Chapter Two

The Intervention Dilemma
The Dynamics of Civilian Protection in the post-Cold War Era

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"… it is by vigorously upholding international law that we can, and must, fulfil our responsibility to protect innocent civilians from genocide, crimes against humanity and war crimes … history will judge us very harshly if we let ourselves be deflected in this task, or think we are excused from it, by invocations of national sovereignty." – Kofi Annan[1]

INTRODUCTION

The end the Cold War brought with it a great deal of political activism that often degenerated into violent conflicts in Africa and elsewhere. One of the troubling characteristics of the conflicts that erupted during this period was the deliberate targeting of civilians by various belligerent groups – often also involving state security agencies as well. Unlike conflicts during the Cold War, the level of violence directed at civilians during the latter has been unprecedented. For instance, while soldiers constituted the highest percentage of casualties in both the First and Second World Wars, approximately 70% of the victims in the post-Cold War era have been civilians. In addition, while conflicts before and during the Cold War were mostly inter-state, nearly 80% of the wars that erupted in the 1990s have been intra-state. The change in the strategic focus of the main belligerents has resulted in dire consequences for the civilian population. The conduct of belligerents during this period contravenes the basic principles of warfare as enshrined in the Geneva Conventions and the Additional Protocols. As in previous eras, the blatant disregard for International Humanitarian and Human Rights Law prompted strong responses from the international community. 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 International Humanitarian and Human Rights Law.

In light of the above, this chapter seeks to provide an overview of the evolution of the principle of the protection of civilians as espoused by International Humanitarian Law (IHL). It highlights the principles of warfare as contained in international legal norms and instruments and then looks at developments relating to the protection of civilians in the post-Cold War era. A brief attempt will be made to highlight how the increased burden borne by civilians prompted a re-conceptualisation of security from its traditional state-centric approach to a more people-oriented approach, that is, human security. This will be followed by an in depth analysis of the attendant dilemma of civilian protection and the principle of sovereignty. The analysis then highlights the inherent challenges in enforcing the principle of civilian protection in a world characterised by the Westphalian state system, which is built on the principles of sovereignty and non-intervention. Specific attention will be focused on some of the reforms introduced by African regional organisations such as the Economic Community of West African States (ECOWAS) and the AU.

THE EVOLUTION OF THE PRINCIPLES OF CIVILIAN PROTECTION

The desire to protect civilians during war has long preoccupied humankind. The wish to minimise the effect of violent conflicts on unarmed civilians led to the development of international legal norms that are commonly referred to as International Humanitarian Law (IHL). The convention for the Amelioration of the Conditions of the Wounded Armies in the Field, adopted in Geneva, in 1864 (commonly referred to as the First Geneva Convention), laid the foundation for IHL. The Convention was concerned with the humane treatment of prisoners of war. The Convention defines a prisoner of war as "… any combatant captured by the adverse Party …". It further states that, "prisoners of war must at all times be treated humanely and that, subject to any privileged treatment on account of rank, sex, state of health, age or professional qualifications, all prisoners of war shall be treated alike".[2] It therefore emphasised the point that respect for the persons of prisoners of war must be ensured at all times. The passage of time and the changing nature of warfare necessitated a review of the principles contained in the First Geneva Convention to reflect new realities. The Geneva Conventions of 1949 and the two Additional Protocols of 1977,[3] coupled with the Universal Declaration of Human Rights by the UN in 1948, are the cornerstones of modern day IHL and Human Rights Law (HRL).[4]

The primary objective of IHL is to protect or limit the adverse effects of war on civilians or combatants who have surrendered or have expressed the intention to do so. In effect, IHL constitutes the rules and norms that regulate the activities of soldiers in wartime, especially on how to handle former combatants who have either been captured or surrendered and unarmed civilians under their control. Thus, the aims of IHL are two-fold: Firstly "to protect persons who are not, or are no longer, directly engaged in hostilities – the wounded, shipwrecked, prisoners of war and civilians"; and secondly, "to limit the effects of violence in fighting to the attainment of the objectives of the conflict".[5] Unlike Human Rights Law, which applies both during peacetime and wartime, IHL applies in wartime, thereby making its implementation extremely difficult, though aspects of individual Human Rights Law might be suspended during an armed conflict.

In spite of the difficulties of implementing IHL during armed conflict, it nonetheless forbids those methods of warfare that

- fail to discriminate between those taking part in the fighting and those, such as civilians, who are not; the purpose being to protect the civilian population, individual civilians and civilian property;
- cause superfluous injury or unnecessary suffering; and
- cause severe or long-term damage to the environment.[6]

In other words, the Protocol calls for combatants to distinguish themselves without unnecessary 'collateral damage' to civilians.

Article 3, which is common to the four Conventions and the Additional Protocol II, outlines the obligations of parties to a non-international armed conflict in dealing with civilian populations. The protocol declares that, "…neither the civilian population, nor individual civilians may be the object of attacks; moreover, acts of terrorism against them are prohibited". It should be pointed out that "… civilians benefit from this protection as long as they do not take a direct part in hostilities".[7] Based on these principles and the bitter experiences of World War II, since its establishment in 1945 the UN has consistently addressed the issue of the protection of civilians. In this vein, in 1974 the UN General Assembly adopted a proclamation on the "Protection of Women and Children in Emergency and Armed Conflict". The declaration states that:

> "… all forms of repression and cruel and inhuman treatment of women and children, including imprisonment, torture, shooting,

> mass arrests, collective punishment and destruction of dwellings and forcible eviction – committed by belligerents in the course of military operations or in occupied territories are to be considered criminal".[8]

In spite of the existence of these principles and the UN's continued engagement on the issue of the protection of civilians, the colossal civilian suffering that characterised the intra-state conflicts that emerged at the end of the Cold War has been troubling. The emergence of often amorphous armed non-state actors, breaking the monopoly of the state over the means of coercive force, has engendered so much humanitarian catastrophe that it has renewed interest in the plight of civilians. It was in a bid to address these concerns that in 1999 the United Nations Security Council mandated the Secretary General to investigate and report to the UNSC on the state of civilians in armed conflicts. On the fiftieth anniversary of the signing of the Geneva Conventions, he made a "solemn appeal to all peoples, nations and Governments to reject the idea that war is inevitable and to work tirelessly to eradicate its underlying causes; to demand of all those involved in armed conflicts that they respect the essential humanitarian principles and the rules of international law; to spare civilians the agony of war …".[9]

Although the Additional Protocols to the four Geneva Conventions address the issue of internal armed conflict, they seem to have had little deterrent effect on the various belligerent groups involved in the bloody wars during this period. Commenting on the disregard of the principles contained in these instruments, the Secretary General's Report drew the council's attention to the blurring of the lines between civilians and combatants in the violent internal conflicts that erupted in the 1990s. The use of innocent civilians, sometimes even children as young as eight, as combatants and often as human shields, was cited as one of the ominous characteristics of the civil wars that raged during this period.[10]

The report covered a wide range of violations from forced displacement; use of child soldiers; denial of humanitarian assistance and humanitarian access; targeting humanitarian and peacekeeping personnel; widespread availability of small arms and continued use of anti-personnel landmines, to the humanitarian impact of sanctions. In the post-Cold War era, the continued violation of international humanitarian and human rights law has been viewed as a threat to international peace and security. Consequently, the protection of civilians was considered part of the Security Council's mandate to maintain international peace and security.

