



NUPI

# **NUPIReport**

## **Responsibility to Protect**

### **[No. 6 - 2008]**

## **Protecting Civilians from Harm**

**A Humanitarian Perspective**

Turid Laegreid



**R2P**

Publisher: NUPI  
Copyright: © Norwegian Institute of International Affairs 2008  
Series Editor: Eli Stamnes

ISBN: 978-82-7002-221-2

Alle synspunkter står for forfatternes regning. De må ikke tolkes som uttrykk for oppfatninger som kan tillegges Norsk Utenrikspolitisk Institutt. Artikkene kan ikke reproduseres – helt eller delvis – ved trykking, fotokopiering eller på annen måte uten tillatelse fra forfatterne.

Any views expressed in this publication are those of the author. They should not be interpreted as reflecting the views of the Norwegian Institute of International Affairs. The text may not be printed in part or in full without the permission of the author.

Visiting Address: C.J. Hambros plass 2d  
Address: Postboks 8159 Dep.  
0033 Oslo  
Internet: [www.nupi.no](http://www.nupi.no)  
E-mail: [pub@nupi.no](mailto:pub@nupi.no)  
Fax: [+ 47] 22 36 21 82  
Tel: [+ 47] 22 99 40 00

# Protecting Civilians from Harm

## A Humanitarian Perspective

Turid Laegreid



# Executive Summary

The core and spirit of R2P is generally welcomed in the humanitarian world, as R2P represents a commitment to important established principles laid down in international law. If the intentions of R2P are fully met, it has the potential to strengthen the global legal and political framework for protection of civilians.

However, most humanitarian actors have taken care not to engage directly in the ongoing debate on the implementation and future of R2P. The potential for coercive action can be controversial for humanitarian organisations for several reasons.

The protection of civilians as a concept can become too identified with R2P as a political process and the subsequent association with the use of coercive measures.

The fear is that framing a conflict in R2P terms can create problems for access for humanitarian agencies, leaving the civilians even more exposed to abuse and violations. The Darfur case, which was one of the first conflicts to be consistently framed as a protection crisis, shows that the R2P rhetoric can go both ways. At times the Government of Sudan (GoS) responded to R2P related rhetoric by restricting access, thereby leaving vast populations without humanitarian assistance. However, at other times the GoS has used increased access as a means to ease the international pressure on itself.

There is also a risk that the focus on R2P as a political commitment – without reference to the legal obligations underpinning it, can lead to a sidelining of treaty laws that cover a range of rights and obligations. Less reference to law in UN and NGO advocacy is partly a consequence of more actors embracing the notion of protection. Some omit reference to law because of lack of legal training, or more likely, of pragmatic reasons. States will often be less sensitive to be held accountable to their political commitments than to legal obligations. However, while political commitments at times can facilitate action, they can also more easily be changed and even retracted.

The Secretary-General and other main promoters of R2P have stated that civil society organizations and individuals should play a key role in operationalizing the R2P concept. In that endeavor, a look at the lessons from the Guiding Principles for IDPs is recommended. A major achievement of Francis Deng and his colleagues was their ability

to mobilize support and acceptance of these principles among governments, UN agencies, NGOs, civil society and IDP communities through a systematic and inclusive dialogue process over years. If the civil society organisations are to be mobilised to defend R2P principles and support the building of public opinion in favour of the basic elements of R2P, debates on scope and interpretations should be encouraged.

## Introduction

This article looks at how the practices of humanitarian protection relate to the concepts of Responsibility to Protect (R2P) and Protection of Civilians (PoC).

Basically, humanitarian protection, the R2P concept and the PoC concept share the same concern: to ensure the safety of individuals from harm and violations. This article argues that they also share the same legal sources and to some extent the same origins.

The responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity are well established principles laid down in International Humanitarian Law (IHL) and International Human Rights Law (IHRL). Also the UN Secretary-General has reiterated that the R2P principle is firmly anchored in international law.

