

The African Union's Transition from Non-Intervention to Non-Indifference: An Ad Hoc Approach to the Responsibility to Protect?

TIM MURITHI

The Evolution of the African Union (AU)

In 1999 African leaders met in Sirte, Libya, somewhat inauspiciously, to review the Charter of the OAU. This was five years after the Rwandan genocide, as well as five years after the liberation of South Africa from the yoke of apartheid, and marked the completion of the OAU's stated aim of liberating the African continent from colonialism. This meeting emphasized the importance of strengthening solidarity among African countries and reviving the spirit of Pan-Africanism. The African Union project was born in Sirte in 1999 with the decision to draft an act of constitution. The AU's Constitutive Act was subsequently signed in Lome, Togo, on July 11, 2000. The official inauguration of the AU took place in July 2002, in Durban, South Africa, and represented the next level in the evolution of the ideal of Pan-Africanism.

Genesis of the Responsibility to Protect (R2P)

Contextualizing Humanitarian Intervention

The 1992 »An Agenda for Peace,« published by the first African UN Secretary-General, Boutros Boutros-Ghali, argued in favor of proactive peace-making and humanitarian intervention.¹ The report outlined suggestions that would enable intergovernmental organizations to respond quickly and effectively to threats to international peace and security in the post-Cold War era. In particular, four major areas of activity were identified:

1. preventive diplomacy; 2. peacemaking; 3. peacekeeping; and 4. post-conflict peacebuilding.

1. Boutros-Ghali, Boutros (1992): *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping*. New York: United Nations.

However, during the 1990s and following the end of the Cold War it was difficult to operationalize humanitarian intervention. At that time the UN was generally reluctant to issue Security Council resolutions that were perceived as infringing the sovereignty of Member States. As a consequence, violent conflict perpetrated primarily within states was difficult to manage. Africa was particularly affected in this decade with the conflicts in Angola, Liberia, the Democratic Republic of the Congo (DRC), Sierra Leone, and South Sudan, and the genocide in Rwanda. With the onset of the new millennium intra-state violent conflict continued unabated and tragedies like the situation in the Darfur region of Sudan have raised further questions about the doctrine of humanitarian intervention.

The issue of humanitarian intervention became a key challenge in international relations. At the UN General Assembly in 1999, and again in 2000, former Secretary-General Kofi Annan »made compelling pleas to the international community to try and find, once and for all, a new consensus on how to approach these issues, to «forge unity» around the basic questions of principle and process involved« in humanitarian intervention.² Through the leadership of the Government of Canada an International Commission on Intervention and State Sovereignty (ICISS) was established to assess the right of humanitarian intervention.

Key Aspects of the Responsibility to Protect

The responsibility to protect embraces three responsibilities:

1. The responsibility to prevent – addressing root and direct causes of internal conflicts and other man-made crises that put populations at risk.
2. The responsibility to react – responding to situations, where necessary using coercive measures such as sanctions, international prosecution, and military intervention.
3. The responsibility to rebuild – providing assistance with recovery, reconstruction, and reconciliation and addressing the causes of the harm the intervention was designed to halt or avert.³

2. International Commission on Intervention and State Sovereignty (2001): *The Responsibility to Protect*. Ottawa: International Development Research Centre: VII.

3. Ibid: XI.

Article 4 of the African Union's Constitutive Act: Legalizing the Responsibility to Protect

The former Chair of the African Union Commission, President Alpha Oumar Konare, advocated a move from a culture of non-intervention to a culture of non-indifference. The AU is learning from the lessons and failures of the OAU and has adopted a much more interventionist stance through its legal frameworks and institutions. The AU Peace and Security Council was established in 2004 by the Protocol Relating to the Peace and Security Council of 2002.⁴ The AU's 15-member Peace and Security Council is mandated to conduct peacemaking, peacekeeping, and peace-building.⁵ The Council is the key institution charged with carrying out peace operations on the continent, but it is complemented by the Panel of the Wise, the Continental Early Warning System, the African Standby Force (to be operationalized by 2010), and the Military Staff Committee.⁶ An AU Peace Fund has been established to ensure that there will be enough resources to promote peace. The Chair of the African Union is assisted by a Commissioner in charge of Peace and Security to provide operational support to the Peace and Security Council, as well as to take the necessary steps to prevent, manage, and resolve conflicts.

