



THE RESPONSIBILITY TO PROTECT: DOES THE AFRICAN STAND-BY FORCE NEED A DOCTRINE FOR PROTECTION OF CIVILIANS?

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I. INTRODUCTION

The most significant security phenomenon since the end of the overt superpower confrontation as a result of the implosion of the Soviet bloc has been the proliferation of armed intra-state conflicts with odious humanitarian repercussions, especially evident in Africa. The events of September 11, 2001 in the United States (US) have aggravated the scale of contemporary humanitarian tragedies overwhelming civilian resources rendering the military to be increasingly involved in the performance of civilian tasks in the protection of civilians. Given the bitter experiences of World War I (WWI), since its establishment in 1945, the UN has consistently addressed the issue of the protection of civilians. Although safeguarding civilians from the scourges of armed violence is at the very heart of the Charter of the United Nations (UN) and the aspirations of the founders of the UN, the Reports of the UN Secretary-General concerning the protection of civilians in armed conflict paint an ugly picture that no part of the world has been immune from abuse, maiming and killing of innocent civilians. According to the reports, civilians, rather than combatants, continue to be the main casualties of current conflicts, with women and children constituting an unprecedented number of the victims.¹

Historically, men have been the primary victims of military operations because of their predominant role as combatants. This is no longer the case in intra-state conflicts of today. In such struggles, communities become the battlefield, and current figures suggest that civilians account for over 95 per cent of casualties resulting from armed conflict. In the past sixty years more than 250 conflicts have erupted around the world; close to 100 million civilians, mostly women and children, have died; and over 200 million people have been stripped of their rights, their property and their dignity. Unlike conflicts during the Cold War, the level of violence directed at civilians during the latter has been unprecedented. While soldiers constituted the highest percentage of casualties in both the WWI and WWII, approximately 70% of the victims in the post-Cold War era have been civilians. Such a development has serious ramifications for the vulnerable populations of the civilian population.² Yet, one of the greatest contributions to the protection of the rights of victims of

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¹ See UN Secretary-General's report of 28 May 2004 (S/2004/431) concerning the protection of civilians in armed conflict; see also the 1974 UN General Assembly on the Protection of Women and Children in Emergency and Armed Conflict; cf. the Secretary General's address to the 59th session of the United Nations General Assembly, 21 September 2004.

² See Alhaji MS Bah, *The Dynamics of Civilian Protection in the post-Cold War Era in Festus Aboagye and Alhaji MS Bah, A TORTUOUS ROAD TO PEACE—THE DYNAMICS OF REGIONAL, UN AND INTERVENTIONS IN LIBERIA* (Institute for Security Studies, Pretoria, 2005), pp. 21–49, p. 21: cf. Judith Gardam and Michelle J. Jarvis, *WOMEN, ARMED CONFLICT AND INTERNATIONAL LAW* (The Hague: Kluwer Law International, 2001), p.

conflict was to spell out the norms that should govern armed conflicts. The contemporary conduct of belligerents contravenes the basic principles of warfare as enshrined in the 1949 Geneva Conventions and the Additional Protocols of 1977. The rules of International Humanitarian Law (IHL) are intended to provide protection for civilians and non-combatants in armed conflicts. However, the greatest challenge now is not the creation of new norms, but the enforcement of existing rules. According to Bah, the challenge now is not only to address the complex conflict situations but also to influence the manner in which the conflicts are prosecuted—within IHL.³

Against this background, the lessons of the past are clear: the enjoyment of human rights helps secure the peace, deters aggression, promotes the rule of law, combats crime and corruption, strengthens democracies, and prevents humanitarian crises; regimes that violate the human rights of their own citizens are more likely to disrupt the peace and security of countries in their region. The best guarantor of security and prosperity at home and abroad is respect for fundamental freedoms and the protection of human rights through good governance and the rule of law. One of the most significant developments relating to the role of the UN Security Council in the protection of civilians came with the release of Secretary-General Boutros Boutros-Ghali's *An agenda for peace: Preventive diplomacy, peacemaking and peacekeeping*, which addressed issues that confronted the international community at the end of the Cold War.⁴ This was followed by the urgent need to address the question of impunity and saw the establishment of the International Criminal Court (ICC) and the *ad hoc* tribunals for the former Yugoslavia and Rwanda as well as the Special Court for Sierra Leone.

In a positive development, and largely in response to the international community's failures culminating to genocide in Rwanda, all the 192 Nations at the 2005 UN World Summit endorsed a groundbreaking doctrine called the Responsibility to Protect (R2P). The doctrine posits that sovereign States have the primary responsibility to protect their citizens but if a State is unable or unwilling to protect its own citizens, the responsibility falls on the international community. In the same vein the Constitutive Act of the African Union (AU Act) provides for the right of the AU to intervene in a Member State in cases of war crimes, genocide, crimes against humanity and other gross violations under Article 4(h). It is thus reasonable to argue that it is time for AU Member States to consistently, robustly and impartially 'operationalize' Article 4(h) and the concomitant normative commitment of R2P when the need arises.⁵ However, as Angelo Gnaedinger (2007) has pointed out, the effectiveness of humanitarian action could be improved but could never take the place of political action which must prevent conflicts and ultimately stop them. Not only parties to conflicts, but also the entire international community, must enforce IHL, through both punitive and preventive measures. It is for this reason States have an obligation under the 1949 Geneva Conventions to inculcate respect for humanitarian norms to both the military and civilians alike

³ Bah, *supra* note 2, p. 21.