The definition of ‘protection’ commonly used by humanitarian agencies reflects the same principles, but is much wider:

all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of human rights, refugee and international humanitarian law. Protection involves creating an environment conducive to respect for human beings, preventing and/or alleviating the immediate effects of a specific pattern of abuse, and restoring dignified conditions of life through reparation, restitution and rehabilitation.<sup>1</sup>

The advantage of this definition is that it focuses on rights and entitlements, and consequently the responsibilities and obligations of states and non-state actors according to international law. It is important to bear in mind that the terms ‘responsibility to protect’ and ‘protection of civilians’ are old concepts and principles within the humanitarian domain, and are still used without the political and policy implications that come with the specific acronyms PoC and R2P (or RtoP). In the human rights and humanitarian sense, the protection responsibilities and obligation of states, (and to a certain degree of the international community), extend to the full range of universal rights.

Some humanitarian agencies have advocated the use of R2P in Darfur, Myanmar and the DRC, but most humanitarian actors have taken care

---

<sup>1</sup> OCHA, *Glossary of humanitarian terms in relation to the Protection of Civilians in Armed Conflict*. Reliefweb. [http://www.reliefweb.int/rw/lib.nsf/db900sid/KKEE-6DMRTJ/\\$file/glossary.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/KKEE-6DMRTJ/$file/glossary.pdf?openelement)

not to engage directly in such a politically charged debate, and have been generally absent in the general debate on the implementation and future of R2P.

How R2P will be interpreted and possibly implemented will have an impact on humanitarian agencies, and more importantly, have consequences for the populations with whom they work. An optimistic view is that, if R2P is implemented according to intentions, the overall protection regime will be strengthened, and the fate suffered by the Rwandese and Darfurian civilian populations might be avoided in future crises. R2P represents a recognition that states have assumed the primary responsibility for protection, and humanitarian actors can take on the corresponding complementary role.

However, the R2P process also raises dilemmas and questions for humanitarian actors. They are the focus of this paper.

One question is whether calls for the application of R2P can affect access to affected populations. Will such 'threats' pressure states to permit access, or can the mere mention of R2P contribute to total closure?

Another concern is the tendency, when speaking about R2P, to omit references to the underlying legal framework. The 2005 World Summit declaration and the Security Council resolutions are expressions of political commitments to well established principles in international law. However, there is seldom mention of the fact that the principle of the obligation of states to protect their populations is legally binding, and that failure to do so can constitute a crime.

The Myanmar discussion has also revealed a misunderstanding regarding the scope of states' responsibility to protect their civilian populations. Although R2P refers only to certain defined situations of mass violations – genocide, war crimes, ethnic cleansing and crimes against humanity – a state's obligations to protect its population are not limited to these four types of crimes. It may be argued that the victims of the recent cyclone were not subject to these violations, but the authorities' actions were still in violation of international humanitarian and human rights law.

Finally, many also ask whether the principle will actually make a difference at all. Since its endorsement by the summit and the Security Council more than three years ago, war crimes are still being committed in Darfur, and the tens of thousands of Congolese fleeing massacres have seen little signs of political will to react.

This paper first examines the origins of the current humanitarian protection regime as it was developed in parallel to the R2P concept. It further looks at the case of Darfur, which was one of the first conflict situations to be defined as a protection crisis and the first conflict to be framed within the R2P concept.

### **Origins of the current humanitarian protection regime**

To a certain degree, the triggers and developments that led to the formulation of R2P – the Rwanda genocide and ethnic cleansing in Bosnia – also marked a change in humanitarian agencies’ approach to protection. Humanitarian protection can hardly be said to be a new phenomenon, as its roots go back several centuries. What is relatively new is the broad acceptance that protection has gained among most humanitarian actors. In the emergency relief responses in the 1970s and 80s, protection was left to the mandated organizations, while most humanitarian agencies focused on the provision of basic material assistance such as food, health and water.<sup>2</sup> By contrast, in today’s humanitarian crises, most humanitarian organizations will also aim to address the safety concerns of the populations affected. Special protection coordination structures have been set up globally and at field level to ensure common policies, approaches and practices among the main international humanitarian actors, UN agencies, NGOs and the Red Cross family. The current humanitarian protection regime and its architecture are the result of several processes.

