

Chapter 1

Introduction

1.1 The Humanitarian Crises of the 1990s and the Imperatives of Change

The 1990s was mostly characterised by armed conflicts in Africa and the Balkans following the end of the Cold War. These conflicts resulted in great suffering and misery for millions of people and the world witnessed some of the worst humanitarian tragedies and mass atrocities perpetrated since World War II. Millions of people were maimed, raped and slaughtered as more were displaced and even many more fled across national borders as refugees. The height of these humanitarian crises was the Rwandan Genocide and the Srebrenica massacre in which over 800,000 Tutsis and moderate Hutus were slaughtered within 100 days, and 7000 Bosnia Muslim boys were massacred respectively. The failure of the international community to effectively respond to these humanitarian catastrophes and the resulting tragic consequences once again forced the controversial doctrine of humanitarian intervention and the use of force to protect human rights and save populations from mass atrocities on the front burner in the late 1990s.

Subsequently, several panels and commissions of inquiry were set up to determine what went wrong and how to avert a recurrence in the future. The United Nations (UN) established the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda, the Organisation of African Unity (OAU) set up the International Panel of Eminent Personalities, while the Government of Sweden set up the Independent International Commission on Kosovo.¹ These investigations focused largely on the responses of major actors like the

¹ See United Nations (1999). Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda. S/1999/1257, 15 December 1999; Organisation of African Unity (2000). The Report of the International Panel of Eminent Personalities (IPEP) to Investigate the 1994 Genocide in Rwanda and the Surrounding Events; the Independent International Commission on Kosovo (2000).

United Nations, the Organisation of African Unity (OAU), the North Atlantic Treaty Organisation (NATO) and particular individual states, during these conflicts and the humanitarian crises. The findings of these commissions confirmed what at the time, had already been acknowledged in earlier studies and reports—that there was something fundamentally flawed in the UN Charter-based system in terms of particular international law norms, institutional arrangements of global governance, and how they respond to the demands of international peace and security in an era of intra-state conflicts in a post-Cold War world.² Genocides, war crimes, crimes against humanity and ethnic cleansing were occurring not in inter-state conflicts but in non-international armed conflicts within the territorial boundaries of sovereign states. The UN was therefore confronted with the new challenge of how to respond to demands of the international community to protect people from massive violations of human rights within the territory of a sovereign state. Inherent in this challenge is the contradiction between two of the most fundamental principles on which the post-World War II UN Charter system was built—the principle of state sovereignty, non-use of force, and one of the most abiding values enshrined in the UN Charter—respect for human rights and the duty to save succeeding generations from the scourge of war.³ The difficulty of reconciling the apparent tension between sovereignty and the international concern and protection of human rights is one that is conceptualised as “humanitarian intervention” and this doctrine has largely endured through the centuries since the Treaty of Westphalia in 1648.

However, the legality of the right of a state or group of states to intervene in a third state for purposes of protecting the citizens of that third state from massive violations of human rights by the government of the third state also remained disputed in international law throughout the pre-Charter era. This controversy was due to the inherent tension between the principle of state sovereignty and the international concern with human rights. At the inception of the UN in 1945, this tension found its way into the Charter and striking a balance between these competing and diametrically opposed principles became a conundrum for the most part of the life of the United Nations. The humanitarian catastrophes mentioned above and the inability of the UN to respond effectively to these mass atrocity crimes underscored the imperative to find a way of somehow resolving this tension. Africa was the theatre of most of these conflicts and humanitarian tragedies in the last quarter of the twentieth century. Not surprisingly therefore, a major study on resolving this tension was undertaken by researchers working on conflict management on the continent. In their study, *Sovereignty as Responsibility*:

² See UN General Assembly. Identical Letters dated 21 August 2000 from the Secretary General to the President of the General Assembly and the President of the Security Council: Report of the Panel on United Nations Peace Operations, 21 August 2000. A/55/305 S/2000/809; UN General Assembly. An Agenda for Peace, Resolution adopted by the General Assembly, 8 October 1993, A/RES/47/1208.

³ See Preamble, Charter of the United Nations, 24 October 1945. 1 U.N.T.S. XVI.

