Foreign Voices

The Responsibility to Protect (R2P):
A way forward - or rather part of the problem?

To the surprise of many observers, the principle of the "responsibility to protect" (R2P) was enshrined in the Outcome Document adopted by the heads of state and government at the United Nations Millennium +5 Summit in September 2005. The concept was initially developed in 2001 in the Report of the International Commission on Intervention and State Sovereignty (ICISS). In their report, the members of the Commission argued that when a state is unwilling or unable to protect its citizens from massive human rights violations such as genocide, crimes against humanity and war crimes, the principle of non-intervention yields to the international responsibility to protect. This embraces three specific responsibilities: the responsibility to prevent, the responsibility to react, and the responsibility to rebuild.

In this issue of Foreign Voices, **Thelma Ekiyor** from the West Africa Civil Society Institute and Professor **Mary Ellen O'Connell** from the University of Notre Dame, Indiana, discuss whether this new concept means a way forward in dealing with atrocity crimes or whether it rather causes new problems. Both authors were speakers at the International SEF Symposium 2007 on "The Responsibility to Protect – Progress, Empty Promise or a Licence for 'Humanitarian' Intervention" that took place on 29-30 November 2007 in Bonn.

Thelma Ekiyor

Executive Director
West Africa Civil Society Institute (WACSI), Accra

"Enhancing regional structures will be essential"

The debate on the Responsibility to Protect doctrine has gained momentum across the world. While there is consensus that a collective international response is needed to prevent atrocities like Kosovo and Rwanda from recurring, avoid the intervention mishap of Somalia in 1993 or the weakness of the UN's intervention in Srebrenica in Bosnia in 1995, there is little agreement that R2P is the answer. Since the doctrine was adopted at the United Nations World Summit in 2005, debates in different parts of the world have centred on the problematic reality of its implementation. Nowhere more so than in Africa, where many argue is the testing ground for R2P.

A definition that needs clarity

The literature on R2P as conceived by the International Commission on Intervention and State Sovereignty (ICISS) report makes it clear that the protection umbrella is biased towards the responsibility to prevent. However, where all preventive measures fail, then the responsibility to react can be activated after it has met a high threshold. This responsibility must be accompanied by the responsibility to rebuild. However, in discussions on R2P, this bias for prevention is often not highlighted. The focus seems to be more on the second pillar of reaction. A number of reasons have been given for this misinterpretation of the doctrine. Many commentators in the global south and particularly in Africa believe that the entire doctrine aims to serve as a camouflage for the real interventionist intentions of powerful states. In the climate of the "war on terrorism" and the general mistrust that accompanied the United States of America's disregard for the United Nations in its invasion of Iraq, this view has gained popularity, putting proponents of R2P on the defensive.

Clarifying the meaning and intention of the doctrine will not be an easy task. Memories of colonialism and apartheid are fresh in many parts of the world, like Africa, where R2P will be implemented, and the doctrine will be viewed through these old blurred lenses. Additionally, most governments and people in the global south want their voices to be heard not as peripheral interjections, but as central players in geopolitics. Thus, the conversation on R2P two years after the World Summit needs to involve building trust among various actors and including diverse viewpoints on the meaning of concepts like "responsibility" and "protection" in different contexts.

One responsibility, different interpretations

Africa has witnessed some of the world's worst violent civil wars and atrocities. Though there has been a marked decrease in the number of outbreaks of wars on the continent, there still persist intense situations that call for urgent intervention, such as Sudan, Somalia and now surprisingly Kenya. Memories of the wars in Liberia, Sierra Leone, Burundi and the Democratic Republic of Congo have led African leaders

through the African Union to commit to the "right to intervene" in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity. Thus, though many critics of the R2P doctrine in Africa denounce it as a tool to promote parochial goals, African governments seem to concur with the principle that protecting civilians from mass atrocities is an overriding responsibility. However, interpretation of that responsibility has taken different forms.

While there is acceptance that the responsibility for safeguarding international peace and security lies with the UN Security Council, limited political will in the Security Council to readily intervene in past African crises have generated support for "African solutions to African problems". The AU and Regional Economic Communities (RECs) have taken the challenge of intervening in situations on the continent and the outcomes have had mixed results. For example, the African Union Mission in Burundi (AMIB) was the first AU mission conceptualized and executed by member states. Regarded as a success, the AU managed a situation that could have led the country into chaos and destruction similar to Rwanda. The AU's ability and willingness to intervene in a situation where the government of Burundi was unable to protect its citizens, is an example of a regional body practically implementing one of the pillars of R2P.

