



Keeping the stable doors open before the horse bolts

Using standards of due diligence, working through regional institutions and conducting a less doctrinal debate at the time of crisis will help to apply the Responsibility to Protect in cases such as Burma and Zimbabwe

Michael Hammer, Marie Battini and Chris Snow

Briefing paper number 111, July 2008

The One World Trust promotes education and research into changes required in global governance to achieve the eradication of poverty, injustice, environmental degradation and war. We develop recommendations on practical ways to make powerful organisations more accountable to the people they affect now and in the future, and how the rule of law can be applied to all. We educate political leaders, decision makers and opinion-formers about the findings of our research.

Marie Battini and Chris Snow are Research Assistants and Michael Hammer is Executive Director at the One World Trust.

To contact the authors please email mhammer@oneworldtrust.org

International Law & Regulation

© One World Trust.

Readers are encouraged to quote or reproduce from this paper for educational purposes only. As the copyright holder, the One World Trust requests due acknowledgement and a copy of the publication.

3 Whitehall Court
London SW1A 2EL
Tel +44 (0) 20 7766 3470
Fax +44 (0) 20 7219 4879

Email info@oneworldtrust.org
www.oneworldtrust.org

Charity Commission No 210180

In 2005 the member states of the United Nations unanimously supported language entrenching the Responsibility to Protect doctrine as a part of international law and custom. Many did so because they believed in the need for a fundamental shift in the understandings of state sovereignty, both in terms of relationships between states and their citizens, and of governments' responsibility for those relationships to the international community. Indeed, maybe for the first time, governments were forced to consider the people living within their borders as citizens rather than subjects, and to understand the international community as bound by common values and growing legal powers to define responsibilities and sanction behaviour.

Realising this shift, however, continues to pose many problems, political, legal and practical, which, it is recognised, will resolve themselves only gradually, and in tandem with progress on a multitude of levels.

Key to making the Responsibility to Protect doctrine a meaningful part of international law and policy is to keep the focus firmly on supporting and protecting people on the receiving end of widespread and systematic human rights abuses and violations of International Humanitarian Law, rather than debating its language in isolation and in primarily doctrinal terms at the point of crisis.

From the more recent cases in which the Responsibility to Protect language has been used, such as Kenya, Zimbabwe and Burma, several points appear to merit further exploration:

- 1. the need to contextualise the Responsibility to Protect debate within important developments in international human rights law (such as standards of due diligence and proportionality);**
- 2. addressing the problematic conceptual contraction of the doctrine to armed intervention, and issues of timing of debate; and**
- 3. the beneficial role that consistent national and regional institutional engagement can play in preparing the ground for broader acceptance of the Responsibility to Protect doctrine.**

The duty of care and the Responsibility to Protect: applying standards of due diligence

The unanimous commitment to realising the Responsibility to Protect by the member states of the UN in 2005 significantly contributed to the entrenchment of the doctrine in international law and policy. At the same time, its use has been strangely divorced from other key developments in international law, in particular human rights law. At the moment, the Responsibility to Protect often appears to be purely discussed as a matter of protecting civilians in armed conflict, and thus as primarily related to International Humanitarian Law. Taken together with the continuing misinterpretation of the Responsibility to Protect as a right to intervene rather than as a burden of responsibility to act in response to risks to people¹, the current interpretation fails to do justice to the fundamental positive change that the doctrine entails for the relationship between citizen, the nation state and the international community.

The application of the Responsibility to Protect has to be seen in conjunction with other, wider developments in international human rights law, in particular the increasingly accepted use made of standards of due diligence to promote the justiciability of both civil and political and economic, social and cultural rights. The Burmese case in particular demonstrates the importance of emphasising the interdependence of rights and the need for their respect, protection and fulfilment. Clearly the cyclone Nargis was a natural disaster and not an armed conflict, but the subsequent rise in fatalities was arguably the result of conscious negligence of both civil and political, and economic, social and cultural rights (such as access to adequate standards of health care) of the affected citizens at the hands of their own government.²

UN High Commissioner for Human Rights Louise Arbour makes a strong case that “Whether we call it responsibility to protect or anything else, States have a responsibility to extent (sic) protection [to the people on their territory] equally against genocide, as against famine, disease, ignorance, deprivation of the basic necessities of life, discrimination and the lack of freedom. To suggest otherwise would be a very regressive and legally untenable position.”³

