

Halting atrocities in Kenya

by Thomas G. Weiss



Daily life at the Abu Shouk camp for internally displaced people, in North Darfur, Sudan, June 2, 2005. Although the suffering in Darfur is one of the most publicized cases of ongoing genocide, efforts at international intervention have been limited. (AP PHOTO/RON HAVIV/VII)

Since 1943, when Polish Jewish lawyer Raphael Lemkin coined the word “genocide” (combining the Greek word for family, tribe or race with the Latin suffix for killing), governments and citizens have struggled with “never again.” The never again moments since World War II’s Holocaust include Cambodia, Rwanda and Srebrenica. Every time, collectively, the world asks in horror and shame how it could happen once again.

The familiar images of millions dead and displaced in Darfur, a region in Sudan, and the Democratic Republic of Congo (DRC), and the continued suffering and disintegration of Zimbabwe make skeptics doubt the utility of the “responsibility to protect,” commonly called “R2P.” This emerging norm appeals for international action when a state is manifestly unable or unwilling to protect its populations from, or actually is responsible for, “genocide, war crimes, ethnic cleansing and crimes against humanity.” The central challenge of putting “never” back into “never again” is the requirement to act sooner

rather than later, of anticipating the four mass-atrocity crimes.

Since 1994, there had been little evidence of either American or international learning about the need to nip atrocities in the bud. However, one notable case stands out, when collective efforts in early 2008 brought carnage and ethnic cleansing to a halt following the disputed Dec. 27, 2007, presidential elections in Kenya. When the country’s several dozen ethnic groups took to the streets after the presidential ballot, it seemed like the beginning of an inevitable downward spiral of yet another African state.

Yet Kenya, whose game parks, climate and relative economic development over the last several decades have attracted flocks of tourists and Western investors, just as they once attracted British colonists, was the focus of rapid and consolidated international action. Outside actors did not simply defer to the shibboleth of national sovereignty, but acted. Instead of letting Kenya continue to slide toward the precipice of disaster, crucial members of the international commu-

Rapid international intervention kept Kenya from disaster. Was Kenya unique or a model for future action?

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nity—in this case, African neighbors, the African Union (AU*) and former United Nations secretary-general Kofi Annan as mediator, backed by the U.S., the UN and the European Union (EU*)—as well as Kenyan and international civil society, acted rapidly and in unison. The worst was avoided and breathing space created.

R2P and the prevention imperative

With the possible exception of the codification of genocide after World War II, no idea has moved faster or farther in the international normative arena than the responsibility to protect, the title of the 2001 report from the International

Commission on Intervention and State Sovereignty (ICISS). (In the interest of full disclosure, the author was its research director and also directs the Ralph Bunche Institute that houses the secretariat for the Global Centre for the Responsibility to Protect.) The ICISS developed a three-part framework: the responsibility to prevent; the responsibility to react in the eye of a mass atrocity storm; and the responsibility to rebuild after such crises occur. Thus, the international deployment of armed forces is neither the first nor the last step. The full R2P spectrum dispels the frequently held view that only military intervention matters.

While military force for human

protection purposes may be more acceptable than in the past, it is far from palatable and certainly not the first policy option. Given the costs (both political and actual) and limited military capacities worldwide (especially with the U.S. otherwise occupied in Iraq and Afghanistan), the actual deployment of military force to protect human beings is relatively rare.

Moreover, instead of providing a license to do anything to citizens within its borders—the sacrosanct notion of noninterference in the domestic affairs of other countries—R2P redefines sovereignty as contingent upon a basic respect for human rights. R2P also specifies that if a state is manifestly unwilling or unable to honor its responsibilities, or itself is the perpetrator of crimes, then the residual responsibility to protect the victims of mass atrocities shifts to the international community of states, ideally acting through the UN Security Council. In short, the responsibility to protect encapsulates the international agreement that mass atrocities are abhorrent. Preventing them through diplomatic, economic and legal measures is of the essence. But if such actions fail, there is an international responsibility to halt mass atrocities with military force, if necessary, and to help rebuild a society after an intervention.

The ICISS, the UN World Summit of 2005 (which endorsed the responsibility to protect principle) and UN secretaries-general Kofi Annan and Ban Ki-moon have all emphasized prevention. The commonsensical notion of moving quickly to forestall disasters, however, is more problematic than it seems at first glance. Rushing to the rescue after unexpected natural disasters like Hurricane Katrina or the 2008 earthquake in China is laudable, whereas devoting huge resources to relief after a human-made disaster rather than moving earlier to stop it makes no moral or economic sense. However, when national interests are absent, it appears less politically risky than getting involved. How else to explain the huge humanitarian resources that were mobilized for Rwanda im-



*For definition, see glossary on p. 103

mediately by the same governments that had refused to intervene militarily only a few weeks earlier? International assistance amounted to \$1.4 billion in the last six months of 1994, whereas the potentially less costly option of sending troops in April was dismissed in spite of the desperate pleas from UN force commander Roméo Dallaire, whose 500 ill-equipped UN soldiers were powerless.

Getting the concept right

If ridding the world of mass atrocities is to become feasible, the concept of the responsibility to protect needs to be understood neither too narrowly nor too broadly. It is not only about the use of military force. And it is also not about the protection of everyone from everything. Action is required long before the only option remaining is the U.S. Army's 82nd Airborne Division. And it may be emotionally tempting to say people should be protected from HIV/AIDS and the Inuit saved from global warming, but if R2P means everything, it means nothing.

R2P is above all about taking timely preventive action, about identifying situations that are capable of deteriorating into mass atrocities and bring-

ing to bear diplomatic, legal, economic and military pressure. There are three main types of cases where the responsibility to protect could be applicable. First, there are countries where mass atrocities actually are occurring, and it is necessary to prevent them from getting worse. Sudan comes immediately to mind because virtually no one except partisans of President Omar Hassan al-Bashir, currently dodging an International Criminal Court (ICC*) warrant, would deny that governmental crimes have been anything but routine in Darfur since 2003. Similarly, the DRC has been the scene of over 5 million war-related deaths in this century, surely qualifying as both "mass" and "atrocities." Then, there are countries in which indicators overwhelmingly suggest that the preconditions for mass atrocities are present and also getting worse; Zimbabwe is an example. After having led the fight against white-minority rule, Robert Mugabe has virtually destroyed his country's economy by creating some 3.5 million refugees and 1 million IDPs (internally displaced persons), and has stolen at least one election. Finally, there exist countries of concern where indicators are unsettling and mass atrocities have begun but are manageable; Kenya's

election-related violence early in 2008 comes to mind.