⁴ See *An agenda for peace: Preventive diplomacy, peacemaking and peacekeeping*, Report of the Secretary General A/47/277-S/24111, June 1992.

⁵ General Dallaire's full speech is available <http://allafrica.com/stories/200706041468.html> (1 May 2007)

during peacetime, through teaching in schools and training in military institutions.⁶

In the same vein, efforts to strengthen international commitments towards the protection of civilians has resulted into the broadening of the concept of security horizontally from state security to human security. This includes factors such as political democracy, human rights, social and economic development, and environmental sustainability as much as on military stability. To expand the concept vertically involves the recognition that people should be the primary referent for security. In this way, the focus is on identifying threats to human security that emerge at the sub-national, national and trans-national levels.⁷ On a positive note, in 1991 over 500 African leaders held a conference in Kampala Uganda to discuss the continent's problems. The Kampala Document was issued at the end of the conference and was adopted by the erstwhile Organisation of African Unity (OAU) Assembly of Heads of State and Government in which they articulated that: "[w]hile giving due recognition to the provisions of the [UN] and [OAU] Charters with respect to the principles of good neighborliness and non-interference in the internal affairs of states, [there is] an increasing concern over domestic conditions pertaining to threat to personal and collective security and gross violation of basic human rights."⁸ The Kampala Document called for the establishment of a Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA). The CSSDCA aims at promoting and strengthening the cooperation of African countries in ensuring the security of Africans at all levels.⁹ Later, the 36th Session of the OAU Assembly of Heads of States and Government (AHSO) meeting in Lomé, Togo in July 2000, adopted the CSSDCA Solemn Declaration, which ultimately brought the whole process into the focus of what would become the AU. Considering the broad participation of the Kampala conference, it is safe to conclude that the commitment in the resultant Memorandum of Understanding on the Security, Stability, Development and Cooperation Calabashes, reflects the interests and aspirations of African peoples. It also constitutes for each participating State a present and future responsibility, heightened by experience of the past.

⁶ Secretary-General Tells Security Council Protection of Civilians in Situations of Armed Conflict is Key to Sustainable Peace, Press Release, SC/7591, www.un.org/news/press/docs/2002/Sc7591.doc.htm (7 May 2007).

⁷ Bah, *supra* note 2, p. 33.

⁸ The conference was initiated by the independent African Leadership Forum and was co-sponsored by the OAU and the United Nations Economic Commission for Africa (UNECA). This meeting agreed on a unified strategy for development linking the issues of security, stability, development and cooperation in a comprehensive and integrated fashion recognising that one flows into the other and that it is impossible to tackle any without concern for another; see *The Kampala Document: Towards a Conference on Security, Stability, Development and Cooperation in Africa*, Kampala, Uganda on 19-22 May, 1991, available at: www.africaaction.org/african-initiatives/kampall.htm (2 June 2006).

⁹ The CSSDCA is a policy development process created to function within the framework of the AU. It is one of the two special programmes of the AU, the other being the New Partnership for Africa's Development (NEPAD).

II. THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF CIVILIANS

Since the dawn of the new millennium, there has been a dramatic shift in approach to the protection of human rights to the effect that the military has been called upon to protect civilians in situations of gross human rights violations and grave breaches of IHL by way of ‘humanitarian interventions’ to safeguard innocent civilians. Thus, military forces are declining to be instruments for pursuing power policy, but are increasingly becoming guarantors of foreign policy primarily aimed at stability and peacemaking, which is pursued by States, coalitions such as the African Union (AU) and the UN. Although military personnel have been trained and organised primarily to conduct combat operations, the same expertise has given them a unique capability to undertake many of the functions involved in peace and relief operations. Combat troops are trained to close with and destroy an enemy. Yet, in peace and relief operations, they find themselves trying to maintain a peaceful environment without the use of force. Their mission is essentially to keep, enforce and promote peace and to safeguard the geostrategic changes, hence a transition from an era of confrontation and strategic bipolarity to a more cooperative multipolar world.

Peace and relief operations, therefore, represent a tremendous paradigm shift in military thinking and culture. This indicates that very specific rules and training are required for the military to be in keeping with re-orientation of the paradigmatic change in mission and strategy. Yet, in spite of robust mandates for peacekeeping missions, civilians continue to be targeted, often even where peacekeepers are deployed for example in the Eastern Division of the UN Peacekeeping Mission in the DRC (MONUC). Bah informs “this is largely due to unwillingness on the part of the missions to use force to accomplish their respective mandates and a narrow interpretation of the mandate by individual troop contributing countries, whose national rules of engagement are often out of sync with that of the mission”.¹⁰

A. The Use of the Military for the Protection of Civilians: Is There Need for Paradigm Shift?

Contemporary commentators seem to agree that resort to military force should be the last option exercised only in extreme and exceptional cases. Nevertheless, the practical difficulty lies in determining when, in fact, all non-military options have been explored in good faith and exhausted. The generally expressed view is that exceptional circumstances must be cases of violence which so genuinely ‘shock the conscience of mankind’ or which present such a clear and present danger to international security, that they require military intervention.¹¹ Generally, large-scale loss of life actual or apprehended and

¹⁰ Bah, *supra* note 2, p. 27.

