

# SECURITY COUNCIL

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## Security Council and human rights

Over the course of 2008, the Security Council continued with its pattern of failing to protect civilians in many parts of the world.<sup>1</sup> This was due in part to the financial constraints faced by the UN as a whole, coupled with the limited capacity of its member States to contribute sufficient funds, personnel, and other resources to its peacekeeping missions. Even when it took action, the Security Council often failed to respond adequately to the gravity of the situation. In Darfur for instance, despite the grave and well-documented violations of human rights, 12 UN peacekeeping missions became operational, the African Union-UN hybrid force (UNAMID) had only reached about 60% of its strength, and only 20% of the personnel authorised by the Security Council.<sup>2</sup> This failure to ensure a comprehensive and consistent response to protect civilians, whether in Afghanistan, the occupied Palestinian territories (OPT), the Democratic Republic of the Congo (DRC), Somalia or elsewhere, came at considerable cost to the Security Council's international reputation. At the same time, the Security Council also tolerated consistent violations of its own sanctions, most notably the oil and arms embargos on Darfur, the DRC, and Somalia.

The Security Council's inability to protect civilians also fuelled a general climate of impunity that seems to have become entrenched in many of the world's conflict zones. This included impunity for violations of international humanitarian law, particularly the use of child soldiers and sexual and gender-based violence. One of the most serious consequences of this entrenched impunity over the course of the year was the increasing disregard for, and attacks on, humanitarian aid workers. For instance, the UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Jan Egeland, reported that 112 humanitarian workers had been kidnapped in Afghanistan in 2008, and five of them were killed. In North Kivu in the DRC, 104 security incidents involving humanitarian workers were reported in the first nine months of September 2008 alone.<sup>3</sup>

Regrettably, the Security Council also continued to fail to establish formal communication links with the Human Rights Council, or with other warning mechanisms on human rights concerns, the special procedures of the Human Rights Council, or with the most senior UN official on human rights matters, the High Commissioner for Human Rights (the High Commissioner). Not only did this deprive the Security Council of critical, expert information on a range of country-specific human rights developments relevant to its agenda, it also undermined the goal of mainstreaming human rights throughout the UN, as was envisaged in 2005 when all member States committed to restore human rights as the 'third pillar' of the UN organisation at the World Summit. Further, the creation of the Human Rights Council in 2006 provided

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<sup>1</sup> See International Service for Human Rights (ISHR), *Human Rights Monitor 2007* 'The Security Council's failure to protect: the

Council members a convenient opportunity to relegate responsibility for human rights matters to this sub-Committee of the General Assembly.<sup>5</sup>

However, the most critical factor underscoring the Security Council's failure to ensure the protection of civilians in the course of the last year was the continuing political divisions amongst its members, principally the five permanent members. China and the Russian Federation, along with some Security Council members belonging to the Non-Aligned Movement (NAM)<sup>6</sup> preferred 'quiet diplomacy' and frequently sought to avoid any perception of the Security Council's involvement in matters of State sovereignty, as shown by their responses to the deepening crises in Darfur, the DRC and Zimbabwe. These States also showed a preference for deferring to regional and sub-regional organisations such as the African Union (the AU) and the Southern African Development Community (SADC), as demonstrated by the Security Council's response to the crises in Kenya and Zimbabwe. The obvious exception here was the Russian Federation's response to the situation in Georgia, where it invoked the principle of responsibility to protect to legitimise its military deployment to South Ossetia.

In contrast, France, the United Kingdom (the UK), the United States (the US), and some Latin American members of the Security Council were stronger advocates of the Security Council fulfilling its responsibilities to protect civilians. They were less willing to stand by as governments flagrantly flouted their responsibility to protect civilians or to support international justice and accountability mechanisms such as the International Criminal Court (ICC). They were generally more willing to consider or advocate for sanctions and push for other benchmarks of cooperation.

The Security Council's record in 2008 was mixed due to these divisions and the lack of political will. It often meant it settled for the lowest common denominator of no action,<sup>8</sup> or just adopting a presidential statement. It did not mean more decisive action that helped protect civilians or further the principles of justice and accountability.

It is therefore important to recognise that the Security Council did take some notable steps in the right direction in 2008 in relation to addressing impunity and ensuring the protection of civilians. These included its adoption of *Security Council Resolution 1820* on sexual violence during armed conflict; strengthening language relating to sexual violence and the protection of civilians in the resolution renewing the mandate of the UN peacekeeping mission in the DRC; as well as its preparedness to support the independence of the ICC by not undermining its decision to consider an arrest warrant for the current President of the Sudan for genocide, war crimes, and crimes against humanity.

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<sup>5</sup> During the Council's thematic debate on 'working methods' on 27 August 2008, South Africa commented that the Security Council had been criticised on a number of occasions for its 'tendency to encroach upon areas of responsibility' of the General Assembly and the Security Council. It argued this not only weakened the UN as a whole, but also 'opened the Security Council's agenda to manipulation and the pursuit of bilateral agendas'. See S/PV.5968, available at [www.un.org/Depts/dhl/resguide/scact2008.htm](http://www.un.org/Depts/dhl/resguide/scact2008.htm).

<sup>6</sup> South Africa, Indonesia, Libya, Vietnam.

<sup>7</sup> Costa Rica and Panama.

