



**ENFORCING THE RESPONSIBILITY TO PROTECT: THE ROLE OF PARLIAMENT
IN SAFEGUARDING CIVILIANS' LIVES**

REPORTS

Members will find attached the two reports presented by the co-Rapporteurs.

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REPORT SUBMITTED BY
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Introduction

The IPU, the global organization of parliaments, works for peace and cooperation among peoples and for the firm establishment of representative democracy;¹ as such, it has identified *Enforcing the responsibility to protect: the role of parliament in safeguarding civilians' lives* as a current issue of urgent concern.

The "responsibility to protect" concept was endorsed by 191 countries in a resolution (A/RES/60/1) adopted at the United Nations World Summit in 2005. It refers to the responsibility of every State to safeguard its population from genocide, war crimes, ethnic cleansing and crimes against humanity. If a State fails to protect its citizens – meaning that it is no longer upholding its responsibility as a sovereign nation – and peaceful measures have failed, the international community has a responsibility to take corrective measures, with military action being the last resort.

The concept's proper and effective operationalization and implementation have often fallen short of the resolution adopted at the World Summit. This observation has been borne out by events in Egypt, Côte d'Ivoire and Libya, and the ambiguous responses to them. It is evident that parliaments – as assembled by a body such as the IPU – should express themselves on the issue. We should inquire whether our governments have "abdicated" their responsibility as expressed at the 2005 World Summit. We should be upfront and ask whether we have done enough to avert atrocities. We should ask ourselves what our role is in such situations and we should adopt resolutions regarding that role.

Ambiguous implementation and concepts underlying the responsibility to protect

Whether one calls it reluctance, unwillingness or indifference² on the part of the international community to enforce the responsibility to protect, the fact remains that governments are often found lacking in this regard. The purpose of this report is therefore, first, to consider the role of government with regard to the responsibility to protect, and secondly, to investigate what parliaments should do to ensure its implementation. We believe that the problem is not a lack of policy or direction in terms of what needs to be done in the case of mass atrocities, but rather reluctance - for lack of a better word – to get involved or to decide which course of action to take. What we require is an enforcement mechanism or a similar tool to enable governments to act or decide which option to explore to enforce the responsibility to protect. Therefore, while the policy is in place, and governments have agreed to it, its timely, consistent and objective implementation in practice is what we believe is lacking.

Having such an enforcement mechanism will help us not only to give effect to our decision to utilize the concept of responsibility to protect as decided at the World Summit in 2005, but also to avoid the recurrence of mass atrocities as witnessed in Rwanda and Srebrenica, to name but a few. As South Africans, we attach high importance to the protection of civilians during and after armed conflict. In addition to upholding global instruments and declarations such as the 1949 Geneva Conventions and their Additional Protocols, the Universal Declaration of Human Rights and the Millennium Development Declaration (which calls inter alia for the promotion of peace, security and human rights), South Africa recognizes that the protection of civilians is by its very nature primarily the responsibility of individual States, which are sovereign.³

Since the protection of civilians has become more complex as the concept has evolved, as witness recent cases and United Nations resolutions, it is our firm belief that the responsibility to protect doctrine should be approached in a collective and holistic manner ensuring the necessary political support and other resources.⁴ This will facilitate not only a more predictable humanitarian response to complex emergencies, but also a secure environment for the protection of civilians. For us as the global community, it will support our efforts to prevent and stop the deliberate targeting of civilians, which is often accompanied by the indiscriminate use of force, gender-based violence, forced displacement and lack of safety and access for humanitarian personnel, all which have a detrimental effect on civilians.⁵

In recognizing the responsibility to protect as a **means of mobilization** for timely action in a worst-case scenario, we are also aware that it is not, and should not be viewed as, a panacea for all issues related to human security.⁶ While failure to prevent conflicts and security disasters is often attributed to a lack of political will,⁷ what is usually really lacking is full recognition of the world's increasing interdependence and the implications thereof. In this sense, violent conflict is a threat, not only within the country in which it occurs, but far beyond.⁸

In responding to the question of why we need the responsibility to protect, we are reminded of the world saying, "**Never again**"⁹ after every mass atrocity. But the reality is that such crimes are unfortunately being visited on innocent civilians on an all too regular basis.¹⁰ Evans justifiably asks how many more times we will exclaim, "Never again", having done so after the Holocaust, the Cambodian genocide, the Rwandan genocide, the Srebrenica massacre, and the mass killings in Darfur. "Are we indeed really capable as an international community to stop nation-states murdering their own people? How many more times will we look back wondering, how we could have let it all happen?"¹¹

