



# SAFEGUARDING CIVILIANS

DELIVERING ON THE RESPONSIBILITY  
TO PROTECT IN AFRICA

DAVID MEPHAM AND ALEXANDER RAMSBOTHAM

ippr

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# List of abbreviations

ACHPR	African Court on Human and Peoples' Rights
ACJ	African Union Court of Justice
AMIB	African Union Mission in Burundi
AMIS	African Union Mission in Sudan
AMISOM	African Union Mission in Somalia
APF	African Peace Facility
ASF	African Standby Force
AU	African Union
DPA	Darfur Peace Agreement
DRC	Democratic Republic of Congo
ECOMIL	Economic Community of West African States Mission in Liberia
ECOMOG	Economic Community of West African States Monitoring Group
ECOWAS	Economic Community of West African States
EU	European Union
ICC	International Criminal Court
ICID	International Commission of Inquiry on Darfur
ICISS	International Commission on Intervention and State Sovereignty
ICTR	International Criminal Tribunal for Rwanda
IDP	Internally Displaced Persons
IGAD	Inter-Governmental Authority on Development
JEM	Justice and Equality Movement
LRA	Lord's Resistance Army (Uganda)
MONUC	UN Mission in the Democratic Republic of Congo
NATO	North Atlantic Treaty Organisation
NCP	National Congress Party (Sudan)
NRF	National Redemption Front
NGO	non-governmental organisation
OAU	Organisation of African Unity
OCHA	UN Office for the Coordination of Humanitarian Affairs
PSC	African Union Peace and Security Council
REC	Regional Economic Community
RUF	Revolutionary United Front (Sierra Leone)
SADC	Southern African Development Community
SCSL	Special Court for Sierra Leone
SLA	Sudan Liberation Army

SPLM	Sudan People's Liberation Movement
UN	United Nations
UNAMSIL	United Nations Mission in Sierra Leone
UNDPA	United Nations Department of Political Affairs
UNDPKO	United Nations Department of Peacekeeping Operations
UNHCR	United Nations High Commission for Refugees
UNITA	National Union for the Total Independence of Angola
UNMIL	United Nations Mission in Liberia
UNMIS	United Nations Mission in Sudan
UNSC	United Nations Security Council

# Executive summary

In September 2005, at a meeting of the United Nations in New York, the world's leaders endorsed an international 'responsibility to protect': an obligation to act to protect civilians in the face of war crimes or genocide, where the government locally is perpetrating these abuses itself or is unable or unwilling to stop them.

The concept of a responsibility to protect was first put forward by the International Commission on Intervention and State Sovereignty (ICISS), an independent group of experts set up in 2000 with the support of the government of Canada, which reported in the autumn of 2001. After a series of humanitarian crises in the 1990s, from Somalia to Rwanda, Bosnia to Kosovo – and with the international community judged to have performed poorly in its response to most of these – the commission was tasked with identifying when and where it might be appropriate to intervene in the internal affairs of states that were experiencing massive human rights abuses, and what form these interventions should take.

The ICISS report suggested that the international responsibility to protect embraced three distinct, but related, responsibilities. First, the 'responsibility to prevent': to help address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk. Second, the 'responsibility to react': to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and, in extreme cases, military intervention. Third, the 'responsibility to rebuild': to provide, particularly after a military intervention, assistance with recovery, reconstruction and reconciliation.

Although there has been some real progress over the last six years in building support for this idea of a responsibility to protect, there is still a large gap between normative commitments endorsed at UN meetings and the actual practice of governments faced with instances of war crimes. Indeed, the central challenge today in respect of the responsibility to protect is not normative but operational: how to actually protect civilians from mass killing, war crimes and genocide. That is the focus of this ippr report.

Our report looks at the responsibility to protect specifically in relation to Africa. While war crimes and mass human rights abuses are certainly not unique to Africa, over recent decades the continent has suffered disproportionately from both. The global debate about humanitarian intervention has also been profoundly shaped by crises in Africa, not least the Rwandan genocide in 1994. In addition, in an echo of ICISS thinking, the new

African Union (AU) has overturned the non-interference principle of its predecessor, the Organisation of African Unity (OAU), and declared that Africans can no longer be 'indifferent' to war crimes or gross abuses taking place on their continent, and that claims of sovereignty should not be a barrier to addressing them.

It is for these reasons, among others, that we have chosen to address the responsibility to protect in an African context and to draw on African examples to underpin our policy analysis and recommendations. Given the severity of the crisis in Darfur, the report draws heavily but not exclusively on the situation there, and we make a number of policy recommendations for addressing the desperate humanitarian conditions facing the people of Darfur, and, increasingly, the wider region.

Of the three responsibilities identified by the ICISS, this ippr report focuses on the second: the responsibility to react. While reaction is clearly distinct from structural prevention policies and from post-conflict reconstruction and peace-building, we define the reaction agenda fairly broadly. The responsibility to react means more than military intervention. While military action is certainly sometimes required, there is a range of other reactive options – from the persuasive to the coercive – available to policy-makers faced with situations of acute vulnerability for civilians. A number of policy options might be used directly or indirectly to better protect civilians in crisis situations in Africa: mediation, negotiation and diplomacy; sanctions; legal measures; and military force.

These approaches are not mutually exclusive and there is not a hierarchy between them. On the contrary, they are more likely to be effective in changing the behaviour of rights-abusing governments and rebel groups if they form part of a comprehensive and joined-up strategy, rather than being pursued in isolation. Nor is there a single model appropriate to all cases: responsibility to react responses should be tailored to the specifics of each situation and be rooted in a thorough analysis of the country and regional context.

Ultimately, sustainable civilian protection depends on an inclusive political process in the country concerned, but the international policy measures addressed in this report can help to create the conditions for this, as well as better protecting civilians against violence and abuse in the short term.

### Mediation, negotiation and diplomacy

Although there are obvious tensions between the urgent imperative of civilian protection and the more protracted processes of negotiated conflict resolution and peacemaking, research evidence from the Human Security Centre at the University of British Columbia in Canada suggests that these forms of dialogue can make an important contribution to civilian protec-

tion in Africa. For example, African mediation efforts in Burundi, spearheaded by Nelson Mandela, have helped to improve security for civilians in that country.

International humanitarian organisations are also constantly involved in negotiations with political and military leaders over access to vulnerable groups of people. While this is an area fraught with moral complexity and ethical dilemmas – particularly where the leaders involved are responsible for human rights abuses – literally millions of people have been kept alive in Africa as a result of the delivery of humanitarian assistance made possible by such negotiations.

- AU member states should give strong support to the AU Panel of the Wise (a team of five senior Africans, tasked with helping to prevent and mediate serious conflicts on the continent), and it should be assisted by a dedicated mediation unit.
- The UN should prioritise its mediation capacity, and, as a minimum, agree to double the current budget of the Department for Political Affairs from US\$60m to \$120m per annum.
- A permanent international contact group for Darfur should be set up, led by AU and UN mediators and supported by an expert secretariat, to lead international mediation efforts to help secure a comprehensive peace settlement in Darfur. This group should promote greater cohesion among the Darfur rebel groups and encourage a more flexible stance towards peace negotiations.

### Sanctions

Targeted or ‘smart’ sanctions can be a vital tool in the protection of civilians in crises in Africa, particularly in the area of financial sanctions, asset freezes and travel bans. Action has been taken in each of these areas recently in the context of international strategies to combat terrorism or to deal with difficult regimes like North Korea and Iran. It is time that similar energy was invested in tightening the economic and financial screws on governments and rebel groups in Africa (and elsewhere) that abuse the rights of their people.

Secondary sanctions on Liberia helped to bring greater stability and civilian security to Sierra Leone. A series of targeted sanctions against the government in Khartoum could help bring about a change in its policy towards Darfur.

- When the Security Council agrees on a sanctions regime, it should simultaneously establish effective monitoring mechanisms and provide them with the necessary authority and capacity to carry out high-quality,

in-depth investigations on the impacts and effectiveness of sanctions.

- The UN Secretary-General should appoint a senior adviser to provide the Security Council with analysis on the best way to target sanctions and to ensure their effective implementation.
- The UN and national governments should strengthen their capacity and willingness to apply targeted financial sanctions, asset freezes and travel bans.
- There should be an assets freeze and a travel ban on all 17 people listed in the UN Panel of Experts final report and on the 51 individuals named by the International Commission of Inquiry into Sudan; detailed investigations should be undertaken into the National Congress Party's clandestine financial networks; and a full UN arms embargo should be imposed on Sudan.
- Targeted trade sanctions should be imposed on Sudan, with serious thought given to targeting the Sudanese petroleum sector – the biggest single source of revenue for the government.

#### Legal instruments

A new set of legal institutions have recently been established in Africa. Though these have yet to demonstrate that they can play a central role in safeguarding African civilians from gross abuses, there are various ways in which they might be strengthened to do so. There are also important roles for ad hoc tribunals, UN Commissions of Inquiry and for the International Criminal Court (ICC) in holding rights-abusing governments and rebel groups to account and, by changing the calculations of these groups, in curbing abuses against civilians. The ICC has three current investigations in Africa, looking at the Democratic Republic of Congo (DRC), northern Uganda and Darfur, and the AU is in the process of establishing closer links with the ICC.

- African judicial institutions need to be strengthened, and an emphasis placed on the creation of credible enforcement mechanisms that will back up the judgments of bodies such as the African Court on Human and Peoples' Rights.
- Current negotiations to conclude a Memorandum of Understanding between the International Criminal Court (ICC) and the AU should be accelerated, alongside a drive to persuade African and other states that have yet to sign up to the Rome Statute to do so.

- The ICC should be empowered and resourced to secure successful prosecutions against African war criminals in cases like Darfur, DRC and Uganda.

#### Use of military force

Non-consensual military intervention (international intervention that the host government will oppose by force) is very much the exception rather than the rule, given the huge costs and difficulties associated with it. But there are a wider number of cases – ‘semi-consensual’ environments – where well resourced and properly mandated troops can play a vital role in protecting civilians from violence and abuse. This report looks at a number of ways in which the African and wider international capacity for effective intervention could be enhanced.

- The African Standby Force should be given much greater support by African states and international donors, so that it has the necessary equipment, resources, mandate and doctrine to make an effective contribution to the protection of civilians in acute crises in Africa.
- The UN should develop a working concept of civilian protection, and build this into UN peacekeeping training modules and peace operations doctrine, including a detailed breakdown of the specific requirements of civilian protection.
- Western states should do more to transform their existing force capacities into suitable contingents for the tasks of civilian protection, and they should be prepared to deploy troops and other military assets to UN peace operations in Africa.
- The EU should mandate Battlegroups to prioritise civilian protection in crises in Africa and should configure, train and equip them for this task.
- Increased international pressure should be exerted on the Khartoum government to get it to consent to the deployment of a properly resourced and mandated UN or UN/AU hybrid force in Darfur.
- NATO should consider imposing and enforcing a no-fly zone over Darfur if Khartoum continues to use aircraft for attacks on civilians, and an explicit proposal to enforce a no-fly zone should be brought to the UN Security Council as a matter of urgency.

#### Political will

There is one other essential condition for giving effect to the responsibility to protect in Africa, above and beyond our existing recommendations relat-

ing to capacity, institutions and processes. That is the existence of the necessary political will and leadership to act when faced with real crises. Greater political will and leadership might be generated, within Africa and internationally, through media, NGO and civil society pressure, and through the creation of mechanisms to hold senior individuals in governments and international institutions to account for how they act or fail to act when faced with crimes against humanity.

- The new UN Secretary-General, Ban Ki-moon, should prioritise the responsibility to protect and use his position to build wider global support for this norm and the measures necessary to deliver on it.
- The AU Special Representative for the Promotion of the Protection of Civilians in Armed Conflicts and the UN Special Adviser on the Prevention of Genocide need increased resources and high-level political support to ensure that they have the institutional capacity to process early warning information and to help generate effective responses to humanitarian crises.
- Members of the Security Council should be required to report annually to the General Assembly on the steps they have taken to follow through on the responsibility to protect pledge made at the 2005 UN meeting.
- At the national level, governments should be held to account for their obligations under the responsibility to protect, either through hearings before parliamentary committees, or through a regular debate in Parliament.

After Rwanda, and several times since, the world said ‘never again’. In 2005, world leaders endorsed an international responsibility to protect. But did they really mean it? The following policy responses are possible if Africans and the wider international community are serious about upholding that most basic of humanitarian norms: that there is no justification – political or cultural – that can ever excuse gross human rights abuses or the deliberate infliction of massive human suffering.

# 1. Introduction

At the 60th anniversary summit of the General Assembly of the United Nations in September 2005, the world's leaders endorsed an international 'responsibility to protect': an obligation to act to protect civilians in the face of war crimes or genocide, where the government locally is perpetrating these abuses itself or is unable or unwilling to stop them (UN 2005c: para 139). This report is the culmination of a 15-month research project examining how to put this normative commitment into practice in Africa.

While war crimes are certainly not unique to the African continent, in recent decades Africa has suffered disproportionately from large-scale killing carried out by governments and rebel groups (Human Security Centre 2006). The global debate about when and where it is appropriate to intervene inside the borders of another state for humanitarian purposes has also been profoundly shaped by crises in Africa and by the unwillingness of the broader international community to act decisively or effectively to protect civilians caught up in them.