Other examples of interventions by regional organisations across the continent have been cited as possible R2P cases, e.g. the controversial interventions of the Economic Community of West African States' (ECOWAS) Monitoring Group (ECOMOG) led by Nigeria in Liberia and Sierra Leone in the 90s were a case of a regional powerhouse and a regional organisation taking the responsibility to intervene in neighboring states. Though critics have cited Nigeria's hegemonic claims as the reasons for these interventions, the positive outcome was that they defused the situation and paved the way for stronger, well organized peacekeeping missions. Furthermore, the interventions were the catalyst for strengthening ECOWAS to serve as a regional peace and security institution able to intervene in subsequent conflicts in Guinea-Bissau.

Strengthening the responsibility to prevent

A critical point of impasse in the conversation on the interpretation of R2P is the decision on which situations meet the threshold for R2P. The prominent opposing views on this are that the norm is ambiguous on when intervention can be used; and conversely, that the norm is too narrow in its application stating that in places like Africa a broader framework that incorporates human security issues is needed, and that the international campaign for R2P is eclipsing the discourse on human security. Though pioneers of R2P posit that bringing in human security issues will dilute the focus of R2P, it might be necessary to find areas of complementarity between both concepts.

A main source of confusion on which cases qualify as R2P situations is the tendency to focus on the reaction pillar, and in particular military intervention. The threshold for military intervention is very high and includes war crimes, ethnic cleansing and crimes against humanity. However, more awareness should be raised on the availability of other measures under the reaction umbrella such as economic sanctions, diplomatic isolation, and prosecution.

Emphasis should also be placed on strengthening and promoting the prevention ambit which includes a commitment to promoting good governance, democratization, *appropriate diplomatic, humanitarian and other peaceful means*. This pillar of R2P in practice is often unheralded as it usually requires efforts that do not gain the attention of the

international media, such as the mediation role played by the ECOWAS in mitigating the tensions in Togo and Guinea in 2004 and 2007 respectively.

Sudan has been highlighted as a clear case of R2P in Africa. The argument states that the gravity of the situation in the country – genocide or otherwise (depending on who you ask) – meets the requirement of preventing crimes against humanity outlined in the World Summit outcome document. However, Sudan is proving to be a highly divisive and problematic case for R2P. On one hand, international accord exists that the inhuman victimization, rape and killings of the Darfurians in Sudan is abominable, and that the Khartoum government's unwillingness and increasing inability to protect civilians is a clear case for reaction by the international community. On the other hand, galvanizing decisive support for that reaction has been slow. The old problem of power struggles and competing agendas in the Security Council has hindered action; Russia and China with economic ties with Sudan are not in favour of a robust intervention, while the United States though speaking forcefully against the Khartoum government, is weakened by the Iraq experience and is hesitant to intervene in another Islamic State.

The responsibility to intervene fell to the AU. Though the AU was very willing to intervene in Darfur, it was severely under-capacitated and under-resourced making the African Mission in Sudan (AMIS) force unable to protect victims of the crisis. The failure to provide AMIS with adequate resources and a clear and decisive mandate undermined the AU and as the situation worsens and becomes more politicized, it is apparent that R2P has not been operationalised in Sudan.

The above examples illustrate that implementing R2P in Africa requires the active participation of regional organisations. Nevertheless, the continent's regional peace-keeping apparatus is struggling and in many cases still in the formative stages. Therefore enhancing these structures will be essential to implementing R2P. In addition, preventive arrangements such as the Continental Early Warning System (CEWS) and its regional branches, the African Peer Review Mechanism (APRM), the New Partnership for Africa's Development (NEPAD) and mediation structures like the Panel of Wise and the ECOWAS Council of Elders should be reinforced.

These organisations by and large have credibility and acceptance on the ground. Their visible roles in implementing R2P will assist in allaying the fears of those who view R2P as a tool by old colonial powers to interfere in the affairs of sovereign states.

The future of R2P

Despite the ongoing debates over R2P, what is incontrovertible is that the norm is now a part of the international relations' lexicon. The ICISS report and the subsequent World Summit outcome document provided a framework for the global community to act decisively to prevent systematic and deliberate human rights violations. However, ensuring that the norm guides policy making and practice on the ground will continue to be a challenge.

