A conceptual safari
Africa and R2P

Yolanda Spies and Patrick Dzimiri

Abstract: The Responsibility to Protect is a new human security paradigm that re-conceptualizes state sovereignty as a responsibility rather than a right. Its seminal endorsement by the 2005 World Summit has however not consolidated the intellectual parameters of the norm. Neither has it succeeded in galvanizing R2P's doctrinal development; hence the January 2009 appeal by the UN secretary-general for the international community to operationalize R2P at the doctrinal level, in addition to at institutional and policy levels. R2P represents a critical stage in the debate on intervention for human protection purposes, but its key concepts require more exploration. Africa is a uniquely placed stakeholder in R2P on account of its disproportionate share of humanitarian crises and because Africans have played key roles in conceptualizing the norm. The continent should therefore not just offer an arena for, but indeed take the lead in, the conceptual journey that R2P's doctrinal development requires.

Keywords: Africa, doctrine, intervention, humanitarian, human security, norm, Responsibility to Protect

Introduction

The Responsibility to Protect (R2P) is a term coined by the International Commission on Intervention and State Sovereignty (ICISS), whose 2001 report has become a landmark in the protracted and bitter global debate on humanitarian intervention (HI). The ICISS attempted to transcend the narrow argument about non-intervention versus right of intervention in the affairs of sovereign states by replacing the notion of "right" with that of "responsibility" and concluded that, in situations where a state is unable or unwilling to fulfil its primary duty, namely to protect its own people, the principle of non-intervention yields to responsibility borne by the wider international community. R2P thus pins the responsibility to

protect citizens to the state at the national level and the United Nations (UN) (through its Security Council) at the international level, in the process bridging the conceptual divide between the jurisdiction of the international community and the sovereignty of states (Thakur, 2006, p. 247).

The guiding principles of R2P were adopted by the largest gathering of world leaders ever assembled, the UN's 60th-anniversary World Summit in September 2005. Heads of state and government agreed that "each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity" and undertook to "accept that responsibility" and to "act in accordance with it" (UNGA, 2005, par. 138). They also expressed their preparedness "to take collective action, in a timely and decisive manner" (par. 139) to give effect to this pledge.

This unambiguous commitment should have set the stage for the operationalization of R2P, yet the nascent norm has been dogged by controversy and its implementation has been lagging. Thus on 12 January 2009, UN Secretary-General Ban Ki-Moon submitted a lengthy report on the implementation of R2P and appealed to the international community "to give [it] a doctrinal, policy and institutional life" (par.1.2). His call to action was acknowledged later that same year, if rather tersely, by General Assembly Resolution 63/308 (7 October 2009).

The functional semantics of Ban's report on the implementation of R2P barely concealed the magnitude of the intellectual challenge he posed, especially as concerns the doctrinal dimension of R2P. If a norm is understood to be "a standard embodying a judgement about what should be the case" (McLean, 1996, p. 344) and a doctrine to be "a belief, or system of beliefs, accepted as authoritative by some group or school" (Princeton University, 2010) it follows that norms and doctrine at the international level denote inter-subjective understandings among states. The "doctrinal life" Ban has called for thus requires international consensus on the norm itself, whereas the "policy and institutional life" requires a more mechanical implementation of the (agreed upon) norm.

While the policy and institutional implementation of R2P will no doubt proceed asymmetrically in various parts of the world, it is clear that a global effort is required to refine the conceptual parameters of, and forge a normative consensus around, R2P. - Ban (2009, par. 1.2) has issued a specific call to regional groups to assist with this effort, and this article will join the discourse by offering an African perspective. It will argue that the continent offers an ideal arena for this conceptual safari,[1] as it contains a disproportionately large number of potential case studies for R2P application. It will also trace the African intellectual roots of R2P and indicate

why the continent is a uniquely placed stakeholder, and why its leaders as well as citizens could and should act as catalysts in the conceptual development of R2P.

Humanitarian intervention: The conceptual journey thus far.

The re-emergence of ethical considerations in the post-Cold War era has caused a renaissance in the normative paradigms of International Relations (IR) theory and has prompted renewed scrutiny of the obligations intrinsic to statehood. As members of international society, states are subjects of international law – a status that denotes symmetry between rights and duties. The latter requires adherence to legal obligations under international human rights and humanitarian law, not only as concerns the domestic affairs of states, but also as an imperative in their transnational and international relations.

The debate around humanitarian intervention in cases where states shirk sovereign duty gained momentum during the past few decades, aided by public awareness of human atrocities that increasingly are televised in real time around the globe. During the late 1980s, Mario Bettati and Bernard Kouchner's exposition of the "right to intervene" posed a bold challenge to the moral exclusivity and political-legal sanctity of state sovereignty. At the same time, in the field of IR, the emerging human security paradigm sought to deconstruct the state-centric realist conception of security. The ensuing debate also affected UN introspection of its failed first-generation peacekeeping efforts, specifically in African crises. Boutros Boutros-Ghali's 1992 "agenda for peace" eloquently articulated these conceptual developments and placed the idea of pro-active and preemptive peace-building on the global agenda. The genocide in Rwanda during 1994, enacted in full view of horrified but passive international observers, was a damning exposé of collective political hand-wringing in the face of man-made catastrophe.

International guilt over Rwanda accelerated the establishment in 1998 of the International Criminal Court (ICC)[2] with jurisdiction to punish individuals who had committed crimes against humanity, war crimes, and genocide. The following year, in response to a *déjà vu* crisis in the Balkans, the North Atlantic Treaty Organization (NATO) intervened in Kosovo. UN Secretary-General Kofi Annan promptly ordered a staff report on intervention, effectively to reinterpret the traditional understanding of sovereignty. In a speech to the General Assembly on 20 September 1999 he juxtaposed two subtexts of sovereignty, namely that of the state versus that of the individual, and proclaimed that "the State is now widely un-

derstood to be the servant of its people and not vice versa" (Annan, 1999). This interpretation would have humanity prioritized, rather than any form of political organization. It was Annan's repeated pleas to the international community to confront the vexing issue of when it is appropriate for states to take coercive action against another state for the purpose of protecting people at risk that saw the launch of the ICISS during 2000. Its subsequent report has become a decisive moment in the reconceptualization of humanitarian intervention.