Conflict Management in Africa, Francis M. Deng and his colleagues at the Brookings Institution re-conceptualised sovereignty as responsibility.⁴ Published in 1996, this effort at reconciling these two principles did not attract much attention from legal scholars at the time. It was the question posed to the international community by then UN Secretary General, Kofi Annan, in the wake of the NATO intervention in Kosovo in 1999 that awakened the global community to the urgency of the task at hand. At the UN General Assembly, Annan had asked

...if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that affect every precept of our common humanity?⁵

The task of answering this question fell to the International Commission on Intervention and State Sovereignty (ICISS) set up by the Canadian Government in 2000.⁶ The report of the Commission entitled *The Responsibility to Protect* was published in December 2001 and has since generated huge debates and a growing volume of literature. In the same decade of the 1990s that Africa was literally engulfed in armed conflicts from Liberia to Somalia, and from Algeria to Lesotho; regional and sub-regional organisations in Africa notably, the OAU, the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC), and the Inter-Governmental Authority on Development (IGAD) were grappling with the management of these conflicts. While the failure of the UN to respond to the Rwandan Genocide continued to grab international headlines, other conflicts in the continent including Sierra Leone, Cote d'Ivoire, Liberia, Guinea Bissau, the Central African Republic, the Democratic Republic of the Congo, Burundi, Uganda, Sudan amongst others smoldered on in what has been aptly described as “Africa’s World War”.⁷ Thus, these regional organisations started to search for ways of responding to these conflicts themselves but they also had to contend with the principle of sovereignty and non-intervention which were very sensitive issues on the continent.

Beginning in 1989, some normative developments aimed at reconciling state sovereignty with the imperatives of human rights protection had already begun to emerge at the ECOWAS sub-regional level—the ECOWAS military intervention in Liberia and Sierra Leone to halt the humanitarian catastrophes unfolding in those countries at the time. This would mark the beginning of an emerging body of law at the sub-regional level designed to regulate the use of force to prevent gross violations of human rights in West Africa. At about the same time, given that colonialism had effectively ended on the continent with the collapse of apartheid in South Africa, the defunct OAU, an organisation which championed decolonisation and the principle of state sovereignty and non-intervention had begun to rethink its

⁴ See Deng et al. (1996).

⁵ See Annan, Address to the 54th UN General Assembly, United Nations, New York, 20 September 1999.

⁶ See ICISS (2001).

⁷ See Prunier (2009).

stance on state sovereignty and non-intervention in response to the numerous conflicts ravaging the continent. In a series of declarations, conferences and statements there were discernible shifts in paradigm within the organisation with emphasis being placed on human security rather than regime security and a new progressive approach to collective security in Africa.⁸ This change was taking place in the context of broader global developments—the end of the Cold War—which combined to soften the OAU's stance on the principle of state sovereignty, non-intervention and use of force to halt egregious violations of human rights.

Thus, by the dawn of the twenty-first century, just as the ICISS was working to reconceptualise sovereignty, ECOWAS and the African Union (successor to the OAU) were revising the legal framework of collective security in their respective constitutive documents. But the old debates largely remained. The tension between sovereignty and human rights protection, the legality of unauthorised use of force by regional organisations and the legitimacy of the contemporary international legal order in the face of the failure to protect people from genocide and other mass atrocity crimes dominated the debates. In most of these debates, Africa's conflict zones often provided the analytic framework for evaluating the effectiveness of the UN in responding to mass atrocities and the role of international law in the process. The broad consensus in the assessments by the different commissions and studies mentioned above was that the existing system was not effectively responding to the protection of populations from gross violations of human rights within states and that there was an urgent need for reform. The new approach to collective security by ECOWAS and the AU were feeding into this lacuna. However, the legal basis of this AU and ECOWAS approach calls for examination as it raises several legal issues with respect to the UN Charter law on the use of force although the approach may well become the paradigm for future action on the Responsibility to Protect (R2P).

