



AFRICA'S RESPONSIBILITY TO PROTECT



CAPE TOWN, SOUTH AFRICA

POLICY ADVISORY GROUP SEMINAR REPORT

23 AND 24 APRIL 2007, SOMERSET WEST, SOUTH AFRICA

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ORGANISED BY THE CENTRE FOR CONFLICT RESOLUTION, UNIVERSITY OF CAPE TOWN, SOUTH AFRICA

RAPPORTEURS

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Table of Contents

Acknowledgments, CCR and the Rapporteurs	5
Executive Summary	6
I. Introduction	11
1.1 Objectives	11
1.2 Seminar Themes	12
1.3 Background	13
2. The Responsibility to Protect: Theory and Practice	16
2.1 Africa's Responsibility to Protect	18
2.2 The African Union and the Responsibility to Protect	20
2.3 Gender and the Responsibility to Protect	22
2.4 The UN Human Rights Council and the Responsibility to Protect	24
2.5 Civil Society, National Human Rights Institutions and the Responsibility to Protect	26
2.6 Regional Hegemons and the Responsibility to Protect	28
2.7 External Actors and the Responsibility to Protect	31
3. Conclusion	34
3.1 Key Recommendations	34

Annexes

I. Agenda	36
II. List of Participants	38

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About the Organiser:

The Centre for Conflict Resolution (CCR), Cape Town

The Centre for Conflict Resolution is based in Cape Town, South Africa. Established in 1968, the organisation has wide-ranging experience of conflict interventions in the Western Cape and southern Africa and is working increasingly on a pan-continental basis to strengthen the conflict management capacity of Africa’s regional organisations, as well as on policy research on the United Nations’ (UN) role in Africa; South Africa’s role in Africa; African Union (AU)/New Partnership for Africa’s Development (NEPAD) relations; and HIV/AIDS and Human Security.

The Rapporteurs

Dr Helen Scanlon is Africa Co-ordinator: Gender Programme at the International Centre for Transitional Justice (ICTJ) office in Cape Town; Ms Ahunna Eziakonwa is the Chief of the Africa Section of the UN Office for the Co-ordination of Humanitarian Affairs (OCHA); and Ms Elizabeth Myburgh is a Research Assistant at the Centre for Conflict Resolution, University of Cape Town, South Africa.

Executive Summary

The Centre for Conflict Resolution (CCR), at the University of Cape Town, South Africa, held a policy advisory group meeting in Somerset West, Western Cape, on 23 and 24 April 2007 on the theme of “Africa’s Responsibility to Protect”.

This meeting was the fifth in a series of seminars organised to focus on aspects of the United Nations’ (UN) role in Africa and the recent UN reform process. The policy advisory group comprised about 30 participants including senior officials from the African Union (AU), the Southern African Development Community (SADC) and the UN; academics; senior government officials; and civil society activists. The aim of the policy seminar was to interrogate issues around humanitarian intervention in Africa and the responsibility of regional governments and the international community in the face of humanitarian crises. The “responsibility to protect” is the legal and ethical commitment by the international community, acting through organisations such as the UN and Africa’s regional organisations, to protect citizens from genocide, war crimes, crimes against humanity, and/or ethnic cleansing.

The meeting reviewed and analysed the experiences and lessons from recent conflicts in Africa, as well as assessing the degree to which the “responsibility to protect” citizens has been adhered to by national governments within and outside the continent. A key concern of the seminar was to analyse the future of strategies to promote the protection of human rights in Africa.

Context

A perennial issue confronting the international community is the degree to which international society is responsible for the protection of civilians during humanitarian crises. The 2001 Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS) report *The Responsibility to Protect* argued that, while sovereign states have the primary “responsibility to protect” their own citizens, if they prove unwilling or unable to do this, then the international community must act regardless of political sensitivities. The idea gained widespread international legitimacy when it was adopted at the UN World Summit in September 2005. The Outcome Document argued that the UN must “affirm that every sovereign government has a ‘responsibility to protect’ its citizens and those within its jurisdiction from genocide, mass killing, and massive and sustained human rights violations”. Since 2006, the United Nations Security Council has made a number of references to the “responsibility to protect” and the principle is currently one that has been widely recognised and accepted. The idea has been further bolstered through the creation of both the UN Human Rights Council and the UN Peacebuilding Commission during the reform process of 2005.

The “Responsibility to Protect”: Theory and Practice

The “responsibility to protect” principle imparts the international community with three commitments: the responsibility to *prevent*; the responsibility to *react*; and the responsibility to *rebuild*. This idea thus provides a new way of conceptualising sovereignty in order to move to a culture of national and international accountability. One criticism that faces the principle is that it often appears ambiguous, and the circumstance under which intervention can and cannot be used is often unclear. Sceptics have also voiced concern that military interventions may be used to promote the parochial goals of global or regional powers in situations

where there is no real humanitarian crisis. Some critics have dismissed the principle as too narrow, arguing that anything short of a comprehensive framework focusing on the human security agenda is ill-suited for African circumstances. The campaign around the issue of the “responsibility to protect” is also seen in some quarters as diverting attention from the more “sustainable” goal of human security. However, some have argued that applying broader frameworks to the doctrine would only serve to dilute its central theme: generating effective, consensual responses in humanitarian crises. The “responsibility to protect” is thus a mobilisation tool for timely action in worst-case scenarios, not a panacea for issues of human security. The principle provides new expression to old ideas in such a way that the international community has less scope to justify inaction in situations of egregious human rights abuses.

Africa’s “Responsibility to Protect”

Due to the history of colonialism, many African governments remain suspicious of interference in their domestic affairs by the international community. The responsibility for maintaining international peace and security rests with the UN Security Council, although the UN Charter encourages regional organisations such as the AU and regional economic communities (RECs) to deal with peace and security issues once they have obtained UN Security Council authorisation. The AU, through its Ezulwini Consensus on UN reform of February 2005, recognises that the AU and sub-regional organisations such as the Southern African Development Community; the Economic Community of West African States (ECOWAS); the Intergovernmental Authority on Development (IGAD); the Economic Community of Central African States (ECCAS); and the Arab Maghreb Union (AMU) should be able to intervene with approval from the UN Security Council, and takes the position that, in situations requiring urgent action, such approval could be granted “after the fact”. While the advantages of regional peacekeeping efforts over international operations are clear in situations of urgent crises, African governments have thus far not demonstrated sufficient capacity to deal with complex crises on the continent. The UN should enhance its relationship with Africa’s regional organisations and move from “burden-shifting” to “burden-sharing”. The current hybrid mission of AU and UN troops in Sudan’s troubled Darfur region is an important step in this direction.



ABOVE: Dr Douglas Yates, American University of Paris, France, *left*; H.E. Philip Green, Australian High Commissioner to South Africa, Tshwane, South Africa. RIGHT: Mr Tor Sellstrom, African Centre for the Constructive Resolution of Disputes, Durban, South Africa.

The African Union and the “Responsibility to Protect”

Through the AU’s Constitutive Act of 2000, African leaders recognised the responsibility of the organisation to intervene in the internal affairs of member states to protect citizens during humanitarian crises. In similar vein to the “responsibility to protect” principle, the AU Constitutive Act underlines military intervention as the last resort, and emphasises diplomatic, peaceful measures such as dialogue, as the best option in conflict situations. The Constitutive Act also embraces the three levels of action prescribed by the ICISS report: prevention, intervention, and post-conflict reconstruction. African leaders have thus moved – at least rhetorically – to accepting the principle of “sovereignty as responsibility”. Although significant efforts have been made by the AU towards creating a culture of protection within its institutions, the “responsibility to protect” can only be addressed if there is political will to implement existing national, regional, and international standards and principles. There remains an urgent need for the AU to address the reality of responses on the ground, and the experience of the current AU mission in Darfur is an example of the problems of lack of military capacity in a difficult intervention situation.

Gender and the “Responsibility to Protect”

While the ICISS “responsibility to protect” principle was pioneering, this approach failed to incorporate gender sufficiently, leading to accusations in some quarters that the report was gender-blind. Furthermore, there were no concrete suggestions as to how to include women in the various processes of the “responsibility to protect”. The primary responsibility of states to protect women from atrocities was overlooked and the doctrine is accused of having a limited interpretation of protection and security. The “responsibility to protect” principle thus needs to place greater emphasis on the specific needs of women during conflicts. Furthermore, a complete engendering of the “responsibility to protect” and other peace and security frameworks is critical in the African context where women’s protection is often perceived as inferior to that of men’s. For this reason, the continuum approach of the “responsibility to protect” – which emphasises three response pillars – provides a useful framework to engender the entire process and to rectify the lapses inherent in the doctrine.

The UN Human Rights Council and the “Responsibility to Protect”

The intention of the “responsibility to protect” concept was to provide a framework for humanitarian intervention in restricted circumstances rather than to create an alternative framework for human rights protection. The newly-created UN Human Rights Council was set up in 2006 to provide a stronger, more effective, and less politicised organisation to replace the UN Human Rights Commission. Unlike its predecessor, a key difference from the Commission is a clause requiring members of the Council to undergo a review of their human rights record, which did not exist before. Also, the UN General Assembly can suspend any members of the Council found to be committing “gross and systematic” human rights violations if agreed by a two-thirds majority. Within its first year, the biggest challenge facing the Council’s credibility was the four-year civil war in Sudan’s Darfur region, biggest with much debate centred on the UN’s “responsibility to protect”. However, from the outset, the Council was unlikely to prove effective, as the international human rights system itself is shaped by the existing global political and power constraints. There is a need to have realistic expectations of the Council to enforce human rights standards beyond domestic jurisdictions, and perhaps instead more emphasis should be placed on supporting national mechanisms for the promotion of human rights.

Regional Hegemons and the “Responsibility to Protect”

Both South Africa and Nigeria – regional hegemons in Africa – have, at times, practised the “responsibility to protect” in their foreign policies through sub-regional and multilateral means. The full potential of both South Africa and Nigeria to provide leadership and play transformative roles within their respective regions and on the continent has however not yet been fully realised. Actions of regional hegemons should nonetheless be brought more directly under wider umbrellas such as the United Nations, the AU, SADC, and ECOWAS, which would assist with issues of legitimacy, mobilisation and resources. Africa would benefit from a strengthened African Union and from the leadership that these two countries could provide in the quest to implement and entrench the “responsibility to protect” idea in Africa.

External Actors and the “Responsibility to Protect”

The end of colonialism in Africa did not lead to a concomitant end to the involvement of external actors in Africa’s domestic affairs. Military interventions in Africa, often justified as humanitarian interventions, have commonly been used by actors like France, the US and the Soviet Union (particularly during the Cold War era) to pursue their parochial national interests, prop up local despots, and perpetuate “spheres of influence”. There is thus a basis for concern by some African governments that the principle of the “responsibility to protect” is yet another means for powerful countries to interfere with the domestic affairs of weaker countries. Since the US administration of George W. Bush declared a “war on terror” after the attacks on the US in September 2001, a number of initiatives to combat terrorism have emerged in Africa which have led to questions over the potential for the misuse and abuse of the “responsibility to protect” principle. Deep concerns have been expressed in Africa that interference in the internal affairs of African countries will continue to grow, and that countries with weak government structures are particularly vulnerable. African governments could come under even greater influence of external actors economically and the plundering of Africa’s natural resources could increase, particularly with regard to oil. Nonetheless, it is important to bear in mind that sometimes, the motives for external interventions are simply prompted by humanitarian concerns.

Policy Recommendations

Ten key recommendations emerged from the seminar:

1. If the “responsibility to protect” principle is to be utilised successfully, sufficient economic and military resources need to be available. Stronger mediation, sanction measures, and effective preparedness can all contribute towards ensuring that civilians are protected in times of humanitarian crises.
2. Ethical issues that could motivate humanitarian intervention must be identified as national interests in order to mobilise governments to implement the “responsibility to protect”.
3. Gender should be integrated into all levels of the “responsibility to protect”. UN Security Council resolution 1325 of 2000 and the AU Women’s Protocol of 2003 should continue to be used as monitoring mechanisms to gauge the involvement and participation of women in the prevention, reaction, and rebuilding pillars of the “responsibility to protect”.
4. The “responsibility to protect” principle could be better applied in Africa through capacitating regional organisations and, when appropriate, mandating regional hegemons such as South Africa and Nigeria to provide the backbone for UN and regional interventions. The UN should nonetheless maintain its primary responsibility of promoting global peace and security.

