

R2PCS Listserv

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Responsibility to Protect Engaging Civil Society

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I. R2P in the News

1. THE RESPONSIBILITY TO PROTECT AND PROSECUTE?

By Ramesh Thakur

The Hindu

10 July 2007

()Two of the most significant normative advances since 1945 are the establishment of the International Criminal Court in 1998 and the U.N.s adoption of the **responsibility to protect** norm in 2005. Discussion and analyses of the protection of civilians and the prosecution of perpetrators have hitherto proceeded along separate lines. In fact they are two sides of the same coin.

()Given the changing nature and victims of armed conflict, the need for clarity, consistency, and reliability in the use of armed force for civilian protection lies at the heart of the U.N.s credibility in the maintenance of peace and security. The need to help and protect civilians at risk of death and displacement caused by armed conflict is now paramount. Diplomats, international organisations, and NGOs alike will be judged on how well they discharge or dishonour their international **responsibility to protect**. The agenda of the Security Council, the World Bank, inter- and non-governmental humanitarian actors, international criminal justice institutions, and international civil society converge on this point. So too does that of U.N. peace operations.

()The U.N. Charter was never meant to be a tyrants charter of impunity or his constitutional instrument of choice for self-protection. The World Court handles cases between states, not individuals. Without an international criminal court that holds individuals responsible for their actions, acts of genocide and egregious violations of human rights have generally gone unpunished in the last 60 years.

()An international criminal court with universal jurisdiction has been the missing link in the system of international criminal justice. The ICCs permanence, institutionalised identity, and universal jurisdiction will enable an escape from the tyranny of the episodic and attenuate perceptions of politically motivated investigations and selective justice. It should be an efficient and cost-effective alternative to ad hoc tribunals with respect to money, time, and energy, and may also provide sensible alternatives to dubious sanctions and unilateral military retaliation.

Both the **responsibility to protect** norm and the ICC must be sensitive to some delicate judgment calls. Even when the just cause threshold is crossed of conscience-shocking loss of life or ethnic cleansing, intervention must be guided by the precautionary principles of right intention, last resort, proportional means, and reasonable prospects.

()In both tasks protection of victims and prosecution of perpetrators the application of international mechanisms comes second, only after the domestic mechanisms are either exhausted or powerless. The ICC Statute stipulates that its jurisdiction is activated only when states are unwilling or unable genuinely to investigate or prosecute. Similarly, the **responsibility to protect** concept expects and requests states first to protect their populations, and triggers international intervention only after governments are either weak and unable, or unwilling (complicit in crimes) to do so.

The problem is the atrocities committed against innocent civilians. The inter-related twin tasks are to protect the victims and punish the perpetrators. Both require substantial derogations of sovereignty, the first with respect to the norm of non-intervention and the second with respect to sovereign impunity up to the level of heads of government and state. At the same time, both require sensitive judgment calls: the use of external military force to protect civilians inside sovereign jurisdiction must first satisfy legitimacy criteria rooted largely in just war theory, while the prosecution of alleged atrocity criminals must be balanced against the consequences for the prospects and process of peace, the need for post-conflict reconciliation, and the fragility of international as well as domestic institutions.

Full text available at:

<http://www.hindu.com/2007/07/10/stories/2007071053730800.htm>

2. QUOTE BY UN HIGH COMMISSIONER FOR REFUGEES ANTONIO GUTERRES 9 July 2007

UN refugee agency chief Antonio Guterres lamented Monday that the duty once felt by the international community to protect people at risk was losing ground to the idea of national

sovereignty.

"Today, unfortunately, the concept of '**responsibility to protect**', which established itself a while ago is losing strength in the face of a reassertion of national sovereignty," he said in interviews with Portuguese media, referring to the UN interventions in the 1990s in Kosovo and Bosnia.

"We must create a balance between State sovereignty and individual sovereignty," he added, insisting that "the responsibility of the international community when it comes to certain cases of genocide and widespread ethnic cleansing needs to be translated into practice."

Source: <http://www.philstar.com/index.php?News%20Flash&p=54&type=2&sec=91&aid=2007070930>

II. **R2P and the European Union**

1. THE UNFINISHED RESPONSIBILITY TO PROTECT AGENDA: EUROPE'S ROLE

Panel Presentation by Gareth Evans

EPC/IPPR/Oxfam Policy Dialogue on Europe's Responsibility to Protect: What Role for the EU?
5 July 2007

Anyone who thinks we no longer have to fear another Holocaust, Rwanda, Srebrenica or Kosovo just hasn't been concentrating.

