

## THE SECURITY COUNCIL'S FAILURE TO PROTECT: THE GAP BETWEEN RHETORIC AND REALITY GROWS

By working to maintain international peace and security, the Security Council can have a profound effect on human rights and the enforcement of humanitarian law. The language used in Security Council documents has, increasingly so in recent years, acknowledged and addressed grave human rights and humanitarian situations, in particular the protection of civilians in armed conflict, child soldiers, internally displaced persons, and the role of women. Nevertheless, discrepancies persist between Security Council rhetoric and effective action to protect human rights on the ground. The lack of compliance with its resolutions, and in particular the lack of enforcement of its decisions under Chapter VII,<sup>1</sup> is amounting to a loss of authority and credibility for the body, and has a direct impact on the lives of those in need of protection.

One deeply concerning trend that continued throughout 2007 was the climate of impunity enjoyed by some States emerging from war and conflict situations. This was particularly visible in the case of the Security Council's treatment of the Democratic Republic of the Congo (DRC).

### NOTABLE ACHIEVEMENTS AND FAILURES

2007 was witness to two major developments: the first Security Council debate on **climate change** and its response to the political crisis in **Burma/Myanmar**. As a result of the possible implications of Security Council action on either of these matters, member States aired a range of views on the issues, but in both cases concerns were raised that neither fell within the Security Council's mandate, as neither has had a direct impact on international peace and security.<sup>2</sup>

Blame for many Security Council failures can be laid on its permanent five members (the P5), whose interests and power of veto prevent the body from taking the necessary steps to increase global security and protect civilians in armed conflicts. Such was the case this year with the body's failure to squarely confront the horror of what was happening on the ground in **Somalia** and **eastern Ethiopia's Ogaden region**, where a number of actors, rebel groups, as well as the Somali and Ethiopian military, perpetrated serious abuses against civilians. Instead, the Security Council decided to continue an approach to the situation largely in compliance with the wishes of the United States of America (the US), which views Ethiopia as a key ally in the war against terror in the Horn of Africa. Following reports in December by two top UN officials<sup>3</sup> on the seriousness of the situation – described as the

<sup>1</sup> Chapter VII of the *United Nations Charter* allows the Security Council to 'determine the existence of any threat to the peace, breach of the peace, or act of aggression' and to take military and non-military action to 'restore international peace and security'.

<sup>2</sup> The thematic meeting that dealt with climate change's impact on security sparked an angry letter of protest from the Group of 77, who argued that such concerns lie within the domain of the General Assembly.

<sup>3</sup> Under-Secretary-General for Humanitarian Affairs and Emergency Relief Co-ordinator, John Holmes, and the Secretary-General's Special Representative for Somalia, Ahmedou Ould-Abdallah.

'worst humanitarian crisis in Africa' – the Security Council issued a Presidential Statement<sup>4</sup> asking the Secretary-General to develop contingency plans by early February 2008 for a possible UN peacekeeping mission to replace the current African Union Mission. However it made no mention of grave human rights abuses, and remained silent on the war crimes committed by Ethiopian, Somali, and insurgent forces. The positive developments witnessed by the international community in 2007 on the part of the Security Council have thus been outweighed by deep ideological divisions, Security Council member interests, lack of State-level cooperation, and the inability to translate the language found in Security Council documents into reality.

Other country situations and thematic areas with a human rights dimension addressed by the Security Council in 2007 are dealt with in the following section.

## COUNTRY SITUATIONS

### Burma/Myanmar

Given the lack of agreement by the P5 on how widely to interpret the Security Council's mandate, it was particularly noteworthy that it was able to act swiftly and with unanimity to 'strongly deplore' the violent crackdown on peaceful protestors in Burma/Myanmar that occurred in September.<sup>5</sup> The strong language and clear directions delivered to the Government of Myanmar in the Security Council's Presidential Statement and a subsequent press statement<sup>6</sup> suggest that even those P5 members who are typically reluctant to intervene in the 'internal affairs' of neighbouring States can be persuaded to do so when there is sufficiently strong international condemnation of State actions that violate human rights.<sup>7</sup>

Despite this promising development, its impact is uncertain. On the one hand, the latest show of unanimity indicates that the situation in Burma/Myanmar is a legitimate one for the Security Council to address. With the support of China,

hopes are increasing that the Security Council member with the most power to influence Rangoon will step up pressure on the regime. A key test will be whether China actively and consistently supports follow-up to the steps outlined in the Security Council's Presidential Statement, and whether words are turned into concrete acts.