During September 2003, Annan announced his intention to convene a high-level panel to advise him on critical peace and security issues facing the UN and the institutional responses required to deal with such challenges. The panel's resulting recommendations (Annan, 2004) informed his seminal 2005 report *In larger freedom: Towards development, security and human rights for all.* The report offered a textbook example of IR's new human security paradigm, with its holistic and nuanced perspective on matters of international peace and security.

If ethics in IR theory has been in the ascendancy however, the subject of humanitarian intervention[3] has met with formidable theoretical as well as practical opposition. This has happened despite the ICISS having deliberately dispensed with the term "humanitarian intervention," replacing it with "intervention for human protection purposes" to underscore R2P's implication of military means only as a last resort. The mere retention of the option of military coercion within R2P has nonetheless placed the concept on a collision course with the Westphalian principle of state sovereignty, a cornerstone of the international system since 1648.

Within the traditional paradigms of IR, critics argue that any breach of the non-intervention doctrine will subvert the structure of global politics, if not dismantle the international order itself. A more cynical (often spurious, but nevertheless compelling) objection concerns the issue of interveners' motives. Realists believe that unless vital interests are at stake, states will not intervene for the primacy of humanitarian motives. Their scepticism about altruistic motives is echoed by neo-Marxists and their intellectual kin, who believe that humanitarian intervention contravenes states' right of self-determination and masks the imperialist agenda in post-colonial states. Hence the fierce opposition to any such initiatives by communist (and their successor) states such as Russia and China[4] (Sarkin, 2009, p. 14). Even pluralists, who otherwise would embrace a cosmopolitan approach to universal human rights, are unnerved by the concept: it appears to infringe on the social contract that endows a state with its moral right to autonomy.

The state-centric, one-size-fits-all notion of sovereignty has been embedded in the UN Charter for the past six decades (as can be expected of

an IGO charter). Yet even at the heart of the world's only universal "constitution" there exists tension: as Bellamy (2009, p. 28) points out, it refers to "we the peoples" and not "we the governments." This begs the question of who is sovereign – the state or the people?

For post-independence Africa, where sovereignty has been embraced with ideological fervor, this issue is particularly thorny. Several of the continent's new states are weak, often with fragile national identities, and for the governments of such states, sovereignty offers a political raison d'être. Conversely, R2P represents a potential existential crisis. As Christian Reus-Smit (2009, pp. 222–223) reminds us, normative and ideational structures affect political actors in terms of "how they think they should act, what the perceived limitations on their actions are and what strategies they can imagine, let alone entertain, to achieve their objectives. Institutionalized norms and ideas thus condition what actors consider necessary and possible, in both practical and ethical terms."

The contemporary realities of phenomena such as "failed states" raise serious questions about unconditional sovereignty and the rights associated with this de jure status. In addition, the effects of globalization have rendered IR increasingly attentive to the role of non-state actors in coercive measures that cause or solve global problems. Entities that act on behalf of, or in blatant disregard of, the authority of states (such as terrorist or criminal groups) cannot but have an impact on the conceptualization of sovereignty (as discussed by Keohane and Holzgrefe, 2003). Not only in Africa, where many states enjoy de jure rather than de facto sovereignty, but indeed at the global level the accountability of non-state actors and their treatment under international law pose serious questions about the state- driven operationalization of a normative regime such as R2P.

If the traditional rationalist paradigms of IR have proved uncomfortable with theorizing on HI, the other end of the IR spectrum, namely the revisionist approaches contained in post-positivist, critical theory, have been too meta-theoretical in focus to address the compelling practical implications of HI. The space between rationalist and critical IR theorists has been filled by social constructivists, who do not reject empirical analysis as critical theorists do, nor take as a given the political identities and interests that rationalists see as a static part of the world – including institutions such as sovereignty. As Alexander Wendt (1992, p. 406) famously claimed, it is through reciprocal human interaction that social structures are created, and from these social constructs that identities and interests result. Of importance to the HI debate is that constructivists, by building on the work of the English School and its intellectual commitment to international society and the rule of law in international relations, have elevated normative theorizing to center stage IR: they have argued that in-

stitutionalized norms (can and should) mould the identities and interests, and ultimately the actions, of political actors (Barnett, 2007).

Reus-Smit (2009, p. 233) points to the growing body of constructivist work on international law, "an institution intimately related to the politics of norms, legitimacy and power." It is the legal perspective on HI that has anchored universal concern about the legitimacy of intervention in the domestic affairs of states. The report of the ICISS did, in fact, adroitly preempt much of the criticism launched against it. Crucially, it emphasized that R2P does not prescribe a knee-jerk military intervention, nor does it undermine the authority of the Security Council. Moreover, it does not present a polarized choice of non-intervention versus military intervention. Rather, it offers a continuum of measures to address areas of concern, starting with, and emphasizing that the most important of all is, the actual prevention of humanitarian crises. As such R2P is a continuous obligation on states and the community of states, one that requires vigilance and in some cases pro-active efforts to protect humanity from avoidable catastrophe.

Africa: not just an R2P arena, but an R2P actor

Africa enjoys the unfortunate distinction of dominating the Security Council agenda on account of its sheer number of unresolved conflicts and humanitarian crises (Adebayo, 2006, p. 19). As a result, most of the UN's humanitarian efforts and its largest, most numerous peacekeeping missions are based in Africa. It should follow logically that Africa, rather than any other region of the world, would benefit from R2P application in the aftermath of the World Summit's endorsement. However, as the political maneuvering[5] around the Darfur and Zimbabwe crises (to name but two examples) has shown, this has not happened.[6] African opponents of R2P assert that the new concept is a foreign imposition and yet another excuse for self-interest driven intervention in African affairs. This Trojan Horse allegation is not just a political ruse but an insult to Africa's fundamental contribution to the development of the concept. It also, rather presumptuously, implies that ordinary Africans see R2P as Western-centric or against the global South. This notion is refuted by a 2005 study by GlobeScan and the Program on International Policy Attitudes, which found that 65 per cent of polled Africans were in favor of UN military intervention to prevent human rights abuses, as opposed to only 19 per cent who were against it. Indeed, the poll found that while African support for intervention was much higher with UN authorization when it came to severe human rights abuses, the polled Africans also did not reject the idea of a

single state being able to intervene even without explicit UN approval. The "Africans" who are most outraged by the idea of R2P would seem to be those most aware of neglecting their own responsibility to protect and who most fear exposure of the (actual) skeletons in their closets.