When seeking to understand the question of a state’s responsibility to protect its citizens in the context of duties of care, arguments necessarily have to take stock of standards of due diligence. These are increasingly used in international human rights law to establish rights and their justiciability in particular in relation to discrimination and exclusion from access to economic, social and cultural rights, and to end violence against women. Conceptualising failure of a state to live up to its responsibilities from this angle does therefore not only make such failures justiciable under international law⁴, but depending on scale and intent, may allow them to be understood as Crimes Against Humanity.⁵

This approach is further supported by ample evidence that abuse suffered by civilians in armed conflict extends beyond death or injury directly attributable to the use of force⁶, and reaches across the whole spectrum of civil and political, economic, social and cultural rights⁷. Whether the widespread and systematic abuse of their individual or communities’ rights

¹ Arbour, Louise (2008): The Responsibility to Protect as a duty of care in international law and practice, in: *International Studies Review* 34/2008, pp. 447ff, and previously in her address to Trinity College on the same subject on 23 November 2007

² Cohen, Roberta (2008): Disaster standards needed in Asia, Brookings Institution – Research and Commentary, p. 2 and 4, http://www.brookings.edu/2008/06_disaster_standards_cohen.aspx?p=1, last accessed 28/07/2008

³ Arbour, Louise (2008): The Responsibility to Protect as a duty of care in international law and practice, in: *International Studies Review* 34/2008, pp. 458

⁴ Thakur, Ramesh, *The Daily Times*, Getting real with R2P, 28/05/08

⁵ Cohen, Roberta (2008): The Burma Cyclone and the Responsibility to Protect, Brookings Institution - Speeches, p. 2, http://www.brookings.edu/speeches/2008/0721_myanmar_cohen.aspx?p=1, last accessed 28/07/2008

⁶ Human Security Centre, *The Human Security Report 2005*, 'What is Human Security', p. VIII http://www.humansecurityreport.info/HSR2005_HTML/What_is_HS/index.htm, last accessed 25/07/2008

⁷ Médecins sans Frontières (2004): DRC – a never ending health crisis, http://www.msf.org/msfinternational/invoke.cfm?objectId=CF0F0A78-E88C-4E10-86391D9E2C2E0E69&component=toolkit.article&method=full_html&CFID=5624699&CFTOKEN=84967214, last accessed 25/07/2008

happens as a result of war or a natural disaster is entirely irrelevant.⁸ The need for protection remains.⁹

From this angle, both Burma and Zimbabwe are cases which in principle fall within the thrust of the Responsibility to Protect report by the International Commission on State Sovereignty, and also within the eventually agreed language of the Responsibility to Protect as used in the 2005 World Summit Outcome Document¹⁰.

Challenging short-termism and contraction of argument in relation to the language of the Responsibility to Protect

The discussion of the applicability of the Responsibility to Protect doctrine has merits for the development of international law, and a more continuous debate – which should also include more broadly non-governmental organisations (NGOs) - is overdue. However, the cases of Zimbabwe and Burma demonstrate that seeking to use the Responsibility to Protect language as a legitimising lever for action at the boiling point of a crisis may radically reduce the chances for the principles of the doctrine being used effectively and for prompt emergency action to be taken.

Yet this is not easy when even proponents of the doctrine such as Donald Steinberg, Deputy President of the International Crisis Group, find it hard to place situations within the remit of the doctrine ahead of major bloodshed. Concerning Kenya he noted for instance that when violence first began to spill out of control the crisis was “squarely in a ‘pre-R2P’ stage”.¹¹ Arguably, the situation was fully a case for the Responsibility to Protect, but with emphasis on the duty to prevent further aggravation. His comment illustrates that there are as yet no agreed, tangible anchoring points for when a situation can be usefully placed into the Responsibility to Protect context without there having been massive confrontation, or loss of life. Yet, the “duty to prevent” as spelled out under the doctrine, has to necessarily involve engagement before the situation reaches any such a point,¹² let alone a crisis stage, metaphorically asking the international community to keep the stable doors open before the horse bolts.