Failing to protect vulnerable civilian populations would from this point, constitute a serious abdication of responsibility by the Council.

Perhaps, the most significant development relating to the role of the UNSC 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*.[11] The report covered a broad spectrum of issues that confronted the international community at the end of Cold War. Pronouncing itself on the issue of sovereignty the report asserted that the days of absolute sovereignty are fast becoming a thing of the past and called on leaders to strike a balance between internal good governance in an increasingly interdependent world. This was later followed by the presidential statement of 12 February 1996. The statement asserts that "large-scale human suffering is a consequence and sometimes a contributing factor to instability and further conflict … and affirmed the need for the international community to assist and protect civilian populations affected by conflict".

The council "expressed its willingness to respond, in accordance with the Charter of the United Nations, to situations in which civilians, as such, have been targeted or humanitarian assistance to civilians has been deliberately obstructed."[12] The council's acceptance of the link between massive human rights violations and international peace and security was a significant development. By establishing this link, the council tacitly asserted its pivotal role at different stages of the conflict continuum, echoing some of the fundamental issues raised in Boutros-Ghali's *Agenda for Peace*. It thereby assigned itself a role that ranges from conflict prevention, peacekeeping to peace enforcement, pursuant to the relevant provisions of the UN Charter (Article 24). In this vein, the council clearly stated that:

> "… whenever possible, action must be taken to address the root causes of conflict and to prevent disputes from escalating into violence. Where, for whatever reason, these preventive approaches cannot be effectively implemented or have failed, the main thrust of policy must be to minimise the consequences of the violence for the civilian populations …"

In addition, in the "aftermath of war, all efforts must be directed at peacekeeping and peace-building, including reconciliation amongst groups pulled apart by the conflict, and the administration of justice to those who have violated international humanitarian and human rights

law."[13] The Council acknowledged that prevention, peace-making, peacekeeping and peace-building are mutually reinforcing and called for a concerted attempt to address these issues, sometimes on a concurrent basis and as part of an integrated approach to protecting civilians in conflict zones around the world.

In reaction to the plight of civilians in violent domestic conflicts, between 1991 and 1999, among others, the Council adopted Resolutions 688 on Iraq; 941 on Bosnia and Herzegovina; 955 on Rwanda; 1203 and 1244 on Kosovo; and 1497 and 1509 on Liberia, condemning the suffering of civilians that resulted from the deliberate actions of armed groups. In all these instances, the Council expressed grave concern over the plight of the civilian population, arguing that, the continued suffering of civilians constituted significant threats to regional and international peace and security. For example, in Resolution 1497, which authorised the deployment of the ECOWAS Mission in Liberia (ECOMIL), the council expressed deep concern "over the conflict in Liberia and its effects on the humanitarian situation, including the tragic loss of countless innocent lives, in that country, and its destabilising effect on the sub-region".[14] Indeed, it is pertinent to note that for the first time ever, the UN Security Council, in its Resolution 1509, authorised the use of force by a UN mission, among others, for the protection of civilians.

As part of its wider conclusions, the Secretary General's Report called on all member states to ratify the international legal instruments, which would allow them to prosecute individuals for war crimes and crimes against humanity. The report stressed that "wide spread and systematic violations of international humanitarian and human rights law have too frequently not been prosecuted by domestic authorities", adding that "the apprehension and trial of indicted war crimes suspects is an indispensable component in the enforcement of international law and justice".[15] The Rome Statutes of 1998, establishing the International Criminal Court and the *ad hoc* tribunals for the former Yugoslavia and Rwanda, and more recently the Special Court for Sierra Leone, are perhaps the most significant developments relating to the urgent need to address impunity. Thus, Resolution 955 of 1994 called for the establishment of the International Criminal Tribunal for Rwanda with the primary responsibility of "prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states…".[16]

During the genocide in Rwanda in 1994, approximately 800,000 Tutsis and moderate Hutus were killed by Hutu extremists in 100 days as the international community, including Africa which, though, it had deployed a limited observer mission since 1991, stood by and did precious little – leaving thousands of innocent civilians at the mercy of the genocidal army of Rwanda and the government-backed *Intrahamwe* militia. At the time of the genocide, the United Nations Assistance Mission for Rwanda (UNAMIR) was deployed in the country to help implement the ceasefire between the government of President Juvenile Habiyarimana and the Rwanda Patriotic Front (RPF). However, at the outbreak of the genocide, UNAMIR was a mere skeletal force that lacked the capacity to change the course of the disastrous events that were precipitated by the death of the president who, along with his Burundian counterpart were returning from peace talks in neighbouring Tanzania.

Lacking the manpower and, most importantly, the mandate to intervene to stop the mass murder that was unfolding, UNAMIR was forced to act as a passive observer in what is perhaps the most gruesome slaughter of civilians since the Holocaust. In spite of repeated pleas by the UNIMIR force commander for more troops and a robust mandate (Chapter VII), to take enforcement action, the UN and the rest of the international community remained indifferent. Instead calls for an increase in troop levels were met by a sharp reduction of what was already a skeletal force, leaving behind a small force – provided by the Ghanaian contingent – that was severely handicapped by lack of manpower and a weak mandate. The indifference of the international community served as a green light to the genocidal Rwandan military, which, embarked on an orgy of violence against the Tutsi population and the moderate Hutus.

The UN's failure in Rwanda marked a watershed in international peacekeeping, as its aftermath witnessed an increase in the clamour for UN peacekeeping missions to be authorised with a Chapter VII mandate to ensure that they could respond adequately to situations where the civilian population was under threat. Subsequently, nearly all UN peacekeeping missions in Africa, starting with UNIL, have been authorised with a Chapter VII mandate.[17]

Yet, in spite of these robust mandates, civilians continue to be targeted, often in areas where the UN is deployed. 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. For example,

in Liberia, by July 2004, there were reported cases of violence perpetrated against the civilian population, even in areas where the United Nations Mission in Liberia (UNMIL) was deployed. Moreover, the raid on the Gatumba refugee camp in Burundi on 13 August 2004, which left over 150 civilians dead; the continued suffering of the civilian population in the Ituri region of the Democratic Republic of Congo and allegations of human rights abuses by government forces and rebels who control the northern half of Côte d'Ivoire, all point to a failure of UN missions to enforce their protection mandate.

