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Implementing the “Responsibility to Protect” Doctrine in Africa

THELMA EKIYOR

1 Introduction

The principle of Responsibility to Protect (R2P) has made considerable progress in recent years. The report of the International Commission on Intervention and State Sovereignty (ICISS) laid down convincing arguments that sovereign states and the international community have the responsibility to intervene to protect civilians at risk of grave human rights violations, to rebuild war affected societies and to prevent severe violations and deadly conflict¹. Focusing on the “responsibility to protect”, and not the “right to intervene”, the Commission outlined a framework for international actors to intervene when a state fails to live up to the responsibility to protect its citizens. This framework includes principles for the use of force in extreme circumstances. The report set a high threshold for when force/military intervention can be used. The criteria for prompt military response include large-scale violence and ethnic cleansing.

The Commission’s report was well received by the international community and the recommendations were highlighted in the United Nations (UN) High-level Panel on Threats, Challenges and Change². Subsequently, the former UN Secretary General, Kofi Annan endorsed the recommendations through his call for collective security in his report, *“In Larger Freedom”*. The principle gained international legitimacy when the Heads of State and Government adopted it in the outcome document of the World Summit in 2005³.

By adopting the principle, the international community and the UN emphasized two fundamental principles: that part of the responsibility of sovereign states was to protect its citizens from genocide, war crimes, ethnic cleansing and crimes against humanity, and that the international community through the UN has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means to protect populations from the above mentioned atrocities. Furthermore, where peaceful/ diplomatic measures fail, the international community through the Security Council has the responsibility to use

“collective action” to protect populations from the atrocities.

Now an international doctrine, the test of the viability of the principle lies in its implementation. There is consensus across the world that the atrocities of Rwanda, Bosnia, and Somalia should never happen again, but the world has changed since the ICISS first introduced the concept in 2000. In a post “September 11” world, and within the current climate of the war in Iraq, the idea of intervening in the affairs of any sovereign state has become problematic. Proponents for R2P have argued that the outcome document from the world summit in 2005 was aimed at rectifying the errors associated with the invasion of Iraq, and through the prism of collective security, unilateralist interventions will not occur.

The most constructive method for assessing if the doctrine can be implemented is to apply it to specific local and regional contexts. Many have argued, “One person’s responsibility to protect is another’s intervention into the affairs of sovereign states”. This debate is ongoing in Africa.

2 The case of Africa

Africa has hosted some of the world’s most brutal violent conflicts and civil wars. The continent is currently at a crossroads where policy makers, civil society and the international community all concede that the past atrocities such as in Rwanda, or intra-state wars like Liberia, Sierra Leone, and Burundi must serve as a learning curve for preventing recurrence in the future.

However, implementing the doctrine of R2P is proving difficult. African States irrespective of their political configuration, wealth or stability adhere to the principle of sovereignty. For a long time this was a sacred understanding among African States. However, the conversion of the Organisation for African Unity (OAU) to the African Union (AU) chipped away at the invincibility of the sovereignty principle. Though one of the AU’s core objectives is to “Defend the sovereignty, territorial integrity and independence of its Member States”⁴, the organization in a attempt to redress the weakness of the OAU gives the Union the “right to intervene” in a Member State pursuant to a decision of the Assembly in

¹ The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty (ICISS) Ottawa: International Research Centre, 2001

² A more secure world: Our shared responsibility. Report of the High-level Panel on Threats, Challenges and Change. United Nations 2004

³ World Summit Outcome, Resolution adopted by the General Assembly, Sixtieth session, 24 October 2005

⁴ Article 3 (1) Constitutive Act of the African Union, 2002

respect of grave circumstances, namely war crimes, genocide and crimes against humanity⁵.

The AU uses the phrase “right to intervene” and not “responsibility to protect”. However, there are similarities between the AU’s framework for collective security and R2P. Both call for intervention in severe cases of violations of human rights and widespread killings, e.g. genocide. The AU also includes war crimes and crimes against humanity, no doubt in response to the fresh memories of Rwanda, Liberia and Sierra Leone. The similarities also extend to the challenges shared in implementing the AU’s brand of collective security and R2P. These challenges are clearly visible as the AU and the international community have been unable to fully enforce the R2P doctrine in the ongoing crisis in Sudan’s Darfur region. These challenges have led to questions of the viability of the doctrine.

The international community has been handicapped by a variety of factors that kept it from intervening in Sudan. As good as R2P sounds, it seems that the international community is stuck in the usual wrangling over competing national interests in the UN’s Security Council, worsened by the current political landscape of the so-called war on terror. The former US Secretary of State, Collin Powell called the situation genocide, but the US and its allies weakened by Iraq, are hesitant to take action against another Islamic State. The responsibility to respond was given to the United Nations, but the question of who was best suited to intervene in the crisis became the subject of regional and international debates.