Indeed, the duty to prevent is the mainstay of the doctrine and members of the International Commission on Intervention and State Sovereignty which spawned the doctrine, warn of an unhelpful contraction of the debate around the Responsibility to Protect to the sole issue of the use of armed force in countries in which a government is hostile to international engagement. Any action under the doctrine should be triggered by rule-based processes and encompass preventive diplomacy, via humanitarian support to multilateral military action and commitments for post-conflict reconstruction while maintaining proportionality of response.¹³ However, despite the clear recognition of the need to emphasise political and diplomatic engagement¹⁴, the ad hoc, conceptually truncated and untimely use of the Responsibility to Protect language persists, and risks becoming the greatest enemy to achieving progress on its principles. Neither did the crisis in Zimbabwe emerge overnight, nor were the politically rooted limitations of access to Burma unknown when the cyclone struck. It is thus the absence of Zimbabwe on the UN SC agenda before 23rd June 2008¹⁵, and the failure to

⁸ See for instance Oxfam’s analysis of 2007 that of the 4 million dead as many have died a result of the conflict as have died from hunger and disease (Oxfam International (2007): Conflict in the DR. Congo, <http://www.oxfam.org/en/emergencies/congo/in-depth>, last accessed 25/07/2008

⁹ Axworthy, Lloyd (2008): It’s time to intervene, in: Ottawa Citizen, 13 May 2008, p. 2

¹⁰ United Nations (2005): 2005 World Summit Outcome Document, A/RES/60/1, art. 138-140

¹¹ Address by Donald Steinberg, Deputy President, International Crisis Group at the Cardozo Law School, Yeshiva University, New York, 10 March 2008

¹² International Commission on Intervention and State Sovereignty (2001): The Responsibility to Protect – Report, p. 19

¹³ Evans, Gareth (2007): The limits of state sovereignty: the Responsibility to Protect in the 21st century, Eighth Neelam Tiruchelvam Memorial Lecture, Colombo, 29/07/2007, p. 6

¹⁴ “Political and diplomatic intervention is the first mechanism.” Kofi Annan, quoted by Cohen Roger, African Genocide Averted, New York Times, 03/03/08

¹⁵ UN Security Council Meeting Minutes (2008): S/PV.5919, S/PV.5920, S/PV5921, and Statement by the President of the Council S/PRST/2008/23, of 23 June 2008

deliberate and act in relation to Burma¹⁶ despite decades of compelling evidence, that demonstrate the collective failure of the key members of the Security Council to implement the Responsibility to Protect doctrine.

It remains a political reality, however, that Russia, China and South Africa staunchly resisted any attempts to put both Burma and Zimbabwe onto the UN Security Council agenda. Despite clear indications that for instance China is proactively engaging with the debate on changing understandings of sovereignty and the Responsibility to Protect, the country remains openly suspicious of the use of the doctrine in the Security Council and is keen to kick the issue into the long grass of General Assembly debate¹⁷. Key points voiced in this context include the different perceptions that countries in the developing and industrialised world may have of the value of the Westphalian concept of sovereignty for their own autonomous progress, and concerns about the prevailing lack of procedural clarity in relation to the Responsibility to Protect.¹⁸ The focus on the need to address crises first of all from a national perspective is also echoed by South Africa's President Thabo Mbeki.¹⁹

All this points to a growing separation between perceptions of lawfulness and legitimacy in relation to the way the Responsibility to Protect doctrine is used and the debate needs to be urgently depoliticised. As long as Responsibility to Protect is debated only when the urgency of the matter at hand requires to have the use of force on the table, the more the language of the doctrine will be perceived as being exploited by countries viewed as proponents of intervention, and the more it will become a red rag for its opponents.²⁰

The UN Security Council thus needs to do more to table the relevant debates, addressing contentious cases way ahead and independently of crises. UN Secretary-General Ban Ki Moon's recent reiteration of his commitment to the doctrine must therefore not just involve further deliberation outside the UN Security Council, as appears to be his suggestion,²¹ but also at the Council itself. Roberta Cohen's proposals for developing standards also in relation to government responses to disaster relief could be a helpful complementing component to such discussions.²²

However, even belated diplomatic activity at crisis point has value and should be promoted more openly in connection with the Responsibility to Protect to build confidence around its use. Kenya is a case in point where UN Secretary General Ban Ki Moon used the language very clearly, but narrowly targeted it at the national process.²³ While global media attention and reporting continued with a strong focus on the violence on the ground, the majority of political efforts were invested into diplomatic mediation involving several mediators between the high level parties to address their concerns about power balance as much as of misrepresentation of election results, and responsibilities for promoting violence. This unfortunately cannot be said of the Zimbabwean case, where efforts to find a mutually