In addition to their protection mandates, the UN missions in Liberia, Côte d'Ivoire and the DRC have strong rule of law and justice components. The Secretary General's Report to the Security Council: *The Rule of Law and the transitional justice in conflict and post-conflict societies*, stressed the inseparable link between justice, peace and democracy. It emphasised the need to view these issues in a complementary rather than in a mutually exclusive manner. In reference to its experiences in this area the report stated that "… the consolidation of peace in the long term, cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for peaceful settlement of disputes and the fair administration of justice".[18] Stated differently, upholding the rule of law and ensuring a fair administration of justice is a *sine qua non* for long-term peace building. In spite of the recognition of the rule of law and justice as universal principles, the report recognised the need to take into account differences based on cultural and other practices. It therefore warns against the 'one-size fits all' approach, which fails to factor in such differences. It further stressed the issue of timing; whilst these issues are complementary in nature, in fragile conflict and post-conflict societies, sequencing is very important. For instance, some observers of the tortuous peace process in Sierra Leone have questioned the wisdom of having the Truth and Reconciliation Commission and the Special Court running concurrently. In their view the timing and even the location of the court is problematic and could have the unintended effect of undoing the modest gains in the country's peace process. This notwithstanding, the issues around the rule of law and justice have been mainstreamed into UN-led peace support operations.

The UN's failure in Rwanda coupled with allegations of complicity in the genocide by some members of the Security Council further fuelled calls for 'African solutions to African problems'. For instance, France, a staunch supporter of the late President Habiyarimana, was accused by various observers of complicity in the genocide. At a commemoration

speech to mark the tenth anniversary of the genocide, the Rwandan President Paul Kagame, pointed a direct finger at France when he stated that: "They [France] knowingly trained and armed the government soldiers and militias who were going to commit genocide and they knew they were going to commit genocide."[19] France on its part has consistently denied such allegations. These accusations and denials aside, the genocide, and other developments, contributed to a growing feeling that Africa needs to develop its own peacekeeping capacities and to revamp principles defining inter-state relations in the post-independence period. The most important of these was the principle of sovereignty, which had been abused by governments that conveniently invoked it to forestall external intervention.

THE AU, ECOWAS AND THE PROTECTION CHALLENGE

In West Africa, the bitter lessons of the Liberian crisis and ECOWAS's troubled peacekeeping efforts led to the adoption of a substantive Mechanism for Conflict Prevention, Management, Resolution and Security on 10 December, 1999.[20] The protocol departs from the ambivalent approach of previous arrangements, namely the Protocol on Non-Aggression of 1978 and the Protocol on Mutual Assistance on Defence of 1981, and the new regional mechanism does not limit its purview to inter-state conflicts; it has the mandate to intervene in internal conflicts that pose a threat to human rights and the general peace and security of the sub-region. Chapter V Article 25 states that the mechanism will be applied in any of the following cases:

- in cases of aggression or conflict in any member state or threat thereof;
- in cases of conflict between two or several member states;
- in case of internal conflict: (i) that threatens to trigger a humanitarian disaster; or (ii) that poses a serious threat to peace and security in the sub-region;
- in the event of serious and massive violation of human rights and the rule of law.[21]

The ECOWAS Protocol broke new ground as it ventured into hitherto uncharted waters – intervention in domestic conflicts to protect civilians. In order to ensure adherence to these principles, an enforcement mechanism ranging from sanctions to military intervention has been

established by the protocol. Article 45 (1) states that: "In the event that democracy is abruptly brought to an end by any unconstitutional means or where there is massive violation of human rights in a Member State, ECOWAS may impose sanctions on the state concerned."[22]

Although ECOWAS has intervened in several conflicts in member states, such as Liberia, Guinea-Bissau, Sierra Leone, and Côte d'Ivoire, it is yet to be fully able to adequately deal with potential conflicts. The Community has found itself responding to crises after they have erupted. Perhaps ECOWAS's major constraint in the area of preventive diplomacy and peacemaking is the lack of an effective 'carrot and stick' mechanism and the capacity to deal with aberrant member states and their recalcitrant leaders. Consequently, most of the interventions could best be described as a 'fire-brigade' approach in which the region is forced to respond to crisis situations without substantive standby force arrangements. This approach has not led to timely and effective conflict prevention. For instance, the pseudo-democratic rule of the ailing president of Guinea-Conakry, Lansana Conteh, raises serious concerns over the political stability of that country. Although all the main opposition parties boycotted the elections in 2003, ECOWAS has not been successful in mediating between the ailing president and opposition parties, who cite unfair electoral rules and a narrow democratic space as reasons for not taking part in the elections of 2004.

The lack of an effective 'carrot and stick' mechanism becomes even starker when one considers Nigeria's dominant position in the region. If ECOWAS has been timid in enforcing some of the political principles on smaller and weaker member states, it remains to be seen how member states can ensure that Nigeria adheres to these principles. Nigeria's military muscle, population and economic power are unmatched in the region. While Nigeria can muster the necessary political, diplomatic and even military resources to deal with conflicts in other member states, the same cannot be said for any of the other remaining fourteen members. This presents a serious dilemma, which can only be solved by ensuring that member states, including Nigeria, adhere to the principles contained in the various ECOWAS instruments, obviously through the influence and lead role by a significant coalition of regional like-minded states and the attraction of their successful democratic experiments and experiences.

At the continental level, the AU has undertaken a radical transformation by including in its principles intervention in member states with or without the invitation of the government of the affected country. In cases

of gross violation of human rights and war crimes, the union has the right to intervene without an invitation. This significantly departs from the position of the Organisation of African Unity (OAU), which forbade all forms of intervention. By the 1960s when most African states attained independence, the concept of sovereignty had long been a defining principle of international relations. By independence in the 1960s, the Cold War was already in full swing and the newly independent states became pawns in the superpower competition for allies. A combination of the superpower competition for allies, mistrust of the erstwhile colonial powers and the fear of further balkanisation forced the newly independent African states to jealously guard their independence, embracing the notions of sovereignty and non-intervention. Chapter III (3) of the OAU Charter[23] is a clear indication of the determination of the new African states to preserve their newly acquired independent status. The OAU adopted the principle of *uti posside juris*[24] ("as you hold by right of possession") affirming the inviolability of the colonial boundaries inherited at independence by the individual member states.

The most significant outcome of this development was the sanctioning of a state-centric approach to security, subsuming all forms of domestic dissent. The newly independent states of sub-Saharan Africa became the referent objects of both policy and academic discourse. For instance, while a number of African leaders were pleased with Tanzania's unilateral decision to oust Idi Amin's regime from Uganda, the action received muted applause around the continent. Instead, President Julius Nyerere was publicly criticised at the OAU summit in July 1979 by President Jaafar Nimeiri of Sudan and General Olusegun Obasanjo, then military ruler of Nigeria, who condemned the invasion as a "dangerous precedent of unimaginable consequences".[25] Not surprisingly, Nigeria strongly invoked the sacrosanct notions of 'sovereignty and non-intervention' in its fight against Biafran secessionists between 1967 and 1970.[26]

Article 3(b) of the Constitutive Act of the AU pledged to "defend the sovereignty, territorial integrity and independence of its member states". In its principles, however, the Act gives member states the prerogative to intervene in cases of genocide, war crimes or other gross violations of human rights. In this vein, Article 4(h) spells out "the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity".[27] The shift in thinking by leaders on the continent is best illustrated by President Obasanjo, who had criticised President Nyerere for his intervention in Uganda and is currently one of the

champions of the AU and NEPAD – both structures support intervention in member states.

