

Kateřina RUDINCOVÁ

University of Ostrava

katerina.zenkova@osu.cz

AFRICAN SOLUTION TO AFRICAN PROBLEMS: AU AND THE CONFLICT RESOLUTION IN SOUTH SUDAN

ABSTRACT The article deals with the concept of *responsibility to protect*, applied on the case study of South Sudan. The introductory part of the paper discusses the concept itself, its emergence and inclusion in relevant international law documents. The second part is dedicated to the analysis of African Union's documents which enshrine *responsibility to protect* concept to the organization's politics. The third part analyses the South Sudanese civil war and is concerned with the role of African Union in the conflict resolution process in current South Sudan. Methodologically, it is an intrinsic case study and it is based on the analysis of African Union documents and relevant literature.

Key words: South Sudan, Responsibility to protect, African Union, peace resolution

INTRODUCTION

Since the end of the Cold War, nature of conflicts has changed and interstate conflicts started to prevail. In 1990s the international community was shocked by humanitarian catastrophes such as in Somalia or Rwanda. Therefore, the beginning of new millennium was marked by efforts to prevent recurrence of these violations of human rights by development of the *responsibility to protect* (R2P) concept. Even though it has not become a binding obligation, it is accepted by the major part of international community and has been applied in various cases. Therefore, this article seeks to discuss its possible application in the case of South Sudan.

South Sudan was established on 8 July 2011, based on the referendum on independence, in which vast majority of its inhabitants voted for independence. However, a new civil war broke up in 2013 and since then the humanitarian situation in the country has worsened, leaving hundreds thousand dead and displaced people. There have been various efforts led mainly by IGAD and supported by the UN and African Union (AU) aimed at achieving peace. The last one succeeded in signing of the peace accord in Khartoum in August 2018.

The main aim of the article is to answer the following questions: How is the concept of *responsibility to protect* enshrined in the normative framework of the AU and applied in the case of South Sudan? And what are the mechanisms AU uses in order to resolve the conflict in South Sudan? From the methodological point of view, the article is an intrinsic case study which is “*exploratory in nature, and the researcher is guided by his or her interest in the case itself rather than in extending theory or generalizing across cases*”¹. South Sudan was selected as a case because there is an ongoing conflict and AU has engaged itself in the peace process since its beginning. Theoretically, the paper is based on the concept of R2P which is applied in the African context. Discussion about the legality of the responsibility to protect concept in the international law is, however, beyond scope of this article. Instead, it focuses on the application of this concept in the normative framework of the AU as well as its practical use in the conflict resolution in South Sudan.

The article is based on the analysis of documents, released by the AU in particular, which include statements of the Chairperson the Commission of the AU, decisions of the AU Peace and Security Council (AU PSC) concerning the conflict in South Sudan, and founding documents of various AU organs.

Concerning the structure of the paper, the first part discusses the evolution and application of the concept of responsibility to protect in international law and politics, the second one is dedicated to the African peace and security architecture and enshrinement of the R2P concept in documents of the AU. The final part of the article deals with the current political crisis and civil war in South Sudan and mechanisms international community, and AU in particular uses on order to achieve a long-term peace in the region.

¹ A.J. Mills, G. Durepos, E. Wiebe, *Encyclopedia of Case Study Research*, Sage 2010, p. 499-500.

RESPONSIBILITY TO PROTECT

Discussions about the responsibility of international community and states to protect citizens and avoid mass atrocities have become apparent in international forums and consequently in academia since the beginning of new millennium at the response of brutal conflicts and violations of human rights in 1990s. However, the idea that states should protect people from atrocities beyond their borders is far older and traces back to Ancient philosophy. After the consolidation of modern states it became a basis for humanitarian interventions². States were not obliged to intervene, but intervention was a matter of political will and interests. The principle of non-intervention, which means that states have a right to freedom from external intervention, was developed in international law in parallel and became a constituted part of international law covenants during the twentieth century. As a result, the responsibility to protect civilians from atrocities beyond borders of particular states has become, according to Glanville, “*a permissible exception to the rule of non-intervention rather than demanding legal obligation*”³.

Legal basis of the humanitarian intervention was enshrined in the UN Charter signed in 1945. The Chapter VII deals with actions threatening peace, permits UNSC to act in these cases and articles 41 and 42 propose applicable measures, including humanitarian intervention.⁴ Chapter VIII, moreover, grants international organizations authority for “*dealing with such matters relating to the maintenance of international peace and security*” under the condition that it is authorized by the SC.⁵ On 9 December 1948, the UN General Assembly (UN GA) adopted the Convention on the Prevention and Punishment of the Crime of Genocide in which signatories determine genocide as “*a crime under international law which they undertake to prevent and to punish*”.⁶ It suggests that according to this convention, parties have a duty to intervene in the states where genocide occurs.⁷ According to Jeremy Sarkin, “*given that the prohibition*

² Humanitarian intervention has been defined as a „*coercive action by States involving the use of armed force in another State without the consent of its government, with or without authorization from the UN Security Council, for the purpose of preventing or putting to a halt gross and massive violations of human rights or international humanitarian law*“. Danish Institute of Foreign Affairs, „Humanitarian Intervention: Legal and Political Aspects“, submitted to the Minister of Foreign Affairs, Denmark, 7 December 1999, Cit. In B. Kioko, “The Right to Intervention under the African Union’s Constitutive Act: From Non-Interference to Non-Intervention”, *International Review of the Red Cross*, vol. 85, no. 852 (2003), p. 808-809.

³ L. Glanville, “The Responsibility to Protect Beyond Borders”, *Human Rights Law Review*, vol. 12 (2012), p. 7.

⁴ UN Charter, Chapter VII; J. Sarkin, “The Responsibility to Protect and Humanitarian Intervention in Africa”, *Global Responsibility to Protect*, vol. 2, no. 4 (2010), p. 374.

⁵ UN Charter, Chapter VIII

⁶ „Convention on the Prevention and Punishment of the Crime of Genocide“, *UN Human Rights Office of the High Commissioner*, 9 December 1948, at <<https://www.ohchr.org/en/professionalinterest/pages/crimeofgenocide.aspx>>, 21 July 2018.

⁷ L. Glanville, „The Responsibility...“, p. 7-8.

of genocide, war crimes and crimes against humanity qualify as jus cogens [peremptory norm] it follows that R2P can and should be invoked in their prevention”.⁸ In fact, however, the decision on intervention has been subjected to interests of particular states and their political will which have been projected to the decision making of UNSC members in various cases, including whether to call situation in Darfur genocide.⁹ Analogically, as the case of Kosovo demonstrated, political aspirations may cause paralyzing of the SC by a permanent member’s veto of military intervention.¹⁰

Modern R2P concept emerged at the beginning of new millennium in reaction to the changed nature of conflicts. Since the 1990s, conflicts of non-state actors began to prevail in international system, which brought a need to create protective mechanisms for affected people. Brutal conflicts and serious humanitarian crises such as in Rwanda, Bosnia and Kosovo caused discussions about humanitarian interventions and became the memento for international community.¹¹ The R2P concept first emerged in the Kofi Annan’s Annual Report of the Secretary-General to the 54th session of the UN General Assembly in September 1999.¹² In his speech, Annan urged states to agree on the basic principles of humanitarian intervention. Until 2005, responsibility to protect had been endorsed by the UN GA, emerged in various SC and GA resolutions and has been accepted by states, non-governmental organizations (NGOs) and international community.¹³

Core documents on the responsibility to protect include “*The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty (ICISS)*” released by the ICISS in 2001¹⁴, report of the UN High-Level Panel on Threats, Challenges and Change “*A More Secure World: Our Shared Responsibility*” from December 2004¹⁵, report of the UN Secretary-General “*In Larger Freedom:*

⁸ J. Sarkin, „The Role of the United Nations, the African Union and Africa’s Sub-Regional Organizations in Dealing with Africa’s Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect“, *Journal of African Law*, vol. 53, no. 1 (2009), p. 9.

⁹ M. Mamdani, “Responsibility to Protect or Right to Punish?”, *Journal of Intervention and Statebuilding*, vol. 4, no. 1 (2010), p. 58. The Darfur case is generally considered as a failure of the responsibility to protect since the international community was not able to prevent mass atrocities and take an effective collective action. See e.g. A. Bellamy, “The Responsibility to Protect – Five Years On”, *Ethics & International Affairs*, vol. 24, no. 2 (2010).

¹⁰ M. Hakimi, “Toward a Legal Theory on the Responsibility to Protect”, *Yale Journal of International Law*, vol. 39 (2014), p. 251-252.

¹¹ *Ibid.*, p. 251.

