**Responding to mass atrocities in Africa: The responsibility to protect and the responsibility to punish**

Presentation to the 33rd African Studies Association of Australasia and the Pacific (AFSAAP) Conference ‘Engaging Africa/ Engaging Africans: Knowledge, Representation, Politics’, 2-4 December 2010, Victoria University, Melbourne, Australia

Raymond Kwun Sun Lau PhD candidate, Asia Pacific Centre for the Responsibility to Protect, the University of Queensland, Brisbane, Australia raysun@email.com

**Abstract**

What has been distinctive about the post-Cold War era and, in particular, the aftermath of the 1994 Rwandan genocide is a change in expectations about international responses to mass atrocities. The establishment of the International Criminal Court (ICC) in 1998 and the adoption of the Responsibility to Protect (R2P) principle in the 2005 World Summit mark the birth of two forms of responsibilities: responsibility to punish and responsibility to protect.  The interaction of R2P with the ICC, however, reflects an inherent tension between protection and punishment in the temporal trajectory of international society’s response to mass atrocities. This paper explores the relationship between R2P and the ICC by questioning the tendency to perceive protection of civilians and punishment of perpetrators as priori synthetic. In particular, it brings forward the analysis of time dimension in judging the international community’s effectiveness in halting mass atrocities in Africa.

**Keywords**

Mass atrocities, International Criminal Court, responsibility to protect, international society

**Background**

The idea of Responsibility to Protect (R2P) has accelerated its pace of development since the 2001 ICISS report while the international criminal justice appears to have grown dramatically since the end of Cold War. Against the background of the world’s failure to respond adequately to the Rwandan genocide (1994) the development of the R2P principle and the coming into operation of the International Criminal Court (ICC) in 2002 mark the attempt of the international society to come to grips with the thorny question of how best to respond mass atrocity crimes as no universally accepted and effective response mechanism has yet been in place.[[1]](#footnote-1) In terms of international society’s response to genocide and mass atrocities, the idea of responsibility to protect and the reviving practice of international criminal justice have given birth to two forms of responsibilities: responsibility to protect and, namely, responsibility to punish.

Taken together, these two forms of responsibilities share one common feature: mass atrocities or large-scale human rights violations committed in one’s own border against innocent civilians is no longer its ‘internal affairs’ or ‘sovereign right’ because sovereignty has never meant to be a license to kill. In this sense, both R2P and the ICC can be understood as a change in expectations about international response to mass atrocities. In hindsight, a major focus of attention in the post-genocide era is not the Rwandan genocide itself, but rather the impact of the international society’s failure to intervene on subsequent normative developments in international relations. Jennifer Welsh frames these changing expectations as ‘the Rwanda Effect’, which means the international community’s inadequate response to the Rwandan genocide provided the catalyst for the development and endorsement of the R2P principle.[[2]](#footnote-2) The content of ‘the Rwanda Effect’, however, has also placed more demands on strengthening international judicial response to mass atrocities by holding perpetrators accountable. The International Tribunal for Rwanda established in 1994 after the genocide by the UN Security Council is one case in point.

**R2P and the ICC’s African roots and contexts**

It is not too difficult to discover R2P and the ICC’s ‘African roots and contexts’. R2P’s intellectual origin lays in the idea of sovereignty as responsibility. Here ‘sovereignty as responsibility’ was originally formulated by Sudanese scholar-diplomat Francis Deng, who now is the Special Adviser to the UN Secretary-General for the Prevention of Genocide. It is an African tragedy, the Rwandan genocide that prompted Kofi Annan, a Ghanaian Secretary-General, to advocate the ‘two concepts of sovereignty’ and request the establishment of ICISS. As for the ICC, Africa is the most geographically represented region, with 43 African states being the signatories to the ICC Statute, while 30 of them have ratified it. Of five situations under investigation by the ICC, all three self-referrals have been from African countries: Uganda, Democratic Republic of Congo and Central African Republic. The first person to be tried by the Court, Thomas Lubanga, was a former rebel leader from the Democratic Republic of Congo.

