4.

¹²⁹Ibid. 6. For an overview, see Ferdinand Mbirigi, 'Les Nations Unies face à la responsabilité de protéger en Afrique' (Centre de Recherche et Perfectionnement, 2021) 30.

¹³⁰African Union Decisions, AU Doc. Assembly/AU/Dec.199(XI) (2008) ; AU Doc. Assembly/AU/Dec. 221 (XII) (2009); AU Doc. Assembly/AU/Dec.245(XIII)Rev.1 (2009); AU Doc. Assembly/AU/Dec.213 (XII) (2009); AU Doc. Assembly/AU/Dec.243(XIII) Rev.1 (2009); AU Doc. Assembly/AU/Dec.292(XV) (2010); AU Doc. Assembly/AU/Dec. 366(XVII) (2011); AU Doc. Assembly/AU/Dec. 397(XVIII) (2012); AU Doc. Ext/Assembly/AU/Dec.1, (2013); AU Doc. Assembly/AU/Dec.622(XXVIII) (2017); and AU Doc. PSC/PR/COMM.(DXIX) (2015).

¹³¹For an overview, see Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (adopted 27 June 2014, not yet in force) art. 46 A bis.

¹³²Pacifique Manirakiza 'A Twail Perspective on the African Union's Project to Withdraw from the International Criminal Court' (2019) 23 (1) African Ybk Intl L Online 391, 392.

¹³³African Union Decision, AU Doc Assembly/AU/Dec. 366(XVII) (2011) para. 6.

¹³⁴Westen K Shilaho, 'The International Criminal Court and the African Union: Is the ICC a Bulwark against Impunity or an Imperial Trojan Horse?' (2018) 18 African Journal on Conflict Resolution 119, 138 <<https://www.ajol.info/index.php/ajcr/article/view/175832>> accessed 5 June 2022.

¹³⁵Patrick I. Labuda, "The International Criminal Court and Perceptions of Sovereignty, Colonialism and Pan-African Solidarity" (2014) 20 (1) African Ybk Intl L online 300.

¹³⁶For an overview, see African Union Decision AU Doc Ext/Assembly/AU/Dec.1 (Oct. 2013) paras. 4-5; Benson C Olugbuo, 'The African Union, the United Nations Security Council and the Politicisation of International Justice in Africa' (2014) 7(3) African Journal of Legal Studies 351.

¹³⁷Assad G Kiyani, 'The Antinomies of Legitimacy: On the (Im) Possibility of a Legitimate International Criminal Court' (2015) 8 (1-2) African Journal of Legal Studies 4.

¹³⁸'African Union Moves Aggressively to Shield Bashir from Prosecution' *Sudan Tribune*, 29 July 2010 <<https://sudantribune.com/article35539/>> accessed 22 June 2023.

¹³⁹Mary Kimani 'Pursuit of Justice or Western Plot? International Indictments Stir Angry Debate in Africa' (October 2009) Africa Renewal 12.

¹⁴⁰ACHPR Resolution (2007) Doc ACHPR/Res. 117(XXXII) 07.

¹⁴¹Ibid. paras. 4 – 5.

¹⁴²Ibid. para. 7.

¹⁴³Richard Illingworth, 'Responsible Veto Restraint: A Transitional Cosmopolitan Reform Measure for the Responsibility to Protect' (2020) 12 Global Responsibility to Protect 385, 386.

¹⁴⁴Alex J Bellamy and Eduard C Luck, *The Responsibility to Protect: From Promise to Practice* (Polity Press 2018) 100.



challenging the effectiveness of the R2P in African normative and institutional framework. Fortunately, several alternative options for protecting populations from atrocity crimes are still open: the use of the procedure enshrined in Resolution 377(V) when the Security Council is blocked, the Human Rights Council's Inquiry Mechanisms, as well as the universal jurisdiction, ICC and ICJ proceedings.