## The Security Council, UN peacekeeping operations, and the failure to protect civilians

At the close of 2008, the UN's annual peacekeeping budget was at an all-time high of over USD 7 billion and peacekeeping operations on the ground were staffed by 110,000 uniformed and civilian personnel.<sup>9</sup> Yet at the same time, the Secretary-General for Humanitarian Affairs was the first to admit that the peacekeeping operations were failing to protect civilians, despite the fact that it was one of its main purposes.<sup>10</sup>

The complex reasons underpinning this failure are well documented.<sup>11</sup> In addition to the political and operational reasons mentioned above, they include the following:

- UN peacekeeping missions have evolved from simple military operations into multi-dimensional operations, involving a diverse range of partners and regional players
- The nature of the conflicts is also different, as they increasingly involve non-State actors who do not adhere to international humanitarian law and other established norms, and employ weapons of war including landmines, soldiers, sexual violence, and the targeting of civilians and humanitarian workers
- While the inclusion of law enforcement and human rights monitoring components in the protection of civilians in peacekeeping missions is increasingly needed, implementation is hindered by the lack of qualified personnel
- Communication channels between Security Council members, parts of the UN Secretariat with experience in peacekeeping, and the broader UN membership are not effective. In particular, troop-contributing countries have criticised their marginalisation or outright exclusion from the management and strategic decision-making of peacekeeping operations directly affecting their nationals.

The following case studies elaborate on the dynamics and events that gave rise to the Security Council's failure to protect civilians in 2008.

### Darfur

In 2008, the Government of the Sudan continued to disregard the Security Council's resolutions. In particular, it failed to cooperate fully with the deployment of the UN-African Union hybrid peacekeeping mission in Darfur; it failed to implement resolutions of the Security Council and the rulings of the ICC;<sup>12</sup> it failed to reach diplomatic solutions to internal conflicts; and ensure that its civilians were protected from violence and provided access to humanitarian aid.

On the 5<sup>th</sup> anniversary of the conflict in Darfur, Under Secretary-General for Humanitarian Affairs, John H. Brundage, reported to the Security Council that of the estimated 6 million people in Darfur, 4.27 million had been seriously affected by the conflict, 2.45 million were internally displaced, and 260,000 had fled to neighbouring countries.<sup>13</sup>

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<sup>9</sup> The UN had an estimated USD 7.4 billion as the peacekeeping budget for the 2008-09 fiscal year, which was a 10% over the previous year. This represented a nearly threefold increase in budget and personnel since 2003. It was three-times the size of the UN regular budget for the rest of the year. In 1999-2000, the peacekeeping budget was USD 1.5 billion. See Security Council Report, 'UN Peacekeeping Operations: Update Report', January 2009, p. 2 and 4, available at [www.securitycouncilreport.org/site/c\\_4KWIcMTIcG/b\\_2400833/l\\_D0E4/Publications\\_on](http://www.securitycouncilreport.org/site/c_4KWIcMTIcG/b_2400833/l_D0E4/Publications_on)

In 2008 the Security Council continued to fail to enforce the arms embargo it had imposed in 2004. The embargo was frequently violated by all parties to the conflict in Darfur, including the Government.<sup>14</sup> The Security Council renewed UNAMID's mandate for an additional year,<sup>15</sup> but as demonstrated by reports of the Secretary-General and throughout the year from Under Secretary-General, Mr Jean-Marie Guéhenno, troop and equipment shortages compromised the mission's ability to protect itself and civilians.<sup>16</sup> By the end of the year, UNAMID remained at only half its mandated strength.

Moreover, three years after the Security Council adopted a resolution referring the situation in Darfur to the ICC, persons under arrest warrants issued by the ICC were still at large and occupying government positions. In July 2008, ICC Prosecutor, Mr Luis Moreno-Ocampo, requested an arrest warrant against President Omar Hassan al-Bashir for genocide, war crimes, and crimes against humanity. Since the request for the arrest warrant was issued, the Security Council were confronted with, and have since been in disagreement over, a request by South Africa, the OIC, the AU Peace and Security Council, and the Government of the Sudan to suspend the ICC proceedings against President Bashir under Article 16 of the *Rome Statute of the International Criminal Court*.<sup>18</sup> While the US, the UK, Costa Rica, and Italy supported the ICC's independence, China, South Africa, the Russian Federation, India, and Vietnam were in favour of a dialogue with the Government and of promoting the principle of complementarity. The Council considered that suspending the proceedings of the ICC against President Bashir would help avoid further violence. By the end of the year, the Security Council had not taken action on this request to suspend proceedings.

President Bashir warned that the execution of the ICC arrest warrant would further destabilise the region, leading to additional displacements, civilian casualties, and attacks on UN staff. However, the Government of the Sudan began stepping up its cooperation with the UN, including making commitments to a speedier deployment of UNAMID. It remains to be seen how the Government will react if and when an arrest warrant is actually issued by the ICC. The Security Council will take decisive action in 2009 to react to the continuing human rights violations in Darfur.

## Democratic Republic of the Congo

Although the international community undertook several positive initiatives over the past year in regard to the DRC, the Security Council's delay in responding in a timely manner to escalating violence and human rights violations in the east of the country again called into question its credibility in ensuring the protection of civilians.

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<sup>14</sup> Report of the Panel of Experts established pursuant to Security Council *Resolution 1591* (2005) concerning the Sudan, S/2008/10 (2008), available at <http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=1232OKS581033.6581&profile=bib&uri=full=3100001~!878381~!0&ri=1&nu=search&source=~!horizon>.

<sup>15</sup> Security Council *Resolution 1828*.

<sup>16</sup> The shortage of equipment and troops likely contributed to the killings of nine UNAMID peacekeepers.

<sup>17</sup> Security Council *Resolution 1593* (2005).

<sup>18</sup> Article 16 allows the Security Council to suspend the ICC prosecutions in any case for a period of 12 months that can be renewed.