Africa, as much as any other region of the world, and perhaps to a larger extent than any other continent, can claim ownership of the R2P idea. Henning Melber (2009, par. 8) observes that during subsequent General Assembly debates "the pioneering role of African states in the norm-setting process [of R2P] was acknowledged." This raises the first consideration in this regard, namely Africa's contribution to the genesis of the concept. It was renowned Sudanese diplomat and scholar Francis Deng who pioneered the linkage between sovereignty and responsibility in a 1995 article, "Frontiers of Sovereignty."[7] The contribution by Deng informed his selection during May 2007 as the UN Secretary-General's Special Adviser on the Prevention of Genocide. In fact, with his appointment, the position, which had been in existence for three years, was upgraded to that of Under Secretary-General, and its associated responsibilities were increased.[8]

Second, although the now-defunct[9] Organization of African Unity (OAU) was infamously ineffectual in resolving crises on the continent, it should be recalled that several of its statesmen were marking the pace of the normative debate on intervention for human protection purposes. As far back as 1998, OAU Secretary-General Salim Ahmed Salim said "[w]e should talk about the need for accountability of governments and of their national and international responsibilities. In the process, we shall be redefining sovereignty" (Sarkin, 2009, p. 9). South African President Nelson Mandela echoed these words at an OAU summit in Ouagadougou, Burkina Faso, when he stated unambiguously: "Africa has a right and a duty to intervene to root out tyranny… we must all accept that we cannot abuse the concept of national sovereignty to deny the rest of the continent the right and duty to intervene when behind those sovereign boundaries people are being slaughtered to protect tyranny" (CCR, 2007, p. 14). His words may as well have been the preamble to the ICISS report.

A third consideration concerns the priority of the debate on the UN agenda. Boutros Boutros-Ghali and Kofi Annan were the first Secretaries-General of the UN to address, at their personal executive level, the evolving notions of sovereignty and humanitarian intervention. They also happen to have been the first two (and thus far only) African Secretaries-General of the organization. Kofi Annan's relentless efforts in this regard were acknowledged when he was awarded the 2001 Nobel Peace Prize.[10] As the selection committee stated, he was chosen because "[i]n an organization that can hardly become more than its members permit, he has made clear

that sovereignty cannot be a shield behind which member states conceal [human rights] violations" (Norwegian Nobel Committee, 2001).

Fourth, the establishment of the ICC has special significance for Africa. African states, with South Africa taking a leading role, were active in the multilateral diplomatic process that resulted in the establishment and implementation of the court. In fact an African state, Senegal, was the first to ratify the Rome Statute on 2 February 1999 – even before the court's host state, Italy, did so (Coalition for the ICC, 2010). By September 2010, 31 African states had ratified the treaty, more than from any other region in the world. A further 12[11] African states were signatories to it, implying their acceptance of certain obligations under international treaty law. This means that an overwhelming majority of African states – 43 out of the 53 that are also members of the UN – have committed to the Rome Statute, or signaled their intention to do so (ICC, 2010). The current deputy prosecutor of the ICC is Fatou Bensouda, a lawyer and former minister of justice of the Gambia. She has expressed her dismay at allegations that the ICC is deliberately targeting Africa, noting that it is precisely African initiatives that have brought to the ICC the cases against African perpetrators of crimes against humanity (Hosken, 2009). Important for the continent is also the fact that South African Judge Navi Pillai was elected to the first ever panel of judges of the ICC, from where she was recruited to serve, as from 1 September 2008, in her current, even more focal position, as UN High Commissioner for Human Rights (OHCHR).

In the fifth place, the African Union (AU) has distinguished itself as the first inter-governmental organization (IGO) to condone humanitarian intervention in its charter – a major departure from its predecessor's strict nonintervention principle (Mwanasali, 2008, p. 42). Article 4(h) of the AU Constitutive Act (2000) bestows on the organization the right to intervene in humanitarian crises that are triggered by war crimes, genocide, and crimes against humanity – the very crimes specified by the Rome Statute. It actually transcends the scope of R2P by allowing for intervention also in cases where there exists "a serious threat to legitimate order." The act thus endows the organization with the responsibility to override the non-interference principle in "grave circumstances" (Koko, 2007, p. 3). Of particular significance is that the AU asserted this right – what former AU Commission Chairperson Alpha Oumar Konaré calls *ingérence courtoise*, or courteous interference – a year before the ICISS report on R2P was issued and five years before the endorsement of R2P by the World Summit. Musifiky Mwanasali (2008, pp. 9, 41) calls this "a movement from non-interference to non-indifference" and "the dawn of an interventionist phase in the continental management of peace and security." During May 2004 the AU's Peace and Security Council (PSC) was established to pre-

vent, manage, and resolve conflict on the continent, a development that the Cape Town-based Centre for Conflict Resolution (CCR) refers to as "a bold institutional commitment" to the new continental norm and "a source of authority for intervention on the basis of civilian protection" (2007, p. 20).

A sixth consideration draws on the observation by Mwanasali (2008, p. 52) that the AU, by virtue of its integration imperative, "should have more powers and a greater moral authority that would justify intervention, however courteous, in its members' domestic affairs." Africa's yearning for unity has been a leitmotif in the continent's politics, and this should make the AU all the more determined to defend on a collective basis the human rights of its people, not regardless of but precisely because of their geopolitical divisions. A useful study on the transnational diffusion of norms in the context of regions has been done by Amitav Acharya (2004). His research, focusing on Southeast Asia, found that local agents "reconstruct" foreign norms to fit in with pre-existing local cognitive identities, so that "congruence building thus becomes key to acceptance" (p. 239). Keeping in mind that R2P is not, strictly speaking, a "foreign concept", it is nevertheless important to consider Africa's preexisting and inclusive sociopolitical norms, notably the tradition of *ubuntu* (a Bantu word which refers to the affirmation of humanty through the acknowledgement of others)[12], which make the continent a natural geophilosophical home to a concept such as R2P.