While robust action clearly is morally compelling in the case of Darfur and the DRC, they also are the most difficult. They occur in massive territories; action would involve mobilizing substantial political will and resources, both financial and military, which are always in short supply. In terms of cumulative death, destruction and displacement, Zimbabwe seems comparable, especially because many observers would argue that drawing the lines between the first and the second category is so subjective as to be meaningless. These cases have all been on the international agenda for years, and the barriers to entry and political inertia are very high.

Kenya in 2007–2008 illustrates the logic of R2P "proximate prevention." It was less compelling in terms of death levels and forced displacement but compelling enough by conjuring up the fear of another Rwanda while early international action still appeared feasible. This is the type of case in which R2P prevention efforts could succeed, for which political will could be mobilized, and in which relatively modest resources could be invested with a substantial potential payoff. ●

Kenya: pressures for proximate prevention

Following flawed presidential elections in late 2007, international efforts were catalyzed by the compunction to avoid another Rwanda. And they resulted in a cease-fire, buying time to address what caused the violent eruption in the first place.

Elections and violence

"The scale and speed of the violence that engulfed Kenya following the controversial presidential election of Dec. 27, 2007, shocked Kenyans and the world at large," summarized Human Rights Watch. Senior UN official

and former Sudanese diplomat Francis Deng explains the volatile association of democracy and elections in diverse societies like Kenya's, "where people tend to vote on the basis of their politicized ethnic or religious identity... [and] where access to power means access to resources and services, the stakes become very high and elections highly charged."

Two dozen ethnic groups compose Kenya's population of almost 40 million in a country with an area roughly 85% the size of Texas or France. The largest group are the Kikuyu with about

22% of the population, followed by the Luo with 13% and the Kalenjin with 12%. Jomo Kenyatta, the father of the nation, who became Kenya's first president after the country achieved independence in 1963, was a Kikuyu who favored his own tribe, including arranging for family and allies to make extensive land purchases in the fertile Rift Valley. The second president, Daniel arap Moi, was a Kalenjin who followed in his predecessor's footsteps, favoring his own people in the army, police and civil service. Accordingly, other ethnic and tribal groups were

angry and resentful at the perceived discrimination in land and economic opportunities.

Mwai Kibaki, a Kikuyu, was elected president in 2002, ending Moi's 24-year rule. However, this only consolidated long-standing bitterness among other groups, due to their nepotistic exclusion from the distribution of benefits. The leading Luo political family, the Odingas, mobilized this resentment based on the fact that Luo possession of land lagged far behind that of the other two main groups. Raila Odinga had been an ally of Kibaki in the 2002 Kenya elections and had held a ministerial position, but the two men went their separate ways in 2005 (just as Odinga Odinga, Raila's father, had first served as Kenyatta's vice-president before he resigned in 1966 and entered the opposition). Once out of government, Raila Odinga attracted supporters from a wide swath of Kenyan society who were tired of Kikuyu domination and cronyism and fed up with growing poverty, slums and dwindling agricultural land. As the leader of the Orange Democratic Movement (ODM), Odinga challenged the incumbent Kibaki and his party of National Unity (PNU) in the 2007 elections.

There was little in the lead up to

the election that prepared Kenyans and the world for the stunning speed with which violence erupted after the official announcement of results. Odinga was leading by some 1.2 million votes when suddenly the government-appointed Electoral Commission of Kenya (ECK) declared the incumbent Kibaki the winner. Salim Lone, an adviser to Odinga and a former UN press official, did not put too fine a point on it: "The robbery was blatant." The rigging was clear because the opposition ODM won 99 seats in Parliament to the 43 won by the PNU, and votes traditionally replicated national results. The EU, along with international and domestic observers, denounced the tampering.

Within minutes, Kenyans in large numbers took to the streets. The Luo raged in the west, attacking properties belonging to the Kikuyu. The Kalenjin in the central highlands, long irritated with the Kikuyu takeover of fertile lands, attacked their properties. The Kikuyu response, when it came, was equally brutal, especially given the group's dominant position in both the police and the army. Human Rights Watch documented the excessive use of force by public authorities, who "had little will or capacity to prevent violence."

While popular travel magazines may have featured Kenya as a "model" of stability on a troubled continent, Human Rights Watch noted that this reputation "took little account of Kenya's recent history." Previous multiparty elections (in 1992, 1997 and 2002) were marred by violence, but none was comparable to the late December 2007 elections that resulted in an estimated 1,300 dead and over 600,000 displaced. In their day-by-day chronology, Elisabeth Lindenmayer, director of UN studies at Columbia's SIPA, and Josie Lianna Kaye, assistant director of the Center for International Conflict Resolution, point out the incorrect initial perception that victims were mainly among the president's own Kikuyu ethnic group in the Rift Valley. In reality, "victims came from at least four other ethnic groups." Ethnic cleansing is an unsettling if legally imprecise term coined in the 1990s for forced flight in the Balkans and specifically identified by the World Summit as an R2P trigger. The Kenyan government resists the label in relation to the 2008 postelection violence, but commonsense would lead to such a label as the Luo were chased westward from the Rift Valley while the Kikuyu fled from the West. Industrial production in many places halted.



Kenyans line up to vote outside a polling station in Bissel, southwest of Nairobi, Dec. 27, 2007, during the Kenyan presidential election.

The response of the international community was rapid. Initial visits by Archbishop Desmond Tutu, four former African heads of state and U.S. Assistant Secretary of State for African Affairs Jendayi Frazer were unsuccessful in attenuating the violence. However, on January 8–10, 2008, Ghana's president and AU chair John Kufuor asked former UN Secretary General Kofi Annan to mediate as part of a small team consisting of former Tanzanian President Benjamin Mkapa and Graça Machel, the former first lady of Mozambique and now wife of former South African President Nelson Mandela. While Kibaki and the PNU first refused any internationalization of talks, the government eventually was unable to resist them.