At the continental level, the AU stopped short of calling the conflict genocide but there is consensus that the crisis is shocking to the conscience of humanity. Though the AU is a more acceptable intervening body to the Khartoum government than the UN, the experiences of the AU in Darfur have revealed the lack of capacity to embark on large-scale interventions. The experience also highlights the complex relationship between Africa and the international community. At the core of the relationship is the interaction between the AU and the UN⁶. This interaction is one of the main hurdles associated with the im-

plementation of R2P in Africa. At the global level, the UN remains the only body with the right to decide on interventions into a sovereign state. The UN Charter states that member states should refrain from using threat or the use of force against the territorial integrity or political independence of any state. However when the UN has been unwilling or unable to promptly respond to crises in Africa, the AU and Regional Economic Communities, listed in the UN Charter as regional and sub-regional organizations respectively, have in the past embarked on decisive interventions, in some cases without the prior permission of the UN - the pioneering example being the ECOWAS Cease Fire Monitoring Group’s (ECOMOG) intervention in Liberia. This was the first intervention by a sub regional organization using its own troops, resources and logistics without the express permission of the UN⁷. However, the UN subsequently legitimized the intervention.

In the case of Sudan, the AU intervened without the requisite financing or manpower. The African Union Mission in Sudan (AMIS) at its largest was a 7,000 strong force. This force has been unable to protect all civilians under threat. The AU’s logistical handicap became evident resulting in the AU agreeing to revert control back to the UN. However, the Khartoum government’s refusal of a exclusive UN force has resulted in the creation of a hybrid UN-AU force, to which the government has agreed to “in principle”. Some have said that the AU mission was a failure. This remains to be seen. AMIS proved that African leaders have the political will to intervene in conflict situations and are willing to implement the principle of collective security articulated in the AU Constitutive Act⁸.

However, it is also evident that the AU needs substantial financial and logistical support to intervene in the conflicts on the continent. This support extends to implementing the three foundational responsibilities listed under R2P; Prevent, React and Rebuild.

⁵ Article 4 (h) Constitutive Act of the African Union, 2002

⁶ See: The African Union’s emerging peace and security regime: opportunities and challenges for delivering on the responsibility to protect. By Kristina Powell the North-South institute Ottawa, Canada. Published by Institute for Security Studies (ISS) Monograph series • No 119, MAY 2005

⁷ See: Adekeye Adebajo, Liberia’s civil war: Nigeria, ECOMOG, and Regional Security in West Africa. A project of the International Peace Academy, (Lynne Rienner Publishers 2002)

⁸ See: Musifiky Mwanasali, Africa’s Responsibility to Protect, in Adekeye Adebajo and Helen Scanlon, A Dialogue of the Deaf; Essays on Africa and the United Nations (Fanelle publishers 2006)

3 Responsibility to prevent

One of the pillars of the R2P doctrine is the responsibility to prevent. The principle argues that more effort should be put into prevention rather than intervention. The responsibility to prevent as with the responsibility to protect primarily lies with the State and its institutions. The ICISS report posits that factors like good governance and accountability provide a foundation for conflict prevention. African governments also share this view. The New Partnership for African Development (NEPAD), through the African Peer Review Mechanism (APRM), provides a framework through which states are assessed to gauge their performance in areas of good governance⁹. That a few states have acceded to be reviewed by the mechanism signals a positive step towards addressing endemic corruption and bad governance that have characterized many African states, and are at the root causes of conflicts. However, since the review process is voluntary, severely oppressive states with poor governance systems will most likely not accede.

Conflict prevention is also high on the agenda of African governments. The continent has made significant progress in developing an effective conflict early warning and response system. At the continental level, the AU is in the process of developing a Continental Early Warning System (CEWS) as one of the pillars of the Peace and Security Council. The CEWS is tasked with providing the Chairperson of the Commission with information in a timely manner so that he/she can advise the Council on "potential conflicts and threats to peace and security" and "recommend best courses of action"¹⁰. It is expected that warning and response systems operating at the sub-regional level will feed into the AU's system. However, there is a long way to go before this can be realized. Only the Economic Community of West African States (ECOWAS) in West Africa and Intergovernmental Authority on Development (IGAD) in East Africa and the Horn have functioning warning systems and both are more advanced than the AU's.

Another conflict prevention mechanism in the Peace and Security Council is the Panel of the Wise. The protocol calls for this panel to consist

of five highly respected African personalities from various segments of society who have made outstanding contribution to the cause of peace, security and development on the continent. This panel is expected to advise the Peace and Security Council and the Chairperson of the Commission on all issues pertaining to the promotion of peace and stability on the continent. The Panel is not fully operational but the AU can learn from the experiences of ECOWAS' attempts to implement a similar structure. ECOWAS operates a Council of Elders system, which involves prominent elder statesmen and women playing mediatory roles in conflict situations on the region.