The Peace and Security Council can assess a potential crisis situation, send fact-finding missions to trouble spots, and authorize and legitimize AU intervention in internal crisis situations. Article 4(h) of the AU Constitutive Act affirms »the right of the Union 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.«⁷ Furthermore, Article 4(j) declares »the right of Member States to request intervention from the Union in order to restore peace and security.«⁸ In more detail, Article 7, item (e), of the Protocol on the Peace and Security Council states that the Council can »recommend to the Assembly (of Heads of State) intervention, on behalf of the Union, in a Member State in respect of grave circumstances, namely war crimes, genocide and crimes

4. AU (2002): *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*. Addis Ababa: African Union.

5. Ibid.

6. Cilliers, Jakkie and Mark Malan (2005): »Progress with the African Standby Force,« Paper 107. Pretoria: Institute for Security Studies (ISS) (May).

7. AU (2000): »Constitutive Act of the African Union;« Lomé, Togo.

8. Ibid.

against humanity, as defined in relevant international conventions and instruments.«⁹ This is a major qualitative difference between the Charter of the OAU, which placed a greater emphasis on non-intervention and the territorial integrity of its member states. With the adoption of these legal provisions, for the first time in the history of Africa, the continental organization working through an appointed group of states has the authority to intervene in internal situations that might lead to atrocities being committed against minority groups or communities at risk. In other words, the AU has the right and the responsibility to protect. The authors of the Constitutive Act of the African Union effectively enshrined a responsibility to protect in the document and signaled a commitment to implementing a policy of non-indifference.

To ensure that it can meet this obligation the Peace and Security Council was established as the legal institution of the AU mandated, where appropriate, to collaborate with the United Nations and sub-regional African organizations in conducting peace operations. In effect, the AU will continue to maintain a working relationship with the United Nations and other international organizations (the Economic Community of West African States, ECOWAS, the Intergovernmental Authority on Development, IGAD, the Southern African Development Community, SADC, the Economic Community of Central African States, ECASS, and the Arab Maghreb Union, AMU).

With reference to the responsibility to protect, the African Standby Force (ASF) comprises five brigades from each of Africa's sub-regions – Southern, East, Central, West, and North – which will effectively project the responsibility to react. The AU's responsibility to rebuild is currently being pursued through its Post-Conflict and Reconstruction Framework. Other institutions of the AU have also been tasked with promoting and consolidating democratic governance, the rule of law, and the protection of the human rights of citizens in transitional societies. In order to guarantee the sustainability of these institutions, education and training must be provided to establish professionalism and integrity.

Having a principle enshrined in the Constitutive Act and making sure that countries live up to it are two entirely different things. The AU had effectively declared its adherence to R2P even before the term became popularized by the UN General Assembly in 2005. Even though the lan-

9. AU (2003): »Protocol Relating to the Establishment of the Peace and Security Council of the African Union,« Addis Ababa (December): 9.

guage is not strictly the same, it is effectively seeking the same provisions and outcome: the ability to protect African citizens from human rights atrocities.