Despite a ceasefire signed between the Government of the DRC and rebel militias in January 2008, heavy fighting between government army troops and rebel militias erupted in April, August, and October 2008, leaving thousands of people killed and many more having suffered human rights violations.

In November 2008, an emergency summit in Nairobi concluded with the commitment of a new ceasefire agreement and the establishment of a humanitarian corridor in November. Another outcome of the emergency summit was the appointment of a Special Envoy for the Great Lakes region, former President Obasanjo of Nigeria, by the Secretary-General. A key initiative initiated by the Government of the DRC included the arrest and transfer to the ICC of Mathieu Ngudjolo, a prominent rebel leader charged with war crimes and crimes against humanity, and the signing at the UN of the *Paris Agreement on Stability and Development* to address the causes and results of conflict in the Great Lakes region of Africa.

The Security Council issued several presidential statements condemning the violence in the eastern region of the DRC and requested recommendations from the Secretary-General.<sup>21</sup> It also adopted resolutions to renew the sanctions regime and the mandate of the Group of Experts<sup>22</sup> until 30 November 2009, as well as to extend the deployment of MONUC until December 2009.<sup>23</sup> Importantly, the resolution extending the mandate of MONUC included new strong language on the protection of civilians and on women and sexual violence, and on the importance of MONUC to implement these mandates fully, through robust rules of engagement. The references to sexual violence echoed Security Council *Resolution 1820* on this topic adopted in June 2008, which defines rape and sexual violence as war crimes and crimes against humanity, which was drafted in response to the persistent and escalating incidences of sexual violence against women and girls, in particular in the DRC.<sup>24</sup>

On the other hand, although the Security Council received information from the Group of Experts on the DRC in January 2008 regarding the transfer of weapons and on violations by every party to the conflict, the Security Council decided that diplomatic progress in other areas justified easing the arms embargo. This decision had dire consequences across the country, in particular in relation to human rights violations.<sup>25</sup>

Further, more than two years after the Security Council adopted a resolution calling for sanctions against individuals responsible for the recruitment of child soldiers,<sup>26</sup> it had yet to list the names of individuals or entities that recruit children, and children continue to be kidnapped by rebel groups and to be deployed into conflict situations.

The Security Council also failed to respond in a timely manner to reports from the Secretary-General's Special Representative to the Secretary-General and head of MONUC, Mr Alan Doss, in October highlighting that the DRC was unstable and additional troops were required quickly. The Secretary-General's request to mandate a rapid intervention force to support MONUC (possibly in the form of a temporary EU-led multinational force) was not acted upon.

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<sup>21</sup> S/PRST/2008/38 on 21 Oct 2008 and S/PRST/2008/40 on 29 Oct 2008 available at [www.un.org/Docs/sc/unsc\\_pres\\_statements](http://www.un.org/Docs/sc/unsc_pres_statements)

<sup>22</sup> Security Council *Resolution 1533* of March 2004 set up the most recent UN Group of Experts on the DRC to investigate violations of the arms embargo and networks of illegal trade, and to recommend remedies. The Group of Experts reports to the UN Sanctions Committee, a body of the Security Council made up of representatives of member States on the Security Council.

<sup>23</sup> Security Council *Resolution 1799* (15 February 2008) and Security Council *Resolution 1857* (22 December 2008) renewed the mandate of the Group of Experts; Security Council *Resolution 1856* (22 December 2008) extended the deployment of MONUC. Council resolutions are available at [www.un.org/Docs/sc/unsc\\_resolutions08.htm](http://www.un.org/Docs/sc/unsc_resolutions08.htm). As of 31 December 2008, the size of the UN

disregarded, and members of the Security Council did not, in their national capacities, encourage EU member states to contribute troops either as part of the proposed multinational force or as additional temporary MONUC reinforcement. In the face of the escalating violence and human rights violations in the latter part of the year,<sup>27</sup> the Security Council adopted Resolution 1843, a resolution increasing MONUC's troop size until 20 November 2008. The deployment of additional troops was expected before the first quarter of 2009.<sup>28</sup>

Despite some positive steps by the Security Council at the end of the year, the human rights situation remained severe, and the Security Council needs to move quickly to implement its decision to increase the size of MONUC, to use its influence to broker a lasting peace agreement, and to address the culture of impunity that currently exists. It must also prevent and commit war crimes and crimes against humanity.

## Somalia

In the absence of a politically stable Transitional Federal Government (TFG) in Somalia and of sound leadership on the Security Council, the humanitarian crisis in Somalia continued to spiral out of control in 2008. At the end of the year, violence, exacerbated by piracy and rising food prices, had resulted in over one million internally displaced persons, 450,000 Somali refugees, an estimated 2.6 million in need of humanitarian assistance, and thousands of women and children who had fallen victim to sexual violence perpetrated by TFG forces, the Ethiopian military, and opposition groups.

In the wake of a growing threat to the commercial interests of several States, the Security Council responded with several resolutions to deal with piracy off the coast of Somalia and began to address the rampant arms trade in the country. With the support and cooperation of the international community and the TFG in Somalia, the Security Council adopted several resolutions granting States the authority to enter Somalia's territorial waters to combat piracy. In the wake of being confronted with reports of widespread illegal arms trading, the Security Council finally adopted Resolution 1816 in November 2008 expanding the current sanctions regime to include targeted measures against individuals and entities involved in arms embargo or block the delivery of humanitarian aid to civilians.<sup>31</sup>

The Security Council's minor achievements were overshadowed by its failure to provide peace, security, and humanitarian assistance to Somali civilians. Although the mandate of the AU Mission in Somalia (AMISOM) was renewed by the Security Council for an additional six months in August 2008,<sup>32</sup> AMISOM struggled during the year due to a lack of funds and the under-provisioning of troops. The Security Council's indecision over whether to authorise an interim multinational force (despite the urging of the Secretary-General)<sup>33</sup> to supplement AMISOM appeared to be grounded in a number of factors.

