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**RESPONSIBILITY TO PROTECT: THE ROLE OF PARLIAMENT  
IN THE PROTECTION OF CIVILIANS**

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**(a) *Emergence of the concept “responsibility to protect”***

Interventions for the purpose of protecting human lives represent one of the most delicate and controversial issues in the field of international relations.

The International Commission on Intervention and State Sovereignty (ICISS), a body set up by the Canadian government in response to an appeal from Kofi Annan, then Secretary-General of the United Nations, observed the following in its report of December 2001: "External military intervention for human protection purposes has been controversial both when it has happened – as in Somalia, Bosnia and Kosovo – and when it has failed to happen, as in Rwanda. For some the new activism has been a long overdue internationalization of the human conscience; for others it has been an alarming breach of an international state order dependent on the sovereignty of states and the inviolability of their territory."

The solution advanced by ICISS is to establish the principle that sovereign States are responsible for protecting their own citizens against humanitarian disasters through humanitarian intervention. If states are unwilling or unable to do so, this responsibility must be assumed by the entire community of States.

The ICISS's conclusions were taken up by the Secretary-General's High-Level Panel on Threats, Challenges and Change. In its report of December 2004, this panel "endorse[d] the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign governments have proved powerless or unwilling to prevent."

It should be noted that the conclusions issued by ICISS and the High-Level Panel originated from earlier international conventions and practices: in ratifying the United Nations Charter, UN Member States undertook to promote and encourage respect for human rights and fundamental freedoms.

They have also undertaken to respect the Universal Declaration of Human Rights. One hundred forty two States have ratified the Convention on the Prevention and Punishment of the Crime of Genocide, in which the parties “confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and

to punish." All States (and more generally all parties engaged in armed conflict) are bound by international humanitarian law. Most of the States have also ratified the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

It is also significant that as early as 2000 the African countries had affirmed the right of their 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."

Paragraphs 138 and 139 of the Outcome Document adopted by the Heads of State and Government at the High-level Plenary Meeting of the General Assembly (or World Summit), held from 14 to 16 September 2005, was based on the conclusions of ICISS and the High-Level Panel on Threats, Challenges and Change.

Paragraph 138 establishes the principle that "each individual State has the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity." It stipulates, however, that the UN should establish an "early warning capability" to identify potentially massive violations of human rights.

Paragraph 139 provides that "the international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI<sup>1</sup> and VIII<sup>2</sup> of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity." It goes on to specify that, "should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity", the member States are "prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII,<sup>3</sup> on a case-by-case basis and in cooperation with relevant regional organizations as appropriate."

**(b) *The application and ambiguities of the concept***

The Security Council has subsequently referred to responsibility to protect on several occasions, and in particular in six resolutions:

- resolutions 1674 (2006) and 1894 (2009) establishing the normative framework for action by the Security Council for the protection of civilians in armed conflict situations;
- resolution 1706 (2006) on the situation in Darfur;
- resolutions 1970 (2011) and 1973 (2011) on the situation in Libya;
- resolution 1975 (2011) on the situation in Côte d'Ivoire.

In its resolution 1894, the Security Council reiterated "its willingness to respond to situations of armed conflict where civilians are being targeted or humanitarian assistance to civilians is being deliberately obstructed".

Following the adoption of resolution 1706, the African Union contingent in Darfur, which was insufficient to contend with the situation, was to be strengthened with a robust UN peacekeeping force, but the impossibility of obtaining the Sudanese government's consent

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<sup>1</sup> Pacific settlement of disputes.

<sup>2</sup> Pacific settlement of local disputes through regional arrangements or agencies.

<sup>3</sup> Action with respect to threats to the peace, breaches of the peace, and acts of aggression, which may include recourse to force.

prevented its deployment. Subsequently, however, the unanimous adoption of Security Council resolution 1769, on 31 July 2007, did allow for the deployment to Darfur of a joint 26,000-man force of the African Union (AU) and the UN with the fundamental mission of protecting civilian populations (AU/UN Hybrid operation in Darfur - UNAMID). And yet despite the commitments undertaken by the Sudanese government, the ability of UNAMID and humanitarian organizations to move around the country is still obstructed.

In Côte d'Ivoire, a United Nations force (United Nations Operation in Côte d'Ivoire - UNOCI) intervened pursuant to resolution 1975 to protect the civilian population, in particular by preventing the use of heavy weaponry against it.

Security Council resolution 1973 established a no-fly zone in Libya with the aim of protecting the country's civilian population against bombardment by the forces of Colonel Gaddafi's regime. It authorized the member States, consisting in this case of a coalition of France, the United Kingdom and the United States, but also including the Arab countries, to take all necessary measures, including military ones, to enforce this no-fly zone and protect civilian populations in Libya threatened by attack. Thus, military action was authorized solely for the protection of civilian populations, which was why the resolution excluded the words "a foreign occupation force of any form on any part of Libyan territory".