5. The “responsibility to protect” principle needs to be deconstructed to establish what the obstacles are to the effective implementation of existing human rights instruments in Africa.
6. Some of the earlywarning systems already in place on the continent are well developed, but this needs to be matched with early action. The international community should urgently tackle the problem of capacity to move the “responsibility to prevent” idea beyond a theoretical concept.
7. Measures should be taken to ensure that indifference by the international community is not allowed to set in. Support for the “responsibility to protect” should be a matter for mobilisation from the bottom up through civil society organisations as well as in the realm of international advocacy.
8. Civil society must be involved to ensure the implementation of the “responsibility to protect” principle through helping to build the capacity of national and regional institutions. African civil society should use strategic partnerships with actors in the West to assist them.
9. African governments should use their membership of the UN Human Rights Council to apply pressure over human rights issues relevant to the continent such as the plight of refugees and the role of foreign multinationals.
10. Finally, it is important to strengthen National Human Rights Institutions and to ensure that they function under the 1991 Paris Principles that determine international standards for human rights, in order to avoid abuse by governments.



ABOVE: Ms Ahunna Eziakonwa, UN Office for the Co-ordination of Humanitarian Affairs, New York, US, *right*; Dr Solomon Gomes, Darfur Integrated Task Force, African Union Commission, Addis Ababa, Ethiopia.
RIGHT: Mr Sam Kona, Senior Manager, Centre for Conflict Resolution, Cape Town.



1. Introduction

The Centre for Conflict Resolution (CCR), at the University of Cape Town, South Africa, held a policy advisory group meeting in Somerset West, Western Cape, on 23 and 24 April 2007 on the theme of “Africa’s Responsibility to Protect”. This meeting was the fifth in a series of seminars organised to focus on aspects of the United Nations’ (UN) role in Africa and the recent UN reform process.¹

The aim of the policy seminar was to interrogate issues around humanitarian intervention in Africa and the responsibility of regional governments and the international community in the face of humanitarian crises. The “responsibility to protect” is the legal and ethical commitment by the international community acting through organisations such as the UN to protect citizens from genocide, war crimes, and crimes against humanity and/or ethnic cleansing. The meeting reviewed and analysed the experiences and lessons from recent conflicts in Africa, and assessed the degree to which the “responsibility to protect” citizens has been adhered to. A key concern of the seminar was to analyse the future of strategies to promote the protection of human rights on the continent.

About 30 participants including senior officials from the African Union (AU), the Southern African Development Community (SADC), and the UN; academics; senior government officials; and civil society activists attended the policy advisory group meeting. Key officials who attended included: Gareth Evans, President of the International Crisis Group; Solomon Gomes, Political Adviser to the Darfur Integrated Task Force at the African Union; Natangwe Angula, Senior Strategic Analyst at SADC; Jody Kollapen, Chair of the South African Human Rights Commission; Ruth Archibald, High Commissioner of Canada to South Africa; Philip Green, Australian High Commissioner to South Africa; Chris Brown, Canadian Consul-General in Cape Town; and Musifiky Mwanasali, Special Assistant to the Assistant Secretary-General for Africa in the UN Department for Political Affairs.

1.1 Objectives

The recent discussions and disagreements about the reform of the United Nations on its sixtieth anniversary in September 2005 resulted in two significant developments in terms of the protection of human rights in Africa.² These include a commitment to the “responsibility to protect” civilians from human rights abuses, and the establishment of a UN Human Rights Council to replace the UN Human Rights Commission. The primary goal of the CCR policy meeting was to examine the significance of these two developments and to assess the degree of continental consensus and commitment to the “responsibility to protect” principle. In particular, the policy meeting examined the concept of “humanitarian intervention”; identified ways to strengthen the capacity of African regional and sub-regional organisations to manage humanitarian crises; and made suggestions as to how best to equip actors in these organisations with relevant knowledge, skills, and insights on the “responsibility to protect”.

1 See Centre for Conflict Resolution, *The New Partnership for Africa’s Security: The United Nations, Regional Organisations and Future Security Threats in Africa*, Seminar Report, 21-23 May 2004, Cape Town, South Africa; Centre for Conflict Resolution, *A More Secure Continent: African Perspectives on the UN High-Level Panel Report, A More Secure World: Our Shared Responsibility*, Seminar Report, Cape Town, South Africa, 23 and 24 April 2005; Centre for Conflict Resolution, *African Perspectives on the UN Peacebuilding Commission*, Seminar Report, Maputo, Mozambique, 3-5 August 2006; Centre for Conflict Resolution, *The United Nations and Africa: Peace, Development and Human Security*, Seminar Report, Maputo, Mozambique, 14-16 December 2006 (available at <http://ccrweb.uct.ac.za>).

2 See Adekeye Adebajo and Helen Scanlon (eds.), *A Dialogue of the Deaf: Essays on Africa and the United Nations* (Johannesburg: Jacana, 2006).

1.2 Seminar Themes

The following six questions formed the basis of presentations and discussions during the meeting:

- Should civilians in Africa be protected by the international community through military intervention to prevent genocide, ethnic cleansing or mass killings, and how can steps be taken to avoid the abuse of “humanitarian interventions” by global and regional powers?
- What are the challenges that hamper efforts to protect civilians during humanitarian crises?
- To what extent have African institutions and heads of state embraced the “responsibility to protect”?
- What lessons have been learned from the 1994 Rwandan genocide, and how far are these reflected in responses to recent African conflicts?
- Does the international community have a “responsibility to protect” women and children during conflicts? and
- What is the potential significance of the UN Human Rights Council for Africa?



ABOVE: Dr Ulrich Golaszinski, Friedrich Ebert Stiftung, Maputo, Mozambique, left; Mr Jody Kollapen, South African Human Rights Commission, Johannesburg, South Africa.
RIGHT: Mr Chris Brown, Canadian Consul-General, Cape Town, South Africa, left; Mr Gareth Evans, International Crisis Group, Brussels, Belgium.



1.3 Background

A perennial issue confronting the international community is the degree to which international society is responsible for the protection of civilians during humanitarian crises. The failure of the UN to act during the 1994 Rwandan genocide, in which nearly one million people were killed, despite a 2,500-strong UN peacekeeping mission being present at the start of the killings, caused widespread international condemnation and a re-evaluation of international norms in this area. Respect for the sovereign rights of governments remains central to relations between states. However, the question of when intervention is necessary during a humanitarian emergency has become increasingly relevant to the international community, as current debates over Sudan's Darfur region, where an estimated 200,000 people have been killed and 2.5 million displaced since 2003, clearly demonstrate.

Many prominent Africans have contributed to developing the "responsibility to protect" principle.³ Kenyan scholar Ali Mazrui's notion of "continental jurisdiction" in 1967 sought to legitimise the slogan of "African solutions to African problems", as newly-independent states in Africa strove to keep the continent free of external actors during the Cold War. Mazrui distinguished between foreign interventions which he considered illegitimate, and inter-African interventions which, through his idea of "racial sovereignty", regarded interventions by Africans as more legitimate than those by outsiders.⁴ At the time of the creation of the Organisation of African Unity (OAU) in 1963, Ghana's founding president, Kwame Nkrumah, called for the establishment of an African High Command. The idea was to establish a supranational standing army involving all independent African states pooling their resources to advance the liberation of the continent and to protect Africa from foreign intervention. This force would also seek to protect the black victims of white rule in southern Africa.

In the post-Cold War era, the Tanzanian former OAU Secretary-General and Chief African Union mediator in Darfur, Salim Ahmed Salim, said in 1998: "We should talk about the need for accountability of governments and of their national and international responsibilities. In the process, we shall be redefining sovereignty."⁵ Salim regarded regional organisations as the "first line of defence" and called on them to promote democracy, human rights and economic development.⁶ He also argued that "every African is his brother's keeper" and called for the use of African culture and social relations to manage conflicts.⁷ Egyptian UN Secretary-General Boutros Boutros-Ghali argued forcefully for humanitarian intervention in Somalia, Liberia, and Burundi; and castigated western powers for focusing disproportionate attention on "rich men's wars" in the Balkans while neglecting Africa's more numerous conflicts. His Ghanaian successor, Kofi Annan, was the most vociferous prophet of humanitarian intervention in recent times. As Annan noted in 1999: "States are now widely understood to be instruments at the service of their peoples, and not vice-versa... Nothing in the UN charter precludes a recognition that there are rights beyond borders."⁸

3 The next three paragraphs have been contributed directly from Adekeye Adebajo, "Pax Nigeriana and the Responsibility to Protect", paper presented at the CCR seminar, "Africa's Responsibility to Protect", Somerset West, South Africa, 23 and 24 April 2007.

4 Ali Mazrui, *Towards a Pax Africana*, (Chicago: University of Chicago Press, 1967), p.203.

5 Quoted in Solomon Gomes, "The OAU, State Sovereignty and Regional Security" in Edmond Keller and Donald Rothchild (eds.), *Africa in the New International Order: Rethinking State Sovereignty*, (Boulder and London: Lynne Rienner Publishers, 1996), p.41.

6 Salim Ahmed Salim, "The OAU Role in Conflict Management", in Olara A. Otunnu and Michael W. Doyle (eds.), *Peacemaking and Peacekeeping for a New Century*, (New York and Oxford: Rowman & Littlefield, 1998), pp.245-253.

7 Cited in Francis M. Deng, *Protecting the Dispossessed: A Challenge for the International Community*, (Washington, D.C.: Brookings Institution, 1993), p.17.

8 Kofi Annan, "Two Concepts of Sovereignty", *The Economist*, 18-24 September 1999, p.49.

Sudanese scholar Francis Deng, the current UN Special Adviser for the Prevention of Genocide and Mass Atrocities, along with other colleagues, coined the idea of “sovereignty as responsibility” in 1996. He sought to operationalise the idea and to persuade African governments to protect populations in danger within the continent’s changing post-Cold War architecture.⁹ Deng argued that in situations of armed conflicts, countries are often so divided on fundamental issues of sovereignty and legitimacy – with some factions calling for external intervention – that the validity of sovereignty must be judged by the views of the population rather than those of governments or warlords.¹⁰ Finally, in what came to be known by some as the “Mandela doctrine”, at the OAU summit in Ouagadougou, Burkina Faso, in 1998, Mandela told his fellow leaders: “Africa has a right and a duty to intervene to root out tyranny...we must all accept that we cannot abuse the concept of national sovereignty to deny the rest of the continent the right and duty to intervene when behind those sovereign boundaries, people are being slaughtered to protect tyranny.”¹¹

In former UN Secretary-General Kofi Annan’s Millennium Report of 2000, he called on the international community to tackle the contradiction created by the priorities of intervention versus respect for sovereignty during humanitarian crises. The Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS) was created as a result, and produced a report, *The Responsibility to Protect*, in 2001.¹² The report’s premise was that, while sovereign states have the primary “responsibility to protect” their own citizens, if they prove unwilling or unable to do so, then the international community must act, regardless of political sensitivities. Five criteria are laid out to legitimise such interventions:

- First, the seriousness of the threat must justify the use of force;
- Second, the purpose of the military action must be to avert the specific threat;
- Third, all non-military options must previously have been exhausted;
- Fourth, the use of military force must be proportionate to the security threat; and
- Fifth, the chances of the military action to meet the threat must be high.¹³

The major contribution provided by the Canadian-sponsored report was its reconceptualisation of the “right to intervene” as the “responsibility to protect”.¹⁴

In 2004, the UN High-Level Panel report commissioned by Annan adopted the ideas of the ICISS¹⁵ and this was further endorsed by Annan’s 2004 speech to commemorate the tenth anniversary of the genocide in Rwanda, when he announced his intention to launch a UN action plan to prevent future acts of genocide.¹⁶ Annan’s 2005 report, *In Larger Freedom: Towards Development, Security and Human Rights for All*, further identified the

9 Francis M. Deng et al., *Sovereignty as Responsibility: Conflict Management in Africa*, (Washington, D.C.: Brookings Institution, 1996).

10 Deng, *Protecting the Dispossessed: A Challenge for the International Community*, p.19.

11 Quoted in Eboe Hutchful, “Understanding the African Security Crisis”, in Abdel-Fatau Musah and J. Kayode Fayemi (eds.), *Mercenaries: An African Security Dilemma*, (London and Sterling: Pluto Press, 2000), p.218.

