

Responsibility to Protect

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It is only recently that individual human beings as well as peoples in general have gained a place in international law and in international politics, traditionally the domain of states and international organisations. Civil society and non-governmental organisations play a crucial role in international issues and through the media and other communication channels people are better informed about the world around them. With this has come more respect for man and for protection of the individual, with attendant rights and obligations.

Going back in history, legal texts such as the French and US constitutions of the late 18th century have pushed the interests of the individual forward. It is, however, primarily since the Second World War that human rights have been firmly established around the world, in particular through the UN Charter of 1945, the 1948 Universal Declaration of Human Rights and the 1948 Genocide Convention. In this context special mention should also be made of the European Convention on Human Rights as it pioneered the right of the individual to bring his or her own state under international jurisdiction, through the European Court of Human Rights.

Closer to home, in Africa, our entire culture is interwoven with respect for the individual and for peoples in general. We have only to think of our common philosophy of *Ubuntu*¹ or of institutions such as the *Abashingantahe*² in Burundi. But we also think of the protection of the individual through concrete legal texts such as the Charter of the African Union or the African Charter of Human and Peoples' Rights.

1 *Ubuntu* is an Nguni word, related to *umuntu* (person) or *abantu* (people), which stands for the African philosophy and approach to life based on human interaction. As such, *ubuntu* emphasises the necessity to respect and honour every human being as one can only develop and completely succeed in life through interaction with other people: 'I am because of you are'.

2 *Abashingantahe* refers, within Burundi's historical context, to wise people, community leaders, who naturally rise up in a specific village or community through the respect and esteem of the people around them who consequently confer upon them the responsibility to ensure harmony and justice within that community. A revival of this institution has been witnessed in recent times within the context of Burundi's post-conflict reconciliation efforts. It remains important that such leaders or arbitrators rise up from a community without being officially appointed on political or other grounds.

At the United Nations it was in particular the second Secretary-General, Dag Hammarskjöld, who, very early in the history of the world body, had the insight and the political courage to give special attention to smaller nations as opposed to the main international actors and to place human beings at the centre of UN politics. Humankind was crucial to him, the protection of human rights and human development was more important than the mere juggling of interests between the superpowers or the preservation of state sovereignty. This is Hammarskjöld's main legacy to international politics, including the establishment of UN peacekeeping missions and his tireless commitment to reconciliation and conflict resolution, ending in his last mission to the Congo in 1961.

Looking after the wellbeing of fellow human beings is first of all a duty and a moral obligation. It is, however, also an economic and social necessity. We live in a highly interdependent and profoundly challenged world, which no longer accepts political failure or economic mismanagement and which counts on every single one of us to contribute to a stable political and economic environment.

The rise of the individual on the international scene, however, also forces us to re-evaluate and rethink the concept of the sovereignty of states, especially in Africa, where sovereignty has a special and cherished, almost sacred, meaning in the wake of new-found statehood after decolonisation. Giving attention to the individual need not mean any erosion of the concept of sovereignty. On the contrary, sovereignty has only to be redefined as new responsibilities fall upon states and governments with respect to their citizens and inhabitants. States have the responsibility to protect.

What has brought us this far? Undoubtedly the gradual awareness of atrocities committed during colonial times, the crimes against humanity of the Second World War, the massacres in Cambodia and Yugoslavia, as well as the repression exercised by several former Latin-American regimes, brought the world to a realisation that such things could no longer be tolerated. And indignation continues, even today, with respect to the situation in the southern parts of Sudan, in Somalia, and so on.

However, what moved the international community onto a new level of awareness and action was the genocide in Rwanda and the ongoing feeling of guilt at having done the wrong thing – or not having done anything at all, or having withdrawn troops and support that could have prevented massacres and killings.

An international conference in 2000 in Canada (the International Commission on Intervention and State Sovereignty – ICISS) introduced for the first time the doctrine of Responsibility to Protect (R2P). This was an innovative approach which needed some time to mature. It gave new meaning to state authority, upheld for centuries. For the first time, it was clearly spelled out that states had a primary and sovereign obligation to protect their own people. Sovereignty is a responsibility rather than a right. The international community should assist states to put the necessary environment in place to fulfil this obligation. Failing to protect – or worse, turning against your own people – places special responsibility on the entire international community to intervene and protect the populations concerned through a series of well-defined measures under the umbrella of the UN Security Council.