As a seventh point, it is noteworthy that the ICISS was co-chaired by an African, the veteran Algerian diplomat and longtime UN adviser on Africa, Mohamed Sahnoun. He was one of the 12-member commission's two African members, the other one being Cyril Ramaphosa from South Africa, an astute politician-turned-business tycoon and mediator with continent-wide credentials. The commission itself therefore was sufficiently representative to reflect, inter alia, an African perspective.

Finally, the conceptual development of R2P is being continued by a host of African intellectuals who support the indivisibility of human security and the notion of "people's sovereignty" and are thus building on and refining the work of the ICISS. Malawian Dan Kuwali (2009), for example, has investigated the AU's prospects for effective implementation of R2P and written a thesis on the principle of persuasive prevention, which posits a pro-active rather than reactive response to humanitarian crisis by Africa's regional organizations. The growing volume of African civil-society voices is encouraging: until recently the articulation of African political norms was mostly executive-driven, rather than the product of a grassroots consensus finding its expression at the eventual political summit. Ironically, the R2P endorsement by the World Summit was reminiscent of this top-down African approach, and the inverted global vetting process

explains why global consensus around the concept is still lacking at the functional level.

Developing the doctrinal dimension of R2P

Damien Helly (2008, p. 1) notes that R2P to some extent has become a "victim of its own success" because it has raised expectations that have not been met. These expectations pertain to the implementation of the concept, which requires a specific effort to convert the idea into practice in such a way that its effect can be observed and evaluated. In the case of R2P, conceptual implementation as well as development thereof is required at the global, regional, and also at the national level.

At the global level, the UN has driven and is still driving the process. In the wake of the 2005 World Summit, two new UN entities were institutionalized, the UN Human Rights Council and the UN Peacebuilding Commission, both of which reinforce the R2P concept. At the end of August 2007, Secretary-General Ban introduced the position of Special Advisor on the Responsibility to Protect, in addition to and with the aim of supporting the office of Francis Deng, and with the specific mandate to work on the "conceptual development and consensus building" for the R2P. US academic Edward Luck, who had been an ICISS commissioner, was appointed to the position, at the level of assistant secretary-general.

However, with few exceptions, efforts to operationalize R2P at the regional and the national levels are lagging. In this regard, and specifically in the context of Africa, the following propositions are offered:

Communicate the international legal dimension of R2P

Despite the ongoing debate around R2P's exact international legal standing, policy-makers (and the people who have to implement, or abide by, their policies) should be reminded that R2P is not a political option – it is firmly rooted in international law. As many commentators point out, R2P has built on, rather than detracted from, the principles of international law as enshrined in much wider and preexisting conventional and customary international human rights, refugee, humanitarian and criminal law, wherein states have the obligation to prevent and punish large-scale human atrocities (Buchanan, 2003; Wheeler, 2002). It demands action only in conformity with the UN Charter.

The fact that the concept was endorsed unanimously at the 2005 World Summit and subsequently reinforced by various Security Council resolutions[13], renders it a part of the new global governance trend in international

relations. Even without an enforcement mechanism – a general weakness of international law – non-adherence carries the specter of ostracism from the community of civilized nations. Malcolm Shaw (2003, p. 10) refers to the "doctrine of consensus" within the international community, which "reflects the influence of the majority in creating new norms of international law and the acceptance by other states of such rules. It attempts to put into focus the change of emphasis that is beginning to take place from exclusive concentration upon the nation-state to a consideration of the developing forms of international cooperation where such concepts as consent and sanction are inadequate to explain what is happening."

Another legal consideration is the AU membership of the majority of African states. Sarkin (2009, p. 4) reminds us that states, without necessarily setting out to do so, limit their sovereignty every time they ratify an international treaty or join an international organization. Fifty-three African states[14] have thus subscribed to the AU's explicit delimitation of sovereignty as "conditional and defined in terms of a state's capacity and willingness to protect its citizens" (Powell, 2005, p. 119).

The concept must be "nationalized"

Following on the above, African governments are therefore required to legislate compliance with R2P obligations, as indeed they are required to do with all international norms under human rights and humanitarian law, which need to be embodied in national legislation. But legal steps are only the most basic requirement; in order to domesticate the norm and develop its doctrinal dimension, R2P must also be taught and researched in the public as well as private domain.

Awareness of the norm should indeed be fostered at all levels of society, just as democracy and human rights have been embedded in sociopolitical discourse, even at the elementary level. What is required is for R2P as a theme to be included in national school curricula and at the tertiary level in curricula as well as in research agendas. The role of universities is particularly important. In a speech to the Association of African Universities in early 2005, even before the World Summit endorsed R2P, then South African President Thabo Mbeki referred to the AU's commitment to intervention for human protection purposes and urged African universities to play a bigger role in the consolidation of peace and security on the continent. He proposed that universities should, as a starting point, ensure the "development and strengthening of a curriculum around the subjects of peace, stability, and conflict resolution and management" (par. 18) and added that joint ventures in establishing such dedicated institutions should be explored.

Mbeki's foresight in this regard relates to the evident need for targeted and commissioned research on R2P and the necessity for public as well as private funding thereof. A notable international example is the Australian Fund for R2P, which was established in 2008 by the Australian Ministry of Foreign Affairs to support research institutions and non-governmental organisations "which will materially contribute to making R2P a reliable factor in international crisis handling" (Asia-Pacific Centre for the R2P, 2010). For Africans, similar initiatives would signify an intellectual investment in the eradication of endemic humanitarian crises on the continent.

The concept must be "officialized"

Already during 1992, Jarat Chopra and Thomas Weiss (p. 117) observed that the debate on humanitarian intervention had "moved beyond lawyers to include diplomats, politicians, and political scientists" and added that most of these practitioners and analysts had little understanding of the essential legal quality and background of the subject. Their observation is just as pertinent two decades later. Legislators and public servants, especially those government officials involved in law enforcement and judicial processes, should be trained in aspects relating to R2P. Indeed, African public service training academies should include R2P in their curricula just as other constitutionally enshrined principles and civil service ethics are taught on a routine basis.