The day he was to leave for Nairobi, Kenya, Annan had to be rushed to the hospital, but the week's delay permitted him from his hospital bed to make key telephone calls and insist on a consolidated international effort. He emerged as *primus inter pares*, not only on the AU panel but more generally. "We have to make sure there's one mediation process," Annan recalled. "Otherwise you have the protagonists trying to bottom shop, looking elsewhere if they don't like what you're offering."



Former UN chief Kofi Annan speaks to journalists, Oct. 7, 2009, in Nairobi, after meeting Kenyan President Mwai Kibaki and Prime Minister Raila Odinga to discuss the progress the Kenyan coalition government is making in implementing the reform agenda agreed in the peace deal signed in February 2008. (AP PHOTO/SAYYID AZIM)

The U.S. and the EU, with various carrots and sticks, got on board. Annan's former employer discretely provided substantive staff support and retreated into the background because Odinga so clearly favored the UN as a mediator. Kibaki, meanwhile, leaned in Washington's direction because he had ensured Kenya's market economy and had been a solid partner in the war on terror since

the bombings of the U.S. embassies in Nairobi and Dar es Salaam, Tanzania, in 1998.

The three-member Panel of Eminent African Personalities arrived in Kenya on January 22, 2008. The first week was devoted to consultations with various national and outside stakeholders, including a first ice-breaking handshake between Kibaki and Odinga. The



Protests erupted after the official announcement of results and escalated into a targeted ethnic violence. (AP PHOTO/KAREL PRINSLOO)



The normally bustling streets of Kangemi, an ethnically mixed district in Nairobi, Kenya, were mostly empty on Jan. 2, 2008. Targeted ethnic violence escalated and at first was directed mainly against Kikuyu people—the community of which Kibaki is a member—living outside their traditional settlement areas, especially in the Rift Valley Province. This violence peaked with the killing of over 30 unarmed civilians in a church near Eldoret on New Year’s Day. (SHASHANK BENGALI/MCT /LANDOV)

panel drew on expertise from a number of sources, especially the UN and the Geneva-based Centre for Humanitarian Dialogue. They also decided to adopt a transparent communications strategy with the publication of press communiqués and other postings on www.dialoguekenya.org. Mkapa facilitated local involvement through Swahili translations during press conferences.

On January 29, both sides agreed on an agenda with a timetable for implementation, the “Road Map.” As explained by Lindenmayer and Kaye, the first three agenda items were to be agreed within four weeks: “immediate action to stop the violence and restore fundamental rights and liberties; immediate measures to address the humanitarian crisis, promote reconciliation, healing and restoration” of calm; and strategies “to overcome the political crisis.” The fourth agenda item addressed structural issues and had a longer horizon, within a year. The first two agenda items clearly were linked to the R2P preoccupation with mass atrocities, and the latter two were seen as a way to quell the chaos that resulted in attacking other ethnic groups.

The 41-day mediation marathon

Nonstop negotiations continued for 41 days in a highly guarded basement room in Nairobi’s Serena Hotel. The first handshake on January 24 was the occasion to stake out mutually exclusive and supposedly nonnegotiable stances—Kibaki’s underlined the legitimacy of his office, stating publicly that he was the “duly-elected president” and preferring that the conflict be handled internally, while Odinga insisted on new elections and dismissed any possibility of a government of national unity. Despite these disagreements, by February 4, the two parties had issued various statements to halt the violence and address key humanitarian issues, including a commitment to help IDP’s return to their homes or a safe place.

Movement on the third agenda item, overcoming the political crisis, was more problematic. Even the title involved Annan ruling in favor of “Kenya National Dialogue and Reconciliation.” From the outset, Kibaki resisted any labeling of “international mediation” and emphasized “national dialogue,” while Odinga kept pointing to the abuse of

power and stolen elections that could never be remedied by relying upon the government. Ever the pragmatist, Annan downplayed the label and opted in favor of Kibaki’s packaging. Why pick nits when international mediation already was taking place?

The third agenda item had past and future components. On February 11, the parties agreed to an independent body to investigate the disputed December elections, which implied that a political settlement would also influence other reforms. On the same day, a two-day retreat was announced, first preceded by an informal meeting with parliamentarians, during which Annan sneaked in the notion of a “coalition.”

Removing belligerents from customary surroundings is a typical maneuver (for example, to Camp David, the U.S. President’s country retreat in Maryland). Despite two days in shirt sleeves instead of suits at the Kilaguni Lodge in the middle of the Tsavo West National Park, a deal remained elusive. One key element was in place, however, when the two sides agreed to quit revisiting the 2007 election results. UN experts were relieved after discussing the modalities of options. As Lindenmayer and Kaye summarize: “a recount would require opening all 27,500 ballot boxes, a phenomenal task that would not give any results fast and could not be guaranteed to be any fairer than the elections themselves; a rerun implied that the former election was flawed and would therefore be divisive and politically dangerous, and new elections could take a year and so did not offer a solution to the current crisis.”

However, the principals were still at loggerheads over a future governing structure. At a press conference after the retreat, Annan mentioned the option of forming a new government. Taking liberty with the truth, he painted Kibaki and the PNU into a corner. They could no longer pretend that compromise was unthinkable. Originally, power sharing was off the table because PNU negotiators refused to budge from their stated position that the Kenyan constitution required the president to be both head of government and head of state. Mean-

while, the ODM proposed changing the constitution to create the post of a prime minister with executive powers. Advice came from Annan's former UN legal adviser, Hans Corell, who sought a technical legal solution to a profoundly political problem: the creation of a new post raised political problems for Kibaki, but an informal position of prime minister without power was meaningless for Odinga. Accordingly, both sides returned with provisions for the appointment of a prime minister and two deputies, including specifics for forming and dissolving any coalition. In another twist of wording, Annan sought to avoid changes in the constitution but to pursue "constitutional" changes. Yet differences among negotiators remained even after Annan came up with a formula that the prime minister would have "substantial powers and special responsibility delegated from the powers of the president."