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<sup>27</sup> Due to the fighting in North Kivu, the number of internally displaced persons (IDPs) rose to over one million. There continued to be reports of violence against civilians by rebel groups as well as agents of the Government.

<sup>28</sup> Security Council Resolution 1843 (20 November 2008) increased the troop size by 3,085, and is available at [www.un.org/Docs/sc/unsc\\_resolutions08.htm](http://www.un.org/Docs/sc/unsc_resolutions08.htm). S/2008/43 is the report of the Group of Experts on the DRC noting its concern over the increase in troop size, and is available at [www.un.org/sc/committees/1533/egroup.shtml](http://www.un.org/sc/committees/1533/egroup.shtml).

<sup>29</sup> See [www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.4278477/k.B5AB/July\\_2008brSomalia.htm](http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.4278477/k.B5AB/July_2008brSomalia.htm). Also, see Human Rights Watch, *Discriminating Female Victims of the Somali Crisis*, available at [www.hrw.org/en/news/2008/12/00/and\\_what\\_about\\_somali\\_women](http://www.hrw.org/en/news/2008/12/00/and_what_about_somali_women).

including the lack of willingness by any State to lead such a force, and the preferred option of some States, the US and South Africa, to establish a new peacekeeping operation in Somalia.

## Resolution 1820 on women, peace and security (combating sexual violence in conflict)

The Security Council without a vote adopted *Resolution 1820* in June 2008 recognising rape as a weapon of war and a threat to international peace and security. Initiated by the US, the adoption of this resolution was a historic milestone as the Security Council had not previously taken up the issue of sexual violence as a major theme in its work. Importantly, the initiative built on the foundations of a previous resolution on women, peace and security, which complemented the Security Council's existing resolutions on the protection of civilians in country-specific situations. This year's resolution demanded the 'immediate and complete cessation by all parties to armed conflict of all forms of sexual violence against civilians' and recognised that rape and other forms of sexual violence could constitute war crimes, crimes against humanity, or an act of genocide. Civil society organisations welcomed it as a clear statement to the international community intended to end the culture of impunity surrounding these crimes and categorically reject their relegation to amnesty provisions in conflict resolution processes. Further, the resolution affirmed the Security Council's intention to consider imposing targeted and graduated measures against parties to an armed conflict that use sexual violence as a weapon of war when establishing or renewing State-specific sanctions.

The adoption of this resolution was the culmination of years of work by the Secretary-General, UN agencies (at the grassroots and international), and Security Council members such as the US and the UK. All had sought to address the systematic and widespread use of sexual violence against women and children in specific conflict situations, such as the DRC and Darfur. They also impressed upon Security Council members that this was a subset of wider human rights violations against civilians in conflict situations that are contrary to international law. The final steps in this process included a high-level conference for key policy-makers organised by UN Action Against Sexual Violence in Conflict,<sup>37</sup> a meeting in London by the UK to discuss the role of peacekeepers in addressing sexual violence, and an open thematic debate in the Security Council on women, peace and security initiated by the US.

The real test for Security Council *Resolution 1820* will be the extent to which its provisions are implemented in practice through their incorporation into peacekeeping mandates in country-specific situations. Although a preliminary assessment revealed that the Security Council referred to this resolution in seven subsequent country-specific resolutions, only two of these (on the Sudan) demanded that the parties to the conflict take immediate measures to protect women and children from all forms of sexual violence as per the resolution.<sup>38</sup> A range of factors are likely contributing to the lack of a consistent approach to implementation, including the lack of authoritative data from the ground needed to inform a consistent approach, the will within the Security Council to act decisively and make available the expertise and resources necessary to implement, prevent rape during conflict and care for the victims;<sup>39</sup> and the Security Council's unwillingness to

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<sup>34</sup> See Security Council Report, 'Women, Peace and Security: sexual violence in situations of armed conflict', Update Report No.3, p.6.

<sup>35</sup> Security Council *Resolutions 1265* (1999) and *1296* (2000).

<sup>36</sup> For example, United Nations Development Programme (UNDP) and the World Health Organisation (WHO).

<sup>37</sup> UN Action Against Sexual Violence in Conflict was established in 2006 by ten UN agencies, chaired by UNDP and WHO.

implementation or accountability mechanism or time-bound benchmarks, which could track progress on a the implementation of the resolution.<sup>40</sup>

Nonetheless, fears that the Security Council's follow-up thematic debate on women, peace and security<sup>41</sup> might have provided an opportunity for some degree of back-peddling on this issue proved unfounded. Instead, the Security Council issued a presidential statement reaffirming its commitment to the full implementation of *Resolution 1820*.<sup>42</sup> The Security Council requested the Secretary-General to 'systematically' report on and make recommendations on the protection of women and girls in conflict situations the Security Council is seized of, and to submit a report on the implementation of the resolution before 30 June 2009. It is hoped that the Secretary-General's report will identify inadequate mechanisms for implementation and accountability that were evident in *Resolution 1820*.