12 *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, (Ottawa: International Research Centre, 2001), (available at <http://iciss.ca/pdf/commission-report.pdf>; accessed 12 April 2007).

13 See Gareth Evans, “When is it Right To Fight?”, *Survival*, vol.46, no.3, Autumn 2004, p.75. See also Musifiky Mwanasali, “Africa’s Responsibility to Protect”, in Adebajo and Scanlon (eds.), *A Dialogue of the Deaf*, pp. 89-110.

14 Gareth Evans, “Banishing the Rwanda Nightmare: The Responsibility to Protect”, *Frontline*, 31 March 2004.

15 *A More Secure World: Our Shared Responsibility*, Report of the United Nations Secretary-General’s High-Level Panel on Threats, Challenges and Change. Published by the United Nations Department of Public Information DPI/2367, December 2004.

16 United Nations Press Release SC/SM/9197 AFR/893, HR/CN/1077 of 7 April 2004 (available at <http://www.preventgenocide.org/prevent/UNdocs/KofiAnnansActionPlanToPreventGenocide>; accessed 21 May 2007).

need for the international community to assume the principle of collective security.¹⁷ The idea gained widespread international legitimacy when it was adopted at the UN World Summit in September 2005. The Outcome Document argued that the UN must “affirm that every sovereign government has a ‘responsibility to protect’ its citizens and those within its jurisdiction from genocide, mass killing, and massive and sustained human rights violations”¹⁸.

Since 2006, the powerful 15-member UN Security Council has made a number of references to the “responsibility to protect”. These include Resolution 1674 of 2006 on the Protection of Civilians in Armed Conflict, and Resolution 1706 of the same year on Sudan’s peacekeepers in Darfur. The latter resolution called for the deployment of UN peacekeepers to the Darfur region in order to address human rights violations there. Thus, the “responsibility to protect” principle is currently one which has been widely recognised and accepted. The idea has been further bolstered through the creation of both the UN Human Rights Council and the UN Peacebuilding Commission during the reform process of 2005. The mandate of the new Peacebuilding Commission encompasses three broad areas, all of which can help promote the “responsibility to protect”. First, the Commission seeks to promote post-conflict peacebuilding and recovery; second, it aims to help bridge the gap between the immediate post-conflict phase and sustainable peace; and finally, the body is mandated to provide a monitoring and review function to help co-ordinate information-sharing. The UN Human Rights Council was envisioned as a stronger, more effective and less politicised organisation to replace the Human Rights Commission.



Professor Maxi Schoeman, University of Pretoria, Tshwane, South Africa, *left*; H.E. Ms Ruth Archibald, High Commissioner of Canada to South Africa.

17 *In Larger Freedom: Towards Development, Security and Human Rights For All*, Report of the UN Secretary-General; follow-up to the outcome of the Millennium Summit, 21 March 2005, A/59/2005 (available at <http://www.un.org/larger freedom/contents.htm> ; accessed 22 May 2007).

18 United Nations General Assembly, *Outcome Document*, 14 September 2005.

2. The “Responsibility to Protect”: Theory and Practice

Since the Second World War ended in 1945, international politics has been largely governed by Article 2 (7) of the UN Charter which argues that there is no right to “intervene in matters which are essentially within the domestic jurisdiction of any state”.¹⁹

Nonetheless, the international community has also adopted a series of international legal instruments to protect human rights in the 60 years since the UN’s foundation. The primacy of the principle of state sovereignty however rendered these instruments largely ineffective in practice. Even the existence of the 1948 Genocide Convention, under which the principle of non-intervention can be overridden, could not prevent the 1994 Rwandan genocide. While the avoidance of the use of force was standard practice for UN operations throughout the Cold War – with the exception of abortive interventions such as the United Nations Operation in the Congo (ONUC) in 1964 – the concept of non-intervention came under serious scrutiny in the 1990s. The end of the Cold War and the outbreak of a series of intra and inter-state conflicts resulted in a number of massive humanitarian crises across the globe. Nonetheless, attempts by the international community to respond to these conflicts were at best unpredictable, slow, and incomplete. This was demonstrated by the debacles in Somalia in 1993, where UN forces were forced to withdraw, and in Sierra Leone in 2000, where a UN mission had to be stabilised by a brief British intervention.

By the end of the 1990s, the right to “humanitarian intervention” dominated international discourse, giving rise to debates over the need to uphold citizens’ fundamental human rights in contrast to the need to protect state sovereignty. In 1999, Kofi Annan laid out the conceptual dilemma over “humanitarian intervention” and argued that the traditional legal concept of state sovereignty might, in some circumstances, have to yield to the “sovereignty” of individual citizens.²⁰ Annan subsequently noted that “if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?”.²¹ Compelling as Annan’s argument was, extreme humanitarian violations against civilians nonetheless erupted without international action in Sudan’s Darfur region and the Democratic Republic of the Congo (DRC) in the late 20th and early 21st century.

The “responsibility to protect” principle emerged from the need for the creation of new norms over intervention in the face of systematic human rights violations. The 2001 International Commission on Intervention and State Sovereignty report is considered to be one of the most progressive – though not uncontroversial – positions on the protection of civilians since “the right to intervene” debate erupted. The idea provides a new way of conceptualising sovereignty in order to move from the *status quo* of sovereign impunity to a culture of national and international accountability.²² This echoes the AU’s own rhetorical shift from “non-interference” to “non-

19 UN Charter, Article 11 (7).

20 For the full text of the speech, see Kofi Annan “Secretary-General’s Speech to the 54th Session on the General Assembly”, 20 September 1999, SG/SM/7136 CA/9596.

21 Kofi Annan, “We the Peoples: The Role of the United Nations in the Twenty-First Century”, General Assembly, 2000 (A/54/2000), (available at <http://www.un.org/millennium/sg/report/full.htm> ; accessed 3 June 2007).

22 ICISS, *The Responsibility to Protect*.

indifference". The foundations of the "responsibility to protect" as a guiding principle for the international community lies in the responsibility of the UN Security Council to maintain international peace and security under article 24 of the UN Charter. The Canadian-sponsored ICISS report offers the UN and its Security Council principles and criteria for responding to four cases of human rights violations: genocide; war crimes; ethnic cleansing; and crimes against humanity. The concept frames intervention as a continuum with three core components: the responsibility to *prevent*, the responsibility to *react*, and the responsibility to *rebuild*. The "responsibility to prevent" compels states to tackle the root causes of internal conflicts and other man-made disasters, while ensuring effective earlywarning and early action systems. The "responsibility to react" calls for appropriate responses to situations of grave humanitarian catastrophes, ranging from diplomatic to coercive measures such as sanctions, through to military intervention as a last resort. The "responsibility to rebuild" involves the provision of comprehensive assistance programmes towards recovery, reconstruction, and rehabilitation following a military intervention.

Although the UN's 2005 World Summit saw the formal acceptance of the concept, the world body did not adopt all of the criteria outlined by the ICISS, since some members of the Group of 77 (G-77) developing countries at the UN – including a number of African governments – argued against its potential misuse. Some African heads of state such as Zimbabwe's Robert Mugabe cautioned that the concept could potentially be abused by powerful states to infringe on the "sovereignty and territorial integrity of small and weak countries".²³ Challenges that face the implementation of the concept by the world body include political will, authorisation, and operational capacity.²⁴

"While the avoidance of the use of force was standard practice for UN operations throughout the Cold War, the concept of non-intervention came under serious scrutiny in the 1990s."

Another criticism of the "responsibility to protect" principle is that it often appears ambiguous and the circumstances under which intervention can and cannot be used is sometimes unclear. Other critics maintain that by making the UN Security Council the legitimising instrument for intervention, the concept does nothing more than maintain the unequal global *status quo*. Sceptics have also voiced concern that military intervention may be used to promote the parochial goals of global or regional powers in situations where there is no real humanitarian crisis. Such an accusation was raised against France's controversial intervention during the Rwandan genocide of 1994, which was seen as having facilitated the escape of *génocidaires* into the DRC. These misgivings are buttressed by the US-led invasion of Iraq in 2003, particularly as some of the supporters of that war publicly proclaimed that overthrowing tyranny and responding to Iraqi dictator Saddam Hussein's human rights abuses could be justified on the basis of the "responsibility to protect" Iraqi civilians. Nonetheless, proponents of the "responsibility to protect" principle counter that, if the criteria for invoking the principle had been followed, there could have been no justification for the intervention in Iraq on humanitarian grounds.

23 Statement by President Robert Mugabe to the High-Level Plenary Meeting of the General Assembly, 14 September 2005, New York (available at <http://www.un.org/webcast/summit2005/statements/zim050914eng.pdf>; accessed 10 June 2007).

24 Rebecca Hamilton, "The Responsibility To Protect: From Document To Doctrine - But What Of Implementation?", *Harvard Human Rights Law Journal* 19 (2006).

Other critics have dismissed the concept as too narrow, arguing that anything short of a comprehensive framework focusing on the human security agenda is ill-suited to African circumstances. The campaign around the issue of the “responsibility to protect” is also seen in some quarters as diverting attention from the more “sustainable” goal of human security. The fact that states act, more often than not, on the basis of national interest, also brings to question the issue of motivation, legitimacy and the selective use of force.

“Another criticism of the ‘responsibility to protect’ principle is that it often appears ambiguous and the circumstances under which intervention can and cannot be used are sometimes unclear.”

Proponents of the “responsibility to protect” concept, however, consider much of this sort of criticism as misguided. They argue that applying broader frameworks to the doctrine dilutes its central theme: generating effective, consensual responses in humanitarian crises. The “responsibility to protect” is thus a mobilisation tool for timely action in worst-case scenarios, and not a panacea for issues of human security. The concept provides new expression to old ideas in such a way that decisionmakers have little scope to justify inaction during humanitarian crises.

2.1 Africa’s “Responsibility to Protect”

The responsibility for maintaining international peace and security rests primarily with the UN Security Council. But with 18 peacekeeping missions spread across the globe and nearly 100,000 personnel deployed in global trouble spots in 2007, the UN peacekeeping machinery is clearly overstretched. As a result, the international community is increasingly shifting the burden of peacekeeping and protection in Africa to the AU and its regional economic communities such as the Southern African Development Community; the Economic Community of West African States (ECOWAS); the Intergovernmental Authority on Development (IGAD); and the Economic Community of Central African States (ECCAS).²⁵ There have been an increasing number of African peacekeeping forces deployed during humanitarian crises in countries such as Chad, Liberia, Sierra Leone, Rwanda and Burundi, some with and others without prior approval or authorisation from the UN Security Council. The two Nigerian-led ECOMOG (ECOWAS Ceasefire Monitoring Group) interventions in Liberia and Sierra Leone in 1990 and 1997 respectively were largely justified on humanitarian grounds, though the role of Nigeria as a regional hegemon was contentious. South Africa has also played a similar role in Burundi and the DRC. More controversial interventions include Tanzania’s invasion of Uganda in 1979, which led to the overthrow of Ugandan autocrat Idi Amin; South Africa’s intervention in Lesotho in 1998 to quash a coup; and Rwanda’s intervention in the DRC in 1998.

The UN Charter does encourage regional organisations such as the AU and the RECs to deal with peace and security issues, if they obtain prior UN Security Council authorisation. However, the AU and RECs have not always abided by this condition due to what they often see as UN indifference, which they feel could impede necessary action. For example, ECOWAS did not obtain prior UN Security Council authorisation for both its interventions in Liberia and in Sierra Leone in the 1990s. In both cases, ECOWAS states invoked the principle

²⁵ CCR, “Building an African Union for the 21st Century: Relations with Regional Economic Communities (RECS), NEPAD and Civil Society”, Policy Seminar Report, Cape Town, 20 - 22 August 2005.

of "humanitarian intervention", and sub-regional security protocols. Although the AU – through its Ezulwini Consensus of February 2005 – recognises that the AU and sub-regional organisations should be able to intervene with approval from the UN Security Council, many African governments have taken the position that, in situations requiring urgent action, such approval could be granted "after the fact".²⁶

While the advantages of regional peacekeeping efforts over international operations are clear, African governments and, in turn, regional organisations, have thus far not demonstrated sufficient capacity to deal with complex crises on the continent. Peacekeeping operations are costly. For example, Nigeria spent over \$1 million dollars a day during the ECOWAS peace operation in Sierra Leone of 1997-1999.²⁷ The UN thus needs to enhance its relationship with Africa's regional organisations and move from "burden-shifting" to "burden-sharing". The 26,000-strong hybrid mission of AU and UN troops mandated by the UN Security Council in August 2007 to be deployed in Sudan's volatile Darfur region is viewed as an important step in this direction.