¹⁶ The 2005 'Threat to the Peace: A Call for the UN Security Council to Act in Burma', report commissioned by Vacláv Havel, and Desmond Tutu, reviews extensively the comparative merit of the Burmese situation to be addressed by the UN security Council under the UN Charter

¹⁷ Categorically reiterated by Li Junhua, Counselor to China's mission to the UN in the Security Council Open debate on the protection of civilians in armed conflict, 22 June 2007, when stating that "[...] the Security Council should refrain from invoking the concept of "the responsibility to protect." Still less should the concept be abused. The Security Council should respect and support the GA to continue to discuss about the concept, in order to reach broad consensus." United Nations Security Council 5703rd Meeting, Friday, 22nd June 2007, p.17

¹⁸ Xue, Hanqin (2006): Chinese Observations on International Law, Speech at the International Criminal Law Network (by the Chinese Embassy in The Netherlands), The Hague, November 1, 2006, <http://www.mfa.gov.cn/eng/wjz/zwjg/zwbdt282458.htm>, last accessed 30/07/2008. It is useful to note that at its inception in 1648 the Westphalian system was created to prevent undue foreign intervention to protect populations against the levels of violence witnessed during the War of 30 years.

¹⁹ Statement of the President of the Republic of South Africa and Chair of the United Nations Security Council, Thabo Mbeki, on the occasion of the Security Council High Level Debate: UN Headquarters, New York, 16 April 2008.

<http://www.thepresidency.gov.za/show.asp?type=sp&include=president/sp/2008/sp04161622.htm>, last accessed 30/07/2008

²⁰ Thakur, Ramesh (2005): Freedom from Fear: Effective, Efficient, and Equitable Security, paper for the L20 Forum on New Multilateralism, Brussels, 12 May 2005, p. 2

²¹ Ban Ki Moon (2008): Responsible sovereignty: international cooperation for a changed world, Berlin, 15/07/2008

²² Cohen, Roberta (2008): Disaster standards needed in Asia, Brookings Institution – Research and Commentary, http://www.brookings.edu/2008/06_disaster_standards_cohen.aspx?p=1, last accessed 28/07/2008

²³ Ban Ki Moon in a news statement on the situation in Kenya on 2 January 2008, [UN News Service](http://www.un.org/News/Press/docs/2008/Jan/20080102.unsecgsm1008.html) (New York)

accepted and broader mediation team came only to fruition on the back of a campaign of violence in preparation of the problematic presidential election run-off. The recently announced creation of a reference group for Thabo Mbeki to advise in the mediation process²⁴ could have been usefully done much earlier to maintain the trust in the process for all parties involved. In the case of Burma, it was arguably eventually Ban Ki Moon's negotiations focusing on widening the existing severely constrained access of humanitarian support²⁵ which brought about the necessary changes in the policy of the Burmese government, rather than public pressures from outside the region or international sword-rattling.

By couching efforts of this kind in the language of the Responsibility to Protect from early on, more emphasis could be given to the first duty under the doctrine: the duty to prevent, interpreted usefully in many cases as the duty to prevent making matters worse rather than debating doctrinal clarity.

Supporting consistent national and regional engagement with the doctrine

The role of regional and sub-regional actors in conflict prevention has been promoted for several reasons since the 1990s: their advantages in detecting early warning signs, existing communication lines with neighbouring governments and armed groups, and shared political and cultural understandings of interaction. It is also true that neighbouring countries in particular have a major interest in stability, since its absence will affect their own. In addition the 2005 World Summit Outcome Document gives in the context of country specific peacebuilding special responsibility to 'relevant regional organizations' in mobilising appropriate action when national authorities fail²⁶.