## The responsibility to protect<sup>43</sup>

In 2008, the 'responsibility to protect' principle was invoked on a number of occasions by a range of States for different reasons and with a variety of results. The following country-specific examples also underscore that the responsibility to protect and the protection of civilians is not the exclusive responsibility of the Security Council. Rather, it is shared with the General Assembly, regional and sub-regional organisations, and States. Nonetheless, the Security Council bears a particular responsibility to protect civilians from genocide, ethnic cleansing, war crimes, crimes against humanity, and more importantly, to help prevent these crimes from happening in the first place.

In May 2008, the French Foreign Minister sought to invoke the responsibility to protect principle following the negative response of the Government of **Myanmar** to offers of international humanitarian assistance in the wake of Cyclone Nargis. France's very broad interpretation of the principle, which suggested that the international community should ignore the objections of the Government of Myanmar and begin aerial food drops and other measures to avert a worsening humanitarian situation, was widely regarded as unhelpful and ill-conceived.<sup>44</sup> Quiet diplomatic

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<sup>40</sup> The Russian Federation and China were among the opponents to the establishment of a Security Council thematic working group on women, peace and security. The Security Council has held an open thematic debate on women, peace and security in situations of armed conflict, Update Report No.3', 11 June 2008, p.7.

<sup>41</sup> Since the adoption of *Resolution 1325* (2000), the Security Council has held an open thematic debate on women, peace and security.

<sup>42</sup> S/PRST/2008/39. The presidential statement did not incorporate more ambitious options, such as the Secretary-General's recommendation that more meetings and Security Council missions would be useful. See S/2008/655.

<sup>43</sup> Although there is some overlap between the principle of responsibility to protect and the concept of 'protection of civilians', and the concepts of 'protection' and 'conflict prevention', it is beyond the scope of this chapter to elaborate on the conceptual and legal differences between the two. However, it is important to note that the Security Council's evolving approach to the protection of civilians is grounded in humanitarian law, whereas the responsibility to protect principle is grounded in conventional and customary international law and the concept of 'State sovereignty as responsibility'. As a result, the 'responsibility to protect' norm, as defined in the 2005 World Summit Outcome Document (Paras 138 and 139) can only be applied to genocide, war crimes, crimes against humanity, and ethnic cleansing. The Secretary-General clarified that the responsibility to protect should be understood as a more nuanced concept than 'humanitarian law' or 'military intervention' because it embraces the whole suite of policy tools available under the *UN Charter* to prevent and address threats to international security. These include peaceful measures under Chapter VI of the *UN Charter*, coercive measures under Chapter VII, and/or regional and sub-regional arrangements under Chapter VIII. For more information, see *Report of the Secretary-General on the*

the Secretary-General and Myanmar's ASEAN neighbours proved an effective means of eliciting the cooperation with international humanitarian efforts and averting an even worse humanitarian catastrophe.

Initial hopes that Myanmar's increased cooperation with the UN and the international community in the wake of Cyclone Nargis would translate into Security Council re-engagement on the country's human rights situation had largely evaporated by the end of 2008. The origins of this disengagement can be traced back to the Government of Myanmar's complete disregard of the Security Council's May presidential statement on Myanmar, which had called for a free and fair referendum on a new constitution.<sup>45</sup> Even after strong criticism from the Secretary-General regarding the timing and manner in which the Government conducted the referendum,<sup>46</sup> the Security Council failed to take any further action on Myanmar. This was reinforced by China, the Russian Federation, and South Africa's decision to revert to their policy of non-intervention in the 'internal affairs' of the country, once the international spotlight shifted away from the Government's crackdown on dissent in 2007 and the effects of Cyclone Nargis.

Although the Secretary-General's good offices provided a veneer of some high-level attention on Myanmar, this began to mount towards the end of the year that this reliance on quiet diplomacy had played directly into the hands of the military Junta. For example, just days after the Secretary-General's historic visit to Myanmar in the immediate aftermath of the cyclone,<sup>47</sup> the Government extended Aung San Suu Kyi's house arrest by another year, defying recommendations from both the Secretary-General's Special Envoy on Myanmar, Mr Ibrahim Gambari, and the UN Special Representative on Myanmar, Mr Vitit Muntarbhorn, who had called for the release of all political prisoners as the critical step to facilitate inclusive political dialogue and national reconciliation.<sup>48</sup> This was followed in August 2008 by Aung San Suu Kyi's decision to decline to meet with the Special Envoy on Myanmar, during his official visit. On the same day, Mr Gambari was also rebuffed in his fourth attempt since September 2007 to meet with General Than Shwe, the head of the Junta. The December 2008 sentencing of 270 political activists to long prison terms following their participation in demonstrations against the Junta in 2007 and their efforts to assist cyclone victims in 2008, only served to reinforce the Junta's message of defiance to the international community.

It now remains to be seen if the Security Council will take action and require Myanmar to demonstrate tangible progress in the areas of democracy and respect for human rights, or whether it will continue to 'wait and see', preferring to place the responsibility to ASEAN nations and the 'Group of Friends' of the Secretary-General on Myanmar.<sup>49</sup> Given that a major step in Myanmar's 'roadmap to democracy' will be national elections in 2010, the Security Council's actions in relation to Myanmar over the coming year will attract heightened international scrutiny.

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*openDemocracy*, 6 October 2008, available at [www.opendemocracy.net/article/the-responsibility-to-protect-holding-the-line-0](http://www.opendemocracy.net/article/the-responsibility-to-protect-holding-the-line-0).  
levelled at France by the UK, the UN Under Secretary-General for Humanitarian Affairs, and humanitarian relief agencies for similar reasons.

<sup>45</sup> S/PRST/2008/13.