¹² „Secretary-General Presents His Annual Report to General Assembly“, UN, SG/SM/7136, 20 September 1999, at <<https://www.un.org/press/en/1999/19990920.sgsm7136.html>>, 21 July 2018.

¹³ L. Glanville, „The Responsibility...“, p. 2.

¹⁴ “The Responsibility to Protect”, *International Commission on Intervention and State Sovereignty*, December 2001, at <<http://responsibilitytoprotect.org/ICISS%20Report.pdf>>, 19 July 2018

¹⁵ “Note by the Secretary-General”, *UN General Assembly*, A/59/565, 2 December 2004, at <<https://www.securitycouncilreport.org/un-documents/document/CPR%20A%2059%20565.php>>, 21 July 2018.

*Towards Development, Security and Human Rights for All*¹⁶, Paragraphs 138-139 of the World Summit Outcome Document adopted in 2005¹⁷, and Security Council Resolution 1674 (28 April 2006) on Protection of civilians in armed conflict¹⁸. However, none of these documents may be regarded as binding in international law since they do not correspond with the classic sources of international law as classified in the Article 38 of the Statute of the International Court of Justice, namely international conventions, international customs, and general principles of law.¹⁹ This concept, therefore, is understood as “the legal and ethical commitment of the international community, acting through organizations, such as the UN and Africa’s regional organizations, to protect citizens from genocide, war crimes, crimes against humanity, or ethnic cleansing”.²⁰ Therefore, its application became source of discussions both in international fora and in academia.²¹

The founding document of this concept, “*The Responsibility to Protect*” deals with the responsibility of states to prevent mass violation of human rights in situation when “humanitarian intervention is, indeed, an unacceptable assault on sovereignty”.²² It suggests the three-dimensional responsibility of international community – responsibility to prevent, responsibility to react and responsibility to rebuild and deals inter alia with the question of authority and operational dimension as well.²³ This document brings new terminology, since the term “humanitarian intervention” is replaced by the “responsibility to protect”. According to Evans and Sahnoun, the terminological shift from intervention to protection suggests that “primary responsibility rests with the state concerned” and implies “evaluating the issues from the point of view of those needing support, rather than those who may be considering intervention”.²⁴

The World Summit Outcome Document adopted in 2005 specifies the only possibility to take a collective action including humanitarian intervention by approval of

¹⁶ “In larger freedom: towards development, security and human rights for all”, *UN General Assembly*, A/59/2005, 21 March 2005, at <<https://undocs.org/A/59/2005>>, 21 July 2018.

¹⁷ “2005 World Summit Outcome Document”, *UN General Assembly*, A/RES/60/1, 24 October 2005, at <http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf>, 22 July 2018.

¹⁸ “Resolution 1674”, *UN Security Council*, S/RES/1674, 28 April 2006, at <<http://unscr.com/en/resolutions/1674>>, 22 July 2018.

¹⁹ C. Stahn, “Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?”, *The American Journal of International Law*, vol. 101 (2007), p. 101.

²⁰ S. Gumede, “The African Union and the Responsibility to Protect”, *African Human Rights Law Journal*, vol. 10, no. 1 (2010), p. 135

²¹ See e.g.: J. Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?*, 2010; D. Chandler, “Unravelling the Paradox of the Responsibility to Protect”, *Irish Studies in International Affairs*, vol. 20 (2009), p. 27-39; M. Hakimi, “Toward a Legal Theory...”, p. 247-280.

²² “The Responsibility to Protect”, *ICISS*, p. 2, quoting Secretary-General Millennium Report and Annual Report on the Work of the Organization, UN Docs A/54/2000 and A/55/1 (2000), at 48 and para 37); C. Stahn, “Responsibility...”, p. 102.

²³ “The Responsibility to Protect”, *ICISS*.

²⁴ G. Evans, M. Sahnoun, „The Responsibility to Protect”, *Foreign Affairs*, vol. 81, no. 6 (2002), p. 101.

the SC, which is in opposition to the ICISS report, which considers an alternative that regional organisation would take an action and seek its authorization by UNSC *ex post*. In the paragraph 139 it states: “*we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.*”²⁵ However, as Monica Hakimi stresses²⁶, the Outcome Document still prevails the normative factor behind responsibility to protect by stating in paragraph 138 that “*each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it.*”²⁷

Generally, R2P includes several propositions: 1) states have a responsibility to protect their own citizens from the most severe atrocities – from genocide, war crimes, ethnic cleansing and crimes against humanity, which is in accordance with the human rights norms in existing international law; 2) international community has a responsibility to assist host states and to act in the cases when host states are not able to protect their own citizens.²⁸ This suggests that intervention in states that are under atrocities is not a right but a duty, which brings discussions among theorists in international law since it challenges the concept of territorial sovereignty. However, R2P includes various mechanisms and the armed intervention is the only last resort solution applied in cases of the most severe violation of human rights.

African approach to the responsibility to protect

Africa is the continent with high incidence of conflicts and massive human rights violations. There have been an estimated 630 armed conflicts on the continent between 1990 and 2015, according to the Uppsala Conflict Data Program (UCDP).²⁹ In order to deal with them, international community has developed and used various strategies, including humanitarian intervention. However, international humanitarian intervention in Somalia at the beginning of 1990s and the inactivity which enabled genocide in Rwanda led African states to prefer “African solution to African problems”, which

²⁵ “2005 World Summit Outcome Document”, *UN General Assembly*, A/RES/60/1, 24 October 2005, at <http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf>, 22 July 2018.

²⁶ M. Hakimi, “Toward a Legal Theory...”, p. 253.

²⁷ “2005 World Summit Outcome Document”, *UN General Assembly*.

²⁸ L. Glanville, “The Responsibility...”, p. 3-4.

²⁹ Uppsala Conflict Data Program (UCDP), at <http://ucdp.uu.se/>, cit. In P. Williams, „Continuity and Change in War and Conflict in Africa“, Center for Security Studies, ETH Zurich, 13 July 2017, at <<http://www.css.ethz.ch/en/services/digital-library/articles/article.html/ca4e4f42-f754-4436-91ed-0862db6afa71/pdf>>, 16 August 2018.

means that Africans themselves should propose and implement solutions to the problems on the continent, including violent conflicts.

In this context, AU serves as the main actor responsible for the peace maintenance on the continent and is currently the main proponent of R2P. Nevertheless, conflict resolution was already a part of the agenda of AU's predecessor, Organization of African Unity (OAU), which was established in 1963. In this context, the OAU Secretary-General Salim Ahmed Salim proposed the mechanisms for effective conflict prevention and resolution in Africa in 1992, stating that "*if the OAU [...] is to play the lead role in any African conflict, it should be enabled to intervene swiftly, otherwise it cannot be ensured that whoever (apart from African regional organizations) acts will do so in accordance with African interests*".³⁰ However, at the same time, the OAU committed itself to the maintenance of principle of non-interference in states' internal affairs at the expense of human rights, which were promoted almost exclusively in context of self-determination and decolonization. Therefore, the drafting and adopting of the African Charter of Human and People's Rights was a long and complicated process and was not completed until 1981. By drafting the document, OAU expressed the need to deal with human rights violations on the continent on the response of ousting of power from three brutal African leaders at the end of 1970s – Idi Amin in Uganda, Jean-Bédel Bokassa in Central African Republic and Macías Nguema in Equatorial Guinea.³¹

Ideas about responsibility of African states to prevent genocide and mass atrocities on the continent, are apparent from the thoughts of Francis Deng, the Secretary-General's representative on internally displaced persons, summarized in the idea of "sovereignty as responsibility"³², which was developed already before the R2P. According to Deng, "*in order to be legitimate, sovereignty must demonstrate responsibility, which means at the very least ensuring a certain level of protection for, and providing the basic needs of the people; that most governments under normal circumstances do in fact discharge that responsibility; that when they cannot do so for the reason of incapacity, they will call upon the international community to assist; but that under those exceptional circumstances when governments fail to discharge this responsibility and masses of its citizens become threatened with severe suffering and maybe deaths as a result, the international community will in one way or another step in to provide the needed remedy*".³³ Deng further specifies the mechanisms which may be used by international community when states are not able to fulfil their obligations, as the "*on-site monitoring and visits, criticism, condemnation, sanctions, and even armed intervention, where regional or international peace*

³⁰ Report of the Secretary-General on Conflicts in Africa: Proposal for an OAU Mechanism for Conflict Prevention and Resolution, OAU Doc. CM/1710 (L. VI) (1992). Cit. In F. Deng, "Frontiers of Sovereignty. A Framework of Protection, Assistance, and Development for the Internally Displaced", *Leiden Journal of International Law*, vol. 8 (1995), p. 270.

