

# The responsibility to protect: from an ethical principle to an effective policy

(Chapter for *La realidad de la ayuda*, Intermón Oxfam)<sup>1</sup>

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At first sight it may seem misguided to include a chapter on the responsibility to protect (R2P) in a publication from a non-governmental organisation (NGO) entitled *The Reality of Aid*. In the end, the responsibility to protect is a question of high state politics at the service of a humanitarian cause; diplomats and officials in Western capitals taking measured and consensual decisions in which they strive to find a balance between State interests and international solidarity. In humanitarian aid and development, NGOs strive daily to ensure that impartiality remains one of the core principles of their work on the ground. Why therefore this curious inclusion? To begin with, very few really comprehend *the responsibility to protect*. Is it an idealistic principle designed to aid all the unprotected communities of the world? Is it a justification for military intervention as a political objective? Or is it simply another theory remote from all practical application created by well-intended academics?

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<sup>1</sup> This chapter was written with the collaboration of FRIDE's Peace, Security and Human Rights programme (Mariano Aguirre, Ivan Briscoe, Amélie Gauthier, Susanne Gratius, Sarah-Lea John de Sousa and Vidal Martín Hernando).

In fact, the responsibility to protect represents a significant leap from previous debates, especially since the beginning of the 1990s, around the protection of groups threatened by genocide or violations of their human rights. The responsibility to protect works for the protection of civilians not to be completely subjected to political interests or to fall into oblivion due to divisions or lack of political commitments within the international community through the elaboration of a series of guidelines. As an acknowledged and approved principle by the member states of the United Nations (UN), the success or failure, or moreover, the mere existence of the responsibility to protect, will substantially define the scale and nature of the future work of humanitarian aid.

## Introduction

The 2005 United Nations (UN) World Summit will be remembered by many as the event where the plan of reform of the organisation of the outgoing Secretary-General Kofi Annan failed. Nevertheless, even though the divisions around the restructuring of the Security Council could not be overcome, some positive results were achieved, such as the establishment of the Human Rights Council and the Peacekeeping Commission. One of the less discussed was the approval of the principle of the responsibility to protect.

At first glance, the approval of this principle seemed unimportant. However, the text of the International Commission on Intervention and State Sovereignty (ICISS) that officially established the principle of the responsibility to protect in 2001 reveals a developed, inherently controversial and highly necessary concept.<sup>2</sup>

The responsibility to protect stems from a fundamental concept: when a government does not fulfil the basic principle of the modern state of providing protection to its citizens, the international community must assume this responsibility. That is to say, that the principles of sovereignty and non-intervention that for hundreds of years served as a *carte blanche* for the behaviour of state governments at a domestic level are no longer sacred. Sovereignty becomes a conditional right. If a state does not fulfil its obligation of guaranteeing the security of its citizens, especially if it does so consciously, it loses its right to invoke sovereignty as the basis for preventing an international intervention which intends to exercise this responsibility.

With regards to the international community, the principle represents an advance from the right to responsibility. The debate on interventions on the grounds of genocide or massive violations of human rights gained force at the end of the Cold War.<sup>3</sup> The violent crises that took place in Somalia, Rwanda, the Great Lakes region, the former Yugoslavia and Haiti led to heated discussions, slow reactions, and controversial actions. From the point of view of the so-called "liberal intervention", the right to protection was exercised in Kosovo in 1999, where the North Atlantic Treaty Organisation (NATO) intervened against the Serbian forces that committed acts of ethnic cleansing against the Albanian-Kosovar population. This action was justified on the grounds of the right to humanitarian intervention. NATO's action was controversial, especially due to the lack of support from the UN Security Council due to Russia's opposition.

From the start, the right to humanitarian intervention raised many doubts, in particular amongst governments and analysts from Southern countries. Suspicious of the interests of some Northern states, several questions arose: Who defines when it is right to intervene? Why intervene in Kosovo and not in other similar situations? What type of interventions is legitimate? In the case

<sup>2</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, Ottawa: International Development Research Centre, December 2001.

<sup>3</sup> The UN Convention for the Prevention and Sanction of the Crime of Genocide of 1948 defines genocide as the "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group", <http://www.ohchr.org/english/law/genocide.htm>

of Kosovo, several analysts, from the North and South, argued that intervention was carried out too early and too forcibly, or in colloquial Anglo-Saxon terms, “too much, too early”.

In fact, the experience of the interventions of the 1990s led to something of a quagmire: there was no intervention when it was indispensable (Rwanda); intervention was too late (Bosnia, the Great Lakes); conducted under confusing mandates (all cases); prepared with the objective of trying to get out as soon as possible (the United States in Haiti) and justified by a mix of political and humanitarian reasons (Kosovo). There was a shift from the first universal impulse to intervene for humanitarian reasons towards the pragmatic caution of intervening when possible and with limited objectives. Moreover, the multiple actors involved - from the states directly affected to the United Nations and regional security organisations, to NGOs and academics, as well as journalists - went from enthusiasm with regards to interventions to disenchantment due to their failure.

Against this background, it was necessary to clarify the concept in order to advance towards the useful practises that combined what was morally necessary with what was politically possible, and to place the protection horizon as far as possible, or in other words, to make it widely inclusive. In this sense, the responsibility to protect implies a significant empirical and normative progress. Not only is there a shift from the right to the responsibility of states, but some principles with regards to humanitarian intervention, such as proportional means and that military intervention should be the “last resort”, are also specified. Furthermore, the principle is not limited to interventionist measures, but it also stresses how conflict prevention should be the priority of international organisations, states and NGOs.

After the controversy brought about by the right to humanitarian intervention, the fact that the responsibility to protect could be approved unanimously - even if it was a substantially restricted version of the ICISS text - constitutes a notable achievement for the “Group of wise men” who drafted the document which was finally approved at the 2005 UN World Summit.

Nevertheless, it has and continues to be a tortuous road for this concept and for the individuals, organisations and states that supported it. Particularly, the Iraq war represented an almost insurmountable challenge to the principle at its inception. The motives of the war - the assumed threat of a terrorist attack with Iraqi chemical and biological weapons - were already being questioned when a small coalition led by the United States (US) and the United Kingdom (UK) decided to invade Iraq in 2003. The manipulation of facts that led them to start an illegal war without the support of the international community was aggravated when they cited the responsibility to protect Iraqi citizens as a motivation to invade Iraq.<sup>4</sup>

This attempt to legitimise the war not only further discredited the US and the UK, but it also encouraged the very sceptics of the right to humanitarian intervention that argued that the principle was no more than another excuse at the service of Western neo-imperialist interests. The UK government implicitly recognised its mistake in invoking the responsibility to protect in the case of Iraq and did not mention it again.

Today, another conflict threatens the future of the responsibility to protect: Darfur. In this case, not because of a risk of manipulation of the principle, but due to international passiveness towards a situation that seems a clear case to invoke the use of the principle. Few politicians have dared to publicly make this claim. Kofi Annan did so in one of his farewell speeches:

“When I look at the murder, rape and starvation to which the people of Darfur are being subjected, I fear that we have not got far beyond ‘lip service’. The lesson here is that high-

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<sup>4</sup> Speech of Foreign Secretary Jack Straw, Labour Party Conference, Brighton, 28 September 2005.

sounding doctrines like the ‘responsibility to protect’ will remain pure rhetoric unless and until those with the power to intervene effectively - by exerting political, economic or, in the last resort, military muscle - are prepared to take the lead”.<sup>5</sup>

Designed to prevent more cases such as Rwanda from occurring, the most common challenge that the responsibility to protect will have to face is the lack of international political commitment. In Rwanda, it was normatively difficult to blame the UN mission for not intervening to slow down the death of hundreds of thousands of unprotected civilians because the mission’s mandate did not include the protection of civilians through the use of force.<sup>6</sup>

In Darfur, the situation is different. The approval of the responsibility to protect and the ICISS guidelines should prevent a situation similar to Rwanda’s from developing. However, a highly complex political situation in which the main actors have to weigh every decision, and lastly, the lack of political commitment, have led to an almost symbolic international intervention in this region of Sudan. Albeit the recent approval of a hybrid UN and African Union (AU) peacekeeping force, some mention the Darfur case as an unequivocal example of the failure of the responsibility to protect. The complexity of this principle reveals that in reality it is far more complicated.