<sup>46</sup> The Government went ahead with the referendum on 10 May 2008 (a week after the cyclone), despite a public request from the Secretary-General to defer it. The Secretary-General also criticised: the lack of free and open debate, insufficient public information, intimidation and harassment, and the criminalisation of any criticism of or opposition to the draft constitution. See p.12 of *Report of the Secretary-General on the situation of human rights in Myanmar (A/63/356)*. The Secretary-General also publicly expressed his disappointment at the Government's decision to ignore his request to postpone the referendum. See Reuters 'UN's Ban frustrated by Myanmar inaction over Nargis' 2008 available at [www.alertnet.org/thenews/newsdesk/N20526287.htm](http://www.alertnet.org/thenews/newsdesk/N20526287.htm)

One situation where the term ‘responsibility to protect’ was invoked outside the Security Council,<sup>50</sup> but was widely classified as a ‘text book’ application of the principle, was in **Kenya** following widespread post-election violence. Here, the mediation efforts of former Secretary-General Kofi Annan and a distinguished team of African leaders by the AU were credited with averting the need for greater intervention by the country's neighbours and the Security Council. Nonetheless, the UN engaged at the highest political levels, the Security Council issued a statement condemning the violence, and the offices of the Secretary-General and the High Commissioner for Human Rights were mobilised to avert widespread human rights violations, without resorting to the use of military force.

The Security Council’s presidential statement adopted in February 2008 expressed deep concern about the sexual and gender-based violence, and displacement of civilians following the disputed national elections of 2007.<sup>51</sup> The statement also expressed concern regarding political, security, and economic repercussions of the violence in the wider region; welcomed the regional mediation efforts; welcomed the Government of Kenya's acceptance of international commissions by the High Commissioner for Human Rights and the Special Adviser for the prevention of genocide; encouraged dialogue, compromise, and reconciliation between the two political parties. Further, it urged Kenya to take action to dismantle armed gangs and avoid impunity, improve the humanitarian situation, and restore democracy in the country.

The Security Council was able to take action in relation to Kenya thanks to strong regional cohesion, international support, and support for the Security Council's involvement.<sup>53</sup> The Security Council did not add Kenya to its formal agenda, preferring to consider it under its general agenda item on 'Peace and security in Africa'.

The Security Council also chose to deal with the situation in **Zimbabwe** using its agenda item on ‘Peace and Security in Africa’, rather than adding it as a country-specific agenda item. Although many world leaders eventually invoked the responsibility to protect to try to bring forth more decisive action by the Security Council and others (see below), it was not cited by Security Council members as a justification for their initial action in relation to Zimbabwe. Nonetheless, the Security Council’s presidential statement in June 2008 on Zimbabwe showed many of the hallmarks of a responsible protect response.<sup>54</sup>

The presidential statement was a strong, unified response to the deteriorating humanitarian situation, heightening violence in the country following the disputed presidential elections in March 2008, and xenophobic attacks in neighbouring South Africa, which were primarily directed at Zimbabwean refugees. It condemned the actions that had prevented free and fair elections, and called on it to stop the violence; cease political imprisonments; release all detained political leaders; and immediately allow humanitarian organisations to resume their services. The Security Council then closely monitored mediation efforts led by

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<sup>50</sup> The UN Secretary-General did invoke the responsibility to protect in Kenya when he addressed the AU Summit on 31 January 2008, available at [www.reliefweb.int/rw/RWB.NSF/db900SID/THOU-7BE29U?OpenDocument](http://www.reliefweb.int/rw/RWB.NSF/db900SID/THOU-7BE29U?OpenDocument). In addition the French Foreign Minister invoked the principle in a media statement the same day, available at [www.diplomatie.gouv.fr/en/country-files\\_156/kenya\\_209/situation-in-kenya\\_2008\\_6019/situation-in-kenya-statement-by-bernard-kouchner-january-31-2008\\_10767.html](http://www.diplomatie.gouv.fr/en/country-files_156/kenya_209/situation-in-kenya_2008_6019/situation-in-kenya-statement-by-bernard-kouchner-january-31-2008_10767.html). Archbishop Desmond Tutu followed with a similar call in February 2008, available at [www.episcopal.de/international/0\\_1518\\_526505\\_00.html](http://www.episcopal.de/international/0_1518_526505_00.html).

African Development Community, but having reached the conclusion by early July that President Robert Mugabe had chosen to ignore the presidential statement, the US drafted a strong resolution on Zimbabwe. It was intended as an incentive to prompt President Mugabe to co-operate with the Security Council, engage in the mediation process with good faith, and create the conditions for new, free and fair national elections.<sup>55</sup> The resolution proposed to achieve these outcomes by imposing a range of targeted sanctions, including an arms embargo, and a travel ban and asset freeze against President Mugabe and 13 senior government officials.

Nine Security Council members, including Burkina Faso, voted in favour of the resolution on Zimbabwe, stating that the situation was affecting security and stability in the region and was therefore a threat to international peace and security. Despite that, the resolution was not adopted as China and the Russian Federation voted against it.<sup>56</sup> In a double veto, the Russian Federation condemned the resolution as an attempt to 'take the Security Council beyond its mandate of maintaining international peace and security' and to interfere in the internal affairs of Zimbabwe. Furthermore, the Russian Federation considered that the resolution ignored the mediation efforts that were underway with the support of the African Union leaders and the AU. This was only the second time a double veto had been exercised in the Security Council since the Cold War period, and on both occasions, the resolution concerned human rights and democracy.<sup>57</sup>