As a well-timed reminder of international pressure, in mid-February, President Bush, on a planned five-nation tour of Africa, did not stop in Kenya but sent

Secretary of State Condoleezza Rice to Nairobi, wielding both sticks and carrots in support of the Annan mediation. She made clear that power sharing was necessary and that the U.S. would not return to its usual warm relations with Kenya until the crisis was over.

With time in short supply, on February 26, the panel suspended talks so Annan could directly confront Kibaki and Odinga. In addition to the two principals and fellow panel member Mkapa, Annan also asked the new AU chair (elected on January 31), Tanzanian President Jakaya Kikwete, to join what turned out to be the final push. The former and the current presidents of neighboring Tanzania spoke with unusual authority when arguing for a president with a strong prime minister (Tanzania's had more power than the proposed Kenyan one).

Finally, after five hours of knocking heads on February 28, Kibaki and Odinga initialed "Acting Together for Kenya," the principles for Kenya's first coalition government. Lawyers for both sides agreed the only consti-

tutional change would be the creation of the post of prime minister that could not be withdrawn by the president. A text that had been wrangled about for weeks was now completed. On the basis of creating a post of prime minister for Odinga with deputies from each party, Parliament passed on March 18 the National Accord and Reconciliation Act. In addition to giving some executive authority to the prime minister, he and the two deputies received a large measure of protection from arbitrary dismissal. On April 17, Prime Minister Odinga and other members of the cabinet were sworn in.

How important was the responsibility to protect to Annan who, in his words, was "a prisoner of peace" between his arrival in late January and his departure early in March? He mentioned in an early interview with the Centre for Humanitarian Dialogues that "the Rwandan and Yugoslavian stories came to my mind." A few months later, *New York Times* columnist Roger Cohen probed Annan about his motivation, and he replied: "We can't let this



Kenya's President Mwai Kibaki (second from right), accompanied by new Prime Minister Raila Odinga (far right), former President Daniel Arap Moi, Vice President Kalonzo Musyoka and former UN Secretary General Kofi Annan (far left), arrives for the swearing-in ceremony of a 41-member power-sharing cabinet at the State House in Nairobi, April 17, 2008. Kenya began swearing in its largest and costliest-ever cabinet, a power-sharing coalition created to soothe the fury over a disputed election that plunged the country into a bloody crisis. (REUTERS/PRESIDENTIAL PRESS SERVICE /LANDOV)

happen to Kenya! We'd seen a lot of destruction in the region—Rwanda, Somalia, Sudan, Darfur—and Kenya had been the safe haven for refugees. And suddenly Kenya itself was going! I think we've learned that when you have ethnic violence, if you don't mediate quickly, you get a hopeless situation."

The R2P framing was implicit rather than explicit. Some staff on the mediation team said that a more public airing might have let Kenyans off the hook by thinking that outside help was on the way—moral hazard is always lurking. The best way to think about the contribution of R2P to the mediation is as background music that contributed a sense of urgency, motivating Africans, the U.S. and the EU to enter the fray with seriousness and due speed. Resources were contingent upon cooperation.

A concept need not be in the neon lights of a UN Security Council resolution to be influential. The values behind the responsibility to protect, especially the prevention of mass atrocities, were highlighted on the agenda. Given the controversy, it was probably best not to emphasize R2P, even if the fear of a Rwanda-like catastrophe clearly motivated both Kenyans and non-Kenyans alike. "It's worth noting that the Responsibility to Protect was explicitly not part of the debate in the Council," U.S. Ambassador to the UN Susan Rice tells us. "Colleagues who handled this issue in 2008 tell me that it was difficult even to build support for a Council vote of confidence in Annan's mission. Raising the R2P flag may be morally satisfying, but it can be politically fraught."

Problematic postmediation progress

What has happened in the first year and a half after the mediation? It would be hard to disagree with the overview from the Kofi Annan Foundation that "implementation had been slow or insufficient," or a first-hand report in a fall issue of *America* entitled "Corruption and Inaction Leave Kenya on the Brink." To repeat, the R2P reaction in

2008 prevented civil war and bought time, but it did not guarantee that the belligerents would come to their senses and work toward eliminating the root causes of the violence.

It is useful to review progress on the first three agenda items agreed on February 28 before examining the fourth. Halting violence and restoring rights and liberties was the first; the initial success in halting carnage has been followed by uneven governmental efforts to reduce violence. "Fundamental freedoms and liberties are increasingly being constrained," summarized an independent Kenyan think tank, South Consulting, hired to do an overview in 2009. Inadequate protection for witnesses is an especial concern. The second agenda item was the continuing humanitarian crisis. Reconciliation has proven problematic given that large numbers of IDPs have not returned home, thereby leaving a tinderbox that could burst into flame again. The third agenda item, overcoming the political crisis, remains a large question mark. The coalition government limps along with the rules of power sharing vague and cohesion lacking, symbolized by a regime that has some 60 ministers and junior ministers.

Following the power-sharing agreement, the AU panel appointed former Nigerian Foreign Minister Oluyemi Adeniji to begin work on the fourth agenda item. Barely a week later, the negotiators signed four documents, formally establishing the Independent Review Commission (IREC) of the 2007 elections, the Commission of Inquiry into Post-Election Violence (CIPEV), the Truth, Justice and Reconciliation Commission (TJRC) and a roadmap for a comprehensive review of the constitution. Since the passage of two critical laws—the Constitution of Kenya Amendment Act 2008 and the Constitution of Kenyan Review Act 2008—foot-dragging has become routine.

The results of the four agreements are telling. The seven-member IREC, composed of four Kenyans and three international experts, submitted its

report to Kibaki and Odinga in mid-September 2008. The report concluded that the 2007 elections were fundamentally flawed; but few reforms have followed. Meanwhile, the CIPEV found that the root causes of the violence included the growing and personalized power of the presidency along with inequities in land distribution. It recommended the creation of a special tribunal in Kenya "to prosecute crimes committed as a result of post-election violence," in order to "break the cycle of impunity." In February 2009, Parliament defeated a bill that would have created such a tribunal. Kenya's leaders are tied in knots due to their own competing agendas and the uncomfortable prospects of prosecuting their own. The CIPEV identified persons, presumably including some of Kenya's most powerful politicians, and placed their names in a brown sealed envelope that was later given to Annan, who promised to submit the names to the ICC should the country fail to prosecute them. In July 2009, he made good on that threat, and the ICC has now indicated that it will step in if the government fails to act. Meanwhile, the TJRC also has made little progress to date.