IV. Conclusion

This research paper demonstrates that, though it has not yet resulted in a coherent legal elaboration¹⁴⁵, R2P remains a well-established legal norm. We hold, with Welsh, that the extensive consideration of R2P during the UN General Assembly has forged consensus on the core aspects of this norm.¹⁴⁶ This order of views is reflected in the 2005 WSOD, numerous legal instruments, as well as in the states and international organizations practice.

Accordingly, R2P is perceived as a relatively autonomous norm that imposes on its obligators an additional obligation besides their obligations to prevent and prosecute atrocity crimes enshrined in both conventional and customary norms. It is built on the conviction that state sovereignty is enhanced through more effective protection.¹⁴⁷ It, however, embodies the tensions between sovereignty and human rights, national security and human security, and peace and justice, which agitate international society.¹⁴⁸ It is interposed between sovereignty and security, two notions that share a long history in modern political thought and practice, and mobilizes human rights theories in a new sense.¹⁴⁹

It follows that the controversies surrounding the R2P debate are a reflection of the international challenges connected to the process of establishing and enforcing any rule of international law. The international legal order is built on states' interests and moral values. The subjectivists consider that the state should only be bound by the rules of international law it has recognized and accepted.¹⁵⁰ On the other side, the objectivists consider that the states may be liable for obligations that arise without or against their will. The fact that states contest or self-interpret their international obligations under R2P does not mean its core principles doesn't exist.¹⁵¹



Peer Review	Externally peer-reviewed.
Conflict of Interest	The author has no conflict of interest to declare.
Grant Support	The author declared that this study has received no financial support.

Author Details **Ferdinand Mbirigi (PhD)**

¹ University of Burundi, Faculty of Political and Legal Sciences, Bujumbura, Burundi

 0000-0003-0742-7499  ferdinandmbirigi@gmail.com

¹⁴⁵Cabanis et al. (n 15) 24.

¹⁴⁶Welsh 2016 (n 11) 76.

¹⁴⁷Welsh 2016 (n 11) 77.

¹⁴⁸Jean Baptiste Jean Jeangene, *La responsabilité de protéger* (PUF 2015).

¹⁴⁹Cabanis et al. (n 15) 25.

¹⁵⁰As Salmon underscores, the resulting consent can be expressed or implied, and the fact of not protesting a rule to be enforceable implies its acquiescence, Jean Salmon, *Droit des gens, mis à jour par Eric David* (T1, Université Libre de Bruxelles, 2003-2004) 41.

¹⁵¹For an overview, see Alexandre Orakhelashvili, *The Interpretation of Acts and Rules in Public International Law* (Oxford University Press 2008); C Tomuschat, 'Obligations arising for States without or against their will' (1993) 241(IV), *Collected Courses of the Hague Academy of International Law*.