The AU Doctrine of Non-Indifference

The existence of the AU is an expression of Pan-Africanism. Historically, Pan-Africanism has manifested itself as the desire for greater solidarity and collaboration in order to address the domestic and global challenges that confront the continent. One of the ways in which this solidarity is now being put to the test concerns how the AU is addressing human security challenges, conflicts and complex humanitarian situations and public health concerns such as the HIV/AIDS pandemic and malaria/tuberculosis, which are decimating societies. Realizing the ideal of Pan-Africanism means that African countries can no longer remain indifferent to the suffering and plight of their neighbors. The Organization of African Unity (OAU) was notorious for ignoring the suffering and oppression of African citizens in its member states. In effect, the OAU embraced an unspoken policy of non-interference and non-intervention in the affairs of member states. This gave license to Africa's majority oligarchs and dictators to exploit their countries, plunder their resources and suppress freedom of expression in the media and in politics. The true expression of Pan-Africanism will be achieved only when member states and societies in Africa regard the peace, security, and well-being of their neighbors as fundamentally intertwined with theirs. In what would be a paradigm shift from common AU practice the implementation of a policy of non-indifference will require the generation and sustaining of a political will to address crisis situations. To reinforce this point, the AU Commission issued the »Strategic Plan and Vision 2004–2007,« which also reiterates the importance of intervening to promote peace and security as a necessary prerequisite for governance and development.

As already mentioned, the African Union has the primary responsibility for establishing and operationalizing the continent's peace and security architecture.¹⁰ The 2002 AU Constitutive Act enshrines the right to intervene. In terms of policy, this means that African countries have agreed to

10. Mwanasali, Musifiky (2004): »Emerging Security Architecture in Africa,« in: Centre for Policy Studies (CPS), *Policy Issues and Actors*, 7 (4) (February).

pool their sovereignty to enable the AU to act as the ultimate guarantor and protector of the rights and well-being of African people. In effect, the AU has adopted a much more interventionist stance and has embraced a spirit of non-indifference towards war crimes and crimes against humanity in Africa. This principle was articulated and promoted by the first Chair of the AU Commission and former President of Mali Alpha Oumar Konare. Konare believed that it was no longer tenable for African countries to remain silent in the face of atrocities being committed in neighboring countries. This is in keeping with the philosophy of Pan-Africanism and continental solidarity. The principle of non-indifference, continental solidarity, and collective security is now indispensable. No single African country in isolation can address the issues of conflict, refugee flows, the conscription of child soldiers, bonded labor, prostitution, the massacre of civilian populations, drug trafficking, money laundering, the illicit small arms trade, and underdevelopment.

Implementing Non-Indifference: From Rhetoric to Reality

The Indicative Work Program of the Peace and Security Council states that the AU will endeavor to be present on the ground where there is a need for a peace operation. Whether as a standalone AU operation or in partnership with RECs, the UN, and other partners, the AU has indicated its commitment to being active in peacemaking and peacebuilding. Does this demonstrate a political commitment towards implementing the doctrine of non-indifference?

Diplomatic Non-Indifference: Zimbabwe

In 2005, the AU attempted to appoint the former Mozambican President Joaquim Chissano as the AU's Special Representative to Zimbabwe to try and persuade an intransigent Mugabe regime to negotiate with the opposition parties and find a political and economic solution to the crisis. However, on August 17, 2005 the Government of Zimbabwe rejected the appointment of Chissano, saying that it could not negotiate with the opposition, which it perceives as being beholden to the Government of the United Kingdom. In appointing Chissano the AU was demonstrating that it was not indifferent to the situation in Zimbabwe, but critics expressed the view that the AU seemed to be doing too little too late.

Subsequently, the Southern African Development Community was appointed by the AU to address the Zimbabwean crisis. The AU retained a role as part of the Reference Group, together with the UN and other international partners.

In January 2008, at the Annual Summit of the AU Heads of State and Government, held in Sharm-el-Sheik, called on the parties in the Zimbabwe crisis to meet and agree on steps to establish peace and national reconciliation. The AU Summit also asked the parties to establish an inclusive government. The AU endorsed and supported the SADC mediation initiative, led by President Thabo Mbeki. On September 15, 2008, in Harare, the key parties to the crisis – ZANU-PF led by President Robert Mugabe, and the two MDC Formations led by Morgan Tsvangirai, as the Prime Minister, and Arthur Mutambara, as the Deputy Prime Minister, signed an agreement that outlined a government of national unity. Indeed, the AU's engagement in the Zimbabwe issue, albeit in a supporting role, does demonstrate a commitment to non-indifference. Some analysts would argue that the agreement came too late, but if it lays the foundations for national reconciliation then it could reinforce belief that the AU will from now on manifest more commitment towards resolving political problems on the African continent.