The security architecture in Africa also provides space for civil society to act as partners with States to govern and prevent conflict. The AU's Constitutive Act established as one of the organs of the Union the Economic, Social and Cultural Council (ECOSOC). Structured like the UN's version, the ECOSOC has an advisory capacity and provides an avenue for a cross section of CSOs on the continent to input on peace, security and development issues. The ECOSOC meets annually and outcomes of the meetings are fed to the Heads of State summit. Regional configurations of the ECOSOC also exist. For example the West African Civil Society Forum (WACSOF). The involvement of CSOs signals progress in the recognition that collective responsibility to prevent crises and atrocities means including non-state actors in the governance process. This was typically absent in the OAU. However civil society's collective ability to engage in preventive initiatives is hampered by weak structures inherent in civil society, poor coordination and networking. Civil society in Africa has also been criticized for being unregulated and in many cases not accountable for their actions. Thus, there have been calls that civil society should be subjected to the same good governance standards that governments are called to adhere to¹¹.

There is no doubt that the AU is committed to trying to prevent violent conflicts and other atrocities. But its ability to prevent is often undermined by member states that do not abide by the ideals of the AU or respect the recommendations emanating from its security apparatus. For example, the Peace Security Council released several communiqués asking the Sudanese gov-

⁹ The New Partnership for African Development (NEPAD), African Peer Review Mechanism (APRM), Available at <http://www.nepad.org/2005/files/documents/49.pdf> (accessed December 2006)

¹⁰ Article 12, Protocol relating to the establishment of the Peace and Security Council of the African Union

¹¹ See: The Peacebuilding Role of Civil Society in Southern Africa, CCR policy seminar report, Maseru, Lesotho, 14 and 15 October 2005 (available at ccrweb.ccr.uct.ac.za)

ernment to disarm the Janjaweed militia said to be responsible for the majority of the killings and rapes in the Darfur region of the country. The Khartoum government largely ignored these communiqués and the atrocities have continued. In addition to this, member states have also been known to be responsible for conflicts in neighboring states for their own national interests which is often economical, e.g. Liberia in Sierra Leone, Cote d'Ivoire in Guinea and Rwanda, Uganda in DRC. The impact of this at regional and continental levels is that states profiting from conflicts act as spoilers to initiatives that aim to mitigate the situation.

In relation to prevention of genocides and war crimes, one key question asked on the continent is what is an extreme circumstance? The international community was slow to intervene in the Liberian conflict in 2003, though evidence of widespread killings by government and rebel forces was clear. The subjectivity in assessing extreme situations undermines the importance of implementing this new international norm. The argument that Iraq was an extreme case, while Liberia was not, raises skepticism that interventions under R2P will also be based on the geo-strategic value of countries requiring preventive intervention than on the need to protect civilians.

4 Responsibility to React

The responsibility to react under the R2P calls for collective reaction to situations of compelling need for human protection. The doctrine emphasizes that this action can only be taken after all preventive measures fail. These include what the literature calls political, social and judicial measures and where all of these fail, military action.

There have been varied reactions to the crises in Africa. Economic sanctions have been issued against several African states to compel them to comply with conditions imposed by the international community. In all instances, these sanctions have mainly impacted the already poor and oppressed and not their leaders who are usually the targets of the sanctions. Furthermore, experience has shown that sanctions further isolate so-called "pariah" states and are not effective. International sanctions on African states also have the effect of invigorating unity amongst African governments, who see each other as "brothers". This unity affects the ability of states to embark on punitive collective action. A good example of this scenario is the current situation in Zimbabwe. Generally, African leaders do not support the antics of the Zimbabwean govern-

ment. But the isolation and sanctions levied on the country by the international community persuaded most states to seek other forms of engaging the country.

Apart from economic sanctions, the AU Constitutive Act gives African Heads of State and Government the right to intervene in member states through the use of force. The African Standby Force (ASF) is another pillar of the AU's Peace and Security Council and will serve as a rapid response force to keep and maintain peace. The ASF will comprise of standby brigades in each of the 5 regions on the continent, and will incorporate police and civilian expert capacity. The aim is to have the ASF operational by 2010. Most believe that this timeframe is too ambitious and may not be attained. As the ASF consolidates its capacity, the AU has used the structure to intervene in Burundi and Sudan. In the case of Darfur, AMIS personnel lacked training, operational capacity and political initiative to achieve its mandate¹². The challenges of such interventions highlight the need for the AU to embark on a realistic evaluation of its capacity to deploy a response force that can make a substantive impact on the situation.

