

**R2PCS** Listserv

23 April 2008

**Responsibility to Protect** Engaging Civil Society

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1. FREEDOM OF SPEECH IN RWANDA

**I. Pope Benedict XVI Backs R2P at the UN**

1. **R2P** Excerpts from Pope's Address to the UN

*Following is an excerpt from the address of Pope Benedict XVI to the General Assembly of the United Nations, delivered on 18 April 2008 at the UN Headquarters in New York*

(...) Recognition of the unity of the human family, and attention to the innate dignity of every man and woman, today find renewed emphasis in the principle of the **responsibility to protect**. This has only recently been defined, but it was already present implicitly at the origins of the United Nations, and is now increasingly characteristic of its activity. Every State has the primary duty to protect its own population from grave and sustained violations of human rights, as well as from the consequences of humanitarian crises, whether natural or man-made. If States are unable to guarantee such protection, the international community must intervene with the juridical means provided in the United Nations Charter and in other international instruments. The action of the international community and its institutions, provided that it respects the principles undergirding the international order, should never be interpreted as an unwarranted imposition or a limitation of sovereignty. On the contrary, it is indifference or failure to intervene that do the real damage. What is needed is a deeper search for ways of pre-empting and managing conflicts by exploring every possible diplomatic avenue, and giving attention and encouragement to even the faintest sign of dialogue or desire for reconciliation.

The principle of "**responsibility to protect**" was considered by the ancient *ius gentium* as the foundation of every action taken by those in government with regard to the governed: at the time when the concept of national sovereign States was first developing, the Dominican Friar Francisco de Vitoria, rightly considered as a precursor of the idea of the United Nations, described this responsibility as an aspect of natural reason shared by all nations, and the result of an international order whose task it was to regulate relations between peoples. (...) The founding of the United Nations, as we know, coincided with the profound upheavals that humanity experienced when reference to the meaning of transcendence and natural reason was abandoned, and in consequence, freedom and human dignity were grossly violated. When this happens, it threatens the objective foundations of the values inspiring and governing the international order and it undermines the cogent and inviolable principles formulated and consolidated by the United Nations. When faced with new and insistent challenges, it is a mistake to fall back on a pragmatic approach, limited to determining "common ground" minimal in content and weak in its effect. (...)

Pope's full address to the United Nations can be found at:

[http://www.un.org/webcast/pdfs/Pope\\_speech.pdf](http://www.un.org/webcast/pdfs/Pope_speech.pdf)

2. The Pope at the UN: Sensible Words Devoid of Hot Air  
World Tribune  
21 April 2008

Heralding the necessity for human rights and freedom, Pope Benedict XVI spoke before the United Nations General Assembly during his historic visit to the United States. During a magisterial address to delegates from 192 member states, the Catholic Pontiff delivered a powerful message, "The promotion of human rights remains the most effective strategy for

eliminating inequities between countries and social groups, and for increasing security."

(...) He implored, "In the name of freedom there has to be a correlation between rights and duties, by which every person is called to assume responsibility for his or her choices."

(...) Importantly the German-born Pontiff stressed the concept of the **responsibility to protect**.

"Every state has the primary duty to protect its own population from grave and sustained violations of human rights as well as from the consequences of humanitarian crises, whether natural or man-made." He beseeched, "If states are unable to guarantee such protection, the international community must intervene with the juridical means provided in the United Nations Charter." He warned "it is indifference or failure to intervene that can do the real damage." Read that again and recall Rwanda.

Fully aware of the many global crises facing governments, Darfur, West Africa, Congo Somalia, etc, the Pope though not mentioning any specific crises or cases, stated less than cryptically, "When faced with new and insistent challenges, it is a mistake to fall back on a pragmatic approach, limited to determining 'common ground' minimal in content and weak in its effect." One could easily interpret this as a rebuke to bickering UN member states who in their aim to always achieve consensus in crisis, often agree on action too little too late.

Following his speech to the delegates, the Pontiff (...) paid special tribute to the global humanitarian and peacekeeping efforts, as well as to the sacrifices of those staffers killed in the line of duty. (...)