R2P must also become part of official national rhetoric by inserting the civilian protection imperative in the codes of conduct of government officials. Moreover, the popular corporate model of strategic planning (and branding) that typically identifies the vision, mission, and values of government ministries should mention R2P among all the other laudable aims proclaimed on official websites and government brochures.

The concept must be "regionalized"

Notwithstanding the AU's constitutional commitment to the guiding principles of R2P, the continent's subregional organizations, which were all established prior to the founding of the AU, have not done so. As Helly (2008, p. 1) points out, "to become fully legitimate the R2P should be included in all the preambles of constitutional and founding acts of regional and international organizations." (He adds that in this regard the Economic Community of West African States has been a positive exception.) Africa's subregional IGOs need to harmonize their own security mechanisms to be in line with the legal provisions of the AU's Constitutive Act,

and more specifically the mandate of the PSC, to prevent what former AU Commission Chairperson Alpha Oumar Konaré has referred to as a "cacophony" of competing mandates (Mwanasali, 2008, pp. 53–54).

This incongruity exists even at the executive level of the AU itself. An embarrassing example was the union's July 2009 summit decision not to cooperate with the ICC's attempt to extradite Sudan's President Omar al-Bashir on charges of war crimes in Darfur. The resolution in effect compels those African states (the majority of AU membership) who have ratified the Rome Statute to flout their obligations under international law by giving the Sudanese president continent-wide impunity from prosecution. In the furor that followed, several African countries, such as Botswana, distanced themselves from the decision, while the AU Commission tried to salvage the fallout by insisting that the Security Council had merely been implored to review the ICC decision to indict Al-Bashir (AU, 2009). Whatever the explanation, the ill-advised resolution reflects negatively on the consensus-based decision-making processes of the AU and even more pejoratively on "the commitment of those members of the international community who sign up to normative multilateral agreements without necessarily paying them the respect that this adoption by ratification implies" (Melber, 2009, par. 4).

The Rome Statute is just one example – albeit specifically pertinent because it offers a key instrument in operationalizing R2P – where sub-regional hegemons should drive the harmonization of neighboring states' implementation of all treaties relating to the protection of civilians. Within the Southern African Development Community (SADC), for example, South Africa should assist states such as Mozambique, Zimbabwe, Swaziland, and Angola who have signed but not yet ratified the Rome Statute, and use its influence to bring on board Swaziland, which is the only SADC member state which has done neither (Coalition for the ICC, 2010). Even those states that have ratified the treaty may need further assistance to ensure that its provisions are implemented accordingly, in order to prosecute before national courts persons accused of war crimes, crimes against humanity, and genocide. As the CCR points out, decision-makers and implementers in these organizations need to be equipped with relevant knowledge, skills, and insight on R2P, an educational investment that is as important as that required at the national level (CCR, 2007, p. 11).

This is particularly important as concerns the most important of R2P's trilogy of responsibilities, namely the responsibility to prevent. Ban Ki-Moon avers that there have been clear and sufficient warning signs in every case that involved large-scale, man-made atrocities. The earlier action is taken, the less costly and extreme it needs to be and the broader the range of policy options. He illustrates his point by noting that the UN's

preventative capacities absorb only a fraction of the costs of vital post-conflict peace operations (Ban, 2009, par. 38). Institution-building of African entities that have a preventative mandate is therefore essential, including training in skills such as mediation and diplomacy and the analysis and assessment of information used in early warning systems. Helly (2008, p. 2) makes the point that solid risk assessments and analyses will also assist in countering arbitrary advocacy and politicization of R2P in Africa – what he refers to as the "misuse" and "abuse" of the concept.

As a continental government in the making, the AU should ensure that each of its many institutions tasked with conflict resolution and/or human rights protection is R2P-compliant in theory as well as practice. Chief among these institutions is the PSC. The council is constitutionally obliged to involve civil society in its activities, a mandate that Sarkin (2009 p. 22–23) hails as a novel and significant opportunity for the council "to disseminate information about its work and thus establish legitimacy and credibility. Thus, the PSC should also build an outreach programme to inform and educate the public as well as to empower entitled individuals to interact with it." Referring in turn to the AU Commission on Human and People's Rights, he recommends that "[t]he use of a R2P framework on a consistent basis could dramatically affect its activities, mandate, resolutions and decisions" (p. 19).

R2P operationalization can also be promoted and monitored by a unique, African-devised instrument: the African Peer Review Mechanism (APRM). APRM is a mutually agreed-upon self-monitoring instrument voluntarily acceded to by AU member states. It aims "to put in motion a strategic re-orientation towards the validation of universal as well as African values and accelerate the process of intra-African cooperation and integration" (APRM, 2010, par. 1). It is advisable for this mechanism to add an explicit assessment of R2P adherence to its existing broad-ranging criteria of good governance and to determine the extent to which its members are translating into policy behavior the normative commitments they have made at the global and regional levels.

Communicate that assistance is available

Many African states simply lack the resources to implement commitments, normative or otherwise, that derive from global standardization. It should be communicated to these states that their efforts to operationalize R2P need not be a solitary journey. In fact, Paragraph 139 of the World Summit Outcome document explicitly commits the international community to helping states build the necessary institutions and capacities to meet their R2P obligations.

In this regard, cooperative ventures in operationalizing the norm should be explored. Indeed, Helly (2008, p. 3) argues for subsidiarity in Africa's operationalization of R2P: this implies that various levels of action may be appropriate to achieve specific policy goals. There exists a host of entities – international, transnational, regional, national, and local, and public as well as private – that are capable not just of assisting but also eager to support the process by providing educational material, sharing research, and assisting with ratification of conventions, for example by drafting national legislation and revising criminal codes to comply with the norm. The UN, in particular, has invited member states to avail themselves of the organization's institutional and comparative advantages (Ban, 2009, par. 11(b)). Chief in this respect is the OHCHR: it has a field presence in some 50 countries and assists states to observe their human rights obligations and to enable monitoring, advocacy, and education in this domain. Moreover, with an African incumbent as high commissioner it is particularly auspicious for African states to avail themselves of the assistance of this well-resourced organization.