On the other hand, it is important to note that despite the seriousness of the human rights violations that were ongoing at the time, the Security Council did not agree on the need for a binding resolution. Rather, it preferred to support the good offices mission led by the Secretary-General's Special Adviser on Myanmar, Mr Ibrahim Gambari, 'urging' the Government of Myanmar to cooperate fully with him and 'consider seriously' his recommendations.<sup>8</sup> Some Security Council members, particularly the Russian Federation and China, were clear in their preference for cooperation and dialogue with the Government of Myanmar, rather than resorting to the threat of sanctions or other forms of political pressure. Calls by human rights non-governmental organisations (NGOs) for the Security Council and others to impose a range of targeted sanctions on Burma/ Myanmar therefore continue to be branded by these States as 'counter-productive'.<sup>9</sup>

### Democratic People's Republic of Korea

One area where the Security Council appears cautiously optimistic of progress is denuclearisation of the **Democratic People's Republic of Korea** (DPRK). Following the DPRK's launch of ballistic missiles in July 2006, and a nuclear test three months later, the Security Council took swift action to condemn the DPRK's provocative actions and impose economic sanctions.<sup>10</sup> Since that time there have been positive signs of the DPRK's preparedness to head the unanimous international pressure, including its participation in the Six Party Talks<sup>11</sup> and agreement in February 2007 to terminate its nuclear programme in return for fuel and economic aid and the commencement of the decommissioning of the Yongbyon nuclear reactor.<sup>12</sup> Though progress has been made on the denuclearisation issue, the Security Council continues its silence

<sup>4</sup> S/PRST/2007/49, (19 December 2007). See <http://daccess-ods.un.org/TMP/2714085.html>.

<sup>5</sup> See *Statement by the President of the Security Council, S/PRST/2007/37* (11 October 2007). The statement reaffirms strong support for the Secretary-General's good offices mission and strongly deplores the use of violence against peaceful demonstrations. It emphasises the early release of political prisoners and outlines what the Security Council expects of the Government, including genuine dialogue with Aung San Suu Kyi, all concerned parties, and ethnic groups. It calls on the Government to address political, economic, humanitarian, and human rights issues and to seriously consider the recommendations and proposals of the Secretary-General's Special Adviser on Myanmar, Mr Ibrahim Gambari. The Security Council also welcomed the resolution adopted by the Human Rights Council on 2 October urging national dialogue and national reconciliation. It was the first time that the Security Council referred to a Human Rights Council resolution.

<sup>6</sup> See Security Council press statement on Myanmar (11 November 2007) at [www.un.org/News/Press/docs/2007/sc9171.doc.htm](http://www.un.org/News/Press/docs/2007/sc9171.doc.htm).

<sup>7</sup> Previously both the Russian Federation and China had argued that the situation in Burma/Myanmar was an 'internal affair' with no impact on regional or international peace and security. As a result, they cast a rare double veto on a draft resolution on Myanmar presented by the United States (US) on 12 January 2007. The draft resolution aimed to encourage national reconciliation and democratisation in Burma, the release of political prisoners, and to end the human rights abuses carried out by the military junta in power. South Africa also opposed the resolution.

<sup>8</sup> Both statements followed a strong message sent by Mr Ibrahim Gambari, during his briefing to the Security Council about his first visit to the country on 13 November 2007.

The quotations are drawn from the *Presidential Statement on Myanmar, S/PRST/2007/37*.

<sup>9</sup> See for example 'Crackdown in Burma: Targeted Sanctions Needed', Human Rights Watch, Background Briefing, 11 January 2008, available at <http://hrw.org/doc/?t=asia&c=burma>.

on the abysmal human rights situation of the people living in the DPRK despite the fact that, for a number of years, the General Assembly has condemned the grave violations occurring in the country.