With a noticeable change in expectations about deterring and stopping mass atrocities through implementation of protection and punishment, there is a growing tendency to frame these two forms of responsibilities as inseparable and mutually reinforcing, as if they are ‘two sides of the same coin’. Yet despite the perception that a nexus linking R2P with the ICC, I argue that the interaction of the Responsibility to Protect principle with the International Criminal Court reflects an inherent tension between protection and punishment in the temporal trajectory of international society’s response to mass atrocities.

This inherent tension between protection and punishment arises out of their opposing logics, timeframes and influences. To that end, the purpose of this paper is to attempt to bring forward the dimension of path dependence and precise sequencing in understanding the tensions existing between advancing the international protection and punishment agenda. A focus on ‘not just what, but when’ in political processes is significant because ‘*when* things happen within a sequence affects *how* they happen’, and policy options selected by international policymakers in response are critical to understand the tension between R2P and the ICC.

This paper is divided into 2 parts. The first part is organized around the discussion of the background factors that have helped to shape the mutually reinforcing relationship between civilian protection and perpetrator punishment as well as how they are in tension with each other. The second part is an attempt to explore the importance of time dimensions and factors influencing international policymakers’ decisions to select particular courses of action in response to mass atrocities.

**R2P and the ICC: mutually reinforcing?**

Evidence of changing expectations in the post-genocide era since Rwanda is showing up in concerns about how to respond to genocide and mass atrocities in a more effective and consistent manner. This reflects in the tendency to frame the discussion of the Responsibility to Protect principle and the International Criminal Court as mutually inclusive because of their shared commitment to ending mass atrocity crimes. Here there were actually three interconnected streams contributing to this mutually reinforcing relationship between R2P and the ICC: the changing meaning of sovereignty; shared normative consensus in undertaking intervention and weakening of non-intervention norm; the legacy of new interventionism in the 1990s.

*The changing meaning of sovereignty*

The key feature here is a shift to the new concept that a sovereign power is primarily responsible for the welfare of its citizens. The gradual shift in the meaning of sovereignty from having absolute and unrivalled control to acting responsibly both domestically and internationally demonstrates the emergence of conditional sovereignty: sovereignty entails rights as well as responsibilities. This is the essence of the idea of ‘sovereignty as responsibility’ advocated by Francis Deng, Special Adviser to the UN Secretary-General for the Prevention of Genocide, as the aim is to establish minimum standards of responsibility. As such, the particular attention of the R2P is that sovereignty entails rights as well as responsibilities.

As for fulfilling punishment responsibilities, the States Parties to the Rome Statute agreed that it is ‘the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes’. Here, to a large extent, the growing frequency of confronting serious human rights abuses by means of criminal prosecution illustrates the triumph of criminal accountability over impunity in international law. It is also to ensure that those responsible for failing to fulfil the protection responsibilities are not go unpunished.[[3]](#footnote-3) Significantly, even before the Rome Conference in 1998, the African Commission on Human and People’s Rights has already adopted a ‘Plan of Action Against Impunity in Africa’ in 1996, which was subsequently endorsed by the Organization of African Unity Council of Ministers.

*Shared normative consensus in undertaking intervention and weakening of non-intervention norm*

Adding to R2P and the ICC’s shared commitment to ending mass atrocity crimes is their shared normative consensus in undertaking international intervention where necessary. While protection of populations is first and foremost a matter of State responsibility, international assistance and capacity-building under pillar two, as Secretary-General Ban Ki-moon made clear in his report to the General Assembly in 2009, would be of little use ‘if the political leadership of the State is determined to commit crimes and violations relating to the responsibility to protect’.[[4]](#footnote-4) As such, the international community has the responsibility to invoke pillar three by taking ‘timely and decisive’ action to protect the affected population from the four crimes.

More significantly, support for R2P already exists within the African Union. The right to intervene is found in Article 4(h) of the AU Constitutive Act, which said, ‘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.’ And most importantly, the fifteen-member Peace and Security Council (PSC)is the AU organ established in 2004 as a ‘collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa’.