The AU's attempt to address the Zimbabwean issue demonstrates that the organization is at least trying to take responsibility for the behavior of its members. If the agreement signed on September 15, 2008 holds then it will be another demonstration of the important role of the AU and its partner sub-regional organizations in implementing its doctrine of non-indifference. This type of practice needs to become second nature to the continental organization. There are several other situations around the continent which require similar intervention, for example, in northern Uganda and the ongoing dispute with the Lord's Resistance Army. The AU, as a collective body, should not wait until a situation has got out of hand before intervening. Nor should it always wait for the international community to make the first move. However, collaboration with the UN and other partners will be crucial if the AU is to succeed in achieving its vision and implementing its policies.

Diplomatic Non-Indifference: Kenya

Following the presidential elections held in Kenya on December 27, 2007 the results of the poll were heavily contested by the two main political parties, the Party of National Unity (PNU) and the Orange Democratic Movement (ODM). Through an unexpected confluence of events Kenyans found themselves faced with a political conundrum. These presidential elections were hotly contested and generated dissension and discord in both politics and society. When the Electoral Commission of Kenya (ECK) declared the incumbent President Mwai Kibaki duly elected, this triggered a series of events that have forever altered the body politic of the country. The opposition rejected the result and declared that the election was flawed. The government felt itself under no obligation to prove or disprove that the presidential election was in some way flawed. This task was subsequently undertaken by the government-appointed Chair of the ECK, Samuel Kivuitu. When, apparently under duress from all parties, he announced that he did not »know« who had won, the legally sanctioned arbiter of the state polls effectively cast aspersions on the electoral process. The political disagreement over the outcome of the poll led to the outbreak of sporadic violence across Kenya, which affected communities in the capital city of Nairobi, as well as in key urban and rural centers, including Mombasa, Kisumu, and Eldoret. An estimated 1,300 people were killed and 300,000 displaced internally in the violent clashes that ensued. Reliable evidence indicated that voting irregularities were committed by both the Government and the opposition.

The situation subsequently required a process of political dialogue that was conducted under the auspices of the African Union Panel of Eminent Persons, led by Kofi Annan, the former UN Secretary-General. These talks included representatives from the key actors in the crisis, the Party of National Unity and the Orange Democratic Movement. A power-sharing agreement signed by the parties on February 28, 2008 outlined the basis of a government of national unity. Even though a substantial degree of the background work in mediating and crafting an agreement was undertaken by the UN, the AU retained overall responsibility for the process and was the public face of the peacemaking initiative. In effect, the fact that the parties agreed to reach a solution reflects positively on the AU's commitment to implementing its doctrine of non-indifference and fulfilling its responsibility to protect.

Military Non-Indifference

The question is whether recent AU efforts in Burundi, Darfur, Somalia, and Comoros represent an attempt to implement the AU's doctrine of non-indifference and act upon its self-imposed responsibility to protect. R2P should not be an excuse for »military adventurism,« but a blueprint for securing Africa's future and the stability and prosperity of the continent's citizens.

Operationalizing R2P through the AU: The Case of Burundi

The AU intervened in Burundi to build peace and enable the establishment of a more robust UN peace operation. The AU peace operation in Burundi in 2003 – also known as the African Union Mission in Burundi (AMIB) – was the AU's first operation wholly initiated, planned, and executed by its members. In this regard, it represents a milestone for the AU in terms of self-reliance in operationalizing and implementing peacebuilding. AMIB was effectively mandated to build peace in a fluid and dynamic situation in which the country could relapse into violent conflict. In this regard, this AU mission was upholding a responsibility to protect.

One of the tasks of the AU force was to protect politicians returning to take part in the transitional government. Other peacebuilding tasks included opening secure demobilization centers and improving the ability of the Mission to reintegrate former militia members back into society. These demobilization centers supervised the DDR (Disarmament, Demobilization and Reintegration) process, which as noted earlier is a fundamental pillar of peacebuilding. AMIB was also involved in creating conditions that would allow internally displaced persons and refugees, based in the eight Burundian provinces and three refugee camps in Tanzania, to return to their homes.