¹¹ See *generally* International Council on Human Rights Policy, *HUMAN RIGHTS CRISES: NGOs RESPONSES TO MILITARY INTERVENTIONS* (Versoix, 2002), p. 18; *see also* the International Commission on Intervention and State Sovereignty, *THE RESPONSIBILITY TO PROTECT* (2001), p. 33. *But see* Gustav Däniker, *THE GUARDIAN SOLDIER* (Geneva: United Nations Institute for Disarmament Research, 1999), p. 93.

large scale 'ethnic cleansing' have been held to justify a military intervention. These include war crimes, situations of state collapse that expose the population to mass starvation or civil war and overwhelming natural catastrophes. The reigning paradigm of R2P emphasizes the need for 'large scale' loss of life in order to justify military intervention with a caveat that military action can be legitimate as an anticipatory measure in response to clear evidence of likely large-scale killing. The argument goes that without this possibility of anticipatory action, the international community would be placed in a morally untenable position of being required to wait until genocide or such atrocities begin, before taking action to stop them.¹²

Thus, inspired by the theme of building robust African regional capacities for peace operations, the Protocol establishing the Peace and Security Council of the African Union (AU) calls for the development of a rapid reaction capacity – the African Union Standby Force (ASF) – that builds on the military capabilities of African regional organisations. The ASF, which will be developed in two phases by 2010, is intended to address the perennial problems relating to the safety and security of civilian populations in armed conflicts in Africa.¹³ The ASF will operate at three possible levels: as an African Force under the AU; as a Regional Brigade at the level of a Regional Mechanism for conflict prevention, management and resolution; or at the level of a lead nation intervening on behalf of the AU.¹⁴ The regional brigades will be deployed under AU mandates and placed under AU or UN operational control, as applicable. As a consequence, in the operations of the ASF, the militaries of AU Member States will be given new tasks, representing a shift from aggression to human protection and utilise the military's virtues of good organization, courage and willingness to sacrifice. Show of force can be used to prevent aggressiveness, even in places where there has been no open display of violence but good reasons to assume that something may happen.¹⁵ This might include standoff reconnaissance, or a consensual preventative deployment of which the UN Preventative Deployment Force in Macedonia is a textbook example. In extreme cases, direct prevention might as well involve the threat to use force.¹⁶ However, as war is often the greatest human rights violation of all and triggers further violations, exploring alternatives to use of armed force for the ASF may be the most profound protection of civilians in Africa.¹⁷

On the other hand, from a strategic point of view, military operations are usually conducted in the full glare of worldwide media attention, the strategic context of peace support operations (PSOs) must therefore be communicated

¹² *Ibid.*, p. 33.

¹³ The ASF will consist of a system of five regionally managed multidisciplinary contingents comprising 3,000–4,000 troops, between 300 and 500 military observers, police units, and civilian specialists on standby in their countries of origin.

¹⁴ Meanwhile, within the policy framework of the ASF, there is a process of establishing the ECOWAS Brigade while the SADC Standby Brigade was launched on 17 August 2007.

¹⁵ Johan Galtung, *PEACE BY PEACEFUL MEANS: PEACE AND CONFLICT, DEVELOPMENT AND CIVILIZATION* (London: International Peace Research Institute, 1996), p. 5.

¹⁶ *Cf.* THE RESPONSIBILITY TO PROTECT, *supra* note 11, p. 28.

¹⁷ Brian J. Foley, *Avoiding War: Using International Law to Compel a Problem-solving Approach, in Terrorism and Human Rights After September 11* (CAIRO Institute for Human Rights Studies, Cairo, Egypt), p. 109.

and understood by all parties involved. This means that the ASF will have to understand that they can encounter situations where the decisions they make at the tactical level have immediate strategic and political implementations. Failure to understand fully the mission and the operational environment can quickly lead to incidents and misunderstanding that will reduce legitimacy and consent and result in actions that are inconsistent with the overall political objective.¹⁸ Thus, the ASF need to acquire additional capacities that include the ability to operate within the framework of coalitions and in an atmosphere fraught with national sensitivities. The ASF will have to be able to handle human protection missions in difficult strategic environments. They will need the technical and organisational skills to employ both their troops and their equipment with an optimum effect for a great variety of tasks. This development requires the revision of military doctrines and strategies, and corresponding restructuring of the national armed forces, to enhance their defensive capabilities particularly the human protection role, and simultaneously limit their offensive strength.¹⁹ On this mission, strategy for the ASF would entail waging a ‘humanitarian war’ from a human rights perspective. This reflects the need for strategic thinking to formulate ‘ethics’ for using military might for altruistic purposes.²⁰ Unfortunately, discussion of non-violent tactics is usually limited to state-based diplomatic pressure and economic sanctions since human rights groups have a tendency towards cynicism that hinders strategic thinking and tactical experimentation.²¹