The existing tension between the interests of states and the needs of unprotected communities is thus the greatest challenge for the consolidation of the responsibility to protect as an effective principle to protect the victims of certain conflicts. With the aim of combating the lack of knowledge and political commitment in the international community faced by this principle, this chapter will briefly summarise the evolution of the responsibility to protect and of the steps necessary not only to implement the principle but also to do so in an effective and focused way that can ensure its durability.

## II. From humanitarian intervention to the responsibility to protect

The responsibility to protect, per se, only exists since 2001 when the ICISS presented its report and created the term. However, previously, during the 1990s, there was a broad debate around the idea of the right to humanitarian intervention. This debate and its non-resolution is the *raison d’être* of both the ICISS and the responsibility to protect.

In the 1990s, the intra-state conflicts which are now considered a graver threat to international security than inter-state conflicts started to emerge. Just as the Second World War did, the end of the Cold War brought about a series of conflicts. In the case of the latter, these were intra-state violent conflicts that emerged after the collapse of the structures of the state and the vacuum left by the geopolitical rivalry between two superpowers.

These highly complex conflicts based on rivalries and ethnic and religious divisions showed the lack of capacity of international response. The debacle in Somalia in 1993, international passiveness in Rwanda in 1994, the powerlessness of UN troops in Srebrenica in 1995 and NATO’s decision to bomb Kosovo in 1999 were the most eloquent examples of this lack of capacity. It became evident that there were neither adequate rules or resources to respond to these threats to international peace and security.

<sup>5</sup> Speech of the UN Secretary-General Kofi Annan, Truman Library, Missouri, 11 December 2006.

<sup>6</sup> Romeo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda*, Random House, Canada, 2003.

The frustration that followed lacklustre international responses is manifest in the sombre and explicit conclusions of the report of the UN Secretary-General on the fall of Srebrenica:

“The protected areas and security zones may be used to protect the civilian population in armed conflicts. Such zones would by definition have to be demilitarised, based on some agreement between the belligerents, as in the case of ‘protected areas’ and ‘safe havens’ acknowledged in international humanitarian law, or have to be real security zones, vigorously defended by a worthy dissuasive military force.”<sup>7</sup>

It was not long before the international community acknowledged the need to adjust international responses to the changing nature of conflicts. Within the UN, the traditional model of peacekeeping operations was transformed. The Report of the Panel on UN Peace Operations of 1996, also known as the Brahimi report for its president, the Algerian Lakhar Brahimi, called for a change from a model based on the military interventions of blue helmets to what is currently known as integrated missions.<sup>8</sup>

In these integrated missions, under civilian command and with a much stronger civilian presence, other UN fields of work complementary to the work of the blue helmets and indispensable to guaranteeing a long-lasting peace, such as institutional strengthening and gender, have been consolidated.

However, the lack of an insufficient international response capacity inspired a debate that existed beyond the UN and governmental actors. With the emergence of the so-called CNN effect, voters worldwide became more rapidly aware of war and humanitarian crises, making the international political response more emotionally urgent.<sup>9</sup> The debate on humanitarian intervention moved to NGO and academia circles, amongst others. In the case of the UN, according to Paul Kennedy, the Kosovo crisis meant a significant setback with regards to public support towards the organisation.<sup>10</sup>

On the one hand, there was the “droit d’ingérence” argument, or right to intervene, first put forth by Bernard Kouchner, co-founder of Médecins sans frontières and currently French minister of Foreign and European Affairs. The right to intervene called against “the archaic theory of the sovereignty of states, consecrated in the protection of killings” and supported the use of military force as a resort to intervene in a humanitarian crisis situation.<sup>11</sup> However, given the lack of a normative precedent on this regard, the question remained unresolved on which norms should apply to what was presented as a moral obligation and what, in some cases, necessarily implied a non-consensual military intervention.<sup>12</sup>

On the other hand, according to many, since it constituted a clear violation of the basic principle of state sovereignty, the right to intervene represented a neo-colonial threat to the poorest and defenceless countries. In the 1999 UN General Assembly general debate, Algerian president Abdelaziz Bouteflika expressed these concerns and even defined sovereignty as “the last defence against the rules of an unjust world”.

At the same time, organisations such as the Red Cross were strongly opposed to the idea of mixing humanitarian aid and military intervention. According to them, the inherent impartiality

<sup>7</sup> General Assembly, *Report of the Secretary-General pursuant to General Assembly resolution 53/35, The fall of Srebrenica*, 54th session, 15 November 1999, [A/54/549], <http://www.un.org/peace/srebrenica.pdf>

<sup>8</sup> General Assembly and Security Council, *Report of the Panel on UN Peace Operations*, [http://www.un.org/spanish/peace/operations\\_report/](http://www.un.org/spanish/peace/operations_report/)

<sup>9</sup> Piers Robinson, *The CNN Effect: The Myth of News, Foreign Policy and Intervention*, Routledge, 2000.

<sup>10</sup> Paul Kennedy, *The Parliament of Man: The Past, Present, and Future of the United Nations*, Random House, 2006.

<sup>11</sup> Mario Bettati and Bernard Kouchner, *Le devoir d’ingérence : peut-on les laisser mourir?*, Paris: Noël, 1997.

<sup>12</sup> Thomas G. Weiss, “Using military force for human protection: What’s next?”, in *Multilateralism Under Challenge: Power International Order, and Structural Change*, Tokyo: United Nations University Press, 2006.

of humanitarian aid would inevitably be placed in a compromising situation for being associated to something as political as a military intervention.

NATO's decision to intervene in Kosovo without authorisation from the UN Security Council represented the most significant moment in this debate. NATO bombed Serbian troops during 79 days invoking the right to humanitarian intervention. It is important to remember that it was not only Russia and China's threat to veto prevented a UN-backed intervention. Several other countries, which as a whole constituted the majority of the world's population, including Brazil, India or Mexico (who would later support the responsibility to protect) also opposed the intervention in Kosovo.

A year later, in the 2000 UN General Assembly, the then Secretary-General, Kofi Annan, tried to progress in the debate within the organisation. If humanitarian intervention represents an unacceptable violation of sovereignty, what should be done in cases such as Rwanda or Srebrenica where human rights are systematically violated?

During the same year, the Independent International Commission on Kosovo, a group of renowned independent academics, declared that the NATO bombings, albeit illegal as it did not have authorisation from the Security Council, were legitimate because all diplomatic means had been exhausted and a response was necessary. Nevertheless, the authors of the Kosovo report explicitly called for the UN to advance in the complex issue of humanitarian intervention:

"Experience from the NATO intervention in Kosovo suggests the need to close the gap between legality and legitimacy. The Commission believes that the time is now ripe for the presentation of a principled framework for humanitarian intervention which could be used to guide future responses to imminent humanitarian catastrophes and which could be used to assess claims for humanitarian intervention."<sup>13</sup>

As a possible solution to the problem, Kofi Annan himself proposed counterbalancing the principle of "national sovereignty" with that of "individual sovereignty" when one of these situations arose. However, according to Gareth Evans, one of ICISS co-chairs, Annan's proposal did not solve the central dilemma of when individual sovereignty should prevail over national sovereignty.<sup>14</sup>

With these unsolved questions, the government of Canada promoted the creation of the ICISS. The Commission was composed by a group of international experts led by two co-chairs, the aforementioned former Australian Foreign Affairs minister, Gareth Evans, and the Algerian diplomat, Mohammed Shnoun. Other members included renowned academics and politicians such as Michael Ignatieff, Eduardo Stein and Ramesh Thakur. Since the publication of the ICISS report, the debate on humanitarian intervention began to be defined by the responsibility to protect paradigm.

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<sup>13</sup> <http://www.reliefweb.int/library/documents/thekosovoreport.htm>

<sup>14</sup> Gareth Evans, "From Humanitarian Intervention to R2P", keynote address to symposium on humanitarian intervention, Madison: University of Wisconsin, March 2006.