³¹ P. Williams, "From Non-Intervention to Non-Indifference: The Origins and Development of the African Union's Security Culture", *African Affairs*, vol. 106, no. 423 (2007), p. 268.

³² F.M. Deng, S. Kimaro, T. Lyons, D. Rothchild & I.W. Zartman, *Sovereignty as Responsibility: Conflict Management in Africa*, Washington D.C. 1995; F. Deng, „Frontiers...”, p. 249-286.

³³ *Ibid.*, p. 278.

is threatened.³⁴ The concept of sovereignty is therefore newly understood not as a protection of states but as a responsibility towards the states' citizens. If governments fail to protect people in their territories, they “*risk undermining their legitimacy*”.³⁵

However, the commitment to the peace resolution on the African continent and the conflict prevention mechanisms were introduced with the replacement of the OAU by the AU in 2003 on the basis of the Constitutive Act adopted in 2002. This transformation was motivated by efforts to take responsibility for the development on the continent on the response to large scale civil conflicts and violations of human rights. In order to prevent mass atrocities from the 1990s African leaders awarded the AU a right to humanitarian intervention, enshrined in the founding document. Article 4(h) of the Constitutive Act declared as one of the AU's principles “*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*”.³⁶ By adopting the article 4(h), AU seeks to create mechanisms which would enable it to resolve conflicts on African continent more effectively. The move away from non-interference by providing for a right to intervention means, as Ben Kioko calls it, a creation of the doctrine of “non-indifference”.³⁷ It means, that whereas the OAU focused on states and head of state, the AU stresses interests and rights of African peoples.³⁸ However, at the same time member states expressed their commitment to the principle of sovereignty and non-interference in the internal affairs of each African state in the Article 4(g). It suggests, according to Alex Bellamy, that Constitutive Act rejects unilateral actions and prefers collective action in order to achieve a peace.³⁹ To sum it up, according to Paul Williams,⁴⁰ the African security culture is based on following principles:

- 1) *Sovereign equality of members (Article 4a).*
- 2) *Non-intervention by member states (Article 4g).*
- 3) *Anti-imperialism/African solutions first.*
- 4) *Uti possidetis (Article 4b).*
- 5) *Non-use of force/peaceful settlement of disputes (Articles 4e, 4f, 4i).*
- 6) *Condemnation of unconstitutional changes of governments (Article 4p).*
- 7) *The Union's right to intervene in a member state in grave circumstances (Article 4h).*

On the African continent, the peace is maintained using the African Peace and Security Architecture (APSA), consisting of AU Peace and Security Council (PSC),

³⁴ Ibid., p. 264-265.

³⁵ Refugee Policy Group. Human Rights Protection for Internally Displaced Persons: An International Conference 7 (1991). Cit. In: F. Deng, „Frontiers...”, p. 266.

³⁶ “Constitutive Act of the African Union”, *African Union*, 11 July 2000, at <https://au.int/sites/default/files/pages/32020-file-constitutiveact_en.pdf>, 19 July 2018.

³⁷ B. Kioko, “The Right...”, p. 819.

³⁸ J. Sarkin, “The Role...”, p. 17.

³⁹ A.L. Bellamy, „Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit“, *Ethics and International Affairs*, vol. 20 (2006), p. 157.

⁴⁰ P. Williams, “From Non-Intervention...”, p. 261.

Panel of the Wise, the African Standby Force (ASF), the Continental Early Warning System (CEWS), and the Peace Fund. Above that, AU Commission, which serves as a secretariat of AU and has its headquarters in Ethiopian Addis Ababa, has developed into another actor in peace and security agenda. AUC's Peace and Security Department has become the major site of drafting documents related to APSA.⁴¹

The effectivity of conflict prevention and resolution mechanisms is limited by a complicated relationship between the AUPSC and the UNSC, related to their right to invoke an intervention. According to the Constitutive Act, it is AU Assembly who makes a primary responsibility in the case of humanitarian emergencies in Africa. However, PSC as a consultative organ for the AU Assembly in the case of possible intervention must cooperate with the UNSC, according to the Article 17 of the Protocol relating to the establishment of the PSC of the AU. At the same time the Protocol does not require SC's approval of collective enforcement actions or humanitarian intervention.⁴² According to the Protocol, AUPSC is empowered to "recommend to the Assembly, pursuant to Article 4(h) of the Constitutive Act, intervention, on behalf of the Union, in a Member State in respect of grave circumstances", and consequently „approve the modalities for intervention by the Union in a Member State, following a decision by the Assembly, pursuant to article 4(j) of the Constitutive Act“.⁴³ The decision making of regional organizations is, however, limited by the UN Charter, which states in the Article 53 that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council".⁴⁴ In fact, the UN and AU cooperate closely on the conflict resolution which may be inter alia illustrated by the deployment of hybrid UN-AU peacekeeping missions, such as United Nations – African Union Hybrid Operation in Darfur (UNAMID).

The problematic fact is that AU has not agreed on the definition of war crimes, crimes against humanity and genocide, the AU Charter only deals with the term "grave circumstances". It has led to different opinions in regard to the actions in response to mass atrocities in Darfur, for instance.⁴⁵ In this case, despite the fact that the case of Darfur met the definition of "grave circumstances", the AU favoured respect to Sudan's sovereignty and did not approve large scale humanitarian intervention since "even though the humanitarian situation in Darfur is serious, it cannot be defined as a genocide".⁴⁶ Another problem, according to Alex Bellamy is that Africa's regional security initiative "could theoretically be used to block Security Council action" by permitting

⁴¹ U. Engel, J.G. Porto, "Imagining, Implementing, and Integrating the African Peace and Security Architecture: The African Union's Challenge", *African Security*, vol. 7, no. 3 (2014), p. 135-146.

⁴² A.L. Bellamy, "Whither the Responsibility...", p. 158-159.

⁴³ "Protocol relating to the establishment of the Peace and Security Council of the AU", at <<http://www.peaceau.org/uploads/psc-protocol-en.pdf>>, 25 July 2018.

⁴⁴ UN Charter

⁴⁵ A.L. Bellamy, "Whither the Responsibility...", p. 159.

⁴⁶ Decision on Darfur, AU Assembly, Assembly/AU/Dec.54 (III) Rev.1, 6-8 July 2004, at <[http://archive.au.int/collect/auassemb/import/English/Assembly%20AU%20Dec%2054%20\(III\)%20_E.PDF](http://archive.au.int/collect/auassemb/import/English/Assembly%20AU%20Dec%2054%20(III)%20_E.PDF)>, 25 July 2018. P. Williams, "From Non-Intervention...", p. 277.

SC's permanent members to defer cases to the AU regardless its real capacity to act or by legitimization of the arguments that Security Council should “*avoid imposing its will on Africans*”.⁴⁷

The R2P has been projected also into the proposal of African states to the UN reform discussions and has been enshrined in the document “*The Common African Position on the Proposed Reform of the United Nations*”, so called Elzuwini consensus.⁴⁸ In the paragraph B(i) it proposed a close collaboration of Regional organizations and SC consisting of needed SC's approval of interventions carried out by regional organizations. However, this approval may be granted “after the fact” in case of need of an urgent action. The Elzuwini consensus also repeats that “*it is important to reiterate the obligation of states to protect their citizens, but this should not be used as a pretext to undermine the sovereignty, independence and territorial integrity of states.*” Therefore, it suggests that the use of force should be authorized by the SC in accordance with the conditions and criteria proposed by the High Level Panel. However, these criteria “*should not undermine the responsibility of the international community to protect.*” At the same time, the document prohibits “*any recourse to force outside the framework of Article 51 of the UN Charter and Article 4 (b) of the AU Constitutive Act*”, which in fact limits the ability of SC to authorise armed intervention in Africa.⁴⁹ African states except South Africa and Tanzania have not publicly endorsed the R2P and therefore, the adoption of Elzuwini consensus may not be regarded as a support to the concept, but to the fact, that regional mechanisms have to be subjected to African states' decision and they must take precedence over the global level. Therefore, it implies the African states' endeavours to limit the UNSC's power and on the contrary to strengthen the regional African security mechanisms in accordance with the maxim “*African solutions to African problems*”.⁵⁰

SOUTH SUDANESE CONFLICT AND ITS RESOLUTION

The independent South Sudan was declared on 9 July 2011 on the response of the referendum held six months earlier in which 98,8% of South Sudanese decided for independence.⁵¹ The possibility of independence in the situation when it would not be possible to “*make unity attractive*” was enshrined in the Comprehensive Peace Agreement

⁴⁷ A.L. Bellamy, “Whither the Responsibility...”, p. 159.