The role of intervention forces is really a form of policing rather than war.²² Reminiscent of the words of the former UN Secretary-General Dag Hammarskjöld, “peacekeeping is not a job for soldiers, but only soldiers can do it”.²³ Hence the national contingents forming the ASF would need to acknowledge and understand new non-military exogenous factors, to assume additional responsibilities and develop new patterns of non-violent action. In this sense, strategic efforts are not a matter reserved for the military geniuses but also for human rights and humanitarian activists as well as lawyers, theologians and the like, to develop standard operating procedures (SOPs) or better still ‘ethics for human protection’ to replace the so-called rules of engagement for human protection operations. With the declining demand for a ‘warrior’, ‘combatant’ or ‘battlefield technician’, a soldier becomes what Däniker calls a ‘guardian soldier’, who while protecting and maintaining order, is also capable of performing aid and rescue operations with the same energy and competence as combat missions. In this sense, protection would entail the use

¹⁸ See US Army FM 100-23, Chapter 1, Fundamentals of Peace, p. 1.

¹⁹ Roger Kibasomba and Bjørn Møller, *Europe and the Great Lakes Crisis*, Report from the Maputo Conference, 28–29 June 2001, Danish Ministry of Foreign Affairs, DANIDA, p. 111.

²⁰ Cf generally C.A.J. Coady, *The Ethics of Armed Humanitarian Intervention*, 45 PEACEWORKS (United States Institute for Peace, 2002).

²¹ Liam Mahony, “Military Intervention in Human Rights Crises: Responses and Dilemmas for the Human Rights Movement”, *International Human Rights Policy*, 2001 p. 19.

²² See Coady, *supra* note 20, p. 17.

²³ Dag Hammarskjöld, Former UN Secretary-General, quoted in Maj. Gen. (Ret.) Indar Rikhye, *THE POLITICS AND PRACTICE OF UNITED NATIONS PEACEKEEPING: PAST, PRESENT AND FUTURE* (Toronto: Brown Book Company Ltd, 2000), p. 219.

of force for prevention of proliferation of violence.²⁴ Of course use of armed force can never be humane, but its cruelty can be increasingly curtailed. By developing non-violent lines to achieve the long-term goal of abolition of war.²⁵ However, it is worthy of notice that planning of human protection operations should not apply best-case assumptions to situations where the local actors have exhibited worst-case behaviour. The Brahimi Report suggests that in this case, it means bigger forces, better equipped and more costly but able to be a credible deterrent. The Brahimi Report recommends that troops should be afforded the field intelligence and other capabilities needed to mount an effective defence against violent challengers.²⁶

III. THE CONTEMPORARY DOCTRINE FOR SAFEGUARDING CIVILIANS

The presence in war zones of military personnel and humanitarian staff is one of the most effective means of guaranteeing not only the delivery of relief aid but also the protection of victims from hostilities. However, drawing on experience, there is lack of emphasis on the protection of human rights of civilians in international interventions. For instance, in 1993, a small UN peacekeeping contingent was sent to Rwanda without a human rights component despite warnings that one was needed and when government forces engaged Tutsi civilians, the Security Council did not authorise them to use force to protect civilians.²⁷ The war in Sierra Leone, as another example, was largely ignored by much of the international community, with the exception of those who attempted to exploit its resources while the warring factions committed grotesque nature of attacks on civilians.²⁸ In Angola, UNAVEM II did little to protect human rights, often turning a blind eye to reports of human rights abuses.²⁹ This reflects the importance for a clear mandate to protect the rights of civilians during armed conflicts, because promotion of human rights means little if it does not mean to defend them when they are under attack.³⁰ In the Darfur crisis, the AU Mission to the Sudan (AMIS) which is mandated to protect the AU civilian and military observers, has been criticized for slow deployment and not providing for the protection of civilians under threat. Its fo-

²⁴ Rikhye *supra* note 17, pp. 104–106.

²⁵ See Johan Galtung, *Peace by Peaceful Means: Peace and Conflict, Development and Civilization* (International Peace Research Institute, 1996), p. 5.

²⁶ See Rikhye, *supra* note 23, p. 106.

²⁷ The UN Human Rights Commission refused to discuss the case of Rwanda in open session in 1993. The Secretary General and the Security Council acknowledged that the war and the genocide could be addressed separately and they should try to halt the killings. RPF opposition to a new UN force complicated and slowed the effort to mount a rescue operation for Tutsi civilians, see HRW Report: Rwanda: 1999. See also International Council on Human Rights Policy, *supra* note 11, p. 8.

²⁸ See generally The Human Rights Watch World Report 1999: Sierra Leone, *Defending Human Rights*, p. 2.

²⁹ See www.hrw.org/reports/1999/Angola/Ang1998-10.htm, at p. 7 (22 May 2007).