### III. The 2005 UN World Summit

From the beginning expectations were high for the 2005 UN World Summit. The outgoing Secretary-General Kofi Annan, wanted to leave as his legacy a deep reform of the organisation he had led since 1997. Faced with internal corruption scandals, US attacks and the organisation's division and powerlessness during the Iraqi crisis, Annan led a brave reform initiative against challenging obstacles. Finally, the Summit could only fulfil some expectations.

On the one hand, the restructuring of the Security Council failed given the predictable reluctance of its current members and - equally predictable - divisions among the rest of states that sought to take advantage of this restructuring. On the positive side, member states agreed to create a Peacekeeping Commission and a Human Rights Council to replace the discredited Human Rights Commission.

The unanimous support of over 150 states for the responsibility to protect, enshrined in the Summit's Final Document, was another positive result. The text of the Final Document that was approved - albeit being more limited than that of the ICISS (the international community only commits to "helping" states to protect) and not including, for example, the principles for the use of force - adopted the basic principles developed by the ICISS.<sup>15</sup>

Apart from achieving the unanimous approval of the principle, it is important to remember the positions of all relevant actors with regards to the responsibility to protect and the intense political negotiations that preceded approval. First, the expected US and EU support was inevitably undermined by the legitimacy crisis some of the states faced due to the Iraq fiasco.

Given the fact that it took place under strong suspicions due to the interests of the US and the UK in the region, the invasion of Iraq without the approval of the UN Security Council not only damaged the image of the organisation, but also provoked suspicions from those who still felt vulnerable to the interests of the most powerful states. According to the conclusions of the Oxfam report entitled *A just foreign policy*, "the perception of partiality has undermined the UK's capacity to exercise a positive foreign policy".<sup>16</sup>

Nevertheless, the outstanding work of other states managed to push forward the approval of the principle. In this regard, it is necessary to underline the role of Canada. Beyond the creation of the ICISS, Canada accorded the responsibility to protect a priority status in the Summit and its role was key in the fight against the reluctance and misinformed associations that the principle inspired. Furthermore, the role of the then prime minister Paul Martin, and of other leaders

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<sup>15</sup> General Assembly, *Resolution adopted by the General Assembly, 60/1. 2005 World Summit Outcome*, 60th session, 24 October 2005, [A/RES/60/1], <http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>; Article 138 states that "Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability". Article 139 states that "The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out".

<sup>16</sup> Oxfam GB Briefing Paper, "A Fair Foreign Policy", April 2007.

such as Thabo Mbeki from South Africa and Paul Kagame from Rwanda, was remarkable.

The unanimous approval by the General Assembly was achieved albeit the initial opposition from Russia and a small group of states, most of them members of the Non-Aligned Movement (NAM), including Cuba, Venezuela, Pakistan and Zimbabwe. Incapable of seeing beyond their vulnerability with regards to this concept and insisting on comparing the responsibility to protect with imperialist intervention, these states positioned themselves against the principle, despite approving it in the end. The words of Zimbabwe's president, Robert Mugabe, represent the arguments these states presented to justify their position:

"The vision that we must present for a future United Nations should not be one filled with vague concepts that provide an opportunity for those states that seek to interfere in the internal affairs of other states. Concepts such as 'humanitarian intervention' and the 'responsibility to protect' need careful scrutiny in order to test the motives of their proponents".<sup>17</sup>

Curiously, the two most influential groups with respect to overcoming the reluctance that the principle inspired in several states came from the geographical regions that a priori could hold an opposing position due to several reasons. Despite having suffered for decades and centuries from economic and geopolitical speculation at the hands of Western states, both Africa and Latin America presented the most reasonable position with regards to the principle.

Albeit the expected opposition from Cuba and Venezuela, the responsibility to protect represented one of the few cases where all the major powers of the Latin American region were in agreement. After the divisions caused by the debate on the failed attempt to enlarge the UN Security Council with Brazil on one side, and Argentina and Mexico on the other, the support showed by the three regional powers in the debate around the responsibility to protect was most positive. The Mexican position represents a vision that rightly adopts the principle of human security – an omnipresent objective of the responsibility to protect:

Mexico emphasises "that the concept is a continuum and that it therefore includes prevention and international assistance, including development and capacity building".<sup>18</sup>

In Latin America, all forms of intervention engender adverse reactions, especially with regards to a possible hidden interest agenda of the US. Nevertheless, in the past years, the intervention of nine countries of the region in Haiti, led by Brazil – whose concept of protecting the victims is by no means less significant – represents an important political change.<sup>19</sup>

The case of Africa is interesting not only because of its historical support for non-interference but also because it is the continent where the majority of the world's conflicts take place. Consequently, it can be said that the African states are the ones who have the most to win and the most to lose with the responsibility to protect. More to win due to the interest they have in becoming a continent at peace, without the risk of their security being affected by neighbouring conflicts and of corrupt leaders coming to power that could further damage the already precarious image of the continent. And more to lose because many African countries have conflicts in their own borders that could potentially become cases where international intervention is required.

<sup>17</sup> "What Governments said about R2P at 2005 World Summit", 15 September 2005, [http://www.responsibilitytoprotect.org/index.php/government\\_statements/](http://www.responsibilitytoprotect.org/index.php/government_statements/)

<sup>18</sup> "Mexico -- Statement at the 3rd Open Debate on the Protection of Civilians", 22 June 2007, [http://www.responsibilitytoprotect.org/index.php/civil\\_society\\_statements/294](http://www.responsibilitytoprotect.org/index.php/civil_society_statements/294)

<sup>19</sup> Amélie Gauthier-Campbell and Sarah Lea John de Sousa, "Brazil in Haiti: The Debate on the Peacekeeping Mission", FRIDE Comment, November 2006, [www.fride.org](http://www.fride.org); and Monica Hirst, "South American Intervention in Haiti", FRIDE Comment, April 2007, [www.fride.org](http://www.fride.org)



Thus it is not surprising that despite playing a key role in the approval of the responsibility to protect, the position of the African Union has some important nuances. The Ezulwini Consensus - a document approved by the AU before the 2005 Summit - includes explicit references to the role of regional organisations and the sovereignty of states. The following references of the Ezulwini Consensus are contemplated in the 2005 UN Summit Final Document, particularly in the commitment to act with regional organisations when deemed relevant:

“Since the General Assembly and the Security Council are often far from the scenes of conflicts and may not be in a position to undertake effectively a proper appreciation of the nature and development of conflict situations, it is imperative that Regional Organisations, in areas of proximity to conflicts, are empowered to take actions in this regard [...] It is important to reiterate the obligation of states to protect their citizens, but this should not be used as a pretext to undermine the sovereignty, independence and territorial integrity of states”.<sup>20</sup>

The approval of the principle in the 2005 UN World Summit was, therefore, a historical success in many senses. Regions that traditionally favoured the principle of non-interference, such as Latin America and Africa, adopted a position worthy of the ICISS text, and furthermore played a key role in achieving the unanimous support in the Security Council. The brave positions of Latin America and Africa, motivated by the leadership of Canada, constituted an important step forward as they managed to silence the reluctance of a small group of states.

#### IV. The ICISS report: the elements of the responsibility to protect

In the first paragraph of the Forward to the ICISS report, both co-chairs define in their own words the debate that inspired the report:

“Many calls for intervention have been made over the last decade - some of them answered and some of them ignored. But there continues to be disagreement as to whether, if there is a right of intervention, how and when it should be exercised, and under whose authority”.<sup>21</sup>

What follows is a 90-page, highly comprehensive document where they elaborate on all important aspects of the principle. The document:

1. differentiates between the responsibility to prevent, react and rebuild;
2. develops some principles to legitimise a military intervention;
3. deals with pending tasks with regards to the operational level of the protection of civilians;
4. makes pragmatic recommendations to specific addressees in order to fulfil the principle's objectives.

The ICISS establishes the responsibility to protect on the basis of two fundamental principles: first, the sovereignty of a state implies the principal responsibility to protect its population for the state itself; and second, if the state is unable or unwilling to protect its citizens of grave harm, the responsibility to protect has priority over the principle of non-interference. With these two fundamental principles, the ICISS succeeded in completely reformulating the debate. Suddenly, it was not about a right to intervene, but about a responsibility.

