

in economics and calculus. Many of the papers use economic models for the decision-making processes and simplifying assumptions. This is a compilation for the researcher who is already familiar with the field and not an introductory work.

However, *Design of Constitutions* is a convenient, curated compilation of original, innovative, empirical, and theoretical papers on constitutional design written by some of the leading scholars in the field. The papers also include useful literature surveys and many of the papers set forth areas for future research that can inspire new scholarship.

Lyonette Louis-Jacques
Foreign and International Law Librarian & Lecturer in Law
D'Angelo Law Library, University of Chicago Law School
Chicago, IL USA

Africa and the Responsibility to Protect: Article 4(h) of the African Union Constitutive Act. Edited by Dan Kuwali and Frans Viljoen. Oxford and New York: Routledge, 2014. Pp. xviii, 398. ISBN: 978-041-5722-31-5. US\$155.

If, like many people, you hesitate before buying conference proceedings, I urge you to make an exception for this book. Too many collected conference proceedings present an almost random assortment of tangentially related essays. Unlike those efforts, this volume provides a comprehensive, well-organized treatment of its topic—in this case, the Responsibility to Protect (R2P) as an African issue. The book evolved from the proceedings of a 2012 conference on Article 4(h) and its potential to end mass atrocities in Africa. The distinguished editors have assembled an impressive (and largely African) group of contributors; the resulting collection has much to offer.

Four major themes organize the chapters. First, a section called “Conceptual Issues” tackles the purpose and meaning of Article 4(h). This Article of the African Union Constitutive Act (in force 2001) provides,

Article 4 – The Union shall function in accordance with the following principles:

...
(h) 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.

Article 4(h) represents the first inclusion of this principle, sometimes called humanitarian intervention, in a treaty. As such, its contours lack the

clarity of better-established legal principles. Essays in the Conceptual Issues section explore the meaning of “intervention” and the level of atrocity required to justify Article 4(h) action. Contributors also place Article 4(h) in the wider context of international law.

One of the many unresolved questions about Article 4(h) relates to the UN Charter’s ban on the use of force. As Martin Kunschak describes in Chapter 4, the Security Council’s ability to authorize exceptions to that ban has foundered on the rocks of international politics. For example, the five permanent members of the Security Council (the P5) have failed to agree on policy for Syria and Sudan’s Darfur region, leaving the populations in those countries hostage to their own governments. A movement to establish a “Responsibility Not to Veto” among the P5⁴—aimed at situations such as genocide and other mass atrocities—has gained little traction. This failure to act has led some to seize on Article 4(h) as an alternative to UN action. For example, Kunschak points to the Security Council’s ex post facto endorsements of other regional interventions to suggest that its authorization is unnecessary. However, Ademola Abass, in Chapter 3, concludes that “as a matter of law, its Article 4(h) operations require the authorisation of the UN Security Council.”

The relationship of Article 4(h) to the doctrine of the responsibility to protect is probably best understood as a treaty provision versus a claimed norm of international law. Thus, while experts still argue about whether the responsibility to protect is a rule of customary international law,⁵ Article 4(h) represents an innovative agreement by all African countries (except Morocco) to accept the AU’s power to intervene under certain conditions.

Meanwhile, the AU has not yet explicitly invoked Article 4(h).⁶ The reasons for the AU’s failure to do so make sense only through the lens of

⁴ Citizens for Global Action, White Paper, *The Responsibility Not to Veto: A Way Forward* (2010), http://responsibilitytoprotect.org/Responsibility_not_to_Veto_White_Paper_Final_7_14_2_.pdf

⁵ See, e.g., Umut Özsu, Ukraine, *International Law, and the Political Economy of Self-Determination*, 16 *German L.J.* 434, 441–442 (2015) (stating that R2P is not a rule of customary international law); William W. Burke-White, *Power Shifts in International Law: Structural Realignment and Substantive Pluralism*, 56 *HARV. INT’L L.J.* 1, 54 & n.318 (2015) (stating that some experts characterize R2P as an “emerging norm” of international law); Thomas H. Lee, *The Law of War and the Responsibility to Protect Civilians: A Reinterpretation*, 55 *HARV. INT’L L.J.* 251, 253 (2014) (claiming that the established right of a sovereign to protect its citizens abroad, combined with R2P, “constitute a single customary international law ground for unilateral humanitarian intervention in an unconsenting state where civilians are facing group extermination”).