That said, the international community has certainly not disengaged from Africa: the first three investigations of the International Criminal Court are currently underway in Africa and more than 80 per cent of existing UN peace operations are deployed on the continent (Center on International Cooperation 2006).

It is primarily for these reasons, alongside a concern that our research project should be manageable and focused, that we have chosen to address the issue of the responsibility to protect in an African context, and to draw on concrete African examples to underpin our analysis and recommendations.

However, we hope that our report will help to stimulate further discussion on intervention for humanitarian protection purposes and that our proposals will have relevance and applicability to crisis situations in other parts of the world.

## Humanitarian intervention – a brief history

It is important to begin with an understanding of where the idea of the responsibility to protect came from. Since the modern international state system was first established in the mid-17th century, states have regularly intervened in other sovereign states and invoked ostensibly humanitarian concerns as their justification for doing so. While many of these claims were extremely cynical, and the impact of the interventions anything but 'humanitarian', they are a useful reminder that the debate about interven-

tion for humanitarian purposes has a long history. Nonetheless, the recent resurgence of political and intellectual interest in this question is largely a post-Cold War phenomenon (Wheeler 2000, Chesterman 2001, Power 2002).

While the UN had been severely constrained by the stand-off between the two superpower blocs, the end of the Cold War and then the demise of the Soviet Union itself in 1991 appeared to create a whole new set of possibilities for collaborative global action founded on common humanitarian principles.

Following the end of the first Gulf War in 1991, the international community agreed to impose a no-fly zone over the Kurdish region in Northern Iraq to prevent Saddam Hussein's forces from attacking it. This was seen at the time as an important normative and legal precedent: setting clear limits on the sovereign authority of the Iraqi government over one part of its country, and with these measures being taken in order to protect the security of the people living there.

In 1992, humanitarian concerns were also invoked by the US when it led an international intervention into Somalia. This was approved by the UN – the first time that the Security Council had supported military intervention for humanitarian purposes.

At the time, there was no recognised government in Somalia to endorse or reject an intervention. But while the humanitarian situation was indeed a very serious one, the form of intervention was disastrous and served to escalate, not reduce, levels of insecurity for ordinary Somalis. In 1993, local Somali warlords killed 18 US rangers in the infamous 'Black Hawk Down' incident in the capital Mogadishu. This triggered the withdrawal of the US from Somalia, and ultimately the disintegration of the mission (Findlay 2002).

However, the most decisive event of recent times – the one that really spurred the debate on intervention and humanitarianism – was the genocide in Rwanda in 1994. This appalling story has been told in great detail elsewhere and will not be repeated at length here (Prunier 1995, Gourevitch 1998, Melvern 2000, Dallaire 2003). Essentially, in the space of just three months, Rwandan Hutu extremists massacred an estimated 800,000 people – Tutsis and moderate Hutus – in a frenzy of sadistic violence and killing.

While governments internationally were well aware of what was happening in Rwanda, the UN Security Council chose to withdraw the small UN force already in the country and to stand by while the genocide continued. Worse still, many governments, including the US and the UK, deliberately played down the scale of the killing, fearful that an acknowledgement that genocide was occurring would create a legal and moral obligation to intervene to stop it.

Beyond the ranks of civil society, there were very few voices calling for

international action in Rwanda; but a sense of shame at the passivity of the international response was hugely important over the course of the decade in triggering new thinking about the ethics and efficacy of intervention.

This thinking was also coloured by events in the Balkans. In Bosnia, the international community was very slow to respond to the scale of the ethnic cleansing being carried out there (Little and Silber 1995). Many saw the situation as a straightforward civil war, where all sides were guilty of human rights abuses and atrocities, and where external intervention beyond the provision of humanitarian aid was best avoided.

For much of the time that international forces were operating in Bosnia, they did so with confused mandates and with troops that were under-resourced and ill equipped for the task in hand. It took the collapse of the UN-declared 'safe area' in Srebrenica in 1995 – in which 7,000 Muslim men were slaughtered by Serbian forces – to prompt the adoption of a more forceful intervention strategy: a shift that culminated in the Dayton Peace Agreement later in 1995.

In West Africa, the regional organisation the Economic Community of West African States (ECOWAS) undertook interventions in Liberia between 1990 and 1998 and in Sierra Leone from 1997 to 1998. The declared objectives of these interventions were partly humanitarian and partly the restoration of constitutional order. While the ECOWAS Monitoring Group (ECOMOG) did help to end Liberia's civil war, and contributed to the stabilisation of Sierra Leone, the impact of these interventions on protecting civilians was poor. Sustainable peace processes in each country required further interventions by the UN and other states.

International military intervention was carried out in Kosovo in 1999 as a response to Serbian aggression and the ethnic cleansing of the Kosovo Albanians. Some questioned the international legitimacy of the action in the absence of explicit UN authorisation. Others condemned the military tactics, including allied bombing of Serbian targets from 15,000 feet, and the resultant loss of many civilian lives. The action succeeded in compelling Serbian forces to pull back from Kosovo. However, the lasting effectiveness of the intervention is still disputed, with some arguing that the Serbian repression of Albanians has simply been replaced by a new reality: Albanian discrimination and violence directed at the small Serbian population still resident in Kosovo.

It is certainly true that the Serbian minority has been badly treated by some elements of the Albanian majority, and this has taken place despite a significant international military and administrative presence. It is also clear that the unresolved issue of Kosovo's status – autonomy within Serbia or complete independence – has the potential to trigger further conflict. But the case for intervention in Kosovo in 1999 was still a powerful one in humanitarian terms.

Over 10 years, Slobadan Milosevic had demonstrated beyond question a commitment to Serbian territorial expansion, to be achieved where necessary through violence, systematic rape and ethnic cleansing. Several hundred thousand people died as a result of this policy and the unwillingness or inability of the international community to stop it (IICK 2001).

In 1999, the international community intervened to halt serious violence in East Timor. A referendum on East Timor's independence from Indonesia sparked a severe upsurge in fighting in May that year. The government in Jakarta – at the time the ruling authority in East Timor and the instigator of the worst human rights abuses against Timorese civilians – refused to allow in international peacekeepers. But under serious political pressure from the international community Indonesia was persuaded to consent to the deployment of an Australian-led force to protect Timorese civilians. Initially, this intervention was seen as effective in ensuring greater security for the people of East Timor (UN 2002b).

The British military intervention in Sierra Leone in 2000 is often highlighted as one of the most successful interventions of the decade. A brutal civil war in the 1990s had left half the country's 4.5 million people displaced, and led to the loss of over 50,000 lives. Tens of thousands more were victims of amputations and rape, mostly at the hands of the rebel Revolutionary United Front (RUF).

In February 2000, President Kabbah's government, with the support of the UN Mission in Sierra Leone (UNAMSIL), was facing a serious challenge from the RUF rebels, including the hostage-taking of 500 UN soldiers. The formal justification for sending in British troops was to help secure the airport and to evacuate expatriate Britons. In practice, however, the British military intervention helped to reinforce the government's authority and destroyed any prospect of the RUF taking control of the country. The action was successful in maintaining the elected government of President Kabbah, stopping large-scale human rights abuses and preventing Sierra Leone from descending once again into full-scale civil war.

It was these complex crises throughout the 1990s – and the profound humanitarian and moral issues they raised – that stimulated the debate about 'humanitarian intervention'. The then UN Secretary-General, Kofi Annan, was a particularly outspoken and eloquent exponent of the need for a new approach. In an important statement on the subject in 2000, he encapsulated the core of the issue: 'If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?' (Annan 2000: 48).

## The responsibility to protect

To its enormous credit, the government of Canada sought to address this question in 2000, helping to establish an International Commission on Intervention and State Sovereignty, co-chaired by the former Australian Foreign Minister Gareth Evans and the experienced Algerian diplomat Mohamed Sahnoun. The Commission reported in the autumn of 2001 (ICISS 2001).

One of the report's most important contributions was to reject the use of the term 'humanitarian intervention'. It argued that this was to prejudge the issue in question: whether the intervention is in fact defensible in humanitarian terms. The report sought, as Gareth Evans has recently put it, 'to turn the whole weary debate about the "right to intervene" on its head, and to re-characterise it not as an argument about the right of states to anything, but rather about their responsibility ... the relevant perspective being not that of prospective interveners but those needing support' (Evans 2006).

A closely related and absolutely central feature of the report's conclusions was its proposed reconceptualisation of sovereignty: with the idea of sovereignty as control being replaced by the notion of conditional sovereignty, or 'sovereignty as responsibility'. No longer was it tenable for autocratic leaders to invoke sovereignty as a licence or smokescreen to kill and repress their own people. By contrast, as the Commission put it, 'sovereign states have the primary responsibility for the protection of their people from avoidable catastrophe – from mass murder, rape, starvation – but when they are unable and unwilling to do so, that responsibility must be borne by the wider community of states' (ICISS 2001: VIII).

Specifically, the report suggested that the responsibility to protect embrace three distinct, but related, responsibilities:

- First, the responsibility to prevent: to address both the root and direct causes of internal conflict and other man-made crises putting populations at risk.
- Second, the responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and, in extreme cases, military intervention.
- Third, the responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the humanitarian crisis the intervention was designed to halt or avert.

The publication of the ICISS report was initially overshadowed by the

events of 11 September 2001, and the whole argument about intervention has subsequently been hugely affected by the US-led interventions in Afghanistan and Iraq, an issue addressed in detail later in this report. However, notwithstanding this inauspicious context, the Commission's report, *The Responsibility to Protect*, has been highly influential, at least at the normative level, and it remains the best single document for assessing the conceptual issues involved in intervention for humanitarian or human rights purposes.

The report has found a steadily growing international audience over the last six years. The idea of the responsibility to protect featured strongly in the work of the independent panel on UN reform that reported to the UN Secretary-General in December 2004: *A More Secure World – Our Shared Responsibility*; and in Kofi Annan's own document on these issues: *In Larger Freedom*, published in March 2005 (UN 2004a and 2005b). But the biggest breakthrough for the idea came at the September 2005 meeting of the UN General Assembly, where the world's leaders endorsed a responsibility to protect in the Outcome Document, which stated:

'Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity... The international community, through the United Nations, also has [this] responsibility... In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.' (UN 2005c: para 138)

In April 2006, the UN Security Council adopted an important thematic resolution on the Protection of Civilians in Armed Conflict, which contains a clear reaffirmation of the World Summit's conclusions relating to the responsibility to protect (UN 2006b). Moreover, responsibility to protect language has been invoked in specific UN Security Council resolutions, for example in UNSCR 1706 of August 2006 in relation to the situation in Darfur.

This collective global endorsement of the responsibility to protect belies the claim made in some quarters that it is merely a cover for western imperialism. While it is important that the concept should not be misused by powerful states to further other agendas, there is nothing intrinsically imperialistic about the responsibility to protect. On the contrary, it is about upholding human rights and humanitarian principles wherever they are under threat – the very rights and principles that the world's governments have endorsed in a series of international human rights agreements.

Because the governments of the world have signed up to the responsibility to protect norm, they can and should be held to account for delivering on it. That means pressing European and North American states to live up to their responsibilities, in a way that they are failing to do at present. But it also means putting the spotlight on other governments and organisations too, like China, Russia and the Arab League, which are not only failing to advance the norm of the responsibility to protect, but are, in some cases, acting in ways that run directly counter to it (Mepham and Wild 2006).

Delivering on the responsibility to protect in Africa also depends critically on the actions of Africans themselves. Alongside the work of the ICISS Commission and the debate that it has generated within the UN and in western capitals, there has been considerable discussion and thinking on these issues across the African continent. Notably, Africans and non-Africans who have addressed these questions have reached broadly similar conclusions (Djinnnet 2006, Baranyi and Mepham 2006).

This new thinking has been reflected in the institutions and the declared policy statements of the new African Union (AU). The AU was established in 2002, replacing the old and largely discredited Organisation of African Unity (OAU). While the latter was seen as a club for heads of state, the founding documents of the AU placed a new emphasis on the rights of Africa's peoples – rights that were not necessarily trumped by the claims of national sovereignty (AU 2000: Article 4(h)).

The transition from the OAU to the AU has also involved an important shift in policy from a stance of 'non-interference' in the internal affairs of states to one of 'non-indifference' in situations of gross human rights abuses and war crimes. At the institutional level, the AU has established a Peace and Security Council (PSC), defined as a 'collective security and early-warning arrangement to facilitate timely and efficient responses to conflict and crisis situations in Africa'. The AU has recently named the five African individuals who will form a Panel of the Wise. They will serve for three-year periods, advising the PSC on potential conflicts and recommending appropriate policy responses.

In addition, the AU is committed to establishing a Continental Early Warning System, and to taking forward a common African Defence and Security Policy and an African Standby Force – all of which creates at least the potential for more effective African responses to protect civilians from mass violence. These issues are addressed in more detail later in this report.

It should also be noted in this context that some sub-Saharan African states, including Rwanda and South Africa, were particularly supportive of the responsibility to protect language that appeared in the UN Summit Outcome Document, agreed at the UN Summit in 2005, and that they lobbied effectively for its incorporation.

## The implementation gap

There has been real progress on the responsibility to protect at the normative level. Indeed, it has been argued that, in just a few years, the responsibility to protect has acquired the 'pedigree to be described as a broadly accepted international norm, and one with the potential to evolve into a rule of customary international law' (Evans 2006). In a world in which governments are shaped, albeit to varying degrees, by global norms, this should be a source of some satisfaction. But it provides little more than that. The sombre reality is that there remains a large gap between the principles endorsed by the world's governments at UN conferences and in UN resolutions and their willingness to take action to uphold these principles in real-life cases.