Influenced by academics such as Francis M. Deng from Sudan, the ICISS adopted a definition of sovereignty that implies limitations and a focus on the issue of human security.<sup>22</sup> From a

<sup>20</sup> African Union – The Ezulwini Consensus, 7 March 2005, [http://www.responsibilitytoprotect.org/index.php/government\\_statements/](http://www.responsibilitytoprotect.org/index.php/government_statements/)

<sup>21</sup> *The Responsibility to Protect, Report of the International Commission on Intervention and State Sovereignty*, December 2001, Forward, p. 7, <http://www.iciss.ca/pdf/Commission-Report.pdf>

<sup>22</sup> Francis M. Deng, *Sovereignty as Responsibility: Conflict Management in Africa*, Brookings Institution Press, 1996.

concept associated with control, sovereignty ends up implying responsibility. And it is not only the responsibility of governments but also of the international community. When a state does not fulfil its responsibility to protect, the international community, and the UN in particular, must assume this responsibility. If the UN does not do it, ad-hoc coalitions shall be created, and “the stature and credibility of the United Nations may thereby suffer”.<sup>23</sup>

Within the responsibility to protect, the responsibilities to prevent, react and rebuild are defined as “elements”. The responsibility to prevent is rightly defined as the most important dimension of the responsibility to protect and has absolute priority. Aside from, in the best case scenario, clearly preventing risking the lives of the affected population and of those who respond to the crisis, the economic costs to those affected by the crisis as well as to the international community must not be forgotten.<sup>24</sup>

The analysis in this section is truly thorough. The authors criticise the unfulfilled state promises with regards to the gap between the rhetoric and the facts in conflict prevention and explain the different components that should be included in order for prevention to be effective:

“First, there has to be knowledge of the fragility of the situation and the risks associated with it - so called ‘early warning’. Second, there has to be understanding of the policy measures available that are capable of making a difference - the so-called ‘preventive toolbox’. And third, there has to be, as always, the willingness to apply those measures - the issue of ‘political will’.”<sup>25</sup>

In this section on the responsibility to prevent it is worth highlighting that the authors acknowledge the lack of political will, and not the lack of information, as the main problem. However, emphasis is placed on the need for investing in preventive measures. At the institutional level, the authors emphasise the increasing role of mediation and good offices. An example of the resources invested in this section is the recently created Mediation Support Unit (MSU) within the Department of Political Affairs (DPA) of the UN Secretariat.<sup>26</sup> It aims at having trained mediators and support teams prepared to quickly deploy to conflict sites to bring together positions between opposing groups.

Furthermore, the report urges the relevant authorities to create early warning mechanisms at national, regional and international levels. At the same time, the report insists on the need to take advantage of the knowledge of local civil society to understand the complexity of the conflict and to agree on consensual solutions. The praiseworthy work of international organisations, such as Amnesty International and Human Rights Watch that have been for years informing from the ground, acting as independent early warning mechanisms, is a good example to consider.

As explained by the report, “the ‘responsibility to protect’ implies above all else a responsibility to react to situations of compelling need for human protection”.<sup>27</sup> In practise, this is translated into preventive measures; if these fail, coercive measures (political, economic or legal) should be applied; and in extreme cases, military action. The ICISS report acknowledges that “for political, economic and judicial measures the barrier can be set lower”.<sup>28</sup>

<sup>23</sup> *The Responsibility to Protect*, Op. Cit., Synopsis.

<sup>24</sup> Studies by the University of Bradford concluded that out of the twelve cases of investments in conflict prevention under study, only one was not profitable, [http://www.brad.ac.uk/acad/cics/publications/spending/working\\_paper\\_1.pdf](http://www.brad.ac.uk/acad/cics/publications/spending/working_paper_1.pdf)

<sup>25</sup> *The Responsibility to Protect*, Op. Cit., p. 20.

<sup>26</sup> <http://www.un.org/Depts/dpa/peace.html>

<sup>27</sup> *The Responsibility to Protect*, Op. Cit., p. 29.

<sup>28</sup> *Ibid.*

The following analysis of the case of Darfur will show how the political reality determines the sequencing and nature of the measures included in the section on the responsibility to react. The report specifies some of the possible coercive measures prior to military action. Amongst these are arms embargoes, economic sanctions imposed on individuals and companies, air traffic prohibitions, travel restrictions on individuals, and the suspension or expulsion of states from regional and international organisations.

Nevertheless, in this section it is worth highlighting the detailed criteria developed for a military action - the most controversial measure of the responsibility to protect. If it is the fact that one of the most common mistakes is to associate the responsibility to protect with military action is taken into account, it is understandable that the authors decided to elaborate on this section. Parting from the principle that - unlike the right to humanitarian intervention - military action must be the last resort, the report dedicates an entire section to the prerequisites of and the precautionary criteria for a military intervention.

Whilst remembering the controversy surrounding Darfur on whether or not there exists genocide (the US says "yes", the UN says "no"), it is important to analyse the terminology that defines the minimum criterion or just cause for military intervention. The final definition of the minimum criterion coincides to a large extent with the criteria previously proposed by organisations such as Human Rights Watch.<sup>29</sup> The ICISS report presents the following broad definition and specifies cases such as systematic racial discrimination where coercive non-military measures are suggested:

"Large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape".<sup>30</sup>

Parting from this definition of the minimum criterion for military intervention, the report specifies some precautionary principles for military action: right intention, last resort, proportional means, and reasonable prospects. Despite not attracting much attention, the last precautionary principle is perhaps one of the most important ones. When negotiating measures in the UN Security Council, discrepancies often arise between states when deciding on whether or not a military intervention has reasonable prospects for improving the existing situation. The authors present a common formula: the consequences of action cannot be worse than those of inaction.

Bearing in mind that approximately half of the countries that come out of a situation of war relapse into violence within the first five years, the responsibility to rebuild, and to do it well, must be a core objective of the responsibility to protect.<sup>31</sup> In the ICISS report, the responsibility to rebuild analyses the obligations of the international community after the intervention as well as the limits that have to be taken into account.

In this section, the authors advocate for the international community to always begin an intervention with a plan that contains a withdrawal strategy and the objective of a long-lasting peace built in collaboration with local authorities. The real willingness to establish a long-lasting peace must manifest itself in specific measures with the necessary resources in areas such as security, justice, reconciliation and development.

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<sup>29</sup> Carlos Espósito and Jessica Almqvist, "Building a New Role for the United Nations: the Responsibility to Protect", FRIDE Working paper 12, September 2005.

<sup>30</sup> *The Responsibility to Protect*, Op. Cit., p. 32.

<sup>31</sup> <http://www.un.org/spanish/peace/peacebuilding/questions.htm>

This section also includes a part on administrations under UN authority. Here it is worth highlighting the implicit acknowledgment of the potential effects of an intervention as currently demonstrated by the case of Kosovo:

“The responsibility to protect is fundamentally a principle designed to respond to threats to human life, and not a tool for achieving political goals such as greater political autonomy, self-determination, or independence for particular groups within the country (though these underlying issues may well be related to the humanitarian concerns that prompted the military intervention)”.<sup>32</sup>

Finally, the ICISS report draws what should be the limits of an international occupation. Beyond insisting on the participation of local actors, the authors look at the thorny, but extremely relevant, issues such as dependency and legitimacy. Their warnings are in practise reflected in several real cases such as that of Afghanistan. As described by Astri Suhrke in a FRIDE (Fundación para las Relaciones Internacionales y el Dialogo Exterior) working paper, the flow of massive funds controlled by international donors in post-conflict situations may engender situations of dependency of the local authorities which ends up de-legitimising the international intervention as well as the local authorities.<sup>33</sup>

## V. Implementation of the responsibility to protect

The repercussion the ICISS report would have was unknown following its publication on December 2001. Would the international community accept this principle as a substitute for humanitarian intervention? And perhaps more importantly, to what extent would international organisations and sovereign states be willing to legitimise it through its adoption as a legal doctrine?

The similar experience of the Brundtland Commission, which in the previous years had presented a definition of “sustainable development” to promote a more just economic growth from an ecological point of view, ensured the authors that at least the report would set off a debate in which the actors would have to think over its elements, and in the best case scenario, take sides.