AMIB also had the task of establishing conditions which would allow for a UN peace operation to come into the country. The UN was reluctant to enter a situation in which there was the potential for a relapse into conflict. AMIB's role in this case was a vital and crucial one in creating conditions through which peace, albeit a fragile one, could be built in the country. By the end of its mission AMIB had succeeded in establishing relative peace in most provinces in Burundi. Throughout its period of operation AMIB succeeded in de-escalating a potentially volatile situation, and in February 2004 a UN evaluation team concluded that the

conditions were appropriate to establish a UN peacekeeping operation in the country.

Overcoming Indifference: The Limits of R2P in Darfur

From 2004 to 2007 the AU was also involved in promoting peace in the Darfur region of Sudan through its African Union Mission in Sudan (AMIS). In February 2003 the Darfur region – on the border of eastern Chad and western Sudan – was afflicted by violent conflict between the Sudanese government and a pro-government militia referred to as the Janjaweed, and two rebel movements, the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM).¹¹ The conflict resulted in widespread atrocities committed against civilians and uprooted people from their homes, generating a displaced populace and refugee spillover into neighboring countries, particularly Chad. On April 8, 2004 a ceasefire brokered with the assistance of the African Union was due to come into effect for a period of 45 days in order to enable humanitarian aid to reach the affected populations.¹² The Chadian mediation team which initiated talks on a political solution to the conflict in N'djamena worked closely with the African Union. The AU was subsequently charged with establishing and financing a ceasefire verification commission. The ability of the AU to fulfill its mission in this situation was always going to depend on its capacity to mobilize the political will of its member states.

The AU had a rather weak mandate in Darfur, preventing it from effectively monitoring the humanitarian crisis in the region and coordinating efforts to advance the cause of peace. This narrow mandate did not provide the AU with leeway to implement peacebuilding initiatives; nor did the organization have the wherewithal to finance comprehensive peacebuilding operations. Administrative bottlenecks within the organization prevented the effective and smooth running of procurement and disbursement processes, which hampered AMIS's functionality. The AU's mission in Darfur was inadequate and ineffective and a more robust peacekeeping force was required to effectively discourage the silent genocide that unfolded there.

11. Mans, Ulrich (2004): »Sudan: The New War in Darfur,« in: *African Affairs*, 103 (411): 291–94.

12. www.irinnews.org (April 23, 2004).

Meanwhile, the AU sought to find a political solution while undertaking peace operations to alleviate the suffering of Darfurians. However, the AU's peacemaking initiative in Abuja, Nigeria, under the tutelage of former Secretary-General of the Organization of African Unity (OAU) Dr. Salim Ahmed Salim, led to the signing of the Darfur Peace Agreement (DPA) in May 2006. The fact that only the Minni Minnawi faction of the SLA signed it meant that the DPA was by no means a comprehensive peace agreement in the mould of the South Sudan agreement. Therefore, violent confrontation was not curbed and currently there is no durable cease-fire. Factionalization in the Darfur region means that a motley collection of amorphous armed militia groups have begun to fight each other, and the situation has deteriorated into a military, political, and diplomatic mess.

In Darfur, the AU has found itself facing a test case that it was institutionally ill-equipped and under-resourced to resolve successfully. The politicization of the situation in Darfur means that there are now no easy answers. Certainly, it is right and proper for the AU to be in Darfur, or for some form of international peace operation to be staged there. Regrettably, while the AU's peacemaking efforts are to be applauded, its monitoring peace operation is floundering and enabling government forces, the Janjaweed, and the armed resistance groups to continue fighting amongst themselves and prolong the carnage and destruction of the lives and property of Darfurians.

