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**SOME REFLECTIONS ON THE LEGAL AND POLITICAL MECHANISMS BOLSTERING THE
RESPONSIBILITY TO PROTECT: THE AFRICAN UNION AND THE GREAT LAKES, EASTERN,
SOUTHERN AND HORN OF AFRICA SUB-REGIONAL ARRANGEMENTS**

R2P: An Emerging Global Norm	2
R2P in Africa	3
The African Union	4
The East African Community	5
Southern African Development Community	6
The Common Market for Eastern and Southern Africa	7
The International Conference on the Great Lakes Region	8
The Pact on Security, Stability and Development in the Great Lakes Region	9
The Pact and R2P	9
The R2P Principle Acknowledged	10
Impunity and the Prevention and Punishment of Mass Atrocity	11
The Inter-Governmental Authority on Development	12
Conclusion	13

R2P: An Emerging Global Norm

The responsibility to protect (R2P) is an emerging norm of international law which provides that although states have the primary responsibility to protect their citizens from crimes against humanity, ethnic cleansing, genocide and war crimes, when a state is unable or willing to exercise that responsibility, the international community is obliged to assist.

The principle was first articulated by the International Commission on Intervention and State Sovereignty (ICISS), appointed by the government of Canada further to calls by the then United Nations (UN) Secretary General, Kofi Annan. The Commission's 2001 report entitled "The Responsibility to Protect" challenged discussions around the doctrine of 'humanitarian intervention,' proposing a re-conceptualisation of the notion of sovereignty from that of control to responsibility: "[s]overeign states have the primary responsibility for the protection of their people from avoidable catastrophe...but when they are unable and unwilling to do so, that responsibility must be borne by the wider community of states."

R2P therefore expresses a commitment to action along a continuum of responses. The principle embraces three distinct, but related, responsibilities: the responsibility to prevent, the responsibility to react and the responsibility to rebuild, *viz*:

- **Prevention:** the responsibility to address the underlying and direct causes of internal conflict and human-made crises;
- **Reaction:** the responsibility to respond to conflict and crises with appropriate measures, which may include sanctions, international prosecution and, in extreme cases, military intervention, whether consensual or otherwise;
- **Rebuilding:** the responsibility to assist with post-conflict or post-crisis reconstruction and reconciliation.

Responsibility for these three elements remains with the state in which the conflict or crisis is occurring and shifts to states acting collectively through the international community only if that state fails in its responsibility, whether as a result of incapacity or unwillingness.

In September 2005, the international community embraced these central aspects of the ICISS formulation of R2P in the UN World Summit Outcome Document, followed in April 2006 by the adoption of Resolution 1674 on the Protection of Civilians in Armed Conflict by the UN Security Council, reaffirming the World Summit endorsement. Since then the principle has been a reference point for international decision making: the R2P principle for example was invoked by the UN Security Council in its important Resolution 1706 regarding the situation in Darfur.

R2P in Africa

The importance of delivering on R2P in Africa is critical: ongoing conflicts and crises across the continent, including in Burundi, the Democratic Republic of Congo (DRC), Kenya, Somalia, Sudan, Uganda and Zimbabwe, make it essential.

At the regional and sub-regional level Africa already has elements of the legal and peace and security architecture required to convert recognition of R2P into practice. The norms and mechanisms developed within **African Union (AU)**, the **East African Community (EAC)**, the **Southern African Development Community (SADC)**, the **Common Market for Eastern and Southern Africa (COMESA)**, the **International Conference on the Great Lakes Region (ICGLR)** and the **Inter-Governmental Authority on Development (IGAD)** form the subject of this discussion document.

The legal and peace and security architecture supportive of R2P is fairly clearly articulated within the frameworks of some regional bodies, but continues to evolve in others, and in most instances has yet to be tested. There is thus a clear role for civil society in fostering both the development of standards and mechanisms and, where such frameworks already exist, in encouraging regional bodies to consistently put them into effect. In this regard it is worth noting that certain regional bodies provide formal mechanisms to engage civil society. Article 23 of the SADC Treaty, for example, commits Member States to co-operate with and support the initiatives of non-governmental organisations in contributing to the objectives of the Treaty. COMESA also has a procedure to accredit civil society organisations to its Programme on Peace and Security.