⁴⁸ “The Common African Position on the Proposed Reform of the United Nations: Elzuwini consensus” AU Executive Council, 7th Extraordinary Session, 7- 8 March 2005, Addis Ababa, Ethiopia, at http://responsibilitytoprotect.org/files/AU_Ezulwini%20Consensus.pdf, 20 July 2018.

⁴⁹ “The Common African Position on the Proposed Reform of the United Nations: Elzuwini consensus” AU Executive Council; A. L. Bellamy, „Whither the Responsibility...”, p. 161.

⁵⁰ A.L. Bellamy, „Whither the Responsibility...”, p. 162.

⁵¹ “Results for the Referendum of Southern Sudan”, *Southern Sudan Referendum 2011*, at <<http://southernsudan2011.com/>>, 25 July 2018; C. Rossi, “The International Community, South Sudan, and the Responsibility to Protect”, *International Law and Politics*, vol. 49 (2016), p. 157-158.

(CPA), concluded six years earlier between the Sudan People's Liberation Movement/Army (SPLM/A) and the Sudanese government and brokered by regional international organizations, mainly IGAD.⁵² The conclusion of the CPA ended a long-running civil war between Sudanese government and South Sudanese opposition movements, caused by a long-term marginalization of South Sudanese in politics, economy, and social life.⁵³ South Sudan was admitted as a newest UN member on 14 July 2011.⁵⁴ The euphoria of independence, however, did not last long, and on 16 December 2013, a new conflict flared up between the allies of South Sudanese President Salva Kiir Mayardit and former Vice President Riek Machar, leader of the Sudan People's Liberation Movement/Army (In Opposition) (SPLM/A-IO). The violence spread across the country and currently South Sudan is ranked as the most failed state in the 2018 Fragile States Index released by the Fund for Peace.⁵⁵ It is estimated that over 50 thousand civilians have been killed since December 2013.⁵⁶ As of 30 June 2018, there were 2,5 million refugees from South Sudan, one million of them finding refuge in neighbouring Uganda, 700 thousand in Sudan and half a million in Ethiopia.⁵⁷ Another 2 million people were internally displaced⁵⁸ and 7 million out of total 12 million of South Sudanese population required humanitarian assistance.⁵⁹

Even though the conflict is being simplified across the ethnic lines as a conflict between majority Dinka and minority Nuer ethnic groups, in fact, the ethnic factor serves only as a pretext. The causes of conflict should be found in unsuccessful state and

⁵² "Comprehensive Peace Agreement between the Government of Sudan and the SPLM/SPLA", 9 January 2005, at <<https://peacemaker.un.org/node/1369>>, 26 July 2018.

⁵³ Newly established state was identified by its political representation as an Arab-Islamic state and the South had to face Arabization and Islamization tendencies from the North. South Sudanese were excluded from the industrial and agricultural development. Elites who took the highest administrative positions were coming mostly from North Sudan, were educated at the Khartoum University and were speaking Arabic; their way of life had become a norm of Sudanese identity in the colonial era. R.S. O'Fahey, "Islam and Ethnicity in the Sudan", *Journal of Religion in Africa*, vol. 26, no. 3 (1996), p. 261. First civil war (1956-1972) ended by signing the Addis Ababa Peace Agreement guaranteeing autonomy for the South. Second civil war (1983-2005) broke up when government in Khartoum declared Islamic law Sharia binding on the whole state territory, including southern Sudan and was ended by signing of the CPA in 2005. For history of Sudanese civil war see e.g. D. Johnson, *The Root Causes of Sudan's Civil Wars*. Oxford: James Currey, 2003 or R. O. Collins, *A History of Modern Sudan*, New York 2008.

⁵⁴ C. Rossi, "The International...", p. 158.

⁵⁵ "Fragile States Index 2018", *The Fund for Peace*, at <<http://fundforpeace.org/fsi/>>, 10 August 2018.

⁵⁶ "Civil War in South Sudan", *Council on Foreign Relations*, 21 August 2018, at <https://www.cfr.org/interactives/global-conflict-tracker?marker=26#!/conflict/civil-war-in-south-sudan>, 21 August 2018.

⁵⁷ "Operational Portal Refugee Situation", *UNHCR*, 31 July 2018, at <<https://data2.unhcr.org/en/situations/southsudan>>, 21 August 2018.

⁵⁸ "South Sudan. Events of 2017", *Human Rights Watch*, at <<https://www.hrw.org/world-report/2018/country-chapters/south-sudan>>, 21 August 2018.

⁵⁹ "South Sudan – Crisis", *US Aid*, 9 February 2018, at <https://www.usaid.gov/sites/default/files/documents/1866/south_sudan_cr_fs04_02-09-2018.pdf>, 21 August 2018.

nation building processes⁶⁰ and in political and power aspirations of South Sudanese elites in which hands, in the words of Alex de Waal, South Sudan has become a “*violent kleptocracy*”.⁶¹ According to Rolandsen⁶², it is the “*combination of a weak patrimonial state, a wartime mentality and lack of peaceful mechanisms for political contestation and transition that brought about the current war.*” The situation is moreover complicated by the regional rivalries since South Sudanese neighbours promote their own interests in the conflict. In order to support South Sudanese government, Uganda sent its troops to the country.⁶³ Ethiopia sought to be neutral, hosted IGAD peace talks in Addis Ababa, however, later started to support South Sudanese government in order to avoid destabilization of its fragile western region of Gambella.⁶⁴ On the contrary, Eritrea and Sudan provide support for opposition forces. Tanzania and Kenya have involved themselves in the peace process and supported and hosted peace talks between enemy parties.⁶⁵

After series of non-respected cessations of hostilities throughout 2014 and 2015, as a result of peace negotiations brokered by IGAD, President Salva Kiir signed the peace accord⁶⁶ with the opposition leader Riek Machar on 26 August 2015. Based on this agreement, the Transitional Government of National Unity (TGoNU), in which Riek Machar was appointed as Prime Minister, was established in April 2016. However, in June 2016 new violence broke out causing collapse of the government and displacement of tens of thousands people. Riek Machar fled the country and was replaced as Prime Minister by General Taban Deng Gai.⁶⁷

Another round of peace talks between the Government of South Sudan represented by the President Salva Kiir and opposition groups including SPLM-IO, led by Riek Machar, was opened in Ethiopian Addis Ababa on 17 May 2018, where the Sudanese President Omar al-Bashir was entrusted to lead peace negotiations. On 27 June 2018 the parties signed a Declaration of Agreement in Khartoum, which included a permanent ceasefire, commitment to form a new transitional government and prepare for

⁶⁰ See K. Rudincová, “Viability of a secessionist state in Africa: Case Study of South Sudan”, *Acta Politica*, vol. 9, no. 3 (2017), pp. 66-82.

⁶¹ A. de Waal, “When Kleptocracy Becomes Insolvent: Brute Causes of the Civil War in South Sudan”, *African Affairs*, vol. 113 (2014), p. 347-369.

⁶² Ø. H. Rolandsen, „Another Civil War in South Sudan: The Failure of Guerrilla Government?“, *Journal of Eastern African Studies*, vol. 9, no. 1 (2015), pp. 163-174.

⁶³ On legality of Uganda’s intervention see: K.P. Apuuli, „Explaining the (Il)legality of Uganda’s Intervention in the Current South Sudan Conflict“, *African Security Review*, vol. 23, no. 4 (2014), pp. 352-369.

⁶⁴ “South Sudan: Rearranging the Chessboard”, *International Crisis Group*, Africa Report N°243, 20 December 2016, at <<https://www.crisisgroup.org/africa/horn-africa/south-sudan/243-south-sudan-rearranging-chessboard>>, 19 August 2018.

⁶⁵ C. Rossi, “The International...”, p. 176-177.

⁶⁶ „Agreement on the Resolution of the Conflict in the Republic of South Sudan“, 17 August 2015, at <https://unmiss.unmissions.org/sites/default/files/final_proposed_compromise_agreement_for_south_sudan_conflict.pdf>, 21 August 2018.

