

## **Research Article**

### **Africa, paving the way: Lessons from African actors pushing forward the international community's role and responsibility in addressing genocide**

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#### **Abstract**

In the last few years, a shadow has been cast over the legitimacy of international institutions – not least because of the international community's systematic failure to protect the Palestinian people from genocide. This research paper explores whether normative innovations pioneered outside of the West could help better construct the international community's role and responsibility in responding to genocide. It focuses in on African contributions because the continent has historically struggled with high risk levels of mass atrocity, but also because it has often been defined by the interconnectedness of its people in the face of oppressive violence. The paper explores three dimensions of international activity to demonstrate that African actors have regularly led the charge in strengthening the international community's normative capacity - and duty - to intervene in cases of genocide. These are: (i) the African Union's unique regional governance framework for responding to genocide, (ii) African actors' role in the development of international law on genocide and (iii) the African bloc's consistent diplomatic advocacy for an extension of the international community's duty to respond to genocide.

## I. Introduction

2024 marks the thirtieth anniversary of the Rwandan genocide, a tragedy that took the lives of 800,000 people in just under 100 days in 1994.<sup>1</sup> This event is widely considered to constitute a significant failure of the international community, especially in light of the 1997 inquiry of the International Panel of Eminent Personalities (IPEP) appointed by the Organisation of African Unity (OAU), which determined it was largely preventable had the international response been better coordinated.<sup>2</sup> Under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, 'genocide' is defined as 'any [act] committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.'<sup>3</sup> The continent of Africa has been particularly challenged by such acts, due in part to its vast ethnic and religious diversity - encompassing over 3000 ethnic groups practising a range of different faiths<sup>4</sup> - and the fragility that its colonially inherited borders have left it in.<sup>5</sup> Yet, state-level efforts remain critically impotent in curbing these dangers. Consequently, since the events of the Rwandan genocide in particular, African actors have attempted to heighten the capacity and responsibility of the international community to intervene and prevent genocide. These efforts deserve attention in today's context, not only in light of the present heightened risk of genocide within Africa (most notably impending in South Sudan, Burundi, the Central African Republic and the DRC),<sup>6</sup> but also the currently critical state of the international order's normative authority since its continued enabling of the Palestinian genocide.

This essay evaluates the significance of African actors in promoting a stronger international standard in responding to instances of genocide, primarily through innovations in areas such as regional governance, international law and continental

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<sup>1</sup> Chris McGreal, "Thirty Years Ago the World Failed to Stop the Rwandan Genocide. Now We Fail Gaza," *The Guardian*, April 10, 2024.

<sup>2</sup> International Panel of Eminent Personalities, "The Preventable Genocide: Report on the 1994 Genocide in Rwanda and Surrounding Events," *Peaceau.org*, July 7, 2000.

<sup>3</sup>United Nations General Assembly, *1948 Convention on the Prevention and Punishment of the Crime of Genocide*, Article 2.

<sup>4</sup>Thomas Brittner, "Ethnic Groups in Africa" *Study.com*, 2019.

<sup>5</sup>Minority Rights Group, "African Countries Dominate Global Ranking of Communities Facing Greatest Risk of Mass Killings," *minorityrights.org*, January 12, 2024.

<sup>6</sup>Godfrey Musila, "Preventing Genocide: Africa's Evolving Normative and Institutional Framework," *Africa Center for Strategic Studies*, April 7, 2017.

diplomacy. These efforts hold promise for global norm-setting, although they are still riddled with practical and political challenges. The first section of this essay will outline Africa's move from a principle of non-intervention to one of non-indifference and its pioneering regionalisation of genocide response. It will also show that these advancements in governance are still limited by challenges in capacity and national political will. A second section will discuss African actors' role in expanding the remit of the international legal order in addressing genocide, looking particularly at the implications of the Malabo Protocol for regionalised criminal justice, African actors' role in establishing the International Criminal Court (ICC), and the significance of The Gambia and South Africa's expansion of the *erga omnes* doctrine before the International Court of Justice (ICJ). The final section of this essay will demonstrate that the African bloc continuously makes proactive diplomatic efforts in the global arena to advocate for an improved international response to genocides. It will use the bloc's attitude towards the Palestinian genocide as an example of 'practising what you preach', while also recognising that the African bloc's ability to instigate change to the mostly Western-set normative canons of international interactions is still restricted. Despite this, the essay will emphatically conclude that African actors' efforts in the fields of regional governance, international law and diplomacy have continued to set a higher standard for international responsibility in suppressing genocide.