1.2 The Legal Response of ECOWAS and the AU to the Conflicts and Humanitarian Crises

The Economic Community of West African States was established by the Treaty of Lagos on 28 May, 1975 at Lagos, Nigeria.⁹ As its name suggests, its main focus up and till the early 1990s was the economic integration and development of the West

⁸ There is often suspicion on the part of African regional organisations that external interventions in African conflicts are mostly motivated by the national interests of the intervener. For example, the former Secretary-General of the OAU, Salim Ahmed Salim suggested that the OAU should be empowered to undertake military intervention in conflicts in African states because non-African interveners are unlikely to be motivated by humanitarian considerations when they intervene in Africa. See OAU (1992). See Deng et al. (1996), p. 15, citing Council of Ministers, Report of the Secretary General on Conflicts in Africa: Proposals for an OAU Mechanism for Conflict Prevention and Resolution, CM, L. VI, Addis Ababa, pp. 12.

⁹ See Treaty of the Economic Community of West African States (ECOWAS) 28 May 1975.

African sub-region and in the context of the Cold War, the defence of the political independence and territorial integrity of member states. The two principal legal instruments of the organisation in this respect were the ECOWAS Protocol on Non-Aggression adopted on 22 April 1978, and the ECOWAS Protocol Relating to Mutual Assistance on Defence adopted on 29 May 1981.¹⁰ In relation to the UN Charter, the rallying international law principles for ECOWAS at the time were state sovereignty, non-intervention and collective self-defence. However, in response to the conflicts and humanitarian crises in the sub-region, ECOWAS began to revise its laws to respond to the new challenges. First, it revised its 1975 treaty and adopted the revised version on 24 July 1993 in Benin Republic.¹¹ Again, on 31 October 1998, at a meeting of Heads of State and Government in Abuja, ECOWAS adopted the Framework Establishing the ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security.¹² On 10 December 1999, ECOWAS adopted the Protocol Relating to the ECOWAS Mechanism for Conflict Prevention, Management and Resolution, Peace-keeping and Security.¹³ Collectively, these instruments constitute what could be regarded as the intervention legal regime of the Economic Community of West African States and it is the subject of this book. In this book, I am concerned with specific provisions in these instruments namely, article 4(e) and (g), and article 58 of the ECOWAS Revised Treaty; paragraphs 18, 46 and 52 of the ECOWAS Framework; and articles 10, 22 and 25 of the ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security.

At the continental level, on 25 May 1963 African leaders mainly nationalists who spearheaded their countries liberation from colonial domination gathered at Addis Ababa, Ethiopia, to adopt the Charter of the Organisation of African Unity (OAU).¹⁴ The main objective of the OAU was to complete the process of decolonisation in Africa and to defend the sovereignty and territorial integrity of

¹⁰ See Economic Community of West African States, Protocol Relating to Mutual Assistance in Defence, signed at Freetown on 29 May, 1981. A/SP3/S81.

¹¹ See the Revised Treaty of the Economic Community of West African States adopted on 24th July 1993 at Cotonou in Benin Republic. (1966) 25 International Legal Materials 660 (ECOWAS Revised Treaty).

¹² At a meeting of Heads of State in Abuja between 30–31 October 1998, ECOWAS adopted the Framework Establishing the ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security. Reprinted in Levitt (2003a), p. 287.

¹³ See Protocol Relating to the ECOWAS Mechanism for Conflict Prevention, Management and Resolution, Peace-keeping and Security adopted at Lome, Togo on 10 December 1999, which entered into force upon adoption, (ECOWAS MCPMRPS Protocol).

¹⁴ See Charter of the Organisation of African Unity (OAU) 25 May 1963.

the newly independent African states.¹⁵ Again, the rallying point of the organisation in international law were the principles of sovereignty, non-intervention, prohibition on the use of force and respect for the political independence and territorial integrity of states. As mentioned above, the OAU generally maintained this pro-sovereignty and non-intervention posture until the end of the Cold War and the conflicts and humanitarian catastrophes of the 1990s (especially the Rwandan Genocide). With the history of atrocities in Biafra, Uganda, Chad, and elsewhere on the continent haunting the organisation, we began to notice a change in the institutional attitudes of the organisation from the beginning of the 1990s as it reappraised the situation of peace and security on the continent. It was clear that Africans faced new sources of threats than previously and these challenges needed new perspectives and fresh thinking on the general conditions of Africans in order to devise proper responses.