5 Responsibility to Rebuild

The third component of the R2P is the responsibility to rebuild. This asserts that the responsibility to protect is not complete without a commitment to rebuilding societies in the aftermath of military interventions. Failure to adhere to this responsibility results in countries degenerating into deeper societal chaos post military interventions. This post conflict stage is where the R2P and the newly established UN Peacebuilding Commission are linked. The UN Secretary General in his adoption of the Peacebuilding Commission stated that countries emerging from war reverted back to violence within five years of signing peace agreements. This fact has been witnessed repeatedly in Africa, e.g. Liberia, Cote d'Ivoire and DRC.

Some of the weaknesses of post conflict peacebuilding in Africa include poor financing and absence of long-term commitment to reconstruction. UN missions have also prematurely withdrawn from countries without ensuring that functional state institutions are in place to govern. The PBC's main responsibility is to focus attention on the reconstruction and institution

¹² Imperative for Immediate Change: The African Union Mission in Sudan. Human Rights Watch Report, volume 18 No. (1A), January 2006.

building efforts necessary for recovery from conflict and support initiatives that will usher in development. As with the R2P, Africa's serves as a test case to gauge the efficacy of the PBC, with Sierra Leone and Burundi being the first countries on the Commission's agenda.

In this regard it is important to note that both the rebuilding within the R2P and the PBC cannot be successful without the involvement of local actors. Rebuilding should not be prescriptive and the international community should not apply a "one size fits all" attitude to assisting countries in transitioning from war to peace. Recent consultations in Sierra Leone have revealed that the PBC is welcome to the extent that it can re-energize post-conflict peacebuilding in the country and address issues like poverty, unemployment, corruption, human rights violations and lack of social infrastructure¹³. It is also key that rebuilding processes are engendered to address the impact of crises on women and men¹⁴. International instruments like the UN Security Council Resolution 1325, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa should serve as monitoring tools to gauge progress of integrating gender concerns into post conflict rebuilding.

6 Conclusion

Africa is in the process of developing an effective security architecture that is dependent on responsible and accountable states. In a few short years, the AU has put in place a security framework that will enable collective action by states to prevent, deter and mitigate civil wars and atrocities. It is important that as the doctrine of R2P is being applied on the continent, it recognizes the existence of this architecture.

As the Darfur experience shows, the AU has the moral authority and recognition to implement collective responsibility on the continent, but presently lacks the financial and logistical capacity to sustain large interventions. Implementing R2P in Africa should focus on bolstering the capacity and reputation of the AU and its pillars,

the RECs, to carry out preventive, reactive or rebuilding action only where the UN is unable to.

However, a functioning AU should not be viewed as a replacement for the UN fulfilling its responsibilities of protecting civilians in crisis situations. A clear delineation of responsibilities between the AU and UN needs to be clarified on a case-by-case basis.

Lastly, the future of R2P in Africa and elsewhere depends largely on all stakeholders ability to heed the advice of the outgoing Under Secretary for Humanitarian Affairs, Jan Egeland, in a recent speech to the UN Security Council. Mr. Egeland highlights that "the responsibility to protect should be depoliticized and translated into joint action by all Council members and global organizations. It must transcend singular interests and become the core principle of humanity across all civilizations. When the lives and safety of civilians were at stake regardless of where, neither strategic nor economic or political interests should deter Council members from acting swiftly upon their united responsibility to protect"¹⁵. Failure to capture these ideals of R2P will result in the doctrine becoming another rhetoric in the lexicon of international relations.

About the author:

Thelma Ekiyor is Senior Manager of the Centre for Conflict Resolution, University of Cape Town, South Africa

¹³ See: Thelma Ekiyor, and Jacob Enoh-Eben, the UN Peacebuilding Commission in Sierra Leone: civil society's perspective, CCR consultative meeting report, Johannesburg, South Africa, 12 and 13 October 2006, (available at ccrweb.ccr.uct.ac.za)

¹⁴ See: Thelma Ekiyor, Engendering Peace: How the Peacebuilding Commission can live up to UN Security Council Resolution 1325, Friedrich-Ebert-Stiftung Briefing Paper, June 2006, (available at ccrweb.ccr.uct.ac.za)

¹⁵ Security Council 5577th meeting, SC 8884, 4 December 2006. Available at <http://www.un.org/news.press/docs/2006/sc8884.doc.htm> (accessed December 2006)

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Friedrich-Ebert-Stiftung
Hiroshimastrasse 17
10785 Berlin
Germany
Tel.: ++49-30-26-935-914
Fax: ++49-30-26-935-959
HRoswitha.Kiewitt@fes.de
Hwww.fes.de/globalizationH