## **II. Shifting from continental 'non-intervention' to 'non-indifference'**

### **1. Historical context**

International interactions, especially in agreeing to standards of cooperative governance, have historically been underpinned by the fundamental principle of state sovereignty, which tends to root much of States' political legitimacy. In a newly decolonised Africa, the international rule of 'non-intervention' had particular moral potency, upholding previously oppressed peoples' fundamental right to self-determination. Indeed, before the burgeoning regional organisations of the continent shifted away from this, African relations were characterised by an

‘absolutist’ adherence to the principle of non-intervention.<sup>7</sup> Simultaneously, events like the Fifth Pan-African Congress, its outcome Declaration to Imperialist Powers of the World, and the publishing of the Lusaka Manifesto<sup>8</sup> have continued to underline the perceived interconnection of African peoples’ struggle and their shared fight for freedom. Some prominent African figures have extended this ideological solidarity to include all peoples systematically oppressed. For example, in referring to South Africans, Mandela famously stated that their ‘freedom is incomplete without the freedom of the Palestinians’.<sup>9</sup> Still, a number of ethnicity-based mass atrocities have traumatised the continent since its emancipation from colonialism, most infamously in Burundi, Nigeria, Sudan, and Rwanda. It was in its report on the latter that IPEP urged the adoption of a new norm of ‘non-indifference’ to mass atrocity amongst African actors.<sup>10</sup> While on some readings, ‘non-indifference’ emerged as a pragmatic response to the destabilising political and economic effects of mass regional violence<sup>11</sup>, the impact of such traumatism on the African psyche cannot be understated in explaining regional policy development.

## **2. Non-indifference’s induction into regional and continental law**

In fact, Africa has ‘been ahead of the curve’ compared to other regions in terms of codifying regional intervention rights in situations presenting a high risk of genocide.<sup>12</sup> As early as 1998, the Economic Community of West African States (ECOWAS) became the first regional organisation in the world to enshrine a right of humanitarian intervention through its Framework Establishing ECOWAS’s Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security<sup>13</sup>. This provided amongst other things that ECOWAS can militarily intervene in situations which

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<sup>7</sup>Jeremy Levitt and Patasse Ange-Fdlx, “Pro-Democratic Intervention in Africa,” *Wisconsin International Law Journal* 24, no. 3 (September 14, 2014), 831.

<sup>8</sup>Commonwealth Heads of Government. *The Lusaka Declaration of the Commonwealth on Racism and Racial Prejudice*. August 7, 1979.

<sup>9</sup>Huthifa Fayyad, “Nelson Mandela and Palestine: In His Own Words,” *Middle East Eye*, February 11, 2020.

<sup>10</sup>Obinna Ifediora, “Regional Multilateralism: The Right to Protect, Not the Responsibility to Protect, in Africa,” Working Paper Version 1, researchgate.net, November 10, 2021, 6.

<sup>11</sup>Jeremy Levitt, “The Law on Intervention: Africa’s Pathbreaking Model,” *Global Dialogue* 7, no. 1/2 (January 1, 2005), 51–55.

<sup>12</sup>Jenna Slotin, Castro Wesamba, and Teemt Kebede. “The Responsibility to Protect (RtoP) and Genocide Prevention in Africa” *International Peace Institute*, July 22, 2009, 1.

<sup>13</sup>Jeremy Levitt, “Africa’s Pathbreaking Model”, 53.

‘threaten to trigger a humanitarian disaster’.<sup>14</sup> Its attached 1999 Protocol complements this right by providing the organisation may intervene where ‘there has been a serious and massive violation of human rights and the rule of law’, including genocide.<sup>15</sup> These revolutionary codifications have reportedly arisen in a context of West African States ‘consistently demonstrating their willingness to forfeit sovereignty for peace’ in the region.<sup>16</sup>