This political impasse in the Security Council spelled the effective end to its action on Zimbabwe for the remainder of the year. Although it did continue to receive briefings from the Secretariat, including the Secretary-General, to discuss the situation, the Security Council was unable to revive the consensus it had shown in its earlier presidential statement on this issue. This remained the case even after events took a dramatic turn for the worse in Zimbabwe as the collapse of Zimbabwe's health, water, and sanitation systems. This caused a cholera outbreak that killed over 10,000 Zimbabweans dead and almost 40,000 ill. The influx of refugees into neighbouring States caused the outbreak to further threatening regional stability.<sup>58</sup> The fact that the Government of Zimbabwe was both 'unwilling and unable' to intervene, prompted African leaders, including Archbishop Desmond Tutu and Kenya's Prime Minister, Mwai Kibaki, to invoke the responsibility to protect, and to advocate for international military intervention to remove President Mugabe from office.<sup>59</sup> Their calls were supported by the Presidents of France and the US, as well as the Prime Minister of the United Kingdom.

The failure of the Security Council and the international community to summon the political will to act decisively underscored not only how deep the political division ran amongst its permanent five members. It also underscored the potential for 'sub-contracting' responsibility to regional partners to solve sensitive politically-based crises. It was also a failure as the Secretary-General chose not to employ Article 99 of the *UN Charter*<sup>60</sup> to bring the issue to the Security Council.

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<sup>55</sup> Remarks by US Ambassador, Mr. Zalmay Khalilzad, on Zimbabwe at the Security Council media stakeout, 8 July 2008.

<sup>56</sup> Belgium, Burkina Faso, Costa Rica, Croatia, France, Italy, Panama, the UK, and the US voted in favour of the resolution. China, Libya, the Russian Federation, South Africa, and Vietnam) and Indonesia abstained. Burkina Faso's support indicated a break from the convention of African States on the Security Council deferring to SADC mediation efforts.

<sup>57</sup> The other instance was in January 2007 when China and the Russian Federation blocked the Security Council from demanding an end to human rights repression and human rights violations in Myanmar, arguing that the situation in Myanmar was not a threat to international peace and security. South Africa joined with China and the Russian Federation to oppose the resolution (drafted by the US), which was defeated in a 10-3-3 vote.

<sup>58</sup> An estimated 28,000 Zimbabweans lodged asylum claims in the South African border town of Musina between July and August 2008.

something that his own Special Adviser for the prevention of genocide and Special Adviser with a responsibility to protect have suggested should be done 'when necessary'.<sup>61</sup>

In contrast, the Russian Federation's invocation of the responsibility to protect to justify its military operations in August 2008 was widely regarded as a misapplication, if not an abuse of the principle. For instance, France and the UK were quick to criticise the Russian Federation's decision to immediately resort to coercive measures, rather than exploring peaceful diplomatic and humanitarian options that would have respected the territorial integrity of Georgia. The Russian Federation's claims that its use of force was warranted, given Georgia's alleged acts of genocide against the people of South Ossetia, were largely unpersuasive outside of the Russian Federation.

Regardless of who was to blame for the outbreak of the Georgia crisis, resurgent Cold War politics among the Security Council's members prevented it from taking effective steps to end the conflict or contain it. For example, in August 2008, the Russian Federation urged the Security Council to call for a ceasefire, but disagreement over whether the statement should refer to Georgia's territorial integrity (opposed by the Russian Federation, and strongly advocated by the US) resulted in the Security Council not taking any action. After August 2008, the situation in Georgia was absent from the Security Council's agenda until early October 2008 when it was required to adopt a procedure to extend the mandate of the UN's mission in Georgia.<sup>63</sup> The Security Council did not take up the matter for the remainder of the year.

The negotiation of a ceasefire between Georgia and the Russian Federation and the subsequent withdrawal of Russian troops from Georgia was largely brought about by successful mediation efforts by the French President (in 2008, the then President of the EU). However, the ceasefire was preceded by several weeks of looting, arson, and attacks against civilians by Ossetian militias, and followed by the Russian Federation's recognition of South Ossetia and Abkhazia as independent States. The real losers of the conflict were the 65,000 Georgians who were displaced from their country already struggling to resettle some 200,000 people displaced by conflicts during the 1990s.<sup>64</sup>

Perhaps the most encouraging development in relation to the responsibility to protect at the Security Council was in December 2008, when South Africa organised an **informal meeting on the responsibility to protect**. With a view to assisting in operationalising the principle and contributing to the debate on the responsibility to protect, the General Assembly in early 2009, South Africa invited a range of human rights organisations and the Secretary-General's Special Adviser, Mr Ed Luck, to address the Security Council. Their statements elaborated on their interpretation of the principle as well as the Security Council's role in implementing it.<sup>65</sup> Several NGOs and some States pointed to human rights situations in the eastern DRC, Somalia, and Darfur as examples of the Security Council's failure to protect. China and the Russian Federation did not actively take part in the discussions.

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<sup>61</sup> Centre for Conflict Resolution, International Peace Institute, Office of the UN Special Adviser for the prevention of genocide and mass atrocities and the responsibility to protect: Challenges for the UN and the international community in the Responsibility to Protect Occasional Paper Series, June 2008, p.10.

<sup>62</sup> The UN press release relating to the Security Council emergency meeting on Georgia on 8 August 2008 [www.un.org/News/Press/docs/2008/sc9417.doc.htm](http://www.un.org/News/Press/docs/2008/sc9417.doc.htm).

<sup>63</sup> Security Council Resolution 1839, 9 October 2008. The mission was extended only until 15 February 2009.

<sup>64</sup> Lawrence Sheets, Co-Program Director, International Crisis Group, 'Georgia: flouting impunity in the Russian Federation'.