⁶⁷ “Civil War in South Sudan”, *Council on Foreign Relations*, 21 August 2018, at <<https://www.cfr.org/interactives/global-conflict-tracker?marker=26#!/conflict/civil-war-in-south-sudan>>, 21 August 2018.

national elections and provision for Sudan to work with South Sudan to secure and rehabilitate oil fields in the former Unity state.⁶⁸ The peace talks led by President Omar al-Bashir were completed by the signing of power-sharing agreement between the Government of South Sudan and opposition forces on 5 August 2018. According to this deal, Salva Kiir should continue as a president and Riek Machar should assume the position of the First Vice President. The number of ministers in newly appointed transitional government should be as follows: Incumbent TGoNU 20 Ministers; SPLM/A-IO 9 Ministers; SSOA (the South Sudan Opposition Alliance) 3 Ministers; FDs (Former Detainees) 2 Ministers; and OPP (Other Political Parties) 1 Minister.⁶⁹

The role of African Union in the conflict resolution in South Sudan

After new South Sudanese civil war broke up, the AU committed itself to its resolution in accordance with the principle “African solution to African problems”. Immediately, the Chairperson of the AU Commission Nkosazana Dlamini-Zuma expressed her deep concern about the situation in South Sudan and urged for its solution.⁷⁰ The AU PSC declared on its 409th session on 18 December 2013 its “*readiness to assist in finding a peaceful solution to the challenges at hand*” while rejecting the “*use of force to settle political differences*” and at the same time declaring the “*critical importance of respect for human rights, the rule of law and constitutional legality*”.⁷¹

The AU PSC consequently established the Commission of Inquiry into alleged atrocities based on the decision adopted in Banjul, Gambia, on 30 December 2013. Its main task was to “*investigate the human rights violations and other abuses committed during the armed conflict in South Sudan and make recommendations on the best ways and means to ensure accountability, reconciliation and healing among all South Sudanese communities*.”⁷² On her visit to Juba, the Chairperson of the AU Commission stressed

⁶⁸ “South Sudan: Keeping Faith with the IGAD Peace Process”, *International Crisis Group*, Africa Report N°228, 27 July 2015, at <<https://www.crisisgroup.org/africa/horn-africa/south-sudan/south-sudan-keeping-faith-igad-peace-process>>, 20 August 2018; „Khartoum Declaration on Agreement between Parties of the Conflict of the South Sudan“, 27 June 2018, at <<https://igad.int/attachments/article/1874/Khartoum%20Declaration.pdf>>, 21 August 2018.

⁶⁹ “Detail Copy of the Khartoum ‘Agreement on Outstanding Issues of Governance’ yet to be signed by Kiir and Opposition”, 21 July 2018, at <<http://www.southsudannation.com/detail-copy-of-the-khartoum-agreement-on-outstanding-issues-of-governance-yet-to-be-signed-by-kiir-opposition/>>, 21 August 2018.

⁷⁰ “The African Union deeply concerned about the ongoing developments in South Sudan“, AU PSC, 17 December 2013, at <<http://www.peaceau.org/en/article/the-african-union-deeply-concerned-about-the-ongoing-developments-in-south-sudan>>, 20 August 2018.

⁷¹ “Press Statement of the 409 Meeting of the Peace and Security Council on the situation in South Sudan“, AU PSC, 19 December 2013, at <<http://www.peaceau.org/en/article/press-statement-of-the-409-meeting-of-the-psc-on-the-situation-in-south-sudan>>, 20 August 2018.

⁷² „411th meeting of the Peace and Security Council at the level of Heads of State and Government on the situation in South Sudan“, AU PSC, 3 January 2014, at <http://www.peaceau.org/en/article/411th-meeting-of-the-peace-and-security-council-at-the-level-of-heads-of-state-and-government-on-the-situation-in-south-sudan>, 20 August 2018. „The AU takes steps towards the establishment of

to both warring parties that “*the inquiry would be an African-led process*” and would “*build on African experience and act within the framework of relevant AU instruments*”.⁷³ The Commission presented its findings in its final report and proved the violation of human rights and war crimes committed both by Kiir’s governmental and Machar’s opposition forces.⁷⁴ Even though the report was drafted already in 2014, it was not publicly released until 2015. Based on the findings of the Commission published in it, “*some of the serious violations of human rights could amount to crimes against humanity (CAH)*”⁷⁵ and therefore the situation in South Sudan could have been understood as a candidate to the responsibility to protect.

International organizations, including the AU, committed themselves to the conflict resolution laid in non-violent mechanisms. In its decision on the situation in South Sudan adopted at its 440th meeting in Addis Ababa on 12 June 2014, AU PSC endorsed the extension of UN peacekeeping mission in South Sudan and “*reiterated its readiness, upon recommendation by IGAD, to immediately take targeted sanctions and other measures against any party that continues to undermine the search for a solution to the conflict and fails to honour its commitments*”.⁷⁶ Since the violence continued, despite the cessation of hostilities signed in January 2014, the AU PSC declared in its decision adopted at its 474th meeting on 5 December that violation of an agreement would invite a collective action of IGAD members, “*including but not limited to, the enactment of asset freezes, of travel bans within the region, and denial of the supply of arms and ammunition, as well as any other material that could be used in war*”.⁷⁷

The Commissioner for Peace and Security, Ambassador Smail Chergui, was present on the signing ceremonies of the cessation of hostilities between Government of South

a Commission of Inquiry into human rights violations in South Sudan“, AU PSC, 21 January 2014, at <<http://www.peaceau.org/en/article/the-au-takes-steps-towards-the-establishment-of-a-commission-of-inquiry-into-human-rights-violations-in-south-sudan>>, 20 August 2018.

⁷³ „Report of the Chairperson of the AUC on the 416th PSC meeting on the situation in South Sudan“, AU PSC, 30 January 2014, at <<http://www.peaceau.org/en/article/report-of-the-chairperson-of-the-auc-on-the-416th-psc-meeting-on-the-situation-in-south-sudan>>, 20 August 2018.

⁷⁴ “Final Report of the African Union Commission of Inquiry on South Sudan“, *AU Commission of Inquiry on South Sudan*, 15 October 2014, at <<https://reliefweb.int/sites/reliefweb.int/files/resources/auciss.executive.summary.pdf>>, 20 July 2018.

⁷⁵ “Final Report of the African Union Commission of Inquiry on South Sudan“, *AU Commission of Inquiry on South Sudan*, 15 October 2014, at <<https://reliefweb.int/sites/reliefweb.int/files/resources/auciss.executive.summary.pdf>>, 20 July 2018.

⁷⁶ “The Peace and Security Council of the African Union, at its 440th meeting held in Addis Ababa, on 12 June 2014, adopted a decision on the situation in South Sudan“, *AU PSC*, 16 June 2014, at <<http://www.peaceau.org/en/article/the-peace-and-security-council-of-the-african-union-at-its-440th-meeting-held-in-addis-ababa-on-12-june-2014-adopted-a-decision-on-the-situation-in-south-sudan>>, 20 August 2018.

⁷⁷ “Communiqué of the Peace and Security Council of the African Union (AU), at its 474th meeting on the situation in South Sudan“, *AU PSC*, 5 December 2014, at <<http://www.peaceau.org/en/article/communique-of-the-peace-and-security-council-of-the-african-union-au-at-its-474th-meeting-on-the-situation-in-south-sudan>>, 20 August 2018.

Sudan and the SPLM/A-IO 23 January⁷⁸ and 9 May 2014 in Addis Ababa⁷⁹ which documents the AU's support for the IGAD-led peace process. The decisions of the AU PSC released on the situation in South Sudan urged for cooperation with UNMISS, IGAD, but supported the African mediation of the South Sudanese conflict, which is in accordance with the maxim "African solutions to African problems". In this context, the AU has been a part of the IGAD-PLUS, which is a group of states and international organizations, established in March 2015 in order to mediate the peace talks between warring parties in South Sudan. Its additional members include UN, European Union (EU), the Troika (USA, UK and Norway), China and the IGAD Partners Forum (IPF).⁸⁰ In order to coordinate mediation efforts, AU appointed an ad hoc high level committee of five heads of state and government (Algeria, Chad, Nigeria, Rwanda, and South Africa) and a High Representative for South Sudan (former Malian President Alpha Oumar Konaré).⁸¹

The possible resolution of the conflict in South Sudan was discussed also on the 15th meeting of the AU Panel of the Wise held in Addis Ababa on 9 January 2015. Panel of the Wise is a part of the APSA and a consultative body comprising of "five highly respected African personalities from various segments of society who have made outstanding contributions to the cause of peace, security and development on the continent" and its main task is "to support the efforts of the PSC and those of the Chairperson of the Commission, particularly in the area of conflict prevention".⁸² The members of the Panel of the Wise endorsed the peace resolution efforts of the IGAD and welcomed the establishment of a High-Level ad hoc committee of Heads of State and Government.⁸³ Establishment of the Committee was endorsed also in the AU PSC Decision adopted at the 494th meeting on 24 March 2015. Besides that, AU PSC in its decision supported the imposition of sanctions against those who violated peace in South Sudan by the UNSC Resolution 2206 from 3 March 2015.⁸⁴ In a consequent decision from the 510th meeting held on

⁷⁸ „The African Union welcomes the signing of agreements to end hostilities in South Sudan“, *AU PSC*, 24 January 2014, at <<http://www.peaceau.org/en/article/the-african-union-welcomes-the-signing-of-agreements-to-end-hostilities-in-south-sudan>>, 20 August 2018.