This gap is clearly visible today in relation to Darfur. The desperate situation there is precisely the kind of case for which the responsibility to protect was developed, and it meets many of the criteria for intervention identified by the ICISS. Since 2003, more than 200,000 people have been killed in the region and more than two million displaced (UN 2006c). Nearly four million people now depend on humanitarian aid for food, shelter and health care.

While some of the rebel groups have also committed serious human rights abuses, and have shown little interest in resolving this conflict diplomatically, primary responsibility for this human tragedy rests with the Sudanese government and the government-backed militia, known as the Janjaweed (Mephram and Ramsbotham 2006, Baldo 2006, International Crisis Group 2004a, 2005, 2006b).

For four years now, the Janjaweed has engaged in ethnic cleansing and forced displacement by burning and looting villages. Women and girls have been particularly vulnerable to violence and abuse, with large numbers of them becoming victims of sexual attacks when leaving their villages to get water or firewood or when taking goods to local markets. In August 2006, just to highlight one month as an example, an estimated 200 women and girls were sexually assaulted in Kalma, the largest displaced persons camp in south Darfur (Human Rights Watch 2007).

Fighting has impacted on Sudan's neighbours, too. Indeed, over the last couple of years, the conflict has become a truly regional crisis, with large-scale killing and human displacement also affecting Chad and the Central African Republic (Marchal 2007). Without more effective action to address these interlocking crises, there is a real risk of regional implosion, which would entail further massive displacement of populations and put millions more at risk of death through violence or from hunger, malnutrition and disease.

Despite a string of UN resolutions calling for decisive international action to better protect civilians in Darfur, the international community is still failing to discharge its responsibilities to the Darfurian people. Later in this report, we identify some of the steps that could still be taken to better protect civilians in Darfur and to halt further regional destabilisation in

Chad and the Central African Republic. But Darfur is not an isolated case. There are other contemporary instances across Africa of mass killing and war crimes that Africans and the broader international community have not addressed adequately.

The central challenge today in respect of the responsibility to protect in Africa (and in other parts of the world) is not normative but operational: how to actually protect civilians from mass killing, war crimes and genocide. That is the aim of this report: to think through the kind of policies, institutions and capacity required to give effect to the responsibility to protect in Africa and, in so doing, to help persuade international and African policymakers to close the large gap between the declared aspiration to protect civilians and the all-too-common abuses that continue to occur across the continent.

## The focus of this report

Although the ICISS report highlights three responsibilities – to prevent, react and rebuild – this report is deliberately focused on the second of these: the responsibility to react. It does not, therefore, address structural prevention (those policies designed to make societies less vulnerable to outbreaks of mass violence); nor does it deal with post-conflict reconstruction (those measures taken to help prevent societies slipping back into violent conflict when they have recently emerged from it).

Of course, these issues are hugely significant. But they are areas that are already the subject of extensive academic and policy literature (Carnegie Commission 1997, UN 1998, DfID 2001, UN 2002a, UN 2004a, Ali and Matthews 2004). By comparison, the responsibility to react, and what it means to put this principle into effect in Africa, is a relatively neglected area.

Three definitional clarifications are particularly important at this point. First, what kind of abuses are we reacting to? Second, how narrow or broad is the reaction agenda? Third, what do we mean by the protection of civilians?

This report focuses on African and international responses to instances of mass killing, war crimes or genocide: that is to say, we are concerned with levels of human rights abuses that cross a certain threshold of barbarity. This level is not easy to quantify. The best definition, and the one we use here, was given in the ICISS report. Our main focus is on situations in Africa in which there is:

‘(1) large scale loss of human life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or (2) large scale “ethnic cleansing”, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.’ (ICISS

To focus on abuses at or beyond this threshold is not to diminish other human rights abuses that are happening elsewhere on the continent and in other parts of the world. These are well documented, and there are ongoing efforts to address them (Human Rights Watch 2007, Amnesty 2006). But the kinds of policies appropriate for dealing with instances of mass killing are different from those applicable in other cases.

While there will be argument at the margin about which conflicts fall within which category, we would argue that, over the last 15 years, Somalia, Rwanda, Burundi, northern Uganda, Liberia, Sierra Leone, Sudan and the Democratic Republic of Congo all meet the criteria first articulated by the ICISS, and they are the examples to which we refer throughout this report.

While reaction is clearly distinct from structural prevention policies and from post-conflict reconstruction and peace-building, we define the reaction agenda fairly broadly. There is a common misconception, fed by sloppy journalism, that the responsibility to react simply means military intervention. We reject this as far too narrow an interpretation. While military action is certainly sometimes required, there is a range of other reactive options – from the persuasive to the coercive – available to policymakers faced with situations of acute vulnerability for civilians (Evans 2006).

This report addresses each of these options in turn, considering how they might be used – directly or indirectly – to better protect civilians in crisis situations. This is done to simplify the report's structure and to give appropriate focus to each. It certainly does not mean that these approaches are necessarily mutually exclusive, nor is there a hierarchy between them. In fact, in many of the cases described in this report, several of these tools have been used concurrently. In general, we argue here that they are more likely to be effective in changing the behaviour of rights-abusing governments and rebel groups if they form part of a comprehensive and joined-up strategy, rather than being pursued in isolation.

The question of what is meant by protection is also critical. Humanitarian assistance agencies, human rights organisations and the military typically have rather different understandings of the term (Berkman and Holt 2006). For example, some humanitarian agencies have thought of protection largely in terms of civilians' access to relief supplies and the kind of environment that might best facilitate this. Very difficult trade-offs can occur in which temporary security is gained for civilians through negotiations with rebel groups or government forces that are themselves the cause of insecurity and violence.

Human rights organisations have typically sought to hold rights abusers to account and have been less keen on deals with political leaders and armed groups that appear to reward bad behaviour. They have also defined protection as ensuring that those who use military force do so in conform-

ity with the laws of war.

By contrast, a traditional military take on protection would put more emphasis on 'defeating the enemy', with greater civilian security seen as a result of this outcome.

These differing interpretations are necessarily an oversimplification, but they illustrate some important dimensions of the concept of protection. We argue that protection is best viewed as combining elements of each: safeguarding the rights of citizens from 'violence, coercion and the denial of basic subsistence', and helping to secure this within a framework defined by international humanitarian law (Darcy 2007).

In the next four chapters, the report assesses various policy options – mediation, negotiation and diplomacy; sanctions; legal measures; and military force – relating them to recent African case studies, and considering to what extent these measures can be used to better protect African civilians in acute crises.

## Project methodology

A range of research tools were used to conduct this project, including extensive desk research and literature review, as well as expert peer review. The project has also been highly participatory and consultative. In addition to the formal meetings, outlined below, research was carried out through face-to-face, telephone and email interviews with key officials, practitioners, academics and civil society organisations in Africa, Europe and North America, including meetings in Accra, Addis Ababa, Brussels, London, Pretoria and Stockholm. The project also commissioned a number of papers from African and international experts.

The project involved three expert symposia and a separate roundtable on Darfur:

- *Enhancing military capacities to protect civilians in Africa* (Addis Ababa, Ethiopia, March 2006). Speakers included Ambassador Said Djinnit, Peace and Security Commissioner, AU.
- *Non-military options to protect vulnerable civilians in crises in Africa* (London, UK, September 2006). Speakers included Geoffrey Mugumya, Director of Peace and Security, AU.
- *Strengthening political will* (Accra, Ghana, November 2006). Speakers included Victoria Holt, Senior Associate, Henry L Stimson Center, Washington DC.
- *The crisis in Darfur* (Addis Ababa, July 2006). Speakers included Mukesh Kapila, former UN Humanitarian Coordinator for Sudan.

A number of other key reports from the project can be accessed at: [www.ippr.org/international](http://www.ippr.org/international).

## 2. Tough talking: mediation, negotiation and diplomacy

This chapter looks at the role that mediation, negotiation and diplomacy can play in helping to protect civilians in acute crises in Africa. Mediation, as defined by Nathan, is ‘a method of mitigating the concerns [of the parties] through the presence and support of an intermediary peacemaker who is not party to the conflict, who enjoys the trust of the disputants, and whose goal is to help them to forge agreements they find acceptable’ (Nathan 2005: 2). Negotiation is understood here as a formal or informal process, involving talks to reach agreement or settle a dispute. Diplomacy is traditionally interpreted as the conduct of relations between states, although here we define it more expansively as the complex processes of communication and negotiation that go on between governments, not just bilaterally, but also in regional and global forums.

While mediation, negotiation and diplomacy can all involve threatening others with consequences if they continue to behave in a certain way, they are still essentially ‘soft’ policy options, at least until firm words are matched with tougher actions, be they economic, financial, legal, or military.

It is relatively easy to see how these various forms of dialogue might play a role in facilitating ceasefires or peace agreements between warring parties in the context of a traditional armed conflict, either a war between states or an internal civil conflict between a government and rebel groups. Moreover, there is substantial evidence that mediation, negotiation and broader diplomatic engagement have been effective in helping bring these types of conflict to a resolution.

Research by the Human Security Centre at the University of British Columbia in Canada shows that, in the last 15 years, more civil wars were ended through negotiation than in the previous two centuries; in large part, they suggest, ‘because the United Nations provided leadership, opportunities for negotiation, strategic coordination, and the resources needed for implementation’ (Human Security Centre 2005: 151). Between 1992 and 2003, the number of civil wars dropped by 40 per cent, from over 50 to fewer than 30. As a result, security for hundreds of thousands of people – in Africa and elsewhere – has been significantly enhanced (UN 2004a).

However, can mediation, negotiation and diplomacy – inherently consensual processes and ones that lack real teeth – also help to protect civilians in the narrower category of cases that are addressed in this report: in circumstances of mass killing or where one party is intent on ethnically cleansing members of another group or inflicting sustained violence against them?

There are certainly some real tensions between the concerns of media-

tors or diplomats with finding a lasting peace agreement between conflicting parties, something that can often take time and involves talking to parties that may themselves be responsible for war crimes, and the imperative of immediate civilian protection in circumstances in which individuals are being killed in large numbers or are acutely vulnerable to violence. It is naive to imagine, for example, that even the world's finest negotiators would have been any use in Rwanda in early 1994, given the premeditated determination of a group of Hutu extremists to inflict genocide on the Tutsi population and on moderate Hutus.

However, unambiguous genocide of the kind witnessed in Rwanda in 1994 is thankfully still a very rare occurrence. Many of the other cases of mass killing in Africa addressed in this report have become lengthy and protracted conflicts. This is not to deny the severity of the human insecurity involved in these cases or the scale of killing and abuse. Nor does it imply that negotiations will by themselves be sufficient to provide effective protection to civilians. In most cases, they will not be. But they can sometimes be part of the solution.

There are two dimensions to this. First, in the medium to long term, sustainable civilian protection clearly depends on a permanent ceasefire and a durable peace settlement. Even where troops and other coercive policy options are required to protect civilians in the short term – as we would argue is necessary today in the case of Darfur – negotiations are still needed to help facilitate a lasting end to the conflict.

Second, even in the short term, there is a role for negotiations in providing assistance and protection for civilians. In many conflict situations around the world, in Africa and elsewhere, negotiation can help secure temporary ceasefires, opening up humanitarian space for aid agencies to deliver relief to civilians, to allow particularly vulnerable people to get access to medical support or to facilitate access for human rights monitors. Very often, this involves humanitarian agencies negotiating with political leaders and armed groups that are the cause of the violence and insecurity that are affecting civilians.

This raises very difficult ethical issues. Some advocates of robust humanitarian intervention see the provision of humanitarian assistance in these circumstances as a mere sticking plaster that provides only temporary relief, or, worse, as a barrier to the 'resolution' of conflict. There is some truth in both of these claims.

This can be illustrated with reference to the UN's Operation Lifeline Sudan (OLS), launched in 1989. The OLS was a tripartite agreement between the UN, the government of Sudan and the rebel Sudan Popular Liberation Army (SPLA), to provide humanitarian aid to civilians during the ongoing war. OLS comprised five main UN agencies and over 40 NGOs, with an annual budget of around US\$150m. It covered approxi-

mately 2.5 million people in both south and north Sudan. Over the years, OLS succeeded in guaranteeing the survival of tens of thousands of Sudanese civilians. But it could not prevent the gross manipulation of aid, or human rights abuses, such as massive forced migration, military targeting of civilians and massacres, perpetrated by both government and rebel forces (Deng and Minear 1992).

As this example shows, it is difficult to uphold neutrality, impartiality and consent – ‘the principles of traditional humanitarian action’ – in situations of severe insecurity (Berkman and Holt 2006: 18). Throughout the 1990s, and in this decade, there have been many cases in which, as Berkman and Holt put it: ‘humanitarians delivered assistance, often heroically, only to witness the beneficiaries face injury or death at the hands of armies, militia groups or thugs. A painful phrase emerged to describe the victims of such violence: “the well-fed dead”’ (ibid).

However, we need to be cautious about the conclusions that are drawn from this. As we argue in this report, more coercive policies are sometimes required to safeguard civilians in situations of acute crisis. But these will need to be implemented alongside continuing efforts by humanitarian agencies to provide aid and assistance, and, in most cases, the effective operation of these agencies on the ground will depend more on negotiation and dialogue than the threat of force.