### The Sudan

If the past year is any indication of success in terms of translation of Security Council-binding resolutions into effective action, the news was not encouraging. In at least one case, that of **the Sudan**,<sup>13</sup> the Khartoum Government has actively undermined efforts by the Security Council to restore peace and security and provide for the protection of civilians. The Security Council unanimously adopted *Resolution 1769* in July 2007, which established the joint United Nations-African Union Mission in Darfur (UNAMID).<sup>14</sup> The long-awaited hybrid United Nations-African Union peacekeeping force officially took over from the smaller African Union force on December 31, but only 9,000 members of the planned force of 26,000 were in Darfur at the beginning of 2008. Although Khartoum has accepted the force's presence at face value, it continues to resist any moves to allow the effective implementation of its mandate, including by refusing to accept specialised military units from non-African countries. However, blame for the slow rate of progress also lies with developed States, who have not been forthcoming with the costly aviation and technical assistance that is urgently needed to equip the multinational forces. In addition to condemning the slow pace of mobilising and equipping the forces, international NGOs<sup>15</sup> have been particularly disappointed by the inability of the force to actively intervene to control the illegal arms in Darfur.<sup>16</sup> Not only does this bode poorly for the capacity of this new peacekeeping effort to prevent further gross violations of human rights in the Darfur region, it suggests that the Security Council has not learned basic lessons from past failures.

### Democratic Republic of the Congo

The **Democratic Republic of the Congo** (DRC) presents another case where improved Security Council language on human rights in binding resolutions has not necessarily equalled correlated improvement on the ground. A variety of factors, including the provision of insufficient resources, a lack of political will, or weak interpretation of the mandate, has hampered progress. At the beginning of 2007, the country illustrated its ability to make nominally positive political improvements, holding senatorial and provincial governorship elections in January. The DRC also boasts the largest and most expensive peacekeeping mission, the United Nations Mission in the Democratic Republic of Congo (MONUC) in the UN's Department of Peace Keeping Operations (DPKO),<sup>17</sup> and has one of the strongest mandates in terms of human rights and protection of civilians, in particular with regard to gender and sexual violence.<sup>18</sup> However, conditions for many civilians remain appalling, with the police and the army committing numerous human rights violations with impunity. Especially in the east of the country, serious crimes, including killings, rape, forced displacement of civilians, and the use of child soldiers continue to be perpetrated. Many factors affect and shape this situation, including that the major powers have not put enough pressure on neighbouring countries such as Rwanda to make progress in winding down the conflict in the east. However, if the Security Council, and the UN in general, is to maintain credibility with the victims of armed conflict in the DRC, a critical issue is the implementation of MONUC's mandate to protect civilians, and the need for a heightened commitment to ensuring that resources are focused towards this area.

One positive development was the transferral to the International Criminal Court's (ICC) custody in October of General Germain Katanga, the former chief of staff of the Patriotic Force of Resistance who is to be tried for war crimes and crimes against humanity. However, the status of Laurent Nkunda, a former General and the current leader of a rebel group, is in flux although the Government issued an international arrest warrant for him on war crimes two years ago.

<sup>10</sup> *Resolution 1695* (15 July 2006) was the first Security Council resolution on the Democratic Republic of North Korea (DPRK) since 1993. It condemned the multiple launches of ballistic missiles by the DPRK and demanded it immediately return to its missile-launch moratorium. *Resolution 1718* (14 October 2006) expressed the Security Council's 'gravest concern' at the DPRK's nuclear test, imposed sanctions, set up the Sanctions Committee, and called on the DPRK to immediately return to the Six Party Talks.

<sup>11</sup> The parties are: the DPRK, China, Japan, the Russian Federation, the US, South Korea.

<sup>12</sup> The Security Council received an IAEA Report dated 17 August 2007 verifying the shut-down of the Yongbyon reactor (GOV/2007/45-GC(51)/19). Available at [http://www.armscontrol.org/pdf/20070817\\_IAEArepDPRK.pdf](http://www.armscontrol.org/pdf/20070817_IAEArepDPRK.pdf)

<sup>13</sup> The four-year armed conflict has left at least 200,000 civilians dead and, in 2007, saw a 150% increase in the number of attacks on aid workers.

<sup>14</sup> The authority and impact of previous resolutions had been undermined by the abstentions of China, the Russian Federation, and members of the Arab League.

<sup>15</sup> Amnesty International and the International Crisis Group.

<sup>16</sup> *Resolution 1769* did not authorise UNAMID to seize illegal arms in Darfur in violation of the UN-mandated Darfur arms embargo, but only to monitor existing arms embargos for violations. As a result, Amnesty International has urged the Security Council to broaden *Resolution 1769* to allow UNAMID to do more than merely monitor arms, while the International Crisis Group has advocated for the use of punitive measures to increase compliance with the arms embargo.

<sup>17</sup> The 17,000 UN peacekeepers operate under a mandate from Chapter VII of the *UN Charter*, which allows them to protect civilians under imminent threat of violence. The mission has a \$1 billion a year budget.