Similarly, while the punishment responsibilities lie first and foremost with the State, the ICC, under the principle of complementarity, is entitled to determine unwillingness or inability in a particular case and thus able to step in if the state is unwilling or unable to carry out independent or impartial proceedings on its own alleged perpetrators. In other words, the Court assumes the responsibility to prosecute those responsible for the four specified crimes and violations when States fail to fulfil their punishment responsibilities. Precisely, one of the founding principles of the African Union is the rejection of impunity for war crimes, crimes against humanity and genocide.

*The legacy of new interventionism in the 1990s*

If the changing expectations that result from ‘the Rwanda Effect’ has given rise to the development of R2P principle and the coming into existence of ICC, the emergence of the ‘new interventionism’ in the 1990s is then arguably an attempt to answer a single core question: ‘how should international society respond when peoples’ allegedly fundamental rights are systematically abused not by other states but by their own governments?’.[[5]](#footnote-5) While it is a truism that the failure to halt the 1994 Rwandan genocide has made the reputation of the UN stood at an all time low, the importance of ‘new interventionism’ in the 1990s, is that it has left two legacieswhich cast a long shadow over subsequent attempts at improving international response to mass atrocities. The first was the weakening of the non-intervention norm. Compared to the constant paralysis during the Cold War, the new interventionism era was characterised by the increasingly willingness of a revitalised UN Security Council to define any serious humanitarian crisis as potentially a threat to international and security’.[[6]](#footnote-6) In such a situation the UNSC could use its powers to order ‘enforcement action’, including the use of military force, under Chapter VII of the Charter. This UN Security Council activism of the 1990s has made the norm of non-intervention that was largely intact in the Cold War period greatly weakened, and that sovereignty has been increasingly circumscribed by the advent of ‘new interventionism’, paving the way for the development of responsible sovereignty as mentioned above.

The second legacy of the ‘new interventionism’ to international society was the growing importance of ‘human rights logic’ over ‘state logic’. State sovereignty was traditionally privileged over human rights during the Cold War, the fact that mass violence perpetrated against their vulnerable civilians by genocidal and tyrannical regimes becoming a matter of international concern in the post-Cold War era is a reflection of a sustained tension between these two ‘logics’. This is not to say that a legal basis in chapter VII of the UN Charter for human rights-based military intervention has been established under international law. But with the changing meaning of sovereignty and weakening of non-intervention norm, to equip states with the primary responsibility for implementing human rights has become an imperative because the contention that internal human rights are “essentially within the domestic jurisdiction of any state” and hence exempted from international scrutiny is no longer justifiable.In this sense, the establishment of the ICTR by the Security Council after the genocide, as mentioned earlier, can be seen as a form of international judicial intervention in the 1990s.

As a result, the tendency in international society’s response to mass atrocities seems to be threefold. First, R2P and the ICC are considered as complementary and mutually reinforcing. Second, discussion has proceeded on implementing R2P judicially by treating the ICC as ‘the judicial arm of R2P’. And third, by reaffirming States’ primary punishment responsibility for the four specified crimes under the Rome Statute, the ICC has integrated itself indirectly into the R2P enforcement mechanism**.** Yet, precisely because of the highly context-specific nature of mass atrocity crimes, it is important to note that these two normative endeavours are not always mutually reinforcing even so they are not mutually exclusive. This is attributed to their opposing logics, timeframes, institutions and influences.

**Protection vs. Punishment: The tension between R2P and the ICC**

Bearing in mind that the commission of mass atrocity crimes is context specific, imposing a robotic one-size-fits-all approach is not necessarily helpful for halting and ending mass atrocities. This section is thus an attempt to identify circumstances where protection of civilians and punishment of perpetrators can be expected to be in conflict and even to collide from time to time.

Sharing the same commitment to ending mass atrocities notwithstanding, one fundamental difference between R2P and the ICC is their logics and timeframes. Undertaking R2P intervention to stop mass killings is primarily concerned with saving lives out of immediate danger and alleviating suffering. ICC intervention, on the other hand, is focussed on the criminalization of both international and non-international violence by holding perpetrators accountable and punishing them. Temporally, the fact that R2P prioritises physical protection of civilians means it is bound to be a short term palliative, as ‘the understandable human desire to help those in life-threatening distress’, or ‘the humanitarian impulse’[[7]](#footnote-7), in Thomas Weiss’s term, is critical. Upholding justice by punishing perpetrators, in contrast, can be seen as providing longer-term recovery aid by addressing the underlying roots of these atrocities: combating impunity and prevention through deterrence. As such, preventing/deterring future mass atrocities through international criminal justice is separate from saving lives through R2P intervention: despite its potential of providing indirect protection of civilians against future victimisation, pursuing criminal justice for perpetrators cannot protect victims *now* being killed.