Since its establishment in 2002, the AU has deployed peace-keeping troops to Burundi – the AU Mission in Burundi (AMIB) and more recently the African Mission in Sudan (AMIS I & II). As part of its exit strategy, AMIB has since been re-hatted a UN mission. The mission in Sudan, which is mandated to protect the AU civilian and military observers, has been criticised for slow deployment and what most observers see as a weak mandate. The mandate of the mission falls short of authorising the observer force to intervene when civilians are under threat. Instead, its focus is limited to observing and reporting violations of human rights by the parties to the conflict – most observers, including some troop contributing states such as Rwanda, consider the mandate grossly inadequate. In particular, Rwanda has since asked the AU to revise the mandate to allow the force to directly intervene directly when the welfare civilians is under threat.

As with previous operations, such as ECOMOG in Liberia, the deployment of AU troops to Darfur took place in the face of political meandering by the international community. Although the US Congress has argued that some of the crimes committed in Darfur constitute genocide, the US administration has been unable to take decisive action against the government of Sudan. This is perhaps due to the realisation that the Security Council will not reach broad consensus on a robust response to the crisis, because of China's strong business (oil) interest in Sudan. Furthermore, Russia, another member of the P5, is a major supplier of weapons to the Sudanese government. The view of the AU, which is not unaware of Pan-Arab sentiments within its fold, has been that the situation in Darfur did and does not constitute genocide. On the diplomatic level, however, this has contributed to the lack of international political and diplomatic consensus on a common definition of what constitutes genocide or what the threshold of 'grave circumstances' involving war crimes and crimes against humanity, should warrant decisive regional and international action.

The situation is further complicated by the rather ambiguous report of the UN International Commission of Inquiry on Darfur. For instance, while the report acknowledged that war crimes have been committed, it added that this did not constitute genocide. It concluded that while "the government of Sudan has not pursued a policy of genocide … in some instances individuals, including government officials, may commit acts with genocidal intent".[28] To most observers and advocates of human

rights, the report fell short of expectation and could have the unintended effect of deflecting international attention from the real issues on the ground – justice for the innocent victims.

Perhaps the most controversial aspect of the Report is its recommendation that the situation in Darfur be referred to the International Criminal Court (ICC). The Commission argues that "the prosecution by the ICC of persons allegedly responsible for the most serious crimes would contribute to the restoration of peace and security in the region".[29] This temporarily put the US and the EU on a collision course. It should be remembered that the US administration has refused to sign the Rome Statute establishing the ICC, arguing that it could be used for politically motivated trials against its soldiers. It has even gone further and entered into bi-lateral agreements with several countries that have signed the Statute not to hand over US nationals to the Court.[30] It is no surprise therefore that the US initially opposed the recommendation, arguing that such a move would only serve to legitimise the Court. As an alternative, it proposed the establishment of a Rwanda-type criminal tribunal to try those accused of committing war crimes in Darfur. For its part, the EU, which is perhaps the strongest advocate of the ICC, supports the Commission's recommendation. After what some observers have described as serious compromises and horse-trading, the Security Council finally agreed to forward the issue of Darfur to the ICC. This is significant because it is the first case that the Security Council has referred to the ICC. It now remains to be seen what the prosecutor of the Court will do when he receives the names of persons who are believed to have directed the atrocities in Darfur. Furthermore, there are serious doubts as to whether the government of Sudan will cooperate with the ICC by handing over some of its senior political and military officers believed to be behind the alleged war crimes in Darfur.

Critics of the US policy in Darfur have pointed out that, in spite of having labelled the crisis in Darfur as genocide, to date it has not taken any concrete steps to deal with the situation. Moreover, they point out that the US' objection to the ICC provides "the best hope to the Sudanese officials seeking to avoid accountability for what President Bush himself has called genocide".[31] The ambivalent policy of the US administration does not conform to international law, because in cases where it has been established that genocide is taking place, states are obliged to intervene. If the killing of approximately 75,000 innocent civilians and the displacement of about two million more do not constitute genocide, then what does? How many more people would have to be slaughtered and driven from their homes before the international community respond appropriately?

The situation certainly warrants more concrete international action than it has received so far.

Although, the AU has already deployed its protection and observer force, the African Mission in Sudan (AMIS I & II), albeit slowly, the force is hamstrung by a weak mandate, lack of logistics, and runs the risk of being a victim of the horse trading between the permanent members of the Security Council. The current debate is reminiscent of the Rwandan genocide of 1994, when valuable time was expended on debating labels for the ominous events which gripped that country – history is about to repeat itself. In the midst of the ideological wrangling between the US and EU, the civilian population in Darfur continue to suffer.

Once again, the welfare of civilians has been overshadowed by the narrow national self-interest of one or more of the permanent members of the Security Council, coupled with the lack of international consensus on what constitutes genocide. In the end, this has only played into the hands of the protagonists, to the detriment of the civilian population, who continue to bear the gruesome brunt of the conflict. Such dithering on the part of the international community, coupled with a lack of common mechanism to verifiably establish the existence of genocide, therefore further reinforces the need to develop a strong and viable African security architecture that can rapidly and effectively respond to crises on the continent. Thus, instead of dismissing the AU for its rather incremental approach to its intervention in Darfur, a concerted effort should be made to strengthen African capacities for peace support operations (PSO), especially in the critical areas of logistical support, strategic airlift, mission funding and mission sustainment based on the lessons from these and other deployments.

The plight of civilians in the plethora of conflicts that emerged in the 1990s fuelled the need for a re-conceptualisation of security. Such efforts led to calls for the widening of the security discourse to include non-military issues that are human security in nature.

ENTER HUMAN SECURITY

The end of the Cold War ushered in a new era in international relations. These developments witnessed a shift from the traditional and often confrontational bi-polar world (the US-led Western alliance against the Soviet-led Eastern alliance) that emerged at the end of the Second World War. The bi-polar world that reigned from the end of the Second World War was replaced by what most observers viewed as an unchallenged uni-polarity. That the greatly anticipated peace dividend

did not materialise in some parts of the world provided ample fuel for these countries to champion a more people-oriented approach to security. Such efforts led to the adoption of human security as the framework for understanding security.

The fact that the peace dividend did not materialise in some parts of the world, coupled with the desire to steer the world away from the dangerous brinkmanship that characterised the Cold War, led to calls for a re-conceptualisation of security and the reform of the UN. Middle powers such as Canada and the Scandinavian countries, determined to carve a niche for themselves and to promote peace in the new global (dis)order, capitalised on the changing situation and called for a new conception and understanding of – the notions of – security. A combination of such efforts and a realisation by some in the developing world of the futility of the state-centric approach to security led to the projection of human security as a new framework for the understanding of security.