## Other country-specific developments in Africa

**Central Africa** maintained its status as an extremely unstable region where war crimes and crimes against humanity were regularly committed with impunity. As such, the Security Council devoted much of its attention to resolving the multiple ongoing armed conflicts in that region. However, its impact on human rights has been very limited, as illustrated earlier by the example of the Sudan.

The situation in the **Central African Republic (CAR)** and **Chad**, which is partially affected by the ongoing instability in the Sudan, has also shown a lack of improvement, with Eastern Chad and northwestern CAR in particular plagued by rampant violence and continuing human rights abuses. In response to these developments and on the Secretary-General's recommendation, the Security Council adopted *Resolution 1778* in September, which provides for the deployment of a multi-dimensional international presence, including troops comprised of the UN Mission in the Central African Republic and Chad (MINURCAT) and the EU Military Operation in Eastern Chad and North Eastern Central African Republic (EUFOR).<sup>19</sup> The mandate calls special attention to the plight of child soldiers as well as gender-based and sexual violence. Despite a mandate to protect vulnerable civilians, MINURCAT does not have the authority to patrol the border areas between the Sudan, Chad and the CAR although a high level of cross-border attacks has been occurring. Despite calls by international human rights NGOs for immediate deployment, neither MINURCAT nor EUFOR have a relevant presence in either Chad or the CAR as of January 2008.

The humanitarian situation in **Western Africa** was more positive than in Central Africa and the region was considerably calmer. Even though the turbulence in Côte d'Ivoire and the Republic of Guinea still posed a threat to Liberian progress, the stability in **Liberia** allowed the Security Council to endorse the phased drawdown and consolidation of the United Nations Mission in Liberia (UNMIL), and lift the embargo on Liberian diamond exports. However, while Liberia has made significant progress towards peace, democracy, and security in recent years, problems related to the capacity of local security forces, unemploy-

ment, and the reintegration of ex-combatants threaten fragile human rights gains. The Truth and Reconciliation Commission, established to confront the human rights violations of Liberia's 14-year civil conflict, has been impeded by financial and logistical constraints.<sup>20</sup> Although the international community and civil society have stressed the importance of the Commission, its viability remains uncertain. Further, though UNMIL has a mandate to monitor human rights, abuses have continued in the Liberian judicial system and jails.

In March, President Gbagbo and New Forces leader Guillaume Soro signed the *Ouagadougou Agreement*. A product of direct talks between the two conflicting sides, the agreement provided a new framework for the peace process in **Côte d'Ivoire**. While the Security Council expressed support for the agreement,<sup>21</sup> it also effectively led to the scaling back of the international community's role in Côte d'Ivoire.<sup>22</sup> The *Ouagadougou Agreement* does not address human rights violations, and NGOs have been sceptical as to whether the Agreement will hold. Reports of ongoing human rights violations and serious security challenges also continue in the western part of the country.<sup>23</sup>

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## Other country-specific developments: 'fragile States'

Although African States continued to absorb much of the Security Council's attention due to the scale and severity of the human rights abuses that were occurring and the broader threat they posed to international peace and security, the Security Council remained active in other parts of the world that are emerging from war or conflict situations. These included **Afghanistan**, **Haiti**, **Iraq**, **Nepal**, and **Timor-Leste**.

Despite progress on some fronts, the security situation in these States remained at best fragile as they struggled to put in place or maintain the democratic institutions and governance structures that are essential to the operation of the rule of law and the enjoyment of human rights. All were plagued by a complex mix of political instability, outbreaks of violence or sustained terrorist activity, a general lack of confidence on the part of the population in the police and

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*Resolution 1794* (December 2007) renews the mandate of the United Nations Mission in the Democratic Republic of Congo (MONUC) in the DRC and contains a strongly worded provision on sexual violence. Article 18 'Requests MONUC to undertake a thorough review of its efforts to prevent and respond to sexual violence, and to pursue a comprehensive mission-wide strategy, in close cooperation with the United Nations Country Team and other partners, to strengthen prevention, protection, and response to sexual violence, including through training for the Congolese security forces in accordance with its mandate, and to regularly report, including in a separate annex if necessary, on actions taken in this regard, including factual data and trend analysis of the problem.'

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Security Council *Resolution 1778* (25 September 2007).

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Amnesty International, 20 December 2006, 'Liberia: Full participation and support is necessary for the success of the Truth and Reconciliation Commission', available at: [www.amnesty.org/en/report/info/AFR34/009/2006](http://www.amnesty.org/en/report/info/AFR34/009/2006).