Nonetheless, due to the history of colonialism, many African governments remain suspicious of interference in their domestic affairs by external actors. The concept of intervention continues to cause alarm due to the memory of past abuses by actors such as France, the US and the Soviet Union, which pursued parochial security interests during the Cold War, propped up local despots, and perpetuated "spheres of influence". Since many African states lack adequate political or military power to ensure their sovereignty and independence, they often rely on the respect of other states for international law. The strength of these rules and codes of conduct is, for many states, their only effective defence.²⁸ To ensure that the "responsibility to protect" becomes an effective concept on the continent, it is important that these fears be assuaged.



Dr Solomon Gomes, Darfur Integrated Task Force, African Union Commission, Addis Ababa, Ethiopia.

26 Mwanasali, "Africa's Responsibility to Protect".

27 Ben Kioko, "The Right of Intervention under the African Union's Constitutive Act: From Non-interference to Non-intervention", International Committee of the Red Cross, p.822 (available at <http://www.icrc.org/Web/eng/siteeng0.nsf/html/SWNJDL> ; accessed 11 June 2007).

28 Stanlake Samkange, "African Perspectives on Intervention and State Sovereignty", *African Security Review*, 11 2002, p.2.

2.2 The AU and the “Responsibility to Protect”

The acceptance by African governments of the “responsibility to protect” principle has evolved substantially since the Rwandan genocide of 1994, taking on a new resonance with the creation of the African Union in 2002. Through the AU’s Constitutive Act of 2000, African leaders recognised the responsibility of the organisation to intervene in the internal affairs of its member states to protect citizens during humanitarian crises. Article IV of the Constitutive Act represents a considerable shift in the thinking of the continental organisation, as well as a reassessment of the concept of sovereignty as outlined in the Charter of the Organisation of African Unity of 1963.²⁹ In similar vein to the “responsibility to protect” principle, the AU Constitutive Act underlines military intervention as the last resort, and emphasises diplomatic, peaceful measures such as dialogue as the best option in conflict situations. The Constitutive Act also embraces the three levels of action prescribed by the Canadian-sponsored ICISS report: prevention, intervention, and post-conflict reconstruction. African leaders have thus moved – at least rhetorically – to accepting the principle of “sovereignty as responsibility”.³⁰

The AU’s concept of “non-indifference” – in contrast to its predecessor’s, the OAU’s policy of “non-interference”, is seen by many actors as demonstrating the AU’s determination to be more proactive in preventing and resolving African conflicts.³¹ This was reiterated at a meeting in Swaziland in February 2005, when the African Union’s Committee of Fifteen foreign ministers met in Mbabane to create a common African response to the UN High-Level Panel report of 2004. Their report, known as the “Ezulwini Consensus”, rejected the proposal for a UN Human Rights Council with universal membership which they felt could hamper the body’s effectiveness and duplicate the work of the UN’s third committee. However, African leaders voiced strong support for a reformed UN Human Rights Commission and the idea of a “responsibility to protect” doctrine.³²

In May 2004, the African Union’s 15-member Peace and Security Council (PSC) was created for the prevention, management, and resolution of conflicts on the continent. The PSC was designed as a collective security and earlywarning system to facilitate timely and effective responses by the AU to conflict situations on the continent. This decision-making body presented a bold institutional commitment to a culture of protection, echoing the core ideas of the ICISS report on the “responsibility to protect”. Although the “responsibility to protect” is not explicitly mentioned in any AU legislative documents, the PSC provides a source of authority for intervention on the basis of civilian protection. The establishment of the PSC and its subsidiary bodies – the Continental Early Warning System, the Panel of the Wise, and Africa’s Standby Force to be established in 2010 based on five sub-regional brigades – as well as the adoption of the AU Policy on Post-Conflict Reconstruction and Development (PCRD), provides the foundation for implementing the three dimensions of the “responsibility to protect” principle in Africa.³³

In practice, the AU has recently deployed missions in both Burundi (AMIB) and Sudan (AMIS). The mission in Burundi contributed to the stabilisation of the country and created the conditions for the deployment of a UN

29 Decision AHG/Dec.141 (XXV) was adopted by the 35th ordinary session of the Assembly of Heads of State and Government of the Organisation of African Unity (Algiers, Algeria, 12 - 14 July 1999).

30 See Francis Deng et al., *Sovereignty as Responsibility*.

31 See Mwanasali, “Africa’s Responsibility to Protect”, p.94, and Kristina Powell, *The African Union’s Emerging Peace and Security Regime*, International Security Studies (Tshwane) Monograph Series, no. 119, May 2005.

32 See African Union, Draft Recommendations at the Ministerial Committee of Fifteen on the Report of the High-Level Panel on the Reform of the UN System, 20-22 February 2005, Mbabane, Swaziland, CTTE/15/Min/ReformUN/Draft/Recomm. (I).

33 See Tim Murithi, “Towards a Symbiotic Partnership: The UN Peacebuilding Commission and the Evolving AU/NEPAD Post-conflict Reconstruction Framework”, in Adebajo and Scanlon (eds.), *A Dialogue of the Deaf*, pp.243-260.



FACT BOX

“In May 2004, the African Union’s 15-member Peace and Security Council (PSC) was created for the prevention, management, and resolution of conflicts on the continent.”

LEFT: From left: Dr Douglas Yates, Department of International Affairs, American University of Paris, France; H.E. Philip Green, Australian High Commissioner to South Africa; Professor Mwesiga Baregu, University of Dar es Salaam, Tanzania.
ABOVE: Dr Devon Curtis, Department of Politics, Cambridge University, United Kingdom.

operation in 2003 and subsequent elections in June 2005. The humanitarian crisis in Darfur has seen increasing numbers of African leaders at the AU invoking the principle of the “responsibility to protect”, deploying a 7,000-strong African Union force in the region by 2004 and backing a stronger UN peacekeeping role in the province. However, the deployment of African troops in a region the size of France, has led the intervention to be dubbed “mission impossible” and prompted the AU to call for UN assistance.³⁴ Sudanese President Omar al-Bashir grudgingly accepted the deployment of a 26,000-strong hybrid AU/UN force in Darfur. China – which is a permanent member of the UN Security Council, as well as a large importer of Sudanese oil – eventually bowed to international pressure to play a more constructive role with Khartoum to allow a UN presence in Darfur.

For some, AMIS is indicative of the continental body’s commitment to the “responsibility to protect” doctrine. However, sceptics have argued that the mission underlined the limitations of collective action by an organisation with both limited resources and capacity. There must be requisite civilian and military resources and appropriate capability if the “responsibility to protect” doctrine is to be realised in Africa. Furthermore, the principle of sovereignty still appears to be the overriding concern for most African governments, and could obstruct future attempts to promote collective action.

Thus, while significant efforts have been made by the AU to create channels for the protection of citizens within its institutions, the “responsibility to protect” idea can only succeed if there is political will to implement existing national, regional, and international standards and principles. The mere existence of legal instruments and declarations does not guarantee adherence to these documents. There remains an urgent need for the AU to address the gap between its decisions, the rhetoric of compliance, and the reality of responses on the ground. Efforts should therefore focus far more on the responsibility to prevent conflict and on promoting transparent, democratic governance at the national level by the continental body.

34. Mwanasali, “Africa’s Responsibility to Protect”, p.92.

2.3 Gender and the “Responsibility to Protect”

Armed conflicts and gender-based violence are proving to be major humanitarian challenges in Africa. Recent conflicts on the continent have increasingly witnessed civilian populations being deliberately targeted by parties in conflicts during which they are murdered, internally displaced, sexually abused, and often denied access to food, shelter and medicine. According to a report by former UN Secretary General Kofi Annan in 2002, women and children constitute the majority of all victims of contemporary armed conflicts.³⁵ Violence against women – especially rape – is increasingly used as a weapon of war during armed conflicts. The Rwandan genocide in 1994 resulted in an estimated 500,000 women and children being raped by militias and soldiers, while the recent conflicts in Sierra Leone, Liberia and Sudan’s Darfur region have all experienced high rates of sexual violence.³⁶ Refugees, asylum-seekers and internally displaced persons (IDPs) are also victims of conflicts. Currently, of the 13 million IDPs in 20 countries in Africa, 85 percent of these are women and children.³⁷ While governments have the primary “responsibility to protect” citizens from gender-based violence as enshrined in national and international legal instruments, they often fail to ensure this protection both during and after conflicts.

“Concerns have also been raised that the interpretation of protection and security is still based on perceptions of women as the ‘protected’ and men as the ‘protectors.’”

In an attempt to address the plight of civilians during the Darfur conflict, UN Security Council resolution 1706 of 2006 made specific reference to the “responsibility to protect” women in southern Sudan. The resolution called on the Sudanese government to take action to tackle gender-based violence in Darfur; to co-ordinate international efforts towards the protection of women and children; and to ensure an adequate gender presence, capacity and expertise within the United Nations Mission in Sudan (UNMIS).³⁸ The recent development of international instruments such as UN Security Council Resolution 1325 of 2000, and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa of 2004³⁹ also provide potential instruments that can be used to monitor the protection of the human rights of women and children in crisis situations. Another significant development in combating sexual violence as a method of warfare is the inclusion of rape, sexual slavery, enforced prostitution and forced pregnancy in the definition of crimes against humanity and war crimes, most explicitly in the Rome Statute of the International Criminal Court (ICC) of 1998. Mainstreaming gender into all aspects of the UN Peacebuilding Commission’s work is also critical to the promotion of the principle of the “responsibility to protect”.

While the ICISS “responsibility to protect” doctrine of 2001 was pioneering, it did, however, fail to incorporate gender effectively into this concept, leading to accusations that the report was gender-blind.⁴⁰ According to

35 UN Security Council, “Report of the Secretary-General on Women, Peace and Security”, (October 2002), p.2. See CCR and the United Nations Development Fund for Women (UNIFEM), *Women and Peacebuilding in Africa*, CCR Seminar, Cape Town, 27 and 28 October 2005 (available at <http://ccrweb.ccr.uct.ac.za>).

36 Human Rights Watch Report, “Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath”, September 1996, (available at <http://www.hrw.org/reports/1996/Rwanda.htm>; accessed 5 February 2007).

37 Francis Deng, “The International Challenges of State Failure and Internal Displacement”, in Adebajo and Scanlon (eds.), *A Dialogue of the Deaf*, p.113.

38 See UN Security Council Resolution S/RES/1706 (2006).

39 Centre for Conflict Resolution, “The Rights of Women in Post-conflict Societies in Africa”, Policy Seminar Report, Johannesburg, 6 and 7 November 2006.

40 Thelma Ekiyor, “Engendering the Responsibility to Protect Doctrine: The African Experience”, paper presented at the CCR seminar, “Africa’s Responsibility to Protect”, Somerset West, South Africa, 23 and 24 April 2007.

critics, when women were alluded to in the report; they are often reduced to vulnerable groups during armed conflicts rather than independent actors with their own “agency”. Furthermore, there were no concrete suggestions in the report as to how to include women in the various processes of the “responsibility to protect”. The primary responsibility of states to protect women from atrocities was overlooked, and the doctrine is often confusing due to its limited interpretation of protection and security.⁴¹ Concerns have also been raised that the interpretation of protection and security is still based on perceptions of women as the “protected” and men as the “protectors”. This situation is exacerbated by the limited engagement of African women with the “responsibility to protect” doctrine which is largely attributable to a lack of awareness of the concept.

A 2005 report by former UN Secretary-General Kofi Annan on the Protection of Civilians underlines the importance of respecting and using women as mediators, as promoters of protection, and as a primary force of economic activity during conflict and in rebuilding war-torn countries.⁴² The “responsibility to protect” doctrine thus needs to place greater emphasis on the multiple contributions of women in these crisis situations. Furthermore, a complete engendering of the “responsibility to protect” and other peace and security frameworks is critical in the African context in which the protection of women is often perceived to be a lesser priority to the protection of men. For this reason, the continuum approach of the “responsibility to protect” – which emphasises the three response pillars of prevention, reaction, and rebuilding – provides a useful framework to engender the entire process and to rectify the lapses in addressing gender that are inherent in the doctrine.⁴³



ABOVE: From left: Mr Jody Kollapen, South African Human Rights Commission, Johannesburg, South Africa; Dr Helen Scanlon, Centre for Conflict Resolution, Cape Town, South Africa; Dr Ulrich Golaszinski, Friedrich Ebert Stiftung, Maputo, Mozambique.