With regards to the responsibility to protect, African states were the first to take sides. This extremely important support and political push was manifest in the AU doctrine, established in 2002, and the creation of the Peace and Security Council (PSC) of the African Union in 2004. It was especially significant that African states were the first to support the principle, given that they had already previously vehemently supported, through the Organisation of African States, the principle of non-interference.

In the UN, the Report of the High-level Panel on Threats, Challenges and Change, chaired by Thailand’s former president Anand Panyarachun and composed of other renowned former politicians, acknowledged the principle and supported the promotion of measures to ensure its validity:

“In signing the Charter of the United Nations, States not only benefit from the privileges of sovereignty but also accept its responsibilities [...] And in those circumstances, the principles of collective security mean that some portion of those responsibilities should be taken up by the international community, acting in accordance with the Charter of the United Nations and the Universal Declaration of Human Rights, to help build the necessary capacity or supply the necessary protection, as the case may be”.<sup>34</sup>

<sup>32</sup> The Responsibility to Protect, Op. Cit., p. 43.

<sup>33</sup> Astri Suhrke, “When More is Less: Aiding Statebuilding in Afghanistan”, FRIDE Working paper 26, September 2006.

<sup>34</sup> General Assembly, *Report of the High-level Panel on Threats, Challenges and Change. A more secure world: Our shared responsibility*, 2 December 2004, [A/59/565], <http://www.un.org/secureworld/report.pdf>, pp.21-22.

The aforementioned 2005 UN World Summit Final Document represented the political approval of the principle at the international level. Despite the support received by the AU and the High-level Panel on Threats, Challenges and Change, the principle was only approved after a long debate in which the voices of reason prevailed. Since then, it is worth highlighting the Security Council resolutions in relation to the Protection of Civilians in Armed Conflict and to the Darfur conflict.

Security Council resolution 1674 on the protection of civilians in armed conflict reasserts the references to the responsibility to protect made in the 2005 UN World Summit Final Document and urges states to fulfil their responsibilities towards their citizens as well as towards the international community. Since then, other important resolutions have been approved and the debate around this issue has continued.

Whilst states progressively understand what the responsibility to protect implies, the words of UN Undersecretary-General for Humanitarian Affairs and Emergency Relief, John Holmes, after an open debate on the protection of civilians in armed conflict, show that there is still reluctance to adopt a new vision of sovereignty:

“We should not focus too exclusively on the possible actions of last resort in the responsibility to protect. There are many stages before that in helping countries to exercise the responsibility to protect their own civilians”.<sup>35</sup>

Security Council resolution 1706 represents the first time the principle was invoked in a resolution relating to a conflict. Beyond the specific mention in the paragraphs of the 2005 World Summit Final Document, it is interesting to see how the terminology with regards to sovereignty and the responsibilities of states has changed. In the case of resolution 1706, the responsibilities granted to the United Nations Mission in the Sudan (UNMIS) authorised, in that moment, to protect civilians who were subjected to threats of physical violence, “without prejudice to the responsibility of the Government of the Sudan”.<sup>36</sup>

The previous resolution concerning Darfur signals the importance of mandates in the implementation of the responsibility to protect. In the past, mandates had not been clear enough, often allowing for “circumstances to shape the mandate and not the other way around”.<sup>37</sup> In the mandate of the United Nations Protection Force (UNPROFOR) in the Balkans, for example, the protection of civilians in “security zones” was only implicitly present. UNPROFOR was furthermore not authorised to intervene when civilians were attacked.

Nevertheless, the planning and the mandate for situations concerning the protection of civilians began to improve in the ten years between the fall of Srebrenica and the Janjaweed attacks in Darfur. Within the UN, peace operations in Sierra Leone, the Democratic Republic of Congo (DRC), Liberia, Haiti, Burundi and the Ivory Coast included terminology that authorised the protection of civilians in some cases such as the return of internally displaced persons (IDP) and the provision of humanitarian aid.

One of the factors that contributed to these changes was the aforementioned Brahimi report, which had great repercussion in the area of peace operations by urgently calling for improvement in the planning of missions (integrated missions, resources etc.) and the creation of clearer mandates and doctrines. The fundamental message was that the UN Secretariat had to tell the Security Council “what it needs to know, not what it wants to hear”.<sup>38</sup>

<sup>35</sup> “Excerpted Statements on R2P at the 3rd Open Debate on the Protection of Civilians”, 22 June 2007, [http://www.responsibilityto-protect.org/index.php/government\\_statements/](http://www.responsibilityto-protect.org/index.php/government_statements/)

<sup>36</sup> Security Council Resolution 1706, adopted by the Security Council at its 5519th meeting, 31 August 2006, [S/RES/1706 (2006)], <http://daccessdds.un.org/doc/UNDOC/GEN/N06/484/67/PDF/N0648467.pdf?OpenElement>

<sup>37</sup> Mariano Aguirre, “War and peace operations; playing on words?”, *Política Exterior* No118, July-August 2007, p. 2.

<sup>38</sup> *Report of the Panel on UN Peace Operations*, Op. Cit.

One of the areas mentioned in the Brahimi report that still needs to be worked on is the lack of a military doctrine for the protection of civilians. An excellent study by Victoria K. Holt and Tobias C. Berkman identifies the changes that are still necessary to allow missions to fulfil civilian protection mandates.<sup>39</sup> One of the fundamental conclusions is that given that peace operations are by nature impartial, they therefore inevitably faced many obstacles when using coercive force to protect civilians.

Similarly, although some states and organisations are capable of using this force and albeit the majority of active peace missions have civilian protection mandates, neither states nor organisations count with the rules of engagement to protect civilians that do exist, for example, in relation to counter-insurgency or the evacuation of non-combatants.

The UK military doctrine related to peace operations, for example, mentions the “provision of protection” but does not explain how this can be put into practice or which operational rules should apply. The same document recognises the need to elaborate on the doctrine:

“To respond to these changes [the responsibility to protect of the international community] [...] those who are tasked with, or choose to assist with, upholding, renewing or restoring acceptable governance need an expansion of the concepts and doctrine that guide their actions”.<sup>40</sup>

In these cases NGOs can play a relevant role. As William R. Pace, from the World Federalist Movement-Institute for Global Policy, indicated in a conference organised by Oxfam International on the AU and the responsibility to protect, NGOs may have a central role in the implementation of the principle by pressuring their respective governments to take the necessary measures:

“...assessments of whether capacities are lacking or need strengthening within the government to build capacity to prevent mass atrocities; national security strategies that incorporate protection of populations from atrocity crimes; coordination among governmental departments on this agenda, in particular, ministries and agencies for foreign affairs, defence and development”.<sup>41</sup>

In short, the international community, and especially armies, have to prepare themselves for operations in which the protection of civilians is a core part of the mandate. According to the Holt and Berkman report, some missions, such as the United Nations Mission in the Democratic Republic of Congo (MONUC), “operate in a gray zone between more traditional peacekeeping missions and military interventions, navigating questions of sovereignty, consent, impartiality, and mission goals”.<sup>42</sup>

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<sup>39</sup> Victoria K. Holt and Tobias C. Berkman, *The Impossible Mandate?: Military Preparedness, the Responsibility to Protect and Modern Peace Operations*, Henry L. Stimson Centre, November 2006.

<sup>40</sup> UK Ministry of Defence, *The Military Contribution to Peace Support Operations*, June 2004, [JWP 3-50], [http://www.mod.uk/NR/rdonlyres/C5125D17-9CB4-4733-AAC1-613104434BC0/0/jwp3\\_50.pdf](http://www.mod.uk/NR/rdonlyres/C5125D17-9CB4-4733-AAC1-613104434BC0/0/jwp3_50.pdf)

<sup>41</sup> Speech by Bill Pace at Oxfam International Addis Ababa conference on the responsibility to protect: The critical role of CSOs in the evolution of the responsibility to protect, 8 June 2007, [http://www.responsibilitytoprotect.org/index.php/government\\_statements/](http://www.responsibilitytoprotect.org/index.php/government_statements/)

<sup>42</sup> Victoria K. Holt and Tobias C. Berkman, Op. Cit., p. 181.