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Security Council *Resolution 1765* (16 July 2007).

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The agreement reduced the role of the international community in the peace process to such tasks as: supervision of the national disarmament, demobilisation, and reintegration programme; deployment of neutral forces along the 'green line' dividing the north and south; and impartial observation of the implementation of the agreement.

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Médecins Sans Frontières, 'Ivory Coast: International Activity Report, 2007', available at: [http://www.msf.org/msfinternational/invcoke.cfm?objectId=C95616D0-15C5-F00A-25D8015312CB9E19&component=toolkit.article&method=full\\_html](http://www.msf.org/msfinternational/invcoke.cfm?objectId=C95616D0-15C5-F00A-25D8015312CB9E19&component=toolkit.article&method=full_html).

justice systems, and a culture of impunity. As a consequence, ambitions of national reconciliation, economic development and social cohesion were effectively on hold as the more immediate question of how to avoid slipping back into renewed conflict remained the priority.

Given the manifold and deep-seated nature of the problems confronting these States, it was no surprise that in 2007 the Security Council renewed the mandate of the UN missions in Haiti,<sup>24</sup> Afghanistan,<sup>25</sup> and Iraq<sup>26</sup> as well as the multinational force in Iraq<sup>27</sup> and the International Security Assistance Force in Afghanistan.<sup>28</sup> In the new year, it looks set to do likewise for the mandates of the UN missions in Nepal and Timor-Leste, as requested by those governments in December 2007.

It remains unclear whether the security assistance, capacity-building expertise, and other forms of support provided through the UN missions will be sufficient to prevent these 'fragile States' from lapsing into 'failed State' status. The wave of politically-motivated violence in **Timor-Leste** following national elections in July was a sobering reminder of how volatile the situation remains, and how frustrated civilians are with the slow pace of reform and national reconstruction. A similarly precarious political situation threatens the peace process in **Nepal**, following the country's decision in October to postpone national elections for a second time. Meanwhile in **Haiti**, the security situation remained tenuous as the country increased its efforts to promote police and judicial reform, curb trafficking in drugs and arms, address endemic corruption, and combat sexual violence against women and girls.

Despite the high-profile nature of the political instability and grave security situations in Afghanistan and Iraq, the Security Council has taken quite different decisions during the year in relation to the extent of its future involvement in each. In **Afghanistan**, a range of factors have conspired against an expansion of UN involvement. These obstacles include the growing insurgency, the explosion in the production of opium which finances the Taliban,<sup>29</sup> the slow pace of police and judicial reform, and the domestic political cost for Security Council members of keeping troops deployed in Afghanistan.<sup>30</sup>

The Security Council unanimously agreed that the UN should play a greater role in rebuilding **Iraq** when it unanimously adopted *Resolution 1770* in August 2007. This will see the UN Assistance Mission for Iraq (UNAMI) work in close partnership with the Iraqi Government as it takes on greater responsibility for fostering national reconciliation and regional dialogue, providing humanitarian assistance, and promoting human rights. However, it is unclear whether the resolution will provide the framework to enable the UN to effectively address the ever-deepening humanitarian crisis that affects most Iraqis, especially the millions who are internally displaced. While there are positive signs that the multinational force has made some improvement in the overall security situation in Iraq, such progress comes from an extremely low base and major terrorist attacks persist. When these considerations are coupled with the deep political divisions and poor standing of the Iraqi Government amongst its people, it is clear that *Resolution 1770* is a high-risk undertaking for the Security Council. These risks are further accentuated by the fact that the Iraqi Government is intent on ending the presence of the multinational force by the end of 2008, which opens up serious questions about how the security of UN personnel in Iraq can be guaranteed beyond this date, as it surely must if the UN is to deliver the long-term support that Iraq needs.

## THEMATIC DEVELOPMENTS

Some progress was made on thematic issues, but the implementation gap applies to this area too. For example, having adopted the historic *Resolution 1325* on women, peace, and security<sup>31</sup> in 2000, seven years later (including the same number of annual open debates discussing and lauding the milestone) the Security Council has yet to make real progress in creating monitoring or accountability mechanisms to ensure implementation of the resolution. The Security Council has also increasingly condemned and attempted to address acts of **sexual violence** in armed conflicts, including in its own peacekeeping missions. However, rape and sexual violence continues unabated in many war-torn and post-conflict countries under the Security Council's watch.