⁷⁹ „The African Union welcomes the signing of the agreement to resolve the crisis in South Sudan: the AU looks forwards to the timely and effective implementation of the agreement“, *AU PSC*, 19 May 2014, at <<http://www.peaceau.org/en/article/the-african-union-welcomes-the-signing-of-the-agreement-to-resolve-the-crisis-in-south-sudan-the-au-looks-forwards-to-the-timely-and-effective-implementation-of-the-agreement>>, 20 August 2018.

⁸⁰ "South Sudan: Keeping Faith with the IGAD Peace Process", *International Crisis Group*, p. 3.

⁸¹ *Ibid.*, p. 23.

⁸² "Protocol relating to the establishment of the Peace and Security Council of the AU".

⁸³ "Communique of the 15th meeting of the panel of the wise", *AU PSC*, 14 January 2015, at <<http://www.peaceau.org/en/article/communique-of-the-15th-meeting-of-the-panel-of-the-wise>>, 23 August 2018.

⁸⁴ "Communique of the 494th PSC meeting on the Situation in South Sudan", *AU PSC*, 8 April 2015, at <<http://www.peaceau.org/en/article/communique-of-the-494th-psc-meeting-on-the-situation-in-south-sudan>>, 23 August 2018.

22 May 2015 AU PSC called for an urgent designation of those who would be subject for the sanctions according to the UNSC Resolution 2206.⁸⁵

The report of the Commission of Inquiry into alleged atrocities in South Sudan was officially received and discussed at the 526th AU Peace and Security Council meeting on 24 July 2015 and the members of the Council “*agreed, should this become necessary, to deploy an African force to bring the ongoing tragedy in South Sudan to a definite end*”⁸⁶ which suggest the commitment to the R2P as a last resort solution. Council also expressed a need to promote the African solution to the issue and a need to approach the conflict from a specificity of the South Sudanese context.

In response to the continuing violence, even after the peace accord was signed in August 2015, the AU PSC, in the decision from the 571st meeting held on 29 January 2016, urged the Commission to complete arrangements to revise mandate of the UN-MISS and establish the AU Mission in South Sudan (AUMISS) in order to provide protection to civilians, security in Juba and in the whole country, and to enable the implementation of commitments from the Agreement signed between warring parties.⁸⁷ The consequent decision of the AUPSC from the 609th meeting on 30 June 2016 repeated a commitment to establish the AU peace mission in South Sudan and urged the international community for its support, “*given the strategic role that Africa can play in supporting the peace process*”.⁸⁸ Even though the AUMISS mission has not been deployed, in the decision from the 714th PSC meeting held on 29 August 2017, the AU PSC welcomed the deployment of the Regional Protection Force (RPF) based on the UNSC Resolution 2304 of 12 August 2016 with the mandate to provide security around Juba, secure airport and other facilities and to provide security for civilians and UN personnel.⁸⁹

The Khartoum Declaration Agreement between the Parties to the Conflict in South Sudan, signed on 27 June 2018 was welcomed by the Chairperson of the AU

⁸⁵ “Communiqué of the Peace and Security Council of the African Union (AU) on the developments on the situation in South Sudan”, *AU PSC*, 23 May 2015, at <<http://www.peaceau.org/en/article/communique-of-the-peace-and-security-council-of-the-african-union-au-on-the-developments-on-the-situation-in-south-sudan>>, 23 August 2018.

⁸⁶ “Communique of the 526th PSC meeting at the level of ministers on AU Commission of Inquiry on South Sudan (AUCISS)”, *AU PSC*, 27 July 2015, at <<http://www.peaceau.org/en/article/communique-of-the-526th-psc-meeting-at-the-level-of-ministers>>, 23 August 2018.

⁸⁷ “Communiqué of PSC 571st meeting at the Level of Heads of State and Government on the situation in South Sudan”, *AU PSC*, 2 February 2016, at <<http://www.peaceau.org/en/article/communique-of-psc-571st-meeting-at-the-level-of-heads-of-state-and-government-on-the-situation-in-south-sudan>>, 23 August 2018.

⁸⁸ “Communique of the 609th meeting of the PSC on the situation in South Sudan”, *AU PSC*, 12 July 2016, at <<http://www.peaceau.org/en/article/communique-of-the-609th-meeting-of-the-psc-on-the-situation-in-south-sudan>>, 23 August 2018.

⁸⁹ “Press Statement of the 714th PSC meeting on the situation in South Sudan”, *AU PSC*, 12 September 2017, at <http://www.peaceau.org/en/article/press-statement-of-the-714th-psc-meeting-on-the-situation-in-south-sudan>, 23 August 2018.

Commission Moussa Faki Mahamat⁹⁰ and consequently endorsed by the AU PSC at the 783rd meeting in Nouakchott, Mauritania, on 30 June 2018.⁹¹ The newest Agreement on Outstanding Issues of Governance signed between the government of South Sudan led by Salva Kiir and the opposition forces led by Riek Machar in Khartoum on 5 August 2018, was supported by the Chairperson of the AU Commission in his statement from 7 August 2018.⁹² It suggests that even though the main negotiation process is brokered by IGAD, AU endorsed the conflict resolution and signing of the new peace and power sharing accord between warring parties. Therefore, AU serves as one of the guarantors of the peace process in South Sudan and cooperates closely with other stakeholders such as IGAD or UN in the conflict resolution process. Its mechanisms include endorsement of the sanctions imposed on actors in South Sudan, support of the Regional Protection Force deployed to South Sudan and diplomatic endorsement of the signing of the peace accords and later implementation of the provision included inside.

CONCLUSIONS

Responsibility to protect is a concept developed by international community since the beginning of new millennium and enshrined in various documents of international law. It has become a part of the African conflict resolution mechanisms since it was enshrined in the founding documents of the AU. However, as the case of South Sudan shows, it is still being applied selectively and its possible application is highly influenced by political ambitions of international community and other geopolitical factors, including the importance of the states concerned.

In order to create an effective mechanism to deal with renewed South Sudanese conflict, the AU established the Commission of Inquiry into human rights violations in South Sudan. In the report, which is a key document dealing with humanitarian situation in the country, the Commission does not mention genocide, but a massive violation of human rights which would suggest that South Sudan is a candidate for the responsibility to protect. The international community was horrified by mass atrocities committed by warring parties and documented by the Commission of inquiry,

⁹⁰ "Statement of the Chairperson of the African Union Commission on South Sudan", *AU PSC*, 3 July 2018, at <<http://www.peaceau.org/en/article/statement-of-the-chairperson-of-the-african-union-commission-on-south-sudan>>, 23 August 2018.

⁹¹ "Communique of the 783rd meeting of the AU PSC held in Nouakchott, Mauritania, on 30 June 2018, at the level of Heads of State and Government, on the situation in the Republic of South Sudan", *AU PSC*, 3 July 2018, at <<http://www.peaceau.org/en/article/communique-of-the-783rd-meeting-of-the-psc-held-in-nouakchott-mauritania-on-30-june-2018-on-the-situation-in-the-republic-of-south-sudan>>, 23 August 2018.

⁹² "Statement of the Chairperson of the African Union Commission on the agreement on outstanding issues of governance in South Sudan", *AU PSC*, 7 August 2018, at <<http://www.peaceau.org/en/article/statement-of-the-chairperson-of-the-african-union-commission-on-the-agreement-on-outstanding-issues-of-governance-in-south-sudan>>, 23 August 2018.

however, did not call for a massive humanitarian action. Instead, the sanctions imposed on South Sudanese elites and finally in 2018 also arms embargo were applied.

In case of South Sudan, the R2P has not been applied in the form of humanitarian intervention, but in the non-violent form. AU has strongly supported the peace process initiated and led by the IGAD and has appreciated the role of the UNMISS in protecting the civilians in South Sudan and preventing mass atrocities. Despite this, AU proposed a creation of regional force in accordance to the commitment to African solution to African problems, which, however, has not been finally deployed. Currently, AU is not, to a large extent, able to answer the crises on the continent, since the decisions are being paralyzed by the power ambitions of the members and the lack of political will as well as financial sources. AU is still dependent on the finances from abroad, mainly from the EU and its fund. Instead deployment of AU mission, the UN mandated Regional Protection Force in order to protect civilians and infrastructure in South Sudan. Therefore, in the case of South Sudan, the AU as an actor used the diplomatic solution to the conflict in accordance to the R2P, where the humanitarian intervention is the only last resort solution.