The creation of a dedicated NGO to promote and support R2P at the continental level in the way the Global Centre for the Responsibility to Protect[15] does at the global level would greatly assist in the accessing, coordination, and dissemination of available aid. AU support for such a body would offer gravitas to attract donor money from states and philanthropic entities, not just for individual African states but also for the continent's subregional organizations and the AU itself.

Conclusion

The ICISS, in its 2001 report (par. 1.7), noted that its constitutive mission was "to build a broader understanding of the problem of reconciling intervention for human protection purposes and sovereignty." More specifically, it was to try to develop a "global political consensus on how to move from polemics – and often paralysis – towards action within the international system, particularly through the United Nations." The carefully calibrated report facilitated the embrace of the concept by the 2005 World Summit, but despite the nominal agreement reflected by paragraphs 138 and 139 of the summit's outcome, consensus on the conceptual parameters of R2P has been lacking and the rhetorical (ab)use of R2P in debates about international reaction to crisis situations continues to obfuscate the debate.

The fact that R2P is rooted in preexisting international law, its unanimous endorsement by the General Assembly, and reinforcement subse-

quently by Security Council Resolutions arguably secures the concept's place within the realm of international law. However, two caveats are relevant to this claim: in the first place, international norms are usually codified into international law at a stage when they reflect entrenched global custom. This is because international law exists not as an enforceable law above states but horizontally and based on reciprocity and agreement among them (Shaw, 2003, p. 6). In the case of R2P, however, the salient principles were only recently articulated and soon thereafter endorsed at the global political level without drawing on a track record in practice. One could argue further that R2P has barely left a footprint on customary law since the 2005 endorsement. Second, the vague and "aspirational" nature of the commitments in the World Summit Outcome raises the question of precisely what it is that world leaders agreed to and what it is they can be held accountable for. These legal uncertainties demand the doctrinal maturation of R2P.

It cannot be denied that some aspects of the ICISS report remain ambiguous, even if R2P proponents have warned that the fragile global consensus achieved by the World Summit should not be jeopardized by revisiting the contentious elements of the debate that preceded it. On the other hand, human security activists have argued that R2P is too narrow and that a more comprehensive normative approach to human security is called for: as Helly (2008, p. 2) advises rather sensibly, "[t]oo broad or loose definitions … may endanger or jeopardise the actual implementation of the R2P doctrine."

The ICISS set out – unsuccessfully, it would seem – to make "a practical and concrete political impact, rather than simply provide additional stimulation to scholars and other commentators" (ICISS, 2001, article 8.24). The lack of unequivocal implementation of R2P since 2005 indicates that a certain depth if not breadth of consensus is lacking. A concerted effort is required if this newly crafted norm is going to become part of universal parlance in the way that, for example, "human rights" and "democracy" have over the past few decades. Not just global but also regional and national plans of action are required to do so. Sadly, for a vast number of Africans, this is literally a matter of life and death.

At the African continental level, R2P is already institutionalized through its inclusion in the AU's Constitutive Act, but as legal imperative it needs to find its way into regional charters and national constitutions as well. The requisite training, commissioned research, and official communications associated with constitutional obligations should thus also be accorded to R2P. There exists more than sufficient will and resources at the global level to assist with R2P's implementation at the regional and national levels, and African governments should harness these without

delay. The continent's hegemons have a responsibility to take the lead in this regard.

Allegations that R2P is a foreign and inappropriate imposition on the continent are spurious and should be seen for the agenda they conceal. These political ruses, and indeed all valid criticism of R2P's conceptual deficiencies, should not be allowed to detract from Africa's significant historical – and potential future – contribution to the evolving new doctrine. The rest of R2P's conceptual journey cannot be left to policy makers alone; African civil society should rally behind the norm, take ownership of it and act as catalysts for its doctrinal development.

ACKNOWLEDGEMENTS

YOLANDA KEMP SPIES was a South African career diplomat for 18 years and lived and worked on four continents before joining academia in 2006. As senior lecturer in the Department of Political Sciences, University of Pretoria, she teaches international relations at the under- and postgraduate levels, specifically in the areas of global South international relations, comparative foreign policy, diplomacy, and conflict resolution. She guest lectures and acts as external examiner for a number of other institutions, including the Pretoria-based Centre for Human Rights. Since 2008 she has directed a new master of diplomatic studies program in the department.

PATRICK DZIMIRI is a doctoral candidate in the Department of Political Sciences, University of Pretoria. During 2005 he completed his master's degree in international relations at the University of Zimbabwe, where he was a junior lecturer. The political events in his own country inspired the choice of his DPhil theme, the application of R2P principles to selected case studies in Africa. During 2009 he was appointed as lecturer in the Department of Development Studies at the University of Venda, where his research and lecturing areas include inter alia conflict and international cooperation, human security, and humanitarian law.

NOTES

1. The Swahili word for "long journey".
2. The ICC was established through the adoption of the Rome Statute, on 17 July 1998. The treaty entered into force in 2002.
3. Anne Ryniker (2001) explains that from an international humanitarian law perspective, it is a contradiction in terms to speak of humanitarian "intervention" or "interference", as the term "humanitarian" should be reserved to

describe actions exclusively intended to alleviate the suffering of the victims. The argument advanced by this thinking is that the impartial provision of humanitarian assistance cannot be condemned as interference with or infringement of a state's national sovereignty.

4. Alex Bellamy (2009, p. 27) cites the spirited opposition expressed by the Chinese Permanent Representative to the UN, in response to Francis Deng's introduction of the concept of 'sovereignty as responsibility'.

5. In a perhaps implicit reference to the failure of so-called quiet diplomacy in the case of Zimbabwe, Secretary-General Ban (2009, par. 56) comments as follows: "Talk is not an end in itself, and there should be no hesitation to seek authorisation for more robust measures if quiet diplomacy is being used as a delaying tactic when an earlier and more direct response could save lives and restore order".

6. Ironically, as far back as 1990, the Economic Community of West African States (ECOWAS) intervened in Liberia, with *post facto* praise by the Security Council. In similar fashion, ECOWAS intervened in Sierra Leona during 1998 and was again lauded for its efforts by the Security Counccil.