Yet as Louise Arbour points out, while geographical proximity strengthens the practical pressures to respond, international law does not absolve the wider international community beyond the immediate sub-region from its responsibility to engage as well²⁷. In practice and policy, however, the record of engagement with crises on the basis of the Responsibility to Protect has remained fragmented and uneven by both, the international community writ large and also regional organisations. While over the past decade several regional organisations have given themselves some form of stronger or weaker mandate to engage with issues of armed conflict within the region or between their members²⁸, their practical translation into protocols for action remains weak. In some cases, sub-regional bodies' practical experience and capabilities to engage with peace and security governance issues remains stronger than those that the regional organisations have on offer (compare ECOWAS with the AU). Yet it is increasingly the latter which are the target of relevant demands and capacity building from the United Nations as it tries to fulfil its role of guaranteeing regional and global security. Further, with the exception of the African Union, most regional organisations frame their engagement in peace and security governance using terminology which is different from the Responsibility to Protect language, and which often puts emphasis on the principles of sovereignty and non-interference. This is also the case for instance for both the Southern

²⁴ Associated Press statement, http://www.usatoday.com/news/world/2008-07-18-Zimbabwe_N.htm?csp=34, last accessed 25/07/08

²⁵ NGOs such as World Vision, Save the Children, Rotary – Shelterbox and Médecins Sans Frontières were from early on working on the field, providing assistance to the affected population, as were several UN agencies – including UNICEF, WFP, WHO and OCHA, see The Asia Pacific Centre for the Responsibility to Protect, *Cyclone Nargis and the Responsibility to Protect*, Myanmar/Burma Briefing Paper No.2, 16 May 2008 p.2, and http://www.shelterbox.org/news_index.htm (May), last accessed 25/07/2008

²⁶ United Nations (2005): 2005 World Summit Outcome Document, A/RES/60/1, art. 71, 93, 100 (referring to country-specific peacebuilding commissions)

²⁷ Arbour, Louise (2008): The Responsibility to Protect as a duty of care in international law and practice, in: *International Studies Review* 34/2008, pp. 454, referring to the 26 February 2007 Judgement of the International Court of Justice in the case of *Bosnia and Herzegovina v. Serbia and Montenegro*, General List No 91

²⁸ Illustrated for instance by the Déclaration de Saint-Boniface (Canada) of the Francophonie, adopted 14 May 2006, and the July 2007 decision of the ASEAN Forum to create a quick reaction group, <http://www.aseanregionalforum.org/News/tabid/59/newsid399/48/Default.aspx>, last accessed 25/07/2008

Africa Development Community (SADC)²⁹ and the Association of South East Asian Nations (ASEAN)³⁰. The general reluctance to engage forcefully with each other, both regionally or bilaterally, is illustrated for instance in the Asian case by the fact that while the governments of Malaysia, Indonesia and Thailand³¹ repeatedly expressed concerns about the situation in Burma, none of the governments or ASEAN collectively have so far taken public and severe measures to apply pressure for change in the country.³² Bilateral diplomatic efforts of engagement with Burma have focused either on specific policy areas, such as resolving drugs trafficking concerns and encouraging trade³³, or on communicating with the government, suggesting a number of reforms, and accepting the country as a member of the ASEAN to foster its integration.

The chronology of events has worked differently within the Southern Africa Development Community (SADC). While Burma has grown more into ASEAN as it continued to face international isolation, Zimbabwe's originally high degree of integration in SADC has been undermined by its own government policy. Yet even in this case fellow members have actively used SADC to reach out to Zimbabwe - at times accepting a loss of credibility to keep Zimbabwe involved, as for example with the widely criticised whitewash SADC election observer reports. Similarly, individual politicians, such as South Africa's Thabo Mbeki have taken extraordinary pains to demonstrate solidarity. Only on very rare occasions has the carpet of approval been publicly pulled away from under him, for instance when unionised workers refused to offload a Chinese arms shipping for Zimbabwe during the recent election campaign, and were supported by the Congress of South African Trade Unions (COSATU) and African National Congress (ANC) leader Jacob Zuma³⁴. The same line of solidarity has also publicly been kept up by African Union³⁵.

At the same time independent regional commentators have conspicuously broken ranks. Ghanaian Parliamentarians are reported to have supported sanctions³⁶, Desmond Tutu publicly requested the AU to investigate in the country the need and opportunities for intervention in the country under the Responsibility to Protect³⁷, and journalists in Tanzania expressed concern and supported external intervention³⁸. Although the AU has failed to publicly criticise Mugabe, pressures on his government have evidently increased, and while admittedly coming late, have lead to grudging acceptance of power sharing talks between the Zimbabwe African National Union – Patriotic Front (ZANU PF) and the Movement for Democratic Change (MDC).