Thus, efforts to strengthen international commitments towards the protection of civilians received a boost when both policy makers and academic scholars advocated the broadening of the concept of security. During the Cold War, security was the sole preserve of the state. Traditionally, the concept of security has been concerned with understanding the causes of war and the conditions of peace. The continued suffering of civilians in conflict zones across the world was seen as a compelling reason to expand the concept of security horizontally, to include 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 recognising that people should be the primary referent for security. In this way, it becomes possible to identify threats to human security that emerge at the sub-national, national and trans-national levels.[32]

In other words, human security was simply described as freedom from fear and want. By defining security in these terms, the report highlighted the need to focus on people-centred security – a radical departure from the traditional state/regime security. But it pointed out that human security should not be equated with human development. Human development is a much broader concept with the aim of widening people's choices, whilst on the other hand human security is about how people can freely and safely exercise these choices with minimal fear that today's opportunities will not be lost tomorrow.[33]

In Africa the most significant initiative was what became known as the Kampala Document, which called for the establishment of a Conference

on Security, Stability, Development and Cooperation in Africa (CSSDCA). The CSSDCA points to the fact that peace, security and stability are the pillars for development and cooperation in Africa. It emphasised that the security, stability and development of African states are inseparably interlinked. Consequently, the erosion of security and stability is a major cause of conflicts which has impeded development efforts on the continent as a whole.[34]

In the principles of the CSSDCA the exercise of responsible sovereignty is the key to security, failing which cooperation among neighbours is required to deal with internal problems and conflicts. Measures are required to assure the security of both states and people, creating a security community among African states where war is no longer envisaged as a tool of national policy and where the basic necessities of life are assured to their citizens. Stability on the other hand calls for the rule of law, accountable democratic procedures, the free participation of the citizenry in governance, and the full protection of human rights. Finally development calls for open, competitive economy to assure the satisfaction of basic human needs and the full growth of the African potential.[35] Consequently it emphasised that the "security, stability and development of every African country are inseparably linked to that of other African countries. Instability in one country affects the stability of neighbouring countries and has serious implications for continental unity, peace and security."[36] In this vein, when ECOWAS adopted the Protocol on Conflict Resolution in 1999, it incorporated some of the principles espoused by the CSSDCA. In addition, the newly established Peace and Security mechanism of the AU embraced some of the principles of the CSSDCA.

In theory the broad conceptualisation of security augurs well for the principle of civilian protection. What is left is the will to enforce these principles, to the extent possible, and in accordance with the spirit of the principles. This also calls for expiation of set principles that would guide and smoothen implementation processes.

In spite of a growing support for humanitarian intervention, the principle of sovereignty remains to be a thorny issue. The ensuing section will explore the contours of the debate surrounding humanitarian intervention vis-à-vis the principle of sovereignty.

SOVEREIGNTY OR SURVIVAL

The levels of unprecedented violence directed at the civilian population precipitated a polarised debate on the 'strict' adherence to the principle

of sovereignty. Regardless of the fact that there is a general acceptance of the need to apply international humanitarian law in conflict situations there is serious controversy on how to gain compliance without violating the principle of state sovereignty. The domestic nature of warfare in the 1990s, coupled with the emergence of amorphous non-state actors who operate across porous borders, raises fundamental questions about the weight and importance of sovereignty, especially when the central government has all but lost its capacity for governance or is complicit in perpetrating violence against the civilian population. Consequently, scholars and policy analysts are divided on the exact location of sovereignty – with the people or the state? Or should sovereignty be regionalised? In spite of the lack of consensus, there is a general feeling that the protection of civilians should not be sacrificed at the expense of sovereignty.[37]

In the post-Cold War era Africa has experienced a good number of intra-state conflicts. The removal of the superpower umbrella effectively meant that Africa lost its strategic significance in the new international political milieu. As a result, most of the bloody conflicts that engulfed the region during this period received scant international attention. Even though the conflicts were mostly internal, they had ramifications for regional security, often with the civilian population bearing the brunt of the suffering.

These conflicts have therefore brought into sharp focus the debate over whether the notions of sovereignty and non-interference should continue to be held as sacrosanct. Most advocates of intervention base their arguments on the universality of humanitarian values and the compelling need to subordinate conventional notions of sovereignty to those humanitarian imperatives.[38] Nevertheless, challenging the notion of sovereignty also amounts to questioning one of the fundamental pillars of the UN – Articles 2(1), 2(4) and 2(7) of the UN Charter, which guarantee the sovereign equality of all member states.

In this vein, Scheffer, for instance, has observed that:

> "In the Post-Cold war world … a new standard of intolerance for human misery and human atrocities has taken hold … Something quite significant has occurred to raise the consciousness of nations to the plight of peoples within borders. There is a new commitment – expressed in both moral and legal terms – to alleviate the suffering of oppressed or devastated people. To argue today that norms of sovereignty, non-use of force, and the sanctity of internal affairs are

> paramount to the collective human rights of people, whose lives and well being are at risk, is to avoid the hard questions of international law and to ignore the march of history."[39]

Scholars such as Louis Henkin have also called for a radical assessment of the place and value of sovereignty in the post-Cold War world. Henkin argues that "we might do well to relegate the term to the shelf of history as a relic from another era … As applied to a State, elements long identified with sovereignty are inevitably only metaphors, fictions, fictions upon fictions."[40] In the same vein, Michael Reisman sees sovereignty as popular, rather than state sovereignty. Referring to international intervention in Haiti he noted:

> "In modern international law, what counts is the sovereignty of people and not a metaphysical abstraction called the state. If the *de jure* government, which was elected by the people, wants military assistance, how is its sovereignty violated? And if the purpose of coercion is to reinstate a *de jure* government elected in a free and fair election after it was ousted by a renegade military, whose sovereignty is being violated? The military's?"[41]

In response to the strong humanitarian arguments advanced in the post-Cold War era, those who are not in favour of intervention, including some states in sub-Saharan Africa, have raised concerns over the possible abuse of intervention.

Concern over abuse resulting from an expanded understanding of the principle of sovereignty has also been raised by neutral observers in the developed world. For instance, Stanton writes that, "It is well-known that the practice of intervention has diverged from international law with respect to 'less civilised,' non-western, developing states, leaving intervention linked with imperialism and colonialism in historical memory."[42] In response to the work of the International Commission on Human Rights, China (acting as the spokesperson for Africa and other Third World countries) asserted that questioning the notion of sovereignty amounted to an imposition of Western human rights values on these states. The Chinese argued that, "The practice of distorting human rights standards, exerting political pressure through abuse of monitoring mechanisms, applying selectivity and double standards have led to the violation of principles and purposes of the UN Charter, and the impairing of the sovereignty and dignity of many developing countries."