³⁰ Zelim Skurbaty, AS IF PEOPLES MATTERED: A CRITICAL APPRAISAL OF 'PEOPLES' AND 'MINORITIES' FROM THE INTERNATIONAL HUMAN RIGHTS PERSPECTIVE AND BEYOND (The Hague: Kluwer Law International, 2000), p. 189.

cus is limited to observing and reporting violations of human rights by the parties to the conflict.³¹

Nevertheless, according to Nicholas Berry, today's wars are vulnerable to intervention: "inject members of the international community into these wars as non-partisan third parties, and these rag-tag wars can be overwhelmed and made dysfunctional. They can be sabotaged. The third parties would have enough capabilities to upset the power relations between the warring parties and prevent victory by one side, to mute the horror of combat on civilians, and to create the basis for diplomatic settlements".³² Thus, modern conflicts can be decided by a variety of means of pressure and by a whole range of instruments including a psychological reaction to convince the enemy of the futility of initiating or continuing the combat without reviving the anachronism of annihilation.³³ Therefore, the ASF –who will operate as peacekeepers as well as humanitarian actors –has a key role to play in the protection of the people at risk during violent conflicts by ensuring compliance of IHL and respect for human rights. As the Darfur crisis has demonstrated, there is an urgent need for the international community to control and outlaw indiscriminate forms of warfare that maim and kill innocent civilians.³⁴

IV. THE ROLE OF THE SECURITY COUNCIL IN MILITARY INTERVENTION TO PROTECT CIVILIANS

Military intervention for civilian protection is a serious commitment for the UN. In Resolution 1291(2006), for example, the UN Security Council unanimously reaffirmed the 2005 UN World Summit commitment on the R2P.³⁵ The UN Security Council has increasingly included language on protecting vulnerable civilians in mandates for UN peace operations in Africa, including in Sierra Leone, DRC, Liberia, Burundi, Côte d'Ivoire, and Sudan.³⁶ Since 1999, there has been a 500 per cent expansion in UN peace operations globally, and more than 80 per cent of these have been deployed to Africa.³⁷ The UN has also made progress in strengthening the Department of Peacekeeping Operations (DPKO), increasing numbers of headquarters staff to around 600. However, the new UN Secretary-General Ban Ki-moon has cautioned that the unprecedented global surge in UN peacekeeping operations has left its leadership 'impossibly overstretched' and unable to cope without serious reform and additional resources.³⁸

³¹ See Bah, *supra* note 2, p. 32.

³² Nicholas O. Berry, *WAR AND THE RED CROSS: THE UNSPOKEN MISSION* (London: Macmillan, 1997), pp. 30–31.

³³ Däniker, *supra* note 11, p. 98.

³⁴ G.S. Goodwill-Gill, in *The Rights of Children in Armed Conflicts*, Conference on the Rights of Children in Armed Conflict, Final Report of a Conference held in Amsterdam, the Netherlands, on 20–21 June 1994, p. 78.

³⁵ United Nations, Security Council Resolution 1291, 24 February 2006.

³⁶ Cf. T. Berkman and V. Holt, *The Impossible Mandate? Military Preparedness, the Responsibility to Protect and Modern Peace Operations* (Washington, DC: Henry L. Stimson Centre, 2006).

³⁷ Center on International Cooperation, 2006.

³⁸ See United Nations, 'General Assembly supports Ban Ki-Moon's reform proposals for stronger UN, Press Release, News Centre, 5 April, 2007.

Further, over the years the Security Council has provided a conceptual framework to combat the problem of protection of civilians, but what is needed now was practical action and a more systematic approach.³⁹ The Security Council's *Aide-memoire* of March 2002 is a centrepiece of a strategy for civilian protection, which has already proved useful in Sierra Leone and the Ituri region of the DRC Coordination between the Office for the Coordination of Humanitarian Affairs (OCHA) and the Department of Peacekeeping Operations was also progressing. The *Aide-memoire* is important to ensure that government responses to perceived security threats meet international legal standards. The 'road map' annexed to the report of the Secretary-General in this respect provides direction for further progress.⁴⁰ In that light, practical actions to protect civilians are described in three key areas: secure humanitarian access; the clear separation of civilians and combatants; and the swift re-establishment of the rule of law, justice and reconciliation during the transition.

A. Provision of Humanitarian Access to Civilians in Armed Conflict

To improve humanitarian access to civilians in armed conflict, it is imperative that all parties to a conflict, including non-state actors (NSAs), must understand their obligations and responsibilities to civilians, with clearly defined conditions for access in any terms of engagement. Human Rights organizations, Humanitarian agencies and the ASF should coordinate contact in that regard, with the *aide-memoire* used to guide access negotiations. Contact between warring parties on humanitarian access issues should be structured; framework agreements are the best option when no peacekeeping mission is present.

B. Promotion of the Rule of Law

In the interest of promoting the rule of law, justice and reconciliation, it is crucial that resources must be provided to reform national institutions as soon as possible after the end of a conflict. Similarly, early and adequate disarmament, demobilization and reintegration of combatants (DDR) must also be ensured, with attention to reconciliation at the community level.