In response to the profound shock that rippled through the African community after the Rwandan genocide, the African Union (AU) sought in 2001 to expand on and ‘continentalise’ these codifications in its Constitutive Act.<sup>17</sup> Most notably, in Article 4(h) of the Act, the AU reserves the 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’.<sup>18</sup> With this move, the AU constitutionally enshrined a norm of ‘non-indifference’ to victims of mass atrocities all over Africa. It became the first continental institution to empower such intervention in instances of genocide. Rather than unduly encroaching on the principle of state sovereignty, these innovations seemed to signal a growing African understanding of sovereignty as responsibility and were mostly designed to ‘operate alongside’ domestic efforts.<sup>19</sup>

Still, Article 4(h) remains the only instance of a continent laying down a normative framework for unilateral military intervention.<sup>20</sup> Indeed, years before the inception of the Responsibility to Protect (RtoP) doctrine, the AU’s Constitutive Act already attempted to draw a balance between state sovereignty and what it understood to be an international responsibility towards victims of mass atrocities. Yet, these regional innovations have had a degree of influence beyond Africa. As Levitt claims, ‘the codification of African regional customary law allowing for pro-humanitarian

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<sup>14</sup> ECOWAS, *Framework Establishing ECOWAS’s Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security*, 1998, para. 46.

<sup>15</sup> ECOWAS, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security*, 1999, Article 25.

<sup>16</sup> Jeremy Levitt and Patasse Ange-Fdlix, “Pro-Democratic Intervention in Africa,” 814.

<sup>17</sup> Jeremy Levitt, “Africa’s Pathbreaking Model”, 56.

<sup>18</sup> Heads of State and Government of the Members States of the Organisation of the African Unity, *Constitutive Act of the African Union*, 11 July 2000, Article 4(h).

<sup>19</sup> Alex de Waal, “From Darfur to Darfur: The Fall and Rise of Indifference to Mass Atrocities in Africa,” *Just Security*, November 2, 2023.

<sup>20</sup> Jeremy Levitt, “Africa’s Pathbreaking Model”, 53.

intervention [...] has influenced the wider corpus of the law'.<sup>21</sup>

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<sup>21</sup>Jeremy Levitt and Patasse Ange-Felix, "Pro-Democratic Intervention in Africa," , 814.

### 3. Implementation and challenges

In furtherance of these newly constitutionalised principles, both the regional organisations of Africa and the AU have developed international governance tools to bolster their capacity to intervene in situations involving a high risk of human tragedy. The AU has four institutional components to its peace and security architecture, overseen by the Peace and Security Council: the Continental Warning System, the Peace Fund, the Panel of the Wise, and the peacekeeping African Standby Force.

This architecture upholds the earliest comprehensive regional collective security and intervention regime in the world,<sup>22</sup> allowing the AU to ‘take the lead’ on cooperative efforts to prevent genocide in the continent.<sup>23</sup> It has pre-empted the UN Security Council’s (UNSC) role several times in quickly responding to crises and has on several occasions restated its willingness to act in situations where UNSC approval might only be granted ‘after the fact’.<sup>24</sup> This indicates a distinctly more proactive African understanding of international responsibility to swiftly and effectively protect populations from mass atrocities. Its effectiveness has also generated a trend toward more hybridised AU/UN peacekeeping missions.<sup>25</sup> Furthermore, just this year, the AU has debuted a Special Envoy for the Prevention of the Crime of Genocide and Other Mass Atrocities position to bolster its role in diplomatic, capacity-building and peacekeeping efforts to curb genocide in the region.<sup>26</sup> These examples support Levitt’s claim that ‘from a normative standpoint, Africa’s collective security regime is more advanced than any other’.<sup>27</sup>

ECOWAS also stands among the regional systems that have intervened to prevent atrocities and obtained ‘after-the-fact’ UNSC sanctioning of their decision, notably in Liberia, Sierra Leone, and Guinea- Bissau.<sup>28</sup> According to a report by the Global Centre for the Responsibility to Protect (GCR2P), ECOWAS has been widely

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<sup>22</sup>Jeremy Levitt, “Africa’s Pathbreaking Model”, 51.

<sup>23</sup>Godfrey Musila, “Preventing Genocide”.

<sup>24</sup>Executive Council of the African Union, *The Common African Position on the Proposed United Nations Reform - “The Ezulwini Consensus”*, March 8, 2005, 6.

<sup>25</sup>Godfrey Musila, “Preventing Genocide”.