From a strategic point of view, R2P requires a strategy of compulsion which involves the threat of or the actual use of force to compel the perpetrators to cease their attacks on civilians. On the contrary, the logic of international criminal justice subscribes to the strategy of deterrence, which is aimed to dissuade a potential perpetrator from initiating atrocious crimes, thus preventing the reoccurrence of mass atrocities in the future.

Another fundamental difference between R2P and the ICC is their institutions and influences. It is important to note that the ICC and the UNSC are two independent international institutions. The Court, in accordance with the 2004 Relationship Agreement between the International Criminal Court (ICC) and the United Nations (UN) is recognised as an independent permanent judicial institution having international legal personality’. The fact that the two international institutions are independent reflects a fundamental difference in their functions: the Court is assigned with the judicial task of advancing international criminal law and prosecuting perpetrators, while the Security Council has been an inherently political organ designed to maintain international peace and security. More importantly, the Council is assigned as the deciding body for R2P enforcement.

Therefore, the most significant point is that these competing institutions are characterized by a high degree of conflict between ‘the politically driven security function of the Council’ and ‘the judicial nature of the Court and its concern with justice’. Although the Relationship Agreement reflects a delicate balance between *independence* and *cooperation*,[[8]](#footnote-8) the underlying problem of these competing institutions lies in the judicial-political dilemma surrounding them: the ICC as a judicial organization constantly ventures in political turbulent water. Notwithstanding the judicial nature of its decisions, ‘the Court’s actions’, as Benjamin Schiff suggests, ‘have political ramifications for states and for actors within states, and will inevitably be interpreted politically’.[[9]](#footnote-9) This is due to the fact that the Court, by operating in an international environment that is highly political, has to deal with issues regarding matters of high State policy and interest constantly.[[10]](#footnote-10)

In this regard, the growing tendency to assess how the International Criminal Court can contribute to the operationalization of R2P is problematic. The danger here is that it implies that the pursuit of ICC justice may have to play a secondary role to the achievement of peace and the saving of lives from time to time. As a result, treating ICC as the judicial arm of R2P risks instrumentalizing justice as a tool for maintaining or restoring international peace and security and not as an important end in and of itself.

Also, there appears to be a growing acceptance of criminalizing human rights abuses,[[11]](#footnote-11) as the international community is determined to end impunity through fostering ‘a culture of accountability’. Yet, in a worrying manner, it might indicate that mass atrocities are viewed more as a criminal justice problem than an R2P intervention problem. This demonstrates ‘the use of punitive criminal justice method and rhetoric to maintain a castigatory sentiment amongst the public’[[12]](#footnote-12) to disguise two real issues of concern to the international community as mentioned above: R2P intervention for civilian protection and judicial intervention for perpetrator punishment.

**The importance of path dependence and time dimension**

Returning to the main argument, that is, the interaction of the Responsibility to Protect principle with the International Criminal Court reflects the inherent tensions between protection and punishment in the temporal trajectory of international society’s response to mass atrocities, the principal concern here is not on whether R2P and the ICC may collide but about when and how these two normative endeavours within the international society are likely to collide. Thu, this involves the attempt to bring forward the analysis of time dimension in how the international society coordinates its response to mass atrocities because the occurrence of successful outcomes depends decisively on how policy options are selected and which actors become involved first. This touches on the precise sequencing and path dependence.