C. Gender-Based Abuses in Conflict Situations

It is also important that laws and regulations inconsistent with international legal standards be repealed, in particular those regarding the right to return, property rights and housing rights, and that impartial mechanisms be put in place for the return and restoration of property. Finally, international

³⁹ Secretary-General Tells Security Council Protection of Civilians in Situations of Armed Conflict is Key to Sustainable Peace.

⁴⁰ The report of the Secretary-General (document S/2002/1300), the third such report since September 1999. See also other reports of the Secretary-General (documents S/2002/1154 and S/2002/1299); Reports by the expert panels on the illegal exploitation of resources were also valuable regarding the relation of such exploitation and harm to civilians (documents S/2002/1146 and S/2002/1115).

tribunals and the ICC must be supported, to bring to justice perpetrators of grave violations of humanitarian and human rights law.

D. Protection of Civilians while Countering Terrorism

AU States must condemn terrorism without reservation and fight it with focused energy. The rider though is that States must respond to acts of terrorism in a way that respects the need to protect civilian life and property. The UN Secretary-General has cautioned that to pursue security at the expense of human rights will ultimately be self-defeating. In addition, because of the added complexities caused by terrorism, the UN faces the burden to formulate clear guidelines for its future work on the protection of civilians in armed conflict in areas where terrorist organizations are active.

V. THE ROLE OF THE INTERNATIONAL COMMUNITY IN SAFEGUARDING CIVILIANS IN AFRICA

While developing countries contribute the vast majority of personnel for UN deployments, Western militaries have provided vital operational capacity to underpin UN peace operations in Africa, including US and French deployments in Liberia and Côte d'Ivoire, respectively, and EU support for the UN mission during elections in the DRC in 2006. Thus, there is no doubt that support for the protection of fundamental human rights is one of the foundations of US and EU countries. Recently, the US has broadened its foreign aid policy to include providing more protection to civilian populations in countries where governments fail their citizens. An example of the new policy is the strategy now being implemented to protect internally displaced persons (IDPs) in the Darfur region of Sudan from starvation and death.⁴¹ On its part, the EU has become an increasingly important player in African peace and security. *Operation Artemis* was the first example of the EU's increasing willingness to develop its operational military capacity on the ground in Africa. More recently, in June 2006, the EU sent a small military operation coined EUFOR DR Congo to help MONUC deter anticipated violence during elections in the DRC in July 2006 although it is not clear to what extent the EUFOR DR Congo improved civilian security in reality.⁴²

The 'Battlegroups' concept is, at present, the primary operational tool for EU military interventions. In 2004, the EU agreed to establish 13 Battlegroups, which are based on a battalion-sized force of 1,500 troops, formed by a framework nation or by a multinational coalition of EU Member States.

⁴¹ Speaking at an October 27 meeting of the agency's Advisory Committee on Voluntary Foreign Aid, Roger Winter, heads USAID's Bureau for Democracy, Conflict and Humanitarian Assistance quoted by Kathryn McConnell Washington File Staff Writer, U.S. Foreign Aid Policies to include Safeguarding Civilians, USAID's Winter reviews U.S. assistance being extended to Darfur, 28 October 2004.

⁴² Deployment was delayed as EU member states were slow to come forward to contribute troops. Germany had previously agreed to lead the mission, but spent weeks in negotiations to build up sufficient numbers of personnel. EUFOR DR Congo was eventually deployed with an element of 400-450 troops stationed in Kinshasa, and a battalion-sized 'on-call' force outside the country, ready for rapid deployment when needed. (House of Lords, 2006).

Battlegroups are intended to be deployable within 15 days and sustainable for 30 days (but extendable up to 120 days). They are designed to be compatible with UN Chapter VII mandates, and will, in most instances, be deployed in response to a request from the UN. They will be capable of robust peace enforcement on a limited scale, such as local suppression of hostilities, separation of parties and prevention of atrocities. The plan is that the EU should be able to undertake two concurrent single Battlegroup-size rapid response operations simultaneously.⁴³ On paper, Battlegroups appear to be highly relevant to rapid military interventions for humanitarian protection purposes in Africa. The December 2005 EU *Strategy for Africa* pledged to deploy operations 'involving EU Battlegroups' to promote African peace and security.⁴⁴ However, experts have noted that Battlegroups have not been configured for the specific tasks of civilian protection, and no framework nations or multinational coalition members have made clear commitments to deploy them to crises in Africa. Discussions between the EU and NATO have reached broad agreement that Battlegroups will be mutually reinforcing with the larger NATO Response Force (NRF).

Standards, practical methods and procedures for Battlegroups are designed to be compatible with those defined within the NRF, so that there should be considerable potential for synergy between the two initiatives.⁴⁵ The NRF comprises 25,000 troops for rapid deployment with global reach. The NRF is a ready and highly technologically advanced force comprising land, air, sea and Special Forces components. It is intended to be capable of performing missions worldwide across the whole spectrum of operations, including crisis management, and as 'an initial entry force' for larger, follow-on operations. The NRF has the capacity to start to deploy after five days notice and to sustain itself for operations lasting 30 days, or longer with reinforcements. To this end, David Mepham and Alexander Ramsbotham have recommended that the EU should mandate Battlegroups to prioritise civilian protection in crises in Africa, through configuring, training and equipping them for the specific tasks of civilian protection. The North Atlantic Council should be prepared to deploy the NATO Response Force and other key assets to support AU or UN peace operations, or stand-alone interventions in Africa if necessary.