Despite this restriction, the States participating in the coalition were able to apply the Security Council mandate by deploying military resources not only to stop the attacks against civilian populations but also to support the armed opposition in Libya (the National Transition Council). It should indeed be observed that no guarantee could be given as to the security of civilian populations so long as Colonel Gaddafi was in charge. The Security Council's action therefore prevented a major humanitarian disaster.

The Security Council debated the coalition's operations, received regular reports on its deployment and, as soon as major threats to the civilian population had subsided, withdrew the authorization for recourse to force contained in resolution 1973.

Is the mandate in Libya given by resolution 1973 still in effect? The question is a subject of debate. Deployment of the military mission has been criticized, particularly by certain African countries as well as Russia and China, which are permanent members of the Security Council. These last two countries have advanced reasoning critical of the responsibility-to-protect concept when invoked, in their view, too extensively.

However one might judge these African, Russian and Chinese positions, particularly in relation to the Syrian crisis, it must be admitted that **a clarification is needed to distinguish between "responsibility to protect" and "regime change"**.

Indeed, it is generally not possible to restore real civilian security in the absence of a political process to remove from power those responsible for massive human rights violations. Such a process tends moreover to entail a democratic transformation in the governance of the country concerned.

On the other hand, while armed foreign intervention may be necessary to bring an end to massive human rights violations, such interventions must never seek to impose a particular political regime.

**(c) Responsibility to protect and parliaments**

According to UN Secretary-General Ban Ki-moon, in his 2009 report on the subject, responsibility to protect must be assumed at three levels (the three "pillars"): the primary responsibility of the State; international assistance and capacity building; and, if necessary, a timely and decisive reaction.

This report provides below an analysis of the role that parliaments could and should play with respect to each of these three pillars.

But it also includes a few remarks about a fourth area, not often considered, where parliaments could promote responsibility to protect: international support for peacebuilding in the wake of humanitarian crises. As observed in the ICISS report: "if military intervention is to be contemplated, the need for a post-intervention strategy is also of paramount importance." Together with "responsibility to protect" and "responsibility to react" an additional "responsibility to rebuild" is thus evoked.

***The responsibility of the State includes strict respect for its international obligations in the area of protection for civilian populations:*** any State needs to ensure strict observance of its own obligations in the fight against grave human rights violations. In that regard, parliaments need to take all the necessary legislative measures: they must bring their countries' penal codes and codes of penal procedures into conformity with international norms regarding the protection of civilians in armed conflicts; they must also review the legislation on exceptional circumstances or on foreign operations to preclude any possibility of their nationals violating international humanitarian law.

Parliaments must also ensure that the orders given to armed forces are in accordance with current international law and that they are respected, particularly through the establishment of effective disciplinary procedures, as called for in Security Council resolution 1894.

Parliaments must finally take the legislative measures necessary to ensure that the perpetrators of massive human rights violations are held accountable for their acts through a judicial process (by ratifying the Statute of Rome, establishing the International Criminal Court (ICC), and by adapting their penal codes and codes of penal procedures to the ICC framework).

***International assistance and capacity building are essential to the prevention of grave human rights violations:*** it is the duty of the international community to help States meet their obligations toward their civilian populations. Humanitarian aid, development cooperation and assistance in establishing the rule of law are determining factors in this regard.

Parliaments must actively participate in the formulation and implementation of these policies (particularly in countries of the North, when debating and voting on the allocation of budget resources to development assistance and as part of their oversight of development cooperation policies). All parliaments must see to it that their governments help equip the UN with an effective early warning capability, reporting back to the parliaments on the results of such efforts. They must also ensure that their governments fully support the work of the United Nations Peacebuilding Commission and contribute appropriately to the United Nations Peacebuilding Fund.<sup>4</sup>

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<sup>4</sup> The Peacebuilding Commission (PBC) is a UN intergovernmental advisory body that supports peace efforts in countries emerging from conflict.

**Timely and decisive action:** parliaments must be fully informed about any massive and systematic violation of human rights. They must question the government on its positions in the Security Council and/or General Assembly. Parliaments may be called upon in some countries to discuss and vote on government requests to authorize external interventions on responsibility-to-protect grounds and to allocate the budget resources required. Parliaments and governments bear a heavy responsibility in such cases. They must be aware that under international law, any military action, except in cases of legitimate defence, must be duly authorized by the Security Council. Parliaments must consider two other factors when voting on a responsibility-to-protect military intervention: the use of force must be a last resort after all others have been exhausted; and the military action must be limited to what is strictly necessary to prevent genocide, war crimes, ethnic cleansing or crimes against humanity, and must not cause more destruction than it is intended to prevent.

The Syrian crisis illustrates the difficulty of timely action in response to threats against civilian populations. Grave human rights violations constituting war crimes and crimes against humanity are undeniably being committed. According to Navi Pillay, United Nations High Commissioner for Human Rights, the Bashar el-Assad regime's deliberate recourse to deadly violence in late August 2012 resulted in more than 18,000 deaths, mainly among civilians. The prisoners held at that time, often tortured and sometimes executed, numbered in the tens of thousands, together with hundreds of thousands of displaced persons on Syrian territory and more than 200,000 refugees in neighbouring countries.