24 The UN Stabilisation Mission in Haiti (MINUSTAH) was extended for 12 months in *Resolution 1780*, (15 October 2007). Paragraph 16 'reaffirms' MINUSTAH's human rights mandate and calls on the Haitian authorities, particularly the police, to continue to promote and protect human rights. Paragraph 17 'strongly condemns' the widespread rape and other sexual abuse of girls and armed violence against children.

25 The UN Assistance Mission in Afghanistan (UNAMA) was extended for 12 months in *Resolution 1776*, (19 September 2007).

26 The UN Assistance Mission for Iraq (UNAMI) was extended for 12 months in *Resolution 1770*, (10 August 2007).

27 *Resolution 1790*, (18 December 2007). The extended mandate ends on 31 December 2008, and on the advice of the Iraqi Government, the Security Council does not expect a further request for its extension.

28 *Resolution 1776*, (19 September 2007). The extension is for 12 months.

29 The International Crisis Group reports that opium production in Afghanistan has 'exploded' and accounts for 92% of the world's supply. See [www.crisisgroup.org/home/index.cfm?id=1266&1=1](http://www.crisisgroup.org/home/index.cfm?id=1266&1=1).

30 The *Security Council Report* commented in its October 2007 report on Afghanistan that '[t]he presence of troops from three P5 members (UK, France and the US) coupled with history (including the Russian Federation's past involvement) and regional interests (notably China's) have made it difficult to discuss the scope of the Security Council's role in Afghanistan.

31 *Resolution 1325* addresses the disproportionate and unique impact of armed conflict on women, recognised the under-valued and under-utilised contributions women make to conflict prevention, peacekeeping, conflict resolution, and peace-building, and stressed the importance of their equal and full participation as active agents in peace and security. See [www.peacewomen.org](http://www.peacewomen.org) for more information and all related documents.

## The responsibility to protect

## International Criminal Court

Criticisms of lack of action and ongoing equivocation also extend to the Security Council's failure to effectively implement its share of the UN's role in the **responsibility to protect** mandate.<sup>32</sup> Although the unanimous adoption of this principle at the 2005 World Summit by 150 States has been lauded as one of the most significant achievements of that gathering, the Security Council has not effectively implemented the responsibility to protect to prevent further human rights atrocities from occurring in the Darfur region of the Sudan.<sup>33</sup> Many States, particularly those belonging to the Non-Aligned Movement (NAM), have regressed on their 2005 commitment, primarily because they see the responsibility to protect principle as a major threat to State sovereignty. Criticisms by NAM States in various UN fora that the responsibility to protect principle lacks international acceptance<sup>34</sup> indicates that progress on its implementation within the UN and among member States will remain difficult.

Nonetheless, other key stakeholders continue their efforts to further develop the responsibility to protect principle, in collaboration with supportive member States, thereby helping to clarify when and how the Security Council and States should implement it. Central in this effort to move the responsibility to protect principle from concept to reality is the Secretary-General's decision in August 2007 to establish the position of Special Adviser on the responsibility to protect, and to upgrade and broaden the existing mandate of Special Representative of the Secretary-General on the prevention of genocide to include mass atrocities.<sup>35</sup> These appointments provide encouragement to those human rights NGOs and academics working to promote the responsibility to protect and provide guidance on its implementation.<sup>36</sup> However it is of concern that NAM States manoeuvred behind the scenes of the recent General Assembly session to ensure that the Fifth Committee would vote to deny any budget allocation to the newly established position of Special Advisor, and to fund only half of the budget request for the Special Representative of the Secretary-General on the prevention of genocide and mass atrocities.

The DRC, Northern Uganda, the Sudan, and the Central African Republic were all subject to **International Criminal Court (ICC)** scrutiny in 2007. Of these, only the Darfur region of the Sudan was referred to the ICC by the Security Council in *Resolution 1593*.<sup>37</sup> There were six outstanding ICC arrest warrants in 2007, four of which were for members of the Lord's Resistance Army in Northern Uganda. The remaining two warrants were issued for the arrests of Ali Kushayb, a Sudanese Janjaweed militia leader, and Ahmad Harun, the Sudan's Minister for Humanitarian Affairs.<sup>38</sup> NGOs, having been highly supportive of ICC efforts, have been wary of measures taken by governments to invoke the complementarity principle,<sup>39</sup> as they fear that local courts may not be able to achieve the international standard required. However, it appears that an agreement between the government of Uganda and the Lord's Resistance Army on undertaking a national process<sup>40</sup> to achieve accountability and reconciliation for crimes will proceed, as the Lord's Resistance Army has asserted that it would not allow the peace process to move forward unless the ICC's arrest warrants were withdrawn.<sup>41</sup> Although Khartoum, a non-signatory to the *Rome Statute of the International Criminal Court*, is required under *Resolution 1593* to cooperate with the ICC on the grounds that the situation in the Sudan is a threat to international peace and security, the Government has yet to comply with the ICC's outstanding arrest warrants.<sup>42</sup> In November, the office of the prosecutor asked the Security Council<sup>43</sup> to send a strong unanimous message to the Government of the Sudan to comply with *Resolution 1593*. Following the briefing, the Security Council failed to agree on a Presidential Statement supporting such language, with China (supported by Qatar) acting as the main obstacle to consensus.