### **The bottom-up approach – self regulatory processes**

During the 1990s, there was growing awareness among humanitarian actors that, for the civilian population caught in conflict, protection and safety concerns were often more acute than the need for humanitarian assistance, understood in traditional terms. The Rwanda genocide not only triggered reflection on the need to improve the political and military response to large-scale atrocities, it also highlighted profound weaknesses in the abilities of humanitarian organizations to respond in an effective and coordinated manner. Many important initiatives to improve quality, effectiveness and accountability were launched in the aftermath, mainly by the operational agencies themselves, with some key NGOs taking the lead. This self-regulatory process resulted in commonly accepted codes and standards, most notably the Sphere standards<sup>3</sup> and the Code of Conduct.<sup>4</sup> NGO alliances

<sup>2</sup> See Sorcha O’Callaghan and Sara Pantuliano: ‘Protective Action. Incorporating Civilian Protection into Humanitarian Response’, *HPG Report* 26, December 2007.

<sup>3</sup> The Sphere Project was launched in 1997 by a group of humanitarian NGOs and the Red Cross and Red Crescent movement. The main Sphere product is the Handbook, operationalizing minimum standards for the various emergency sec-

and researchers also produced publications, booklets and manuals to support practitioners in translating protection concepts into action.

These are all practical, field-relevant tools, recognizing international humanitarian law and human rights law as the cornerstones for humanitarian action. Assistance, it was now acknowledged, was to be directed by the victims' *rights* to assistance and protection— not by emotions or charity. It was also emphasized that the role of international humanitarian organizations was only a complementary one: responsibility to provide life-saving assistance and protection lay primarily with governments, or in some cases, the *de facto* authorities. For many humanitarian agencies, this process was a rediscovery of the relevance of IHL and IHRL in humanitarian crises.

This heightened focus of NGOs and other agencies on ensuring the safety of civilians from acute harm, and programmes for addressing the rights of the affected populations, challenged the 'monopoly status of the protection-mandated agencies. The NGOs also challenged the rather narrow (and differing) definitions of 'protection' employed by these agencies. Initially, the International Committee of the Red Cross (ICRC) and the UN High Commissioner for Refugees (UNHCR) were reluctant to accept the broadening of the scope of protection, in actors as well as activities. In the end, it was an ICRC-led process, where a range of humanitarian actors participated in a series of workshops, that led to consensus that protection activities should not be undertaken solely by mandated agencies.<sup>5</sup> The definition cited above was also the result of this process. It was later adopted by the Inter-Agency Standing Committee, the global policy forum for UN operational agencies, NGOs and the Red Cross Family.<sup>6</sup> Considerable efforts have been made to operationalize and systematize protection activities. As to terminology:

---

tors. The main reference to international law is in the Sphere Charter, which says ' (This) commitment is based on agencies' appreciation of their own ethical obligations, and reflects the rights and duties enshrined in international law in respect of which states and other parties have established obligations.' See <http://www.sphereproject.org/>.

<sup>4</sup> 'The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief' was the result of collaboration between six of the largest NGO networks and the Red Cross and Red Crescent Movement in 1994. They drew up a professional Code of Conduct to set universal basic standards to govern the way they should work in disaster assistance. The main purpose was 'to maintain the high standards of independence, effectiveness and impact to which disaster response NGOs and the International Red Cross and Red Crescent Movement aspires'. Today the Code has 462 signatories. <http://www.ifrc.org/publicat/conduct/index.asp>.

<sup>5</sup> S. Giossi Caverazasio, *Strengthening Protection in War: A Search for Professional Standards*. (Geneva: ICRC, 2001).

<sup>6</sup> ICRC participates, but only as observer.

- *Mainstreaming* of protection means to have concern for the safety and rights of the people, while providing traditional assistance such as food, water and health.
- *Protective Action* means to have the protection and safety of the affected people as the principle strategic objective for the activities undertaken.
- *Specialized protection activities* are those undertaken by specialized protection agencies, in particular the mandated ones like the ICRC, UNHCR, UN High Commissioner for Human Rights (UNHCHR) and the UN Children's Fund (UNICEF); they include human rights monitoring, prison visits, child protection activities etc.