LEFT: Ms Margaret Legum, Independent Economist, Cape Town, South Africa, left; Ms Elizabeth Myburgh, Centre for Conflict Resolution, Cape Town, South Africa.

41 Ekijor, “Engendering the Responsibility to Protect Doctrine”.

42 See Report of the Secretary-General on the Protection of Civilians in Armed Conflict, (S/2005/743), 28 November 2005.

43 Ekijor, “Engendering the Responsibility to Protect Doctrine”.

2.4 The UN Human Rights Council and the “Responsibility to Protect”

The intention of the “responsibility to protect” doctrine is to provide a framework for humanitarian intervention in restricted circumstances rather than to create an alternative framework for human rights protection. The United Nations already has a comprehensive human rights infrastructure which has grown substantially since the 1948 Universal Declaration of Human Rights. Most recently, the UN Human Rights Council was set up to replace the UN Human Rights Commission as part of former UN Secretary-General, Kofi Annan’s 2005 reform process.⁴⁴ The Commission had faced increased criticism that certain countries used membership of the organ to prevent scrutiny of their own human rights abuses and to block international action against them. Other powerful countries like the US were also accused of using the Commission to target what they considered to be “rogue states”. In Annan’s 2005 report *In Larger Freedom*, he argued that the Commission has been undermined by “declining credibility and professionalism”.⁴⁵

The newly-created UN Human Rights Council was intended to provide a stronger, more effective and, most importantly, less politicised, organisation to replace the Human Rights Commission, which was seen by some western governments to be discredited. Within its first year, however, the body was under fire for its inaction in various crises zones. In its defence, supporters argued that the Council was young and still developing its own procedures for addressing country-specific human rights situations. Perhaps the biggest challenge to the Council’s credibility has been over the four-year civil war in Sudan’s Darfur region. In the last six months of 2006, it was reported that the number of displaced Chadians had increased from 30,000 to over 113,000, as the Sudanese government-backed militia, the *Janjaweed*, began cross-border attacks into Chad, thus rendering the humanitarian crisis a regional emergency.⁴⁶

Since 2005, there has been mounting pressure for the UN to act over Darfur with increasing reference to the “responsibility to protect”. The extent of the crisis was widely acknowledged through a UN Security Council-sponsored International Commission of Inquiry on Darfur which was published in January 2005.⁴⁷ The Commission’s report demonstrated a firm connection between the Sudanese government and the *Janjaweed* militia, and concluded that both actors should be held accountable for violations of human rights and humanitarian law in Darfur.⁴⁸ UN Security Council Resolution 1706 of August 2006 on peacekeeping in Darfur cites the international community’s “responsibility to protect” in the volatile region. In August 2007, the UN Security Council mandated the deployment of 26,000 UN troops in Darfur to replace the AU’s beleaguered 7,000-strong force in the region.⁴⁹ The UN Security Council’s request for “the consent of the Government of National Unity for this deployment” signaled the need for the Sudanese government to co-operate with the hybrid AU/UN force. Khartoum argued that intervention by the UN would be a violation of its sovereignty and

44 See Helen Scanlon, “The UN Human Rights Council: From Rights to Responsibility”, in Adebajo and Scanlon (eds.), *A Dialogue of the Deaf*.

45 *In Larger Freedom*.

46 Jody Williams, “Fleeing the Janjaweed: a People Brutalised and Betrayed”, *The Independent* (London), 24 March 2007.

47 Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General (available at <http://www.ohchr.org/english/darfur.htm>; accessed 12 August 2007).

48 Written statement submitted by Amnesty International (AI) to the Human Rights Council, in special consultative status A/HRC/S-4/NGO/7, 7 December 2006.

49 See UN Security Council Resolution S/RES/1706 (2006).

an attempt to “re-colonise” the country. While the UN sought the support of the Sudanese government, the Security Council warned that the world body might intervene if Sudan fails to fulfill its sovereign responsibilities.

Despite mounting international pressure for the UN Human Rights Council to respond to the humanitarian crisis in Darfur, the body has proved reticent to act, and has been riddled with political divisions over how to respond. While the Council cannot directly intervene in countries over human rights violations, it can evoke moral pressure that could reinforce the Security Council’s actions.

Deep divisions have been revealed between the rich North and the global South over the responsibility of the Council to intervene in cases of humanitarian crises. Despite these divisions, a High-Level Mission was set up by the Council in 2007 to investigate the situation in Darfur. Using the framework of the “responsibility to protect”, the Mission’s report argued that the Sudanese government had not only failed to protect its citizens, but had actively participated in human rights violations against them. The report further argued that “the solemn obligation of the international community to exercise its responsibility to protect has become evident and urgent”,⁵⁰ before concluding by recommending the need for UN Security Council intervention, sanctions, and criminal prosecutions in Darfur. When presenting the report to the Council, its Chair, Nobel Peace Laureate Jody Williams, argued that the “responsibility to protect is meant to protect civilians – not abusive governments”.⁵¹ However, the Council’s subsequent discussion centred more on the report’s validity instead of its allegations of human rights violations in the Darfur region.

“Deep divisions have been revealed between the rich North and the global South over the responsibility of the (UN Security) Council to intervene in cases of humanitarian crises.”



H.E. Philip Green, Australian High Commissioner to South Africa, *left*; Mr Gareth Evans, International Crisis Group, Brussels, Belgium.

50 See Report of the High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101 (available at <http://daccessdds.un.org/doc/UNDOC/GEN/G07/116/20/PDF/G0711620.pdf?OpenElement> ; accessed 12 August 2007).

51 Report of the High-Level Mission on the situation of human rights in Darfur.

The discussion at the Human Rights Council's fourth session in 2007 culminated in a watered-down resolution in which "deep concern" was expressed "regarding the seriousness of the ongoing violations of human rights and international humanitarian law in Darfur".⁵² The Council failed to endorse the High-level Mission's report and the wording of its resolution ensured that no direct criticism was made of the Sudanese government. The decision on Darfur was nonetheless seen as one of relative success by observers who decried the Council's decision to end its investigations on human rights abuses in Iran and Uzbekistan. Some have argued that, as a still fledging institution, the current focus of the Council should be on the completion of "institution-building". According to this view, if the body focused on immediate human rights issues, this could undermine its success in the long term.

Much expectation was placed on the new UN Human Rights Council, and it was envisioned that 60 years after its creation, the UN would finally recognise the protection of human rights as intrinsic to international peace and security. Unlike its predecessor, a key difference from the Commission is a clause that requires members of the Council to undergo a review of their human rights record, which did not exist before. Also, the 192-member UN General Assembly can suspend any members of the Council committing "gross and systematic" human rights violations if agreed to by a two-thirds majority. However, from the outset, the Human Rights Council was unlikely to prove effective, as the international human rights system itself is shaped by existing global political and power constraints. There is also a need to have realistic expectations over the ability of this new body to enforce human rights standards beyond domestic jurisdictions, and more emphasis should perhaps instead be placed on supporting national mechanisms for the promotion of human rights.⁵³



Dr Chris Landsberg, Centre for Policy Studies, Johannesburg, South Africa, left; Dr Adekeye Adebajo, Centre for Conflict Resolution, Cape Town, South Africa.

52 Resolution A/HRC/4/L.7/Rev.2, "Follow-up to the decision of 13 December 2006 adopted by the Human Rights Council at its fourth special session entitled 'Situation of human rights in Darfur' (S-4/101)".

53 Jody Kollapen, "The UN and Human Rights: From Commission to Council", paper presented at the CCR seminar, "Africa's Responsibility to Protect", Somerset West, South Africa, 23 and 24 April 2007.

2.5 Civil Society, National Human Rights Institutions and the “Responsibility to Protect”

African civil society potentially has a central role to play in the implementation of the “responsibility to protect” on the continent through helping to build the capacity of states. Non-governmental organisations (NGOs) are also well placed to advocate for the implementation of the range of legal instruments and declarations existing at the national, regional, and international levels. However, many African governments remain suspicious of civil society organisations acting in the area of human rights, often viewing them as promoting foreign agendas and interfering in politics. This is exacerbated by the fact that there is a tendency by members of the international donor community to channel much of their funding to support NGOs focusing on human rights that also sometimes adopt an adversarial approach towards working with national governments. Strategies and mechanisms for co-operation and information exchange should thus be developed to address this gap. The protection of civil society members in insecure environments is also important, given the sensitive issues that they are often forced to contend with. Equally, just as governments are held accountable for both violations and lack of implementation, civil society should also be held accountable for their actions.

National mechanisms to address human rights abuses are viewed as critical in ensuring the “responsibility to protect” in Africa. By 2007, the number of National Human Rights Institutions in Africa had grown from just one national agency in 1989 to 24.⁵⁴ The large number of these bodies demonstrates a growing recognition that human rights protection is the responsibility of national governments. However, while some National Human Rights Institutions (NHRIs) have been established in an effort to promote human rights, critics point to the fact that, in many contexts, these commissions have been established by governments wishing to deflect international attention away from their own human rights record.⁵⁵ Thus, if NHRIs are to contribute to the “responsibility to protect” citizens, they need to function under the Paris Principles of 1991 which determine international standards for human rights to avoid abuse by governments that may wish to establish commissions for the wrong reasons.⁵⁶

Another challenge facing many NHRIs is that, while they are theoretically independent and meant to bridge the gap between governments and civil society, these bodies are often not recognised and supported by national governments. Furthermore, like NGOs, the capacity and efficiency of NHRIs vary widely, and they are often not adequately resourced. NGOs are also often reluctant to work with these institutions. Again, there is an urgent need to ensure that these institutions have adequate resources and capacity to ensure that the “responsibility to protect” principle is upheld in Africa.

54 These include: Algeria, Benin, Cameroon, the Central African Republic, Chad, Ethiopia, Ghana, Kenya, Liberia, Malawi, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Sudan, Togo, Tunisia, Uganda, and Zambia. See Michelle Parlevliet, Guy Lamb and Victoria Maloka, *National Human Rights Institutions in Africa: Defenders of Human Rights, Managers of Conflict, Builders of Peace?* (Cape Town: Centre for Conflict Resolution, 2005).

55 Human Rights Watch, *Protectors or Pretenders? Government Human Rights Commissions in Africa*, (New York, Brussels, London, Washington: Human Rights Watch, 2001), p2 (available at <http://www.hrw.org/reports/2001/africa/overview/summary.html> ; accessed 18 April 2006).

56 OCHA, Fact Sheet No.19, National Institutions for the Promotion and Protection of Human Rights (available at <http://www.unhchr.ch/html/menu6/2/fs19.htm> ; accessed 12 August 2007).

2.6 Regional Hegemons and the “Responsibility to Protect”

Both South Africa and Nigeria have recently practiced the “responsibility to protect” in their foreign policies through sub-regional and multilateral means. South Africa has played a proactive and supportive role on the continent in issues ranging from initiating a constitutional review process in Swaziland, to peacemaking efforts in Burundi, Côte d’Ivoire, DRC, and the Comoros.⁵⁷ Nigeria has been a regular contributor to peace operations in the region under the auspices of the UN, the AU, and ECOWAS in countries such as Liberia, Sierra Leone and Sudan’s Darfur region.

Nonetheless, both South Africa and Nigeria have less than unblemished human rights records within their own borders. White minority rule in South Africa resulted in the country becoming a pariah both continentally as well as internationally for much of the second half of the 20th century. Since independence in 1960, Nigeria has been plagued by undemocratic military leadership, and successive governments have failed to use the country’s vast resources for the benefit of their population. Nigeria was also castigated internationally for the execution, in November 1995, of Ken Saro-Wiwa and eight fellow activists who had campaigned against environmental damage caused by multinational oil companies in the south-eastern region of the country.