## VI. Rhetoric and capacities: the EU, Spain and the responsibility to protect

The previous section has showed that even though some progress has been made on the implementation of the responsibility to protect, there is still a lot of work to do with regards to the capacity building of international organisations and states. Beyond the case of the AU and the Darfur crisis, this section will analyse to what extent the EU and its member states, particularly Spain, have recognised the principle and have designed a strategy to create the necessary response capacities for situations involving the protection of civilians.

The EU has always supported the principle but some critiques say that the EU should adopt a more pro-active attitude so that the responsibility to protect can be more than just a principle. The first step has to be assuming the principle as its own responsibility that requires a series of efforts. ICISS co-chair Gareth Evans has criticised the passiveness of the EU, in particular of the Council and the Commission. On the one hand, according to Evans, even though they take into account the principle when developing EU missions, EU High Commissioner (and former NATO Secretary-General during the Kosovo bombings) Javier Solana and the Council should not be reluctant to invoke it.

Evans is even more critical of the European Commission: "The Commission does not seem to see itself as having any particular responsibility to take the responsibility to protect concept forward by way of anything in the nature of formal programs".<sup>43</sup> Unfortunately, evidence seems to support this mentality within the Commission. In an answer to the European Parliament, a Commission representative explained that "while the Commission welcomes the development of this norm, it is for the UN member states to act upon it".<sup>44</sup>

Even though, in fact, states are the ones who must develop national strategies, the EU should urge its member states to develop them, attempting to coordinate efforts and acting as bridge to share information. Support gestures towards the implementation of the responsibility to protect reiterated by Euro-parliamentarians should translate into Commission initiatives with this end and into the creation of capacities to allow for European missions managed by the Council to assume a civilian protection mandate with corresponding capacities.

Since the approval of the European Security and Defence Policy (ESDP) in 1999, the EU has made considerable progress in its role as an international actor. Currently, the Council manages around ten missions in places such as Afghanistan and Palestine. The 1992 Western European Union "Petersburg tasks" and the subsequent 2003 European Security Strategy describe a series of military missions in which the EU can act, including humanitarian and rescue missions.<sup>45</sup> As part of the Headline Goal 2010, the EU has embarked on the great challenge of creating around ten rapid reaction battle-groups that could potentially act in situations concerning the protection of civilians.<sup>46</sup>

These battle-groups would have similar characteristics to, and could participate in missions similar to the EU mission in the DRC in 2003. Operation Artemis, led by France, was created in response to a call by the then UN Secretary-General Kofi Annan, for an Interim Emergency Multinational Force to protect the city of Bunya, to allow for the reinforcement of MONUC

<sup>43</sup> Gareth Evans, "The Unfinished Responsibility to Protect Agenda: Europe's Role", presentation to EPC/IPPR/Oxfam Policy Dialogue, Brussels, 5 July 2007.

<sup>44</sup> Ibid.

<sup>45</sup> <http://www.consilium.europa.eu/uedocs/cmsUpload/031208ESSIIES.pdf>

<sup>46</sup> Carlota García Encina, *Headline Goal 2010: ¿Se cumplirán las promesas?* ARI 121 Real Instituto Elcano, July 2004.

<sup>47</sup> The Center for International Cooperation, *Annual review of peace operations 2007*, London: Lynne Rienner, 2007.

troops.<sup>47</sup> Acting under Chapter VII of the Charter of the United Nations, the mission included the deployment of 1,400 troops to protect civilians taking “all necessary measures”.<sup>48</sup>

Despite having participated in missions with civilian protection mandates such as Operation Artemis, the EU still lacks a military doctrine concerning the protection of civilians. In the European Security Strategy document, “A Secure Europe in a Better World”, EU High Representative Javier Solana describes a series of threats to European security, in particular, regional conflicts, failed states and organised crime.<sup>49</sup> Even though the document considers human security as a priority, there is no mention to the role the EU could play in situations primarily of protection of civilians such as cases of genocide.

The case of EU member states is similar to that of the organisation itself in the sense that even though rhetorically supporting the responsibility to protect, in practise very few measures have been taken with the aim of being prepared to respond to civilian protection missions. The case of Spain presents these characteristics: Spain pays increasing attention to its projection in international organisations such as the UN and to its role of “peace builder”. For the first time, the Master Plan in force of Spanish Development Cooperation 2005-2008 includes “Peacebuilding and Prevention of Violent Conflicts” as a sectoral strategy.

Likewise, the sectoral strategy of the Spanish development cooperation on humanitarian action unequivocally calls for the consolidation of the principle in international fora as well as in Spain:

“The establishment of a clear position with regards to military action on the grounds of humanitarian action will be encouraged so as to avoid confusion. The true implementation of the principle of the ‘responsibility to protect’ in the United Nations should be more intensely supported and, even though it exceeds the objectives of this Strategy, it should be more actively involved in the UN Peacebuilding Commission. This position, alongside coordination mechanisms, would clarify the role of the Armed Forces in these tasks”.<sup>50</sup>

However, the responsibility to protect is barely cited in relevant official documents and the ministries of Foreign Affairs and Cooperation and Defence do not seem to have understood the efforts that the implementation of the principle supposes. IECAH (Instituto de Estudios sobre Conflictos y Acción Humanitaria), a centre of analysis on conflicts and humanitarian action, proposes a starting point: “[...] we understand that a peacebuilding nation is that which has the adequate resources for peacebuilding and the prevention of violent conflict and provides them, with the aim of using these outside its national borders, thus contributing to the construction of more sustainable and secure societies”.<sup>51</sup>

Concerning the military doctrine, Spain should make progress in this area through the development - individually and under the NATO or the EU umbrella - of rules of engagement and relevant capacities. Even though some countries like Spain have participated in missions with civilian protection mandates, there are still some significant gaps in the rules that should apply in these interventions. In the 2004 document entitled “The Military Contribution to Peace Support Operations”, the UK revises its operational rules and advocates for a single peace operations concept.<sup>52</sup> Despite taking into account the activities relating to the protection of civilians, the authors themselves conclude that it is necessary to elaborate on this issue.

<sup>48</sup> Security Council, Resolution 1484 (2003), adopted by the Security Council at its 4764th meeting, 30 May 2003, [S/RES/1484 (2003)], <http://daccessdds.un.org/doc/UNDOC/GEN/N03/377/68/PDF/N0337768.pdf?OpenElement>

<sup>49</sup> <http://www.consilium.europa.eu/uedocs/cmsUpload/031208ESSIIIES.pdf>

<sup>50</sup> Sectoral Strategy of the Spanish Development Cooperation on Humanitarian Action (unpublished), [translation by the author].

<sup>51</sup> Jesús A. Núñez Villaverde, Ximena Valente Hervier and Balder Hageraats, “España constructor de paz: apuntes para una Estrategia Española de Construcción de la Paz”, *Revista Española de Desarrollo y Cooperación*, 2006, [translation by the author].

<sup>52</sup> UK Ministry of Defence, “The Military Contribution to Peace Support Operations”, June 2004, [JWP 3-50], [http://www.mod.uk/NR/rdonlyres/C5125D17-9CB4-4733-AAC1-613104434BC0/0/jwp3\\_50.pdf](http://www.mod.uk/NR/rdonlyres/C5125D17-9CB4-4733-AAC1-613104434BC0/0/jwp3_50.pdf)



The Netherlands, heavily influenced by the 1995 massacre in Srebrenica, which occurred under Dutch mandate, developed contingency plans for the protection of civilians and explicitly accepts that the protection of civilians can be the main objective of a mission.<sup>53</sup> France, for its part, endorses a principle of “active impartiality” that could justify the use of force to guarantee the protection of civilians.<sup>54</sup>

Nevertheless, most relevant is the experience of a non European country. Unsurprisingly, Canada is the country that has made most progress with regards to the real implementation of the principle. The Canadian military doctrine is a step ahead of that of other states inasmuch as it acknowledges and has developed five types of missions, which it classifies aside from a state of war: peace operations, humanitarian operations, disaster response operations, evacuation of non-combatants, and confrontation of masses.