The fact, then, that negotiation, diplomacy and traditional humanitarianism are inadequate by themselves for ensuring comprehensive civilian protection in some acute crises does not mean that they have no role to play in safeguarding civilians, or that what they do is marginal or inconsequential, even in security terms. Millions of people are kept alive each year in Africa as a result of the work of international humanitarian agencies, and traditional humanitarian issues can be a way to build bridges between warring parties and create the conditions for a more substantive dialogue about peace.

Where mediation, negotiation and diplomacy need to be reinforced by more coercive policy instruments, a critical question is whether soft and hard policy options can be pursued concurrently. We argue that they can, but only if the two approaches are kept distinct. The work of the humanitarian agencies should certainly, as far as possible, be kept separate from the more overtly political work of foreign ministries and especially from military operations. This is to avoid compromising the independence and impartiality of the humanitarian agencies in the eyes of the various communities that they work within.

But a degree of separation is also required and possible between conflict mediators and politics. For example, mediation can be institutionally isolated at the AU and the UN. The UN Secretary-General and Secretariat can and should maintain institutional distance from political organs like the Security Council. Similarly, at the AU, a commitment to non-partisanship

by AU mediators should not preclude other AU structures, such as the Peace and Security Council, from condemning a party engaged in conflict or applying coercive measures against it (Nathan 2005).

This distinction between coercive and consensual approaches may also be easier to maintain if those doing the mediating are non-governmental. NGOs like the Geneva-based Centre for Humanitarian Dialogue have been involved in mediation in African conflicts in Burundi, Darfur and northern Uganda (Centre for Humanitarian Dialogue 2006). And African civil society groups, including women's groups, have played a role in conflict mediation in South Africa, Somalia, Mozambique and the Mano River region, and with some success. This potential needs to be explored further.

The remainder of this chapter considers the steps that have been taken, within Africa and the broader international community, to strengthen the role of mediation, negotiation and diplomacy in relation to violent African conflicts, and the measures that should be taken to enhance their contribution to the protection of African civilians.

### African mediation, negotiation and diplomacy

The African Union has a specific mandate for mediation and diplomacy. Article 6 of the Protocol establishing the AU Peace and Security Council (PSC) states that the Council will perform functions in the area of 'peace-making, including the use of good offices, mediation, conciliation and enquiry' (AU 2000: Article 6).

Other peace and security bodies operating below the AU PSC also have mandated diplomatic and mediation roles. The Chairperson of the AU Commission can use his or her good offices to mediate in conflicts, either personally, or through special envoys or regional mechanisms. The AU has led international negotiations to try to end the conflict in Darfur, through a mediation team led by the former Secretary-General of the Organisation for African Unity (OAU), Salim Ahmed Salim.

Also in Sudan, the East African regional body, the Intergovernmental Authority on Development (IGAD), appointed Kenyan General Lazaro Sumbeiywo to lead mediation efforts, which have generally been seen as playing a valuable role in helping to deliver the Comprehensive Peace Agreement between the north and south of Sudan (Dixon and Simmons 2006).

The AU Panel of the Wise has a clear mediation role. It is mandated to promote quiet diplomacy and to alert the AU Commission, the PSC or the leadership of the country or countries concerned about a specific conflict. At its eighth meeting in Addis Ababa in January 2007, the AU Assembly appointed the Panel's five members for a three-year period. The members are Miguel Trovoadá, former President of Sao Tome and Principe; Salim Ahmed

Salim; Ahmed Ben Bella, former President of Algeria; Brigalia Bam, President of the Independent Electoral Commission of South Africa; and Elizabeth K Pogon, President of the Constitutional Court of Benin (AU 2007b).

While there remains continuing ambiguity about the precise role and remit of the Panel, and while it does need political buy-in from African governments and the requisite financial resources, it creates the potential for a much more effective AU role in relation to conflict prevention and civilian protection.

The Panel also builds on a longstanding African tradition of mediation by African 'elder statesmen' to help bring an end to armed conflicts. African engagement in Burundi in recent years is perhaps the best example of this.

Acute instability has plagued Burundi since it gained independence from Belgium in 1962, marked by periodic presidential assassinations and vicious inter-communal pogroms. In one particularly brutal incident during fighting between Hutus and Tutsis in the north of the country in 1988, around 20,000 Hutus were killed and another 60,000 fled into neighbouring Rwanda (ISS 2005). Violence intensified dramatically in 1994, after the main Hutu party, the Union pour le Progrès National (UPRONA), withdrew from the government in protest at political power being ceded to Tutsis.

In March 1996, in the face of continuing instability and bloodshed, the former Tanzanian President Julius Nyerere was mandated by the OAU and the UN to try to mediate a solution to the conflict. But repeated rounds of negotiations in Arusha, Tanzania, led only to a series of weak agreements, all of which broke down. Then, in late 1999, Nelson Mandela took over as mediator.

Mandela brought a number of key innovations to the mediation process. He exerted strong leverage on the parties to reach agreement, and he worked vigorously (albeit controversially) to bring all armed factions into the negotiation process. This included a personal commitment to meet separately with all parties, to listen to their grievances and to talk through possible solutions. He also worked to engage the UN Security Council more proactively, to garner its firm political support for the Arusha talks, and to enhance its understanding of the nuances of the negotiation process (Van Eck 2000).

These efforts were not a complete success. Although the main political parties eventually signed the Arusha Peace and Conciliation Agreement for Burundi in August 2000, two key armed militias, the Forces pour la Défense de la Démocratie (FDD) and the Forces Nationales pour la Libération (FNL), denounced the deal and continued fighting. But Mandela's mediation role was still a critical one. Mandela continued to push for a transitional government to be formed quickly, and, in November 2001, former leader Pierre Buyoya was reinstated as President.

In October 2003, mediated by South African deputy president Jacob Zuma, the FDD agreed to lay down its weapons. Although the FNL has not formally renounced violence, thanks to Mandela and other South African

mediators the security situation throughout most of Burundi has improved, with real benefits for ordinary Burundians. This has led, for example, to the return of tens of thousands of Burundian refugees in recent years (UN 2006f).

*ippr recommends that:*

- AU member states give strong support to the AU Panel of the Wise (a team of five senior Africans, tasked with helping to prevent and mediate serious conflicts on the continent), and that it should be supported by a dedicated mediation unit.

## International mediation, negotiation and diplomacy

The broader international community needs to enhance its own contribution to mediation, negotiation and diplomacy in relation to crises in Africa and the protection of civilians caught up in them. The UN is the key institution here. The UN Secretary-General has a mandate to provide 'good offices': to act as a neutral broker and a channel of communication between parties to a dispute. Good offices' functions range from passing messages from one party to another to brokering a limited agreement or negotiating a comprehensive accord.

At the UN, the Department of Political Affairs (UNDPA) holds primary responsibility for mediation and diplomacy, by identifying peacemaking opportunities and supporting the efforts of the Secretary-General.

However, UN capacity for mediation and diplomacy is severely under-resourced. The 2004 report of the High-Level Panel on Threats, Challenges and Change noted that a 'skyrocketing' demand for UN good offices and mediation has been accompanied by a chronic under-resourcing of the UNDPA (UN 2004a: para 102).

UNDPA's budget for 2004-2005 was approximately US\$59m, compared with the budget of the Department for Peacekeeping Operations for the same period of nearly US\$5bn. UNDPA has stressed that its Regional Divisions need to be equipped to better analyse the specific dynamics of conflict situations and to build local relationships and trust, and that it needs to be strengthened to provide adequate administrative and logistical support to the expanding numbers of Special Envoys and other UN mediators in the field (see UNDPA and UNDPKO websites for further information).

The 2005 UN World Summit endorsed efforts to strengthen the Secretary-General's capacity to employ good offices, including a new system to identify and recruit mediators and train envoys. UNDPA is also establishing a Mediation Support Unit (MSU) to act as a central repository for peacemaking experiences, to serve as a clearing house for lessons learnt

and the dissemination of best practice, as well as coordinating training.

*ippr recommends that:*

- The UN should prioritise its mediation capacity, and, as a minimum, agree to double the current budget of the Department for Political Affairs, from US\$60m to \$120m per annum.

## A peace deal for Darfur?

The precondition for effective civilian protection in Darfur is a comprehensive peace agreement between the government and the rebel groups. Targeted sanctions on the Khartoum government are essential to convince it to rethink its policy. But effective mediation, negotiation and diplomacy will also be critical.

The Darfur Peace Agreement (DPA) of 5 May 2006 was deeply flawed. It was signed only by the government and one rebel faction, and it has severely exacerbated violence and civilian suffering in Darfur. AU-led negotiations in Abuja, Nigeria, were seriously undermined by splits between the rebel groups. By the time of the last round of talks, which began in Abuja in November 2005, the rebels were divided into three separate factions – Minni Minnawi and Abdel Wahid al-Nur's branches of the Sudan Liberation Movement (SLM), and the Justice and Equality Movement (JEM). Splits among the rebels allowed the government to continue its half-hearted approach to negotiation and have undermined efforts to broker a lasting settlement (de Waal 2006).

External engagement in the talks was also poorly directed and coordinated. International parties involved in early negotiations in N'djamena, Chad, in March 2004 did not have an agreed policy on the requirements for a settlement, or on their respective roles in the mediation process. Reconciling French, British, Dutch and US positions, and deciding the various roles of the AU, the EU, the Chadians and the UN, took up much valuable time (Slim 2004).

On 23 August 2004, new AU-mediated talks in Abuja were launched. Khartoum played on international splits, appealing to the sympathies of the Arab League and the AU to support African-Arab solidarity against major power interference (ibid). From late 2006, various parts of the international system imposed a series of arbitrary and sometimes conflicting deadlines on the parties to finish negotiations. Then, at the beginning of April 2006, the UN Security Council finally demanded that the Abuja talks conclude at the end of the month.

The mediation team rushed through the draft of a full settlement, leaving only one week to negotiate its numerous and complex provisions, even

though it was clear that the parties would not be able to reach agreement on all of its terms within this highly compressed timeframe (de Waal 2006).

*ippr recommends that:*

- A permanent international contact group for Darfur should be set up, led by AU and UN mediators and supported by an expert secretariat, to lead mediation efforts to help secure a comprehensive peace settlement in Darfur.

This group should collaborate with other potential mediators, such as Eritrea and Libya, and with key regional players like Chad and Egypt. Mediators should draft a comprehensive endgame agreement, taking into account rebel as well as Darfurian political and civil society concerns on key issues, including disarming the Janjaweed, securing the return of displaced people, power sharing, and compensation (Prendergast 2007).

Senior officials from the Sudan People's Liberation Movement (SPLM) in the south should also be involved. They can lend the benefit of their experience from successful efforts to develop a unified rebel stance during negotiations that led to the resolution of the north-south conflict. There is an increasingly significant regional element to this, too. It is essential to ensure that Darfurian rebels supported by President Deby in neighbouring Chad are brought into the process.

China has recently indicated its support for a negotiated resolution of the conflict (Xinhua 2007). And the Arab League at its Summit in Riyadh in March 2007 pledged to work with the UN and the AU 'to seek an early and comprehensive settlement to the conflict' and 'to back this up with genuine support for a workable political solution' (UN 2007c). Given the records of China and the Arab League, this will be greeted with some scepticism. Both need to put their money where their mouths are, to provide sustained political and material support for integrated international efforts to help reach a negotiated settlement.

*ippr recommends that:*

- International partners, including the AU, the UN, the EU and the US, need to work together to promote greater cohesion among the Darfur rebel groups.
- China and the Arab League states should be pressed to play a more constructive role in relation to a political settlement in Darfur.

### 3. Tightening the screws: the role of sanctions

Sanctions are a hugely important – and under-exploited – policy instrument for delivering on the responsibility to protect in Africa. But if the potential of sanctions is to be fully realised, a significantly changed approach to their design and implementation is required.

The term ‘sanctions’ encompasses a broad range of different actions, including:

- Arms embargoes or other limits on the transfer of military technology
- Financial penalties targeting the foreign assets of a state, a rebel movement or terrorist organisation, or of particular leaders and their associates
- Restrictions on income-generating activities in war economies, such as in the oil, diamond, timber and drugs industries
- Curbs on access to fuel
- Flight bans and broader travel restrictions
- Limits on diplomatic representation
- Suspension of membership or expulsion from international or regional bodies. (ICISS 2001: paras 4.7-9)

Two issues are central to the debate about sanctions and the responsibility to protect. The first is the relationship between sanctions and humanitarianism. The whole rationale of the responsibility to protect is to safeguard civilians against acute violence, abuse and suffering. But comprehensive economic sanctions have been widely criticised as causing large-scale suffering for civilians. The challenge is to redesign sanctions to make them ‘smarter’ and more discriminate, so that they put pressure on governing elites to change their policies in a way that benefits rather than harms vulnerable civilians.

The second issue relates to timing. This report is concerned with instances of mass killing and acute civilian insecurity. Can even the best-designed sanctions, expeditiously and effectively applied, have a quick enough impact to make a difference to civilians whose lives are under serious threat? The answer depends very much on the specific case and on the immediacy of the threat.