Bibliography

Books, Articles and Thesis

- Aggar S, 'La responsabilité de protéger: un nouveau concept?' (Thèse de doctorat, Université de Bordeaux 2016).
- Ahouansou W, 'Eradiquer la menace terroriste au Nigéria par la coopération régionale: nécessité et moyens d'actions' Policy Brief 12 L'Afrique des idées 1 -13.
- Aluoch R, 'The Dilemma of Responsibility to Protect in the Great Lakes Region' (2018) 4(1) *Journal of African Conflicts and Peace Studies* 1 - 18.
- Bellamy A J, Luck E C, *The Responsibility to Protect: From Promise to Practice* (Polity Press 2018).
- Bettati M, 'Du Droit d'ingérence à La Responsabilité de Protéger' (2007) 3 *Outre-Terre* 381 - 389 <<https://www.cairn.info/revue-outre-terre1-2007-3-page-381.htm>> accessed 26 April 2022.
- Brendan Simms & DJB Trim (ed), *Humanitarian Intervention: A History* <https://is.muni.cz/el/fss/jaro2021/IREb2005/110828317/Humanitarian-Intervention-A-History-Simms-Trim_3773_.pdf> accessed 25 January 2024.
- Cabanis A et al., *La responsabilité de protéger: une perspective francophone* (Idea Design and Print 2010).
- Crouzatier JM, 'Le Principe de la responsabilité de protéger : avancé de la solidarité internationale ou ultime avatar de l'impérialisme', (2008) 2 *Revue ASPECTS* 13.
- Cunliffe P, 'The Doctrine of the Responsibility to Protect as a Practice of Political Exceptionalism' (2017) 23 *European Journal of International Relations* 466- 486<<https://kar.kent.ac.uk/55842/>> accessed 26 April 2022.
- David E, *Principes de droit des conflits armés* (4^e édition, Bruylant 2008).
- De Chazournes L B, Condorelli L, 'De la responsabilité de protéger, ou d'une nouvelle parure pour une notion déjà bien établie' (2006) 110 (1) *Revue générale de droit international public* 11 - 18.
- Durham H, Wynn-Pope P, 'The relationship between international humanitarian law and responsibility to protect: From Solferino to Srebrenica' in Popovski V, Francis A, Sampford C (ed), *Norms of protection: responsibility to protect, protection of civilians and their interaction* (UN University Press, 2012).
- Cinq-Mars E 'Too Little, Too Late: Failing to Prevent Atrocities in the Central African Republic' (2015) 7 *Global Centre for Responsibility to Protect Occasional Paper Series* 1-22.
- Gallagher A, Ralph J, 'The Responsibility to Protect at Ten' (2015) 7 *Global Responsibility to Protect* 239-253 <https://brill.com/view/journals/gr2p/7/3-4/article-p239_2.xml> accessed 26 April 2024.
- Gareth E, 'R2P: The Dream and the Reality, Speech Originally Delivered on 26 November 2020 at the European Centre for the Responsibility to Protect's Annual Lecture, at Leeds University' (*Global Centre for the Responsibility to Protect*, 26 November 2020) <<https://www.globalr2p.org/publications/r2p-the-dream-and-the-reality/>> accessed 9 August 2023.
- Gaudino JJ, *Anthropologie sur les droits de l'homme* (Librio 1998).
- Gueldich H, 'Droit d'ingérence et interventions humanitaires: état de la pratique et du droit international' (Thèse de doctorat, Université de Carthage 2008) <https://www.ceja.ch/images/CEJA/theses/Droit_ingérence_interventions_humanitaires.pdf> accessed 30 January 2024.
- Hajjami N, 'La Responsabilité de protéger' (Thèse de doctorat, Université d'Angers et Université Libre de Bruxelles 2012).
- Illingworth R, 'Responsible Veto Restraint: A Transitional Cosmopolitan Reform Measure for the Responsibility to Protect' (2020) 12 *Global Responsibility to Protect* 385- 414.
- Jeangene Vilmer J-B, 'Histoire, droit, éthique et politique de l'intervention militaire justifiée par des raisons humanitaires' (Thèse de doctorat, Ecole des Hautes Etudes en Sciences Sociales (EHESS) et Université de Montréal 2009) <https://papyrus.bib.umontreal.ca/xmlui/bitstream/handle/1866/4242/Jeangene-Vilmer_Jean-Baptiste_2009_these.pdf.pdf?sequence=6&isAllowed=y>.
- Jeangene Vilmer J-B, *La responsabilité de protéger* (PUF 2015).
- Kabaka PI, Amouzou V, *La souveraineté des Etats aux prises du droit d'ingérence internationale. Etude de la portée de la responsabilité de protéger en droit international des droits de l'homme* (2020) < <https://hal.science/hal-02508823v1/document> > accessed 29 April 2024.
- Kimani M, 'Pursuit of Justice or Western Plot? International Indictments Stir Angry Debate in Africa' (October 2009) *Africa Renewal* 12- 15.
- Kiyani G A, 'The Antinomies of Legitimacy: On the (Im) Possibility of a Legitimate International Criminal Court'(2015) 8(1-2) *African Journal of Legal Studies* 1- 32.
- Kurtz G, Rotmann P, 'The Evolution of Norms of Protection: Major Powers Debate the Responsibility to Protect' (2006) 30(1) *Global Security* 3- 20.