In fact, there is considerable ground for highlighting issues of temporality as ‘placing politics in time—systematically situating particular moment (including the present) in a temporal sequence of events and processes’—helps prevent variable-centered analyses from being ripped from their temporal context.[[13]](#footnote-13) A focus on ‘not just what, but when’ in political processes highlights the importance of treating distinct processes as potentially linked in highly consequential ways, which is based on temporal ordering—the possibility that the particular sequencing of events or processes may be a key part of the explanation for divergent outcomes.[[14]](#footnote-14) In this sense, the critical aspects of exploring the relationship between R2P and the ICC are the significance of timing and sequencing in international society’s response to mass atrocities because ‘*when* things happen within a sequence affects *how* they happen’.[[15]](#footnote-15)

The emphasis on the analysis of timing and sequence, that is temporally-oriented analyses, is highly relevant to concepts of self-reinforcing or path dependent processes in politics.[[16]](#footnote-16) Then, what is and why the dimension of path dependence? Simply speaking, path dependence involves a self-reinforcing process in which early stages in a sequence can place particular aspects of political systems onto distinct tracks, which can be reinforced through time. As a result, once a particular path gets established or chosen, path dependency helps ‘narrow conceptually the choice set and link decision making through time’,[[17]](#footnote-17) thus reinforcing the recurrence of a particular pattern into the future. Therefore, the ‘constraining effect’ of path dependent processes forces attentiveness to the dimension of temporal sequences in explaining political outcomes because the temporal order of events or processes may help determine which path of development will emerge.

To put this into perspective, the ‘constraining effects’ of R2P and the ICC on when and how the international society responds is obvious: due to the Rwanda effect and changing expectations, dismissing R2P and ICC actions (reversal) can be very difficult or even virtually impossible once the (humanitarian and judicial) interventionist ‘path’ gets established.

**Three explanatory factors**

It has become increasingly clear that the link between the possibility of irreversibility and the significance of temporal ordering is prominent in the interplay between R2P and the ICC. Thus, in understanding the inherent tension between R2P principle and the ICC, the focus must be on different temporal orderings of R2P-ICC linkages, that is, whether ICC precedes R2P, ICC follows R2P or ICC and R2P take place simultaneously. But international policymakers’ decisions on how a particular sequencing approach is applied and the degree to which it effectively achieves its objectives is influenced by a number of domestic and international factors. Therefore, it is important to understand the factors that influence their selection of particular courses of action as opposed to other equally viable options. There are three sets of factors that should be considered. They include (i) positions taken by UN Security Council on taking international protection and punishment responsibilities; (ii) Receptivity of the host government towards international R2P and judicial interventions; (iii) the policy and prosecutorial strategy of the Office of the Prosecutor of the ICC.

*Positions taken by UNSC’s permanent members*

The adoption of the R2P principle by the 2005 World Summit was undoubtedly premised on the notion that the UN Security Council was *exclusively*, rather than *primarily* responsible for authorizing R2P intervention.[[18]](#footnote-18) Just like the Security Council was granted sole responsibility for the maintenance of international peace and security, the Council is appointed the task to undertake determination function and the action function of carrying out R2P action.[[19]](#footnote-19) Inevitably, decisions taken by international policymakers to intervene under the banner of R2P are inherently political because the Council, as mentioned earlier, is first and foremost a political body, even though protection of civilians as a moral imperative may still serve as a constraint on the Council for rubber stamping their vested interest. On the issue of punishment of perpetrators, the Council is capable of using its power of referral in relation to mass atrocity situations involving non-States Parties by recommending the ICC to exercise its jurisdiction over alleged crime committed neither by State Party nationals or on the territory of State Parties. The Council, in effect, can enhance the jurisdictional reach of the Court.[[20]](#footnote-20) The Security Council’s referral of the Darfur situation to the ICC in 2005 is a case in point, as Sudan is not a State Party of the ICC. Therefore, international community’s willingness to stop genocide and mass atrocities by carrying out R2P and ICC interventions decisively hinges on whether strong political support at the level of the Security Council’s five permanent members (P5) can be secured.