Incrementalism, critique and criteria for intervention

While recognizing the challenges we face in operationalizing and implementing the responsibility to protect, we would do well to remember Brazil's statement: "No issue can be more deserving of the attention of the Security Council than the need to protect civilians in situations of armed conflict."¹² It is our firm belief that people should come first – something we South Africans refer to as *batho pele* – and we therefore hold that the responsibility to protect can help us provide civilians with effective protection in situations of armed conflict.

However, this should be based on a solid understanding of the various aspects of the responsibility to protect. The first is the **responsibility to prevent**, which entails a duty to address the root causes of internal conflicts and other man-made catastrophes. The second, the **responsibility to react**, entails responding to serious humanitarian crises with appropriate measures,¹³ which may include coercive measures such as sanctions and international prosecution, and, in extreme cases, military intervention.¹⁴ The third, the **responsibility to rebuild**, entails providing full assistance for recovery, reconstruction and reconciliation, particularly after a military intervention, and addressing the causes of the humanitarian crisis the intervention was designed to halt or avert.¹⁵ Military action should only be deployed as a last resort, after all the consequences have been comprehensively and carefully analysed.¹⁶ This is because the use of force always carries the risk of unintended casualties and instability, something we have unfortunately witnessed all too often and to our collective shame.

South Africa's support for the responsibility to protect is premised not only on its Ubuntu-oriented foreign policy, but also on its support for the African Peer Review Mechanism (APRM). This is a system introduced by the African Union to improve governance with a view to achieving political stability and socio-economic development in Africa.¹⁷ We are, however, also fully aware of the **arguments** of those who do not necessarily agree with the concept. Sceptics believe that it is too easily misused, a cover for imperialism, even an incentive to kill. Others feel that the concept is too narrow in scope in that it allows the international community to intervene only if one of the following four crimes has been committed: genocide, war crimes, crimes against humanity or ethnic cleansing. This means that it is not applicable to HIV/AIDS, climate change, natural disasters, etc. One concern often cited is that the responsibility to protect can be used by major Western countries to legitimize intervention in other States' domestic affairs. This is especially true because the five permanent members of the United Nations Security Council¹⁸ can exercise their veto whenever they are affected politically, economically or strategically. The use of military intervention has always been controversial, and some believe it can be utilized for regime-change purposes.¹⁹ In this regard, the case of Libya did not work in favour of the concept's proponents.

The **Libya case** has turned a spotlight on the rationale for, the scope and end result of military intervention. In this respect, we would do well to remember the 2001 Report of the International Commission on Intervention and State Sovereignty (ICISS). According to the Report, any form of military intervention predicated on the responsibility to protect should meet the following **six criteria** in order to be justified as an extraordinary measure of intervention:

- right authority: the most appropriate body to authorize military intervention for human protection purposes is the United Nations Security Council;
- right intention: the primary purpose of the intervention, whatever other motives intervening States may have, must be to halt or avert human suffering;
- just cause: in order for military intervention to be warranted, serious and irreparable harm must be occurring to human beings, or be imminently likely to occur;
- last resort: military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded;
- proportional means: the duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective;
- reasonable prospects: there must be a reasonable chance of halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.²⁰

It remains an open question whether these criteria were adhered to in the Libya case. This uncertainty has prompted many people to oppose military intervention, and more recently Security Council resolutions on the Syrian conflict,^{21,22} especially in terms of right intention and proportional means.

A human rights focus

We should not lose sight of the fact that the responsibility to protect concept was intended to provide a framework for humanitarian intervention in restricted circumstances, not to create an alternative framework for **human rights protection**. The UN Human Rights Council was set up in 2006 to provide a stronger and more effective organization, but there remains a need to enforce human rights standards beyond domestic jurisdictions, and greater emphasis should perhaps therefore be placed on supporting national mechanisms

for the promotion of human rights. Furthermore, a democratic system should respect human rights and be premised on the rule of law. We therefore agree that a democratic system is best suited to uphold freedom of expression, equal opportunities for all and equal treatment for all sectors of society.²³

Some of the best practices in this regard relate to independent government watchdogs such as human rights commissions, which should be endowed with constitutional powers, resources and capacity for the promotion and protection of human rights. While many countries have progressive constitutions that endeavour to promote and protect basic human rights, in practice these rights are trampled through acts such as extrajudicial executions, the killing of judges, unlawful detentions, and police torture.