Like mediation, negotiation and diplomacy discussed in the last chapter, sanctions would have been no use to civilians following the outbreak of mass killing in Rwanda in 1994. In these circumstances, only international military force could have halted or contained the scale of the violence. But there are many other cases – short of outright genocide – in which sanctions

can make a difference.

This chapter looks at how the international debate on sanctions, as well as their practical implementation, has changed since the early 1990s. It considers what further steps might be taken to enhance the contribution of UN sanctions to the protection of civilians in acute crises in Africa. The chapter also assesses how sanctions are viewed within Africa itself, particularly by the African Union. Relating theory to practice, the chapter then examines in detail two country cases: Sierra Leone and Sudan/Darfur.

In the former case, we are interested in the extent to which sanctions – first on the military regime and then on neighbouring Liberia – helped to promote greater security for ordinary Sierra Leonean civilians. In the case of Darfur, we are concerned with how sanctions might be used today to help force a change in the behaviour of the Khartoum government.

## UN and international sanctions

Prior to 1990, UN sanctions had only ever been imposed in two cases: against Rhodesia in 1966 and against South Africa in 1977. However, since the end of the Cold War there has been a huge expansion in the use of UN sanctions, with the Security Council viewing them as an important mechanism for helping to bring states into conformity with international law. A large number of these sanctions have been imposed on African states in response to violent conflicts or crises on the continent (Vines 2003). But this phenomenon has also been controversial. Critics of UN sanctions have questioned their humanitarian impact, their enforceability and their efficacy in changing behaviour.

Since the mid 1990s, there have been a number of important initiatives to rethink sanctions policy in the light of these concerns. In 1995, at the instigation of the UN Security Council, the newly created UN Department for Humanitarian Affairs (DHA) commissioned a report on the impact of sanctions on humanitarian assistance efforts. This was followed up by the development of a new methodology and a new set of indicators for assessing humanitarian impacts, both of which have been used by the successor agency to DHA: the UN Office for the Coordination of Humanitarian Affairs (OCHA) (Cortright and Lopez 2005). Efforts to consider the humanitarian impact of particular sanctions regimes have now become a standard, if inconsistently applied, feature of UN sanctions policy.

Humanitarian impact assessments have been carried out, for example, in the cases of Sierra Leone (in 1997), Afghanistan (in 2000) and Liberia (in 2001), and some changes were made to sanctions policy in these cases as a result (*ibid*).

A number of European governments have also led international efforts to enhance the efficacy and enforceability of sanctions. In 1998, the gov-

ernment of Switzerland initiated an inquiry into financial sanctions (known as the Interlaken Process). This was followed in 2000 by a German government initiative (the Bonn-Berlin Process). This addressed the issues of arms embargoes, aviation sanctions and travel bans. Both of these processes involved academics, diplomats, practitioners and NGOs, and reports were presented to the UN Security Council (SECO 2001, BICC 2001).

In late 2001, the Swedish government started a research and consultation process examining how to better implement targeted sanctions. This process was concluded in 2003 (the *Stockholm Process*). These and other initiatives have led to some further changes in UN policy on sanctions.

For example, efforts to strengthen the enforcement of sanctions have been aided by the work of UN Sanctions Committees. These Committees maintain lists of targeted individuals and entities, and review enforcement measures taken by member states, as well as monitor violations of sanctions regimes (Wallensteen *et al* 2003). UN Panels of Experts have also played an increasingly significant role.

Expert Panels are independent bodies that report to UN Sanctions Committees, detailing illicit activities, naming sanctions violators and recommending measures to stem infringements. They have been established to monitor sanctions regimes in Sudan, Liberia, the Democratic Republic of Congo, Côte d'Ivoire, Sierra Leone and Somalia. As the first case study in this chapter will show, the Sierra Leone Expert Panel played an important role in bringing an end to the war in Sierra Leone. But Expert Panels need much more institutional support if they are to function effectively.

In addition, the UN Security Council has made changes relating to the implementation of arms embargoes, with efforts to close up loopholes and to monitor compliance. And commodity-specific boycotts have become another regular feature of UN sanctions regimes in recent years, particularly in Africa.

NGOs and human rights groups tracked the role of diamond smuggling in financing the armed rebellions in both Angola and Sierra Leone. This prompted the Security Council to act to block the 'blood diamond' trade. It imposed diamond embargoes against UNITA in Angola (the National Union for the Total Independence of Angola) (UN 1998), the Revolutionary United Front areas of Sierra Leone (UN 2000c), and the government of Liberia (UN 2001).

The UN cooperated with diamond-exporting countries, the diamond industry and NGOs in order to implement these measures. It did so by establishing certificate-of-origin systems intended to protect the legitimate diamond trade while weeding out illicit diamonds mined by banned rebel movements (Cortright and Lopez 2005).

But despite progress in some areas, further reforms are required to make

UN sanctions smarter and more effective and to strengthen their contribution to the protection of civilians in acute crises in Africa.

*ippr recommends that:*

- When the Security Council agrees on a sanctions regime, it should simultaneously establish effective monitoring mechanisms and provide them with the necessary authority and capacity to carry out high-quality, in-depth investigations on the impacts and effectiveness of sanctions.

The Security Council needs to address delays in establishing sanctions monitoring mechanisms, which are often not set up until several months after a sanctions regime has been adopted (UN 2006g). And there should also be improved procedures for assessing the likely humanitarian impact of sanctions. The Subsidiary Organs Branch in the UN Secretariat, which provides institutional assistance to UN sanctions regimes, needs to be further strengthened in terms of staff, resources and mandate, so that it can provide the necessary analytical and logistic support to Expert Panels.

The establishment of a high-ranking, dedicated UN post relating to sanctions would help ensure that sanctions regimes are designed and applied with greater precision: with a clearer sense of who the perpetrators of human rights abuses are, what resources and commodities are motivating and sustaining their actions, what specific sanctions would be most likely to compel a government or rebel group to end their abusive policies, and how best to design sanctions regimes to minimise adverse humanitarian consequences for civilians.

It would also help to raise the political profile of sanctions, to convince the UN Security Council that they are a genuinely useful tool for civilian protection, rather than a smokescreen to cover failures to develop a more active policy, as is too often the case at present.

*ippr recommends that:*

- The UN Secretary-General should appoint a senior adviser to provide the Security Council with analysis on the best way to target sanctions and to ensure their effective implementation.

Financial sanctions can target abusive regimes' sources of income and commercial interests, in order to help alter their behaviour. The second case study in this chapter underlines the potential of financial sanctions to close down the financial networks of the National Congress Party in Khartoum.

Imposing financial sanctions in Africa is not easy. Targeted groups can maintain clandestine financial channels through trans-national criminal

networks and corporations or via illegal trade routes across porous African state borders. However, recent developments in combating international terrorism suggest that it is possible to implement these kinds of measures in a way that exerts real pressure on the party in question. The UN Counter Terrorism Committee, for example, is developing new approaches to freezing terrorist financial assets and to deny designated individuals and organisations the right to travel within their borders. These measures should be used to strengthen UN financial sanctions for the protection of civilians in acute crises.

Other international innovations should also be explored. For example, efforts by the Financial Action Task Force to develop national and international policies to combat money laundering and illicit financing could play a very useful role. A particularly interesting development has been the establishment of a new 'Bankers Group', which met for the first time at the UN in New York in February 2007. The Bankers Group was created by the Monitoring Team of the Al-Qaida and Taliban UN Sanctions Committee (1267 Committee). It is intended to reach out to bankers, bankers' associations and other private sector financial experts, in order to explore ways to improve the effectiveness of international financial sanctions applicable to Al-Qaida and the Taliban.

It will investigate ways in which national authorities should implement the assets freeze, actions that should be demanded of financial institutions, the extent to which a particular action is likely to achieve expectations, and the main impediments to effective sanctions implementation (Security Council Report 2007).

While it is always preferable to secure the agreement of the UN Security Council when it comes to the imposition of sanctions, there will be occasions when this political consensus cannot be reached. In these circumstances, countries may need to take independent action. Later in this chapter, for example, we argue that Europeans should adopt sanctions against Khartoum because of its policy in Darfur. The efficacy of these sanctions obviously greatly depends on the particular economic relationships between the countries imposing the sanctions and the country being sanctioned. In the case of Europe, we believe that these relationships are significant and that they potentially give Europe some real leverage over the Sudanese government.

*ippr recommends that:*

- The UN and national governments should strengthen their capacity and willingness to apply targeted financial sanctions, asset freezes and travel bans.

## The African Union and sanctions

There is plenty of scope for African leaders to exert economic pressure on their peers in circumstances in which large-scale human rights abuses or war crimes are occurring. Article 23 of the Constitutive Act of the African Union states that:

‘... any member state that fails to comply with the decisions and policies of the Union may be subjected to ... sanctions, such as the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly.’ (AU 2000: Article 23)

In the recent past, African regional bodies have cooperated with the Security Council to impose UN sanctions, through the Economic Community of West African States (ECOWAS) in Sierra Leone (1997) and Liberia (2001), and through the Southern African Development Community (SADC) in Angola (1997). In addition, in 1996, neighbouring states agreed to apply regional sanctions against Burundi.

Overall, however, the commitment of most African states to impose sanctions is very limited. Part of the problem is technical. There are serious practical difficulties in implementing African sanctions regimes effectively in circumstances of weak governance and poor border controls – conditions prevalent in many parts of the continent. Moreover, many African states lack the legal and operational capacity to enforce sanctions.

But the main problem is political. Allegiance to pan-African solidarity means that many African leaders still place ‘consensus politics’ ahead of their commitment to human rights principles (Cilliers and Sturman 2002). For example, the AU has twice managed to prevent Khartoum from assuming the AU presidency. But the AU has not suspended Sudan’s membership and it has not been prepared to apply any real economic pressure on Khartoum over its policy towards Darfur.

Tellingly, the AU discussion on sanctions and Sudan at the June 2006 AU Peace and Security Council (PSC) meeting in Banjul was over whether sanctions should be imposed on the rebel groups that had failed to sign the Darfur Peace Agreement, not on the government that bears primary responsibility for the horrific abuses in Darfur.

The 53-member Africa Group at the UN has also adopted a consistently critical attitude towards sanctions. In 2005, for example, during a discussion on sanctions in the relevant committee of the General Assembly, Madagascar’s envoy to the UN, Lydia Randrianarivony, spoke on behalf of the Africa Group to strongly attack the UN’s regular resort to sanctions in Africa.

These actions and statements suggest very limited support for sanctions within Africa and little likelihood that they will be used by African governments as a tool for advancing the responsibility to protect on the continent.

African civil society needs to do much more to convince African governments to support smart sanctions when faced with clear evidence that governments are abusing human rights on a large scale. And international NGOs should support and encourage African partners in pressing for this.

But what does recent experience tell us about the actual efficacy of sanctions in Africa?

## Did sanctions help in Sierra Leone?

The civil war in Sierra Leone was exceptionally brutal and involved enormous human suffering, with the maiming of innocent civilians a particularly odious and commonly used tactic. The recent conflict dates from March 1991, when the rebel Revolutionary United Front (RUF) launched a military campaign to overthrow the existing government of Sierra Leone led by Major General Momoh.

Supported by ECOWAS's Military Observer Group (ECOMOG), the Sierra Leone National Army (SLNA) was initially successful in defending the capital, Freetown. But the following year, a dissident group of military officers within the SLNA overthrew the government in a military coup led by Captain Valentine Strasser. And from 1992 to early 1996 the country was governed by the National Provisional Ruling Council (NPRC).

The NPRC was highly ineffectual, however, and by 1995 the RUF was in control of much of the country outside Freetown. In 1996, popular demand and mounting international pressure forced the NPRC to concede democratic elections, which were won by Ahmad Tejan Kabbah. But violence persisted, and in May 1997 Kabbah's government was ousted by disgruntled troops from the Sierra Leone army. These joined forces with the RUF to form a ruling junta – the Armed Forces Revolutionary Council (AFRC). Civilian security deteriorated markedly during this period, which belatedly triggered a more forceful international response.

In October 1997, the UN Security Council imposed an oil and arms embargo on the regime in Sierra Leone and authorised ECOMOG to oversee its implementation. An ECOMOG military offensive in February 1998 successfully expelled the junta from Freetown, and President Kabbah was returned to office in March. The oil and arms embargoes were lifted. But the civil war continued, with large-scale atrocities and human rights abuses.

Then, in January 1999, the AFRC overran most of Freetown. In a new intervention, ECOMOG troops retook the capital and shored up Kabbah's government, although thousands of rebels remained at large in the surrounding countryside. On 7 July 1999, all parties to the conflict signed the Lomé Accord to end hostilities and form a government of national unity. And in October 1999 the Security Council authorised the establishment of the UN Mission in Sierra Leone to help oversee implementation of Lomé (UNDPKO 2007).

But none of these measures was successful in halting the continuing violence of the rebel forces. International concern increasingly focused on the role of the illicit diamond trade in supporting the rebels. On 5 July 2000, the Security Council adopted Resolution 1306, which imposed a ban on the import of all rough diamonds from Sierra Leone that were not under the control of the government through a Certificate of Origin scheme. Resolution 1306 also established a Panel of Experts to investigate violations of the arms embargo and links between trade in diamonds and the trafficking of arms into Sierra Leone.