VI. SAFEGUARDING CIVILIANS: WHICH WAY THE AFRICAN STANDBY FORCES?

There are still questions on the international capacity and willingness to undertake military intervention in Africa. Western commitments have been very selective, and their contributions have been 'standalone', operating outside UN command and control structures. This explains why the former UN Secretary-General Kofi Annan and the independent UN High-level Panel on Threats, Challenges and Change voiced concerns over western governments'

⁴³ David Mepham and Alexander Ramsbotham, *Safeguarding Civilians*, Institute of Public Policy Research, 2007.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

increasing reluctance to contribute troops to UN peace operations.⁴⁶ In the same vein, to date, it has been observed that NATO's operational activities in Africa have been restricted to providing logistic support to AMIS in Darfur, and some minor training and capacity-building assistance. With NATO assets already severely stretched in Afghanistan and Kosovo, and with the UK and the US still heavily committed in Iraq, there seems little immediate prospect of that changing. The international political fallout from the Afghanistan and Iraq interventions raises further questions about the willingness of NATO to support military intervention in Africa. Further, while the NRF appears exceptionally well placed to respond to a fast-moving war crimes or genocide-type situation like Rwanda in 1994, it is still not clear how far NATO will be prepared to deploy the NRF or other key assets to support military interventions in Africa is unclear.⁴⁷

Against backdrop, Costantinos is of the view that whatever the technical construction chosen to express the R2P in Africa, Africans must be the ultimate determinants of their own democratic fate by understanding the states of the right and obligations of citizenship and respect for democracy and ensuring the sustainability of peace and security in the continent. Africans should act by themselves to determine their own democratic fate in spite of countless declaration and manifestos on human security. The sustainability of the system will depend on its understanding by States of the right and obligations of citizenship and respect for democracy.⁴⁸ In the same vein, Ambassador Djinit counsels that Africans have to protect peace and security in Africa themselves without abusing the concept of non-interference through a collective force in insuring peace and security.⁴⁹ In this connection, Khobe has highlighted some of the problems with AU deployments which include: excessive control by home governments; language difference; lack of standardization of equipment, arms and ammunition; different standards, doctrines and staff procedures; poor sea and airlift capabilities; absence of vital air-to-ground supports asserts, particularly ground attack helicopters; lack of logistic support for some contingents; inadequate resources to deal with humanitarian problems; poor coordination and liaison with international relief agencies; and the misrepresentation of force activities by mercenary organizations and the international mass media.⁵⁰ These are the issues that the ASF Military Staff Committee (MSC) comprising senior military officers of the Members of the AU PSC will have to advise and assist in solving in order to promotion the protection of civilians in Africa.

⁴⁶ United Nations, *A More Secure World: Our Shared Responsibility*, Report of the High-Level Panel on Threats, Challenges and Change, 21 March, New York: United Nations Department of Public Information, 2004, para. 216.

⁴⁷ Mepham and Ramsbotham, *supra* note 43.

⁴⁸ Dr. B.T. Costantinos, Vice President of African Humanitarian Action opening the workshop entitled "The African Union and 'the responsibility to protect' From Non-Interference to Non-Indifference", Hilton Hotel, Addis Ababa, 2007.

⁴⁹ Yonas Abiye, *Africans Urged to Underpin 'Responsibility To Protect' in the Continent*, THE DAILY MONITOR (Addis Ababa), 11 June 2007.

⁵⁰ Matikishe Maxwell Khobe, *The evolution and conduct of ECOMOG operations in West Africa*, www.iss.org.za/Pubs/Monographs/No44/ECOMOG.html.

VII. CONCLUSION

Although in March 2007, the UN General Assembly endorsed Ban's plans to restructure DPKO. However, Secretary-General Ban's proposals do not address the issue of enhancing the capacity of UN peace operations to promote civilian protection. This is an obvious oversight given the increasing emphasis placed on civilian protection in UN mandates. In the past, efforts towards the development of appropriate holistic doctrine for the protection of civilians have been ad hoc, fragmented and based on evolving horrors of conflicts in Africa and elsewhere. This has led to a gap between the means and ends of the UN and AU peace operations in terms of their mandates and the resources, capacities and willingness to use force in upholding mandates. Even though the UN is making an effort to consolidate its doctrine for peace-support operations through such mechanisms as standard generic training modules (SGTM), the political dynamics of the UN System point to difficulties in achieving consensus on what may be expected of UN peace operations to carry out forcefully all provisions of the mandate. Notwithstanding that western support has sometimes played a pivotal role in enhancing the capability of UN operations to deliver civilian protection, there is need to transform their existing force capacities into suitable contingents for the specific tasks of civilian protection, and should be prepared to deploy troops and other military assets to UN peace operations in Africa.