And that:

> "… the urgent issue is to remove as soon as possible the imposition of their own human rights concepts, values and ideology by a few countries who style themselves as 'human rights judges': and the interference in internal affairs of other countries by using human rights as a means of applying political pressure. The victims of such practice are developing countries whose people suffered from violation of human rights and fundamental freedoms for a long time before and are now making great efforts to safeguard their sovereignty and independence for their survival and development."[43]

THE INTERVENTION DILEMMA: REGIONAL AND INTERNATIONAL RESPONSES

The assault on the notion of sovereignty – a cardinal pillar of the UN and regional organisations – has not escaped the chief administrators of organisations. The responses of the post-Cold War Secretaries General reflect the ambivalence of the UN in the unfolding debate. This ambivalence was captured by former UN Secretary General Javier Perez de Cuellar when he stated that "we are clearly witnessing what is probably an irreversible shift in public attitudes towards the belief that the defence of the oppressed in the name of morality should prevail over frontiers and legal documents". He added the question, however: "Does [intervention] not call into question one of the cardinal principles of international law, one diametrically opposed to it, namely, the obligation of non-interference in the internal affairs of states?"[44]

This theme was picked up by the incoming Secretary General Boutros Boutros-Ghali. In his now famous report to the UN General Assembly, *An agenda for peace,* he wrote that "the time of absolute and exclusive sovereignty … has passed", adding that "its theory was never matched by reality", and that there is a compelling need for states "to find a balance between the needs of good internal governance and the requirements of an ever more interdependent world".[45] He noted that the notion of sovereignty needs to be revisited in light of the emerging global dynamic:

> "A major intellectual requirement of our time is to rethink the question of sovereignty – not to weaken its essence, but to recognise that it may take more than one form and perform more than one function. This perception could help solve problems both within and among states. And underlying

> the rights of the individual and the rights of peoples is a dimension of universal sovereignty that resides in all humanity and provides all peoples with legitimate involvements in issues affecting the world as a whole. It is a sense that increasingly finds expression in the gradual expansion of international law."[46]

On his part, Secretary General Kofi Annan has noted that "no government has the right to hide behind national sovereignty in order to violate the human rights or fundamental freedoms of its peoples. Whether a person belongs to the minority or the majority, that person's human rights and fundamental freedoms are sacred."[47] The international community's indifference to the genocide in Rwanda and NATO's intervention in Kosovo without the authorisation of the Security Council presented the world community with a dilemma, that is, either failing to intervene, or intervening without consensus or the authorisation of the Security Council. In direct reference to this dilemma, in a speech to the General Assembly, 'Toward democratic world federation', on 20 September 1999, Secretary Annan stated that "if the new commitment to intervention in the face of extreme suffering is to retain the support of the world's peoples, it must be – and be seen to be – fairly and consistently applied, irrespective of region or nation. Humanity after all is indivisible."

However, realising the potential danger of unilateral actions in the guise of humanitarian intervention, Annan poignantly observed that, "just as the world cannot stand aside when gross and systematic violations of human rights are taking place, so intervention must be based on legitimate and universal principles if it is to enjoy the sustained support of the world's people". He continued: "… developing international norm in favour of intervention to protect civilians from wholesale slaughter will no doubt continue to pose profound challenges to the international community."[48] Finally, he warned the international community about capacity – if the political will exits to influence belligerents – that the protection of civilians can only be achieved if the UN is given the means to address a wide range of issues from civil administration to policing in post-conflict societies, otherwise there is a real danger of losing both the war and the peace.

In recognition of the serious security challenges posed by the rising tide of internal conflicts in sub-Saharan Africa, the Organisation of African Unity (OAU), which was replaced by the AU in 2002, also questioned the wisdom of clinging on to the traditional notion of sovereignty, which meant non-intervention even at the expense of widespread human suffering. In spite of the controversy that was sparked by the ECOWAS

intervention in Liberia in August 1990, the move broke new ground in winning the support of several prominent African leaders whose public support for such ventures a few years earlier would have been unthinkable. For example, the OAU Secretary General Salim Ahmed Salim responded to criticisms that the intervention is a violation of the non-intervention clause of the OAU by stating that non-interference should not be taken to mean indifference.

He contended critics of ECOMOG based their argument on a 'misinterpretation' of the OAU Charter:

> "... for African government to have the right to kill its citizens or let its citizens be killed, I believe there is no clause in the charter that allows this … [T]he charter was created to preserve the humanity, dignity, and the rights of the African. You cannot use a clause of the charter to oppress the African and say that you are implementing the OAU charter. What has happened is that people have interpreted the charter as if to mean that what happens in the next house is not one's concern. This does not accord with the reality of the world."[49]

The OAU chief went further and urged the organisation to play a leading role in transcending the traditional view of sovereignty, invoking African values of kinship and solidarity and the notion that every "African is his brother's keeper".[50] Continuing his cultural argument, he asserted that "our borders are at best artificial", and that "we in Africa need to use our own cultural and social relationships to interpret the principle of non-interference in such a way that we are enabled to apply it to our advantage in conflict prevention and resolution".[51]

Despite the strong humanitarian arguments in favour of intervention, the place and value of sovereignty are still subject to debate. An international conference on sovereignty concluded that "… we may be witnessing the very beginning of a period in which the balance between state sovereignty and international authority is shifting decisively … Nevertheless, it is undoubtedly premature to declare that international society has moved beyond Westphalia and has overcome the idea of state sovereignty …"[52]

Spurred by the dilemma that surfaced after the controversial NATO intervention in Kosovo, and bearing in mind the tragic consequences of lack of action in Rwanda, the government of Canada, together with major foundations established the International Commission on Intervention and State Sovereignty (ICISS). The ICISS was mandated to explore the

legal, moral, political and operational issues surrounding humanitarian intervention. In other words, the commission was requested to explore the contours of the delicate and controversial issues that surfaced both when intervention took place (Kosovo) and when it did not (Rwanda). Amongst other things, the commission was to make concrete recommendations on the way forward.

In what has now become the seminal work on the intervention dilemma, the commission published its report: *The responsibility to protect*. The thrust of the report is that "sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states".[53] The report delved more deeply into the nature and dynamics of the notion of the responsibility to protect and most importantly on how to go about it when the need arises, without raising too much controversy, as happened in the Kosovo intervention. The commission outlines three main elements that underlie the responsibility to protect:

- *The responsibility to prevent:* The need to address both the structural and proximate causes of domestic conflicts, and man-made crises that put populations at risk.

- *The responsibility to react:* Responding in a timely and adequate manner to situations where the civilian population is under threat – the response could take several options ranging from sanctions to military intervention. Military intervention could only be pursued only in extreme cases and as a last option.

- *The responsibility to rebuild:* To provide multi-pronged assistance and support to address some of the fundamental causes of the conflict that necessitated the intervention in the first place – engaging in long-term and sustainable peace-building programmes.[54]

The report further emphasised that "prevention is the single most important dimension of the responsibility to protect: prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted".[55] Mention must be made of the fact that the first basic principle outlined by the report made it abundantly clear that "state sovereignty implies responsibility", emphasising that the "primary responsibility for the protection of its

people lies with the state itself". However, in the event that "a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect".[56]

Thus, although the report speaks of an international responsibility to protect, it presented that as a last resort. In other words, the international community can only intervene in the name of protecting civilians when the state in question is either complicit in the suffering of its people or is incapable of dealing with the challenge. In Liberia, for instance, gaining such an entry point required a delicate balancing act between the regional political and diplomatic concerns, and the interests and intentions of the international community. This presents a dilemma, namely that in other cases, such as in Sudan, this may be lacking and may lead to conflict prolongation and attenuation of the peace efforts. The report therefore delicately attempts to balance the need for protection and ensuring that state sovereignty is not compromised. This is an important distinction, especially in a world dominated by one superpower, whose actions are often unpredictable and may be viewed with suspicion by different states and regions of the world. The need for clarity on the international *responsibility to protect* was made all the more serious after the terrorist attacks on the United States on 11 September 2001 and the subsequent US-led war on terrorism. In the current global order (and during the Cold War), the principle of sovereignty is perhaps the strongest line of defence for small and weak members of the international community. Developments leading to the current war in Iraq, however, showed that the small and weak members of the international community are still at the mercy of the world's only superpower.

