AFE BABALOLA UNIVERSITY ADO-EKITI, EKITI STATE

PEACE AND CONFLICT STUDIES

PCS 402

ASSIGNMENT

DISCUSS CRITICALLY THE REGIONAL AND GLOBAL INSTRUMENTS FOR REFUGEE PROTECTION AND THEIR LIMITATIONS

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INTRODUCTION

One of the main aspects of international refugee law is non-refoulement which is the basic idea that a country cannot send back a person to their country of origin if they will face endangerment upon return. In this case, a certain level of sovereignty is taken away from a country. This basic right of non-refoulement conflicts with the basic right of sovereign state to expel any undocumented aliens.

A refugee, generally speaking, is a displaced person who has been forced to cross national boundaries and who cannot return home safely (for more detail see legal definition). Such a person may be called an asylum seeker until granted refugee status by the contracting state or the UNHCR if they formally make a claim for asylum. The lead international agency coordinating refugee protection is the United Nations Office of the United Nations High Commissioner for Refugees (UNHCR). The United Nations have a second Office for refugees, the UNRWA, which is solely responsible for supporting the large majority of Palestinian refugees.

Non-refoulement is a fundamental principle of international law that forbids a country receiving asylum seekers from returning them to a country in which they would be in likely danger of persecution based on "race, religion, nationality, membership of a particular social group or political opinion". Unlike political asylum, which applies to those who can prove a well-grounded fear of persecution based on certain category of persons, non-refoulement refers to the generic repatriation of people, including refugees into war zones and other disaster locales. It is a principle of customary international law, as it applies even to states that are not parties to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol. It is also a principle of the trucial law of nations.

The Responsibility to Protect (R2P or RtoP)

Is said to be a global political commitment which was said to be endorsed by all the existing member states as at that time of the United Nation in the year 2005 during the world summit to address 4 key factors to prevent Genocide, War crimes, Ethnic Cleansing and War against humanity.

The principle of the Responsibility to Protect is based upon the underlying premise that sovereignty entails a responsibility to protect all populations from mass atrocity crimes and human rights violations. The principle is based on a respect for the norms and principles of international law, especially the underlying principles of law relating to sovereignty, peace and security, human rights, and armed conflict. The Responsibility to Protect provides a

framework for employing measures that already exist (i.e., mediation, early warning mechanisms, economic sanctions, and chapter VII powers) to prevent atrocity crimes and to protect civilians from their occurrence. The authority to employ the use of force under the framework of the Responsibility to Protect rests solely with United Nations Security Council and is considered a measure of last resort. The United Nations Secretary-General has published annual reports on the Responsibility to Protect since 2009 that expand on the measures available to governments, intergovernmental organizations, and civil society, as well as the private sector, to prevent atrocity crimes.

INSTRUMENTS OF R2P

The Responsibility to Protect differs from humanitarian intervention in four important ways. First, humanitarian intervention only refers to the use of military force, whereas R2P is first and foremost a preventive principle that emphasizes a range of measures to stem the risk of genocide, war crimes, ethnic cleansing or crimes against humanity before the crimes are threatened or occur. The use of force may only be carried out as a measure of last resort, when all other non-coercive measures have failed, and only when it is authorized by the UN Security Council. This is in contrast to the principle of 'humanitarian intervention', which dubiously claims to allow for the use of force as a humanitarian imperative without the authorization of the Security Council.

The second point relates to the first. As a principle, the Responsibility to Protect is rooted firmly in existing international law, especially the law relating to sovereignty, peace and security, human rights, and armed conflict.

Third, while humanitarian interventions have in the past been justified in the context of varying situations, R2P focuses only on the four mass atrocity crimes: genocide, war crimes, ethnic cleansing and crimes against humanity. The first three crimes are clearly defined in international law and codified in the Rome Statute of the International Criminal Court, the treaty which established the International Criminal Court. Ethnic cleansing is not a crime defined under international law, but has been defined by the UN as "a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas".

Finally, while humanitarian intervention assumes a "right to intervene", the R2P is based on a "responsibility to protect". Humanitarian intervention and the R2P both agree on the fact that sovereignty is not absolute. However, the R2P doctrine shifts away from state-centered motivations to the interests of victims by focusing not on the right of states to intervene but on a responsibility to protect populations at risk. In addition, it introduces a new way of looking at the

essence of sovereignty, moving away from issues of "control" and emphasising "responsibility" to one's own citizens and the wider international community.

LIMITATIONS OF THE R2P

- The report of the International Commission on Intervention and State Sovereignty, which first articulated the Responsibility to Protect in its December 2001 Report, envisioned a wide scope of application in its articulation of the principle, which included "overwhelming natural or environmental catastrophes, where the state concerned is either unwilling or unable to cope, or call for assistance, and significant loss of life is occurring or threatened."
- Heads of State and Government at the 2005 World Summit refined the scope of the Responsibility to Protect to the four crimes mentioned in paragraphs 138 and 139, namely genocide, war crimes, ethnic cleansing and crimes against humanity, which are commonly referred to as 'atrocity crimes' or 'mass atrocity crimes'.
- As per the Secretary-General's 2009 Report on the Responsibility to Protect, Implementing the Responsibility to Protect, "The responsibility to protect applies, until Member States decide otherwise, only to the four specified crimes and violations: genocide, war crimes, ethnic cleansing and crimes against humanity...To try to extend it to cover other calamities, such as HIV/AIDS, climate change or the response to natural disasters, would undermine the 2005 consensus and stretch the concept beyond recognition or operational utility.
- The focused scope is part of what the UN Secretary-General has termed a "narrow but deep approach" to the Responsibility to Protect: A narrow application to four crimes, but a deep approach to response, employing the wide array of prevention and protection instruments available to Member States, the United Nations system, regional and subregional organizations and civil society.