The Panel of Experts exposed the extent of Liberia's role in fuelling the war in Sierra Leone, and made sure that this information reached the Security Council. Resolution 1343, adopted by the Council in 2001, took note of the findings of the Panel of Experts that diamonds were the primary source of income for the RUF, and that most RUF diamonds left Sierra Leone through Liberia with the permission and involvement of Liberian government officials at the highest levels (UN 2001).

Resolution 1343 extended sanctions to Liberia, tightening an existing military embargo and banning the import of Liberian rough diamonds. All Liberian registered aircraft were also prohibited from entering Sierra Leonean airspace, after the Expert Panel concluded that Liberian aircraft were being used to violate the arms embargo against Sierra Leone (UN 2000e).

Stability was eventually restored to Sierra Leone in 2002. A number of international mechanisms were instrumental in bringing an end to violence there. The deployment of a major UN peace operation – backed up by British military forces – was especially significant. However, the imposition of 'secondary sanctions' against Charles Taylor's government in Liberia was also critical. This disrupted the links between the rebel-controlled diamond industry and supplies of war resources from Liberia to the RUF.

Sanctions did not work quickly and they were not in themselves sufficient to resolve the crisis. But they were an important component of the international response, and they played a vital role in helping to deliver a more secure and stable environment for the people of Sierra Leone.

## Can sanctions help in Darfur?

Despite the severity of the human rights abuses and suffering endured by the people of Darfur, the international community has still failed to agree on targeted and effective sanctions against the ruling National Congress Party government in Khartoum. There have been some initiatives to identify key figures within the Khartoum government against whom economic pressure can be brought to bear, but the international community has so far shown itself to be unable or unwilling to agree on decisive action against them.

In January 2006 a UN Panel of Experts belatedly drew up a list of 17 individuals who have undermined peace in Darfur. A subsequent Panel of Experts report in August 2006 included an additional confidential list of individuals identified for sanctions, including senior people in the Sudanese government (UN 2006a). A parallel UN-appointed International Commission of Inquiry identified 51 people responsible for serious violations of international human rights laws, including crimes against humanity or war crimes (International Crisis Group 2006b) (see Chapter 4 for more on this).

Yet despite these formal processes and conclusions, sanctions have so far been applied to just four individuals: one airforce commander, one Janjaweed leader and two rebels. The only additional sanction has been a weak and largely ignored arms embargo that applies only to Darfur and not to the whole of Sudan, allowing Khartoum to continue to send military supplies to Darfur.

This record is profoundly shocking and inexcusable. While sanctions will need to form part of a broader international strategy towards Darfur, they are potentially a vital policy tool for helping to persuade the Khartoum government to accept a UN force in Darfur. As the International Crisis Group has argued: 'Changing policies in Darfur and allowing the transition to a UN mission would clearly be traumatic, with serious domestic and security repercussions. The National Congress Party (NCP) will only do so if it calculates that the international repercussions for non compliance outweigh the domestic costs of cooperation' (International Crisis Group 2006b: 2).

Tough international sanctions should be specifically designed to secure this objective, an outcome that would bring real benefits to civilians in Darfur. Another purpose of sanctions should be to get the Sudanese government to be more flexible when it comes to political and peace negotiations with the rebels.

There is also evidence from Sudan's recent history that sanctions can work. For example, in the 1990s the US led efforts in the UN to impose diplomatic and aviation sanctions against Khartoum because of its support for international terrorism. Alongside the US's own unilateral sanctions, introduced in 1997, these tough measures were instrumental in bringing about important changes in Sudanese government policies, including the decision to expel Osama bin Laden from the country, dismantle the commercial infrastructure and terrorist training camps of Al-Qaida and to cut Khartoum's ties to a number of terrorist organisations (International Crisis Group 2006b).

After the terror attacks on New York on 11 September 2001, serious US pressure also persuaded the Khartoum government to increase its counter-terrorism cooperation with western governments and to show greater flexibility in its negotiations with the SPLM, a process that culminated in the signing of the Comprehensive Peace Agreement to end the war between

north and south Sudan in 2005 (Prendergast 2007).

A major obstacle to the imposition of effective UN sanctions against Khartoum has been the position taken by China and Russia. China in particular has opposed tougher action against Sudan in the Security Council, including sanctions.

While comprehensive UN sanctions are always preferable to independent sanctions, in this case, faced with opposition from the Chinese and the Russians, sanctions against Sudan should now be pursued by governments outside of the UN framework. That said, Beijing and Moscow's somewhat surprising support for sanctions against Iran in late 2006 may give some cause for optimism that a workable UN sanctions regime for Darfur can be agreed in New York (UN 2006h).

It is particularly disappointing that the European Union has done so little on the sanctions front to date. The EU has contributed substantial financial sums to the African Union mission in Darfur (AMIS) and it has provided over €360m in humanitarian assistance (Grono 2007). For this it deserves credit. But it has conspicuously failed to match tough rhetoric about Darfur – of which there has been plenty – with a willingness to impose serious penalties on Khartoum. This is despite the EU being prepared to impose sanctions in a string of other cases, from Belarus to Moldova, Burma to the DRC, Liberia to Côte d'Ivoire.

While substantial human rights abuses are taking place in each of these cases, in none of them (with the possible exception of DRC) are the abuses as egregious as in Darfur. It is long overdue for the EU and others to adopt a firmer line on sanctions towards Khartoum.

*ippr recommends that:*

- There should be an assets freeze and a travel ban on all 17 people listed in the UN Panel of Experts final report and on the 51 individuals named by the International Commission of Inquiry. In the absence of Security Council agreement on this, the EU and the US should act independently – freezing assets and limiting the travel of named Sudanese within EU and US territory.
- Detailed investigations should be undertaken into the National Congress Party's clandestine financial networks. Again, it would be better for this to be done with the authorisation of the Security Council, but in the absence of this, Europe and the US should act independently.

Senior figures in the Khartoum government have become exceptionally rich on the basis of these illicit financial networks. This is also an area in which international policy has become much more sophisticated in recent

years, with encouraging innovations to close the financial accounts of terrorist organisations. There is scope for using these new methods to freeze the assets of those elements of the Sudanese elite that are responsible for war crimes in Darfur.

*ippr recommends that:*

- A full UN arms embargo should be imposed on Sudan.
- Unilateral trade sanctions should be imposed on Sudan, and serious thought should be given to targeting the Sudanese petroleum sector specifically – the biggest single source of revenue for the government.

The existing embargo is only supposed to apply to Darfur and has been largely ignored. Given the extent to which the Chinese and the Russians supply Sudan with military equipment, getting their support for a stronger and more comprehensive arms embargo will be difficult. But the Europeans in particular should press hard for this. The imposition of a UN ban would not in itself bring an end to Sudanese repression in Darfur, but it would send a powerful signal to Khartoum, given its dependence on external military supplies.

There are already some economic sanctions on Sudan: US sanctions have been in place since 1997 and there are currently campaigning efforts underway to encourage targeted disinvestment from Sudan on the part of US companies. Similar action should be encouraged within Europe, where levels of trade and investment are high and the impact of trade sanctions and disinvestment are potentially more significant as a form of leverage on Khartoum.

There are some other options that are probably too dangerous to contemplate. Although it might be feasible to do logistically, we do not advocate that a coalition of willing states impose a naval blockade on oil shipments from Sudanese ports. In the absence of a supporting UN Security Council resolution, a military blockade could be presented as an illegal act of war. It could risk a major confrontation with China, given its dependence on Sudanese petroleum. There might also be serious humanitarian consequences for Sudanese civilians.

But short of UN-mandated action of this kind, there are steps that Europeans could take that would exploit Khartoum's vulnerability in this sector and force it to re-evaluate its existing policies. To give an example highlighted by the International Crisis Group, European governments:

'... could enact legislation to ban companies based in their countries that are either still directly involved in the Sudanese petroleum sector or are in industries related to it...This would affect such entities as ABB of Switzerland, which invests in Sudan's power grid, and

Siemens of Germany, which supplies telecommunications systems to the main oil-producing consortium (GNPOC) and is building one of the largest diesel-generating plants in Khartoum.' (International Crisis Group 2006b: 9)

## 4. The force of law: the use of legal measures

In 2001, the report of the International Commission on Intervention and State Sovereignty (ICISS) suggested that the threat and imposition of international legal sanctions could play a vital role in protecting civilians from large-scale violence and abuse. It asserted that the establishment of special war crimes tribunals in places like Rwanda and Sierra Leone would ‘concentrate the minds of potential perpetrators of crimes against humanity on the risks they run of international retribution’ (ICISS 2001: 3:29). The report also anticipated that the International Criminal Court (ICC) would provide new jurisdiction over a wide range of war crimes and other crimes against humanity, and that this extension of international legal authority would bring benefits to vulnerable civilians.

But to what extent have these claims been borne out in practice in Africa? And what scope is there for strengthening the contribution of national, regional and international legal measures to the protection of vulnerable civilians in acute crises in Africa?

This chapter addresses these questions. It looks first at legal developments within Africa. It then considers international legal developments, including UN Commissions of Inquiry and the work of the ICC. Finally, the chapter sets out a number of policy recommendations for how these mechanisms could be strengthened, consistent with a commitment to the responsibility to protect in Africa.

### African justice mechanisms

The major continental institutions responsible for protecting and promoting human rights in Africa are the African Court of Human and Peoples’ Rights (ACHPR) and the Court of Justice of the African Union (ACJ). Although these courts are set to be merged, the unification process has been severely delayed by the reluctance of most AU states to ratify the Protocol of the ACJ.

In 2005, the AU Assembly therefore decided that operationalisation of the ACHPR would proceed regardless, and that the issue of integrating the courts would be revisited when the ACJ entered into force.

This section will focus on the development of the ACHPR and its potential to improve the access of all African citizens to fair and impartial justice in cases where their rights are being systematically abused by their own governments.

The Protocol establishing the ACHPR came into force in January 2004, following its ratification by 15 AU member states. Two-and-a-half years

later, in July 2006, the first 11 judges of the ACHPR were sworn in. The new court has yet to hear a case, but once it is fully operational, its primary purpose will be to adjudicate in human rights cases brought by one state against another, or by an individual or NGO against a state. States parties to the Protocol are required to comply with and guarantee the execution of any judgments of the ACHPR, and the Court is able to order that compensation be made for violations of human rights.

This is an important step in the development of African justice mechanisms. However, the capacity of the ACHPR to strengthen the rule of law in Africa to protect civilians caught up in severe crises remains unclear. African leaders and governments have traditionally been reluctant to accept limits on their sovereignty, and so an increase in political will and a major shift in attitudes will be required before the Court can hope to enjoy a strong mandate for upholding individual human rights.

In relation to direct civilian protection, the Court suffers from two major structural weaknesses. First, the Protocol to the ACHPR permits NGOs and individuals to bring cases against states parties. But this is conditional upon the state in question having recognised the Court's competence to do so. By the end of 2005, just one of the 21 states parties to the Protocol (Burkina Faso) had made such a declaration, and few others appear willing to follow this example (van der Mei 2005).

A second weakness is the failure of the Protocol to the ACHPR to specify actions that can be taken to enforce the Court's judgments. The AU Constitutive Act gives the AU Assembly the power to impose economic and political sanctions on states that refuse to comply with decisions made by any organ of the African Union, including the Court. However, the record of the AU in following through with these threats would suggest that comprehensive African sanctions against states that are abusing their own populations are difficult to achieve. A Court that is not empowered to punish states that do not comply with its judgments will have very little impact on civilian protection in Africa.

*ippr recommends:*

- Regional African judicial institutions should be strengthened, and an emphasis placed on the creation of credible enforcement mechanisms that will back up the judgments of bodies such as the African Court on Human and Peoples' Rights.

Actors involved with the ongoing development of the Court, including its judges and civil society activists, should prioritise the discussion of realistic penalties that could be imposed on states that do not adhere to the rulings of the ACHPR. Governments such as the UK's are potentially well

placed to support this process through dialogue and technical legal assistance (House of Lords 2006).

## Ad hoc tribunals

Prior to the establishment of the ACHPR and the ICC, one way in which the international community attempted to bring abusive African regimes to account was through the creation of ad hoc international or hybrid tribunals. The International Criminal Tribunal for Rwanda (ICTR) was created in 1994, after a genocide that left more than 800,000 dead and a further two million displaced from their homes. In 2000, authorities in Sierra Leone consented to the creation of a 'hybrid' Special Court for Sierra Leone (SCSL), which drew on a combination of international and domestic legal processes and personnel to administer justice to leaders of the abusive RUF (Dickinson 2003).

In this report we will not attempt to catalogue the strengths and weaknesses of these courts. Other authors have provided more comprehensive analyses of both the ICTR and the SCSL (Dickinson 2003, O'Shea 2003, Mose 2005). However, it is worth considering what role, if any, these kinds of institutions can play in the protection of civilians in crisis situations in Africa.

The most valuable contribution made by the ad hoc courts has undoubtedly been normative, in the sense of rejecting impunity for the most serious crimes against civilian populations. For example, a notable success of the ICTR was its conviction of former Rwandan Prime Minister Jean Kambanda for the crime of genocide, reaffirming the idea that political status is no barrier to prosecution for crimes against humanity. In the long term, this may alter the calculations of potential human rights abusers.

The ICTR furthered the development of international jurisprudence in other important ways, such as the landmark decision in the case of *Prosecutor v. Akayesu*, defining rape as an act of genocide when committed with the intent to destroy a particular ethnic group. By recognising acts of sexual violence as crimes against humanity, the ICTR has done much to advance the ideals of civilian protection in Africa, particularly in terms of women's rights (IWPR 2007).