The African Union

The 2005 UN Summit declaration was historic, but by 2000 African nations had already moved to enshrine the principle of R2P (if not the language) in African law. When the AU was founded in 2000 to replace the old Organization of African Unity, African leaders stipulated that achieving the protection of human rights would be a defining principle. With their failure to prevent and halt the Rwandan genocide fresh on their consciences, African leaders agreed that sometimes sovereignty should yield to the principle of protection, when exercised collectively through Member States. In making this decision, the AU built upon the steps individual states in Africa had taken in the previous decades to use humanitarian grounds (among others) as a basis for intervention in situations such as those in Uganda and Sierra Leone.

It was in the **AU Constitutive Act** that African states reconceived the protection of individuals from grave criminal harm as a collective responsibility of African states. First, the Constitutive Act defines the promotion of peace, security and stability and the promotion and protection of “human and peoples’ rights” as core objectives of the Union. Second, it

identifies “respect for democratic principles, human rights, the rule of law and good governance,” “respect for the sanctity of human life” and “condemnation and rejection of impunity” as among the core values which will guide the achievement of those objectives. Third, the Constitutive Act asserts a new, complementary principle aimed at ensuring that interventionist action – of unspecified scope but encompassing a range of possible measures – may be taken “by the Union” in situations where grievous harm is threatened to individuals and populations. Article 4(h) of the Constitutive Act provides for “the right of the Union to intervene in a Member State...in respect of grave circumstances, namely war crimes, genocide and crimes against humanity,” if it is determined necessary by the Assembly of Heads of State and Government, the governing body of the AU. Taken together, and notwithstanding the prohibition on the use of force and the principle of “non-interference by any Member State in the internal affairs of another,”¹ the adoption of these principles marks a clear normative break with the emphasis by post-colonial Africa on the sanctity of state sovereignty.

The comprehensive peace and security architecture of the AU, from the Panel of the Wise to the Continental Early Warning System, is too broad to detail here, but as part of a series of measures which are operationalising these principles, the AU has, for example, established the **African Standby Force**, an international, continental peacekeeping force including civilian and police components for deployment in times of crisis in Africa. The force will be comprised of brigades established by Africa’s regional economic communities and will be operational by 2010.

The embrace by the AU of principles echoing the foundations of R2P and the creation of organs such as the African Court of Justice and the African Court on Human and Peoples’ Rights (now merged to form one judicial mechanism, the **African Court of Justice and Human Rights**) has established a fresh foundation for the realisation of the Union’s vision that “freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples.”²

The challenge now facing the AU is how these principles, powers and mechanisms can be harnessed to both prevent and ensure accountability for international crimes in Africa, against the background of complex political and economic realities on the continent. What is less well known, however, is whether the sub-regional organisations echo this continental undertaking.

¹ *Constitutive Act of the African Union*, Article 4(g).

² *African (Banjul) Charter on Human and Peoples’ Rights*, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

The East African Community

Although not an organisation primarily devoted to peace and security issues, elements of the EAC legal framework resonate with R2P.³ First, the **Treaty for the Establishment of the East African Community** upholds the principles of respect for human rights in accordance with the African Charter on Human and Peoples Rights. Articles 6 and 123(3)(c) clearly state that the promotion and protection of human rights is one of the fundamental principles that shall govern the achievement of the Community's objectives. The EAC Development Strategy 2006-2010 reinforces this and provides for the development of strategies and programmes towards the promotion and protection of human rights in east Africa.

