

Recent Publications

GA Aneme A study of the African Union's right of intervention against genocide, crimes against humanity and war crimes

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The book critically analyses the unprecedented right of the African Union (AU) to intervene in a member state in respect of grave crimes by placing it within the broader context of international law governing intervention. It begins by providing a historical background to the study, defining its methodology and sources of law, and presenting the AU's normative and institutional framework. It then focuses on the principle of the AU providing for the AU's right 'to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity' (article 4(h) of the Constitutive Act of the AU). The book meticulously dissects and discusses the constituent elements of article 4(h), evaluates its 'legality' in international law, and grapples with issues of its operationalisation and application. In the substantive parts of the book, chapter three clarifies the meaning and grounds of the AU's right to intervene and addresses the issue of whether there is a need for a UN Security Council authorisation to implement the right. Chapter four mainly examines the legality of the use of military force against a state under the right of the AU to intervene in light of the prohibition on the use of force under the United Nations (UN) Charter. In a part that deals with the operationalisation of article 4(h), the book discusses the procedure of implementation of the right to intervene and tests its applicability to the atrocities committed in the Darfur region of Sudan.

The genesis of article 4(h) is found in the costs of stringent adherence to the principle of non-interference under the Organisation of African

Unity (OAU) (such as the Rwandan genocide of 1994) and precedents of military intervention within sub-regional arrangements in Africa. By locating the article within the broader debate on intervention, the author interprets its provisions as allowing military and non-military forcible measures by the member states of the AU as a collective in a state which is unable or unwilling to protect its people from the grave crimes. In connection with non-military forcible measures, the author appears to overlook the weak economic and communication linkages among African states that minimise the effectiveness of sanctions. He also argues for the delegation of the power to pass the final decision on intervention from the AU Assembly of Heads of State and Government to the AU Peace and Security Council (PSC). While this may expedite the process, it would detract from the level of legitimacy that is meant to be ensured through the backing of a decision to intervene by all member states of the AU.

The AU's right to intervene is juxtaposed with the prohibition on the use of force and the power of the UN Security Council to take measures against any threat to international peace and security under the UN Charter. It is argued that the consent of member states of the AU to allow intervention through their ratification of the Constitutive Act excludes a conflict with the prohibition on the use of force under article 2(4) of the UN Charter. According to the author, such consent justifies the use of force that is exercised within the substantive and operational limits of article 4(h). He argues that intervention that breaches the limits of prior consent in a way that threatens the sovereignty of a target state may be considered a material breach of the Constitutive Act. This may lead to its suspension and a claim for reparations and related remedies. He is not, however, clear as to what constitutes a 'threat to sovereignty'. In relation to the power of the UN Security Council, on the other hand, the author comes to the conclusion that the AU Assembly must, as a rule, get the authorisation of the Council prior to the use of military force in a state that has rejected its decision to allow intervention (124). It is further argued that the AU Assembly must inform the UN Security Council of all circumstances and facts of the military or non-military intervention it contemplates.

In relation to the mandate of the PSC to recommend intervention, the book considers the absence of mechanisms for the investigation and analysis of atrocities inside a state and for the determination of their legal status as genocide, crimes against humanity or war crimes in international law to be a serious impediment to the operationalisation of the AU's right to intervene. Recommending formal co-operation with such institutions as the African Commission on Human and Peoples' Rights, the Continental Early Warning System and the Pan-African Parliament in the investigation of atrocities, the author proposes that a special organ be established under the PSC for the swift determination of whether atrocities qualify as crimes under article 4(h). In this regard, it is not clear why the author opted for the establishment of yet another

special organ, the attributes of which he does not specify, over the determination of the status of atrocities by the PSC itself based on the legal opinion of the African Court of Justice and Human Rights, which should respond swiftly to such requests.

In connection with the identification and implementation of forcible measures, the author emphasises that the PSC should adopt detailed guidelines on possible non-military forcible measures and a mechanism of monitoring the implementation of military forcible measures. However, he finds the adoption of the 'lead nation concept' under the African Standby Force problematic in terms of finding a militarily and economically-capable lead state and making sure that such a state does not have interests of its own. He further underscores the need for enhancing the capability of the ASF to carry out interventions without relying on a lead state and the necessity of equipping it with a predictable and sustainable source of funding by AU member states. While recognising the importance of co-operation with sub-regional organisations in cases of military intervention, the book points to the absence of a formal co-operation framework and the institutional, financial and logistical constraints of the organisations.

Finally, the AU's right to intervene is seen *vis-à-vis* the atrocities committed in the Darfur region of Sudan. The author advises the AU member states 'to consider intervention inside Sudan' relying mainly on the findings of the African Commission on Human and Peoples' Rights and the UN International Commission of Inquiry on Darfur, both of which established the commission of crimes against humanity and war crimes in Darfur, and the unwillingness of the Sudanese government to protect the people of Darfur. He argued against military intervention based on the non-satisfaction of the criteria of 'reasonable prospects' and 'last resort' and recommended political, diplomatic and military sanctions against the Sudanese government, the *Janjawiid* militia as well as the responsible rebel groups. In addition to questioning the effectiveness of sanctions in Africa, a reader of the last chapter may require more facts and explanations exemplifying the practical application of the detailed legal framework for the AU's right to intervene.

In sum, the book is very well written and clearly structured. It is a wonderful study with a clear focus, great depth of detail and meticulous reasoning. As a major research work on the novel right of a regional organisation (the AU) to intervene in relation to grave crimes, it stands out as a seminal contribution to the literature in international law relating to intervention in a state. A reader would be able to get a clear picture of how the AU, in general, and the PSC, in particular, operate in practice and also of the challenges they face. As any outcome of academic research, the book includes some subjective arguments with which a reader may beg to differ. While I attempted to articulate a couple of such differences, they may not at all be raised as fundamental weaknesses of the book.