It has taken the world an insanely long time, centuries in fact, to come to terms conceptually with the idea that state sovereignty is not a license to kill that there is something fundamentally and intolerably wrong about states murdering or forcibly displacing large numbers of their own citizens, or standing by when others do so. With the emergence of the **responsibility to protect** (**R2P**) concept and its endorsement by the World Summit of 2005, and subsequently by the Security Council, we seem to have at last passed that milestone.

But there is still a big distance to go before we can be comfortable that emerging **R2P** situations will be understood as such; that there will be a reflex international response both among governments and publics - supportive of the need to respond appropriately, both preventively before the event and reactively after it, even when no national interests can be directly called in aid; and that the necessary policy tools and mechanisms will be in place, able and ready to be quickly mobilised.

Addressing this unfinished agenda is very much the responsibility of all of us in the international community, NGOs and think-tanks, governments and intergovernmental organisations. So far as the EU is concerned, it is clear that there is some distance to go in giving **R2P** shape and voice. Members of the European Parliament have been quite vocally supportive, and the concept periodically surfaces in resolutions and debates there. But it is not very much in

evidence at all in the work of the other main EU institutions. No doubt Javier Solana and his colleagues in the European Council are fully conscious of the principle, but they seem deeply reluctant to invoke it in any relevant context.

()In thinking about what more the European institutions, like those elsewhere around the world, need to do to translate the **responsibility to protect** norm into effective action worldwide, we need to focus on five distinct challenges which have to be met.

()At the moment it is not really anyones day-job anywhere not in the UN, not in the EU, not even in NGOs like my own to think and write and advocate full-time about how to meet these various challenges. With this in mind, to fill this gap, I and senior colleagues at the International Crisis Group have been working with like-minded NGOs, including the co-sponsors of this dialogue today, Oxfam, and governments, to establish a new lobal Centre for the **Responsibility to Protect**

, based in New York, but with a strong North-South character and outreach, to work on just these issues to be, in short, a resource base and catalyst for ongoing activity worldwide by NGOs, governments and key international organisations, including the EU.

We are presently engaged in seeking the necessary funding, are looking to have the Centre up and running by the end of the year, and will keep you posted. I hope very much that there will be interest in and support for this exercise by EU institutions, although I guess to anticipate that this support might take a financial form by the end of this year would constitute a triumph of hope over experience!

Full text available at:

<http://www.crisisgroup.org/home/index.cfm?id=4936>

2. DARFUR AND THE EUS RESPONSIBILITY TO PROTECT

By Mark Burgess

Defense News

25 June 2007

In recent months, the European Union has sought to enact laws banning the denial of past genocides. As for the existing one in Darfur, they have been far less active.

()Given that the failure to act in Darfur is a denial in itself, the union as a whole would stand accused if the genocide-denial laws sought by its current chair were followed through to their logical conclusion.

The EU's inaction is doubly damning considering that in 2005 all its members (along with other world leaders) accepted a concept that, if practiced, would prove the international community's best defense against mass atrocity crimes.

()This concept, the **Responsibility to Protect (R2P)**, arose shortly before the world became transfixed by the terrorist attacks on America of Sept. 11, 2001. It sought to reconcile the

tensions between the international community's so-called "right of humanitarian intervention" and state sovereignty, which, it was often argued, precluded any such interference.

() In Darfur, prevention has failed while the Sudanese government has clearly abdicated its **responsibility to protect**

-- an assertion that needs no further argument here.

() Targeted sanctions against the Sudanese government or other involved parties trying to act as a spoiler in peace negotiations should also be enacted, while diplomatic pressure on other players who could assist in solving the crisis, like Russia and China, should likewise be applied. If the European Union acts with one voice on such issues, its collective power will act as a force multiplier.

() Despite this, it is unlikely that such methods alone will suffice. Military intervention, or the credible threat of it, will also probably be needed. A no-fly zone is certainly called for. The more dangerous and difficult option of an intervention with ground troops should not be ruled out either.

Here again, the European Union has much to offer. Any such deployment to the region will pose huge political, logistical and operational challenges. But EU military elements - such as one of the newly commissioned battlegroups - could, acting alone or in conjunction with NATO or other forces, apply the needed pressure or buy time for other initiatives to play out.

Armed force, while a last resort, must not be ruled out. Khartoum is unlikely to be deterred or coerced by economic sanctions and diplomatic efforts unless these are backed up by the credible threat of military intervention. Such intervention, in Darfur or elsewhere, is never preferable to other courses of action - except that sometimes it is the best bad choice.

Here again, the European Union seems to be in denial, making a virtue out of a necessity when it comes to soft power and often appearing to prefer this option over all else.

Speaking in 1991 of the Yugoslav conflict, Luxembourg's foreign minister, Jacques Poos, declared: "The hour of Europe has come," and was roundly ridiculed. However, in a sense he was right. Europe just failed to recognize and discharge its responsibility.