<sup>26</sup>Tchioffo Kodjo, “Statement by Adama DIENG: On the Mandate and Vision of the African Union Special Envoy for the Prevention of the Crime of Genocide and Other Mass Atrocities-African Union - Peace and Security Department,” *African Union Peace and Security Department*, July 11, 2024.

<sup>27</sup>Jeremy Levitt, “Africa’s Pathbreaking Model”, 51.

<sup>28</sup>*Ibid*, 52-53.

‘commended for its military and diplomatic engagements regarding emerging conflict’ and ‘has often been at the forefront of responding to violence, mobilising an international response to forestall escalation and prevent mass atrocities’.<sup>29</sup> Its highly sophisticated Early Warning and Response Network (ECOWARN) has been the subject of praise, and has inspired recommendations by the UN Secretary General in his 2023 *Report on the Development and the Responsibility to Protect*, alongside the AU, the Organisation for Security and Co-operation (OSCE) and the East African Intergovernmental Authority on Development (IGAD)’s mechanisms.<sup>30</sup>

Despite this, Africa is still one of the most prone regions to mass killings in the world,<sup>31</sup> indicating that its capacity to prevent such atrocities remains limited. The GCP2R claims that most states ‘often have the will and desire to implement much needed reform [...] but lack the capacity to institute ambitious reforms without sustained external support’.<sup>32</sup> Yet, 15 years after the adoption of ECOWAS’s Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping, and Security many initiatives “are still only at a developmental stage”.<sup>33</sup> Beyond this, the Budapest Centre for Mass Atrocities Prevention has in its recent comprehensive study on African Regional Communities and the Prevention of Mass Atrocities identified political will as one of the principal challenges to regionalised prevention efforts.<sup>34</sup> The study cites corruption and the weakness of the rule of law in certain States as particularly impeding factors.<sup>35</sup> Moreover, regional state powers are still understood to unduly direct the agenda of regional bodies,<sup>36</sup> which can undermine their capacity to impartially and rapidly respond to genocidal risks. As illustrated by the GCPR, ECOWAS has at times struggled to respond to mass atrocities when such actions are in contrast with the political aims of its largest power, Nigeria. For example, there

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<sup>29</sup>Jaclyn Streitfeld-Hall, “Preventing Mass Atrocities in West Africa” *Global Centre for the Responsibility to Protect, Occasional Paper Series* No. 6 (September 6, 2015), 9.

<sup>30</sup>United Nations Secretary General, “Development and the Responsibility to Protect: Recognizing and Addressing Embedded Risks and Drivers of Atrocity Crimes, 2023,” *Documents.un.org*, June 6, 2024, 10.

<sup>31</sup>Early Warning Project, “Countries at Risk for Mass Killing 2023-2024: Statistical Risk Assessment Results,” *Earlywarningproject.ushmm.org*, January 2024, 3.

<sup>32</sup>Jaclyn Streitfeld-Hall, “Preventing Mass Atrocities in West Africa”, 22.

<sup>33</sup>*Ibid*, 9.

<sup>34</sup>African Task Force on the Prevention of Mass Atrocities, “African Regional Communities and the Prevention of Mass Atrocities,” *The Budapest Centre for Mass Atrocities Prevention*, October 2016, IV.

<sup>35</sup>*Ibid*, V.

<sup>36</sup> African Task Force on the Prevention of Mass Atrocities, “African Regional Communities and the Prevention of Mass Atrocities,” IX.



existed delays in responding to atrocities in Mali and Côte d'Ivoire as symptoms of this influence.<sup>37</sup> This leads some to argue that the regime's main lacunae in preventing atrocity is not in fact its material capacities, but members' lacking of 'courage to expend political and diplomatic capital to do so'.<sup>38</sup> Thus, African actors still have to overcome several practical and political challenges to effectively pioneer a continental principle of 'non-indifference' to mass atrocities.