Yet international and hybrid tribunals can also have a more direct bearing on civilian protection in Africa. This was particularly true of the SCSL's indictment of the former president of Liberia, Charles Taylor. Until 2000, Taylor's longstanding relationship with the Revolutionary United Front (RUF) in Sierra Leone had contributed to immense suffering for civilians in both West African states. The RUF had aided and abetted in the 1989 coup that brought Taylor and his National Patriotic Front of Liberia (NPFL) to power; in return, Taylor approved the participation of NPFL fighters in the civil war in Sierra Leone.

Therefore, in June 2003, the Prosecutor of the Special Court indicted Charles Taylor as one of the individuals most responsible for committing crimes against humanity in Sierra Leone, and issued a warrant for his arrest (Bhoke 2006). This action greatly weakened Taylor's dictatorial grip over his people and, combined with his arrest in 2006 by the SCSL, was a crucial factor in bringing peace to Liberia.

Of course, the Special Court's successful arrest of Charles Taylor must be seen in the wider context of efforts to resolve the crisis in Liberia, which included sanctions, regional and UN peacekeeping operations and domestic political pressure. But this example shows that ad hoc courts can make a significant contribution to civilian protection and the consolidation of international humanitarian law in Africa, if they are given strong political and financial support.

## UN Commissions of Inquiry

In the past few years, UN Commissions of Inquiry have been set up by the Security Council to investigate conflict situations in Sudan, East Timor and Lebanon. There are three key ways in which these initiatives can complement other legal tools that are used to protect civilians in Africa (and elsewhere). First, they are able to deliver expert and non-partisan specialist advice to governments or UN officials. Second, they can establish an accurate picture of humanitarian conditions on the ground in areas of conflict. Third, they can focus political and media attention on conflicts that the international community is failing to address properly.

This is particularly true of the International Commission of Inquiry on Darfur (ICID), which was established in September 2004 to investigate serious violations of international humanitarian law in the region, to determine whether acts of genocide had been committed and to identify the perpetrators of such abuses with the intention of holding them accountable for their crimes (UN 2004b). The Commission consisted of five international legal and humanitarian rights experts and a team of specialists on issues such as forensic and military analysis and violence against women. This group spent eight weeks on the ground in Sudan and in neighbouring Chad, Ethiopia and Eritrea collecting evidence from governmental and non-governmental sources.

The ICID report presented to the Security Council in early 2005 concluded that individuals from the government of Sudan, the Janjaweed militia groups and some of the rebel groups were responsible for indiscriminate acts of violence, including the killing of civilians, torture, disappearances, destruction of villages, forced displacement and rape and other forms of sexual violence on a widespread and systematic basis. The report also included detailed evidence of the atrocities being committed in Darfur

and the names of 51 people considered most responsible for these acts (ICID 2005).

The work of the ICID was a key factor in the Security Council's decision in March 2005 to refer the situation in Darfur to the Prosecutor of the ICC (Washburn and Punyasena 2005). Previously, US opposition to the ICC had prevented the adoption of Security Council resolutions recommending that such a step be taken. China and Russia had also been reluctant to criticise the Khartoum government, largely due to their own substantial interests in Sudan's oil and natural resources. But the evidence provided by the Commission's report gave serious weight to the calls for urgent humanitarian action in Darfur by the international community.

On 8 March 2005, Kofi Annan called the Security Council into emergency session to press them to act on the Commission's recommendations, and, by the end of the month, a compromise had been reached whereby the US and China agreed to abstain on a resolution referring the situation to the ICC (UN 2005b).

Of course, the mere fact of creating a Commission to investigate serious human rights abuses will not necessarily lead to action. In the case of Darfur, it was the desperate state of affairs in the region, combined with strong pressure from the UN Secretary-General, the High Commissioner for Human Rights and countless international NGOs that gave such a boost to the recommendations of the Commission of Inquiry. But if a similar approach is taken with future high-level commissions, there is a real opportunity for them to force civilian protection measures further up the international agenda and to help galvanise more effective action.

*ippr recommends:*

- Commissions of Inquiry should be used strategically by the UN Secretary-General to encourage Security Council or broader international action in crises in Africa when political will is lacking.

## The International Criminal Court

A common theme of the debate on the role of the ICC in protecting civilians is the supposed trade-off that must be made between peace and justice in brokering the end of a serious conflict.

Commentators have argued that it is impractical or even dangerous to set justice mechanisms in motion before a sustainable peace settlement has been negotiated (Hovil and Quinn 2005: 50). But this assertion requires closer examination. Is it really self-evident that peace and justice are mutually exclusive, or could a well-managed application of international law support and strengthen peace processes and enhance civilian protection?

This section will consider some of the strengths and weaknesses of the ICC, using the Court's current investigations as case studies.

The Prosecutor of the ICC faces many difficulties when attempting to intervene in a live conflict. Ideally, investigations and prosecutions would take place in a reasonably stable and peaceful environment following the cessation of hostilities. But the Court has only been authorised under its Statute to deal with crimes committed since 1 July 2002. For the foreseeable future, the ICC will therefore be called on to investigate serious crimes against humanity in conflicts that remain unresolved (Grono 2006b).

This situation has led to the charge that ICC prosecutions could act as a direct obstacle to peace, if abusive leaders refuse to relinquish their power for fear that they may fall into the hands of the Court. This perception has clearly strengthened the resolve of Sudan's President Bashir to prevent UN peacekeepers from entering Darfur. Meanwhile, the ICC's investigation of the situation in Northern Uganda has frequently been cited as the single largest barrier to the peaceful resolution of the 20-year civil war between government forces and Joseph Kony's Lord's Resistance Army (LRA). But this idea is misleading and counterproductive.

Prosecution by the ICC is, in fact, 'one of the few credible threats faced by leaders of warring parties' and it may act as a deterrent to would-be human rights abusers (Grono 2006b: 3). It is too early to tell whether this prediction will be borne out. However, the experiences of the ICC in the DRC, Uganda and Sudan suggest that the threat of prosecution does influence the decisions made by abusive leaders.

On 29 January 2007, ICC judges ruled that there was sufficient evidence to allow the case against DRC militia leader Thomas Lubanga Dyilo to proceed to trial. This will be the first case prosecuted by the Court and will therefore be watched carefully by African leaders and the international community.

Lubanga has initially been charged with the war crimes of enlisting and conscripting children under the age of 15 and directing them to actively participate in hostilities, although there is evidence that implicates his militia group – the Union of Congolese Patriots (UPC) – in other serious crimes including murder, sexual violence and torture (Human Rights Watch 2006). Human rights organisations have objected to the narrow scope of the trial, arguing that the Court should use this opportunity to demonstrate that all serious crimes against humanity will be prosecuted.

It has been noted that the prosecution of Lubanga will not measurably improve the situation for civilians in the Ituri region of the DRC. Although he is leader of a group responsible for some of the worst acts of violence in the seven-year conflict in this area, he is expendable to the government and his trial will not cause it any significant political damage (Wolters 2007). However, this case is still crucial in the short term as a demonstration of the

effectiveness of the court in apprehending and successfully prosecuting those responsible for some of the worst human rights abuses against civilian populations (Grono 2006b).

In the Ugandan crisis, the ICC investigation has been more directly involved in civilian protection through its role in reinvigorating a previously moribund peace process. Since the late 1980s, nearly 100,000 people have died and a further two million have been forced into overcrowded and squalid IDP (internally displaced persons) camps as a result of the conflict between government and rebel forces. It has been estimated that 25,000 children have been abducted and 'recruited' as child soldiers or sex slaves (Grono 2006a). Until recently, domestic and international efforts to resolve the war have been half-hearted and inconsistent.

In late 2003, the referral of the situation in the North to the ICC by Ugandan President Museveni drastically altered the calculations of all parties and focused international political and media attention on the conflict. The arrest warrants issued by the ICC in October 2005 for Joseph Kony and four other leading members of the LRA had a similar impact, inducing Kony and his deputy Vincent Otti to emerge from the bush for the first time in mid-2006. But the LRA's leaders have subsequently put the Prosecutor of the ICC in a difficult position by making their continued engagement in peace talks conditional upon the Court dropping its prosecutions.

Reactions to these developments in Uganda have been mixed. The lack of a stable communications infrastructure in the region has prevented widespread dissemination of accurate information about what ICC prosecutions would actually mean on the ground. Many local NGOs and community leaders have been openly hostile to the Court, fearing that civilians will be endangered if the prosecutions encourage both sides to return to the battlefield instead of the negotiating table.

But the Prosecutor's response to this challenge should not be to revoke the prosecutions. The Court is still a fledgling organisation, and its legitimacy as a source of international justice and accountability will be greatly undermined if it is perceived to give in to the demands of those who have committed the most serious crimes against humanity. This would send a dangerous message to other human rights abusers, particularly to individuals in Sudan and the DRC currently being investigated by the Court.

A suspension of the Ugandan prosecutions against the LRA should therefore only be considered if parties to the conflict are able to reach a viable peace agreement – one that includes strong accountability and reconciliation mechanisms – and this should be a political decision taken by the UN Security Council (Grono and O'Brien 2006).

Although the creation of the ICC has been a landmark in the development of international justice, its financial and structural limitations will prevent it from ever trying more than a handful of the most serious human

rights abusers. The most valuable contribution that the Court can make to international peace and security is therefore a normative one, promoting accountability and the rule of law as the cornerstones of peaceful and just societies in Africa and elsewhere. However, there are also important practical steps that can be taken by the ICC to ensure greater levels of civilian protection, and a greater understanding of what the Court is trying to achieve in African crisis situations.

In October 2006, the UN High Commissioner for Human Rights, Louise Arbour, presented a report to the ICC regarding the situation in Darfur, drawing on her experiences of investigating human rights abuses in ongoing conflicts. The key recommendation put forward by the High Commissioner was that a 'proactive field presence' of the ICC in Sudan could measurably enhance the level of protection perceived and enjoyed by the affected population (Arbour 2006).

There are undeniably serious risks for civilians who decide to cooperate with ICC investigators. Yet, as the High Commissioner argued in her report, these risks are not substantially greater than the danger faced on a daily basis by civilians caught up in acute crisis situations. As far as is feasible, the ICC should therefore reinforce its ongoing attempts to secure a field presence in areas where civilian protection is particularly poor, such as the planned office in Bunia in the Ituri region of the DRC (Human Rights Watch 2005). This will enable the Court to manage victim and witness protection much more effectively, and will improve access to the Court for those who need its help the most.

In tandem with this process, the Court should continue to strengthen its outreach efforts in states under investigation, an activity to which it has devoted insufficient resources in the past. An encouraging sign is the ICC's allocation of €2.7m to its outreach programmes in 2007, which represents a 90 per cent increase on the budget for 2006 (IWPR 2006). These funds should be directed into initiatives that will help build a relationship of trust and understanding between the ICC and civilian populations in Africa, such as the series of workshops that were held in Uganda with Ateso and Langi traditional leaders, local council members, the Ugandan Human Rights Commission and the UN OHCHR in the summer of 2006.

ICC outreach initiatives in the countries in which investigations are taking place must also be underpinned by a concerted effort to consolidate the role of the ICC in Africa. The ratification of the Rome Statute by 29 African states and the development of a new peace and security architecture within the AU signify an emerging commitment to stamping out impunity for crimes against humanity in Africa.

In June 2006 an ICC delegation met with the AU Legal Counsel to discuss the possibility of signing a Memorandum of Understanding (MOU) between the African Union and the Court (Kambudzi in du Plessis and

Louw 2006). This was a promising start. However, in light of the serious challenges that the ICC is facing in respect to its current African investigations, ensuring that a substantive MOU is concluded as soon as possible should be a priority for both organisations.

*ippr recommends:*

- The ICC should be empowered and resourced to secure successful prosecutions against African war criminals. To further strengthen the ICC's role, field offices should also be established in the states under investigation, in conjunction with greater outreach to African leaders and civil society.
- Current negotiations to conclude a Memorandum of Understanding between the ICC and the AU should be accelerated, alongside a drive to persuade African and other states that have not ratified the Rome Statute to do so.

### The ICC and Darfur: hindrance or help?

Nowhere is support for the ICC more urgently required than in Darfur. On 27 February 2007, following a year-long investigation by the Prosecutor, two Sudanese individuals were named as the first targets of an ICC investigation – former State Minister for the Interior Ahmad Harun and a Janjaweed commander, Ali Muhammed Ali Abd al-Rahman. Both men are suspected of a total of 51 counts of war crimes and crimes against humanity, and ICC judges have been asked to determine whether there is sufficient evidence to bring them to trial (Osman 2007).

Khartoum's response to this development has been predictably belligerent, asserting that the ICC investigation is a little more than a Western imperialist plot to overthrow the government of Sudan. Interior Minister al-Zubayr Bashir Taha has reportedly threatened to 'cut the throat of any international official ... who tries to jail a Sudanese official in order to present him to the international justice' (Grono and Steinberg 2007).

But it is essential for the Court and the Security Council to stand firm in the face of this defiance. Equivocation on the part of the international community will only reinforce the Sudanese government's sense of infallibility and reveal the impotency of the ICC. Conversely, a strong push to secure the arrest and prosecution of those most responsible for horrific acts of violence against civilians in Darfur would signify a clear commitment to ending impunity for such abuses.