On August 31, 2006 the UN passed Security Council Resolution 1706 (2006) which called for the deployment of a UN peace operation in Sudan.¹³ It requested that »the Secretary-General (...) take the necessary steps to strengthen AMIS through the use of existing and additional United Nations resources with a view to transition to a United Nations operation in Darfur.«¹⁴ Article 52 in fact states that »the Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.«¹⁵ Therefore the legal basis for deploying UN personnel within the AU has been established. It also stated that the UN Mission in Sudan

13. United Nations Security Council, Resolution 1706, S/RES/1706(2006), August 31, 2006. New York: United Nations.

14. Ibid.: paragraph 11.

15. United Nations: *The Charter of the United Nations*: Article 52.

(UNMIS) would take over responsibility for implementing the Darfur Peace Agreement from AMIS, upon the expiry of its mandate, at the very latest by December 31, 2006. Due to the intransigence of the Sudanese government the UN adopted a different approach. UN Security Council Resolution 1769 of July 31, 2007 established the Joint AU–UN Hybrid Operation in Sudan (UNAMID). The hybrid mission has found itself embroiled in the same challenges that confronted AMIS. UNAMID has also not succeeded in upholding the responsibility to protect, because the Janjaweed and other armed militia are still committing atrocities in the region.

Not Indifferent But Not Sufficiently Planned: A Misconceived R2P in Somalia?

The AU launched an operation in Somalia in March 2007, ostensibly to stabilize the ongoing dispute between groups in the country. However, there is no peace to keep in Somalia, and the AU, represented mainly by Ugandan troops, has found itself drawn into a peacemaking and peace enforcement role. The AU is effectively embroiled in a conflict situation. If the AU is to succeed the different factions will have to come to a sustainable political agreement, without which the territorial conflict will continue unabated. This highlights the limits of implementing the doctrine of non-indifference, but it does not negate the continental body's responsibility to protect.

Comoros

In Comoros the AU has taken the additional step of adopting a partisan position in supporting the government of a member state. As a result of a series of threats to secede from the Union of Comoros by the irredentist island of Anjouan, the AU instituted a naval blockade in May 2007. The fact that the AU chose to engage intimately with the situation in Comoros can be held up as an example of its policy of non-indifference, in what would otherwise be a forgotten international conflict. However, its decision to adopt military sanctions could be questioned on the grounds that it does not meet the criterion of upholding its responsibility to protect minority groups.

Addressing Global Indifference to Africa: The Prospects of International Collaboration on R2P

Retired General Romeo Dallaire, former Commander of the UN mission in Rwanda in 1994 observed that »some 2.000 personnel from several countries, including France, the United Kingdom, the United States and Italy, had come to evacuate their expatriates and though they were stumbling on corpses, they remained firm in totally ignoring the catastrophe.« General Dallaire, a Canadian citizen, made his comments at a Memorial Meeting on the Rwanda Genocide, held in March 2004 at UN Headquarters in New York. The main point that he was trying to make was that the West maintains double standards when it comes to responding to African crisis situations. This means that there is a selective global commitment to upholding the responsibility to protect. On the basis of Dallaire's observations the African continent needs to re-think its intervention strategies and readiness and not rely on the international community to come to the rescue in times of crisis.

The operational character of the UN Security Council has not changed significantly since the genocide in 1994. Indeed, if anything it has become more rigid and inflexible. Despite the impression that the 15 members of the UN Security Council deliberate in an objective and rational environment, the reality is that power plays a vital role in obtaining any resolution. In this regard, the veto power held by the five permanent members of the Council renders the whole exercise of trying to reach an agreement which is genuinely in the interests of the international community and humanity as a whole rather meaningless. The five permanent members can and do threaten to veto resolutions even at the drafting stage, which means that they can effectively prevent certain decisions, not only being reached, but even being heard by other members of the Council. Regrettably this was the scenario that played itself out during the Rwandan genocide. Some members of the permanent five did not want the word »genocide« to appear in any UN Security Council resolution because international law would have compelled them to act to prevent it. Conversely, when a powerful country has a hidden economic, military, or political agenda it can push for a country to be declared a perpetrator of genocide. So historically and currently when it comes to Africa's conflict situations, the UN Security Council can only prescribe remedies – in the form of inquiries, deliberations, and ineffectual sanctions – that are more likely to kill the patient, as witnessed in Rwanda and more recently in

Darfur. This demonstrates something of a global indifference to the plight of Africa.