Separating the longer- from the shorter-term issues was key to early successful activities to protect and succor civilians. Saving lives took precedence, but with almost 60% of the population living in poverty, according to a UN Development Program survey, the powder keg that was, remains. Without addressing the fundamental problems of justice and development behind Odinga's campaign, armed groups undoubtedly could regroup with relative ease. The two principals, Mwai Kibaki and Raila Odinga, will have to provide leadership and direction, as South Consulting warns, "if the country is to avoid another wave of political violence." The sense of urgency that motivated the parties and their African and international partners in 2008 must resurface soon or the 2012 elections will be even bloodier than the last ones. ●

Too little, too late

The UN Security Council's dithering since early 2003 in spite of massive murder and displacement in Darfur resembles its inability to address the woes of the DRC. Along with insincere mediation in Zimbabwe, the dramatic disparity between lofty multilateral rhetoric and the collective lack of international will to prevent mass atrocities becomes clear. These three cases—each of too little outside attention too late—contrast sharply with Kenya. While no two cases are ever completely comparable, what clearly emerges is the value of early international action.

Darfur

Although conflict has been long-standing between nomadic herders and pastoralists, the current crisis in Darfur dates from early 2003, when rebels from the Sudan Liberation Movement/Army (SLM/A) and Justice and Equality Movement (JEM) began attacking government posts in western Sudan. Accusing the Arab-dominated government in Khartoum of neglecting the Darfur region and of oppressing non-Arabs, rebel groups sought to exploit the army's overstretch in southern Sudan, the site of a 30-year conflict between its mostly Christian and animist populations, and Muslims in the north.

In response, the government of Sudan armed and supplied the *Janjaweed*—militiamen from primarily nomadic black Arab tribes—to attack Darfur's sedentary ethnic groups. The gruesome numbers are disputed, but estimates are as high as 400,000 deaths and 2.7 million displaced. *New York Times* columnist Nicholas Kristof's one-man campaign to focus attention on the crisis laments that "the publishing industry manages to respond more quickly to genocide than the UN and world leaders do." In July 2004, the U.S. Congress condemned Darfur unanimously, voting 422-0 in the House of Representatives, with the

Senate concurring, that Khartoum was committing "genocide." Meanwhile, Secretary of State Colin Powell used the term in Senate testimony in September of that year.

Dallaire, the Canadian general in charge of inadequate UN forces during Rwanda's 1994 slaughter, comments: "Having called what is happening in Darfur genocide and having vowed to stop it, it is time for the West to keep its word." In July 2004, the AU deployed 60 observers with a force of 300 troops to Darfur as the African Union Mission in Sudan (AMIS); and the following month, it launched negotiations in Abuja, Nigeria, for inter-Sudanese peace talks. While the AU tried to spearhead international political efforts and Khartoum opposed any UN involvement, the Security Council did refer Darfur to the ICC in March 2005 and established the UN Mission in the Sudan (UNMIS). This operation's task was to reinforce AMIS and implement the 2005 Comprehensive Peace Agreement (intended to end the even more deadly conflict in southern Sudan). The reluctance to endanger that tenuous peace agree-

ment helps explain the hesitancy by many to press Khartoum over Darfur.

In December 2007, a hybrid UN and AU Mission in Darfur (UNAMID) officially took over from AMIS. Meanwhile, Qatar, the UN, the AU and the Arab League sponsored talks in Doha in February 2009. The Sudanese government and JEM signed an initial peace agreement, laying the framework for a potential, broader long-term solution. However, the so-called Doha peace process has since stalled.

The lack of robust international military efforts has been matched on the legal front; indeed, ICC involvement in Darfur seemingly has created more problems than it has solved. Halfhearted "intervention," be it military or legal, strengthens the hand of culprits. After issuing an indictment in 2008 without any way to ensure compliance, the ICC then issued an arrest warrant for President al-Bashir in March 2009 on charges of war crimes and crimes against humanity. Whether or not criticism of the theatrical nature of Chief Prosecutor Luis Moreno-Ocampo or of the ICC's focus on Africa is justi-



Sudanese displaced women carry firewood at Abu Shouk camp, in north Darfur, Sudan, where more than 40,000 displaced people receive food and shelter from international aid agencies, Aug. 30, 2004. Attacks on civilians were a daily occurrence and women were raped by militiamen as they left camps to collect firewood. (AP PHOTO/AMR NABIL)



A young Tutsi refugee gazes upon the Tutsi camp of Nyarushishi, Rwanda, Aug. 25, 1994. Some 12,000 Tutsis who lived in the camp said they would eventually go back to the Rwandan capital, Kigali, but for now preferred the safety of the Red Cross camp of Nyarushishi. Up to 500,000 Tutsis were massacred by mainly Hutu soldiers and supporters of Rwanda's former government. (AP PHOTO/JEAN-MARCH BOUJU)

fied, the counterproductive nature of ICC action was clear. Many observers called on the Security Council to exercise its right to defer prosecution for a year in order to facilitate the peace process in Darfur and keep intact the tenuous agreements in the South. As a result, the spoilers' hand was strengthened. The Non-Aligned Movement,* the Group of 77* and regional groups of the global South backed al-Bashir, who in turn felt empowered and responded by expelling 13 foreign and 3 domestic nongovernmental organizations (NGOs) who were working to assist the people of Darfur. His actions could qualify as yet another crime against humanity.

By the end of 2009—some two and a half years after its authorization—hopefully UNAMID will be 75% operational. But even then, it will be overwhelmed and unable to react to atrocities. Moreover, implementing the responsibility to protect would dictate overriding sovereignty, rather than waiting for an invitation from those in Khartoum responsible for atrocities. Unlike peace operations elsewhere—and also in contrast to Kenya where a reluctant government was dragged along—in Darfur, as *Global Peace Operations 2009* reports, the international force “faces willful opposition

from a virulently anti-UNAMID Sudanese government that banks on other states' reluctance to challenge its sovereignty.”