Consequently, the EU and its member states, particularly Spain, have a lot of work to do in order to have the resources and the rules of engagement to implement the responsibility to protect. From the highest-level positions, the EU and its member states should make a more explicit and sustainable commitment to the principle. The EU should urge and coordinate its member states in order to advance in a common direction that facilitates future European missions. Spain, fulfilling its recent commitment to international peace missions, has the opportunity to play a central role in these efforts.

## VII. The responsibility to protect in practice: the case of Darfur

Since the start of the Darfur conflict in 2003, it has been repeatedly cited as the great challenge to the responsibility to protect. It is, after all, a humanitarian catastrophe in which more than 200,000 defenceless civilians have died and other 2.5 million have been displaced due to an undeniably reprehensible government. The situation has developed in a complex political situation in which a peace agreement failed and a strong international action was restrained by the economic interests of some permanent members of the Security Council. In particular, the omnipresent veto threat from China, a country which participates in 40 percent of the strong energy sector of Sudan.

What has been the general nature of the international response in over three years? The AU was the first to respond to a crisis situation and sent around 7,000 soldiers and policemen to the region, extending its mandate from protecting the monitors of the 2004 ceasefire to taking “all necessary steps [...] to ensure a more forceful protection of the civilian population”.<sup>55</sup> Both NATO and the EU have supported the mission, financing it almost entirely and providing logistical assistance. The Security Council managed to approve resolutions to impose an arms embargo, ensure the prohibition of offensive flights in Darfur, and apply political and economic sanctions to individuals connected to the government of Khartoum. In August 2007, a hybrid UN-AU peacekeeping force of approximately 20,000 soldiers and 6,000 policemen was approved.

Despite the initiative shown by the AU, the support of organisations such as the EU and NATO and the approval of coercive measures, the international response has been ineffective. The international presence on the ground is still insufficient, it has not managed to implement effective coercive measures and it looks unlikely that the newly approved force will be completely deployed and operative by the end of 2008. Can therefore one talk about the failure of the responsibility to protect in Darfur?

<sup>53</sup> Royal Netherlands Army, *Peace Operations: Army Doctrine Publication III*, June 1999.

<sup>54</sup> Victoria K. Holt and Tobias C. Berkman, *Op. Cit.*, p.123.

<sup>55</sup> AU Peace and Security Council, Communiqué of the 46th Ordinary Session, 10 March 2006.

The simple answer is no. Albeit the deficient international political commitment to Darfur, a comprehensive analysis of the last three years in Darfur reveals that the international community has also acted with caution. The division of opinions with regards to what to do in the region, the intelligent strategy of Khartoum and the fact that perhaps there was more to lose in applying certain approved measures show that to speak of success or failure in Darfur would be a simplification of the facts.

A large part of the merit of the ICISS text is that it was written with these situations in mind. The variety of measures and the eloquent considerations that accompany it are an explicit acknowledgement of the fact that the complexity of conflicts such as Darfur's has no clear answers. In the words of Lee Feinstein, "If the prevailing policy is zero tolerance for casualties, then enforcement of the responsibility to protect is an empty promise".<sup>56</sup> In the word of Kofi Annan, "The choice ... must not be between Council unity and inaction in the face of genocide, as in the case of Rwanda, on the one hand; and Council division, and regional action, as in the case of Kosovo, on the other".<sup>57</sup>

Before studying why the international response was as irresponsible as it seems at first sight, it only remains to see what has not worked. Beyond the fact that a force composed of 7,000 soldiers and policemen to protect the citizens of a region the size of France is clearly insufficient, the AU has had problems paying the salaries of its forces and has not had enough air support - an indispensable element for this type of operation.<sup>58</sup> The AU and Western donors have privately accused one another of excessive bureaucracy and corruption. Either way, it is clear that more investment and the presence of further international forces were missing.<sup>59</sup>

With regards to the aforementioned coercive measures authorised by the Security Council, these have not been applied in practise. In August 2007, Amnesty International informed that Russian arms continue to reach Darfur.<sup>60</sup> The ban on offensive flights has not been applied due to the high costs of monitoring. And with regards to economic sanctions, the repeated calls from organisations such as the International Crisis Group (ICG) for the application of sanctions to individuals connected to Khartoum have had no effect.

The majority of international analysts and public opinion agree that the measures taken against the government of Sudan have not been sufficiently harsh. In his article entitled "Why the United Nations can't save Darfur", American Eric Reeves supports an extreme version of this theory and concludes that "it has never been so obvious that only NATO military action can save Darfur".<sup>61</sup>

European Mark Burgess represents the most common position, supporting the use of sanctions and a no flying zone without excluding the possibility of a military action as a last resort.<sup>62</sup> According to a joint survey carried out by WorldPublicOpinion.org and the Chicago Council on Global Affairs in 12 countries, great majorities favour the "right" of the Security Council to authorise a military intervention in Darfur.<sup>63</sup>

And why haven't the measures approved by the Security Council been put into practise? The answer can be applied to several other world conflicts and starts to reveal why the international community has chosen caution in its response to the situation in Darfur. On the one hand, there

<sup>56</sup> Lee Feinstein, "Darfur and Beyond", CSR No. 22, Council on Foreign Relations, January 2007, p. 41.

<sup>57</sup> Ibid., p. 47.

<sup>58</sup> Alhaji M. S. Bah and Ian Johnstone, *Peacekeeping in Sudan: The Dynamics of Protection, Partnerships and Inclusive Politics*, Center on International Cooperation, May 2007.

<sup>59</sup> Interviews by the author of AU and EU officials, Addis Ababa, July 2007.

<sup>60</sup> "Khartoum defying Darfur embargo", BBC News, 24 August 2007.

<sup>61</sup> Eric Reeves, "Why the United Nations can't save Darfur: Problem resolution", *The New Republic Online*, 27 May 2006.

<sup>62</sup> Mark Burgess, "Darfur and the EU's Responsibility to Protect", *Defense News*, 25 June 2005.

<sup>63</sup> Gareth Evans, "The International Responsibility to Protect: The Tasks Ahead", Speech to The Centre for Conflict Resolution, Cape Town, 23 April 2007.

has been a lack of international political commitment. On the other hand, realpolitik dilemmas and trade-offs have resulted in an impasse situation that has gone on for approximately three years.

In the case of approved coercive measures, the UN and the international community have consciously decided not to implement them. It seems evident that both measures could have improved the situation of civilians in Darfur and would have imposed the extra pressure on Khartoum, which has been missing.

Unfortunately, however, governments such as Russia's and China's could not see beyond the multi-millionaire contracts provided for by arms sales and investments in the energy sector, respectively. Their constant threat to veto measures in the Security Council showed once again how unfair and old-fashioned this organism really is, and of course, the power of the political interests of states. In the case of the other Security Council members, these can be blamed for not having exercised enough pressure on Russia and China to fulfil these measures.

The reality is that the international community has never had a unified vision as to what would be the best strategy to follow. The case of the no fly zones as well as that of sanctions were inspired by a debate beyond the Security Council where no clear consensus emerged on the best response to the situation, given the reluctance of prominent actors and the objective of achieving Khartoum's support for a peace mission.

As indicated by Feinstein, the banning of offensive flights results extraordinarily costly and as argued by humanitarian organisations, the establishment of a no fly zone would be counter-productive given the disastrous effects it has for humanitarian work and because it is land attacks and not air attacks that constitute the greatest threat to civilians in Darfur. Likewise, the scarce Western presence in Darfur and the conflict between the AU and its Western donors with regards to late payment of salaries of African soldiers deployed in Darfur demonstrate that increasing the cost of the mission would have been difficult.

With regards to economic sanctions, when the United States approved bilateral sanctions to companies and individuals close to the government of Jartum, indicating that improvements in the behaviour of Sudan were no longer expected, the UN hesitated thinking of the well-being of Darfur in the medium and long-run. The new UN Secretary-General, Ban Ki Moon, even asked the US and the UK to hold back their plans to impose sanctions, claiming that it was important to maintain the recently achieved commitment for Jartum to accept a strengthened UN mission, and they finally consented.<sup>64</sup>

Furthermore, a resolution proposal from the EU and Canada to urge the government of Sudan to persecute the perpetrators of atrocities in Darfur was rejected in the UN Human Rights Council in November 2006. Reluctance to the idea of economic sanctions also emerged within the AU. Feeling somewhat betrayed by the lack of real support on the ground, some of the very states that were vital to overcoming the principle of non-interference and approving the responsibility to protect could have reacted negatively to measures of this sort.