Moreover, the application of R2P is influenced by the political will of various actors, including neighbouring states and South Sudanese elites. In the case of South Sudan, there are number of geopolitical factors which made it difficult for international community to prevent mass atrocities and violation of human rights in the country during the conflict. They are especially oil, little importance of South Sudan, fragile region alliances, and various proxy conflicts. Neighbouring states promote their own interests in South Sudanese conflict and support one or the other warring party, which makes it more difficult to achieve a long-lasting solution. Despite all obstacles, however, in August 2018 new peace accord including power sharing proposals was signed by warring parties, which was brokered by IGAD and supported by AU, UN and other international partners. It will turn out to be a long-lasting solution only if the warring parties will be able to give up part of their own interest in the sake of peace. Therefore, in the process of rebuilding, which is a part of the R2P principle, the cooperation between AU, UN and other regional bodies on the continent is crucial.

BIBLIOGRAPHY

- “2005 World Summit Outcome Document“, *UN General Assembly*, A/RES/60/1, 24 October 2005, at <http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf>, 22 July 2018.
- “411th meeting of the Peace and Security Council at the level of Heads of State and Government on the situation in South Sudan“, *AU PSC*, 3 January 2014, at <<http://www.peaceau.org/en/article/411th-meeting-of-the-peace-and-security-council-at-the-level-of-heads-of-state-and-government-on-the-situation-in-south-sudan>>, 20 August 2018.
- “Agreement on the Resolution of the Conflict in the Republic of South Sudan“, 17 August 2015, at <https://unmiss.unmissions.org/sites/default/files/final_proposed_compromise_agreement_for_south_sudan_conflict.pdf>, 21 August 2018.

- Apuuli K.P., "Explaining the (Il)legality of Uganda's Intervention in the Current South Sudan Conflict", *African Security Review*, vol. 23, no. 4 (2014).
- Bellamy A.L., "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit", *Ethics & International Affairs*, vol. 20 (2006).
- Bellamy A.L., "The Responsibility to Protect – Five Years On", *Ethics and International Affairs*, vol. 24, no. 2 (2010).
- Chandler D., "Unravelling the Paradox of the Responsibility to Protect", *Irish Studies in International Affairs*, vol. 20 (2009).
- "Charter of the United Nations", *United Nations*, 26 June 1945, at <<http://www.un.org/en/charter-united-nations/>>, 23 August 2018.
- "Civil War in South Sudan", Council on Foreign Relations, 21 August 2018, at <https://www.cfr.org/interactives/global-conflict-tracker?marker=26#!/conflict/civil-war-in-south-sudan>, 21 August 2018.
- Collins R.O., *A History of Modern Sudan*, New York 2008.
- "Communiqué of the Peace and Security Council of the African Union (AU), at its 474th meeting on the situation in South Sudan", *AU PSC*, 5 December 2014, at <<http://www.peaceau.org/en/article/communique-of-the-peace-and-security-council-of-the-african-union-au-at-its-474th-meeting-on-the-situation-in-south-sudan>>, 20 August 2018.
- "Communique of the 15th meeting of the panel of the wise", *AU PSC*, 14 January 2015, at <<http://www.peaceau.org/en/article/communique-of-the-15th-meeting-of-the-panel-of-the-wise>>, 23 August 2018.
- "Communiqué of the 494th PSC meeting on the Situation in South Sudan", *AU PSC*, 8 April 2015, at <<http://www.peaceau.org/en/article/communique-of-the-494th-psc-meeting-on-the-situation-in-south-sudan>>, 23 August 2018.
- "Communiqué of the Peace and Security Council of the African Union (AU) on the developments on the situation in South Sudan", *AU PSC*, 23 May 2015, at <<http://www.peaceau.org/en/article/communique-of-the-peace-and-security-council-of-the-african-union-au-on-the-developments-on-the-situation-in-south-sudan>>, 23 August 2018.
- "Communique of the 526th PSC meeting at the level of ministers on AU Commission of Inquiry on South Sudan (AUCISS)", *AU PSC*, 27 July 2015, at <<http://www.peaceau.org/en/article/communique-of-the-526th-psc-meeting-at-the-level-of-ministers>>, 23 August 2018.
- "Communiqué of PSC 571st meeting at the Level of Heads of State and Government on the situation in South Sudan", *AU PSC*, 2 February 2016, at <<http://www.peaceau.org/en/article/communique-of-psc-571st-meeting-at-the-level-of-heads-of-state-and-government-on-the-situation-in-south-sudan>>, 23 August 2018.
- "Communique of the 609th meeting of the PSC on the situation in South Sudan", *AU PSC*, 12 July 2016, at <<http://www.peaceau.org/en/article/communique-of-the-609th-meeting-of-the-psc-on-the-situation-in-south-sudan>>, 23 August 2018.
- "Communique of the 783rd meeting of the AU PSC held in Nouakchott, Mauritania, on 30 June 2018, at the level of Heads of State and Government, on the situation in the Republic of South Sudan", *AU PSC*, 3 July 2018, at <<http://www.peaceau.org/en/article/communique-of-the-783rd-meeting-of-the-psc-held-in-nouakchott-mauritania-on-30-june-2018-on-the-situation-in-the-republic-of-south-sudan>>, 23 August 2018.

- “Comprehensive Peace Agreement between the Government of Sudan and the SPLM/SPLA”, 9 January 2005, at <<https://peacemaker.un.org/node/1369>>, 26 July 2018.
- “Constitutive Act of the African Union”, *African Union*, 11 July 2000, at <https://au.int/sites/default/files/pages/32020-file-constitutiveact_en.pdf>, 19 July 2018.
- “Convention on the Prevention and Punishment of the Crime of Genocide”, *UN Human Rights Office of the High Commissioner*, 9 December 1948, at <<https://www.ohchr.org/en/professionalinterest/pages/crimeofgenocide.aspx>>, 21 July 2018.
- “Decision on Darfur”, AU Assembly, Assembly/AU/Dec.54 (III) Rev.1, 6-8 July 2004, at <[http://archive.au.int/collect/auassemb/import/English/Assembly%20AU%20Dec%2054%20\(III\)%20_E.PDF](http://archive.au.int/collect/auassemb/import/English/Assembly%20AU%20Dec%2054%20(III)%20_E.PDF)>, 25 July 2018.
- Deng F., “Frontiers of Sovereignty. A Framework of Protection, Assistance, and Development for the Internally Displaced”, *Leiden Journal of International Law*, vol. 8 (1995), p. 249-286.
- Deng F., Kimaro S., Lyons T., Rothchild D., Zartman I.W., *Sovereignty as Responsibility: Conflict Management in Africa*, Washington D.C. 1995.
- “Detail Copy of the Khartoum ‘Agreement on Outstanding Issues of Governance’ yet to be signed by Kiir and Opposition”, 21 July 2018, at <<http://www.southsudannation.com/detail-copy-of-the-khartoum-agreement-on-outstanding-issues-of-governance-yet-to-be-signed-by-kiir-opposition/>>, 21 August 2018.
- Engel U., Porto J.G., “Imagining, Implementing, and Integrating the African Peace and Security Architecture: The African Union’s Challenge”, *African Security*, vol. 7, no. 3 (2014).
- Evans G. Sahnoun M., “The Responsibility to Protect”, *Foreign Affairs*, vol. 81, no. 6 (2002).
- “Final Report of the African Union Commission of Inquiry on South Sudan”, *AU Commission of Inquiry on South Sudan*, 15 October 2014, at <<https://reliefweb.int/sites/reliefweb.int/files/resources/auaiss.executive.summary.pdf>>, 20 July 2018.
- “Fragile States Index 2018”, *The Fund for Peace*, at <<http://fundforpeace.org/fsi/>>, 10 August 2018.
- Glanville L., “The Responsibility to Protect Beyond Borders”, *Human Rights Law Review*, vol. 12 (2012).
- Gumedze S., “The African Union and the Responsibility to Protect”, *African Human Rights Law Journal*, vol. 10, no. 1 (2010).
- Hakimi M., “Toward a Legal Theory on the Responsibility to Protect”, *Yale Journal of International Law*, vol. 39 (2014).
- “In larger freedom: towards development, security and human rights for all”, *UN General Assembly*, A/59/2005, 21 March 2005, at <<https://undocs.org/A/59/2005>>, 21 July 2018.
- Johnson D., *The Root Causes of Sudan’s Civil Wars*. Oxford: James Currey, 2003.
- “Khartoum Declaration on Agreement between Parties of the Conflict of the South Sudan“, 27 June 2018, at <<https://igad.int/attachments/article/1874/Khartoum%20Declaration.pdf>>, 21 August 2018.
- Kioko B., “The Right to Intervention under the African Union’s Constitutive Act: From Non-Interference to Non-Intervention”, *International Review of the Red Cross*, vol. 85, no. 852 (2003).
- Mamdani M., “Responsibility to Protect or Right to Punish?” *Journal of Intervention and State-building*, vol. 4, no. 1 (2010).

