

Preface

In this book, I undertake to formulate an answer to the question whether international law currently poses a duty for states that hold the power of Security Council membership to direct their acts or omissions in that body towards the prevention of mass atrocity crimes, including but not limited to genocide. As I will sketch in [Chap. 1](#), this question could hardly be more topical today. In the age of what has been labelled “new wars”, the most atrocious forms of violence are not just a concomitant feature but often an integral part of warfare. Civilians suffer excessively in times of armed conflict and often pay an enormous toll of lives and dignity. This was most evident in Rwanda and Srebrenica in the mid-1990s, and it currently is in Syria, but it has equally marked many conflicts which have received less public attention. As the international community opened its eyes to the extent to which its own passivity had enabled the Rwandan and Bosnian genocides, a new notion was created with a view to ensuring the protection of imperilled populations, which has eventually made its way not just into academic and diplomatic circles but even into mainstream media. At the heart of this “Responsibility to Protect” or “R2P” concept is the Security Council, the body which has indeed claimed for itself the competence to deal with massive human rights violations.

As I have sought to tie these ends together and assess whether international law contains a responsibility to protect framework that would obligate the members of the Security Council to prevent atrocity crimes, I have had to tackle two issues of a more general nature. Most basically, in [Chap. 2](#), I suggest that the criteria for determining the existence and contents of a legal norm are far from being settled but rather require some theoretical foundation, especially when the topic under consideration exerts such strong moral pulls as does the prevention of mass atrocities. Having outlined an understanding of the sources and methodology of international law that is, in my opinion, consistent both as a matter of legal theory and with the practice of international courts, I turn to substantive international law. In [Chap. 3](#), I confront a general obstacle to potential duties for Security Council members, namely the proposition, which is at times more and sometimes less explicit in scholarly works, that no substantive obligations apply to the decision-making of the Council. Having rejected this contention as being, at least in this generality, without

basis in the international legal system, the question is essentially whether any legal regime contains a norm that would require states to make sure that the Security Council gets involved for the prevention of certain crimes. Candidate regimes are not only unwritten, especially customary international law, but also the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the humanitarian law contained in the 1949 Geneva Conventions and their additional protocols as well as the Charter of the United Nations. In three successive steps, I will address in [Chaps. 4–6](#) whether any of these legal frameworks establishes duties of prevention that could commit the Security Council members to actively support or at least not to impede collective measures to prevent or halt atrocity crimes wherever they may occur.

In [Chap. 7](#), I propose some conclusions that may be drawn from the preceding analysis. They are necessarily contingent on the methodological approach in which this analysis is grounded as well as on the material that I have examined. Moreover, as international legal norms and the interpretation to be given to them may evolve over the course of time, these conclusions are a snapshot and could be subject to further refinement as relevant state practice keeps proliferating. Various processes that could potentially have an impact on both general international law and the interpretation of relevant treaty provisions are still underway – in fact, some of them have only begun or gathered pace while this book was written. I am namely thinking of the ongoing conceptual debates within the United Nations, such as the annual General Assembly informal interactive dialogues on the responsibility to protect or the debate concerning veto restraint, which has been promoted by the recent initiative on a Code of Conduct regarding Security Council action against atrocity crimes. Meanwhile, the bitter reality is that the Security Council keeps being confronted with conflicts in which atrocity crimes are being committed on a massive scale and which thus test the commitment of the Security Council members – and the international community at large – to a collective responsibility to protect in practice.

For the purposes of the present study, I have appraised actual state practice, with a particular focus on the post-Cold War era, up until the end of 2013 and, in the case of Syria, the beginning of 2014, as well as verbal state practice in the form of initiatives, debates and statements within the United Nations up into 2015. Time will show whether the debates of the United Nations will help to further clarify, consolidate and flesh out legal duties of the Security Council members or whether the prevention of atrocity crimes through the Security Council will rather be considered as a matter of politics and morality.

This book is a product of my doctoral studies at Bucerius Law School, Hamburg, which concluded with an oral examination on 18 November 2016. It corresponds – with some minor corrections and editorial amendments – to the dissertation that I submitted in November 2015. I am indebted to all those who enabled me to undertake this project and carry it through to completion. I should first mention my thesis supervisor, Prof. Dr. Doris König, M.C.L., whom I thank for the opportunity to carry out this research project under her supervision, for her feedback and advice on the extensive draft of this thesis as well as for the chance to gain valuable academic

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Protect

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