### **Guiding Principles for Internally Displaced Persons (IDPs)**

One of the roots of R2P is the process that led to the endorsement of the Guiding Principles on the Human Rights of Internally Displaced Persons. Francis Deng, who was appointed Special Representative on Internally Displaced Persons by the UN Secretary-General in 1993, was one of the first to speak consistently of the state's responsibility to protect its citizens, and link this responsibility to the principle of sovereignty. The main objective of the Guiding Principles is to guide and assist governments in all parts of the world in better discharging their responsibilities to protect and help people forcibly displaced within their countries. The principles cover the responsibility for the state to protect its citizens and populations from all sorts of violations of human rights law and international humanitarian law. This is not restricted only to protection *from* abuse, but also covers protection of positive rights, like the rights to property and to family reunification as well as to basic needs such as food, water, shelter and health services. It has been used systematically and constructively with governments as a means to seek their explicit commitment to core responsibilities.

While effective protection of internally displaced persons remains a huge challenge, there are several cases where the Guiding Principles have been used successfully to develop government policies and even domestic legislation.

A major achievement of Francis Deng and his colleagues was their ability to mobilize support and acceptance of these principles among governments, UN agencies, NGOs, civil society and IDP communities. Equally important has been the development of operational field guides and manuals, facilitated by the pedagogical structure of the document. Humanitarian and human rights actors have embraced it as one of the most important protection instruments, and it has played a

significant role in shaping operational response for international organizations.<sup>7</sup>

As the UN Secretary-General has identified the task of promoting and operationalizing R2P as a key priority, it could be worthwhile to look at some of the lessons to be drawn from the Guiding Principles. The R2P process is currently facing conceptual, institutional and political challenges, as misunderstandings and misconceptions prevail as to the scope and content of the R2P commitment.<sup>8</sup> There is a need to build alliances within civil society, in particular human rights and humanitarian organizations, who can defend R2P principles and support the building of public opinion in favour of the basic elements of R2P: that each government has the main responsibility to protect its population, and other states have a responsibility to assist. Although the need for broad involvement is recognized, there seems to be a certain reluctance to unleash the debate on what R2P means and how it should be operationalized. Edward Luck's recommendation to commentators that they could 'usefully devote more attention to what the Outcome Document actually says about the content and scope of RtoP, rather than to what they hoped or feared it might say'<sup>9</sup> is understandable, since R2P finally emerged as a carefully negotiated multilateral agreement. However, if – as expressly desired by Luck, the Secretary-General and other main promoters of the R2P – civil society organizations and individuals are to play a key role in operationalizing the concept, that will inevitably involve debates on scope and interpretations.

### **Protection of Civilians – the political level**

Whereas humanitarian protection as described above is the result of a process internal to the humanitarian operational agencies, the term 'protection of civilians' (POC) often refers to certain policy processes on protection at UN headquarters in New York.

OCHA has defined Protection of Civilians as follows:

<sup>7</sup> As recognized for example by António Guterres, UN High Commissioner for Refugees. See A. Guterres, *Ten years of Guiding Principles on Internal Displacement: Achievements and Future Challenges*. UNHCR, 2008.

<sup>8</sup> See Gareth Evans: *The Responsibility to Protect: Meeting the Challenges*. Lecture to 10<sup>th</sup> Asia Pacific Programme for Senior Military Officers, S.Rajaratnam School of International Studies, Singapore, 5 August 2008, <http://www.crisisgroup.org/home/index.cfm?id=5615&l=1>, and Edward C. Luck 'The Responsible Sovereign and the Responsibility to Protect,' in Joachim W. Müller and Karl P. Sauvant, eds., *Annual Review of United Nations Affairs* (Oxford: Oxford University Press, 2008).

<sup>9</sup> Luck, 'The Responsible Sovereign and the Responsibility to Protect'

Structures and policies developed by the UN, States and other humanitarian actors, and based in international humanitarian law, human rights and refugee law, to protect vulnerable populations from the effects of armed conflict, ranging from the most immediate priorities of minimizing civilian casualties to more long-term priorities of promoting the rule of law and security, law and order within a State.<sup>10</sup>

Under the leadership of the Secretary-General and the Emergency Relief Coordinator, the profile of protection of civilians has increased at political level, and has continuously been kept on the Security Council agenda. Important principles of international humanitarian law and human rights law have been endorsed through resolutions 1265 and 1296, and protection of civilians has been included in numerous Security Council resolutions authorizing UN peacekeeping missions.