In an unusual and highly contested move, the United Kingdom (UK)<sup>44</sup> brought the Security Council's attention to **the interrelationship between climate change, energy, and security** by organising an open debate on the subject when it held the Security Council Presidency. Secretary-General Ban Ki-moon, addressing member States, identified clearly how climate change can be a threat to human rights.<sup>45</sup> The Security Council's willingness to at least consider these issues in a thematic debate<sup>46</sup> may

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The responsibility to protect recognises that the responsibility to protect any given population lies first and foremost with the sovereign State. However, if a State is unable or unwilling to protect its population, or is itself the cause of the threat, the international community has a responsibility to protect those populations against genocide, war crimes, ethnic cleansing or other crimes against humanity. In such cases, military intervention authorised by the Security Council can be used to protect civilians. See paras 138 and 139 of the *2005 World Summit Outcomes Document*. Available at [http://www.responsibilitytoprotect.org/index.php/united\\_nations/398?theme=all1](http://www.responsibilitytoprotect.org/index.php/united_nations/398?theme=all1). See also International Service for Human Rights, *Human Rights Monitor 2006*, pp. 107-108, available at [www.ishr.ch](http://www.ishr.ch).

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The Security Council reaffirmed the responsibility to protect in *Resolution 1674* (28 April 2006) on the protection of civilians in armed conflict. It then invoked the responsibility to protect for the first time in *Resolution 1706* (31 August 2006), a country-specific resolution relating to Darfur. However neither of these resolutions, nor *Resolution 1769* (2007) on Darfur have helped the UN end the violence in Darfur.

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For example, during the 24<sup>th</sup> Meeting of the Fifth Committee of the 62<sup>nd</sup> session of the General Assembly (17 December 2007), several NAM members argued that the responsibility to protect principle was not agreed upon at the World Summit and that further consideration and deliberation about what the principle means and how it can be applied, is required. These States included China, Pakistan, Cuba, Venezuela, Egypt, and India.

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The Secretary-General wrote to the Security Council to advise of his intention with respect to these positions on 31 August 2007 (S/2007/721). His letter explained that the position of Special Adviser on the responsibility to protect would be at the level of Assistant Secretary-General and would be filled by Mr Edward Luck, 'a distinguished international scholar with extensive knowledge of the United Nations system'. The letter also advised that Mr Francis Deng would be appointed as Special Representative of the Secretary-General on the prevention of genocide and mass atrocities. He would assume a more elevated position than his predecessor with a broader mandate. In another letter, The Security Council indicated its support to upgrade the Francis Deng's position, but it is yet to approve the extension of the genocide mandate to include 'mass atrocities'. This remains an open issue. Both letters are available at [www.un.org/Docs/sc/unscc\\_presandsg\\_letters07.htm](http://www.un.org/Docs/sc/unscc_presandsg_letters07.htm).

signal the possibility of a future paradigm shift towards preventive conflict management, and possibly pave the way for change in the way in which peacebuilding strategies are approached and perceived. Moreover, the weighing of this subject matter across the agenda of the Security Council would broaden its current understanding of the elements necessary to maintain international peace and security, and could result in a more specific focus on the issue in particular country resolutions. However the reticence of a great number of developing countries that perceive the Security Council to be encroaching on their domain will be a difficult obstacle to overcome anytime in the near term.