Media release available at:

[http://www.worldtribune.com/worldtribune/WTARC/2008/mz0070\\_4\\_11.asp](http://www.worldtribune.com/worldtribune/WTARC/2008/mz0070_4_11.asp)

## II. UK Prime Minister References R2P

1. Gordon Brown's Speech to the UN Security Council on Africa  
10 Downing Street  
16 April 2008

*Following is the speech of United Kingdom's Prime Minister Gordon Brown to the UN Security Council on Africa, delivered on 16 April 2008 at the United Nations*

(...) Today there is still a gaping hole in our ability to address the illegitimate threats and use of force against innocent peoples.

It is to our shame that the international community did not act in Rwanda.

Darfur shows the urgent needs that yet have to be met.

Today there are 28,000 African peacekeepers.

But if we are to honour our **responsibility to protect** behind borders where there are atrocities, we need to ensure more systematic support for peacekeepers, and we need to build the capacity of vulnerable nations to prevent conflict.

(...) History tells us that fragile and conflict states need not only humanitarian aid and peacekeeping, they need to combine that with help for stabilisation and reconstruction.

And for countries where breakdowns occur, it is now right to agree major changes in the way the international order responds, so that we can systematically combine humanitarian aid and peacekeeping with help for reconstruction and development.

(..) And in the same way that we have military forces ready to respond to conflicts, we should agree to have civilian experts ready on stand-by to deploy quickly to help rebuild countries emerging from instability.

(...) We should also respond to the Secretary-General's offer that the UN, in support of the AU and SADC, can do a great deal to help, and I welcome the Secretary-General's statements today. (...)

Gordon Brown's full speech at the United Nations is available at:

<http://www.number-10.gov.uk/output/Page15286.asp>

### III. Crisis in Zimbabwe

#### 1. Power Clinging to False Foundations

The Star

Kader Asmal and Nicole Fritz

18 April 2008

African liberation movements brought about revolutions in government but they also revolutionized the very legal principles and precepts by which governments were to be judged. The concept of sovereignty, signalling the exercise of absolute authority and autonomy within a state's territory and long the central operating principle of international relations and law, was transformed.

No longer attaching to a putative monarch or an abstract entity, like an empire, sovereignty became to be understood as the inalienable right of the people inhabiting a state, the

manifestation of their right to self-determination.

And so there is a sad irony in the current impasse: a Zimbabwean regime using outdated, discredited notions of sovereignty, the illegitimacy of which they themselves once made plain, in order to defend what is now, in effect, an autocracy. That the Southern African Development Community (SADC), in part a response to a new international legal order invoked by a revolutionized concept of sovereignty, does not more publicly seek to distance itself from so obvious a subversion of the Zimbabwean people's democratic will makes the situation sadder still.

(...) Legitimately, SADC might have done much more. SADC leaders might, for instance, have invoked the doctrine of **responsibility to protect**. The doctrine, adopted unanimously at the UN world summit in 2005, has been said to represent one of the most significant developments in international law.

But in reality it is merely a restatement of the principle secured by the anti-colonial struggles for self-determination: that governments may only make claim to sovereignty, the right to non-interference from other states, where such sovereignty safeguards the rights of the people who inhabit the state.

The doctrine of the **responsibility to protect** takes this principle and applies it in the context of impending and actual grave human rights violations. The ongoing reports of large-scale deployment of military and paramilitary forces throughout rural areas and increasingly numerous accounts of attacks on individuals and communities for having voted for the opposition makes the principle immediately applicable to Zimbabwe.

Simply stated, the principle recognizes that states have the primary **responsibility to protect** their populations from grave human rights violations, but when a state fails to protect its population, the principles of non-intervention yield to the international **responsibility to protect**

The doctrine is not without some controversy, because, at its most extreme, it is understood to justify humanitarian intervention, specifically measures involving force. But such measures are, in fact, envisaged only as ones of last resort. And credible, responsible application of the doctrine, in fact, compels measures short of coercive intervention where such action would be effective.

Some are understandably also wary of the doctrine, believing that it may be used as a pretext for unilateral action on the part of self-interested states. But again, responsible application of the doctrine requires that any response to large-scale threats to populations take the form of a collective response.

The SADC was well-placed to coordinate just such a response. Its Organ on Politics, Development and Security Cooperation is authorized to apply measures of prevention and even enforcement, as a last resort, in carrying out its mandate of resolving conflict, which includes

intrastate conflict at the level of gross violation of human rights.