Sixteen years and 15 countries later, much the same is happening with Darfur. The European Union has a **responsibility to protect**. It remains to be seen if it will.

Full text is available at:

<http://www.worldsecurityinstitute.org/showarticle.cfm?id=222>

III. R2P and Darfur

1. A CLIMATE CULPRIT IN DARFUR

By UN Secretary-General Ban Ki-moon
The Washington Post
16 June 2007

On 16 June 2007, The Washington Post published Climate Culprit in Darfur, an opinion article written by United Nations Secretary-General Ban Ki-moon. In the article, the Secretary-General attributes the Darfur crisis to global climate change. The Secretary-Generals controversial statements prompted several people to write responses in disagreement. The following is the Secretary-Generals article.

Just over a week ago, leaders of the world's industrialized nations met in Heiligendamm, Germany, for their annual summit. Our modest goal: to win a breakthrough on climate change. And we got it -- an agreement to cut greenhouse gases by 50 percent before 2050.

()This week, the global focus shifted. Tough but patient diplomacy produced another win, as yet modest in scope but large in humanitarian potential. Sudanese President Omar al-Bashir accepted a plan to deploy, at long last, a joint United Nations-African Union peacekeeping force in Darfur.

()Clearly, uncertainties remain. This deal, like others before it, could yet come undone. It could be several months before the first new troops arrive and longer before the full 23,000-member contingent is in place. Meanwhile, the fighting will probably go on, even if less intensely and despite our many calls for a cease-fire. Still, in a conflict that has claimed more than 200,000 lives during four years of diplomatic inertia, this is significant progress, especially considering that it has come in only five months.

It would be natural to view these as distinct developments. In fact, they are linked. Almost invariably, we discuss Darfur in a convenient military and political shorthand -- an ethnic conflict pitting Arab militias against black rebels and farmers. Look to its roots, though, and you discover a more complex dynamic. Amid the diverse social and political causes, the Darfur conflict began as an ecological crisis, arising at least in part from climate change.

()A U.N. peacekeeping force will help moderate the violence and keep humanitarian aid flowing, saving many lives. Yet that is only a first step, as I emphasized to my colleagues at the summit in Germany. Any peace in Darfur must be built on solutions that go to the root causes of the conflict. We can hope for the return of more than 2 million refugees. We can safeguard villages and help rebuild homes. But what to do about the essential dilemma -- the fact that there's no longer enough good land to go around?

()There are many other parts of the world where such problems will arise, for which any solutions we find in Darfur will be relevant. We have made slow but steady progress in recent weeks. The people of Darfur have suffered too much, for too long. Now the real work begins.

Full text is available at:

http://www.washingtonpost.com/wp-dyn/content/article/2007/06/15/AR2007061501857_pf.html

2. THE UNS BLOODY FAILURE

By Eric Reeves

The Guardian Unlimited

20 June 2007

The following is Eric Reeves response to the UN Secretary-Generals Washington Post article.

The failures of the UN secretariat in responding to the Darfur catastrophe are among the many signs that the international body remains incapable of responding to crises that entail confronting sovereign nations engaged in genocide, ethnic cleansing and crimes against humanity.

To be sure there was much unctuous talk by the former secretary general, Kofi Annan, about the "**responsibility to protect**" civilians endangered in precisely the ways that have long been so evident in Darfur and eastern Chad. But in the end, Annan left office with a savage genocide by attrition continuing, with no end in sight, almost four years after large scale conflict began in February 2003.

()It was a grim irony that during Annan's tenure the UN World Summit of September 2005 enshrined, in an "outcome document," the "**responsibility to protect**," as did Security Council resolution 1674 (April 2006). While Annan often invoked such "responsibility," it never really moved beyond exhortation. The current secretary general, Ban Ki-moon, also made the obligatory noises last October: "I will work diligently to materialise our responsibility to protect the most vulnerable members of humanity."

()And still the genocide continues, if with more chaotic violence and a fracturing of the rebel movement. Khartoum remains obdurate in its defiance of the international community, and the UN in particular. For this regime of genocidaires, the "**responsibility to protect**" means little more than protecting its own officials from being extradited to The Hague for trial by the international criminal court.

In short, there is a highly embarrassing disconnect between the rhetoric of the UN secretariat, including the secretary general's various special envoys for Sudan, and the poverty of achievement in protecting millions of vulnerable Darfuris and acutely endangered humanitarian operations.

This disconnect goes a long way to explain a truly preposterous opinion essay by Ban Ki-moon this past weekend in The Washington Post, suggesting that the real explanation for the Darfur crisis lies in global warming.