Thus, on 22 May 1991, the OAU adopted the Draft Kampala Document for a Proposed Conference on Security, Stability, Development and Cooperation in Africa in Kampala, Uganda.¹⁶ The organisation began to draw the link between peace and stability and the socio-economic development that seems to be eluding the continent. Again, on 28 June 1993, the OAU followed this up with the Declaration of the Assembly of Heads of State and Government on the Establishment of a Mechanism for Conflict Prevention, Management and Resolution.¹⁷ The emphasis was gradually shifting to human security and the mitigation of the humanitarian effects of conflicts on the continent. However, it was arguably the many failures of the OAU in the face of mass atrocities on the continent particularly the genocide in Rwanda coupled with other developments at the global level that gave the OAU the impetus to transform itself into the African Union and to adopt some of the most radical treaty provisions on sovereignty, non-intervention, use of force and the protection of populations from gross violations of human rights. On 11 July, 2000 at Lome in Togo, the OAU adopted the Constitutive Act of the African Union in which the body essentially re-orientated the underlying philosophy of the organisation on collective security from one of non-intervention to one of

¹⁵ For example, the OAU was at the vanguard of pushing for the UN Declaration on the Granting of Independence to Colonial Countries and Peoples, UN General Assembly Resolution 1514 (XV) of 14 December 1960; the International Convention on the Suppression and Punishment of the Crime of Apartheid, UN General Assembly Resolution 3068 (XXVIII) of 30 November 1973 which entered into force on 18 July 1976.

¹⁶ See Draft Kampala Document for a Proposed Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA), Kampala, Uganda, 22 May, 1991, reprinted in Levitt (2003a), p. 227.

¹⁷ See Declaration of the Assembly of Heads of State and Government on the Establishment within the OAU of a Mechanism for Conflict Prevention, Management and Resolution, adopted at the Twenty Ninth Ordinary Session of the OAU, on 30 June 1993, reprinted in Levitt (2003a), p. 219.

non-indifference.¹⁸ Two years later at Durban in South Africa, the AU adopted the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (AUPSC).¹⁹ Article 4(h) of the AU Constitutive Act and articles 16 and 17 of the AUPSC Protocol introduce radical legal reforms to the law on military intervention in Africa and together with other provisions, these instruments constitute the AU legal regime on the use of force for the prevention of mass atrocities in what is now generally referred to as the AU peace and security architecture. For purposes of convenience, throughout this book I refer to these respective AU and ECOWAS instruments as the AU–ECOWAS regional military intervention legal regimes.

1.3 The AU–ECOWAS Regional Military Intervention Legal Regimes and International Law

The legal responses of AU and ECOWAS to the conflicts and humanitarian crises were fundamental, radical and novel in many respects. First, there was a desire to break with the past given the changing global geopolitics—the diminished threat of intervention by either of the superpowers or their local proxies. Secondly, as the threat of inter-state conflicts and external aggression receded, intra-state conflicts posed new threats to social cohesion and political stability in many African states to which the existing international legal order seemed incapable or unprepared to respond to effectively. Therefore, when ECOWAS undertook its first intervention mission in Liberia in 1990 it had no legal provision in its constitutive document to rely on. It had to quickly revise its constitutive document and adopt new treaties in order to meet the new challenges that faced its member states and the sub-region. There was a shift in focus from mainly economic and development issues to matters of peace and security as well as a push for sub-regional autonomy in the use of force to halt mass atrocities and collective security in West Africa.

Under the ECOWAS intervention legal regime, the Revised Treaty provides for the “maintenance of regional peace, stability and security through the promotion and strengthening of good neighbourliness”²⁰ and article 58 deals with regional

¹⁸ The Constitutive Act of the African Union (hereafter AU Act) was adopted on 11 July 2000 in Lome, Togo and by virtue of article 28 of the Act came into force on 26 May 2001 by deposit of instruments of ratification by two-thirds of members of the OAU. As of 13 July 2012, all 54 Member states have ratified the Act.

¹⁹ See the Protocol Relating to the Establishment of the Peace and Security Council of the African Union adopted at the 1st Ordinary Session of the Assembly of the African Union on 9th July 2002. The Protocol was adopted pursuant to Article 5(2) of the AU Act which empowers the AU to establish such organs as it deems necessary.