### **III. Expanding genocide's international justiciability**

#### **1. An Africa-wide genocide court?**

African actors have also been surprisingly proactive in strengthening the international justice system's capacity to punish genocide. For example, the Malabo protocol, conceived by the AU, constitutes an interesting regional judicial experiment and could inspire broader uptake. The adoption of the Protocol represents the first time a continental organisation is seeking to set up a court with regional criminal jurisdiction to tackle international crimes such as war crimes, crimes against humanity and genocide. This is particularly promising considering Africa's high susceptibility to cross-territorial crime, its historical inability to bring justice in such cases, and its persistently high rates of impunity for mass violations of human rights under international law.<sup>39</sup> The Protocol could make it easier to achieve justice for victims in situations of cross-border atrocities, complement domestic efforts in persecuting genocidaires, and better curb perpetrators' attempted evasions of domestic justice systems by consolidating a regional approach to the persecution of mass atrocity crimes. However, some aspects of the Protocol remain highly controversial. Most notably, it includes an immunity clause for serving heads of state and governments.<sup>40</sup> These are agents who, in many instances across Africa, have been the primary perpetrators or enablers of genocidal violence. Such a clause directly undermines the efficacy of the new African Court of Justice and Human Rights in bringing justice for victims of genocide. The court's institutional design also faces several operational and funding issues, leading Amnesty International to question its overall potential for

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<sup>37</sup> Jaclyn Streitfeld-Hall, "Preventing Mass Atrocities in West Africa", 9.

<sup>38</sup> Godfrey Musila, "Preventing Genocide".

<sup>39</sup> Amnesty International, "Malabo Protocol: Legal and Institutional Implications of the Merged and Expanded African Court," *Amnesty.org*, 2017, 3.

<sup>40</sup> *Ibid*, 4.

efficiency.<sup>41</sup> Moreover, Malabo's uptake by Member States of the AU is slow and critically limited. Although the Protocol was initially adopted in 2014, it currently only has 15 signatories (out of 55 AU member states) and merely one ratification (Angola).<sup>42</sup> Despite its practical challenges, the AU's conceptualisation of a regionalised criminal justice system, one with the goal of bringing better justice to victims of international crimes such as genocide, is innovative in its vision.

## **2. African actors and the International Criminal Court**

Africa has also played a significant role in enhancing the remit of a global criminal justice system under the auspices of the UN. Alongside the International Criminal Tribunal for Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the contribution African advocates made to the latter's design and operation set an important precedent for the international undertaking of genocidal justice. Indeed, the ICTR was the first ever international tribunal to interpret the Genocide Convention and convict a perpetrator of genocide, as well as being the first to convict and imprison a head of state for the crime of genocide.<sup>43</sup> The permanent International Criminal Court (ICC), created by the Rome Statute in 1998, is also a 'direct legacy' of the ICTR.<sup>44</sup> Furthermore, the ICC itself has stated that, at its inception, 'the most meaningful declarations about the Court were made by Africans' and that without African contribution, the Rome Statute might never have been adopted.<sup>45</sup> It also noted Africa is the most heavily represented region in the Court's membership and that it 'has benefited from the professional experience of Africans and several Africans occupy high-level positions in all organs of the Court'.<sup>46</sup> Indeed, for the same reasons the AU established the Malabo protocol, African actors have persistently pushed the need for an internationalised criminal justice system to punish genocidal crimes. The ICC is unprecedentedly empowered in this domain. As of 2024, the Court has issued arrest warrants on three heads of state under investigation for genocide-related crimes: former Sudanese president Al-Bashir, Russian president

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<sup>41</sup>Amnesty International, "Malabo Protocol".

<sup>42</sup> Allan Ngari and Zenaida Machado, "Angola Becomes First Country to Join African Criminal Court," *Human Rights Watch*, June 14, 2024.

<sup>43</sup>United Nations International Residual Mechanism for Criminal Tribunals, "The ICTR in Brief," *UNIRMCT*, 2013.

<sup>44</sup> Human Rights Watch, "Rwanda: Justice after Genocide—20 Years On," *hrw.org*, March 28, 2014.

<sup>45</sup> International Criminal Court, "Understanding the International Criminal Court" *icc-ipr.com*, 2020, 15.

<sup>46</sup> *Ibid*.