But even if there weren't this added dimension, if there weren't every reason to believe that Zimbabweans will and are being subject to state-sponsored violence and intimidation - if it were simply a matter that vote counts were being manipulated behind closed doors - then the principle at the heart of **responsibility to protect** would still matter and would still be at risk: namely, the right to self-determination. (...)

*Kader Asmal is a professor extraordinary at the University of the Western Cape and Nicole Fritz is the director of the Southern Africa Litigation Centre.*

Link: unavailable

2. Africa's Civil Society Communique on Zimbabwe  
Association of Zimbabwe Journalists  
Civil Society Organisations  
22 April 2008

*Following is the communique from the African Emergency Summit on Zimbabwe in Dar es Salaam on 21 April 2008:*

We, the 105 undersigned representatives of civil society from 21 countries in Africa, after meeting in Dar es Salaam on the 21 April 2008, and after debating, interrogating and considering the events subsequent to the 29 March 2008 elections held in Zimbabwe, and after noting the following:

the groundbreaking convening of such a diverse range of civil society organisations from all regions of the African continent, all mobilizing for a solution to the Zimbabwean crisis;

that on 29 March 2008 the Zimbabwean populace voted for change;

that there is currently a blocked process with ZANU PF attempting to stay in power through coercion. There is intimidation, arrests, torture and killing of opposition supporters, civil society activists and lawyers and this is a miscarriage of justice and further undermines the fundamental principles of democracy, rule of law and human rights;

that through the ongoing delay in announcing the presidential results and through spurious attempts by ZANU PF to have a recount in some parliamentary constituencies, the election process has been negated and any run-off as a result of a recount or an announcement of results will be illegitimate and not an expression of the free will of the people of Zimbabwe as exercised on 29 March 2008;

That the AU mediation process delegated to SADC was supposed to deliver an election that was broadly accepted by the people and that the delayed presidential announcement and

recount in constituencies has prevented such an election to the people of Zimbabwe;

that the Zimbabwe Electoral Commission (ZEC) has not acted independently and are discredited;

that the judiciary has been compromised and is not independent;

that the military is politicised and has excessive control over the government,

that Zimbabwe is in a constitutional crisis and the legal environment has been compromised and does not provide for and protect the rule of law; and

that certain international countries such as China are propping up an illegitimate regime through a range of activities from diplomatic silence to the provision of arms and ammunition to ZANU PF.

We further recognize the important role played by certain countries and people in attempting to resolve the crisis and impasse in Zimbabwe, and are encouraged by efforts and support of particular African Heads of State who recognized that the will of the people as reflected on the 29th March 2008 has been compromised in the subsequent electoral process.

We call upon the African Union to initiate and implement the following:

1. Any result emanating from the current recount should not be recognized and that the electoral crisis be resolved through a political settlement that reflects the will of the people as expressed on the 29th March 2008. To achieve this settlement, the African Union must appoint an independent high level Pan-African panel of eminent persons;
2. To prevent any presidential run-off that may emanate as a consequence of the presidential results being announced; these results are corrupted and compromised;
3. The state campaign of violence against the people for exercising their democratic rights must be condemned at the highest level of the AU;
4. The mediation efforts put forth by the Southern African Development Community (SADC) and endorsed by the African Union has failed to deliver the necessary solutions and has further compromised the will of the people. The entire mediation process has lacked transparency, neutrality, openness and consultation of the majority of the people. The SADC elected mediator has shown a clear bias to the incumbent government and he should be removed from the mediation process with immediate effect;
5. The international law principle and norm of **Responsibility to Protect** places primary responsibility in the hands of the State to protect its people from crimes against humanity, genocide, and war crimes. However, where the State itself is the perpetrator of such heinous crimes, and/or where it fails or neglects to protect its people, the international **Responsibility to Protect**

cannot be stopped by self-serving claims of sovereignty on the part of armed and predatory elites. The African Union has the

**responsibility**

to put into place measures

**to protect**

;

6. Consistent with Article 4 of the African Union Constitutive Act which provides for the "right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances", that is war crimes, genocide and crimes against humanity, we call on the African Union to protect the Zimbabwean population against the military and paramilitary retribution that communities are currently being subjected to, for voting Mr. Mugabe out of office.