Public attention by such groups as the Save Darfur Coalition has improved somewhat the situation of displaced persons from the height of violence in 2003-2005, but international action has been too little and too late. If past is prelude, Darfur's suffering will continue.

Democratic Republic of Congo

Hostilities in the DRC since 1998 have been referred to interchangeably as the “Second Congo War,” “Africa's World War” and the “Great War of Africa.” They officially ended in 2003 following a regionally brokered peace agreement in December 2002, which established a transitional government and led to elections in 2006. But fighting—most notably in the eastern provinces of North and South Kivu—continues to claim countless lives amidst atrocities. As reported by the International Rescue Committee (IRC), almost 5.5 million people have died since 1998, with similar numbers displaced. The IRC's 2007 mortality survey awarded the DRC the dubious honor of being the world's most lethal armed conflict

since World War II. The vast majority of deaths have resulted from non-violent, easily treatable causes such as malaria, diarrhea, pneumonia and malnutrition. An estimated 45,000 people continue to die every month, and the UN describes the frequency and intensity of rape as worse than anywhere else in the world.

The UN's peacekeeping efforts in the DRC are its largest ever, but they appear feeble in comparison with the magnitude of the suffering. In November 1999, the UN authorized the UN Organization Mission in the Democratic Republic of Congo (MONUC) to help monitor and implement the Lusaka Ceasefire Agreement, which had been signed a few months earlier by the heads of state of Angola, the DRC, Namibia, Rwanda, Uganda, Zambia (as witness) and Zimbabwe. With a monitoring and humanitarian assistance mandate, MONUC's strength has increased with additional soldiers and police. In 2009, there were more than 18,000 uniformed personnel, still ludicrously inadequate for such a vast territory.

October 2006 elections replaced the transitional government in December with one led by Joseph Kabila, but state fragility made the DRC fertile ground for further conflict fueled and funded by neighbors. Since November 2007, when the governments of the DRC and Rwanda agreed to refrain from arming belligerents, MONUC has shifted to providing operational support to DRC government forces to perform disarmament, demobilization and reintegration (DDR). However, such efforts have failed with “serious consequences for MONUC's public image.” UN peacekeepers were allegedly involved in “sexual exploitation, the smuggling of gold and fraternizing with rebel groups.” The allegations were an ugly reminder of the scandal of 2004 when peacekeepers and civilian personnel were found to have been involved in rape, prostitution and pedophilia.

The inability of MONUC to protect civilians has been an ongoing criticism of the mission, while the presence of numerous rebel groups, some of who

are alleged to have participated in Rwanda's genocide, further complicates the situation on the ground. As voiced by many others, this may be a case of too little resources for too vast a conflict. *Global Peace Operations 2009* reports that UN performance has "exposed the disconnect between MONUC's mandate and its capabilities" and threatened to undermine UN peacekeeping "as an effective conflict management instrument." Going further, the report has characterized the military effort there as "feckless," with only 17,000 poorly equipped troops "stretched over a territory four times the size of France," ignominiously offering "the specter of a replay of the combined failures in Srebrenica and Rwanda.

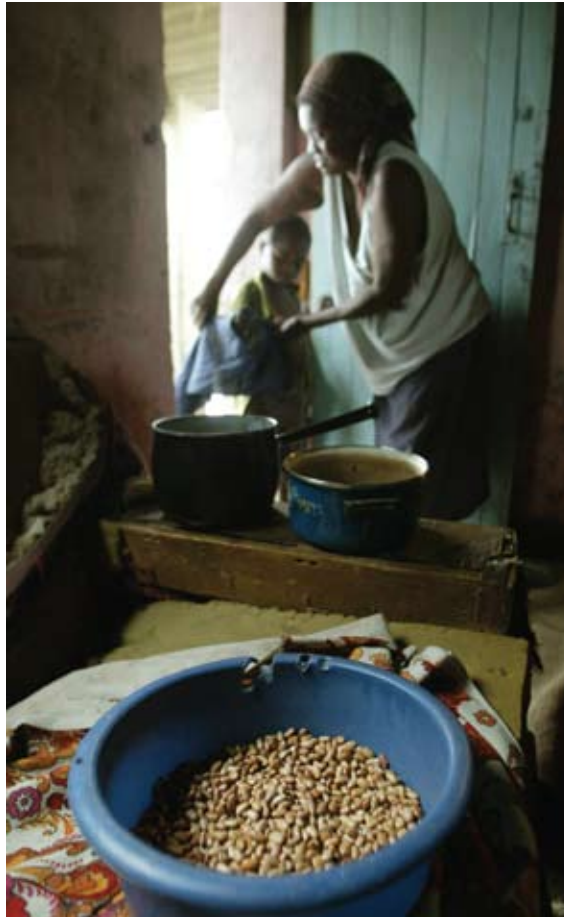
The numbers alone might not qualify this case as requiring robust R2P attention, but the existence of rape and other mass atrocities along with the targeting of civilians probably would. Moreover, the underlying dynamics—the culture of impunity, hate speech, ethnic conflict, enormous economic disparities and a long history of ugly atrocities—provide warning signs as the crimes of the past inform the risk levels for future atrocities. Yet the size of the outside intervention that would be required is so large, and the amount of political will needed is so great, that the application of R2P is even less likely in 2010 than a decade ago.

Zimbabwe

The head of government since 1980, Robert Mugabe's image as a valiant guerrilla hero has been replaced by one of a tyrant refusing to abdicate his throne. He has unleashed violence against political opponents and implemented policies designed to consolidate his personal position, leading to the country's precipitous economic decline since 1998.

In 2000, Mugabe began a fast-track land reform and resettlement program to redistribute white-owned farms, most-

ly to his own supporters and cronies. Frenzied and chaotic implementation led to a sharp decline in Zimbabwe's agricultural exports and hard-currency reserves, which has continued unabated since. Mugabe's decision to print hundreds of trillions of Zimbabwean dollars led to hyperinflation and chronic oil and food shortages. Furthermore, in 2005, the government launched Opera-



Faustine Janjira, right, with her son Ricardo at their home in Highfields, a high density suburb in Harare, Oct. 17, 2006. Janjira lives with her sisters who have 10 children and struggles to feed the big family as only one member of the family works. Mugabe's violence directed against political opponents and his policies designed to consolidate his personal position have led to the country's precipitous economic decline since 1998. (AP PHOTO/TSVANGIRAYI MUKWAZHI)

tion Murambatsvina, an urban demolitions campaign that forcibly displaced hundreds of thousands of people, virtually all supporters of the opposition. Some 3.4 million people fled abroad, and 1 million are internally displaced.