It is this mismatch between theory and practice that is often the starting point for widespread abuses that eventually lead citizens to revolt against their governments, which in turn can lead to mass atrocities. It is therefore our firm belief that, in addressing such situations, the tenets of democracy embodied in the dictum, "Government by the people, for the people", should be kept uppermost in mind. The implementation of democratic tenets not only promotes and safeguards peace and security, it also ensures national resources are likely to be used for the people's benefit and in the national interest.²⁴

The United Nations and the responsibility to protect

The United Nations Charter establishes the Security Council as one of the main international bodies with primary responsibility for the maintenance of world peace and security.²⁵ Former UN Secretary-General Kofi Annan was instrumental in developing the responsibility to protect concept, notably when he asked **when** the international community must intervene for humanitarian purposes. The answer, in part, was when State sovereignty has to yield to protection against the most egregious violations of humanitarian and international law, including genocide, ethnic cleansing and crimes against humanity. He further stated: "It cannot be right, when the international community is faced with genocide or massive human rights abuses, for the United Nations to stand by and let them unfold to the end."²⁶

The United Nations has adopted numerous resolutions on the responsibility to protect, not only expressing its support for the doctrine but also stating its willingness to authorize the deployment of peacekeepers and adopt resolutions which sanction military intervention.²⁷ For instance, on 26 February 2011 the Security Council adopted resolution 1970, which deplored the gross and systematic violation of human rights in strife-torn Libya. On 17 March 2011, it adopted resolution 1973, which demanded an immediate ceasefire in Libya, including an end to ongoing attacks against civilians. It authorized member States to take all necessary measures to protect civilians under threat if they are attacked.²⁸ As we are all aware, NATO was subsequently criticized for its enforcement of the mandate to protect civilians under the terms of resolutions 1970 and 1973.²⁹

While the Security Council has adopted various resolutions referring to the responsibility to protect, it has not always been in agreement on situations in which the concept applies. In the case of the **Syrian Arab Republic**, on 4 February 2012 it voted on a draft resolution; 13 members voted in favour, but China and the Russian Federation exercised their veto and blocked the adoption of the resolution.³⁰ On 19 July 2012, China and the Russian Federation used their veto to block another resolution, South Africa and Pakistan abstained, while the other 11 members voted in favour. A veto by one of the permanent members – in this case China and the Russian Federation – means the resolution cannot be adopted.³¹

The unfolding humanitarian crisis in the Syrian Arab Republic, where the international community is deadlocked over whether and how to intervene to stop the carnage, underscores the urgent need for a middle ground to unblock the diplomatic stalemate.³² The efforts of Kofi Annan – former UN-Arab League Joint Special Envoy for Syria - left him frustrated and impatient over his helplessness to push through a ceasefire. His frustrations were shared by the international community, which looked on as the "[A]ssad regime raged on with impunity in its bloody crushing of the people's uprising".³³ The Syrian stalemate and Annan's frustration reflect tragically not only on the United Nations, but also on States who dawdle over decisions while the bloodshed continues. Once again, we have to ask what we, as a global community of parliaments, should do together and individually and whether we have explored all avenues to prevent the situation from deteriorating further.

The efforts of the IPU and the fall-out of the Arab Spring

The 126th IPU Assembly (Kampala, March-April 2012) adopted a resolution calling for the immediate cessation of violence and human rights violations and abuses in the Syrian Arab Republic and for support for the efforts of international and regional organizations to bring about a peaceful end to the crisis, and urging the United Nations and its organs to redouble their efforts to help bring an end to armed violence in the country and to address the current humanitarian crisis.³⁴

We want peace and stability in the world, especially in conflict-ridden areas and in particular in the Syrian Arab Republic. We hold that violence should not be used to effect regime change, not only because of its destructive nature but because it is often viewed as externally imposed, rendering post-conflict reconciliation even more problematic. It is therefore incumbent on both parties to negotiate a peaceful settlement and end the killing of innocent people as soon as possible. Parties arming both sides with military equipment and weapons should cease these activities immediately in order to allow the two parties to settle their differences peacefully. There can be no development, much less economic growth, unless there is peace and security, as neither can happen in situations where the parties are trying to annihilate each other with weapons supplied by external players.