On this account, it has been suggested that UN Member States should implement Secretary-General Ban Ki-moon's proposals to create two new UN peacekeeping departments, a Department of Peace Operations and a Department of Field Support, making sure that a unity of command is maintained so as to ensure better planning, faster deployment and a more responsive system of support for those working on the ground. Importantly, David Mepham and Alexander Ramsbotham have recommended that the UN should develop a working concept for civilian protection, and should build this into UN peacekeeping training modules and doctrine, containing a detailed breakdown of the specific requirements of civilian protection.⁵¹ Likewise, the AU and the EU need to collaborate so that the EU Battlegroups and NATO's Response Force could make coordinated contribution to the R2P in Africa. Efforts should thus be made to develop and strengthen African capacities for PSOs with the ASF constituting the nucleus of such mechanism. To this end, Bah suggests that attention should be given to the development of African capacities at the strategic, operational and tactical levels, which are essential for the successful application of the ASF. Importantly, the security architecture should include a strong early warning and early response capacity.

However, as regards the AU, analysts have noted that doctrine development is still too early in the time for the establishment of the ASF by 2010.⁵² Still, the challenge for the ASF in this context is to find tactics and strategies of military intervention that fill the current gap between outdated

⁵¹ Bah, *supra* note 2, p. 45.

⁵² The ASF should be given much greater support by African states and international donors, so that it has the necessary equipment, resources, mandate and doctrine to make an effective contribution to the protection of civilians in acute crises in Africa. Aboagye and Bah, *supra* note 3, p. 6; *see also* Mepham and Ramsbotham, *supra* note 43, p. xiii.

concepts of peacekeeping and full-scale military operations that may have deleterious impacts on civilians. Peacekeeping operations succeed when they are led or complemented by well-equipped, well-trained forces of sufficient size and with a mandate that allows for robust defence as well as counter-attack. A British force deployed to Sierra Leone in 2000 to assist the UN peacekeeping mission is a perfect example, as is a French-led force *Operation Artemis* deployed in Eastern DRC in 2003. The existence of a well trained and equipped ready force in their own countries of origin will undoubtedly provide the ASF with the capacity for rapid deployment in regional and other conflicts on the continent, as well as under the auspices of the UN. *Operation Artemis* represents a possible template for ASF deployments.⁵³ In the wake of continued dithering by the international community, such ASF intervention will endow the continent with the capacity for prevention, management and resolution of existing and emerging conflicts. The ASF should constitute the nucleus mechanism. The operationalization of the ASF and its constituent brigades should therefore be given priority as a way of lending credence to the notion of ‘African solutions to African problems’. Nonetheless, the Stand-by Brigades can possibly build on the EU Battlegroups concept.

In short, the ASF need better training and equipment as well as robust mandates to protect civilians. This requires a review of the military roles and capacities relevant to international peace and security challenges of the 21st Century, particularly a review of defence policies of Member States to meet the prevailing challenges. This should therefore address four broad categories of needed change: the exploration and development of the kinds of alternative military models required; the promotion of a more effective multilateral institutional framework for multilateral military action; further development of the Common African Defence and Security Policy (CADSP) to reflect the military and non-military dimensions of international peace and security efforts; and the development of a broader international consensus and a more responsive, and accountable, multilateral decision-making mechanism in support of the ASF’s peace support operations.⁵⁴ Building on the CADSP, the AU may implement these guidelines if it has an integrated set of civil-military capabilities that would be suited to carry out human security operations and a legal framework that underpins decisions to intervene as well forming the basis for a law-enforcement approach to operations. Strengthening and devel-

⁵³ The possibility that strengthening African military protection capacities could tip fragile civil-military balances in certain countries. Any increases in military institutions’ capacities in Africa must be linked to proportionate investments to make security forces democratically accountable to civilian authorities; see Report of the Secretary-General on the implementation of the Conference on Security, Stability, Development and Cooperation in Africa, Department of Foreign Affairs, Republic of South Africa, p. 10; available at: www.dfa.gov.za/foreign/Multilateral/africa/cssdca.htm (15 June 2006); see also the AU Common African Defence and Security Policy, Sirte, February 2004. See ‘The Development of a Common European Security and Defence Policy—The Integration Project of the Next Decade’, Remarks by Dr. Javier Solana, High Representative of the EU for Common Foreign and Security Policy, EU-Commission/ Institut für Europäische Politik Conference, Berlin, 17 December 1999, www.fas.org/news/europe/091217-eu-fp.htm (5 May 2005)

⁵⁴ Festus B. Aboagye and Alhaji MS Bah, “Introduction”, in Aboagye and Bah (eds.), *supra* note 3, p. 6; see also Mephan and Ramsbotham, *supra* note 43, p. xiii.

opment of civil–military links will ensure that issues such as regional integration or even in cases of humanitarian intervention which, in the past were purely state-driven, would receive strong inputs from the citizenry.⁵⁵ The AU and Regional Economic Communities (RECs) should also work towards developing their own accountability mechanism.

⁵⁵ Bah, *supra* note 2, pp. 45–46.