There is much energy around reinforcing these both at secretariat level and among civil society. The Ugandan organisation Kituo Cha Katiba has been leading advocacy efforts around the formulation of a regional bill of rights that would be enforced by the Community's **Court of Justice**. Extension of the jurisdiction of this Court is also under consideration: it has been suggested that there might be capacity for the Court to embrace individual criminal responsibility, either through an occasional or permanent mechanism. Furthermore, a **draft Protocol on a Conflict Early Warning and Response Mechanism**, which references coordination and collaboration with the other regional economic communities and the AU, is circulating and joint meetings on small arms and light weapons and joint exercises for peace operations training, counter-terrorism and disaster management have been undertaken with the other sub-regional organisations.

There is fertile ground here to pressure the Community to explicitly enshrine principles that recognise collective obligations in situations where gross violations of human rights are being committed. As the Community advances towards a Federation, other countries such as Sudan will be agitating to join and there is expected to be an ever-greater scope for an emphasis on human rights. On 18 September 2007, in discussions on the possibility of incorporating a bill of rights into the EAC Treaty, Ambassador Juma Mwapachu, the Secretary-General of the EAC, acknowledged that although the organisation has in the past concentrated on economic integration, the need to address good governance and human rights issues had come to the fore. The **draft Bill of Rights initiative**, he said, was "the beginning of tackling the human rights and good governance issues that we should have done in the past 10 years." He also suggested that the network of existing national human rights commissions in Member States could be coalesced into an **East African Human Rights Commission**, which would be the first port of call for preventing human rights violations and protecting victims, with the East African Court of extended jurisdiction the last resort. His deputy has made similar intimations: in October 2008, Beatrice Kisaro, in the context of national consultations on the proposed EAC political federation, explained that the Community's Secretariat is working towards developing a regional framework on

³ The EAC's Member States are Burundi, Kenya, Rwanda, Tanzania and Uganda.

good governance encompassing the four major pillars of democratisation, justice and rule of law, anti-corruption, ethics, integrity and human rights and social justice.

In addition to this focus on human rights, other elements of the EAC's architecture providing for the **free movement of persons** may have a role to play in mitigating conflict. The EAC Treaty requires the integration of its member through four stages: 1) a customs union, 2) a common market, 3) a monetary union, and 4) a political union. The first would allow the free movement and residence of east Africans within the EAC.⁴ Furthermore, the inclusiveness inherent in these arrangements could contribute to mitigating or even preventing domestic and regional conflicts rooted in and fuelled by divisive notions of identity and citizenship.

Southern African Development Community

Similarly to the EAC, SADC was not founded as a peace and security organisation, but rather as a conference to coordinate development projects among 9 southern African states⁵ seeking to lessen economic dependence on apartheid South Africa. Since SADC's founding in 1980, however, it has evolved from a coordinating conference to a regional economic organisation and now addresses peace and security. Article 5 of the **SADC Treaty** provides that the promotion and defense of peace and security is a core objective of the Community; Article 4 requires that Member States act in accordance with the principles of human rights, democracy and the rule of law; and, with particular resonance for R2P, Article 21 urges the Community to cooperate beyond their collective borders in the areas of politics, diplomacy, international relations and peace and security.

These provisions of the SADC Treaty were first brought to life at the Community's Workshop on Democracy, Peace and Security, held at Windhoek in 1994, where participants sought to put SADC on a course towards formal security co-ordination, conflict mediation and military co-operation. This culminated, two years later, in the formation of a body to support the Community's peace and security objectives: the **Organ on Politics, Defense and Security**. The Organ's operation is governed by the Protocol on Politics, Defense and Security Cooperation and includes departments devoted to political and diplomatic affairs, defense, security and a regional peacekeeping training centre. The centre has provided training to the SADC Standby Brigade, SADC's contribution to the African Standby Force, which has also provided troops to the hybrid UN-AU force in Darfur.

SADC's legal architecture also includes a **Tribunal**. A protocol to establish the Tribunal was signed at Windhoek, the seat of the Tribunal, during SADC's 2000 Ordinary Summit, and

⁴ Chapter 17 of the EAC Treaty on the "Free Movement of Persons, Labour, Services and Right of Establishment and Residence" provides in Article 104(1) that Member States agree to adopt measures to achieve the free movement of persons.