The meeting emphasised the importance of early intervention by the Security Council, as provided under Chapter VII of the *UN Charter*. There was also general agreement that the international commitment to the protection of civilians expressed in the 2005 World Summit, coupled with Security Council resolutions on the protection of civilians, provided further impetus for timely, preventative action by the Security Council. At the same time, States agreed that where there was a 'manifest failure' by a State to act to protect its civilians, the Security Council was empowered under Chapter VII of the *UN Charter* to use coercive measures, including the use of force. Above all, NGOs implored the Security Council the need to change its past practice and learn from both its successes and mistakes to ensure that it was 'part of meaningful efforts to prevent mass atrocity crimes' using 'non-violent solutions'.<sup>67</sup>

The meeting also highlighted the need for a formal exchange on the responsibility to protect between the Security Council and the General Assembly to clarify their respective roles and responsibilities in implementing the principle. The Secretary-General's Special Adviser on the responsibility to protect stated that while the Security Council has the primary responsibility to play in terms of the responsibility to protect, its interactions with other UN organs, such as the Human Rights Commission and the General Assembly, were equally important. He agreed that although the General Assembly may seek to restrict the Security Council's endeavours, it was also important for the Security Council to receive support from the General Assembly could play an important role in prevention, mediation, monitoring and investigation. The relationship between the Security Council and the General Assembly looks set to be a focus of debate when the General Assembly considers the Secretary-General's first report on the principle of responsibility to protect in early 2009.<sup>68</sup>

## Looking forward

One factor that may impact positively on the political dynamics among Security Council members is the change in the permanent members as of 1 January 2009.<sup>69</sup> For example, the departure of South Africa, which had obstructed the Security Council taking action to protect or promote human rights, particularly on the African continent, could create new possibilities. However, its replacement, Uganda, may struggle to be a human rights champion on the Security Council given its own domestic record on human rights. A similar concern exists in relation to Turkey. There is hope that new-comers Austria, Japan, and Mexico will be proactive voices for human rights.

At the time of writing, there was also a degree of optimism that the new US Administration would bring a new perspective to the politics of the Security Council, possibly restoring the Security Council's willingness to play a leadership role in relation to the protection and promotion of human rights. In particular, the new US Ambassador to the UN, Stephen O'Brien, has been an outspoken critic of the need for the international community to take decisive steps to address gross human rights violations, particularly in relation to the grave and systematic violations of human rights in Darfur.

However, such optimism must be tempered by the situations confronting the Security Council at the beginning of 2009. Much of its energy in early 2009 has been absorbed by the conflict and the humanitarian crisis that engulfed Darfur.

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<sup>67</sup> See in particular the statement by the Global Centre for the Responsibility to Protect, presented by Ms Nicole Boivin, 12 July 2008, <http://www.gcrp.org/press-releases/2008-07-12-statement-by-the-global-centre-for-the-responsibility-to-protect>.

and Gaza, but resolutions from the Security Council, the General Assembly, and the Human Rights Council had a negligible impact on stemming the violence.

Other challenges confronting the Security Council include an intensification of violence in Darfur and the unfinished deployment to both situations; new mandates for Chad<sup>70</sup> and Somalia,<sup>71</sup> which will require a significant increase in terms of peacekeeping costs and resources; 'grotesque' violence against civilians by the Lord's Resistance Army in eastern DRC;<sup>72</sup> and uncertainty about the consequences for peace in the DRC following the Government's arrest of Laurent Nkunda.

At the same time, some Security Council members are acutely aware of the urgent need to comprehensively address the host of challenges confronting its ever-expanding and increasingly complex peacekeeping operations. In January 2009, France and the UK will begin a series of formal and informal meetings designed to overhaul elements of the Security Council's peacekeeping operations to empower them to prevent and stop violations of international humanitarian law. These meetings will involve members of the Security Council, as well as the wider UN membership, key agencies of the UN Secretariat, including OHCHR and the Office of the UN High Commissioner for Refugees (UNHCR), and the International Committee of the Red Cross. Although many of these initial meetings are closed or by invitation only, they may be instrumental in bringing about a more direct approach by the Security Council, including less contractual management of its peacekeeping operations to regional partners.

Again, it will be important to take a longer-term view of these initial signs before reaching conclusions about the effectiveness of the Security Council's actions. For example, despite the Security Council's closed thematic discussion on 'Protection of civilians in armed conflict' in January 2009, which resulted in a presidential statement reaffirming 'its commitment to the full and effective implementation of its resolutions on the protection of civilians in armed conflict' and the release of a revised set of guidelines on the issue,<sup>74</sup> these renewed commitments did not translate into commensurate action on other fronts. For example, just days after the release of the Security Council's presidential statement, the Security Council failed to include provisions for the protection of civilians or human rights monitoring as part of the proposed mandate of a UN peacekeeping force in Somalia.

END

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<sup>70</sup> The UN Mission in Chad, MINURCAT, will contribute to the monitoring and to the promotion and protection of human rights in Chad, with particular attention to sexual and gender-based violence, and to recommend action to the competent authorities, with a view to their implementation.

<sup>71</sup> Although no decision had been made by year's end, in early 2009, the Security Council shifted course and expressed its interest in the establishment of a UN peacekeeping force in Somalia through Security Council *Resolution 1863* (16 January 2009). The unanimously adopted resolution requested the African Union to strengthen its force from 2,600 to 8,000 troops, and authorised the Secretary-General to submit a report by 15 February 2009, which would include a possible mandate for a peacekeeping force in Somalia. Further, it called for a decision on this matter by 15 February 2009.