The IPU resolution, with its unambiguous stance on the Syrian crisis, is a step in the right direction, but we need to ask whether it goes far enough. Is the role of national parliaments limited to supporting such resolutions with no enforcement or punitive mechanism?

Whether the stalemate is partly due to the mishandling of the responsibility to protect in 2011 in Libya – many believed the ground-breaking intervention in Libya to protect unarmed civilians from the atrocities of the Gaddafi regime³⁵ was the right thing to do – is open for debate. The death of Gaddafi and the subsequent change in regime have prompted the concept's detractors to say that this is not what they voted for. One opinion is that the Libyan experience turned the tide against the responsibility to protect, as the Russian Federation and China have since hardened their positions on intervention in the Syrian Arab Republic.

Perceptions of abuse and selective non-use of the responsibility to protect

Part of the fall-out of the turmoil in Libya, Tunisia, Egypt and the Syrian Arab Republic is that, although 191 countries endorsed the concept in 2005, many still harbour reservations about the responsibility to protect. This is partly because of their suspicion about the potential abuse of the doctrine – the fear that it will be used to advance the strategic interests of other countries, or to bring about regime change.³⁶

The question is thus what should be done to ensure that States do not neglect their responsibility to act when mass crimes are taking place. Their perceived "reluctance" and/or indifference reflects not only their wish to protect political, economic and other interests, as some would like to believe, but also the fear of a repeat of what happened in Libya, when NATO apparently exceeded its mandate. How do we assure States that there will not be a repeat of what happened in Libya? How do we, as an assembly of parliaments, guide our governments to get involved and enforce the responsibility to protect?

One of the issues we need to consider is whether the responsibility to protect is being selectively utilized. While the majority of States agree in principle with the doctrine, their support is qualified by strong perceptions of it being abused when strategic and economic interests are at stake. They ask why the doctrine can be so readily invoked in cases such as Côte d'Ivoire and Libya, but not in Palestine. This perception needs to be addressed, and governments, non-governmental organizations and especially parliamentary associations such as the IPU, the Commonwealth Parliamentary Association (CPA) and the Pan African Parliament (PAP) must take steps to ensure that the responsibility to protect is not being invoked for the wrong reasons.

The concerns expressed that the International Criminal Court – whose main task is to bring the perpetrators of war crimes and crimes against humanity to book – is a "pro-Western and anti-African court"³⁷ are similar to those raised against the selective application of the responsibility to protect concept. Although this bias has been denied by the Court, there is nonetheless a strong perception among African governments³⁸ that the continent receives far more attention from the Court than the rest of the world,³⁹ despite that fact that it played a crucial part in the Court's formation.⁴⁰ More importantly, the Rome Statute, the international treaty establishing the Court, has been ratified by 114 countries. Thirty-three of these are African countries. Prominent States, including the United States of America, the Russian Federation, Israel, the Islamic Republic of Iran, Egypt, China, India and Pakistan, and 11 African States have not signed the treaty.⁴¹ Yet some of the non-signatories are often the first to call for the Court to take action against a suspected perpetrator.

We therefore need to apply our collective minds to this perceived bias in the application of the responsibility to protect concept, lest it renders us unable to intervene effectively and decisively anytime and anywhere such mass atrocities are perpetrated.

Responsibility while protecting

In its statement to the Security Council,⁴² Brazil articulated a position regarding implementation of the responsibility to protect that can basically be described as "responsibility while protecting". Under this approach, the United Nations, when acting to protect, should not cause greater harm than the one it is endeavouring to prevent. In the light of what happened in Libya, Brazil's position is both timely and to the point: the United Nations should always start from a position of not causing harm itself. Some of the fundamental principles of the approach are listed below.

- Prevention is always the best policy;
- The international community should be rigorous in its efforts to exhaust all peaceful means available;
- The use of force must produce as little violence and instability as possible;
- In the event of the use of force being contemplated, action must be judicious, proportionate and limited to the objectives established by the Security Council;

- Enhanced Security Council procedures are needed to monitor and assess the manner in which resolutions are interpreted and implemented to ensure responsibility while protecting.