While external expectations of high-profile action under the Responsibility to Protect doctrine are therefore frequently not met by relevant sub-regional and regional bodies, there is evidence for movement and activity that could very well be understood as part of the fulfilment of duties under the doctrine. Accepting that many sub-regional and regional bodies

²⁹ See Preamble of the Southern Africa Development Community (2001): Protocol On Politics, Defence And Security Co-Operation, and Article 4 of the Southern Africa Development Community (2001): Consolidated Text of The Treaty of the Southern African Development Community, as amended in Blantyre

³⁰ Association of South East Asian Nations (1976): Treaty of Amity and Cooperation in South-East Asia, Bali/Indonesia 24/02/1976, Chapter 1 (Purpose and Principles), Article 2

³¹ Joint Statement between the United States of America and the Kingdom of Thailand, 11th June 2003, and Joint Communiqué of the 36th ASEAN Ministerial Meeting, 16th-17th June 2003, Phnom Penh, paragraph 17

³² Cohen, Roberta (2008): Disaster standards needed in Asia, Brookings Institution – Research and Commentary, p. 3, http://www.brookings.edu/2008/06_disaster_standards_cohen.aspx?p=1, last accessed 28/07/2008

³³ Such as under Thailand's "constructive engagement" policy with Burma from 2001 and 2006

³⁴ Sibanda, Tichaona (2008): Zimbabwe: Jacob Zuma Calls for Urgent UN And SADC Intervention, on SW Radio Africa, 24/06/2008, posted to the Web 24/06/2008 at <http://allafrica.com/stories/200806241061.html>, last accessed 25/07/2008; LA Times (2008): Longtime Ally Rebukes Zimbabwe President Robert Mugabe, in Los Angeles Times, 25/06/2008, <http://www.latimes.com/news/printedition/asection/la-fg-zuma25-2008jun25,0,1940953.story>, last accessed 25/07/2008

³⁵ African Union (2008): 11th AU Summit, Sharm El Sheikh, Egypt, Decision On The Current Political Situation In Zimbabwe, 11 Ex.Cl/Dec.452 (XIII), [http://www.africa-union.org/root/au/Conferences/2008/june/summit/dec/EX.CL.%20Dec.%20415%20-%20453%20\(XIII\).pdf](http://www.africa-union.org/root/au/Conferences/2008/june/summit/dec/EX.CL.%20Dec.%20415%20-%20453%20(XIII).pdf), last accessed 19/08/2008

³⁶ Akrafi Kotey, Linda (2008): Ghana: MPs Call for Military Intervention in Zimbabwe, in: Ghanaian Chronicle (Accra) 25 June 2008

³⁷ Desmond Tutu in The Guardian UK (the Guardian Unlimited, web edition), 2 May 2008

³⁸ Editorial (2008): Zimbabwe: Africa Must Take Stern Action Against Mugabe, in The Citizen (Dar es Salaam), 25th June 2008. Online at <http://allafrica.com/stories/200806250875.html>, last accessed 25/07/08.

have only very recently begun to jointly define their ambitions and are carefully feeling their way into a more active and rules-based role in peace and security governance, the overall trend may be more positive than often decried. Although at times frustrating, the continued inclusion of 'delinquent' states in regional bodies can be understood as one of the strongest reasons for their existence. They provide a practical approach to keeping communication lines open, while and where other sanctions - such as the long standing US policy towards Burma³⁹, or the "Common Position" of the European Union⁴⁰ - provide a background of pressures. The significant external support for stronger engagement with rules-based processes for regional bodies could thus still bear fruit. While one of the slowest avenues to progress, regional and sub-regional bodies may prove to be one of the most effective conduits for developing buy-in for the Responsibility to Protect doctrine in the long term.

Conclusion

Despite clear practical and political obstacles, the development of the Responsibility to Protect doctrine constitutes a great achievement in the way the relationships between citizens, state and the wider international community are conceptualised. Building on the broader human security debate, the doctrine places people at the centre. It defines duties of care initially for the state they reside in, but then overall for the wider international community in situations where governments fail to protect people against widespread and systematic abuses of their rights.

The large-scale and serious impact of deliberate government policy on ordinary people in both the Zimbabwean and Burmese cases highlights the impossibility of separating civil and political rights from economic, social and cultural rights when assessing impact of government action or inaction against people affected by direct or indirect abuse of their rights at the hands of state or non-state actors.

Standards of due diligence have become an accepted prism of interpretation to assess respect, protection and fulfilment of rights under both Covenants under international human rights law. They prove to be equally useful for guiding analysis in relation to the Responsibility to Protect doctrine, which can be meaningfully applied to both the Burmese and Zimbabwean case on grounds of neglect of duties of care by these governments for their people, independent of whether the resulting widespread and systematic human rights abuses are connected to the use of armed force.