- Labuda I P, "The International Criminal Court and Perceptions of Sovereignty, Colonialism and Pan-African Solidarity" (2014) 20 (1) African Ybk Intl L online 289- 321.
- Lwabukuna O, 'The Responsibility to Protect Internally Displaced Persons in Africa' (2021) 65 Journal of African Law 73- 100.
- Manirakiza P, 'A Twail Perspective on the African Union's Project to Withdraw from the International Criminal Court' (2019) 23 (1) African Ybk Intl L Online 391- 424.
- Mbirigi F, 'Les Nations Unies face à la responsabilité de protéger en Afrique' (Centre de Recherche et de Perfectionnement, 2021).
- Morada NM, 'Asean and the Rakhine Crisis: Balancing Non-Interference, Accountability, and Strategic Interests in Responding to Atrocities in Myanmar' (2021) 13 Global Responsibility to Protect 131- 157.
- Olugbuo C B, 'The African Union, the United Nations Security Council and the Politicisation of International Justice in Africa' (2014) 7(3) African Journal of Legal Studies 351- 379.
- Orakhelashvili A, *The Interpretation of Acts and Rules in Public International Law* (Oxford University Press 2008).
- Özden M, Astruc M, 'Responsabilité de protéger : progrès ou recul du droit international public ?' (2013) 12 Cahier critique 1- 27.
- Popovski V, Francis A, Sampford C (ed), *Norms of protection: responsibility to protect, protection of civilians and their interaction* (UN University Press, 2012) <<https://digitallibrary.un.org/record/742062>> accessed 29 April 2024.
- Sandholtz W, 'Norm Contestation, Robustness, and Replacement' (2019) 4(1) Journal of Global Security Studies 139- 146.
- Salmon J, *Droit des gens, mis à jour par Eric David* (T1, Université Libre de Bruxelles, 2003-2004).
- Sarkin J, 'The Role of the United Nations, the African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect' (2009) 53 (1) Journal of African Law 1- 33.
- Shilaho K W, 'The International Criminal Court and the African Union: Is the ICC a Bulwark against Impunity or an Imperial Trojan Horse?' (2018) 18 African Journal on Conflict Resolution 119- 146 <<https://www.ajol.info/index.php/ajcr/article/view/175832>> accessed 5 June 2022.
- Šimonović I, 'Why "Never Again" and R2P Did Not Work in Myanmar' (2021) 13 Global Responsibility to Protect 387- 391.
- Stefan CG, Newman E, 'Europe's Progress and the Road Ahead at R2P's 15th Anniversary' (2020) 12 Global Responsibility to Protect 369- 371.
- Terpan F, 'L'Union Européenne et la responsabilité de protéger : les raisons d'un engagement modéré' (2017) XVII Annuaire Français des Relations Internationales 475- 488.
- Tomuschat C, 'Obligations arising for States without or against their will' (1993) 24(I), Collected Courses of the Hague Academy of International Law.
- Traub J, 'Unwilling and Unable: The Failed Response to the Atrocities in Darfur' (2010) 1, Occasional Paper Series 1- 29.
- Welsh M J, 'Norm Robustness and the Responsibility to Protect' (2019) 4 (1) Journal of Global Security Studies 53- 72.
- Welsh M J, 'The Responsibility to Protect after Libya & Syria' (2016) 145 (4) American Academy of Arts and Sciences 75- 87.
- Winston C, 'Norm Structure, Diffusion and Evolution: a Conceptual Approach' (2017) 24 (3) European Journal of International Relations 638 - 661.
- Zähringer N, 'Taking Stock of Theories around Norm Contestation: A Conceptual Re-examining of the Evolution of the Responsibility to Protect' (2021) 64 (1) Revista Brasileira de Política Internacional 1- 18.
- Zähringer N, Brosig M, 'Organised Hypocrisy in the African Union: The Responsibility to Protect as a Contested Norm' (2020) 27 (1) South African Journal of International Affairs 1 - 23.