While the input from Brazil was generally welcomed, the Netherlands, referring to the issue of comprehensive and judicious analysis of all consequences, noted that when it came to the use of force, "no military plan survives first contact with the enemy". Not only can over-planning result in the atrocities getting further out of hand, it can also delay timely action.⁴³ The German Ambassador raised similar concerns about the Brazilian approach, indicating that "responsibility while protecting" limits the scope for timely, decisive and tailor-made solutions to situations of extreme gravity.⁴⁴ Although we note the concerns of the Netherlands and Germany, we are inclined to support the Brazilian view as we agree that the United Nations should indeed only apply the sanctions or force needed to achieve its goal and thus limit the economic and military damage. This approach will also serve to address concerns that the responsibility to protect doctrine is being misused.

The role of regional organizations

Priority should also be given to the contribution of continental and regional bodies, such as the Southern African Development Community and the Economic Community of West African States, towards implementation of the responsibility to protect concept.

Jean Ping, former Chairperson of the African Union Commission, speaking about implementation of the responsibility to protect in Africa, says that: "[T]his concept has become universal and it is imperative for us in Africa to think global and act local, that is, to analyse and truly understand the global challenges and find our own answers to them."⁴⁵

The African Union deals with issues of peace and security on the continent through its Peace and Security Council,⁴⁶ which serves as a "collective security and early warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa". Its security regime is also in line with elements of the protection framework set out in the responsibility to protect concept. Like the responsibility to protect, the African Union's Constitutive Act⁴⁷ and its Protocol Relating to the Establishment of the Peace and Security Council are pro-sovereignty: they assign high priority to the sovereignty and territorial integrity of member States.⁴⁸

The SADC, as one of the continent's regional organizations,⁴⁹ generally supports UN and African Union initiatives, in particular for the protection of civilians in conflict situations. South Africa and Nigeria, two regional heavyweights, have at times already implemented the responsibility to protect in their foreign policies, using subregional and multilateral means. However, they have yet to realize their full potential in this role.⁵⁰

A South African perspective on the responsibility to protect

In 1993, Nelson Mandela stated: "Human rights will be the light that guides our foreign policy."⁵¹ This belief is manifest in South Africa's various policy guidelines and is the pillar around which the South African government has built its approach to the responsibility to protect. The legislative framework informing our position starts with the 1996 Constitution, which confirms the centrality of human rights and freedoms in the Bill of Rights. Our Constitution's people-centeredness has its roots not only in our past, but also in our firm belief in *Ubuntu*.⁵² The White Paper on Foreign Affairs, *Building a better world: the diplomacy of Ubuntu*,⁵³ further elaborates on this humane approach, which we project in our international relations.

Following on this, South Africa's approach to the responsibility to protect is logically one of engagement and quiet diplomacy, one that often pushes for **multilateral institutions** to become the main repositories of the responsibility to protect. This approach is also "engagist" in nature in that it underlines South Africa's move to push the continent's approach of "non-intervention" towards "non-indifference".⁵⁴ It therefore promotes graduated and cascading action that is based on the belief that the root causes of wars and deadly conflicts have to be tackled to prevent a return to violence, which can erupt even after peace deals have been agreed and implemented.

South Africa attaches great importance to the protection of civilians in armed conflicts. Besides acceding to and upholding the Geneva Conventions and their Additional Protocols - which seek to protect various categories of victims of armed conflict, particularly civilians not involved in hostilities - South Africa recognizes that the protection of civilians by its very nature is primarily the responsibility of individual States.⁵⁵

Further to this, from the point of view of implementation by the national government, South Africa regards the responsibility to protect as a process, rather than a diktat that needs to be enforced. As a process, the responsibility to protect can best be encouraged and managed through diplomacy and engagement. In this way, South Africa has distanced itself from the role of policeman and bullying hegemon, a role others would like it to play.

What parliaments should do

Even though the constitutions of democratic countries specify the different roles of the legislative, executive and judicial branches in line with the separation of powers, parliaments should not view themselves as unable to contribute constructively and decisively to the manner in which international relations are conducted. On the contrary, parliament's oversight role extends beyond the national/domestic realm to include oversight of international participation. Thus, parliamentarians, as the elected representatives of the people, have a responsibility to engage the Executive on matters of international relations to ensure that the views of the electorate find concrete expression in the manner in which the Executive conducts itself in the international arena, within the prescripts of the country's foreign policy. Parliaments should strive not to limit their international participation to contributions in parliamentary forums such as the IPU, the CPA or the PAP; they should reach out and engage the Executive on matters of national interest at international level. These include the negotiation of treaties, international partnership agreements, reporting obligations arising from treaties ratified, etc.