In the end, and beyond the fears of the precedent that might be created within their own borders, African leaders feel that they have assumed responsibility for the Darfur conflict and should therefore be heard. In the words of Said Djinnit, AU Commissioner for Peace and Security, "We have to protect the peace and security of our continent ourselves".<sup>65</sup> Moreover, the Iraqi war has nurtured distrust in the region. In the words of Penny Lawrence, Programme Director of

<sup>64</sup> "UN chief seeks more time on Darfur sanctions", Agence France Presse, 29 May 2007.

<sup>65</sup> "Africans should support the responsibility to protect in their continent", *Daily Monitor*, Addis Ababa, 11 June 2007.

Oxfam Great Britain, in a visit to Darfur in March 2007, “I am struck by the hostility felt here against the UK government as a result of Iraq’.”<sup>66</sup>

Therefore even though it can only be speculated whether there is more to gain or to lose by authorising the aforementioned measures in Darfur, the reality is that the reactions of all relevant actors show a very complex situation in which no decision could be made with consensus or clarity. On the one hand, the tense relations between Western powers and the AU have hardened the African position urging Africans to insist that Darfur is above all an “African issue” and that the positions of African states must therefore be respected.

On the other hand, the government of Sudan has followed a cruel as well as astute strategy by playing an ebb and flow game with the international community. In several occasions, when the patience of the international community with the government of Bashir seemed to be wearing out, Bashir consented to enter peace negotiations with the rebels in Darfur or to support the deployment of a strengthened peace mission.

Parting from the fact that it is unacceptable that the most powerful states have not managed to overcome their economic interests or to achieve a greater commitment to peace efforts in Darfur, the lack of measures can also be interpreted as the international community exercising a certain degree of caution. Undoubtedly, the excessive use of prescribed measures by the responsibility to protect may be as dangerous for its future as not using them at all.

Even if the efficient application of the arms embargo, the banning of offensive military flights and the approved sanctions had improved the situation of unprotected civilians, the reality is that there have been enough international political reticence - justifiable or not - so as to understand the caution of the international community. It is to be expected, however, that the next time a conflict similar to the Darfur conflict arises, the international community must adopt a more unified and committed position from the beginning to better respond to the always urgent needs of unprotected civilians. If states do not show a clearer predisposed political willingness to protect defenceless civilians in the future, there will soon be talk of the failure of the responsibility to protect.

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<sup>66</sup> Oxfam GB Briefing Paper, *A Fair Foreign Policy*, April 2007.

## VIII. The future: conclusions and recommendations

\* The approval of the responsibility to protect entails a significant advance for the international community since the emergence of the debate concerning humanitarian intervention in the 1990s. The development of coercive and non-coercive measures that can be used by the international community, and the precautionary principles that accompany them, in cases where a state has not fulfilled the responsibility to protect its own citizens, turns the principle of sovereignty into a conditional principle, without leaving aside the concerns of states that previously supported the right to non-interference.

\* By assuming the responsibility to protect victims in other states, the international system of states ensures certain peace and stability in each member state and in the EU as a whole. In reality, there is no contradiction between the normative sphere and the realist interest of the state. On the contrary, guaranteeing an international system that protects human rights offers in the medium and long-run more stability and security for all. With this objective in mind, the General Assembly and the Security Council should make an effort to reflect the principle in their resolutions.

\* One of the main contributions of the ICISS report is how it deals with military action as a coercive measure to guarantee the protection of civilians. Apart from clarifying that military intervention must be a last resort, the report identifies precautionary principles such as proportional means and reasonable prospects. If these principles are respected, it will represent an important step forward in addressing the fears of the countries most reluctant to forget the principle of non-interference.

\* As an absolute priority of the responsibility to protect, international organisations and states should make an effort to fill the gap between rhetoric and the resources for conflict prevention. There must be strategies to implement the responsibility to protect with measures such as the creation of early warning mechanisms, support of academic institutes and NGOs and capacity building of mediators. In this sense, it is necessary to support the initiative of the ICISS co-chair and others to create a "Global Coalition for the Responsibility Protect".

\* The efficient implementation of the responsibility to protect by organisations such as the AU shows the universal power of the principle. Moreover, the increasing inclusion of the protection of civilians in the mandates of peace missions represents a positive step. However, these advances in the implementation of the principle result useless if they are not accompanied by the allocation of resources and the creation of capacities.

\* The military doctrine is one of the areas in which there is still a lot of work to do in order to ensure the effective implementation of the responsibility to protect. The inclusion of the protection of civilians in the mandates of peace missions has developed ahead of a military doctrine to face this kind of situations. International organisations as well as states should begin to differentiate between the different types of missions and to develop adequate rules of engagement.<sup>67</sup> The military doctrine implemented by Canada in the past years may serve as an example.

\* International organisations as well as governments should make an effort to make the general public aware of the responsibility to protect. Parliamentarians, other high-level civil servants and the media should promote debate around the principle at a public level and insist upon its inclusion in relevant documents. Furthermore, the work of academic institutes and NGOs should be supported in order to promote knowledge of the principle.

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<sup>67</sup> *Present and Future of Peace Operations*, FRIDE Activity Brief, June 2007.

\* The 2003 report of the Commission on Human Security led to the creation of the Human Security Unit in the UN Office for the Coordination of Humanitarian Affairs (OCHA). Similarly, the UN and other international organisations should be inspired by the ICISS report in order to create units that can act as focal points for all responsibility to protect-related issues.

\* A monitoring committee should be created within the Security Council in order to follow-up cases that are or may eventually turn into a civilian protection mission. A relevant precedent is the monitoring committee for the rights of children in armed conflict - the Working Group on Children and Armed Conflict (CAAC).

\* The Iraqi intervention and the subsequent de-legitimisation of the UK and the US should serve as a warning. The consequences of taking coercive measures - especially a military intervention - where there is international resistance may have an extremely negative effect difficult to offset. It is crucial to maintain the support of the principle from key regions such as Africa and Latin America.

\* The UK made a fundamental mistake when it attempted to justify the military intervention in Iraq on the grounds of the responsibility to protect. One of the lessons to be drawn from the Iraqi case is the need to differentiate between types of military interventions. On the one hand, security missions or counter-terrorist missions are missions such as those in Afghanistan and Iraq. And on the other hand, humanitarian missions or civilian protection missions such as Darfur.

\* The Darfur experience shows the complex situations in which missions that aim mainly at protecting civilians are carried out. Even though the response of the AU was positive, the international community has to learn from the consequences of not manifesting a unified political commitment from the beginning. The extremely precarious situation of civilians in Darfur is due, in part, to the late and insufficient response of the international community.

\* Nevertheless, Darfur also shows the difficulties in approving coercive measures against a sovereign government. It can be argued that in some cases inaction is the result of caution. Resistance from the AU and other to apply economic sanctions to Jartum is a good example. In some situations, there is more to lose than win by applying coercive measures.

\* The EU should adopt a more pro-active role in the promotion of the responsibility to protect. The Commission has the opportunity of playing a key role in the coordination of member states in order for them to develop relevant capacities. Concurrently, the Council should not be reluctant to invoke the principle in its missions and should advance in the creation of battle-groups with the capacity to implement civilian protection mandates.

\* Spain should take advantage of the increasing efforts it has directed towards enhancing its international stature to extend knowledge of the responsibility to protect within the ministries of Foreign Affairs and Cooperation and Defence. These two departments should establish communication channels in this area and create a joint strategy in order to assign responsibilities and create specific objectives such as the inclusion of the principle in official documents and the development of a relevant military doctrine. As Maria Banda recommended to the government of Canada: "... a failure to assign individual responsibilities for specific dimensions of R2P will lead to policy duplication or, worse, a policy lapse".<sup>68</sup>

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<sup>68</sup> Maria Banda, *The Responsibility to Protect: Moving the Agenda Forward*, United Nations Association in Canada, March 2007, p. 13.

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