IPU expressed its deep concern over the Syrian crisis at its Assembly in Kampala, in April 2012, adopting, by consensus, an emergency resolution entitled: *Inter-Parliamentary Union initiative for an immediate halt to the bloodshed and human rights violations in Syria, and the need to ensure access to humanitarian aid for all persons in need and to support implementation of all relevant Arab League and United Nations resolutions and peace efforts.*

Given the desperate situation now faced by many Syrians, the responsibility-to-protect concept would appear to apply. At this stage, however, a military intervention would not solve any of the challenges facing Syrian society, and would not even address the question of how the country's different religious communities can co-exist going forward. Such an intervention, moreover, could have negative consequences for the security of Syria's neighbours or for the stability of others.

At any rate, the basic condition for armed intervention – a broad consensus among Security Council members, including Russia and China – has yet to be fulfilled. There can be no armed intervention on the grounds of responsibility to protect in the absence of a decision by the only "legitimate authority" in the area of recourse to force: the Security Council.

On the other hand, however, full application of the proposals made by Kofi Annan as emissary of the UN and the Arab League – including a political transition directed by the Syrians themselves – could help to end the violence and avoid civil war. The international community must therefore increase the pressure to guarantee the application of the Annan Plan, as the European Union countries have done by imposing sanctions against the Syrian authorities who have perpetrated this grave humanitarian crisis.

Unilateral initiatives are not enough, however. Action by the entire international community is indispensable and urgent. The Annan Plan could be pursued, for instance, under Chapter VII of

the UN Charter, which envisages the use of force. Lakhdar Brahimi, the new special envoy of the United Nations and the Arab League, would be well advised to plan his action from this perspective. Given the gravity of the Syrian humanitarian crisis, it is the duty of parliaments to question their governments about the actions and solutions they intend to pursue.

***International support for peacebuilding following humanitarian crises:*** responsibility to protect must not be limited to prevention and intervention.

If prevention fails and a military intervention is judged necessary by the Security Council, the international community has a responsibility to rebuild the country after the conflict and provide for a stable environment. As noted in the ICISS report, "the responsibility to protect is but one element in a continuum of intervention, which begins with preventive efforts and ends with the responsibility to rebuild, so that respect for human life and the rule of law will be restored."

From that standpoint, the military intervention in Libya illustrates the inadequacy of a responsibility-to-protect strategy that fails to come to grips with the diverse consequences that result from the use of force.

Since it was urgent to prevent the forces of Colonel Gaddafi from massacring the civilian population, particularly in Benghazi, the Security Council was right to authorize an international coalition to stop their offensive. One might question, however, whether the Council's reaction to the growing humanitarian crisis was sufficiently timely. Moreover, the coalition should have factored in more carefully what consequences might result from the sudden defeat of forces still loyal to Colonel Gaddafi, including the forced return of migrant workers to vulnerable zones and an influx of weapons into the Sahel region. The new Libyan government seems for the moment incapable of securing the country's long borders, particularly in the South, which is controlled by heavily armed tribes and rival smuggling operations and characterized by a largely informal economy. These conditions also appear to have undermined the security and military situation in Mali. We can only hope that the recent Libyan elections will usher in a credible and broadly representative government capable of exercising its full authority throughout national territory. One of the main challenges facing this government will be to integrate the country's diverse militia into a national army and restore security to all of its regions. Support from the international community will be crucial in that regard, and it is incumbent on parliaments to see that it is provided.

The responsibility-to-protect concept is an emerging norm of international law. Adopted by the World Summit of 2005, it has since been confirmed by the General Assembly and Security Council. As a concept, it need not conflict with that of national sovereignty, which it treats as a responsibility – not a defensive posture that national leaders can hide behind to commit the worst abuses. UN Secretary-General Ban Ki-moon, in a speech given in Berlin on 15 July 2008, put it this way: "by helping States meet one of their core responsibilities, responsibility to protect seeks to strengthen sovereignty, not weaken it."

It is now up to the international community to define the responsibility-to-protect concept more precisely, to avoid its misuse for purposes other than the protection of civilian populations.

The Brazilian proposal to expand the concept with the notion of "responsibility in protecting" addresses that concern, reflecting an understandable desire to prepare for possible contingencies. But neither, on the other hand, must one resign oneself to impotence.

As a collective instrument, the responsibility-to-protect concept must not be overburdened with unnecessarily restrictive conditions that make implementation more difficult. The risk is that such conditions could be interpreted so as to block decisive and timely action, which is essential to saving lives in danger.

The international community must not create conditions like those experienced in Rwanda in 1994, when the Security Council proved incapable of timely action to end the massacre and prevent genocide.

It is therefore the duty of UN Member States to reach agreement on a process for making the responsibility-to-protect concept fully operational. Dialogue within the framework of the Inter-Parliamentary Union can enrich this essential debate.