CONCLUSION

In the foregoing analysis an attempt has been made to illustrate the evolution of the principle of the protection of civilians as enshrined in IHL. The analysis also highlighted the shift in the conception of security from its narrow state-centric prism to a broader approach, that is, human security. Moreover, it brings to the fore the tensions and contradictions of the international system, even in cases of humanitarian intervention – thereby rendering the cliché 'never again' redundant. That state sovereignty is an age-old principle of international relations underscores the difficulty of enforcing the principle of the protection of civilians.

Although the UN has continuously promoted the need to comply with IHL and Human Rights Law, in certain instances, such as Rwanda and currently Darfur, it has failed to muster the necessary political support for a robust intervention. In Darfur, the traditional tug-of-war between the permanent members of the Security Council has once again stifled any meaningful form of intervention. The actions of members of the council have been limited to rhetorical statements that do little to alleviate the plight of the civilians. In spite of these apparent lapses by the council, all UN peacekeeping missions in Africa, since the genocide in Rwanda, as well as the recommendations of the Brahimi Panel (2000), have been authorised with a Chapter VII mandate, giving them the option to intervene to protect civilians. However, in some instances – such as Sierra Leone and the Democratic Republic of Congo (DRC) – a Chapter VII mandate was given only after UN personnel came under attack. As was mentioned earlier, the interpretation of these robust mandates remain a big problem that, among other reasons, gave rise to the incidence of hybrid forces to shore up the mandates of missions in Sierra Leone, DRC, Liberia and Côte d'Ivoire.

Although African regional and sub-regional organisations such as the AU and ECOWAS have demonstrated a strong desire to undertake humanitarian interventions and missions, their efforts are severely handicapped by financial and logistical inadequacies. In the face of the growing phenomena of armed non-state actors, with little or no respect for international norms and conventions, there is a compelling need for the strengthening of African PSO capacities so that they can respond in a timely and adequate manner when civilians are under threat. Although the establishment of the ad-hoc tribunals for the former Yugoslavia and Rwanda and the Special Court for Sierra Leone are important steps in the fight against impunity, they are nevertheless limited in duration, scope and, in some cases, such as Sierra Leone, could have the unintended consequence of undermining long-term peace-building.

Indeed, some critics, including the author, go as far as asserting that these *ad hoc* arrangements are mere compensatory mechanisms by the international community for having failed to take appropriate action to protect innocent civilians when they were under threat. Moreover, they are even seen as an opportunity by the international community to broaden the frontiers of international jurisprudence. Advocates of human rights have applauded the establishment of the International Criminal Court (ICC), but the record of compliance and enforcing international norms leaves much room for scepticism. Consequently, Africa needs to

develop and implement, its own political, legal and security mechanisms to ensure that it can prevent and adequately respond to humanitarian crises when they emerge; failing which, the continent will witness the blossoming of a cottage industry of Special Courts and *ad hoc* tribunals, often with unintended negative consequences. In this vein, the following should be considered as the building blocs of such a mechanism;

The development of strong democratic institutions that are built on respect for the rule of law, adherence to the African Charter on Peoples and Human Rights, the Constitutive Act of the AU and other continental and international instruments. Strengthening the democratic ethos would go a long way in minimising the incidents of political tensions that often erupt into violence. It is therefore important for the AU and the RECs to enforce their political principles, which, forbids all forms of unconstitutional change of government – hence the need to develop a strong and efficient peer review mechanism.

Efforts should be made to develop and strengthen African capacities for PSOs. The African Standby Force should constitute the nucleus of such a mechanism. The operationalisation 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'. The unwillingness of the international community, especially the major western powers to contribute troops to UN-led PSOs in Africa, should be viewed as an opportunity for the continent to develop its own capacities to undertake PSOs. 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. Furthermore, the security architecture should include a strong early warning and early response capacity.

In the face of continued dithering by the international community, the AU and RECs should work towards developing their own accountability mechanisms. Continental instruments such as the African Court of Human Rights and other sub-regional mechanisms such as the ECOWAS Court of Justice should be strengthened to deal with cases of war crimes and gross violations of human rights. The application of such mechanisms would further the cause of African solutions to African problems, thereby minimising the legitimacy and ownership issues that are associated with international criminal courts/tribunals.

Finally, strong links with civil society organisations should be developed at the national, sub-regional and continental levels. The development and strengthening of such 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. For their part civil society organisations should make themselves familiar with policies at the national, sub-regional and continental levels, so as to allow them to make meaningful contribution.

NOTES

1 Secretary General's address to the 59th session of the United Nations General Assembly, 21 September 2004.
2 For details on the status, treatment of prisoners of war and the obligations of parties to an armed conflict see the "Geneva Convention relative to the treatment of prisoners of war" (Convention III of 12 August 1949), Additional Protocol I, Part II. This information can be found at <www.icrc.org> (14 January 2005).
3 The four Geneva Conventions and two additional Protocols signed in 1949 and 1977 respectively are: Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed forces in the Field; Convention II for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked members of the Armed Forces at Sea; Convention III Relative to the Treatment of Prisoners of War; Convention IV Relative to the Protection of Civilian Persons in Time of War; and Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts 8 June, 1977 and Protocol II Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977. For more information go to: <Mwww.globalissuesgroup.com/geneva/history.html> (8 February 2005).
4 For more information see the International Humanitarian Law and Human Rights Fact Sheet No 13, pp 201–204, Raoul Wallenberg Institute, Lund, Sweden, 1994.
5 Ibid, p 198.
6 The full text of the Geneva Conventions and additional Protocols can be found at <www.icrc.org> (13 January 2005).
7 Ibid.
8 Ibid, p 208.
9 See Report of the Secretary General to the Security Council on the Protection of Civilians in Armed Conflict, S/1999/957, September 1999, p 1.
10 Ibid, p 2.
11 See *An Agenda for Peace: Preventive diplomacy, peacemaking and peacekeeping*, Report of the Secretary General A/47/277-S/24111, June 1992.
12 Ibid, p 6.
13 Ibid, pp 6-7.
14 See Resolution 1497 (2003), Adopted by the Security Council at its 4803rd Meeting on 1 August 2003. S/RES/1497(2003), p 1.
15 Ibid, p 9.