*Receptivity of the host government towards international R2P and judicial interventions*

Obviously, international policymakers’ selection of particular courses of action is influenced by the receptivity of the host government in question to external influence. Countries which areincapableof protecting their own people tend to welcome foreign involvement to help solve their problems, while countries which are unwilling to fulfil their primary protection responsibilities tend to remain defiant, either because they are wholly indifferent to how their own people are treated, or they are perpetrators themselves. In the former case, there is a very strong chance that with host state consent being secured the international community is more willing to engage. In the latter case, given that it is not realistic to expect consent and cooperation from intransigent host governments involved in mass atrocity situations ‘timely and decisive R2P action’ from the Security Council and its referral of the situation to the ICC are vital for stopping genocide and mass atrocities, yet robust international action under the banner of R2P and ICC is closely related to the first factor mentioned above: positions taken by UN Security Council. Here the international community’s successful and rapid response to Kenya’s post-election violence in late 2007 is a case being widely recognised as a R2P success story because of the international society’s willingness to take decisive action.

*ICC Prosecutorial Strategy*

The Office of the Prosecutor will step in only when states fail to conduct genuine investigations and prosecutions, and thus the exercise of the Prosecutor’s functions is largely to encourage and facilitate State to carry out genuine national proceedings themselves where possible. But still the ICC Prosecutor will need to exercise its investigative powers in an affirmative manner by filling the gap created by states’ failure to fulfil their punishment responsibilities. As Article 5 of the Rome statute limits the ICC’s jurisdiction to ‘the most serious crimes of concern to the international community as a whole’ the Office of the Prosecutor has adopted and consolidated a policy of focused investigations and prosecutions, meaning only those who bear the greatest responsibility for the most serious crimes will be investigated and prosecuted and the selection of cases is based on the gravity of the alleged crimes.[[21]](#footnote-21)

 To be sure, as the ICC Prosecutor himself admitted, the ‘impunity gap’ problem caused by the Court’s focus on ‘catching the big fish’ can only be fixed by having national authorities, the international community and the Court working together and using all appropriate means for bringing other perpetrators to justice.[[22]](#footnote-22) Yet the shift of the prosecutorial strategy is worth paying attention to. Building on three principles defined for 2006-2009,[[23]](#footnote-23) ‘addressing the interests of victims’ has been added as the fourth principle in the Report on Prosecutorial Strategy for 2009-2012.[[24]](#footnote-24) To address the interests of victims means ‘seeking their views at an early stage, before an investigation is launched, and to continue to assess their interests on an on-going basis’.[[25]](#footnote-25) Importantly, under this new principle, the victims’ interests are to become the vital determinant for assessing interests of justice under Article 53. As a result, it is certain that the Prosecutor would be asked to take judicial action for both past atrocities and ongoing conflicts as he is mandated to deal with crimes committed since July 2002. The shift of the prosecutorial strategy is then one of the main factors for determining the Court’s credibility and effectiveness in upholding justice, thus affecting international policymakers’ temporal ordering in selecting particular courses of action to stop genocide and mass atrocities.

**Conclusion**

Addressing the problem of responding to mass atrocities in Africa does not mean that this phenomenon is uniquely African. But it is not incorrect to suggest that the African continent has suffered disproportionately from large-scale killings carried out by governments and rebel groups, in particular the resurgence of ethnic conflicts since the end of Cold War. And all too frequently the international society’s response is too slow, disjointed and timid, as this is illustrated by the tendency of Western disengagement from Africa in the post-Cold War era.

 Arguing that the interaction between R2P and the ICC reflects an inherent tension between protection of civilians and punishment of perpetrators, this paper attempts to explain the importance of precise sequencing and path dependence of R2P and the ICC actions in determining international society’s response to mass atrocities. It further goes on by pointing out that the inherent tension between the responsibility to protect and responsibility to punish is attributed to R2P and the ICC’s different logics, timeframes, institutions and influences. And what’s more, the relationship between the temporal ordering of R2P-ICC linkages and international society’s effectiveness in stopping mass atrocities in Africa.

As Francis Deng admitted himself, the isolationist tendency emerging within the major powers in the post-Cold War era marked the birth of ‘sovereignty as responsibility’ idea.[[26]](#footnote-26) In this sense, it is important to reverse this trend of the West’s general unwillingness to intervene in the continent by making use of R2P and the ICC’s constraining effects to keep the international society engaged in Africa.