Whereas inadequate regional and UN peacekeeping forces were deployed in Darfur and the DRC, inter-

national efforts to resolve the crisis in Zimbabwe have consisted largely of ineffective sanctions and diplomacy. In 2002, the Commonwealth suspended Zimbabwe over human rights abuses and its conduct in the 2002 elections, while the EU also imposed targeted sanctions in response to the elections (the U.S. followed suit in 2003). The International Monetary Fund* formally suspended financial and technical assistance in 2002. The fact that these efforts were led by the former colonial master—Britain and the Commonwealth—and by other Western powers made the rhetoric of "imperialism" harder to dismiss in Africa than one might have expected in the face of massive human rights abuses and the bankruptcy of one of the continent's wealthiest countries.

This ineffective pattern of action was repeated in the aftermath of the disputed March 2008 presidential and parliamentary elections. The regime withheld the official election results for weeks, and Mugabe refused to concede defeat even after acknowledging that Morgan Tsvangirai's Movement for Democratic Change had gained a number of parliamentary seats. Attempts to impose targeted sanctions through the UN were vetoed by both China and Russia in July 2008. Mbeki did help broker a power-sharing deal that left Mugabe as president and eventually installed Tsvangirai as prime minister in February 2009, but numerous issues have arisen since. Meanwhile, the hardship caused by food and oil shortages, forced displacement and political violence has led to a continuing sharp decline in life expectancy

among Zimbabweans—in 2006 the World Health Organization ranked the country as among the world's worst, with a life expectancy of 34 years for females and 37 years for males.

If not the crisis in Zimbabwe, then what would qualify as an R2P self-induced atrocity? The Security Council has been less active in Zimbabwe than

in Darfur or the DRC. Given the nature of widespread and self-induced suffering, this record provides yet another illustration of insufficient political will to mitigate atrocities. Underlying this

reality are African diplomatic disarray and differences between the West and South Africa, resulting in a total absence of regional unity and international muscle. This case is a bench-

mark of sorts that suggests how difficult it is to move governments to act against the preferences of other states even when those choices involve mass atrocities.

Lessons learned or spurned?

The UN Security Council's inability to address the woes of Darfur and the DRC demonstrate the dramatic disconnect between lofty multilateral norms and the ugly political realities of trying to end mass atrocities. Half-hearted economic, military and legal sanctions have accomplished little. And the hands-off approach to Zimbabwe illustrates much the same, with a heavier dose of African diplomatic disarray. Are there any chances for effective international action in the face of conscience-shocking horrors? Some optimism should result because the responsibility to protect does not set the foreign policy bar impossibly high. Surely it is not quixotic to say no more Holocausts and Rwandas—and to mean it?

Hence, it is instructive to acknowledge the successful application in Kenya of R2P's prevention motivation and logic. Protecting people from further atrocities motivated the mediation and diplomatic pressures from every direction: ending violence and atrocities were priorities on the agenda. "The involvement of international actors... has been considerable," concluded Human Rights Watch, "a model of diplomatic action under the 'Responsibility to Protect' principles adopted by the UN." The collective efforts in Kenya are "a sign of how rapid response, with support from neighbors and the international community, can save lives and bring hope," Nobel laureate Tutu argued at the time. "In contrast to the crises in Rwanda in 1994 and Darfur in 2003, we see today in Kenya the formation of an international consensus that it is unacceptable to ignore violence of the kind that has occurred in recent months

or to consider the crisis as purely an internal matter of the state."

The normative and operational potential of R2P is substantial. What lessons from the 41 days in Kenya might be helpful for earlier and more decisive U.S. and international action in Africa and elsewhere?

Five lessons result for timely and concerted efforts to prevent mass atrocities because, in Annan's words, "effective external assistance proves that the responsibility to protect can work." First, while "never again" undoubtedly represents wishful thinking, another slogan that has more traction is "acting sooner rather than later." The successful outcome of the mediation in Kenya has hardly been a foregone conclusion; because it began almost immediately after the eruption of violence, there were a relatively limited number of accounts to be settled. Some 1,300 deaths and 600,000 IDPs is hardly trivial, but the numbers could have been far worse. This reality—especially when viewed in the historical light of Rwanda or the ongoing glare of Darfur, the DRC and Zimbabwe—motivated Kenyans and outsiders to act. The responsibility to protect is, of course, more than sheer numbers, but the fear of bigger ones and a destabilized country were important stimuli. Looking through R2P lenses added urgency.

Second, Kenyans desperately wanted the mediation to succeed. As Annan summarized, "Kenya was bleeding and the people wanted peace... The leaders found the courage... to seek a political settlement and stop the killing." Outside helping hands are far more likely to be effective when they are demand-driven

rather than imposed, and ultimately Kenyans embraced peace. The existence not only of *Wabenzi* (Swahili for Mercedes owners) but also a middle class, which had much to lose, and a strong civil society, which sought a peaceful solution, provided constituencies for the mediation. They also contribute to current support for the agreement and perhaps its sustainability. A powerful motivation for outsiders and Kenyans was wishing to avoid watching decades of investment and development assistance go up in smoke.

Third, diplomats and analysts often stress the value of regional partners rather than the universal UN. Kenya's neighbors pushed for a settlement; and the AU moved expeditiously to identify three well-respected mediators from the continent. "African solutions for African problems" is an oft-uttered mantra; but in this instance it was accurate. Taking the Kenyan case to the UN undoubtedly would have delayed action; a consensus Presidential Statement in February was the Security Council's only effort, which endorsed the AU process and the operational support that Annan's efforts received from the UN Secretariat. In New York, more vigorous action would have been resisted by the usual spoiler governments in the global South, who would have raised the specter of sacrosanct state sovereignty and noninterference in the domestic affairs of states, enshrined in UN Charter Article 2(7). And there would probably have been the usual pussyfooting from the North. But the AU has a crucial provision in its Constitutive Act, Article 4(h), that permits faster and, in theory, more intrusive ac-

tions because of “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances.”