Putin and Israel's prime minister, Netanyahu. However, it has failed to compel the arrest of any of them so far. Moreover, a trend is identified amongst African actors pulling back from the jurisdiction of the Court amidst accusations that it has 'disproportionately targeted African countries' and is being used 'as a tool of Western powers against developing nations'.<sup>47</sup> These criticisms are not completely unfounded: out of 54 individuals indicted by the Court in its lifetime, 47 are Africans.<sup>48</sup> Furthermore, recently, the ICC's capacity to deliver justice has been heavily put to the test amidst categorical dismissals of the warrants by the governments of Russia and Israel, which has described the Court as 'a biased and discriminatory political body'<sup>49</sup>, as well as The United States, which has described the ICC's warrant on Netanyahu as 'outrageous', fundamentally rejecting it.<sup>50</sup>

### **3. *Erga Omnes* and third-party jurisdiction before the ICJ**

Perhaps more promisingly, two African states have played a pioneering role in the development of the crucial *erga omnes* doctrine in interstate genocide cases brought before the ICJ. The notion of *erga omnes* operates as a conceptual framework for certain rights and duties in international law. *Erga omnes*, meaning 'towards all' in Latin, classifies legal obligations which are owed to the international community as whole (or in the case of *erga omnes partes*, towards all parties of a treaty). Specifically, *erga omnes* includes norms whose violation is considered such a high offence to humanity that they endanger the sanctity of the international community as a whole, such as genocide (as confirmed in *Bosnia v Serbia, Preliminary Objections*).<sup>51</sup> Importantly, the Genocide Convention also imposes a positive *erga omnes* duty on all Contracting Parties, 'which in any situation [have] it in [their] power to contribute to restraining in any degree the commission of genocide' to do so.<sup>52</sup> Some legal scholars

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<sup>47</sup>Human Rights Watch, "Rwanda: Justice after Genocide—20 Years On". See also Kenneth Roth, "Africa Attacks the International Criminal Court," *hrw.org*, January 14, 2014.

<sup>48</sup>Melissa Hendrickse, "A Chance for Africa to Counter the Pitfalls of International Criminal Justice?," *Amnesty International*, April 22, 2024.

<sup>49</sup>Julian Borger and Andrew Roth, "ICC Issues Arrest Warrant for Benjamin Netanyahu for Alleged Gaza War Crimes," *The Guardian*, November 22, 2024.

<sup>50</sup>Al Jazeera, "How US Politicians Responded to Netanyahu's ICC Arrest Warrant," *aljazeera.com*, November 21, 2024.

<sup>51</sup>In this paragraph the Courts actually states that *all* the rights and obligations under the Genocide Convention are rights and obligations *erga omnes*. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia v Serbia), Judgement on Preliminary Objections (ICJ July 11, 1996) [33].

<sup>52</sup>See article 1 of the Convention and its interpretation by the Court in para. 461 in *Application of the*

have gone as far as to suggest that this 'should be considered the legal basis for asserting the binding character of the responsibility to protect doctrine',<sup>53</sup> underlining the importance of the ICJ's application of the doctrine.

As of late 2024, no State has ever been held responsible for not acting on its capacity to prevent a genocide outside its territory. However, both The Gambia and South Africa have been uniquely proactive in attempting to discharge this duty. Bringing a case against Myanmar in 2019 for genocidal violence against its Rohingya population, The Gambia became the first state to invoke its jurisdiction to bring redress to a people that were not its nationals.<sup>54</sup> This case allowed the ICJ to confirm the *locus standi* of Contracting Parties to the Genocide Convention who are completely external to a genocide, by virtue of their *erga omnes* obligations (*The Gambia v Myanmar, Preliminary Objections*).<sup>55</sup> This has been extolled as a 'revolution',<sup>56</sup> expanding the legal capacity for Third States to bring justice for victims of genocide, and a 'promising solution to the systemic underenforcement of human rights'.<sup>57</sup> Indeed, in The Gambia's case, the ICJ promptly ordered Myanmar to bring an end to its genocidal acts.

Furthermore, in line with its long-standing support of the Palestinian people, South Africa became the second state to inter-continentially invoke such a jurisdiction to bring charges against Israel for its apartheid regime and genocidal acts in 2023. In its preliminary treatment of the case, the ICJ disposed of the question of jurisdiction in a single paragraph.<sup>58</sup> Israel did not object to South Africa's standing, indicating a move

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*Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia v Serbia), Judgement on Preliminary Objections (ICJ July 11, 1996), [461].

<sup>53</sup>Marco Longobardo, "Genocide, Obligations Erga Omnes, and the Responsibility to Protect: Remarks on a Complex Convergence," *The International Journal of Human Rights* 19, no. 8 (September 30, 2015): 1199–1212, 6.