International Legal instruments

- Pact on Security, Stability, and Development in the Great Lakes Region (adopted 15 December 2006, entered into force 21 June 2008).
- United Nations Charter (adopted 26 June 1945, entered into force 24 October 1945) XV UNCIO 335, amendments in 557 UNTS 143, 638 UNTS 308 and 892 UNTS 119.
- International Covenant on Civil and Political Rights (adopted 19 December 1966 entered into force 23 March 1976) 999 UNTS 171.
- International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.
- Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.



- Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force on 21 October 1950) 75 UNTS 31.
- Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85.
- Convention (III) relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135.
- Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287.
- Constitutive Act of African Union (adopted 11 July 2000, entered into force 26 May 2001) 2158 UNTS 3.
- Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277.
- International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entered into force 18 July 1976) 1015 UNTS 243.
- Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity (adopted 26 November 1968, entered into force 11 November 1970) 754 UNTS 73.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 07 December 1978) 1125 UNTS 3.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 07 December 1978) 1125 UNTS 609.
- Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (adopted 27 June 2014, not yet in force).

National legislations

- Loi n°1/27 du 27 décembre 2017 portant révision du code pénal (du Burundi).
- Loi n°68/2018 du 30/08/2018 déterminant les infractions et les peines en général telle que modifiée à ce jour (au Rwanda).

Official documents

- 2005 World Summit Outcome, UNGA RES 60/1 (16 September 2005).
- ACHPR Resolution (2007) Doc. ACHPR/Res.117 (XXXII) 07.
- African Union, The Ezulwini Consensus, AU Doc Ext/EX.CL/2 (VII), 7-8 March 2005, <<https://old.centerforunreform.org/Sites/Default/Files/Ezulwini%20Consensus.pdf>>.
- African Union, Decision Assembly/AU/Dec. 3 (VII) on Hissène Habré Trial, 2 July 2006.
- African Union Decision, AU Doc. Assembly/AU/Dec.199(XI) (2008).
- , AU Doc. Assembly/AU/Dec. 221 (XII) (2009).
- , AU Doc. Assembly/AU/Dec.245(XIII)Rev.1 (2009).
- , AU Doc. Assembly/AU/Dec.213 (XII) (2009).
- , AU Doc. Assembly/AU/Dec.243(XIII) Rev.1 (2009).
- , AU Doc. Assembly/AU/Dec.292(XV) (2010).
- , AU Doc. Assembly/AU/Dec. 366(XVII) (2011).
- , AU Doc. Assembly/AU/Dec. 397(XVIII) (2012).
- , AU Doc. Ext/Assembly/AU/Dec.1, (2013).
- , AU Doc. Assembly/AU/Dec.622(XXVIII) (2017).
- , and AU Doc. PSC/PR/COMM.(DXIX) (2015).
- Déclaration de Ouagadougou, 27 Novembre 2004, <https://www.francophonie.org/sites/default/files/2019-10/Declaration_SOM_X_27112004.pdf>.
- GCR2P 'R2P References in United Nations General Assembly Resolutions as Updated on 18 April 2022' <<https://www.globalr2p.org/resources/un-general-assembly-resolutions-referencing-r2p-2/>> accessed 10 July 2022.
- GCR2P 'R2P References in United Nations Human Rights Council Resolutions as Updated on 8 July 2022' <<https://www.globalr2p.org/resources/un-human-rights-council-resolutions-referencing-r2p/>> accessed 10 July 2022.