Following its first democratic elections in 1994, South Africa entrenched the protection of human rights in its constitution. The country’s image internationally and throughout Africa was also boosted by its relatively peaceful transition to democratic rule between 1990 and 1994. Despite these achievements, the post-apartheid government remains sensitive to the historical baggage of the destabilising role of the previous regime on the continent, and as a result, has tried to promote its credibility as a regional peacebuilder.⁵⁸ South Africa’s involvements in peacekeeping, peacemaking and conflict resolution efforts internationally have been part of the government’s efforts to strengthen its regional and international relations.⁵⁹ South Africa’s foreign policy approach, apart from addressing regional conflicts, also seeks to promote economic interactions with the rest of Africa, and to promote its president Thabo Mbeki’s ideals of an “African Renaissance”.

South Africa’s strategy for the country’s involvement on the continent was outlined in the government’s *White Paper on South African Participation in Peace Missions* of October 1999. The document provides criteria for the country’s involvement in peace missions which include: clear national and foreign policy interests, as well as a strong chance of success. In the spirit of the “responsibility to protect”; the South African government called for the employment of means other than military intervention such as “quiet diplomacy”; non-coercive diplomatic persuasion; incentives and rewards; disincentives and threats of ostracism; as well as coercive economic measures and sanctions against “spoilers”.⁶⁰ Some of the practical ways in which South Africa has become involved in the “responsibility to protect” doctrine, include the establishment of a \$50 million African Renaissance and International Cooperation Peace Fund (from former apartheid-era destabilisation funds), which is to be used to promote democracy, development, and security in Africa. To date however, the fund has mainly been used to fund peace initiatives related to the DRC.

57 Paul-Henri Boshoff, “A Foreign Policy for All”, *Conflict Trends* 3 (1999), pp.33-36.

58 Adebayo Adedeji, Adekeye Adebajo and Chris Landsberg, *South Africa in Africa: The Post-Apartheid Era*, (Scottsville: University of Kwazulu-Natal Press, 2007)

59 Vanessa Kent and Mark Malan, “Decisions, Decisions: South Africa’s Foray into Regional Peace Operations”, Institute for Security Studies, Occasional Paper 72, April 2003.

60 Chris Landsberg, “Pax-South Africana: The ‘Responsibility to Protect’ in Africa”, paper presented at the CCR seminar, “Africa’s Responsibility to Protect”, Somerset West, South Africa, 23 and 24 April 2007.

The 1999 South African government White Paper was introduced after South Africa's controversial intervention in Lesotho in September 1998, ostensibly to assist the government in Maseru to restore law and order following election-related unrest. Although the South African government claimed that it had acted under the auspices of SADC and that the intervention had been requested by Lesotho in accordance with SADC agreements, the intervention was viewed by many as motivated by the need to protect South Africa's own interests such as the Katse Dam Water Scheme in Lesotho which provides water to South Africa's Gauteng industrial heartland. South Africa has been involved in peacekeeping deployments in Burundi, Sudan, and the DRC under the auspices of the AU and the UN. With its strong economic and military capacity and stable democracy, South Africa is often viewed as something of a superpower on the continent. The country is Africa's richest, it accounts for 80 percent of southern Africa's economy, and a third of Africa's economic strength. Nonetheless, many African countries are less enthusiastic about South Africa's role in Africa, as events in Côte d'Ivoire in 2005 indicated. Rebels and other critics in the country rejected South Africa's intervention as mediator, arguing that Mbeki's government was partisan and motivated by a mercantilistic desire to expand its economy and create business opportunities for firms like Randgold. South Africa's forays on the continent also led Ugandan academic Mahmood Mamdani to disparage the country's claim to "exceptionalism", due to its "inflated sense of authority and influence in foreign relations".⁶¹

FACT BOX

"Nigeria...has contributed to over 40 UN peacekeeping operations in Africa, Asia and Europe, and over 150,000 Nigerian troops have served on various peacekeeping missions."

Africa's other regional hegemon, Nigeria, has been active in a number of initiatives in its West African sub-region. Nigeria played an integral role in the creation of ECOWAS in 1975 and was a founding member of the Organisation of African Unity. The country's pivotal role in ECOWAS, and its economic muscle within West Africa have allowed it to exert influence through its "oil diplomacy" which has provided economic assistance to poorer neighbouring countries.⁶² The Nigerian economy constitutes around 75 percent of West Africa's economic strength and the country accounts for over 50 percent of the sub-region's population.⁶³ Nigeria's assistance to global peacekeeping is noteworthy: the country has contributed to over 40 UN peacekeeping operations in Africa, Asia and Europe, and over 150,000 Nigerian troops have served on various peacekeeping missions.⁶⁴ The country provided assistance to liberation struggles in southern Africa, and, most recently, has sent peacekeepers to Liberia and Sierra Leone. However, Nigeria's willingness to intervene has often been motivated by its desire to play a leadership role on the continent, especially in its West African sub-region, prompting accusation of paternalism and arrogance in the country's foreign policy.⁶⁵ Despite questions over Nigeria's motives, it is doubtful whether the conflicts in Liberia and Sierra Leone would have been resolved without its intervention. Furthermore, the conflicts undoubtedly had regional implications; there are currently about 10,000 refugees in Nigeria and 500,000 internally displaced persons as a result of conflicts within the region and internally.⁶⁶

61 Cited in Hein Marais, "South Africa Carries a Big Stick", *Le Monde Diplomatique* (March 1999), (available at <http://mondediplo.com/1999/03/07/safr> ; accessed 10 July 2007).

62 Adekeye Adebajo, "Pax Nigeriana and the Responsibility to Protect in Africa", paper presented at the CCR seminar, "Africa's Responsibility to Protect", Somerset West, South Africa, 23 and 24 April 2007.

63 Adebajo, *Pax Nigeriana*.

64 Adebajo, *Pax Nigeriana*.

65 Adebajo, *Pax Nigeriana*.

66 Adebajo, *Pax Nigeriana*.

Nigeria's interventions in Liberia and Sierra Leone could thus be regarded as an example of the "responsibility to protect" doctrine, despite the fact that substantial international support came only after both missions were already in operation for nearly a decade in each case. The dominant role played by Nigeria in these conflicts also highlighted the challenges facing ECOWAS and showed that without Nigeria's involvement, there would have been no ECOMOG. Nigeria provided over 75 percent of the troops and 90 percent of the funding for both missions. Nigeria was also able to bear the huge costs involved in maintaining peace missions in both countries. The country's treasury released over \$7 billion for these operations, and Nigeria lost over 1,000 troops in Sierra Leone and Liberia.

Nevertheless, Nigeria needs to provide more than simply military muscle to achieve its leadership goals. The country faces its own internal challenges in areas of governance, development, as well as its own human rights abuses in the oil-producing Niger Delta where the environmental "responsibility to protect" principle has not been extended to the inhabitants of this area. A democratically stable Nigeria will be important to guaranteeing international legitimacy and support for the country's future leadership ambitions, as well as for future military interventions in fulfilment of its "responsibility to protect".⁶⁷ The full potential of both South Africa and Nigeria to provide leadership and to play a transformative role within their respective sub-regions and on the continent has not yet been realised. Africa would benefit from a strengthened AU and from the leadership of these two countries in its search for peace, prosperity and justice. Nonetheless, the actions of regional hegemons should be brought more directly under wider umbrellas such as the UN, which could assist with issues of legitimacy, mobilisation and resources.⁶⁸



From left: Ms Thelma Ekiyor, Centre for Conflict Resolution, Cape Town, South Africa; Dr Solomon Gomes, Darfur Integrated Task Force, African Union Commission, Addis Ababa, Ethiopia; Dr Musifiky Mwanasali, Department of Political Affairs, United Nations, New York, US.

67 Adebajo, *Pax Nigeriana*.

68 See Adekeye Adebajo, 'South Africa and Nigeria in Africa: An Axis of Virtue?', in Adebajo, Adedeji and Landsberg (eds.), *South Africa in Africa*, pp. 213-235.

2.7 External Actors and the “Responsibility to Protect”

The end of colonialism in Africa did not lead to the end of the involvement of external actors in Africa’s domestic affairs. Indeed, throughout the Cold War between 1960 and 1989, the US and the Soviet Union, as well as the former colonial power, France, continued to play an integral role in the domestic and international affairs of African states. Military interventions in Africa – often justified as “humanitarian interventions” – have more commonly been used to perpetuate the parochial national interests, and to perpetuate the “spheres of influence” of, “Great Powers”. Thus, several African governments and civil society actors have expressed concerns that the “responsibility to protect” concept is yet another means for powerful countries to interfere in the domestic affairs of weaker countries.

According to the French ministry of defense, almost half of the 12,000 French troops engaged in peacekeeping operations around the world in 2007 were deployed in Africa. Currently, there are three French military bases in Africa in Djibouti, Senegal, and Gabon, and 4,600 troops in Côte d’Ivoire. Following independence in the 1960s, the majority of France’s former colonial powers signed bilateral treaties under which they agreed to sustain military co-operation with the “mother country”.⁶⁹ As well as agreeing to supply munitions, “these accords have stipulated, in secret clauses, a duty to intervene on the part of the protecting power, including cases of domestic unrest”.⁷⁰ These arrangements were extended during the 1970s to incorporate the former Belgian colonies of Burundi, Rwanda, and the Democratic Republic of the Congo (then Zaire). These agreements resulted in 19 interventions by the French in Africa between 1962 and 1995, including the Gallic power’s contentious and discredited involvement in Rwanda in 1994. France’s subsequent support for the dictator, Mobutu Sese Seko, during a military coup in the DRC in 1996-7 proved to be yet another controversial and shameful episode.

Chad is the most striking case of France’s involvement in Africa, having experienced more interventions in the post-colonial period than any other African country.⁷¹ Currently France has 1,200 troops stationed in the country, while Paris also continues to support troops in the Central African Republic (CAR) and Côte d’Ivoire. France’s military intervention in Côte d’Ivoire since 2002 has led to the most criticism of the former colonial power. A *coup d’état* in 2002 resulted in French involvement ostensibly for “the protection of French nationals and other Europeans”.⁷² In each of these cases, France claimed both an affirmative duty to intervene as well as its “responsibility to protect”. Since 2005, France has also sent troops to the DRC to support UN peacekeeping in the country. The French mission explicitly included “the protection of civilians in the zones where it is deployed”.⁷³ In each of these cases, French troops have been engaged in humanitarian assistance such as the building of schools and hospitals, leading to some concern over the blurring of the lines between military and humanitarian operations.

69 Paris signed accords with the Central African Republic, Côte d’Ivoire and Gabon (1960), Togo (1963), Cameroon (1974), and Djibouti (1977). Sixteen other African countries have ratified military co-operation accords with France.

70 Antoine Glaser and Stephen Smith, *Comment la France a perdu l’Afrique*, (Paris: Calmann-Lévy, 2005), p.82. See also Douglas Yates, “France, Britain, China: Good Samaritans?”, paper presented at the CCR seminar, “Africa’s Responsibility to Protect”, Somerset West, South Africa, 23 and 24 April 2007.

71 See Kaye Whiteman and Douglas Yates, “France, Britain and the United States”, in Adekeye Adebajo and Ismail Rashid (eds.), *West Africa’s Security Challenges: Building Peace in a Troubled Region*, (Boulder: Lynne Rienner, 2004), pp.349-379.

72 Yates, “France, Britain, China: Good Samaritans?”.

73 Yates, “France, Britain, China: Good Samaritans?”.

French intervention policies in Africa differ starkly from those of Britain. Since the Suez crisis of 1956, Britain was generally reluctant to become embroiled in Africa's internal affairs. However, events in Sierra Leone in 2000 were to prompt a change in British policy when troops were sent in to help evacuate foreign nationals after the breakdown of the 1999 Lomé peace agreement. As a result of the British military intervention, the situation in the country was stabilised.

China is currently contributing more troops to UN peacekeeping missions in Africa than either France or Britain.⁷⁴ China has provided 1,200 peacekeepers to a number of missions, including Western Sahara (MINURSO); Mozambique (ONUMOZ); Liberia (UNOMIL); Sierra Leone (UNOMSIL); Ethiopia/Eritrea (UNMEE); and the DRC (MONUC). Peacekeeping operations provide an opportunity for Beijing to increase its standing and profile in the international community. While its commitment to peacekeeping is admirable, many sceptics point to China's less commendable support for what some regard as autocratic regimes in Sudan and Zimbabwe where it has considerable financial interest.

