

# Preface

The ECOWAS and AU peace and security legal frameworks have attracted little study amongst international law scholars despite its far-reaching normative innovations and implications for Africa, the UN Charter-based law of humanitarian intervention and international law in general. With the exception of a couple of writers, the few studies that exist have dismissed such provisions as article 4(h) of the AU Constitutive Act and article 10 and 25 of the ECOWAS Mechanism for Conflict Prevention, Management, Resolution Peacekeeping and Security Protocol (MCPMRPS) as illegal treaties because of their incompatibility with articles 2(4), 24(1), 53(1) and 103 of the Charter. None of these studies examined the theoretical basis of these treaties and at a time the world is in search of a legal framework for the operationalisation of the Responsibility to Protect (R2P), it has become imperative to undertake an interrogation of the theoretical underpinnings of these treaties. My study tested the legal validity of the AU–ECOWAS intervention instruments using two theoretical frameworks: transformations of world constitutive process of authoritative decision and the illegal international legal reform theories. It also examined the validity of the treaties under conventional and customary international law. The book advanced three main arguments:

Firstly, following Reisman's theory, I argue that there are four constitutive processes in the international legal order. The UN was designed to establish a system with effective hierarchical institutions of decision making where unilateral acts would be unnecessary and illegal. The UN Security Council failed in its duty as the authoritative decision-maker saddled with the responsibility of maintaining international peace and security and protecting human rights. On this basis, the unilateral intervention treaties established by AU–ECOWAS are valid. Secondly, following Buchanan's theory, I argue that in a legal system such as the UN Charter-based system that poorly approximates justice and where there are few prospects for legal reform, a unilateral act of illegal international legal reform aimed at bringing about moral improvement in the law is permissible. The AU-ECOWAS treaties

constitute illegal international legal reform because they seek to improve the law of humanitarian intervention to prevent future mass atrocities. Thirdly, I argue that under treaty law, there are several grounds for holding the AU–ECOWAS treaties valid, basically because they constitute treaty-based interventions for which UN Security Council authorisation is not required. I conclude that the fundamental assumptions on which the Charter was based have been radically altered, and African states can plead change of circumstances to obviate the application of the full weight of the Charter framework. Based on the above conclusions, I propose the AU–ECOWAS treaty regimes for a theory of regional responsibility to protect as a theoretical framework for the operationalisation of R2P in Africa.

Johannesburg, South Africa  
30 June 2015

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Humanitarian Intervention and the AU-ECOWAS  
Intervention Treaties Under International Law  
Towards a Theory of Regional Responsibility to Protect  
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2016, XVIII, 337 p., Hardcover  
ISBN: 978-3-319-23623-0