The AU

The principle has been largely adopted in different documents on the continent either at a regional level or a sub-regional level. However the state of peace and security on the African continent is still full of challenges. The inability of the international community to solve crisis that erupted in Africa in early 1990s pushed African states to want to solve their crisis themselves.

African nations had already enshrined the R2P though in a different language before the formal adoption by UN in 2005. At some point, the R2P can be seen as part of the ASAP (African Solution to Africa's Problems) doctrine on the continent. The wish of African states to deal with their own crisis and protection of their people can be seen even before AU. The Organisation of African Unity (OAU) in 1993 established a Mechanism for Conflict Prevention, Management and Resolution (CPMR) and as a matter of fact, the mechanism was not effective taking in account crises in Liberia, Sierra Leone or even Rwanda.

The AU took decisive steps in its constitutive act showing that it was ready to deal with arising problems. The AU set the steps for the 'right to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely, war crimes, genocide and crimes against humanity.'
The OAU in 1963 represented pan Africans ideals and was to put an end to colonialism. However, the organisation with its doctrine of non-intervention was not efficient in dealing with problems afflicting the continent. With the AU, a shift in policy has been operated meaning that member states of the AU should be concerned with events happening in the neighbourhood. Indeed the continent is full of potential and there is an urgent need to find solutions because it is generally admitted that without peace, development is not possible, and without development, peace is not durable. The adoption of these principles marks a clear normative break with the emphasis by post-colonial Africa on the sanctity of state sovereignty.

To put words into practice the AU has established a mechanism for preventing and managing conflict. Article 2 of the Peace and Security (PSC) protocol defines the main mechanism of the African peace and security architecture (APSA) which includes the African standby Force (ASF), Panel of Wise (POW), Peace Fund (PF) and a continental early warning system (CEWS) which recognizes the role of regional economic communities and regional mechanism in promoting peace and security in Africa. Through that mechanism, the AU provides direct inputs for sub regional organisations in participating to peace and security. The interesting point echoing the R2P at the AU level is that the consensus is found around the principle to intervene [militarily"> in a state. Unlike at the international level with the UN, 'AU Constitutive Act and the Protocol to the PSC broke a new legal ground under international law. They are the first legal instruments to codify the right of an intergovernmental organisation to intervene for preventing or stopping the perpetration of such serious international crimes…'

LIMITATIONS OF THE AU

The articulation of the principle of R2P and its endorsement by the international community offers potential to protect civilians from crimes against humanity, ethnic cleansing, genocide and war crimes. In Africa violations continue to occur despite the legal peace and security architecture to deliver on the principle. Ongoing conflicts and commission of atrocities across the continent from South Sudan to CAR are a test of whether leaders in regional and sub-regional bodies have the political will to deliver on the mechanisms and standards embodying R2P which they have put in place.

Libya is considered as the first application of the principle on the African continent, but the organisation has failed to accomplish its responsibility to protect. Reflecting back few years down the line after the Libyan crisis, AU could not intervene and was not strong enough to protect the civilians. As far as the AU is concerned for the Libyan crisis, they (AU Commission and the PSC) decided to adhere to a political solution to the Libyan Crisis which failed. Indeed the R2P principle is not limited to use of force. Diplomatic, humanitarian and other peaceful means should be given priority.

While looking at the intervention pattern of the AU, in Darfur for instance, it was probably too little too late. It is relevant to analyse the pattern of behaviour of the AU in cases of intervention as it will be important to see whether the AU is inconsistent in its interventions or are there some other political or logistical impediments to AU's methods of intervention. Amid political dialogue, the continent witnessed foreign powers intervention French intervention in Mali and now Central African Republic and NATO in Libya. These interventions although welcomed by the States, showed the lack of capacity of the AU to rapidly handle crisis. A full analysis of these interventions is not possible in this short reflection. But it is interesting then to notice that despite the legal framework provided for intervention the continent is still struggling to deliver.

As stated earlier, the AU has, for example, established the African Standby Force, an international, continental peacekeeping force including civilian and police components for deployment in times of crisis in Africa. The force will be comprised of five regional brigades established by Africa's regional economic communities. The operationalisation of the force is still facing huge financial and technical challenges from States even if it is acknowledged that this component of the APSA will help the organisation deliver its promise. There are several factors that suggest that Africa will continue to witness violent conflicts and political upheavals. Thus the need to operationalise the African force is more than urgent.

* There is a need to ensure more functional and effective cooperation and coordination with regional and sub-regional arrangements.

* Such cooperation and collaboration must be premised on a clear division of labour that recognises the relative advantages of each organisation.
* The fragile political situations in Somalia, Zimbabwe and Darfur in Sudan will continue to consume the AU's efforts.
* The AU's seeming inability to deal firmly with these situations reveal the organisation's lack of capacity to implement its commitments.
* The AU's responses to the crises in Zimbabwe, Somalia and Darfur show that the inclusion of R2P norms reflect more a sense of political necessity than a realistic assessment of its capacities to deliver on its responsibilities.
* It remains to be seen how the AU will apply the responsibility to protect norm when its peace and security architecture has achieved full capacity.