⁵ SADC's Member States are Angola, Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. The founding Member States are Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe.

members of the Tribunal were appointed during SADC's Summit of Heads of State or Government held at Gaborone in August 2005. The inauguration of the Tribunal and the swearing in of the members took place in November 2005. The Tribunal has jurisdiction over controversies involving the interpretation or application of the SADC Treaty, Protocols and other Community instruments and actions of Community institutions. It applies Community law as reflected in the Treaty, Protocols and other community instruments but also has a mandate to develop its own jurisprudence by drawing on general principles of international law and the laws of Member States. In its very first case heard in December 2007, the SADC tribunal granted interim relief to a Zimbabwean farmer, preventing the government of Zimbabwe from evicting him, his family or his workers until a ruling was given in a case filed in a Zimbabwean court nine months previously.⁶

The Common Market for Eastern and Southern Africa

Founded in 1993, COMESA is the successor to the Preferential Trade Area for Eastern and Southern Africa (PTA), which was established in 1981 and which was to be succeeded by a common market 10 years after its Treaty entered into force. COMESA formally succeeded the PTA in December 1994 upon ratification of its Treaty by 11 signatories. While among all the regional organisations discussed here COMESA is perhaps the most economic focused, its objectives nevertheless include cooperation in the promotion of peace, security and stability among Member States⁷ (albeit in order to enhance economic development)⁸ in addition to the promotion of human and peoples' rights in accordance with the African Charter.⁹

After years of *ad hoc* peace initiatives COMESA began its formal engagement with peace and security at a March 2000 meeting in Lusaka when the organisation recognised that peace, security and stability are important factors in promoting investment, development, trade and regional economic integration. COMESA's core peace and security activities focus on preventative diplomacy – echoing R2P's prevention pillar – and were operationalised at the 2000 meeting with the formation of COMESA's **Programme for Peace and Security**. The Programme has a three-tier structure composed of Heads of State and Government, Ministers of Foreign Affairs and a Committee on Peace and Security. The COMESA Secretariat is responsible for the implementation of the Peace and Security Programme.

⁶ The original case before the Supreme Court of Zimbabwe had challenged a constitutional amendment on compulsory land expropriation. See *Mike Campbell (PVT) Limited and Another v Republic of Zimbabwe (2/07)* [2007] SADCT 1 (December 13, 2007), In the Southern African Development Community (SADC) Tribunal Windhoek, Namibia, Case No SADC: 2/07.

⁷ COMESA's Member States are Angola, Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.

⁸ COMESA Treaty, Article 3(d).

⁹ COMESA Treaty, Article 6.

In 2002 at the Third Meeting of COMESA Foreign Ministers, the second tier of the Peace and Security Programme produced a list of **responsibilities of regional Parliaments in the promotion of a culture of peace and security**. In a move to operationalise those responsibilities, in 2006 the Seventh Meeting of the Ministers of Foreign Affairs adopted a COMESA **Inter-Parliamentarian Forum dedicated to matters of peace and security**. COMESA also has a **conflict early warning and response mechanism**, established at the June 2005 Tenth Summit of the COMESA Authority. Considering COMESA's core competence, the early warning and response mechanism focuses primarily on economic-related issues such as the exploitation of natural resources. Given, however, that COMESA is an organisation with primarily economic objectives, it has produced important pronouncements and constituted key bodies founded on principles echoing R2P.

Finally, the COMESA Treaty makes provision for a **Court of Justice**, with jurisdiction over all matters relating to the Treaty and a seat in Khartoum. Member States can refer another Member State to the Court if that State has failed to fulfill its obligations under the Treaty.¹⁰ Individuals resident in a Member State may refer a matter to the Court provided local remedies have been exhausted.¹¹ Under Article 34 of the Treaty, the Court may determine sanctions where a Member States fails to implement its decision. It remains to be seen how human rights issues, including interpretation of Article 6 of Charter, will be dealt with by the Court.