7. That the AU call upon China and other countries that are propping up the ZANU PF regime to desist from any such actions.

To view the communique in full, please refer to:

[http://www.zimbabwejournalists.com/story.php?art\\_id=4008&cat=4](http://www.zimbabwejournalists.com/story.php?art_id=4008&cat=4)

#### IV. Crisis in Burma

1. International Lawyers Denounce Attempt by Myanmar Regime to Give Themselves Immunity from Criminal Prosecutions and Renew Call for Criminal Investigations

Global Justice Center

14 April 2008

The Myanmar regime, guilty of the most serious crimes of concern to the international community, has revealed that it is seeking to give itself constitutional immunity from prosecution for those crimes. The Burma Lawyers' Council, the Global Justice Center and the Burma Justice Committee denounce this attempt by the regime to avoid accountability. (...) This immunity is invalid under international law and cannot be accepted by the international community.

There is ample evidence that the military regime has committed war crimes, crimes against humanity and potentially even genocide through forced relocation, torture, rape, enforced disappearances and extermination. Perpetrators of these, the most serious of crimes, are not eligible for amnesty under international law. Moreover, the global community has a commitment under the **Responsibility to Protect** Doctrine, Security Council Resolution 1325 on women, peace and security and Resolution 1674 on the protection of civilians in armed conflict, to hold the regime accountable for the crimes committed against the people of Burma. In seeking an amnesty, the military regime recognizes that it has committed serious crimes and needs



amnesty for what it has done and is doing. The regime cannot, however, simply give itself immunity as it is seeking to do.

(...) The Burma Lawyers' Council, Global Justice Center and Burma Justice Committee therefore today make clear:

The military regime must immediately desist from committing further crimes against the people of Burma;

The military regime's constitutional process and intended amnesty fails to comply with any of the applicable international legal norms and will not have any force as a matter of law either internationally or for the future within Burma; and

As a matter of international law, the U.N. Security Council should create an Independent Commission of Inquiry to investigate the crimes and pursue criminal accountability of those members of the military regime who have committed international crimes.

Press release available at:

<http://www.globaljusticecenter.net/media/Press%20Release%202008.4.11%20Amnesty%20in%20Burma%20Constitution.pdf>

## V. Featured Reports

### 1. The Politics of **Responsibility to Protect**

Friedrich-Ebert-Stiftung

Marc Saxer

April 2008

*In 'The Politics of **Responsibility to Protect**,* Marc Saxer conducts an in-depth analysis of the political environment and the strategies of the main international actors in the struggle to strengthen the emerging **R2P** norm. The briefing paper, published with Friedrich-Ebert-Stiftung (FES), points to the shortcomings of the concept of the **Responsibility to Protect**

*and elaborates on strategies to address the R2P impasse. The report argues that it is crucial to reach a broad international consensus on how to tackle mass atrocities in internal conflicts.*

Briefing paper available at:

<http://library.fes.de/pdf-files/iez/global/05313-20080414.pdf>

## VI. Upcoming Events

1. Freedom of Speech in Rwanda  
Benjamin N. Cardozo School of Law  
30 April 2008

*A public discussion on 'Freedom of Speech in Rwanda' is to take place on 30 April 2008 at Benjamin N. Cardozo School of Law. The discussion will address, with the participation of experts in the field, the following questions:*

*\* Is it possible to use content-based restrictions on freedom of speech in order to avoid violence in a situation where incitement to hatred might lead to imminent danger that might be impossible to handle, and to create and maintain at the same time public discourse open enough to facilitate the stability of democracy necessary to avoid violence?*

*\* Is it possible to maintain restrictions on free expression intended to prevent the hate speech that led to the 1994 genocide with the democratic imperative of maintaining a pluralistic and open public discourse?*

*\* What is more dangerous under such circumstances: The content-based regulation of speech or the lack of it?*

*\* Can it help if the content-based restriction on free speech is narrowly tailored?*

*\* Would narrowing the scope of the restrictions in Rwanda help to safeguard against their abusive interpretation?*

*\* Can procedural safeguards significantly reduce the opportunity that the law against hate speech might be abused? Is it possible to provide helpful recommendations?*

For more information on venue, speakers and how to RSVP, please see:

<http://www.responsibilitytoprotect.org/index.php/pages/4>