In particular, parliaments should endeavour to help safeguard civilian lives through implementation of the responsibility to protect. Most centrally, a strong and credible parliament that represents the whole population ought to play a decisive role in ensuring that norms such as the responsibility to protect are given the necessary attention. It can do this by exercising effective democratic oversight, which can enhance the legitimacy of the Executive and the security services.⁵⁶ As a result, the security forces and the Executive can be trusted and relied upon to execute the will of the people, making them less likely to commit atrocities and trample on human rights at home, or to visit such crimes on neighbours. The use of force against another State is thus severely restricted. One role of parliament is to monitor whether the executive branch respects international restrictions on the use and threat of war and does not exceed its powers in times of conflict.

Other more specific suggestions for parliamentary action

- Parliaments should be more proactive in ensuring that they acquaint themselves with (and ideally provide input for) the Executive's negotiated positions on treaties, conventions and resolutions, including Security Council resolutions. Negotiators and/or the relevant Minister(s) should be asked to brief the relevant parliamentary committee(s) on the country's approach to a specific resolution (such as responsibility to protect) and to provide background or the reasons for their decision with regard to this approach. Parliamentarians (as representatives of the people) should thus have some input into the Executive's approaches in the international arena. Parliaments should also request briefings from the Executive on country progress reports required by the reporting structures provided for in individual treaties, particularly those relating to human rights;
- On a more reactive level, parliaments should interact with their governments to verify and confirm the position that their governments have taken on UN Security Council resolutions. An explanation of the reasons for a vote would not only help parliaments understand the issues in play, it would also allow parliamentarians to explain the votes to the media and their constituents;
- All international treaties and conventions should be incorporated into national law where required. Parliaments should use their law-making function to ensure that domestic legislation is aligned with the international norms concerning, for instance, the protection of civilians. A point in case is the processing of the Implementation of the Geneva Conventions Bill [B10 – 2011] in South Africa. National implementation of the Geneva Conventions not only makes international humanitarian law applicable in South Africa, it also strengthens South Africa's commitment to the protection regime during international conflicts;
- Every parliament should consider establishing a dedicated parliamentary committee to oversee international relations. Where such committees already exist, they should be prioritized by their parliaments, i.e. given sufficient financial and human resources, and allotted adequate time on the parliamentary programme to conduct their work. These committees should meet regularly and hold government to account both proactively and reactively for the conduct of international relations. They should work closely with their counterparts in the respective houses of parliament to ensure coordinated and effective oversight in the arena of international relations;
- Parliaments should ensure that the protection of human rights, especially of minorities and indigenous people, is guaranteed not only in national law, but in practice. This can be facilitated by the establishment of effective bodies with adequate resources, such as human rights commissions;
- Parliaments should ensure that their governments have early warning security systems in place in order to facilitate and enhance faster and more effective responses to unfolding internal conflict situations. This should be coupled with internal conflict resolution mechanisms such as negotiation, enquiry, mediation, conciliation, arbitration and judicial settlement, through which disputes can be addressed through dialogue in a timely and fair manner;
- Parliaments should advance and promote the media's role by ensuring that there is freedom of expression and that the media are protected under the Constitution and in law and operate within the parameters of the law. Parliaments and governments should also promote and use information and communication technologies to keep their citizens informed;
- Parliaments should promote all facets of good governance, as it has been demonstrated that there is a positive correlation between good governance and the achievement of peace and security;⁵⁷

- A related suggestion is that Security Council proceedings should be monitored and assessed for the manner in which resolutions are interpreted and implemented to ensure responsibility while protecting.

Conclusion

With the unfolding Syrian crisis and the resignation of Kofi Annan, the IPU decision to deliberate on *Enforcing the responsibility to protect: the role of parliament in safeguarding civilians' lives* is more timely and relevant than ever. The ambiguous response to crisis situations in which mass atrocities are being committed is not only an indictment of governments and parliamentary unions such as the IPU, it also points to the need for an effective and objective enforcement mechanism. In addition, most countries tend to agree that something should be done, then find an excuse why they should not be the ones to do it, thus putting their narrow self-interest first.⁵⁸ The strong perception among African leaders in particular that the responsibility to protect concept is mainly used against the less powerful and Africans – similar to International Criminal Court cases – is an issue that requires urgent attention. This will not only garner support for the concept, it will also help address power relations between different States.