This heightened interest in the protection of civilians at the political level has been warmly welcomed by humanitarian agencies, as political commitment globally is crucial to uphold the responsibilities and obligations of states and non-state armed actors.

How the humanitarian organizations choose to interact with this level varies according to their mandates and profiles. Some actively advocate protection-mandated peacekeeping missions and even military interventions to protect civilians at risk, while others want to adhere to their neutrality mandate and abstain from expressing opinions on how political and military conflict resolution should be handled. Typically OCHA will be the link between the humanitarian field level and the political level, as it has a dual identity – its mandate is first and foremost humanitarian, but as it forms part of the UN secretariat, and reports regularly to the Security Council, it also has an important political dimension.

The ICRC, while commending the efforts of the Secretary-General to raise commitment and awareness of protection, has expressed concern that advocacy by the UN (and NGOs) on protection increasingly refers to ‘soft law’ – UN guiding principles (for example those relating to IDPs) or Security Council resolutions – and avoids referring to ‘hard law’, meaning international humanitarian law, human rights law and refugee law. According to the ICRC Director-General, Angelo Gnaedinger, ‘In the long term such a trend may sideline treaty laws and, conversely, weaken existing normative protection’.<sup>11</sup> Less

<sup>10</sup> OCHA, *Glossary of humanitarian terms in relation to the Protection of Civilians in Armed Conflict*.

<sup>11</sup> Angelo Gnaedinger, *Protection of Civilians in Conflict – the ICRC Perspective*. Address at Humanitarian and Resident Coordinator Retreat. ICRC Official Statement, Geneva, 2007.

reference to law in UN and NGO advocacy is partly a consequence of more actors embracing the concept of protection. Some omit reference to law because of lack of legal training, or, more likely, for pragmatic reasons. States will often be less sensitive to being held accountable to their political commitments than to legal obligations. However, while political commitments at times may facilitate action, they can also more easily be changed and even retracted. There are similar dynamics at work with the R2P. While the UN Secretary-General reiterates that R2P is firmly based in international law, there is usually little reference to the legal obligations underpinning the concept.

### **Darfur – humanitarian protection, R2P and PoC**

Darfur became a test case for protection in all its aspects. Despite the many warnings from NGOs and other actors, for an entire year the international community allowed the mass killings, ethnic cleansing and systematic use of sexual violence to unfold, in what has been labelled a ‘conspiracy of silence’.<sup>12</sup>

However, once political attention finally had been raised, and a substantial humanitarian operation was mounted, the UN, NGOs and states quite unusually defined this situation as a protection crisis. On the operational side of the humanitarian action, this was reflected in an unprecedented number of protection officers, protection programmes and protection working groups. The UN Security Council referred the Darfur situation to the Prosecutor of the International Criminal Court (ICC),<sup>13</sup> thereby opening for legal investigation and prosecution of those responsible for mass atrocities. After the signing of the UN World Summit Document in 2005, Darfur was also soon framed in the debate on the R2P.<sup>14</sup>

### **Humanitarian protection activities on the ground.**

The protection focus of the Darfur humanitarian operation has been unique. *Whether* protection should be an integral part of the humanitarian response was never an issue: the question was how to ensure an effective response. Protection initiatives were launched in a range of activities, and various tools and arrangements were tested, with somewhat mixed experiences.

---

<sup>12</sup> House of Commons (2005). ‘International Development – Fifth Report’. International Development Committee Publications. UK

<sup>13</sup> UNSC resolution 1593 (2005) *Security Council refers situation in Darfur, Sudan, to prosecutor of International Criminal Court*.

<sup>14</sup> For example, the 2005 House of Common report makes a clear reference to the R2P in its 2005 report on the situation in Darfur.

However, the Darfur operation exposed the confusion that existed, and still exists, within the humanitarian community when it comes to protection. As protection is such a wide concept, it was hard to present a relevant agenda that all could subscribe to. A lack of a shared and profound analysis as to threats, risks and trends resulted in a lack of priority setting.