7. A team comprised of S. Kimaro, T. Lyons, D. Rothchild and I.W. Zartman, led by Deng, subsequently published the book *Sovereignty as Responsibility: Conflict Management in Africa,* during 1996.

8. The position was renamed *Special Representative of the Secretary-General on the Prevention of Genocide and Mass Atrocities* (UNSG, 2010).

9. The OAU formally morphed into the AU in terms of the *Constitutive Act of the African Union* of 11 July 2000 (Lomé).

10. Note that the Prize was jointly awarded to Secretary-General Annan and the UN.

11. This tally excludes Sudan, who became a signatory to the Rome Statute during 2000, but who has in the interim announced its withdrawal of the signature.

12. *Ubuntu* implies shared humanity.

13. See UN Security Council *Resolution 1674:* Protection of Civilians in Armed Conflict, 28 April 2006, as well as the second preambular paragraph of *Resolution 1706* on the crisis in Darfur, 31 August 2006, and *Resolution 1755* adopted on 30 April 2007, which extended the UN Mission in Southern Sudan.

14. With the exception of Morocco, which is not an AU member, and including Western Sahara, which is not a UN member.

15. Sarkin (2009, p. 16) explains that the new Centre, established in February 2008, was created by five high profile NGOs, the International Crisis Group, Human Rights Watch, Oxfam International, Refugees International and the Institute for Global Policy.

REFERENCES

Acharya, A. (2004). How ideas spread: Whose norms matter? Norm localization and institutional change in Asian regionalism. *International organization, 58*(2), 239–275.

Adebajo, A. (2006). Chronicle of a death foretold: The rise and fall of UN reform. In A. Adebajo & H. Scanlon (Eds.). *A dialogue of the deaf: Essays on Africa and the United Nations.* (pp. 19–43) Cape Town: Centre for Conflict Resolution.

Adebayo, A., & Scanlon, H. (Eds.). (2006). *A dialogue of the deaf: Essays on Africa and the United Nations.* Cape Town: Centre for Conflict Resolution.

African Peer Review Mechanism (APRM). (2010). *Welcome to APRM.* Retrieved from http://aprm.krazyboyz.co.za/.

African Union. (2009). *Press release on AU summit decision on the meeting of African states parties to the Rome Statute of the International Criminal Court.* Addis Ababa. 14 July 2009.

Akokpari, J., Muvumba, A. N., & Murithi, T. (Eds.). (2008). *The African Union and its institutions.* Cape Town: Centre for Conflict Resolution.

Annan, K. (1999). Secretary-general presents his annual report to General Assembly. *Press release SG/SM/7136, GA/9596.* 20 September.

Annan, K. A. (2004). A more secure world: Our shared responsibility. *Report of the Secretary-General's high-level panel on threats, challenges and change.* New York: United Nations, Department of Public Information.

Annan, K. A. (2005). In larger freedom: Towards development, security and human rights for all. *Report of the Secretary-General.* New York: United Nations, Department of Public Information.

Asia-Pacific Centre for the Responsibility to Protect. (2010). *Australian Responsibility to Protect Fund.* Retrieved from http://r2pasiapacific.org/index.php?option=com_content&task=view&id=91&Itemid=98

Ban, K. M. (2009). Implementing the Responsibility to Protect. *Report of the Secretary-General to the UNGA, A/63/677.* 12 January.

Barnett, M. (2007). Social constructivism. In J. Baylis, S. Smith, & P. Owens (Eds.). *The globalisation of world politics: An introduction to international relations,* 4th ed. (pp. 160–173). Oxford: Oxford University Press.

Baylis, J., Smith, S., & Owens, P. (Eds.). (2007). *The globalisation of world politics: An introduction to international relations,* 4th ed. Oxford: Oxford University Press.

Bellamy, A. J. (2009). *Responsibility to protect.* Cambridge: Polity Press.

Bellamy, A. J. (2010). The responsibility to protect – five years on. *Ethics & International Affairs, 24*(2), 143–169.

Bettati, M., & Kouchner, B. (1987). *Le devoir d'ingérence: Peut-on les laisser mourir?* Paris: Donoël Publishers.

Boutros-Ghali, B. (1992) An agenda for peace: preventive diplomacy, peacemaking and peacekeeping. *Report of the Secretary-General to the UNGA and UNSC. A/47/277, S/2411.* 17 June.

Buchanan, A. (2003). Reforming the law of humanitarian intervention. In O. R. Keohane and J.L. Holzgrefe (Eds.). *Humanitarian intervention: Ethical, legal and political dilemmas.* (pp. 130–173) Cambridge: Cambridge University Press.

Burchill, S. (Ed.). (2009). *Theories of international relations.* 4th edition. New York: Palgrave Macmillan.

Centre for Conflict Resolution (CCR), University of Cape Town. (2007). Africa's responsibility to protect. *Policy advisory group seminar report.* Somerset-West, 23–24 April 2007.

Chopra, J., & Weiss, T.G. (1992). Sovereignty is no longer sacrosanct: Codifying humanitarian intervention. *Ethics and International Affairs,* vol. 6, 95–117.

Coalition for the International Criminal Court. (2010). *Overview of Rome Statute signatories, ratifications and implementing legislation.* Retrieved from http://www.iccnow.org/?mod=download&doc=4348

Deng, F. M. (1995). Frontiers of sovereignty. *Leiden Journal of International Law,* vol. 8/2, 249–286.

Deng, F. M., Kimaro, S., Lyons, T., Rothchild, D., & Zartman, I.W. (1996). *Sovereignty as responsibility: Conflict management in Africa.* Washington D.C.: Brookings Institution Press.

GlobeScan Incorporated and the Program on International Policy Attitudes (PIPA). (2005). *The Darfur crisis: African and American public opinion.* 29 June. Retrieved from http://www.globescan.com/news_archives/GS_PIPA_darfur_report.pdf

Helly, D. (2008). R2P, Africa and the EU: Towards pragmatic international subsidiarity? *European Union Institute for Security Studies: Analysis.* November. Retrieved from http://www.iss.europa.eu/nc/actualites/analysisbooks/select_category/25/article/r2p-africa-and-the-eu-towards-pragmatic-international-subsidiarity/

Hosken, G. (2009). ICC – an army for the downtrodden. *Pretoria News.* 17 June 2009.