²⁰ See ECOWAS Revised Treaty, article 4(e).

security arrangements,²¹ under which member states are to maintain regular consultations between national border agencies,²² establish local and national joint commissions to look into problems between neighbouring states,²³ encourage cooperation and exchange between communities, towns and regions,²⁴ organise meetings between ministries on inter-state relations,²⁵ employ good offices, mediation, conciliation and other peaceful means of dispute resolution where necessary,²⁶ and to provide election observers on the request of a member state.²⁷ Specifically, the treaty provides for “the establishment of a regional peace and security observation system and peacekeeping forces where appropriate.”²⁸ It was on the basis of the above that the ECOWAS Framework and Protocols were both adopted.²⁹ Under the arrangement, ECOWAS has the right to intervene militarily in the internal affairs of a member state if the situation threatens to trigger humanitarian disaster, poses a threat to sub-regional peace and stability or in response to an overthrow or threatened overthrow of a democratically elected government.³⁰

Similarly, article 4 of the AU Act outlines the operating principles of the organisation and requires the African Union to function in accordance with:

- (h) The right of the Union 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;
- (j) the right of Member States to request intervention from the Union in order to restore peace and security.

The AUPSC Protocol also provides that in discharging its duties, the Council shall *inter alia* be guided by

- the right of the Union 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 in accordance with Article 4(h) of the Constitutive Act.³¹
- [t]he right of Member States to request intervention from the Union in order to restore peace and security in accordance with Article 4(j) of the Constitutive Act.³²

²¹ By virtue of article 58 (2) member states undertake to cooperate with ECOWAS to establish and strengthen mechanisms for the timely prevention and resolution of intra-state and inter-state conflicts. For an assessment of ECOWAS security arrangements and peacekeeping operations in West Africa, see Mortimer (1996), pp. 149–164; Vogt (1996), pp. 165–183.

²² See ECOWAS Revised Treaty, article 58 (2) (a).

²³ See ECOWAS Revised Treaty, article (2) (b).

²⁴ See ECOWAS Revised Treaty, article 58(2) (c).

²⁵ See ECOWAS Revised Treaty, article 58(2) (d).

²⁶ See ECOWAS Revised Treaty, article 58(2) (e).

²⁷ See ECOWAS Revised Treaty, article 58(2) (g).

²⁸ See ECOWAS Revised Treaty, article 58(2) (f).

²⁹ See ECOWAS Framework. See Levitt (2002), p. 139.

³⁰ See article 25 of ECOWAS MCPMRPS Protocol.

³¹ See AUPSC Protocol, article 4(j).

³² See AUPSC Protocol, article 4(k).

Surprisingly, since the AU–ECOWAS regional military intervention legal regimes came into force, only a handful of studies have been devoted to their normative innovations and even less to an examination of their legal provisions and implications for the theory and practice of humanitarian intervention, the use of force, and international law.³³ While these provisions have received little academic attention, especially from non-Africa international law scholars,³⁴ a few others have expressed reservations about their legal implications, if not doubts about their legal validity under international law.³⁵ This does not however diminish the significance of these intervention regimes and the broader fundamental normative and practical legal questions they raise and which are engaged in this book. My aim in this book, therefore, is to contribute to the efforts to fill this gap by examining the legal validity of the AU–ECOWAS intervention treaties under current international law. Further, I consider how the legal and theoretical framework they provide could be adapted to form an alternative strategy for the implementation of the responsibility to react component of R2P in Africa.

Against the background of the UN Charter prohibition of the use of force in article 2(4), the vesting of primary responsibility for the maintenance of international peace and security in the UN Security Council under article 24, the requirement of UN Security Council authorisation for any regional organisation's enforcement action under article 53 of the UN Charter, and the restriction upon UN members from entering into treaties inconsistent with their UN Charter obligations in terms of article 103; I undertake an exploration of the legality of the AU–ECOWAS treaties and the moral and legal theories underpinning their validity. I analyse specific provisions of the AU Constitutive Act—article 4(h) of the AU Constitutive Act and article 4(h) and (j), articles 4(k), 16 and 17 of the AUPSC Protocol which deal with the use of force and intervention to protect human rights in member states of the AU.³⁶ Using the arguments on the legal status of the doctrine of humanitarian intervention under Charter law and customary international law as background, I examine whether there exists a gap between the *lex lata* and *lex ferenda* in regional practice of military intervention to protect human rights in Africa on the one hand, and humanitarian intervention in international law on the other hand, which these specific treaty provisions seek to bridge.