The international system has not changed significantly since the Rwandan genocide, either. On the contrary it is today perhaps even more easily co-opted by powerful countries to legitimate their self-interest. In this climate of international politics it would be wise for the African continent, which has no voice where it matters, to develop its own coping mechanisms and find ways of reducing its reliance on external intervention. Speaking at the sixth Institute for Defence Studies and Analyses Asian Security Conference in India, Louise Frechette, former UN Deputy Secretary-General, observed that »there is a manifest imbalance between the 30.000 NATO peacekeepers deployed in tiny Kosovo and the 10.000 UN peacekeepers deployed in the DRC, which is the size of Western Europe and where some 3,5 million people may have died as a result of fighting since 1998.« The »manifest imbalance« that Frechette speaks of suggests that resources for peace and security operations are being undertaken in an asymmetrical fashion on a regional or even racial basis. Clearly, the political will does not exist in Western countries to send significant troops, beyond military observers and advisors, to Africa. The message is clear that European and American troops will not be put in harm's way for the protection of Africans, in effect creating a hierarchy of human worth and endorsing a culture of global indifference to the crises in Africa.

What this illustrates is that the international system of states is prepared to endorse the notion of the responsibility to protect enshrined in the UN General Assembly decision in 2005, but it is not prepared to provide the necessary means to implement it. This means that there is a »manifest imbalance« in the global implementation of R2P. In fact, there is a culture of global indifference when it comes to addressing crises in Africa.

The ICC, Non-Indifference, and the Transformation of Political Communities

The establishment of the African Union as a supranational legal entity with significant powers of intervention in domestic crisis situations challenges traditional notions of the Westphalian state system and in fact offers us an insight into how a post-Westphalian – or post-nation-state – system might be constituted. In effect, the constitution of the African

Union offers an alternative framework for organizing a political community.¹⁶ With the gradual erosion of the notion of absolute sovereignty the international community can begin to legitimize intervention and operationalize the responsibility to protect when governments refuse to meet the needs of their populations and innocent people are at risk.¹⁷ These new provisions on the African continent combine well with the creation of the International Criminal Court (ICC) and eventually leaders who commit »crimes against humanity« and other atrocities towards civilian populations can now be held legally responsible.

The recent indictment of the President of Sudan for war crimes in Darfur by the ICC could be recognized as an attempt by the Court to uphold its international mandate to legally sanction atrocities. Regrettably, the AU was quick to request the postponement of this indictment in what was a negation of its own responsibility to protect the victims in Darfur. If the AU was committed to implementing its doctrine of non-indifference it would have unequivocally supported this indictment of President Bashir. However, a »pragmatic« assessment of the situation by a number of African heads of state led to the AU position: If this action by the ICC is endorsed there is no reason why it will not be invoked in the future to hold other leaders legally accountable for atrocities committed in their countries. The AU, in a political evasion of its own legal mandate, is seeking to ultimately avoid respecting the ICC's indictment because of its implications for the culture of impunity and non-interference which has dominated the approach of its member states to peace and security on the continent. Clearly, the ICC did not make this pronouncement in isolation. The ICC's legal mandate endows it with UN-sanctioned authority to address war crimes, crimes against humanity, and genocide. The ICC was in effect implementing the UN-sanctioned responsibility to protect.

To What Extent Is the AU Committed to Its Doctrine of Non-indifference and R2P?