## LOOKING FORWARD

Despite human rights being reaffirmed at the 2005 World Summit as one of the three pillars of the UN's work, the Security Council rarely seeks information or guidance from human rights experts within the UN human rights system.<sup>47</sup> Although the High Commissioner for Human Rights was not invited to brief the Security Council at all in 2006, she did take up its invitation in 2007, using the opportunity to speak about her mission to the Great Lakes region, including the DRC. Her interaction with the Security Council drew criticism from South Africa, suggesting she was overstepping her role by appearing before the body. Unfortunately the special procedures of the Human Rights Council appear less welcome than the High Commissioner, despite their expertise in country-specific and thematic issues of direct relevance to the Security Council's agenda, such as the human rights situation in Myanmar or violence against women.<sup>48</sup> To ensure that it is privy to the most accurate, up-to-date, and expert information, the Security Council needs to take leadership to initiate a closer relationship with other human rights bodies and mechanisms within the UN. Closer cooperation is likely to assist both parties to more effectively fulfill their mandates and improve the promotion and protection of human rights.

Human rights NGOs have continued to shed light on Security Council failures, hoping to induce action on the part of its members. While

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The NGOs include the World Federalist Movement, the International Crisis Group, Human Rights Watch, and Oxfam International. In October 2007 the City University of New York's Ralph Bunch Institute announced the establishment of a new 'Global Centre for the Responsibility to Protect', to be formally launched in February 2008. Also in October 2007, Oxfam International, together with 39 other NGOs, invoked the responsibility to protect in a press release on the humanitarian crisis in Somalia, available at [www.oxfam.org/en/news/2007/pr071030\\_humanitarian\\_catastrophe\\_in\\_somalia](http://www.oxfam.org/en/news/2007/pr071030_humanitarian_catastrophe_in_somalia).

37 S/RES/1593 (2005). The others were referred by the Presidents of each of the countries.

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The Pre-Trial Chamber of the ICC issued arrest warrants for the two Sudanese on 27 April 2007.

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The ICC treaty principle of complementarity preserves the primary right and duty of States to prosecute the most serious human rights crimes and can proceed only when the State with primary jurisdiction is unable or unwilling to proceed. Any country can avoid prosecution of its citizens by the ICC by using its own courts to prosecute genocide, crimes against humanity and war crimes. The ICC will not even have jurisdiction over cases involving nationals if the State itself investigates, and, if appropriate, prosecutes the individual responsible.

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The national process will use both the formal legal system and traditional mechanisms.

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Lord's Resistance Army talks reach agreement on accountability, June 30 2007, <http://irinnews.org/Report.aspx?ReportId=73010>.

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For more information, see: [www.icc-cpi.int/library/organs/otp/OTP-ST-20071205-UNSC-LMO-ENG.pdf](http://www.icc-cpi.int/library/organs/otp/OTP-ST-20071205-UNSC-LMO-ENG.pdf)

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For more information, see S/PV.5789. Available at: <http://www.un.org/Depts/dhl/resguide/scact2007.htm>

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On the initiative of the UK, the Security Council held a ministerial-level open debate on the relationship between energy, security, and climate on 17 April 2007.

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Following is part of the text of the statement, as delivered April 17 2007, by UN Secretary-General Ban Ki-moon at the debate on energy, security and climate: 'The adverse effects of changing weather patterns, such as floods and droughts, and related economic costs, including compensation for lost land, could risk polarizing society and marginalizing communities. This, in turn, could weaken the institutional capacity of the State to resolve conflict through peaceful and democratic means, to ensure social cohesion, and to safeguard human rights.'

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In the past, the Security Council has also held debates on other thematic issues, including women, peace and security, HIV/AIDS, and terrorism.

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This is particularly striking since the 2005 *World Summit Outcome Document* contains a provision that the world leaders support closer cooperation between the High Commissioner's office and 'all relevant United Nations bodies, including the General Assembly, the Economic and Social Security Council and the Security Council'.

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For example, the Security Council did not invite the Human Rights Council's Special Rapporteur on the situation of human rights in Myanmar, Paulo Sergio Pinheiro, to brief them on his mission to Myanmar in November after he was invited there for the first time in four years. He visited prisons and monasteries in an effort to establish the number of people detained and killed in the recent crackdown and assess the overall scale of resulting human rights violations.

the Security Council has in many ways become more receptive to their concerns over the last 20 years, it has proven largely resistant where major interests are involved. The Security Council has also persistently been more eager to tackle political disputes than it has been to address violations of humanitarian law and human rights. NGOs will continue, though, to bring to the Security Council's attention the gaps that exist between rhetoric and the realities on the ground, and seek to ensure that it remains accountable to the commitments it has made, in particular its responsibility to protect civilians in armed conflict.