Though no scientist, I'm more than convinced that the evidence accumulated to date overwhelmingly supports dismaying predictions about future climate change.

()But the real explanation to genocide in Darfur lies not in the climate but in the ruthless arrogation of national power and wealth by the brutal regime that rules in Khartoum.

()This is well established political history, all neatly excluded from Ban Ki-moon's convenient and self-exculpatory meteorological history of Darfur. But we will make no progress in either understanding or halting the ongoing, indeed spreading, human destruction in Darfur and eastern Chad unless we look not merely to the skies but to the heart of darkness that beats relentlessly in Khartoum.

Full text is available at:

http://commentisfree.guardian.co.uk/eric_reeves/2007/06/the_failures_of_the_un.html

3. SUDAN: CLIMATE CHANGE ONLY ONE CAUSE AMONG MANY FOR DARFUR CONFLICT

Integrated Regional Information Networks

28 June 2007

The following is a report from the Integrated Regional Information Networks (IRIN), which is part of the United Nations Office for the Coordination of Humanitarian Affairs. The report assesses the validity of attributing the Darfur conflict to global climate change.

Climate change may be one of the causes of the Darfur crisis, but to consider it the single root cause would obscure other important factors and could hamper the search for solutions, climate and conflict analysts say.

A number of commentators, journalists and analysts have recently focused on competition for natural resources, increasingly scarce due to global warming, as the trigger of the conflict in western Sudan.

"It [global warming] has become such a trendy issue that everything is being packaged as climate change," said Sorcha O'Callaghan, a researcher at the UK-based Overseas Development Institute (ODI).

"Competition for resources has definitely been one of the main issues in the conflict, but undue emphasis on it, at the expense of other causes, is an attempt to simplify the crisis. The complexity of the different factors driving Darfur's conflict need to be borne in mind in efforts towards its resolution and, therefore, over-simplification should be avoided", she added.

()In an opinion piece for The Washington Post earlier this month, UN Secretary-General Ban Ki-moon wrote, "Amid the diverse social and political causes, the Darfur conflict began as an ecological crisis, arising at least in part from climate change."

()Understanding all the causes of the Darfur crisis may need a more nuanced approach. Julie Flint, who with Alex de Waal, wrote the book *Darfur: The Short History of a Long War*, told IRIN, "There is some truth in this [the link between conflict and the demand for natural resources]. The great drought and famine of 1984-85 led to localised conflicts that generally pitted pastoralists against farmers in a struggle for diminishing resources, culminating in the Fur-Arab war of 1987-89."

But attempts to paint the Darfur conflict as simply resource-based "whitewashes the Sudan government", claimed Flint. The "full-fledged tragedy" starting in 2003, was caused by the government's response to the rebellion, "for which two people have already been indicted for war crimes by the ICC [International Criminal Court] - not by resource conflict."

The ODI's O'Callaghan listed a range of causes for the conflict, none of which a sole or primary cause: "Historical grievances, local perceptions of race, demands for a fair sharing of power between different groups, the inequitable distribution of economic resources and benefits, disputes over access to and control over increasingly scarce natural resources (land, livestock and water), the proliferation of arms and the militarisation of young people, the absence of a democratic process and other governance issues ... Local issues have been politicised and militarised, and drawn into the wider political dynamics of Sudan," she commented.

Geoffrey Dabelko, director of the Environmental Change and Security Programme at the Washington-based Woodrow Wilson International Center for Scholars, noted that "competition between pastoralists and agriculturalists is key to so many conflicts in East Africa, including the crisis in Darfur. Violence between tribes and ethnic groups are the most visible dividing lines, but the stories of these conflicts cannot be told without including underlying environmental and demographic stresses."

()Dabelko, of the Woodrow Wilson Center, commented: "The challenge is to avoid over-simplistic or deterministic formulations that equate climate change inexorably with genocide or terrorism, as some less careful commentators have done."()

Full text is available at:

<http://www.irinnews.org/Report.aspx?ReportId=72985>

IV. Other Reports of Interest

1. ENOUGH PROJECT: EACEKEEPING FOR PROTECTION AND PEACE IN DARFUR: REQUIREMENTS FOR THE SUCCESS OF THE U.N. /A.U. HYBRID MISSION
eacekeeping for Protection and Peace in Darfur: Requirements for the Success of the U.N. /A.U. Hybrid Mission is written by Gayle Smith, for the ENOUGH Project. The ENOUGH Project is a joint initiative of the International Crisis Group and the Center for American Progress. n Axis of Peace for Darfur is the ENOUGH Projects 3rd Strategy Paper on Darfur.

The full ENOUGH Project report is available at:

<http://allafrica.com/peaceafrica/resources/view/00011164.pdf>