⁶ Michael Byers, “International Law and the Responsibility to Protect,” in *Theorising the Responsibility to Protect* 107 (Ramesh Thakur & William Maley eds., 2015).

politics; thus, Francis Kofi Abiew, a professor of international relations, examines the lack of action in Chapter 8. He identifies a lack of resources, along with a lack of political will, as the key causes. Abass agrees, arguing that while the lack of resources does limit the AU's options, the AU's power to intervene "should not be confused with the political readiness" of the AU to do so. Most of the authors, regardless of their central topic, also refer to this disappointing shortage of political will.

The book's second section covers "Institutional Perspectives." Babatunde Fagbayibo analyzes whether Article 4(h) makes the AU a truly "supranational" organization. He argues that because the AU's Peace and Security Council (PSC) can authorize intervention on a vote of two-thirds of its members, rather than by consensus, the AU can be classed as a supranational organization. He follows this conclusion, however, by pointing out elements that weaken the supranational aspect of the AU.

The remainder of Section II includes rare discussions of the African Peace and Security Architecture, the African Union Continental Early Warning System, and the African Standby Force. The chapters assess the performance of these institutions to date, and identify serious obstacles to their success. Because these mechanisms are relatively new, the authors cannot confidently predict whether they will reduce the incidence of mass atrocities and other human rights violations.

The relatively brief Section III focuses on "Preventive Mechanisms." Rather than intervention, the ideal outcome for the AU would be the lack of a need to intervene. Prevention is a key part of R2P theory, but gets less attention than the last resort of armed intervention. The essays in this section address the African human rights system; the African Peer Review Mechanism (a 2002 AU initiative providing for peer review, modeled on the OECD system); and a couple of UN mechanisms. The authors clearly explain the various preventive and monitoring mechanisms, with some optimism about their future effectiveness. Nonetheless, the reader is left believing that legal mechanisms have little power to overcome the underlying economic, social, and political problems that cause mass atrocities.

The final section is entitled "Operationalisation," and contains several experts' suggestions on how to use Article 4(h). While the editors aim to provide "realistic recommendations" on how the AU can overcome resource constraints and institutional incapacity to prevent mass atrocities, the authors in this section collectively wish for more than AU members are likely to do, e.g., build political will, build a "capability to protect," provide steady and adequate funding, and rise above the tendency toward mutual protection of elites.

Although the AU may not adopt the authors' suggestions, the book also provides detailed, expert accounts of AU institutions and African crises

in Sierra Leone, Somalia, Kenya, and other countries. As such, the chapters provide interested researchers with a better understanding of the causes and outcomes of these conflicts.

Researchers and librarians will appreciate the comprehensive, detailed index, enabling readers to track topics through the entire volume. For example, the entry for the International Criminal Court (ICC) provides references to several chapters. The editors' creation of this index will pleasantly surprise readers who have struggled to collect all the information on one topic within published conference proceedings. The authors also refer to a rich, unified bibliography that appears at the book's end; some chapters also include endnotes. A list of abbreviations and acronyms helps the reader navigate through passages that sometimes devolve into a swamp of acronyms, e.g., "The groups associated with the ICU continued to oppose the deployment of IGASOM and, later, AMISOM."

Some editorial fatigue may have set in; for example, on page 275, four lines from page 270 are repeated almost verbatim. Word choice is also sometimes an issue: "[O]ccurrence of any of the Art. 4(h) crimes on the territory of a Member State automatically contrives [sic] its sovereignty". Worse, through sloppy writing and a lack of editorial attention, some statements appear to mean the opposite of what the writers intended. For example, in Chapter 8, the author states, "While it is to be expected that a fledgling Union lacking the capacity and capability to rapidly deploy a credible interventionary force in such situations can do much to effectively deal with a complex emergency such as Darfur...." One suspects that the crucial word "not" should have appeared after "can," because the author believes that a lack of resources has constrained the AU's effectiveness.

Despite these flaws, the book adds to the R2P literature and provides unusual insight into African institutions and problems. Scholars, graduate students, and policy-makers would benefit from the authors' collective wisdom.

Mary Rumsey
Reference and Instructional Services Librarian
Willamette University College of Law
Salem, OR USA

Judicial Activism at the European Court of Justice. Edited by Mark Dawson, Bruno De Witte, and Elise Muir. Cheltenham, UK ; Northampton, MA, USA : Edward Elgar, 2013. Pp. viii, 292. ISBN 9780857939395. UK £83.00; US \$130.00.