The problems facing the implementation of the concept by the world body include the threat of fatigue among the electorate in Western countries with situations in places like Africa needing urgent interventions, States' disregard for the norm and lack of political will, authorisation, and operational capacity. There is also the more practical challenge of broadly based understanding and acceptance of the norm.

The task therefore for advocates of R2P is to repackage or demystify the norm to make it relevant to all sides. Regional organisations can also play critical roles in this process, by discussing the norm in the context of regional realities and challenges. Civil society

actors have begun the process. A number of seminars organised by organisations in the global north and south have begun the process of raising awareness of the norm and promoting acceptance. These seminars have also provided a platform for exchange between actors with different views and opinions of R2P. Such platforms are important as the eventual success of implementing R2P will depend to a large extent on its acceptance by state actors and governments, non-state actors, civil society and international organisations. A global collaboration by all of these actors at different levels will serve as a monitoring and accountability mechanism on the norm to ensure that the world will truly *never again* stand by and watch man-made atrocities occur.

Professor Mary Ellen O'Connell

Robert and Marion Short Professor of Law,
Law School, University of Notre Dame, Indiana

"Opposing the new militarism"

As individuals concerned with human rights contemplate how best to implement the concept of "responsibility to protect", the time is right to advocate for an additional R2P concept: "responsibility to peace". If the point of R2P is the protection of people, of their fundamental human rights, there is almost no better way to accomplish such protection than through the promotion of peace: peace *is* the greatest human right.

It is important to speak of peace and human rights now because, since the end of the Cold War, the legal and moral norm prohibiting the use of force has been eroding. These comments address this erosion, what has contributed to it, and why we should work to reverse it. They could be entitled: opposing the new militarism.

The Idea of Peace

The eminent British historian Michael Howard reminds us in his long essay, *The Invention of Peace* (2000), that the norm of peace, which we enshrined in the United Nations Charter, is a relatively new one. In fact, it took the horrors of World War I and II to move the world to committing to the United Nations Charter with its substantive norm against war and its procedures for the preservation of peace. Charter Article 2(4) is a general prohibition on the use of force. The United Nations Security Council was designed to enforce the prohibition. The Charter contains only two exceptions to Article 2(4): force in self-defense to an armed attack and force with Security Council authorization.

Since the Charter was drafted, numerous decisions of the International Court of Justice, resolutions of the UN Security Council, General Assembly and official government statements have also confirmed the binding nature of the Charter's rules and their meaning. Indeed, the international community has repeatedly affirmed its support for

the regime of peace and the prohibition on the use of force. The most recent and significant reaffirmation came with the overwhelming vote of confidence in the Charter during the September 2005 World Summit in New York.

The New Militarism

This reaffirmation of the Charter regime for peace became necessary despite the fact that following the Cold War, the world had new hope that the Charter would be followed more strictly. In 1990-1991, the international community came together to liberate Kuwait from Iraq's unlawful invasion. That successful use of force, however, gave some the idea that is was time to use military force more, not less often. This was the thinking behind NATO's decision to bomb Serbia in March 1999 in reaction to human rights violations in Kosovo. The bombing did not have Security Council authorization. The Russians in particular had advocated against such a use of force arguing it would do more harm than good. They made clear that they would not vote to authorize the bombing in the Security Council.

The dispute over Security Council authorization of the Kosovo bombing campaign led to the United Kingdom indicating it was interested in aiding in the development of a doctrine of humanitarian intervention. Soon after the Canadian government founded the International Commission on Intervention and State Sovereignty (ICISS) to study the idea, and R2P was born. For the most part the ICISS report reinforces existing international law, especially human rights obligations of states. It does, however, include a significant departure from the Charter in the following passage:

> E.   If the Security Council rejects a proposal or fails to deal with it in a reasonable time, alternative options are:
> I.   consideration of the matter by the General Assembly in Emergency Special Session under the "Uniting for Peace" procedure; and
> II.   action within area of jurisdiction by regional or sub-regional organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorization from the Security Council.

Had this been the rule in place during Kosovo, it might have provided a legal basis for NATO's use of force. Given, however, that human rights monitors were mitigating violence against Kosovo Albanians, the situation may not have met the atrocity parameters of the ICISS report.