16 Security Council Resolution 955 (1994), Adopted by the Security Council at its 3453rd Meeting on 8 November 1994, p 2. For more information on the Rwanda genocide see Salim A Salim, The price of peace, *The West African Bulletin* 3, June 1995; Lieutenant General Romeo Dallaire, *Shake hands with the devil – the failure of humanity in Rwanda,* Canada, Random House, 2003. See also Scott R Feil, Preventing genocide – how the early use of force might have succeeded in Rwanda, A Report to the Carnegie Commission on Preventing Deadly Conflict, Carnegie Corporation, New York, April 1998; Samantha Power, Bystanders to genocide, *The Atlantic Monthly*, September 2001, pp 1–30.

17 Of the seven current UN-led peacekeeping missions in Africa, five were authorised with a Chapter VII mandate – that is, the United Nations Mission in Sierra Leone (UNAMSIL); the United Nations Mission in the Democratic Republic of Congo known by its French acronym as MONUC; the United Nations Operations in Burundi (ONUB); the United Nations Operations in Côte d'Ivoire; and the United Nations Mission in Liberia (UNMIL).

18 See The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary General, S/2004/616, 23 August 2004, p 3. In order to better coordinate its activities in this area a Rule of Law Focal Point Network was established at the UN headquarters in New York. The network consists of specialists from nearly a dozen organisations involved in the promotion of rule of law in conflict and post-conflict societies.

19 For more information go to: <www.adetocqueville.com/cgi-binloc/searchTTC.cgi?displayZop+16609> (31 January 2005).

20 Yoroms, Gani J, "Mechanism for Conflict Management in ECOWAS", Accord Occasional Paper, No. 8. 1999, pp 3-4.

21 See Protocol on Conflict Resolution, op cit, p 17.

22 Ibid, p 22.

23 For more information on the inviolability of the post-independent African states, see Chapter II Section 3 of the OAU Charter, 1963, Addis Ababa, Ethiopia. Note that the OAU was replaced by the AU at a summit meeting held in Durban, South Africa, in July 2002.

24 See also Charter of the OAU, 25 May 1963, reprinted in *International Legal Materials* 3, 1963, Article 3.3, p 766.

25 Quoted in Robert H Jackson, Negative sovereignty in Sub-Saharan Africa, *Review of International Studies* 12, October 1986, p 253; and Zdenek Cervenka and Colin Legum, The organisation of African unity in 1979, in Colin Legum (ed), *Africa contemporary record: Annual survey and documents, 1979–1980,* Africana, New York, 1981, p A62.

26 For more information on the international dynamics of the Nigerian civil war see Oladije Aluko, *Essays in Nigerian foreign policy*, George Allen and Unwin, London, 1981; Oye Ogunbadejo, Nigeria and the Great Powers: The impact of the civil war on Nigerian foreign relations, *African Affairs* 75(298), January 1976.

27 See Constitutive Act of the African Union, Lomé, Togo, July 2000, p 5. The Constitutive Act was formally adopted by the AU at its first summit meeting in Durban, South Africa, in 2002.
28 See Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General, Geneva, 25 January 2005.
29 Ibid, p 5.
30 The Bush administration suspended military aid to about 20 countries, including Mali, Croatia and Ecuador, for refusing to enter into such bilateral agreements, to shield US nationals from the ICC. Furthermore, in August 2002, the US administration passed a law that is now commonly referred to as the "Hague invasion clause" which effectively authorises US troops to use all means at their disposal to extricate US nationals in the event that they are imprisoned.
31 For more analysis on the tug-of-war between the US and the EU go to <http://allafrica.com> (9 February 2005).
32 See Ken Booth, A security regime in southern Africa: Theoretical considerations, University of the Western Cape: Centre for Southern African Studies, *Working Paper* 30, 1994, p 3.
33 Ibid, p 22.
34 Aderinwale Ayodele, The Conference on Security, Stability, Development and Cooperation in Africa – Framework and the Role of Regional Institutions, in Moufids Goucha and Jakkie Cilliers (eds), *Peace, human security and conflict prevention in Africa,* ISS/UNESCO, Paris/Pretoria, 2000, pp 59–66. The Africa Leadership Forum (ALF) initiated the CSSDCA. The ALF was founded by President Olusegun Obasanjo, one of the brains behind the search for alternative strategies to deal with the complex problems of security and development that confronted sub-Saharan Africa in the post-Cold War era. Some of the principles of the CSSDCA were incorporated into the New Partnership for Africa's Development (NEPAD).
35 For analysis of the CSSDCA process see William I Zartman, *Security, stability, development and cooperation in Africa: A regional expression of a global policy network in formation*, Johns Hopkins University, Washington, DC. Article can be found at <www.gppi.net/cms/public> (4 October 2003).
36 Ibid, p 64.
37 For details see Gareth Evans and Mohamed Sahnoun, *The responsibility to protect*, Report of the International Commission on Intervention and State Sovereignty, Ottawa, December 2001.
38 Francis M Deng et al, *Sovereignty as responsibility – conflict management in Africa* discuss the notion of sovereignty in detail: The Brookings Institution, Washington DC, 1991 pp 1-33.
39 See David L Scheffer, Toward a modern doctrine of humanitarian intervention, *University of Toledo Law Review* 23, Winter 1992, p 7.
40 Cited in Deng et al, op cit, p 9.
41 For details see Michael Reisman, Haiti and the validity of international action, *American Journal of International Law* 89, January 1995, p 83.

42 Kimberly Stanton, Pitfalls of intervention: sovereignty as a foundation for human rights, *Harvard International Law Review* 16, Fall 1993, p 16.
43 See China's statement to the Economic and Social Council, UN Commission on Human Rights, Responses of Governments and Agencies to the Report of the UN Special Representative for Internally Displaced Persons, E/CN.4/1993/SR.40.
44 Cited in Deng et al, op cit, p 13.
45 Boutros Boutros-Ghali, An agenda for peace: preventive diplomacy, peacemaking, and peacekeeping, Report of the Secretary General pursuant to the statement adopted by the summit meeting of the Security Council on 31 January 1992, United Nations, New York, 1992, p 2.
46 Boutros Boutros-Ghali, Empowering the United Nations, *Foreign Affairs* 71, Winter 1992/93, p 99.
47 For more information on Secretary Annan's position on the dilemma between sovereignty and the protection of civilians go to: <www.Guardian.co.uk/Kosovo/Category/0,7768,206612,00.html> (14 January 2005).
48 See Kofi Annan, Balance state sovereignty with individual sovereignty!, at <http://users.1mi.net/wfana/pp_annan_on_sov.html> (14 January 2005)
49 The OAU chief is quoted in Wippman, op cit, p 181.
50 See Report of the Secretary General on Conflicts in Africa: Proposals for an OAU mechanism for conflict prevention and resolution, CM/1710 (L.VI), Organisation of African Unity, Addis Ababa, 1992, p 12.
51 Ibid, p 12.
52 See Gene M Lyons and Michael Mastanduno, Beyond Westphalia? International intervention, state sovereignty, and the future of international society, Summary report of conference at Dartmouth College, 1992, p 31.
53 Sahnoun and Evans, op cit, p VIII.
54 Ibid, p XI.
55 Ibid.
56 Ibid.