³³ See Kindiki (2002), Abass (2004a), Akpokari et al. (2008), Kuwali (2010), Engel and Porto (2010), Aneme (2011), Yusuf and Ouguergouz (2012) and Nwankwo (2014).

³⁴ See Chimni (2003), p. 50, describing the scant regard paid to third world scholarship and interests in the development of international law. See also Byers and Chesterman (2003), p. 191, asserting that important works of African writers are disregarded.

³⁵ See for example, Wippman (2002), p. 143.

³⁶ The Protocol Relating to the Establishment of the Peace and Security Council of the African Union adopted at the 1st Ordinary Session of the Assembly of the African Union on 9th July 2002.

The AU–ECOWAS regional military intervention legal regimes raise several legal questions. First, do the AU–ECOWAS intervention legal regimes granting the AU and ECOWAS a right of regional military intervention valid in international law in view of the prohibition of the use of force by article 2(4) of the UN Charter?³⁷ This question arises from the conflict between article 2(4), 2(7) of the UN Charter³⁸ and article 4(h), (j) of the AU Constitutive Act on the one hand, and between article 2(4), 2(7) of the UN Charter and article 25 and 26³⁹ of the ECOWAS MCPMRPS Protocol (which empowers ECOWAS acting through its Mediation and Security Council and ECOMOG to conduct military operations to enforce sanctions, peacekeeping operations, humanitarian intervention to support humanitarian purposes) on the other hand.⁴⁰ Of significance is article 10(c) of the ECOWAS MCPMRPS Protocol which gives the Mediation and Security Council of ECOWAS power to authorise the use force to intervene in the internal affairs of member states when certain conditions are met.⁴¹ Before proceeding to examine the legality of humanitarian intervention below, suffice it to mention here that many scholars agree that besides the exceptions in article 51 relating to self-defence and UN Security Council action under Chapter VII of the UN Charter, the use of force in the internal affairs of a state without its consent is illegal and a violation of that state’s sovereignty.⁴² But what happens when a state consents to future interventions by entering into a treaty like the AU–ECOWAS regional military intervention legal regimes?⁴³ Can a regional organisation rely on such treaty to militarily intervene in such member state to prevent or halt genocides, war crimes, ethnic

³⁷ See Udombana (2005), pp. 1149 and 1151. 13. In this book, I use the term “Regional Military Intervention” to refer to military interventions by regional organisations (including sub-regional bodies) while “unilateral humanitarian intervention” is used to denote military interventions not authorised by the UN Security Council.

³⁸ “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the Purposes of the United Nations.” See article 2(4), Charter of the United Nations, signed on 26 June 1945, 59 Stat. 1031, T.S. No. 993 3 Bevans 1153.

³⁹ See also paragraphs 18(i) and 46 of ECOWAS Framework. The Framework provides for military intervention by ECOWAS when: (1) a situation threatens to trigger humanitarian disaster, (2) a situation poses a serious threat to peace and security in the region and (3) in response to the overthrow or threatened overthrow of a democratically elected government. See Levitt (2002), p. 139.

⁴⁰ See paragraph 52 of ECOWAS Framework.

⁴¹ The listed conditions under article 25 include *inter alia* where an internal conflict: “(i) threatens to trigger a humanitarian disaster or (ii) poses a serious threat to peace and security in the sub-region; (d) in event of serious and massive violations of human rights and rule of law”. Other conditions include “in the event of overthrow or attempted overthrow of a democratically elected government”, and any other circumstances that may be decided by the body.

⁴² See Simma (1999), p. 2. See also *Case of Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v. United States of America), Merits, Judgment of June 27, 1986, ICJ Report 14.

⁴³ See Simma (1999), pp. 2–4 arguing that states cannot contract out of the norm of nonuse of force at the regional level.

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Iyi, J.-M.

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