- GCR2P 'R2P References in United Nations Security Council Resolutions and Presidential Statements updated on 8 April 2021' <<https://www.globalr2p.org/resources/un-security-council-resolutions-and-presidential-statements-referencing-r2p/>> accessed 11 July 2021.
- GCR2P 'List of Supporters of the Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes as Updated on 8 June 2022' <<https://www.globalr2p.org/resources/list-of-signatories-to-the-act-code-of-conduct/>> accessed 9 August 2022.
- GCR2P 'List of Supporters of the Political Declaration on Suspension of Veto as Updated on 13 July 2022 <<https://www.globalr2p.org/resources/list-of-supporters-of-the-political-declaration-on-suspension-of-veto/>> accessed 12 March 2025.
- GCR2P, 'Summary of the Informal Interactive Dialogue of the UN General Assembly on the Responsibility to Protect' 6 September 2017 <<https://www.globalr2p.org/publications/summary-of-the-informal-interactive-dialogue-of-the-un-general-assembly-on-the-responsibility-to-protect-6-september-2017/>> accessed 8 July 2022.
- High-Level Panel on Threats, Challenges, and Change, *A More Secure World: Our Shared Responsibility*, UN Doc. A/59/565, 2 December 2004 <<https://documents.un.org/doc/undoc/gen/n04/602/31/pdf/n0460231.pdf?token=PrtZeoSUDqqyzZfoeK&fe=true>> accessed 26 April 2024.
- ICISS, *The Responsibility to Protect* (International Development Research Centre 2001).
- ICRC 'State Parties to the Following International Humanitarian Law and Other Related Treaties as of 27-May-2021' 5 June 2021 <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=_en> accessed 5 June 2021.
- Nations Unies, *Dans une liberté plus grande: développement, sécurité et respect des droits de l'homme pour tous*, Doc. A/59/2005, 24 Mars 2005 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/270/79/PDF/N0527079.pdf?OpenElement>> accessed 13 July 2023.
- Union Africaine 'Agenda 2063 : l'Afrique que nous voulons' (avril 2015).
- United Nations *Transforming our world: the 2030 Agenda for Sustainable Development*, UN Doc. A/RES/70/1 (2015).
- UNGA Verbatim Record (16 September 2019) UN Doc. A/73/PV.107.
- UNGA Verbatim Record (14 September 2009) UN Doc. A/63/PV.105.
- UNGA Verbatim Record (28 June 2019) UN Doc. A/73/PV.95.
- UNGA Verbatim Record (18 September 2020) UN Doc. A/75/PV.2.
- UNGA Verbatim Record (18 May 2021) UN Doc. A/75/PV.66.
- UNSC Verbatim Record (31 August 2006) UN Doc. S/PV.5519.
- UNSC Verbatim Record (17 March 2011) UN Doc. S/PV.6498.
- UNSC Verbatim Record (29 July 2016) UN Doc. S/PV.7752.
- UN Secretary-General 'Implementing the responsibility to protect: accountability for prevention' (2017) UN Doc. A/71/1016-S/2017/556.
- UN Secretary-General 'Responsibility to Protect: State Responsibility and Prevention' (2013) UN Doc. A/67/929-S/2013/399.
- UN Secretary-General 'Responsibility to Protect: Timely and Decisive Response' (2012) UN Doc. A/66/874-S/2012/578.
- UN Secretary-General 'The Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect' (2011) UN Doc. A/65/877-S/2011/393.
- UN Secretary-General, 'Implementing the Responsibility to Protect' (2009) UN Doc. A/63/677.

International Cases and proceedings

- Decision assigning the situation in the Democratic Republic of Congo to Pre-Trial Chamber I*, ICC-01/04, 5 July 2004.
- Decision assigning the Situation in the Central African Republic II to Pre-Trial Chamber II*, ICC-01/14, 18 June 2014.
- Case Information Sheet on the Situation in Côte d'Ivoire: The Prosecutor v Laurent Gbagbo and Charles Blé Goudé*, ICC-PIDS-CIS-CIV-04-05/20_Eng, July 2021.
- Case Information Sheet on the Situation in the Republic of Mali: The Prosecutor v Ahmad Al Faqi Al Mahdi*, ICC-PIDS-CIS-MAL-01-09/22_Eng, January 2022.
- Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (Request for the Indication of Provisional Measures: Order) [2009] ICJ Rep 139.
- Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (Judgment) [2012] ICJ Rep 144.
- Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (Request for the Indication of Provisional Measures: Order) [2020] ICJ Rep 178.



Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation) (Request for the Indication of Provisional Measures: Order) [2022] ICJ Rep 182.

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v Israel) (Request for the Indication of Provisional Measures: Order) [2024] ICJ Rep 192.

Official statements

'Statement by Belgium at the 2017 UN General Assembly informal interactive dialogue on the Responsibility to Protect', 6 September 2017 <<https://www.globalr2p.org/resources/statement-by-belgium-at-the-2017-un-general-assembly-informal-interactive-dialogue-on-the-responsibility-to-protect/>> accessed 8 July 2022.

'Statement by the United Kingdom at the 2017 UN General Assembly informal interactive dialogue on the Responsibility to Protect', 6 September 2017 <<https://www.globalr2p.org/resources/statement-by-the-united-kingdom-at-the-2017-un-general-assembly-informal-interactive-dialogue-on-the-responsibility-to-protect/>> accessed 8 July 2022.

'Statement Delivered by the Delegation of Nigeria to the United Nations, at the United Nations General Assembly Thematic Panel Discussion on From Commitment to Implementation: Ten Years of the Responsibility to Protect', 26 February 2016 <<https://www.globalr2p.org/resources/statement-by-nigeria-at-the-un-general-assembly-thematic-panel-discussion-from-commitment-to-implementation-ten-years-of-the-responsibility-to-protect-26-february-2016/>> accessed 8 July 2022.

'Statement Delivered by the Delegation of Burundi to the United Nations, at the United Nations General Assembly Thematic Panel Discussion on From Commitment to Implementation: Ten Years of the Responsibility to Protect', 25 February 2016 <<https://www.globalr2p.org/wp-content/uploads/2019/08/2016-TPD-Burundi.pdf>> accessed 8 July 2022.

'China's Statement at the 2016 UN General Assembly Thematic Panel Discussion, "From Commitment to Implementation: Ten Years of Responsibility to Protect", [Transcribed], 26 February 2022, as published by GCR2P.

'Statement delivered on behalf of the Group of Friends on the Responsibility to Protect', 26 February 2016 <<https://www.globalr2p.org/resources/statement-on-behalf-of-the-group-of-friends-on-the-responsibility-to-protect-at-the-un-general-assembly-thematic-panel-discussion-from-commitment-to-implementation-ten-years-of-the-responsibility/>> accessed 8 July 2022.

'Statement on behalf of Group of Friends for the Responsibility to Protect at the 17 May 2021 Formal Debate of the General Assembly on the Responsibility to Protect and the Prevention of Genocide, war crimes, Ethnic Cleansing and Crime against Humanity', 17 May 2021 <<https://www.globalr2p.org/resources/statement-delivered-on-behalf-of-members-of-the-group-of-friends-of-r2p-at-the-2021-un-general-assembly-debate-on-r2p/>> accessed 10 July 2022.

'Statement by the European Union at the UN General Assembly Thematic Panel Discussion, From Commitment to Implementation: Ten Years of the Responsibility to Protect', 26 February 2016 <<https://www.globalr2p.org/resources/statement-by-the-european-union-at-the-un-general-assembly-thematic-panel-discussion-from-commitment-to-implementation-ten-years-of-the-responsibility-to-protect-26-february-2016/>> accessed 20 July 2022.

'Statement by Tanzania at the UN General Assembly Thematic Panel Discussion, From Commitment to Implementation: Ten Years of the Responsibility to Protect', 26 February 2016 <<https://www.globalr2p.org/resources/statement-by-tanzania-at-the-un-general-assembly-thematic-panel-discussion-from-commitment-to-implementation-ten-years-of-the-responsibility-to-protect-26-february-2016/>> accessed 25 July 2022.

'Statement on behalf of the Steering Group of the Global Network of R2P Focal Points at the UN Human Rights Council inter-sessional panel on the responsibility to protect' 11 May 2021 <<https://www.globalr2p.org/resources/statement-on-behalf-of-the-steering-group-of-the-global-network-of-r2p-focal-points/>> accessed 15 September 2021.