The International Conference on the Great Lakes Region

First mooted in the aftermath of the 1994 genocide in Rwanda, since the mid-1990s the multi-stage International Conference on the Great Lakes Region (ICGLR) has convened state and non-state actors from across the region, alongside supportive members of the international community, to formulate a plan for the re-generation of the region which recognises both the interconnectedness of the region's populations, insecurities and economic instabilities, and the imperative of seeking regional solutions. The first phase of the ICGLR process culminated in December 2006 with the signing of the Pact on Security, Stability and Development in the Great Lakes Region (the Great Lakes Pact), a comprehensive new package of laws, programmes of action and mechanisms, which laid a framework for real change in the region.

The Pact on Security, Stability and Development in the Great Lakes Region

The text of the foundational document of the Great Lakes Pact was signed by the 11 heads of state in December 2006.¹² Article 3(1) of the primary Pact document notes that each of

¹⁰ COMESA Treaty, Article 24.

¹¹ COMESA Treaty, Article 26.

¹² The ICGLR's Member States are Angola, Burundi, the Central African Republic, the Democratic Republic of Congo, Kenya, the Republic of Congo, Rwanda, Sudan, Tanzania, Uganda and Zambia.

the six core elements¹³ of the Pact forms an “integral part” of the Pact. The Pact comprises therefore not just the primary instrument of the Pact itself but also the **Dar es Salaam Declaration** (the ICGLR foundation stone signed in December 2004), **ten Protocols**, **four Programs of Action** (including 33 priority projects), and a set of **implementing mechanisms and institutions** (including the Special Fund for Reconstruction and Development). These instruments reflect an ambitious package of undertakings around issues including economic integration, mutual defense, resources development and human rights.

Central to the Pact is a series of ten Protocols which contain the necessary additional legal framework elements for achieving the four priority areas identified in the Pact’s primary document: economic development and regional integration, democracy and good governance, humanitarian and social issues and peace and security. An integral part of the Pact is also the Programme of Action, a collection of inter-linked projects designed to ensure that the new legal standards are converted into practice and that the objectives of the Pact are achieved.

The Pact and R2P

The Pact is a huge instrument with multiple elements and a full analysis is not possible in this short reflection. What follows is an overview of selected elements of the Pact, which relate most directly to R2P.

At least five of the 10 Protocols that form the legal backbone of the Pact deal with aspects of R2P, in its three progressive stages of obligation (preventing, reacting, rebuilding). Taken together, the Pact’s Protocols furnish new, regionally specific tools to fight impunity for international crimes, seek solutions to burgeoning conflict, better protect the displaced and create sustainable solutions and intervene in situations of mass atrocity. The scope of the Pact with respect to R2P is clear from a simple reading of the names of the ten Protocols:

- Protocol on the Protection and Assistance of Internally Displaced persons (IDP Protocol);
- Protocol on the Property Rights of Returning Persons (Property Protocol);
- Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children (Sexual Violence Protocol);
- Protocol on the Prevention and Punishment of the Crimes of Genocide, War Crimes and Crimes Against Humanity (IC Protocol);
- Protocol on Democracy and Good Governance;
- Protocol on Judicial Cooperation;

¹³ These six elements include the primary Great Lakes Pact document, its Protocols, Programmes of Action, the Dar es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region.

- Protocol on Non-Aggression and Mutual Defense in the Great Lakes Region (NA Protocol);
- Protocol on Management of Information and Communication;
- Protocol Against the Illegal Exploitation of Natural Resources; and
- Protocol on the Specific Reconstruction Zone.