<sup>54</sup>Rizwanul Islam, "The Gambia v. Myanmar: An Analysis of the ICJ's Decision on Jurisdiction under the Genocide Convention," *American Society of International Law* 26, no. 8 (September 21, 2022).

<sup>55</sup>*Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (The Gambia v. Myanmar), Judgment on Preliminary Objections (2022), [108].

<sup>56</sup>Oona A. Hathaway, Alaa Hachem, and Justin Cole, "A New Tool for Enforcing Human Rights: Erga Omnes Partes Standing," *Columbia Journal of Transnational Law* 61, no. 2 (October 3, 2023): 259–332.

<sup>57</sup>Oona A. Hathaway, Alaa Achem, and Justin Cole, "In the Case against Syria, a New Tool for Enforcing Human Rights," *Just Security*, October 9, 2023.

<sup>58</sup>*Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v Israel), Provisional Measures Order (ICJ January 26, 2024), [33].

towards 'universal acceptance' of third-party *erga omnes*-founded standing.<sup>59</sup> The Court subsequently ordered an immediate cessation of the killing of Palestinians in Gaza, amongst other provisional measures aimed at preventing genocidal risk.<sup>60</sup>

The Gambia and South Africa's legal activism in these cases echoes the normative understanding of an interconnection of oppressed people that underpins the African approach to genocide. Like the Rohingyas, 95% of The Gambia's population is Muslim, and it acted under the strong support of the Organisation of Islamic Cooperation.<sup>61</sup> Similarly, South Africa has cited its painful history of apartheid as a motive in bringing forward its case.<sup>62</sup> However, in light of Israel's persistent and flagrant disrespect for these orders - fatally sanctioned by the United States - the efficacy of this new legal tool in protecting populations from genocide appears limited. Still, The Gambia and South Africa have set a high normative standard for inter-State litigation, pushing for stronger judicial condemnation of States enabling genocide, in situations where these States previously had little prospects of being held accountable.

#### **IV. Diplomatic efforts towards taking international responsibility**

##### **1. African actors and the Responsibility to Protect doctrine**

Alongside legal contributions, several political efforts emanating from Africa have increased pressure on the international community to protect populations from genocide. In the years since Africa's constitutional regionalisation of the norm of 'non-indifference', African actors have strongly advocated for its adoption at the global stage. Kofi Annan, the Ghanaian UN Secretary General in the early 2000s, was highly instrumental in orienting the UN's agenda towards the establishment of the

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<sup>59</sup> Pearce Clancy, "Erga Omnes Partes Standing after South Africa v Israel," *Blog of the European Journal of International Law*, February 1, 2024.

<sup>60</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v Israel), Provisional Measures Order (ICJ January 26, 2024), [75]-[82].

<sup>61</sup> Owen Bowcott, "Gambia Files Rohingya Genocide Case against Myanmar at UN Court," *The Guardian*, November 11, 2019.

<sup>62</sup> McGreal, Chris. "How Apartheid History Shaped South Africa's Genocide Case against Israel." *The Guardian*, January 8, 2024.

RtoP doctrine.<sup>63</sup> Moreover, the International Peace Institute reports that it was due 'to the tireless efforts of several African leaders that RtoP paragraphs were ultimately included in the Outcome Document of the 2005 World Summit.'<sup>64</sup>

On the occasion of the UN General Assembly's recent debate on the RtoP in 2023, African actors also made valuable contributions. Referring to mass atrocities, the Kenyan UN Special Adviser of the Secretary-General on the Responsibility to Protect, George Okoth-Obbo, emphasised in his introductory remarks that the international community should 'leverage development policies, strategies and programmes across the spectrum of atrocity risk assessment, early warning, preparedness and response to avoid, reduce or mitigate these risks and occurrences'.<sup>65</sup> The Gambian delegation further stressed the need for 'increased cooperation in addressing the risk of atrocity crimes'<sup>66</sup> while Djibouti urged the international community to 'leverage development programming across the spectrum'<sup>67</sup> to address genocidal risks. Moreover, Namibia stated it is its 'fervent hope' that community efforts 'will be geared towards strengthening the global peace and security architecture' and leveraging lessons learned to more swiftly and effectively address emerging issues.<sup>68</sup> These are a few of many examples of African actors' persistent advocacy for stronger international response mechanisms in situations of genocide at the UN.