Chair of the AU former President Konare argued that the »AU would not sit idly by while atrocities persisted« across the continent. Recent exam-

16. Linklater, Andrew (1998): *The Transformation of Political Community*. Cambridge.

17. Deng, Francis: »Reconciling Sovereignty with Responsibility: A Basis for International Humanitarian Action,« in: Harbeson, J. and D. Rothchild (eds) (1995): *Africa and World Politics: Post-Cold War Challenges*. Boulder: Westview Press: 298.

ples have indicated that the AU will make an effort to respond to similar situations that may arise in the future. Of course much pain and suffering could be avoided if the AU can enhance and strengthen its mechanism for preventive diplomacy and early response to potential conflicts before they escalate. The AU should adopt a proactive approach, preventing violence and protecting lives and property, which is a more sustainable way of demonstrating and operationalizing its doctrine of non-indifference and R2P.

Regrettably, the old culture of non-intervention – of seeing and hearing no evil – will take some time to eradicate from the minds and attitudes of government and AU officials. Indeed, this would be a tall order for such a young organization to undertake but in due course this mandate can be developed and improved upon when it comes to taking the necessary steps to intervene in crisis and potential crisis situations in African states. Where states are no longer viable the AU needs to take bold steps to find creative ways of enabling sub-national groups within such countries to coexist harmoniously. Where necessary in the case of border disputes the AU also needs to explore introducing the principle of shared sovereignty, up to the point of bestowing multiple citizenship on people in disputed territories. The experience in East Africa, where Kenya, Tanzania, and Uganda have introduced a common East African passport for all their citizens, illustrates the illusionary nature of African states created at the whim of the colonial powers to serve their own administrative objectives and their interest in extracting natural resources. For African people to be dying over »fictional« colonial borders in the twenty-first century is a tragedy that the African people themselves need to address urgently. This will necessarily begin with the process of »decolonizing the minds« of government officials and citizens and articulating a Pan-African ethic based on the principle of solidarity and unity and the doctrine of non-indifference.

The AU may have a weak mandate and ultimately not manage to implement its doctrine of non-indifference and upholding R2P. There is also the question of how to finance R2P. The AU remains spectacularly under-resourced, which is squarely the responsibility of African governments and not donors. Tax revenues from African citizens finance huge domestic defense budgets, but the commitment to Pan-African security does not yet approximate the commitment shown to national defense. This is a natural consequence of the overemphasis on state sovereignty and an illusionary perception that one can ensure one's own security without an

adequate concern for the security of others. The converse is true in Africa, as elsewhere, because a nation-state's or a community's security is intricately bound up with the security of its neighbors. Therefore, there has to be a greater commitment on the part of African governments to finance their responsibility to protect.

Some countries have misappropriated the term »R2P« and have used it to justify military confrontation with non-state actors. Some have gone as far as using R2P to justify the invasion and occupation of other countries. UN Member States signed up to the 2005 World Summit Outcome Document which effectively legitimized R2P as an international doctrine. However, because of the propensity towards military adventurism, regime change, and imposing or exporting freedom and democracy by force, vigilance is required in the operationalization of R2P.

It is vital to raise global awareness of R2P. Citizens often feel powerless in the face of repression. Therefore an awareness of the existence of R2P as a doctrine that speaks directly to their plight is necessary. Awareness raising should be achieved through policy development seminars and civic education programs at primary, secondary, and tertiary level.

Conclusion

The case can be made that the AU has experienced a significant shift in terms of embracing the doctrine of non-indifference and committing itself to R2P. The AU has taken an interventionist and active stance with regard to situations in Burundi, Darfur, Somalia, Comoros, and Zimbabwe, and is actively involved in supporting other peace operations around the continent. Given the youth of its institutions the AU, although it has made a significant effort to conduct peace operations, is far from operationalizing an effective R2P regime. For example, the limitations of its fledgling institutions have been exposed in the complex humanitarian situation in Darfur. It is too early to pass definitive judgment on the AU's commitment to R2P since the paradigm shift in attitudes that the AU is attempting to bring about, and the institutions that it has developed to do so, have to be given an opportunity to work. The African Union will need to seriously re-orient the political leadership of the continent to maintain a vigilant approach to ensuring non-indifference and taking decisive and necessary action, without which the challenges of ensuring R2P implementation will not be met.