The R2P Principle Acknowledged

The **Protocol on Non-Aggression and Mutual Defense in the Great Lakes Region** explicitly acknowledges the prior obligation of states with respect to R2P. Article 4(8) of the NA Protocol notes that the prohibition on the threat, or use of force in the Protocol “shall not impair the exercise of their [Member States’] responsibility to protect populations from genocide, war crimes, ethnic cleansing, crimes against humanity, and gross violations of human rights committed by, or within a State.”¹⁴ Further, the Protocol comes close to suggesting that R2P may be exercised by a group of states acting of their own initiative (the requirement to act “collectively” under the NA Protocol is not explicit in requiring “all” Great Lakes Member States to act and does not seem to require prior authorization): viz “[t]he decision of the Member States to exercise their responsibility to protect populations in this provision shall be taken collectively, with due procedural notice to the Peace and Security Council of the African Union and the Security Council of the United Nations.”¹⁵

Notable also is the need acknowledged in the NA Protocol for collective action to disarm and dismantle rebel groups in the region alongside the “joint and participatory management of state and human security” on common borders.¹⁶ Article 5 of the Pact instrument refers to and lays out the principle elements of the NA Protocol. Uniquely with respect to the discussion of the Protocols in the Pact instrument, the Pact stipulates explicitly that if states fail to comply with both Article 5 of the Pact and the NA Protocol itself, then an extraordinary summit may be convened to consider appropriate action.¹⁷ Article 28 of the Pact reinforces the principle that states undertake to settle their disputes peacefully, including through good offices, investigation, mediation, conciliation or any other political means within the framework of the ICGLR’s regional follow-up mechanism.

The **Protocol on Democracy and Good Governance** should also be read in tandem with the provisions for R2P in the NA Protocol. In particular, Chapter X of the Protocol provides for the convening of an extraordinary session of the heads of state in the event of “threats to democracy and a beginning of its breakdown by whatever process and in the event of

¹⁴ *Pact on Security, Stability and Development in the Great Lakes Region*, Protocol on Non-Aggression and Mutual Defense, art. 4(8).

¹⁵ *Pact on Security, Stability and Development in the Great Lakes Region*, Protocol on Non-Aggression and Mutual Defense, art. 4 (8).

¹⁶ *Pact on Security, Stability and Development in the Great Lakes Region*, art. 5(1)(c).

¹⁷ *Pact on Security, Stability and Development in the Great Lakes Region*, art. 5(1)(d).

massive violations of human rights in a Member State.”¹⁸ Article 49 of the Protocol provides that a series of “urgent and appropriate measures” should be taken by the summit to put an end to the situation, including sanctions against the responsible Member State, “with a view to returning to normal institutional life and the respect of human rights.” This potential scope of this summit mechanism should be explored in tandem with the R2P principle as expressed in the NA Protocol, which does not seem to circumscribe the types of action that could be contemplated by states acting collectively.

Impunity and the Prevention and Punishment of Mass Atrocity

The elements of R2P that seek to prevent and combat impunity for mass atrocity are also addressed by the Pact. It is entirely appropriate that the Great Lakes Pact contains a Protocol on the prevention and punishment of serious international crime: the **Protocol on the Prevention and Punishment of the Crime of Genocide, War Crimes and Crimes Against Humanity** (IC Protocol). The 1994 genocide in Rwanda and the massive failure of the international community to respond, both prior to the disaster and then to the outflow of refugees which followed, was the spark which ignited a decade of conflict in the Great Lakes region. Finding ways to prevent such atrocities in the future, and ensuring that those who commit them will be held responsible, was from the beginning of the Great Lakes process recognised as an essential element in constructing long-term solutions. As the African experts who looked at the implications of the Rwanda genocide for the future of the region urged, “a culture where all human rights abuses are punished must replace a culture where impunity for such abuses flourishes.”¹⁹

The IC Protocol constitutes a remarkable effort to deal with the question of serious international crime in the region a comprehensive manner. It contains a mix of criminal law and human rights law provisions, dealing not just with the prosecution of offenders (particularly with regard to identifying the appropriate jurisdiction for prosecution), but also with the systematic or contextual root causes of such crimes, including through setting up early warning mechanisms and addressing the need to combat “discriminatory ideologies and practices.”²⁰ The Preamble to the IC Protocol recognises the inextricable linkages between impunity, insecurity and under-development, expressing deep concern about “the endemic conflicts and the persistent insecurity aggravated by the massive violations of human rights, the policies of exclusion and marginalization, the impunity of the crime of genocide, war crimes and crimes against humanity.” It also emphasises each state party’s duty to “exercise its criminal jurisdiction over the perpetrators of the crime of genocide, war crimes, and crimes against humanity.”