## **2. Diplomatic solidarity with Palestine**

The recent widespread attention on the Palestinian genocide has also allowed the African bloc to repeatedly demonstrate it 'practices what it preaches' in terms of upholding a globalised norm of 'non-indifference' towards mass atrocity. Historically, the OAU and the AU have both 'played a progressive role in supporting the Palestinian cause'.<sup>69</sup> The bloc has recently taken an even stronger stance against Israel's

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<sup>63</sup> Karin Wester, "1 - the Origin of the Responsibility to Protect," in *Intervention in Libya the Responsibility to Protect in North Africa* (New York: Cambridge University Press, 2020), 11–23, 11-14.

<sup>64</sup> Jenna Slotin, Castro Wesamba, and Teemt Kebede. "The Responsibility to Protect (RtoP) and Genocide Prevention in Africa", 4.

<sup>65</sup> "Summary of the 2023 UN General Assembly Plenary Meeting on the Responsibility to Protect" *Global Centre for the Responsibility to Protect*, 2023,1.

<sup>66</sup> *Ibid*, 6.

<sup>67</sup> *Ibid*, 3.

<sup>68</sup> *Ibid*, 4.

<sup>69</sup> Kribsoo Diallo, "African Attitudes To, and Solidarity With, Palestine," *Transnational Institute*, October 3, 2024.

apartheid regime. As early as February 2023, the AU withdrew Israel's observer status in the Union - a privileged position for non-members of the Union to participate in its activities on a consultative basis - while the AU investigated the State's compliance with the organisation's values in light of its actions in Palestine (also, it boldly removed an 'uninvited' Israeli diplomat from its weekend Summit).<sup>70</sup> The 54-state bloc has also consistently voted in favour of General Assembly resolutions calling for a humanitarian truce or a ceasefire in Gaza.<sup>71</sup> Indeed, to the exception of Liberia, no African State has thus far objected to any UN resolution related to a ceasefire, the declaration of a humanitarian truce and the unimpeded delivery of humanitarian aid to Gaza.<sup>72</sup> Simultaneously, the AU has persistently advocated for an upgrade in Palestine's rights in the UN as an Observer State.<sup>73</sup> Despite these efforts, more than a year on from the genocide, the United Nations has failed to reach a ceasefire in Gaza. This is mainly due to the reticence or directly obstructive efforts of some of the UN's most powerful actors. In particular, the United States' relentless use of the veto in Security Council resolutions aimed at establishing a ceasefire and, critically, at protecting the Palestinian people from further genocide, casts doubt as to the African bloc's overall power to enshrine an effectively operating norm of 'non-indifference' globally. Despite this, Africa's continued and relatively unified diplomatic engagement remains vital in advancing the global discourse on the international community's responsibility to prevent genocide.

In conclusion, it can be said that African actors have worked tirelessly to consolidate a more effective international response to genocide. The AU and its regional organisations have pioneered a collective security model that empowers the continent in several ways to respond to and mitigate genocidal risks. Because of this, it has been praised by some academics as the most advanced collective security regime on the planet from a normative standpoint<sup>74</sup>. Additionally, African legal agents have paved an important path in terms of 'internationalising' criminal justice for genocidal acts, in such a way that such acts may be more effectively addressed. They have done this through their active role in the ICC's inception and in designing a new African Court of Justice

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<sup>70</sup>Al Jazeera, "African Union Says Israel's Observer Status Suspended," *aljazeera.com*, February 23, 2023.

<sup>71</sup>Kribsoo Diallo, "African Attitudes To, and Solidarity With, Palestine".

<sup>72</sup>*Ibid.*

<sup>73</sup>*Ibid.*

<sup>74</sup>Jeremy Levitt, "Africa's Pathbreaking Model", 51.

and Human Rights, which would theoretically and in unprecedented fashion have jurisdiction to try some 14 newly outlined 'international crimes' (including genocide). Moreover, The Gambia and South Africa's legal activism has played an indispensable role in opening the *erga omnes* doctrine before the ICJ, and in permeating its bolstered interpretation of third states' duties to prevent genocide. Finally, the African bloc's diplomatic efforts have also displayed a united continental front in calling on the international community to proactively respond to ongoing genocides around the world. Although operating within global institutional structures that are still heavily directed by historical and material powers, African actors have, through many avenues, driven a push to elevate the international community's capacity - and duty - to intervene in situations of genocide.



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