“Concerns have been raised about the negative effects of America’s ‘war on terror’ on the implementation of the ‘responsibility to protect’ doctrine in Africa.”

In similar vein, concerns have been raised about the negative effects of America's “war on terror” on the implementation of the “responsibility to protect” doctrine in Africa.⁷⁵ Since the “war on terror” was declared after the attacks on the US in September 2001, a number of initiatives to combat terrorism have emerged in Africa. The American military bombed purported Al-Qaeda operatives in Somalia in 2006, and a US Central Command is to be established on the continent by 2008. US military operations in Africa are currently shared between its European, Pacific and Central Commands, with different regions of the continent assigned to each.⁷⁶ The new US Central Command in Africa is expected to be operational by 2008, and aims to “oversee security cooperation, building partnership capability, defense support to non-military missions, and, if directed, military operations on the African continent”.⁷⁷ These developments have led to a number of questions over US involvement on the continent and the potential for the misuse and abuse of the “responsibility to protect” doctrine. Some analysts contend that US interests in Africa stem largely from a fear of China's growing influence on the continent, particularly in the area of oil.

America's counter-terrorism initiatives in Africa have increased substantially since 2001. The 2002 attacks on an Israeli-owned hotel and an El-Al passenger aircraft in Mombasa, Kenya, precipitated increased American activity in East Africa and the Horn of Africa. The US has taken a particular interest in Africa due to the continent's large Muslim population of over 308 million people, particularly in countries such as Somalia, Nigeria, and West Africa's Sahel region.⁷⁸ An American military base, with 1,200 – 1,800 troops, was established in Djibouti in 2002, which critics maintain is not solely to challenge Al-Qaeda but also to uphold broader American strategic

74 Yates, “France, Britain, China: Good Samaritans?”.

75 Mwesiga Baregu, “Terrorism and Counter-Terrorism: Dialogue or Confrontation?”, in Adebajo and Scanlon (eds.), *A Dialogue of the Deaf*.

76 Ibid.

77 Quoted by Dulue Mbachu, “Scepticism over US Africa Command” (available at www.globalpolicy.org/empire/intervention/2007/0219afrcommand.htm ; accessed 2 June 2007).

78 See Baregu, “Terrorism and Counter-Terrorism”.

interests such as access to oil and other resources. This base was used to launch the January 2007 air strike on southern Somalia in January 2007 on the pretext of eliminating members of Al-Qaeda involved in the Dar es Salaam and Nairobi bombings of 1998. More than 50 people, most of them civilians, including a number of children, were killed in the raid. No terrorists were among the dead. Currently, there is talk of further US bases being built in Senegal, Uganda, Ghana, Cameroon, Gabon, and Equatorial Guinea.⁷⁹

Specific American-sponsored counter-terrorism initiatives include the \$500 million Trans-Sahara Counter-Terrorism Initiative (TSCTI); the Joint Task Force Aztek Silence; the \$100 million East African Counter-Terrorism Initiative (EACTI); and the Combined Joint Task Force-Horn of Africa (CJTF-HOA), under which US naval forces are currently patrolling the east coast of Africa.⁸⁰ These initiatives involve, among other things, military training; military assistance; and terrorist financing prevention aimed at promoting the security of American interests rather than at the internal security of East Africa. Critical questions have thus emerged over the consequences and ramifications of the US "war on terror" in Africa both politically and economically. Accusations have been made that this could constitute a "new Cold War" in Africa in which anti-terrorism – instead of anti-communism – determines US support for sometimes autocratic African regimes. Washington has also been accused of having pressured some African governments into passing anti-terrorism legislation in accordance with UN Security Council Resolution 1373 of 2001 which could be used to violate civil liberties and undermine legitimate domestic opposition.

Deep concerns have been expressed on the continent that interference in the internal affairs of African countries will continue to grow, and that countries with weak government structures are particularly vulnerable. African governments could come under even greater influence from external actors economically, and the plundering of natural resources is likely to increase, particularly in the area of oil. It is important, however, to consider that, sometimes, the motives for intervention by external actors are simply prompted by humanitarian concern or support for regional peace processes in places like Liberia and Sierra Leone. Nonetheless, African governments should be wary of external intervention under the auspices of "humanitarian intervention", and ensure the capacity of regional institutions, with the assistance of the UN, to enforce the "responsibility to protect" doctrine in Africa.

79 Kobbi V. Kra Ocran, "Voluntary Re-Colonisation of Ghana to Be Strengthened With US Military Base", 18 January 2007 (available at <http://www.ghanaweb.com/GhanaHomePage/features/artikel.php?ID=117473> : accessed 14 February 2007).

80 William Pope, "Opening Remarks", "East African Counter-terrorism Initiative", Conference, Kampala, Uganda, April 21, 2004.

3. Conclusion

The “responsibility to protect” concept has gained international legitimacy since its adoption at the UN World Summit in September 2005. It offers a new way of conceptualising sovereignty in order to move to a culture of national and international accountability.

While some sceptics have voiced concern that military interventions may be used to promote the parochial goals of global or regional powers in situations where there is no real humanitarian crisis, the concept is closely aligned to the vision of the African Union’s Constitutive Act of 2000.

The AU clearly notes that military intervention should be the last resort, and that diplomatic, peaceful measures such as dialogue, are the best option in conflict situations. The Constitutive Act also embraces the three levels of action prescribed by the Canadian-sponsored ICISS report: prevention, intervention, and post-conflict reconstruction. The intention of the “responsibility to protect” concept was to provide a framework for humanitarian intervention in restricted circumstances rather than to create an alternative framework for human rights protection. Africa could benefit from embracing the “responsibility to protect” concept to further peace and security issues on the continent.

Policy Recommendations

Ten key recommendations emerged from the seminar:

1. If the “responsibility to protect” principle is to be utilised successfully, sufficient economic and military resources need to be available. Stronger mediation, sanction measures, and effective preparedness can all contribute towards ensuring that civilians are protected in times of humanitarian crises.
2. Ethical issues that could motivate humanitarian intervention must be identified as national interests in order to mobilise governments to implement the “responsibility to protect”.
3. Gender should be integrated into all levels of the “responsibility to protect”. UN Security Council resolution 1325 of 2000 and the AU Women’s Protocol of 2003 should continue to be used as monitoring mechanisms to gauge the involvement and participation of women in the prevention, reaction, and rebuilding pillars of the “responsibility to protect”.
4. The “responsibility to protect” principle could be better applied in Africa through capacitating regional organisations and, when appropriate, mandating regional hegemony such as South Africa and Nigeria to provide the backbone for UN and regional interventions. The UN should nonetheless maintain its primary responsibility of promoting global peace and security.
5. The “responsibility to protect” principle needs to be deconstructed to establish what the obstacles are to the effective implementation of existing human rights instruments in Africa.
6. Some of the earlywarning systems already in place on the continent are well developed, but this needs to be matched with early action. The international community should urgently tackle the problem of capacity to move the “responsibility to prevent” idea beyond a theoretical concept.
7. Measures should be taken to ensure that indifference by the international community is not allowed to set in. Support for the “responsibility to protect” should be a matter for mobilisation from the bottom up through civil society organisations as well as in the realm of international advocacy.

8. Civil society must be involved to ensure the implementation of the “responsibility to protect” principle through helping to build the capacity of national and regional institutions. African civil society should use strategic partnerships with actors in the West to assist them.
9. African governments should use their membership of the UN Human Rights Council to apply pressure over human rights issues relevant to the continent such as the plight of refugees and the role of foreign multinationals.
10. Finally, it is important to strengthen National Human Rights Institutions and to ensure that they function under the 1991 Paris Principles that determine international standards for human rights, in order to avoid abuse by governments.



ABOVE: Participants in the seminar, “Africa’s Responsibility to Protect”, held in Somerset West, South Africa, on 23 and 24 April 2007.

LEFT: From left: Professor Maxi Schoeman, University of Pretoria, Tshwane, South Africa; H.E. Ms Ruth Archibald, High Commissioner of Canada to South Africa; Dr Musifiky Mwanasali, Department of Political Affairs, United Nations, New York, US.

Annex I

Agenda

Day One: Monday 23 April 2007

9h00 – 9h15 Welcome and Opening
Dr Adekeye Adebajo, Executive Director, Centre for Conflict Resolution, Cape Town

9h15 – 10h30 Session I: The International Responsibility to Protect

Chair: Dr Adekeye Adebajo, Executive Director, Centre for Conflict Resolution, Cape Town

Mr Gareth Evans, President, International Crisis Group, Brussels, “The International Responsibility to Protect”

10h30 – 10h45 Coffee Break

10h45 – 12h00 Session II: Africa’s Responsibility to Protect

Chair: Ambassador Ruth Archibald, Canadian High Commissioner to South Africa

Dr Musifiky Mwanasali, Political Affairs Officer, Department of Political Affairs, United Nations, New York

Professor Maxi Schoeman, Department of Political Science, University of Pretoria, Tshwane

12h00 – 13h00 Lunch

13h00 – 14h30 Session III: The AU and Civil Society

Chair: Dr Solomon Gomes, Political Adviser, Darfur Integrated Task Force, African Union, Addis Ababa

Dr Musifiky Mwanasali, Political Affairs Officer, Department of Political Affairs, United Nations, New York, “The Responsibility to Protect and the AU”

Ms Thelma Ekiyor, Senior Manager, Centre for Conflict Resolution, Cape Town, “The Responsibility to Protect and Civil Society”

14h30 – 14h45 Coffee Break

14h45 – 16h15 Session IV: The UN Human Rights Council: Progress and Prospects

Chair: Dr Ulrich Golaszinski, Resident Representative, Friedrich Ebert Stiftung, Maputo

Mr Jody Kollapen, Chair, South African Human Rights Commission, Johannesburg, “The UN and Human Rights: From Commission to Council”

Dr Helen Scanlon, Senior Researcher, Centre for Conflict Resolution, Cape Town, “The Human Rights Council and the Responsibility to Protect”

Day Two: Tuesday 24 April 2007

09h30 – 11h00 Session V: Regional Hegemons and the Responsibility to Protect

Chair: Mr Tor Sellstrom, Senior Adviser, African Centre for the Constructive Resolution of Disputes, Durban,

Dr Chris Landsberg, Director, Centre for Policy Studies, Johannesburg, "Pax South Africana and the Responsibility to Protect"

Dr Adekeye Adebajo, Executive Director, Centre for Conflict Resolution, Cape Town, "Pax Nigeriana and the Responsibility to Protect"

11h00 – 11h15 Coffee Break

11h15 – 13h00 Session VI: External Actors and the Responsibility to Protect

Chair: H.E. Ambassador Philip Green, High Commissioner of Australia to South Africa, Tshwane

Dr Douglas Yates, American University in Paris, Paris, "France, Britain, China and the Responsibility to Protect in Africa"

Professor Mwesiga Baregu, University of Dar es Salaam, Dar es Salaam, "The US 'War on Terror' and the Responsibility to Protect in Africa"

13h00 – 14h00 Lunch

14h00 – 14h15 Filling out of Evaluation Forms

14h15 – 15h15 Session VII: Rapporteurs' Report and the Way Forward

Chair: Dr Solomon Gomes, Political Adviser, Darfur Integrated Task Force, African Union, Addis Ababa

Dr Helen Scanlon, Senior Researcher, Centre for Conflict Resolution, Cape Town

Ms Ahunna Eziakonwa, Chief: Africa Section, UN Office for the Co-ordination of Humanitarian Affairs, New York

Annex II

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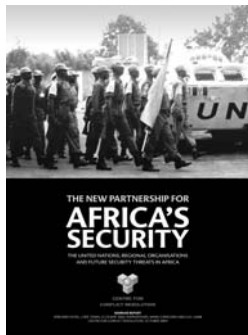
Annex III