We therefore hold that issues of human rights abuses, such as in recent cases, require urgent attention by parliaments worldwide in the sense that they need to agree on a comprehensive resolution.

This report shows the extent to which human lives are being wasted because of the inability to play a proper role when mass atrocities occur, for reasons relating inter alia to narrow self-interest and protection of political, economic and strategic interests. Even though some of these mass atrocities are internally sponsored, and we respect State sovereignty, parliaments should not stand idle when this happens.

We need to agree that we require an enforcing mechanism or protocol that all States should adopt, a convention that has a specific legal status and clear criteria for measuring impact. These instruments will help address the indifference and narrow self-interests which often prevent countries from taking decisive action while mass atrocities are being perpetrated.

We believe that people deserve the right to call for assistance on behalf of abused/affected people when conditions deteriorate to the level of a mass atrocity.

Irrespective of what parliaments do, people (the affected) should be able to call for such assistance, particularly when the State is the culprit. We thus need to find a mechanism that allows people to call for assistance in such cases. This call needs, however, to be managed by existing institutions such as the United Nations, the African Union and the SADC, and the right to call for assistance should be formally recognized.

END NOTES

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- 2 See, for instance, the statement made by Mr. Basso Sansui, Ambassador and Permanent Representative of South Africa to the United Nations, during the debate on the Secretary-General's report on implementing the responsibility to protect, 23 July 2009.
- 3 Statement of South Africa: Ninth Open Debate on the Protection of Civilians in Armed Conflict: 7 July 2010.
- 4 See the statement made by Mr. Mashing, from the Permanent Mission of South Africa to the United Nations, on the protection of civilians in armed conflict, Security Council, 9 December 2005.
- 5 See the statement made by Mr. Swab, of the Permanent Mission of South Africa to the United Nations, during the Open Debate on the Protection of Civilians, Security Council, 22 June 2007.
- 6 Centre for Conflict Resolution, 2007. *Africa's responsibility to protect*. Policy Advisory Group Seminar Report, 23-24 April, Somerset West.
- 7 The UN is often denied the political will and material to prevent tragedy because most nations tend to agree that something should be done, but then find an excuse why they should not be the ones to do it. See, for instance, South Africa's 2009 statement on the issue, 23 July 2009.
- 8 Kofi Annan, 2005. Secretary-General's message to the Global Conference on the Role of Civil Society in the Prevention of Armed Conflict and Peace-building, New York, 19 July. Accessed at <http://www.un.org/sg/statements/index.asp?nid=1587> on 11 July 2012.
- 9 See, for instance, President Barak Obama's statement on the 18th anniversary of the Rwanda genocide, at <http://content.usatoday.com/communities/theoval/post/2012/04/obama-on-rwanda-never-again/1>, and the references to the "Never again" statements after the Holocaust and Rwanda, at <http://news.bbc.co.uk/2/hi/africa/4211621.stm>.
- 10 Evans, G. 2006. *Crimes against humanity: Overcoming global indifferences*, University of New South Wales, Sydney, 30 April.
- 11 *Ibid.*
- 12 Statement by the Ambassador of Brazil to the Security Council during the Open Debate on the Protection of Civilians in Armed Conflict, 9 November 2011.
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- 16 Parliamentary hearing at the United Nations, 2008.
- 17 See, for instance, South Africa's 2009 statement on the issue, 23 July 2009.
- 18 See a critique by Koresh Zia Bari of the five permanent members in particular, at <http://www.globalresearch.ca/index.php?context=va&aid=22875>.
- 19 See, for instance, Inseam, L. 2011. *The concept of R2P and how it changes international law*, Rhodes Youth Forum, October. Accessed at <http://youth-time.org/rhodes-youth-forum/54-the-concept-of-responsibility-to-protect-and-how-it-changes-international-law> on 11 July 2012.
- 20 See also <http://r2pcoalition.org/content/view/73/93/>, accessed on 30 July 2012.
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REPORT SUBMITTED BY
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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 VI¹ and VIII² 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,³ 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 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.

¹ Pacific settlement of disputes.

² Pacific settlement of local disputes through regional arrangements or agencies.

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

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.⁴

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.

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

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.