Yet while in purely doctrinal terms the last year has yielded ample points which may help to clarify the question of applicability of the Responsibility to Protect, the reality of the debate, decision-making processes and opportunities for implementation raise additional questions. In face of high levels of resistance to crisis-led use of the Responsibility to Protect language within the UN Security Council, its membership has so far collectively failed to live up to the mandate given to it by all UN member states to implement the principles of the Responsibility to Protect as agreed in the 2005 World Summit Outcome document. While it is easy, and in some cases may also be proper, to blame the use of stalling tactics and vetoes on a limited, identifiable set of states on the Security Council, those who rightly seek to promote the application and further entrenchment of the doctrine have the responsibility to undertake broader confidence-building work that reduces the impact of misconceptions of intent and the risks arising from a separation of arguments of law and legitimacy. In particular the often ad hoc nature of use of the Responsibility to Protect terminology only at points where the potential use of force is also on the table damages the understanding of a legal concept which is built on proportionality of response and involves not only a last resort option for the

³⁹ US sanctions began with the 1997 Congress amendment to the Foreign Operations Appropriations Act and were last renewed in 2007 (Government of the USA (2007): Executive order strengthening sanctions at <http://www.whitehouse.gov/news/releases/2007/10/20071019-12.html>)

⁴⁰ The European Union's 'Common Position' of 1996, consists of an arms embargo, the suspension of defence cooperation conditions on assistance, a visa ban and asset freeze aimed at the senior military and government members and a prohibition of making finance available to named Burmese state-owned enterprises. (http://ec.europa.eu/external_relations/myanmar/intro/index.htm)

use of force to protect civilians, but places at least comparable emphasis on steps to be taken to prevent the abuse of rights, and to rebuild societies. In addition, the shortening of the doctrine gives frequent rise to the unwarranted assumption that intervention is an always necessary part of fulfilling its principles.

In both of the most recent cases in which the Responsibility to Protect has been evoked and questions have been raised about its applicability, sub-regional and regional organisations have also been the target of criticism for lack of engagement with the principles and language of the doctrine. In particular these bodies have been criticised for their failure to demonstrate tangible concern and take adversarial action against the 'delinquent' states in their midst. The absence of forceful, united statements has been interpreted as a failure to live up to their responsibilities as immediate or closer neighbours towards the people of member countries suffering widespread and systematic human rights abuse. However, this external criticism, while warranted in terms of the impact of delay of action, should be analysed carefully. First, it includes the risk of the wider international community tacitly divesting itself of its continuing responsibilities under the doctrine; and second it often means that the discourse around the doctrine is again truncated to the element of military intervention, discarding the crucial elements of political and diplomatic engagement through communication channels that run often very effectively within sub-regional and regional organisations. While full public isolation in the subregion of the perceived 'villains' may sell well in the global media and with the concerned western public, it may also prove counter-productive in realising the purpose underlying the Responsibility to Protect.

While the Responsibility to Protect doctrine continues to arouse choruses of support and opposition in equal measure, the reality is that its entrenchment and application in policy and law is undeniably advancing, even if through apparently contradictory means such as maintaining communications in the face of public criticism. Despite the apparent setback that the recent debates around Zimbabwe and Burma may entail, these debates have increased awareness of the need to implement the doctrine through a range of balancing streams of work: applying standards of due diligence, conducting broader preparatory work for a holistic use and securing acceptance of the doctrine, and strengthening the role of sub-regional organisations. Each will help international actors to define increasingly workable understandings of responsibilities and a clear rule-based due process for determining action. The debate shows that the Responsibility to Protect has come to stay and implementing it remains an essential item on the global governance agenda.

Global and regional organisations are increasingly being called upon to respond to armed conflicts and humanitarian disasters. However, developing appropriate policies and taking effective action at the international level continues to involve a range of global governance challenges. This set of briefing papers seeks to explore the options and constraints faced by individual countries and multilateral institutions when seeking to implement the Responsibility to Protect. The One World Trust aims in particular to support parliamentarians, senior decision-makers in executive positions, and others in the policy community in their task to contribute to an emerging framework for rule-based and accountable international policy in response to global and regional challenges to human security.