Such measures range from diplomatic engagement, pressure, sanctions and, as a last resort, military intervention, to oblige states to protect their people. The conference also made it perfectly clear that an R2P intervention could only be driven by the UN Security Council. It is important to note that R2P thus introduced a generally acceptable form of intervention and, in doing so, offered a valid and long-awaited alternative to the concept of humanitarian intervention, which had come under criticism as it was being used without a clear political framework and legal backing.

It needs to be emphasised that the African Union (AU) associated itself at a very early stage with the need to protect human beings and peoples. Even before the ICISS took place, the AU Charter had already stipulated the protection of human rights and peoples as a principle objective of the Union, with the right to intervene pursuant to a decision by the Assembly. Later on, the Ezulmini consensus welcomed the R2P

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doctrine as a tool to prevent atrocities. In doing so, the AU dramatically shifted from non-intervention in internal affairs, as advocated earlier by the OAU, towards non-indifference and, even, collective responsibility. Furthermore, it needs to be pointed out that it was largely due to the support and commitment of the African states that the doctrine of R2P was ultimately adopted in the UN.

It was only in 2005 through the report of the World Summit that the UN first recognised the principle of R2P, each state accepting to protect its own people and the international community being prepared to take collective action in case of violation. The subsequent reference to R2P in Security Council resolutions gave force of international law to the doctrine. The General Assembly, finally, reaffirmed R2P in 2009 (A/RES/63/2009) and a general debate on the subject took place in 2010. The Secretary-General invited regional groups to assist in further defining the doctrine and in elaborating acceptable rules of procedure.

Meanwhile, the doctrine has been invoked on several occasions by different international actors to protect people in imminent danger. The Security Council referred to the doctrine when deciding to intervene in the crisis in Darfur (Resolution 1674) and to extend its mission in the former southern Sudan (now independent South Sudan) (Resolution 1755). In both cases reference was made to R2P only as a background to decisions on humanitarian aid or peacekeeping. Furthermore, both cases involved consent on the part of the government concerned.

It is, therefore, in the case of Libya, that the Council for the first time not only refers to R2P but uses the doctrine as the basis to intervene in a country, without the consent of the government. It is also the first R2P case of armed intervention, through NATO, bringing the doctrine fully to everyone's attention, resulting in widespread criticism and comment, which emphasises more than ever the urgent need to refine its implementation.

To a certain extent, it is unfortunate that R2P has been brought to the test in such a high profile conflict, involving a charismatic African leader and evoking a mixture of reactions and emotions which have, meanwhile, far removed the issue from the very essence of R2P. Irrespective of criticism, R2P is here to stay as it is our ultimate tool to, finally, give full attention to the protection of human and peoples' rights.

For Africa and the AU it is the ultimate test to determine whether the continent really believes in the need to protect, even if a long-term leader, to which many owe loyalty, has to be disposed. Is one really ready to sacrifice the holy principle of sovereignty for the benefit of African

peoples? Is one really ready to react without delay, even diplomatically, and condemn gross violations of human rights by fellow leaders?

As long as this is not clear, there will be a void, a vacuum, on the international scene, which will be filled by other actors, as was the case when NATO responded to the call when the Libyan leader turned against his own people in their search for dignity and freedom.

After Tunisia and Egypt, the crisis in Libya should not have come as a surprise to the AU. It did, however, come as a surprise that other international actors stepped in. Africa must adapt to the speed with which situations unfold and decisions are being taken in the world of today. Instead of focusing on a missed opportunity in Libya, Africa should seize the opportunity to meet the need for a better regulated R2P doctrine.

Africa should now come forward as it is directly concerned. Responding to the Secretary-General's standing request to further elaborate the doctrine, Africa should present a valid project around R2P, defining actions, for example placing emphasis on diplomatic consultations and reconciliation. It should make proposals around the decision-making process and the implementation of R2P, giving the doctrine an African stamp. Most importantly, it should without delay lay down the groundwork for an African early-warning system.

Especially South Africa should play a prominent role in this initiative, as our country enjoys the full support of the African continent as a non-permanent member of the UN Security Council. It could make history and give lasting meaning to Pretoria's second mandate on the Council.

The AU and South Africa, however, should not limit their action to diplomatic proposals but should give proof of their willingness to remind leaders of their responsibility to protect and react when people are at risk. Several situations come immediately to mind where Africa can give proof of its genuine commitment to the doctrine of R2P and place human dignity above state sovereignty and blind respect for established leaders. There is the political crisis in Malawi, there is the plight of the people in the southern parts of Sudan and there is the famine in Somalia.

Indeed, what is needed is not so much talking and planning or supporting R2P in the UN General Assembly, it is above all the political will to take it seriously and act with determination.