On the UN side, OCHA initially had to take on the role of leading the coordination of protection efforts. UNMIS Protection Unit took gradually over this responsibility as the mission grew. At the global level, the humanitarian reform process had been initiated in 2005. At the core of this reform is the concept of lead agencies for the coordination of sector response and cross-cutting issues. UNHCR eventually agreed to act as the lead responsible agency globally for coordinating protection responses. Originally, UNHCR had assumed protection responsibility only for West Darfur, but is now co-responsible for protection together with UNMIS. Adding to the confusion was the fact that UNMIS had included two separate protection-related components – a Protection of Civilians unit and a Human Rights unit. The focus on protection officers and protection working groups may have contributed to sideline protection from the decision-making level – within individual organizations, the UN mission, and at the managerial level of the coordination mechanisms.

The enormous focus on the protection role of the humanitarian actors led to extremely high expectations as to what humanitarian actors could achieve in a situation with ongoing conflict. Experienced protection actors (like the ICRC and the UNHCR) are trained to establish balance between protection objectives and goals and the inherent limitations of their role. However, the newer protection actors became increasingly frustrated as violations continued, and the responsible actors did not abide by their obligations and commitments.

### **Humanitarian advocacy**

Throughout the crisis, the humanitarian agencies had to deal with the dilemma of how to deal with public advocacy connected to the atrocities, while maintaining neutrality – and access. Protection advocacy concerning Darfur by humanitarian agencies had various elements:<sup>15</sup>

*Advocacy on the need for funding* was strong at the outset, as donors were reluctant to pledge funds for the appeals made by the UN and NGOs. In general, fund-raising advocacy is not seen as controversial or in conflict with neutrality principles. However, in the specific con-

---

<sup>15</sup> See Sorcha O'Callaghan: 'Humanitarian advocacy in Darfur: the challenge of neutrality', *HPG Policy Brief* 28, London 2007.

text of Darfur in 2003 and 2005, the Government of Sudan (GoS) wanted no attention at all on Darfur, interpreting also calls for a humanitarian operation and presence as interventionist. Many donors, particularly those who were engaged in the peace process between North and South Sudan, were therefore reluctant to get involved in Darfur, for fear of jeopardizing the peace process.<sup>16</sup>

*Advocacy for humanitarian access* to the affected populations has been a central part of the humanitarian strategy. The GoS showed an unprecedented ‘creativity’ in setting up administrative obstacles to humanitarian actors, particularly international NGOs. These practices delayed the humanitarian response, and seriously affected the effectiveness of service provision and protection activities alike. Adding to this, the rebel groups’ practices of hijacking cars and humanitarian deliveries jeopardized the provision of life-saving assistance to large areas. At its peak, the humanitarian operation provided life-saving assistance to some two to three million inhabitants.

Access negotiations were conducted at various levels and through a range of channels. A first line of action was to ensure political commitment to allow for free access. A first apparent success was the ceasefire agreement between the GoS and two of the rebel groups in April 2004, which stated that the ceasefire had been reached to ‘allow on one hand, a fast and unrestricted humanitarian access to the needy populations of Darfur and on the other hand, to arrive at a just and durable solution to the problem in Darfur’.<sup>17</sup> The ceasefire agreement included a clause on protection, as the parties also pledged to ‘refrain from any act of violence or any other abuse on civilian populations’. In the subsequent protocols and agreements the protection of civilians elements were more pronounced, and included also direct references to international law.<sup>18</sup>

Direct negotiations with all parties and factions were continuously undertaken on the ground, most often to solve specific problems that had

---

<sup>16</sup> House of Commons 2005.

<sup>17</sup> ‘Humanitarian Cease Fire Agreement on the Conflict in Darfur’, 8 April 2004. Available at [http://www.usip.org/library/pa/sudan/sudan\\_ceasefire\\_4082004.html](http://www.usip.org/library/pa/sudan/sudan_ceasefire_4082004.html). In addition to refrain from regular military activity, the parties committed to ‘refrain from any act of violence or any other abuse on civilian populations, stop any act of sabotage; stop any restriction on the movement of goods and people; stop any form of hostile act, including hostile propaganda; ensure humanitarian access’