List of Acronyms

ADB	African Development Bank	MINURSO	UN Mission for the Referendum in Western Sahara
ADF	African Development Forum	MONUC	UN Mission in the Congo
AMIB	African Union Mission in Burundi	NEPAD	New Partnership for Africa's Development
AMU	Arab Maghreb Union	NGO	Non-governmental Organisation
AU	African Union	OAU	Organisation of African Unity
BINUB	UN Integrated Office in Burundi	OCHA	UN Office for the Co-ordination of Humanitarian Affairs
CAAC	Children Affected by Armed Conflict	ONUB	UN Peace Operation in Burundi
CAR	Central African Republic	ONUCI	UN Operation in Côte d'Ivoire
CCR	Centre for Conflict Resolution	OSRSG	UN Office of the Special Representative of the Secretary-General
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women	P5	Permanent Five
CPAs	Child Protection Advisers	RECs	Regional Economic Communities
DDR	Demobilisation, Disarmament and Reintegration	SADC	Southern African Development Community
DHA	Department of Humanitarian Affairs	UN	United Nations
DRC	Democratic Republic of the Congo	UNAIDS	Joint UN Programme on HIV/AIDS
ECA	Economic Commission for Africa	UNAMSIL	UN Mission in Sierra Leone
ECCAS	Economic Community of Central African States	UNCTAD	UN Conference on Trade and Development
ECOMOG	ECOWAS Ceasefire Monitoring Group	UNDPA	UN Department of Political Affairs
ECOSOC	UN Economic and Social Council	UNDPKO	UN Department of Peacekeeping Operations
ECOWAS	Economic Community of West African States	UNEF	UN Emergency Force
EU	European Union	UNEP	UN Environmental Programme
FES	Friedrich Ebert Stiftung	UNESCO	UN Educational, Scientific and Cultural Organisation
G4	Group of Four	UNHCR	UN High Commissioner for Refugees
HIV/AIDS	Human Immuno-Virus/Acquired Immune-Deficiency Syndrome	UNICEF	UN Children's Fund
ICJ	UN International Court of Justice	UNIFEM	UN Development Fund for Women
ICRC	International Committee of the Red Cross	UNMA	UN Mission in Angola
IDPs	Internally Displaced Persons	UNMIL	UN Mission in Liberia
IGAD	Intergovernmental Authority on Development	UNMIS	UN Mission in Sudan
ILO	International Labour Organisation	UNTSO	UN Truce Supervision Organisation
IMF	International Monetary Fund	US	United States

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VOLUME 1 THE NEW PARTNERSHIP FOR AFRICA'S SECURITY

THE UNITED NATIONS, REGIONAL ORGANISATIONS AND FUTURE SECURITY THREATS IN AFRICA

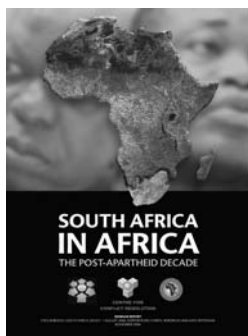
The inter-related and vexing issues of political instability in Africa and international security within the framework of UN reform were specifically focused on at this policy seminar, held from 21 - 23 May 2004 in Claremont, Cape Town.



VOLUME 4 A MORE SECURE CONTINENT

AFRICAN PERSPECTIVES ON THE UN HIGH-LEVEL PANEL REPORT, A MORE SECURE WORLD: OUR SHARED RESPONSIBILITY

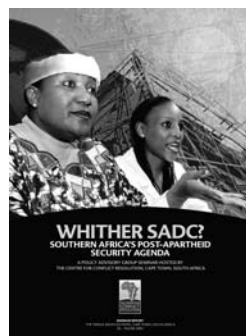
African perspectives on the United Nations' (UN) High-Level Panel report on Threats, Challenges and Change were considered at this policy advisory group meeting in Somerset West, Cape Town, on 23 and 24 April 2005.



VOLUME 2 SOUTH AFRICA IN AFRICA

THE POST-APARTHEID DECADE

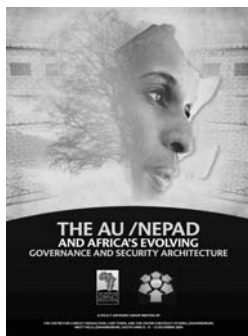
The role that South Africa has played on the African continent and the challenges that persist in South Africa's domestic transformation 10 years into democracy were assessed at this meeting in Stellenbosch, Cape Town, from 29 July - 1 August 2004.



VOLUME 5 WHITHER SADC?

SOUTHERN AFRICA'S POST-APARTHEID SECURITY AGENDA

The role and capacity of the Southern African Development Community's (SADC) Organ on Politics, Defence and Security (OPDS) were focused on at this meeting in Oudekraal, Cape Town, on 18 and 19 June 2005.



VOLUME 3 THE AU/NEPAD AND AFRICA'S EVOLVING GOVERNANCE AND SECURITY ARCHITECTURE

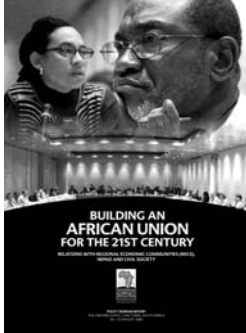
The state of governance and security in Africa under the AU and NEPAD were analysed and assessed at this policy advisory group meeting in Misty Hills, Johannesburg, on 11 and 12 December 2004.



VOLUME 6 HIV/AIDS AND HUMAN SECURITY:

AN AGENDA FOR AFRICA

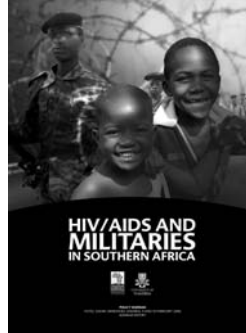
The links between human security and the HIV/AIDS pandemic in Africa, and the potential role of African leadership and the African Union in addressing this crisis were analysed at this policy advisory group meeting in Addis Ababa, Ethiopia, on 9 and 10 September 2005.



**VOLUME 7
BUILDING AN AFRICAN UNION FOR THE 21ST CENTURY**

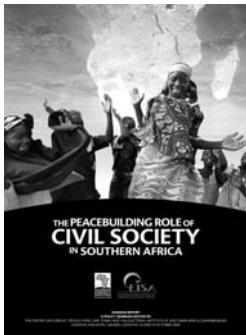
RELATIONS WITH REGIONAL ECONOMIC COMMUNITIES (RECS), NEPAD AND CIVIL SOCIETY

This seminar in Cape Town from 20 – 22 August 2005 made policy recommendations on how the AU's institutions, including NEPAD, could achieve their aims and objectives.



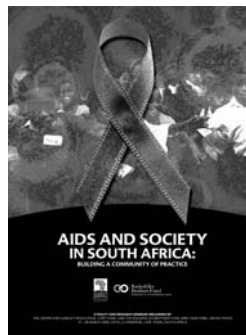
**VOLUME 10
HIV/AIDS AND MILITARIES IN SOUTHERN AFRICA**

This two-day policy advisory group seminar in Windhoek, Namibia, on 9 and 10 February 2006 examined issues of HIV/AIDS and militaries in southern Africa.



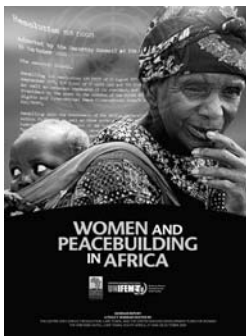
**VOLUME 8
THE PEACEBUILDING ROLE OF CIVIL SOCIETY IN SOUTHERN AFRICA**

This meeting, held in Maseru, Lesotho, on 14 and 15 October 2005, explores civil society's role in relation to southern Africa, democratic governance, its nexus with government, and draws on comparative experiences in peacebuilding.



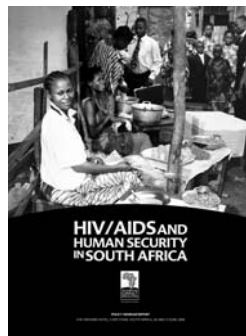
**VOLUME 11
AIDS AND SOCIETY IN SOUTH AFRICA:
BUILDING A COMMUNITY OF PRACTICE**

This policy and research seminar, held in Cape Town on 27 and 28 March 2006, developed and disseminated new knowledge on the impact of HIV/AIDS in South Africa in the three key areas of: democratic practice; sustainable development; and peace and security.



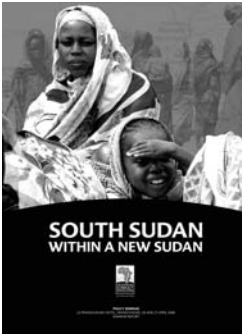
**VOLUME 9
WOMEN AND PEACEBUILDING IN AFRICA**

This meeting, held in Cape Town on 27 and 28 October 2005, reviewed the progress of the implementation of UN Security Council Resolution 1325 on Women and Peacebuilding in Africa in the five years since its adoption by the United Nations in 2000.



**VOLUME 12
HIV/AIDS AND HUMAN SECURITY IN SOUTH AFRICA**

This two-day policy seminar on 26 and 27 June 2006 took place in Cape Town and examined the scope and response to HIV/AIDS in South Africa and southern Africa from a human security perspective.



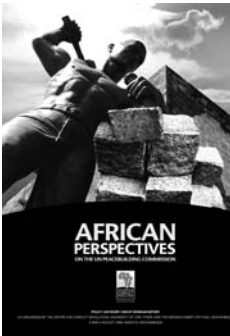
**VOLUME 13
SOUTH SUDAN WITHIN
A NEW SUDAN**

This policy advisory group seminar on 20 and 21 April 2006 in Franschhoek, Western Cape, assessed the implementation of the Comprehensive Peace Agreement (CPA) signed in January 2005 by the Government of the Republic of the Sudan (GOS) and the Sudan People's Liberation Movement/Sudan People's Liberation Army (SPLM/A).



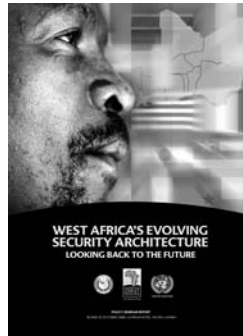
**VOLUME 16
UNITED NATIONS
MEDIATION EXPERIENCE
IN AFRICA**

This seminar, held in Cape Town on 16 and 17 October 2006, sought to draw out key lessons from mediation and conflict resolution experiences in Africa, and to identify gaps in mediation support while exploring how best to fill them. It was the first regional consultation on the United Nations' newly-established Mediation Support Unit (MSU).



**VOLUME 14
AFRICAN PERSPECTIVES
ON THE UN
PEACEBUILDING
COMMISSION**

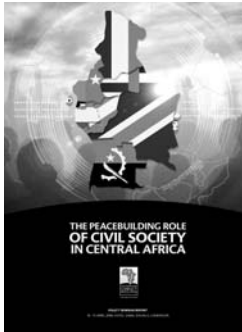
This meeting, in Maputo, Mozambique, on 3 and 4 August 2006, analysed the relevance for Africa of the creation, in December 2005, of the UN Peacebuilding Commission, and examined how countries emerging from conflict could benefit from its establishment.



**VOLUME 17
WEST AFRICA'S
EVOLVING SECURITY
ARCHITECTURE**

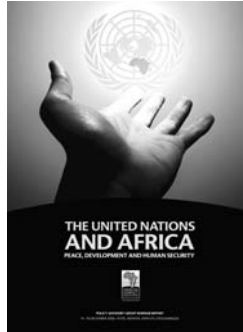
LOOKING BACK TO THE FUTURE

The conflict management challenges facing the Economic Community of West African States (ECOWAS) in the areas of governance, development, and security reform and post-conflict peacebuilding formed the basis of this policy seminar in Accra, Ghana, on 30 and 31 October 2006.



**VOLUME 15
THE PEACEBUILDING
ROLE OF CIVIL SOCIETY
IN CENTRAL AFRICA**

This sub-regional seminar, held from 10 to 12 April 2006 in Douala, Cameroon, provided an opportunity for civil society actors, representatives of the Economic Community of Central African States (ECCAS), the United Nations (UN) and other relevant players to analyse and understand the causes and consequences of conflict in central Africa.



**VOLUME 18
THE UNITED NATIONS
AND AFRICA: PEACE,
DEVELOPMENT AND
HUMAN SECURITY**

This policy advisory group meeting, held in Maputo, Mozambique, from 14 to 16 December 2006, set out to assess the role of the principal organs and the specialised agencies of the United Nations in Africa.

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This report addresses the “responsibility to protect” principle – the legal and ethical commitment by the international community, acting through organisations such as the UN and Africa’s regional organisations, to protect citizens from genocide, war crimes, crimes against humanity and/or ethnic cleansing. The degree to which the “responsibility to protect” citizens has been adhered to by national governments within and outside the continent is assessed; and experiences and lessons from recent conflicts in Africa are reviewed and analysed.



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