¹⁸ *Pact on Security, Stability and Development in the Great Lakes Region*, Protocol on Democracy and Good Governance, art. 48.

¹⁹ “Rwanda: The Preventable Genocide,” Report to the OAU by the Panel of Eminent Persons, Chapter 24, III, para II.

²⁰ *Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination*, Chapter II, Article 5.

The **Protocol on Judicial Cooperation** (JC Protocol) complements the IC Protocol. In agreeing the JC Protocol, states were animated by deep concern about “the upsurge in crime aggravated by impunity which together exacerbate a climate of insecurity in the Great Lakes Region.”²¹ The objectives of the JC Protocol, as expressed in its Preamble, are, therefore, to combat impunity for crime in the Great Lakes region, extend reciprocal judicial and police cooperation between states, particularly with respect to extradition, and fill the institutional gaps and enhance the protection of citizens of the countries of the region and their property. The JC Protocol creates a framework for the handling of extradition requests in respect of such crimes covering a range of issues such as procedures relating to the accused and convicted persons (Article 7), concurrent requests by states (Article 12), the regulation of preventative detention and release (Articles 8 and 9) and cooperation in respect of investigations and prosecutions (Chapter III) including the creation of joint investigation commissions (Article 17) and exchange of information (Article 21).

The Inter-Governmental Authority on Development

Regional peace and security has always been an “area of cooperation” for IGAD, however a full strategy has yet to be developed.²² The objectives of the draft IGAD peace and security strategy are:

- Facilitation of the development of appropriate national-level mechanisms to promote national peace and security within the context of common core values;
- Appraisal of structures and mechanisms for conflict early warning, management and resolution within the region and across its boundaries;
- Achievement of consensus on aims, principles and benchmarks for the promotion of regional peace and security; and
- Monitoring and supporting post-conflict transitions.

Two significant initiatives related to these objectives have already emerged. First, in furtherance of the appraisal of structures and mechanisms for conflict early warning, similarly to COMESA IGAD has implemented a **Conflict Early Warning Response Mechanism** (CEWARN), with a mandate to “receive and share information concerning potentially violent conflicts as well as their outbreak and escalation in the IGAD region, undertake analysis of the information and formulate options for early response.”²³ CEWARN is developing incrementally and is initially focused on pastoralist conflicts, in particular those in the “Somali cluster” and the “Karamoja cluster.” CEWARN is clearly relevant to the prevention aspect of R2P, and it will be interesting to watch as it develops beyond its initial focus on pastoralist conflicts.

²¹ *Pact on Security, Stability and Development in the Great Lakes Region*, Protocol on Judicial Cooperation, Preamble.

²² IGAD’s Member States are Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan and Uganda.

²³ *Protocol on the Establishment of a Conflict Early Warning and Response Mechanism for IGAD Member States*, Annex, Part I, art. 1(a).

Second, in connection with conflict management and resolution within the region and across its boundaries, IGAD has taken on a number of **mediation roles**, in particular in relation to the Sudanese Comprehensive Peace Agreement, for which IGAD appointed Kenyan General Lazaro Sumbeiywo to lead mediation efforts, and in relation to the Somali conflict. While embryonic in its development, the emerging IGAD strategy around peace and security represents a further aspect of the regional legal framework for delivering on R2P in Africa.

Conclusion

The articulation of the principle of R2P and its endorsement by the international community offers enormous potential to protect civilians from crimes against humanity, ethnic cleansing, genocide and war crimes. This potential is ripe for realisation in Africa where many such violations continue to occur, but also where the legal and peace and security architecture to deliver on the principle exists. Ongoing conflicts and commission of atrocities across the continent from Darfur to DRC are a test of whether leaders in regional and sub-regional bodies have the political will to deliver on the mechanisms and standards embodying R2P which they have put in place.