A great deal of attention was devoted to the R2P concept following the ICISS report. The U.S.-led invasion of Iraq in March 2003 seemed to lead to a new, general anti-war sentiment throughout the world, however, and the interest in war for humanitarian purposes seemed to wane with the rising toll of deaths, injury and destruction. The UN Secretary General's High Level Panel on United Nations Reform, reporting in November 2004, and the Secretary General's own report of September 2005, both referenced R2P but reaffirmed the need for Security Council authorization. And that is what the world confirmed at the Summit. Nevertheless, there remains a persistent view that the unauthorized use of force in pursuance of humanitarian goals is legitimate. Indeed, a view has emerged that force for a variety of goals, despite the Charter prohibition, is now lawful.

A false sense of security

The people who drafted the UN Charter had much clearer understanding of the nature of war, however, what it can accomplish and what it cannot. The Charter prohibition on humanitarian intervention is built on well-considered normative and pragmatic

underpinnings. For that reason, it has withstood until now arguments in favor of such intervention. The heart of the matter is that major military force is a poor tool for the sort of complex social problems present in humanitarian crises. The military consistently advise political leaders that using force to protect human rights is extremely difficult. The results in Kosovo bear out that advice, as do many other examples.

The cases show that military intervention for humanitarian purposes, on balance, has accomplished more harm than good. This fact rarely comes up when intervention is demanded. Rather, proponents continue to cite the Srebrenica and Rwanda tragedies. The argument is that if Western countries had used military force while the killing in those places was in progress, it could have been stopped. This argument fails to acknowledge that the presence of inadequate Western military forces helped set the conditions for the tragedies in the first place. In both Bosnia and Rwanda, lightly-armed UN peacekeepers were present. They had mandates to do more than they could. Their presence gave people a false sense of security. If the peacekeepers had not been there, people may well have done more to protect themselves. In Srebrenica, Bosnians would not have remained in the vicinity of Serb militias if the UN had not promised to protect them. In Rwanda, Tutsis may not have trusted their Hutu neighbors while Tutsi rebels were advancing on the country. The presence of UN troops in these situations, situations that lacked the conditions for classical peacekeeping, seems to have been a factor in the tragedies. Why should we expect that sending inadequate forces in the wrong conditions into future humanitarian crises will have better outcomes?

When the poor record of military force to protect human rights is reviewed, some try to counter it by arguing that states have simply failed to commit the requisite resources. Committing resources is surely part of the problem. Since states are unlikely, however, ever to commit the massive resources that may be necessary for successful humanitarian intervention, in complex multi-faction conflicts over major land-masses, this factor weighs against changing the law in favor of intervention. And even if massive resources are committed, resources alone cannot overcome the need for communities to develop their own leadership—leaders who are identified with the community they will lead and not with a foreign power. The United States has committed billions of dollars and massive numbers of troops in Iraq and yet violence, chaos, and ethnic cleansing continue at time of writing as insurgents fight the foreign invader. International law recognizes the human right of self-determination and that right is violated when outside powers determine a community's leadership.

Corrosive impact on human rights law

Inherent in the idea of humanitarian intervention is the contradiction that it is acceptable to kill and injure some, even wholly innocent people, to preserve human rights of others. In addition, the advocacy for intervening in disregard of the law is also contradictory in that international law—the treaties, customary international law rules, and general principles that establish human rights—forms the basis of the claim that it is legitimate to intervene. Advocates of humanitarian intervention fail to take into account the corrosive impact on the law of human rights when they champion the use of force in violation of the law. The arguments for ignoring the Charter in the Kosovo Crisis clearly undermined respect for the Charter on the eve of the U.S.-led invasion of Iraq. U.S. Secretary of State Colin Powell said on 20 October 2002, that the United States had the same authority to use force in Iraq that it had in Kosovo.

Force is being used today to change governments, to stop weapons development, to deal with secessionist movements, to promote religion, democracy and more—all in-

dications are that we are facing a new militarism, a new acceptance of the use of force and rejection of the norm of peace. Unfortunately, R2P may have added to the new acceptability of war.

Responsibility to peace

If R2P has contributed to the new militarism, it is a tragic irony, as the authors of R2P plainly intended only to promote human rights protection. We have seen demonstrated again and again since 1991, however, that armed conflict is connected with the gravest human rights abuse. Peace is the condition necessary to the flourishing of other rights. If proponents of R2P begin to associate it with the additional R2P, responsibility to peace, the original concept will have a better chance of succeeding in the protection of human rights. The world needs to turn back to building the norm of peace, toward creating a general norm of nonviolence. This can be achieved by advocating that the responsibility to protect human rights includes the protection of the human right to peace, especially by advocating strict compliance with the UN Charter's prohibition on war.