Fourth, there are no panaceas for early intervention and prevention, and each response to a potential mass atrocity has to be tailored to the specifics of a case and a moment in time. Nonetheless, Kenya demonstrates that outsiders should mobilize behind a single voice and put their political, economic and diplomatic resources where their mouths are. In this case, mediation was facilitated not only by diplomatic pressure but also by menacing the suspension of military and development assistance and investment. Initially neither the PNU nor the ODM sought mediation, but coerced consent eventually worked. As Annan noted, “We recognized that strong and coordinated international support from the AU, the UN, the EU, the U.S. and others was needed right from the start.” Or as columnist Roger Cohen quipped: “Intervening in a country’s domestic affairs, in a world where the West seems in relative decline, is most acceptable when a regional organization takes the lead, the UN Security Council issues a supportive statement, and U.S. power is used not in the sledgehammer mode, but with some sensitivity and precision.”

Fifth, successful prevention is no excuse to rest on collective laurels. Annan correctly stated that the early efforts were an essential but totally insufficient first step because they “represented a ‘cease-fire’ allowing a restoration of calm for space to address the fundamental problems of Kenya.” It is urgent for Kenya and its partners, including the U.S., to pick up the pace so that the elections of 2012 are not a rerun of 2007. On the one hand, outside donors with carrots and sticks should congratulate themselves on effective action.

On the other hand, Human Rights Watch reminds Washington and other Western capitals that it is partly their fault as well. “Decades of turning a blind eye to corruption, impunity and mismanagement by Kenya’s governments has contributed to this crisis.” In order for the power-sharing agreement to work, long-standing human rights



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violations must be addressed. Some leverage results from the 3.75 billion Kenyan shillings (about \$50 million) pledged by Washington for the implementation of the power-sharing agreement and reconstruction, which was underlined by Secretary of State Hillary Clinton during her August 2009 visit to the region. And sanctions remain an option should local parties continue to resist meaningful change.

Kenya is at a crossroads. The first case of successful R2P prevention should not become the first case of such efforts to go awry, which is certainly possible unless local parties become more serious about reform. The post-conflict dimensions of R2P require, at a minimum, mitigating the causes for the original violence. To date, little evidence exists of such a commitment.

The responsibility to protect should not be merely Band-Aids, and parties have to engage rather than fall back into old routines. Patience may be a virtue, but so too is impatience in moving sooner rather than later to the longer and steeper road toward sustainable peace. While more outside help is required, ultimately Kenyans themselves have to make the provisional government work and address land reform, poverty, inequality and unemployment. The grand coalition—which some have labeled the “government of national impunity”—was cobbled together to tackle these issues but has not.

In November, as GREAT DECISIONS went to press, two events took place with significant implications for the

immediate term in Kenyan politics. First, ICC prosecutor Luis Moreno-Ocampo visited Kenya and announced that he would seek a formal investigation into crimes against humanity as spelled out in the court’s statute. The ICC is getting bad press in parts of Africa as a “white-man’s court” because most of its cases are African. But Kenyans appear to feel differently as their elected officials have stonewalled for 18 months and thwarted the establishment of a Kenyan tribunal to bring justice for the election violence. Second, a long-awaited review of the constitution recommended a substantial reduction in presidential powers and an increase in those of the prime minister. The suggestions stem from the original power-sharing agreement and are intended to remove some of the temptations of the “big man” syndrome in Kenyan politics. The implementation holds the potential for violence as does the prosecution of the suspects whose names currently are in front of the ICC in The Hague. But an even greater danger lies in doing nothing.

As is now well-known, U.S. President Barack Obama is a child from a marriage between his Kansas mother and his Luo father. A widely cited joke is that the U.S. is more likely to elect a Luo than Kenya. Perhaps, however, the East African country can adapt an Obama slogan: “Kenyans, yes you can.”



**OPINION BALLOTS
AFTER PAGE 16**

QUESTIONS

1. Intervention by the international community was effective in avoiding an escalation of violence in Kenya in the short term, but failed to produce a long-term solution that addresses the root sources of the problems in the country. Was international intervention a mere Band-Aid, stalling but not preventing a greater crisis? What are the prospects for a lasting peace in Kenya?
2. What role should the U.S. and the EU play in implementing and enforcing R2P? Should they provide military support and then take a backseat and allow regional leaders to come up with “African solutions for African problems?”
3. Who should evaluate the potential of a situation escalating to mass atrocities, whether or not the sovereign government is doing enough to prevent such mass atrocities? How should they decide?
4. How does the international community ensure that rapid, swift intervention does not turn into rash intervention?
5. Why was there such a rapid response to the violence following the 2007 Kenya elections and such a concerted effort to remedy the situation before the violence escalated? Why has there not been a similar effort in Sudan, the Democratic Republic of Congo or Zimbabwe?
6. Are moral obligations a strong enough motivator for Western powers to deploy troops to nations such as Sudan and

the DRC? How much do U.S. and Western interests rely on preventing mass atrocities in these countries?

7. To what extent should R2P be seen as a way to buy time, as opposed to a concerted effort to solve the root problems that lead to mass atrocities?
8. How can international intervention be prevented from being perceived as a continuation of Western imperialism? Is the ICC’s focus on Africa justified? What steps can be taken to ensure that international efforts are embraced instead of imposed?
9. The MONUC has allegedly been involved in sexual exploitation, smuggling, and fraternizing with rebel groups. What do such abuses mean for the UN peacekeeping process? What solutions can be offered when those sent to alleviate a problem exacerbate it?
10. What is the true value of R2P if once the time comes to implement the doctrine, the powers involved refuse to invoke its name explicitly?
11. The prosecution of perpetrators of mass atrocities in Kenya, Sudan and other countries has been delayed in order to safeguard peacekeeping efforts and tenuous agreements. Does preventing further violence take precedence over enacting justice? Is it effective in maintaining the peace? Does the failure to punish such offenders encourage a culture of impunity?

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