International Commission on Intervention and State Sovereignty (ICISS). (2001). *The responsibility to protect.* Ottawa: International Development Research Centre.

International Criminal Court. (2010). *The states parties to the Rome Statute.* Retrieved from http://www.icc-cpi.int/menus/ASP/states+parties.

Keohane, R., & Holzgrefe, J. L. (Eds.). (2003). *Humanitarian intervention: Ethical, legal and political dilemmas.* Cambridge: Cambridge University Press.

Koko, S. (2007). Whose responsibility to protect? Reflection on the dynamics of an 'abandoned disorder' in Somalia. *African Security Review,* vol. 16, no. 3, 1–13.

Kuwali, D. (2009). Persuasive prevention: Towards a principle for implementing article 4(h) and R2P by the African Union. *Current African Issues,* vol. 42, 1–72.

Mbeki, T. (2005). *Address by the President of South Africa to the Conference of the Association of African Universities.* Cape Town, 22 February.

McLean, I. (1996). *Oxford concise dictionary of politics.* Oxford: Oxford University Press.

Melber, H. (2009). Dealing with injustice: Dag Hammarskjöld and the international community today. *Address at the Fifth Dag Hammarskjöld Commemorative Seminar.* Mutare: Africa University. 4–6 November.

Mwanasali, M. (2008). From non-interference to non-indifference: The emerging doctrine of conflict prevention in Africa. In J. Akokpari, A.N. Muvumba, and T. Murithi (Eds.). *The African Union and its institutions.* (pp. 41–62) Cape Town: Centre for Conflict Resolution.

Norwegian Nobel Committee. (2001). The Nobel Peace Prize 2001. *Press Release on 12 October.* Oslo.

Powell, K. (2005). *The African Union's emerging peace and security regime: Opportunities and challenges for delivering on the responsibility to protect.* Pretoria: Institute for Security Studies Monograph Series.

Princeton University. (2010). *WordNet: A lexical database for English.* Retrieved from http://wordnetweb.princeton.edu/perl/webwn

Reus-Smit, C. (2009). Constructivism. In Burchill et al, *Theories of international relations*, 4th ed. (pp. 209–230) New York: Palgrave Macmillan.

Ryniker, A. (2001). The ICRC's position on humanitarian intervention, *International Review of the Red Cross*, 83, no. 842, (June 2001), 527–532.

Sarkin, J. (2009). The role of the United Nations, the African Union and Africa's sub-regional organisations in dealing with Africa's human rights problems: Connecting humanitarian intervention and the responsibility to protect. *Journal of African Law, 53*(1), 1–33.

Shaw, M. N. (2003). *International law.* 5th edition. Cambridge: Cambridge University Press.

Thakur, R. (2006). *The United Nations, peace and security: From collective security to the pesponsibility to protect.* Cambridge: Cambridge University Press.

United Nations General Assembly (UNGA). (2005). *2005 World Summit Outcome.* Resolution 60/1. 15 September.

United Nations General Assembly (UNGA). (2009). *The responsibility to protect.* Resolution 63/308. 7 October.

United Nations Secretary General (UNSG). (2010). *Senior Management Group.* Retrieved from http://www.un.org/sg/senstaff_details.asp?smgID=137.

Wendt, A. (1992). Anarchy is what states make of it: The social construction of power politics. In *International Organization, 46*(Spring), 391–425.

Wheeler, N. (2002). *Saving strangers; Humanitarian intervention in international society.* New York: Oxford University Press.

· · · · · · · · · ·

Resumen: La "responsabilidad de proteger" es un nuevo paradigma de seguridad humana que reconceptualiza la soberanía del Estado como una "responsabilidad" en lugar de un derecho. Pese al respaldo inicial que obtuvo en la Cumbre Mundial de 2005, los parámetros intelectuales de esta norma no se han consolidado. En esta cumbre tampoco se logró fortalecer el desarrollo de la doctrina del R2P (Responsibility to Protect), por lo que se produjo un llamado en enero de 2009 por parte del secretario general de la ONU para poner en práctica el nivel de la doctrina del R2P, además de los niveles institucional y político. La R2P representa una etapa crítica en el debate sobre la intervención con fines de protección humana, pero sus conceptos clave requieren más profundización. África tiene una posición única en la R2P dada su parte desproporcionada en las crisis humanitarias y porque los africanos han tenido un papel clave en la conceptualización de la norma. Por ello, el continente debería no sólo ofrecer un espacio, sino de hecho tomar la delantera en el trazado conceptual que requiere el desarrollo de la doctrina de la R2P.

Palabras claves: África, doctrina, intervención, humanitario, seguridad humana, norma, responsabilidad de proteger

Résumé : Le «devoir de protection» est un nouveau paradigme de la sécurité humaine qui redéfinit la souveraineté de l'État comme une "responsabilité" plutôt que comme un "droit". Cependant, lors du Sommet Mondial de 2005 les paramètres du concept n'ont pas été consolidés. Ce sommet n'a pas non plus réussi à activer le développement doctrinal du "devoir de protection" (en anglais «Responsibility to Protect» ou «R2P»), d'où l'appel lancé en janvier 2009 par le Secrétaire Général des Nations Unies à la communauté internationale pour qu'elle rende le «devoir de protection» opérationnel à un niveau doctrinal en plus des niveaux institutionnel et politique. Le devoir de protection représente un moment critique du débat sur les interventions ayant pour but la protection humaine, mais ses concepts méritent une analyse encore plus approfondie. En matière de devoir de protection, l'Afrique est une partie prenante incomparable, du fait de sa part disproportionnée de crises humanitaires, mais aussi parce que les Africains ont joué un rôle clé dans la conceptualisation de cette norme-là. Dans ces conditions, le continent africain ne devrait-il pas, non seulement offrir le terrain d'étude, mais aussi prendre la tête dans le cheminement conceptuel que le développement doctrinal du devoir de protection exige ?

Mots clés : Afrique, doctrine, intervention, humanitaire, sécurité humaine, norme, Devoir de protection.

. . . .