**Bibliography**

Bellamy, Alex, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, Cambridge: Polity Press, 2009.

Berdal, Mats & Economides, Spyros (ed.) *United Nations Interventionism 1991-2004,* New York: Cambridge University Press 2007.

Blau, Judith & Moncada, Alberto, ‘It Ought to Be a Crime: Criminalizing Human Rights Violations’, *Sociological Forum*, Vol. 22, No. 3, September 2007, p. 364-371.

Clark, Phil & Kaufman, Zachary (ed.), *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond,* New York: Columbia University Press, 2009.

Deng, Francis (*et al*) *Sovereignty as Responsibility: Conflict Management in Africa*, Washington DC: The Brookings Institutions, 1996.

Evans, Gareth, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* Washington, D.C: Brookings Institution Press, 2008.

ICC, OTP, ‘Report on Prosecutorial Strategy 2009-2012’, 1 February 2010, The Hague.

ICC*-*OTP*,* Paper on some policy issues before the Office of the Prosecutor*,* September 2003.

Malone, David (ed.) *The UN Security Council: From the Cold War to the 21st century*, New York: Lynne Rienner Publishers, 2004.

McGoldrick, Dominic, Rowe, Peter & Donnelly, Eric (*et al.*) *The Permanent International Criminal Court: Legal and Policy Issues, Oxford*: Hart Publishing, 2004.

Meron, Theodor, ‘Is International Law Moving towards Criminalization?’, *European Journal of International Law*, Vol. 9 (1998), p. 18-31.

Monterosso, Stephen, ‘Punitive Criminal Justice in Contemporary Society’, Vol. 9, Issue 1(2009), p. 13-25.

North, Douglass, *Institutions, Institutional Change and Economic Performance,* Cambridge: Cambridge University Press, 1990.

Pierson, Paul, *Politics In Time: History Institutions and Social Analysis,* Princeton: Princeton University Press, 2004.

Pierson, Paul, ‘Increasing Returns, Path Dependence, and the Study of Politics’, *American Political Science Review* Vol. 94, No.2 (June 2000), p. 251-267.

Pierson, Paul, ‘Not Just What, but When: Timing and Sequence in Political Processes’ *Studies in American Political Development* 14 (Spring 2000), p. 72-92.

Pugh, Michael (ed.) *The UN, Peace and Force,* London: Frank Cass, 1997.

Schiff, Benjamin, *Building the International Criminal Court,* Cambridge: Cambridge University Press, 2008.

Stahn, Carsten & Sluiter, Göran (eds.) *The Emerging Practice of the International Criminal Court*, Leiden, Boston: Martinus Nijhoff, 2009.

UN General Assembly, *Implementing the responsibility to protect: report of the Secretary-General*, 12 January 2009, A/63/677.

1. Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, D.C: Brookings Institution Press, 2008), p. 11. [↑](#footnote-ref-1)
2. Jennifer Welsh, ‘The Rwanda Effect: Development and Endorsement of the “Responsibility to Protect”, in Phil Clark & Zachary Kaufman (ed.), *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond* (New York: Columbia University Press, 2009), p. 333-350. [↑](#footnote-ref-2)
3. As the Preamble of the Rome Statute notes, ‘the most serious crimes of concern to the international community as a whole must not go unpunished…’ [↑](#footnote-ref-3)
4. UN General Assembly, *Implementing the responsibility to protect: report of the Secretary-General*, 12 January 2009, A/63/677, p. 15. [↑](#footnote-ref-4)
5. Mats Berdal & Spyros Economides (ed.) *United Nations Interventionism 1991-2004* (New York: Cambridge University Press 2007), p. 5. [↑](#footnote-ref-5)
6. Tonny Knudsen, ‘Humanitarian Intervention Revisited: Post-Cold War Responses to Classical Problems’, in Michael Pugh (ed.) *The UN, Peace and Force* (London: Frank Cass, 1997), p. 155. [↑](#footnote-ref-6)
7. Thomas Weiss, ‘The Humanitarian Impulse’ in David Malone (ed.) *The UN Security Council: From the Cold War to the 21st century* (New York: Lynne Rienner Publishers, 2004), p. 37-54. [↑](#footnote-ref-7)
8. ‘Questions & Answers: Relationship Agreement Between the ICC and the United Nations’, Coalition for the International Criminal Court, 12 November 2004. (*italics* original) Available at <http://www.iccnow.org/documents/CICCFS-UNRelationshipAgmt\_12Nov04.pdf> [↑](#footnote-ref-8)
9. Benjamin Schiff, *Building the International Criminal Court* (Cambridge: Cambridge University Press, 2008), p. 9. [↑](#footnote-ref-9)
10. Robert Cryer, ‘The International Criminal Court and its relationship to Non-Party States’, in Carsten Stahn & Göran Sluiter (eds.) *The Emerging Practice of the International Criminal Court* (Leiden, Boston: Martinus Nijhoff, 2009), p. 132. [↑](#footnote-ref-10)
11. Theodor Meron, ‘Is International Law Moving towards Criminalization?’, *European Journal of International Law*, Vol. 9 (1998), p. 18-31; Judith Blau & Alberto Moncada, ‘It Ought to Be a Crime: Criminalizing Human Rights Violations’, *Sociological Forum*, Vol. 22, No. 3, September 2007, p. 364-371; [↑](#footnote-ref-11)
12. Stephen Monterosso, ‘Punitive Criminal Justice in Contemporary Society’, Vol. 9, Issue 1(2009), p. 13. [↑](#footnote-ref-12)
13. Paul Pierson ‘Not Just What, but When: Timing and Sequence in Political Processes’ *Studies in American Political Development* 14 (Spring 2000), p. 72. [↑](#footnote-ref-13)
14. Paul Pierson, ‘Increasing Returns, Path Dependence, and the Study of Politics’, *American Political Science Review* Vol. 94, No.2 (June 2000), p. 252. [↑](#footnote-ref-14)
15. Quoted in Paul Pierson ‘Not Just What, but When: Timing and Sequence in Political Processes’ *Studies in American Political Development* 14 (Spring 2000), p. 73. [↑](#footnote-ref-15)
16. Paul Pierson, *Politics In Time: History Institutions and Social Analysis* (Princeton: Princeton University Press, 2004), p. 55. [↑](#footnote-ref-16)
17. Douglass North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990), p. 98-99. [↑](#footnote-ref-17)
18. Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity Press, 2009), p. 73 (*emphasis* original). [↑](#footnote-ref-18)
19. Paragraph 139 of the World Summit Outcome Document affirms that the Security Council, in accordance with the Charter including Chapter VII, is prepared to take collective action, in a timely and decisive manner, ‘on a case-by-case basis and in cooperation with relevant regional organizations as appropriate’. [↑](#footnote-ref-19)
20. Dan Sarooshi, ‘The Peace and Justice Paradox: The International Criminal Court and the UN Security Council’, in Dominic McGoldrick, Peter Rowe & Eric Donnelly (*et al.*) *The Permanent International Criminal Court: Legal and Policy Issues* (Oxford: Hart Publishing, 2004), p. 98. [↑](#footnote-ref-20)
21. ICC, OTP, ‘Report on Prosecutorial Strategy’, 1 February 2010, p. 5-6. [↑](#footnote-ref-21)
22. ICC, OTP, ‘Paper on some policy issues before the Office of the Prosecutor’ September 2003, p.3. [↑](#footnote-ref-22)
23. The principles identified in the Prosecutorial Strategy 2006-2009 are: 1) a positive approach to complementarity; 2) focused investigations and prosecutions; and 3) maximizing impact. [↑](#footnote-ref-23)
24. ICC, OTP, ‘Report on Prosecutorial Strategy’ 1 February 2010, p. 1-18. [↑](#footnote-ref-24)
25. Ibid., p. 6. [↑](#footnote-ref-25)
26. Francis Deng, Sadikiel Kimaro, Terrence Lyons, Donald Rothchild & I. William Zartman *Sovereignty as Responsibility: Conflict Management in Africa* (Washington DC: The Brookings Institutions, 1996), p. 1-33. [↑](#footnote-ref-26)