<sup>18</sup> Protocol between the Government of the Sudan(GOS), the Sudan Liberation Movement/Army(SLM/A) and the Justice and Equality Movement(JEM) on the improvement of the humanitarian situation in Darfur. Abuja, 9 November 2004, and the The Comprehensive Peace Agreement between The Government of The Republic of The Sudan and The Sudan People's Liberation Movement/Sudan People's Liberation Army

arisen. Efforts on the ground were complemented by strong statements by high-level UN officials, including the Secretary-General and the Emergency Relief Coordinator. They highlighted the principles and the responsibilities of the parties, and condemned specific actions that were hindering access. The Security Council also stressed this principle in resolution 1556 in July 2004.<sup>19</sup>

For the humanitarian organizations, the main dilemma was whether *public disclosure of violations* of human rights and IHL would jeopardize neutrality and thus continued presence and access. Humanitarian NGOs are usually the ones closest to the victims, and will usually be the first to gather information on illegal practices. They are also the ones most vulnerable to harassment. Several organizations were expelled after speaking out on the atrocities they witnessed. UN agencies were to a lesser degree exposed (even though several UN staff were declared *personae non grata* and had to leave the country), and many NGOs chose to share information confidentially with OCHA, the UNMIS Human Rights monitors and other specialized protection agencies in order to keep a low profile, and ensure continued presence.

*Advocacy for military presence or intervention.* AMIS, the AU mission, was met with high expectations from the civilian population and the humanitarian actors, as it was thought that it would contribute to the protection of civilians. However, it soon became evident that, due to the weak mandate and lack of resources and experience, the mission's impact was insignificant, and it failed to protect the civilian population. This created enormous frustration among the civilian population at risk, and many groups turned against AMIS. Moreover, the political process was not going well. The Darfur Peace Agreement failed, as one of the main factions, the Sudanese Liberation Army (SLA) Waheed faction, refused to sign the agreement. The two remaining signatories SLA – Minnawi faction and the GoS launched a military campaign against the non-signatories in the name of the peace agreement, with continuous escalation of the conflict as a result.

With the failure of AMIS, humanitarian agencies soon joined the calls for a robust UN mission, with a mandate to protect civilians. Increasingly, reference was made to the responsibility to protect, and the High-Level Mission on the situation of human rights in Darfur framed its report within the R2P context.<sup>20</sup> The Government of Sudan firmly opposed a UN mission, and tightened access for UN agencies in a re-

---

<sup>19</sup> S/RES/1556 (2004).

<sup>20</sup> OHCHR (2007) High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101. A/HRC/4/80 , 9 March 2007

sponse to the ongoing planning in New York. When the deployment of UNAMID, the hybrid AU-UN mission, finally was agreed to, it encountered obstructions, delays and even direct attacks from the GoS. The states that had strongly supported the creation of the mission and have had a high profile on the need to protect the civilian populations have not met their obligations to fund and staff UNAMID. Thus far, the mission has not had an impact on the protection situation on the ground. The humanitarian operation continues, with assistance and low-key protection activities. Humanitarian agencies have practically stopped advocacy on civilian protection, in order to maintain their presence.

Darfur can hardly be seen as a success for the R2P concept. Another question is whether the framing of Darfur in R2P terms impacted negatively on humanitarian access, or if it facilitated access. There is evidence both ways. At times the Government of Sudan responded to R2P-related rhetoric by restricting access, thereby leaving vast populations without humanitarian assistance. However, at other times the GoS has used increased access as a means to ease the international pressure on itself. In that sense, humanitarian access can become a negotiating tool to avoid other interference.

### **Conclusions**

The core and spirit of R2P have been welcomed in the humanitarian world, as R2P represents a commitment to important established principles laid down in international law. If the intentions of R2P can be fully met, it has the potential to strengthen the global legal and political framework for protection of civilians.

The potential for coercive action that R2P implies, however, can be controversial for humanitarian organizations, for several reasons. The protection of civilians as a concept can become too closely identified with R2P as a political process, with a subsequent association with the use of coercive measures. There is also the risk that governments will relate to their responsibility to protect their populations *only* in a R2P framework, knowing that it will seldom be applied. That could lead to a sidelining of treaty laws that cover a range of rights and obligations.

There is also the risk that R2P will remain high in rhetoric, but with no will to implement. This can create problems for access for humanitarian agencies, leaving civilians even more exposed to abuse and violations. And finally, protection and humanitarian needs can also be invoked as a pretext for military interventions, disguising specific political interests and agendas.