- “Note by the Secretary-General”, *UN General Assembly*, A/59/565, 2 December 2004, at <<https://www.securitycouncilreport.org/un-documents/document/CPR%20A%2059%20565.php>>, 21 July 2018.
- O’Fahey R.S., “Islam and Ethnicity in the Sudan”, *Journal of Religion in Africa*, vol. 26, no. 3 (1996).
- “Operational Portal Refugee Situation”, *UNHCR*, 31 July 2018, at <https://data2.unhcr.org/en/situations/southsudan>, 21 August 2018.
- Pattison J., *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* Oxford University Press, 2010.
- “Press Statement of the 409 Meeting of the Peace and Security Council on the situation in South Sudan”, *AU PSC*, 19 December 2013, at <<http://www.peaceau.org/en/article/press-statement-of-the-409-meeting-of-the-psc-on-the-situation-in-south-sudan>>, 20 August 2018.
- “Press Statement of the 714th PSC meeting on the situation in South Sudan”, *AU PSC*, 12 September 2017, at <<http://www.peaceau.org/en/article/press-statement-of-the-714th-psc-meeting-on-the-situation-in-south-sudan>>, 23 August 2018.
- “Protocol relating to the establishment of the Peace and Security Council of the AU”, at <<http://www.peaceau.org/uploads/psc-protocol-en.pdf>>, 25 July 2018.
- „Report of the Chairperson of the AUC on the 416th PSC meeting on the situation in South Sudan“, *AU PSC*, 30 January 2014, at <<http://www.peaceau.org/en/article/report-of-the-chairperson-of-the-auc-on-the-416th-psc-meeting-on-the-situation-in-south-sudan>>, 20 August 2018.
- “Resolution 1674”, *UN Security Council*, S/RES/1674, 28 April 2006, at <<http://unscr.com/en/resolutions/1674>>, 22 July 2018.
- “Results for the Referendum of Southern Sudan”, *Southern Sudan Referendum 2011*, at <<http://southernsudan2011.com/>>, 25 July 2018.
- Rolandsen Ø.H., “Another Civil War in South Sudan: The Failure of Guerrilla Government?”, *Journal of Eastern African Studies*, vol. 9, no. 1 (2015).
- Rossi C., “The International Community, South Sudan, and the Responsibility to Protect”, *International Law and Politics*, vol. 49 (2016).
- Rudincová K., “Viability of a secessionist state in Africa: Case Study of South Sudan”, *Acta Politologica*, vol. 9, no. 3 (2017).
- Sarkin J., „The Role of the United Nations, the African Union and Africa’s Sub-Regional Organizations in Dealing with Africa’s Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect“, *Journal of African Law*, vol. 53, no. 1 (2009).
- Sarkin J., “The Responsibility to Protect and Humanitarian Intervention in Africa”, *Global Responsibility to Protect*, vol. 2, no. 4 (2010).
- “Secretary-General Presents His Annual Report to General Assembly”, *UN*, SG/SM/7136, 20 September 1999, at <<https://www.un.org/press/en/1999/19990920.sgs7136.html>>, 21 July 2018.
- “South Sudan. Events of 2017”, *Human Rights Watch*, at <<https://www.hrw.org/world-report/2018/country-chapters/south-sudan>>, 21 August 2018.
- “South Sudan: Finding a Way Forward After the July 2016 Crisis”, *Transitional Justice Working Group*, 10 August 2016, at <<https://reliefweb.int/report/south-sudan/south-sudan-finding-way-forward-after-july-2016-crisis>>, 13 August 2018.

- “South Sudan: Keeping Faith with the IGAD Peace Process”, *International Crisis Group*, Africa Report N°228, 27 July 2015, at <<https://www.crisisgroup.org/africa/horn-africa/south-sudan/south-sudan-keeping-faith-igad-peace-process>>, 20 August 2018.
- “South Sudan: Rearranging the Chessboard”, *International Crisis Group*, Africa Report N°243, 20 December 2016, at <<https://www.crisisgroup.org/africa/horn-africa/south-sudan/243-south-sudan-rearranging-chessboard>>, 19 August 2018.
- Stahn C., “Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?” *The American Journal of International Law*, vol. 101 (2007).
- “Statement of the Chairperson of the African Union Commission on South Sudan”, *AU PSC*, 3 July 2018, at <<http://www.peaceau.org/en/article/statement-of-the-chairperson-of-the-african-union-commission-on-south-sudan>>, 23 August 2018.
- “Statement of the Chairperson of the African Union Commission on the agreement on outstanding issues of governance in South Sudan”, *AU PSC*, 7 August 2018, at <<http://www.peaceau.org/en/article/statement-of-the-chairperson-of-the-african-union-commission-on-the-agreement-on-outstanding-issues-of-governance-in-south-sudan>>, 23 August 2018.
- “The African Union deeply concerned about the ongoing developments in South Sudan”, *AU PSC*, 17 December 2013, at <<http://www.peaceau.org/en/article/the-african-union-deeply-concerned-about-the-ongoing-developments-in-south-sudan>>, 20 August 2018.
- “The African Union welcomes the signing of agreements to end hostilities in South Sudan”, *AU PSC*, 24 January 2014, at <<http://www.peaceau.org/en/article/the-african-union-welcomes-the-signing-of-agreements-to-end-hostilities-in-south-sudan>>, 20 August 2018.
- “The African Union welcomes the signing of the agreement to resolve the crisis in South Sudan: the AU looks forwards to the timely and effective implementation of the agreement”, *AU PSC*, 19 May 2014, at <<http://www.peaceau.org/en/article/the-african-union-welcomes-the-signing-of-the-agreement-to-resolve-the-crisis-in-south-sudan-the-au-looks-forwards-to-the-timely-and-effective-implementation-of-the-agreement>>, 20 August 2018.
- “The AU takes steps towards the establishment of a Commission of Inquiry into human rights violations in South Sudan”, *AU PSC*, 21 January 2014, at <<http://www.peaceau.org/en/article/the-au-takes-steps-towards-the-establishment-of-a-commission-of-inquiry-into-human-rights-violations-in-south-sudan>>, 20 August 2018.
- “The Common African Position on the Proposed Reform of the United Nations: Elzuwini consensus”, AU Executive Council, 7th Extraordinary Session, 7-8 March 2005, Addis Ababa, Ethiopia, at http://responsibilitytoprotect.org/files/AU_Ezulwini%20Consensus.pdf, 20 July 2018.
- “The Peace and Security Council of the African Union, at its 440th meeting held in Addis Ababa, on 12 June 2014, adopted a decision on the situation in South Sudan”, *AU PSC*, 16 June 2014, at <http://www.peaceau.org/en/article/the-peace-and-security-council-of-the-african-union-at-its-440th-meeting-held-in-addis-ababa-on-12-june-2014-adopted-a-decision-on-the-situation-in-south-sudan>>, 20 August 2018.
- “The Responsibility to Protect”, *International Commission on Intervention and State Sovereignty*, December 2001, at <<http://responsibilitytoprotect.org/ICISS%20Report.pdf>>, 19 July 2018.

de Waal A., "When Kleptocracy Becomes Insolvent: Brute Causes of the Civil War in South Sudan", *African Affairs*, vol. 113 (2014).

Williams P., "From Non-Intervention to Non-Indifference: The Origins and Development of the African Union's Security Culture", *African Affairs*, vol. 106, no. 423 (2007).

Williams P., "Continuity and Change in War and Conflict in Africa", *Center for Security Studies. ETH Zurich*, 13 July 2017, at <<http://www.css.ethz.ch/en/services/digital-library/articles/article.html/ca4e4f42-f754-4436-91ed-0862db6afa71/pdf>>, 16 August 2018.

Kateřina RUDINOVÁ, Ph.D. – an Assistant professor at the Department of Human Geography and Regional Development, Faculty of Science, University of Ostrava. She deals with international relations, politics and border issues in Africa and in recent years has intensively published in this field. Her main research interest is the territorial fragmentation of Somalia studied in comparison to Sudan, and the African Union's role in peace resolution processes. In this respect, she has conducted three research programmes at the Commission of African Union in Addis Ababa in the years 2010, 2011, and 2015.