Progress will only be made in securing the convictions of individuals indicted for the most serious war crimes in Darfur if a strong consensus to

act can be built between ICC signatory states and other relevant governments. The US in particular possesses credible intelligence regarding senior Sudanese officials, and should be urged to share relevant information with the ICC that could help it to build its case (Prendergast 2007).

*ippr recommends that:*

- African and Western governments should back up their support for the enforcement of ICC arrest warrants in Sudan with strong and coordinated action.

## 5. Boots on the ground: military force and civilian protection

This report has so far examined a range of non-violent policy responses for protecting civilians in acute crises in Africa. Applied effectively, there is evidence that these measures can help to safeguard civilians from large-scale violence and abuse. However, there are other circumstances where these measures are likely to be insufficient and where military force will be required to provide greater civilian security.

This chapter focuses on these cases. Specifically, it considers the ICISS precautionary criteria for military intervention and provides some detailed commentary relating to each of them. It looks at some of the challenges facing military intervention in different types of environment. It then assesses African efforts to enhance the continent's capacity for military intervention, the experience of recent interventions in Burundi and Darfur, and the prospects for an AU intervention in Somalia.

The chapter also considers wider international efforts to improve the efficacy of military intervention for human protection purposes in Africa, looking at the role of the UN, the European Union and NATO. Again, it addresses some recent examples of international intervention in Africa, including Sierra Leone and the Democratic Republic of Congo, as well as military options in Darfur.

### Criteria for military intervention

Military intervention is easily the most contentious dimension of the responsibility to protect agenda. One of the critical issues is how bad a situation has to be to warrant military action. The International Commission on Intervention and State Sovereignty (ICISS) suggested that all of the relevant decision-making criteria for reaching such a judgment can be summarised under the following six headings: right authority, just cause, right intention, last resort, proportional means and reasonable prospects (ICISS 2001: XII).

#### Right authority

The Commission states that 'there is no better or more appropriate body than the United Nations Security Council to authorise military intervention for human protection purposes ... Security Council authorisation should in all cases be sought prior to any military intervention being carried out' (ICISS 2001: XII).

One of the reasons that military action against Iraq was so unpopular

internationally was precisely because the US and the UK governments went to war without explicit UN authorisation, referring back to previous resolutions when they could not gain the necessary support for a new UN resolution authorising military action.

However, the question of UN authority for intervention is not unproblematic. The existing composition of the Security Council, particularly the five permanent members, is unrepresentative, with no permanent representatives from Africa, Latin America, the Middle East or the Indian sub-continent. There is also an issue about the democratic credentials of some Security Council members, and whether the legitimacy of military interventions should be dependent on the votes of countries, like China, that deny democratic elections to their own people.

Similarly, should action to prevent large-scale killing in an African country be beholden to a Security Council that has no permanent African membership? Kofi Annan's High-Level Panel argued that 'in some urgent situations [Council] authorisation may be sought after ... operations have commenced' (UN 2004a: para 272a). But the UN World Summit in 2005 rejected demands by a number of African states that the AU should be able to act before gaining UN authorisation. This is a complex issue, however. Africa's weak response to Darfur suggests that a stronger African voice on the UN Security Council will not automatically ensure more decisive Council action to halt crises in Africa.

There is another critical issue here, which relates to the consequences of the UN not responding when faced with grave human rights violations. As the Commission put it, 'If the Security Council fails to act in conscience-shocking situations crying out for action then ad hoc groups of countries are unlikely to rule out actions themselves and the stature and credibility of the UN may suffer thereby' (ICISS 2001: XIII).

This tension between the legality and legitimacy of interventions has been a particular issue in Africa. In the case of Liberia, for example, the ECOWAS intervention in 1991 did not initially have the endorsement of the UN Security Council, but was strongly backed by many African states and received retrospective UN authorisation. And in neighbouring Sierra Leone, ECOWAS sent in West African troops to restore to power the democratically elected government, in advance of approval by the UN Security Council. In the eyes of most Africans, these interventions were seen as legitimate if not strictly lawful.

#### Just cause

As noted in the Introduction to this report, in ICISS's view, military intervention for human protection purposes is justified in two broad sets of circumstances:

'...to halt or avert: 1) large scale loss of human life ...; or 2) large

scale “ethnic cleansing”...’ (ICISS 2001: XII)

The most controversial issue in these proposals is that of anticipatory or pre-emptive military action. While it is right to be generally very sceptical about such action, a commitment to human rights cannot exclude this option in all circumstances. Without this possibility of anticipatory action, the international community would be placed in the ethically untenable position of being obliged to wait for massive human rights abuses to occur before taking action to stop them (ICISS 2001). Having said this, the US-led action in Iraq, and the inaccuracy of the intelligence information used to justify this action, will make it far harder in the future to gain the necessary public support for pre-emptive military interventions on human protection grounds in Africa and elsewhere.

### Right intention

The issue of right intention has acquired heightened significance in light of the military interventions in Afghanistan and Iraq. While governments have many and often mixed motives for foreign policy actions, humanitarian objectives should be the primary reason for intervention if that intervention is to have a reasonable chance of delivering a humanitarian outcome. An intervention carried out with right intentions is much more likely to involve the necessary pre-war planning for the post-war period. And an intervention is much more likely to be well intentioned if it takes place with widespread international support and with the authorisation of the Security Council.

### Last resort

In advance of military intervention, every reasonable diplomatic and non-military option for the resolution of the humanitarian crisis should have been explored. Time pressures and other exigencies may prohibit literally exhausting all non-military measures ‘by rote’ before resort to force. Indeed, Chapter VII of the UN Charter enables the Security Council to authorise military intervention should it consider that non-military measures ‘would be inadequate or have proved to be inadequate’ (UN 1945).

But there need to be very solid grounds to believe that a non-military measure would fail. And it is essential that non-military options are explored comprehensively. Too often, diplomatic censure, sanctions or a weak peacekeeping force represent political ‘gestures’ to disguise a lack of international resolve to pursue a more active and effective policy.

### Proportional means

ICISS states that ‘finding a consensus about intervention is not simply a matter of deciding who should authorise it and when it is legitimate to undertake. It is also a matter of deciding how to do it so that decent motives are not tarnished by inappropriate means’ (ICISS 2001: para 1.23).

Intervention for human protection purposes should involve extensive responsibility for ordinary people living in the country concerned, on whose behalf and in whose interests these interventions are supposedly being carried out. This means taking much greater care to minimise both civilian casualties and injuries, as well as damage to the country's infrastructure. This suggests the need for a different type of military doctrine and different rules of engagement from traditional warfighting.

### Reasonable prospects

The sixth and final criterion is that of reasonable prospects. If there is less enthusiasm for international humanitarian interventions today than six years ago, it is because governments and opinion formers have witnessed how difficult these operations are to carry out in practice. This is not an argument against military intervention. In some cases, like Rwanda in 1994, only non-consensual military intervention could have contained the level of killing. What is clear, however, is that there is a need to think more seriously about the 'how' of intervention for human protection, locating it within a wider operational and political context (see below).

When considering the question of military intervention it is also important that the above criteria are not treated as some kind of pro-forma checklist, whereby action is regarded as automatic when the criteria are met. As the academic Chris Brown puts it:

'...what is required is a practically minded judgement taken in the round based on individual circumstances. Such a judgement will sometimes involve a tough-minded acknowledgement that there are wrongs that cannot be righted, but, equally, it will not allow the best to be the enemy of the good – what is required is a form of judgement that constitutes the creative interaction between the standard criteria and the full specifics of the particular case.' (Brown 2006: 45)

### Different types of military intervention

When assessing the role of military force in protecting civilians from large-scale violence, it is useful to distinguish between three types of military intervention: consensual, semi-consensual and non-consensual.

The first is the classic peacekeeping operation, deployed in situations of 'conventional' conflict between countries. Here, UN or other peacekeeping troops monitor the compliance by national militaries with a political settlement agreed between warring state parties. Traditionally, these missions have operated with a mandate authorised under Chapter VI of the UN Charter, which relates to the 'peaceful settlement of disputes' (UN 1945). Because of the existence of a peace agreement, and general compliance

with it by the parties, the threat to the security of civilians and of peacekeeping troops tends to be small and these peacekeeping operations are authorised to use force only in very limited situations of self-defence.

However, the vast majority of military interventions in Africa over recent years are better described as 'semi-consensual' peace operations. These are primarily deployed to intervene in internal conflicts or civil wars, which are by far the main cause of the civilian protection emergencies in Africa that the responsibility to protect concept seeks to address. These missions have been undertaken by the UN or by African regional bodies with the formal consent of the host state authorities. But, unlike traditional Chapter VI missions, even in so-called 'post-conflict' situations, operational environments can be highly unstable and fluid, and formal consent to the deployment that has been provided by the host capital rarely translates into an end to all forms of violence on the ground.

Serious armed opposition to intervening forces can come from a number of sources who reject all or part of an agreement, including elements of the national armed forces, militia, rebel groups or terrorists. In such cases, international troops and ordinary civilians in particular are often still extremely vulnerable to violence. Semi-consensual missions are thus generally authorised under Chapter VII of the Charter, which can allow the use of violent, coercive measures by peacekeepers. But they are only mandated to use force in restricted and specifically defined circumstances.

These types of peace operations are generally highly complex, designed to advance a whole series of objectives as part of the implementation of comprehensive peace agreements. For example, peace operation mandates have increasingly included direct civilian protection as an explicit operational objective, alongside a broader range of tasks. But there is no case to date in which civilian protection has been stated as the primary objective of the mission. In terms of the responsibility to protect agenda, there are three particular problems that such missions tend to face.

First, they have often lacked adequate and appropriate capacity to provide direct civilian protection from extreme violence. Peacekeepers have been equipped to address comparatively small-scale, localised forms of violence, but not more than that. They have been heavily dependent on a reasonable level of stability existing in the country in question and have been neither configured nor resourced to challenge more intense levels of fighting or to stabilise highly volatile conflict zones.

The principal contributors of troops for UN missions in Africa are developing countries. While these countries have made a vital contribution to UN peacekeeping over many years, their militaries generally lack the sophisticated modern capabilities that are required to protect civilians in situations of extreme violence.

Second, the mandates for multidimensional peace operations often do

not clearly define what is meant by civilian protection. UN mandates have tended to represent a political compromise based on 'lowest common denominator' multilateral negotiations. The resultant ambiguities that surround a mission's objectives have not translated well into clear rules of engagement as to how troops should respond to violent threats to civilians (Terrie 2006).

Third, there are often serious gaps in doctrine and training for peace operations. Troops need to be well prepared for the specific tasks of civilian protection. Military doctrine and training need to translate the concepts of civilian protection into effective military activities, such as protecting and demilitarising camps, establishing safe havens, forcibly disbanding and disarming militias, or intervening on behalf of threatened civilians. For example, existing French, British, American and NATO doctrines do not include a detailed breakdown of the requirements of civilian protection. Nor is civilian protection a clear priority in most military training programmes internationally.

The UN is developing training on civilian protection that builds on traditional roles for peacekeepers to support human rights, the rule of law, and international humanitarian principles. But UN training modules do not address how countries should interpret mandates to protect civilians under imminent threat. And they do not instruct military forces in how to prepare for civilian protection missions (Berkman and Holt 2006).

In an excellent recent report from the Henry L Stimson Centre, *The Impossible Mandate? Military Preparedness, the Responsibility to Protect and Modern Peace Operations*, Victoria Holt and Tobias Berkman provide a strong critique of existing military operations when it comes to the responsibility to protect, and they outline the practical requirements for effective, non-consensual military intervention to safeguard civilians (Berkman and Holt 2006). They argue persuasively that a military intervention designed expressly to protect civilians from mass killing is qualitatively different from a peace operation tasked with protecting civilians from much lesser risks. As they put it, 'Halting violent actors in their tracks might require operations more akin to combat and entail coercion to prevent harm to civilians' (ibid: 5).

The authors note that such operations are unlikely to be led by the UN, which lacks the capacity or political stomach for these types of missions, and are more likely to be led by militarily competent states with sufficient capacity. These types of non-consensual interventions would also need to be authorised under Chapter VII of the UN Charter.

Despite the commitment of the world's governments to the responsibility to protect, Berkman and Holt see little evidence that the world's militaries and their political masters are developing the necessary capacity, doctrine, training and rules of engagement for such missions. They suggest that

addressing this shortfall should be a priority for Africans and the wider international community if they are serious about the responsibility to protect in Africa and elsewhere.

While non-consensual military intervention will be required in exceptional cases like Rwanda, there are enormous risks and costs associated with it. There is also a danger in focusing too intently on military intervention at the expense of other non-violent policy options that have been addressed in this report, and ignoring the local and global political context of international interventions. Below we elaborate briefly on each of these points.

External military intervention in another country is an incredibly difficult thing to get right. It is for this reason that the ICISS commission argued that it should be very much the option of last resort. It is also why the commission stipulated criterion six: that there should be a reasonable prospect that intervention would make things better rather than worse.

Even in a situation as bad as Darfur's today, our judgment is that non-consensual military intervention would fail this test. Were such action to be carried out, there is a real risk that the international humanitarian relief operation would end, putting millions of people at risk of death from starvation or disease. There is also a real likelihood that the peace agreement between north and south Sudan would collapse (Evans 2007).

Non-consensual military intervention, and the serious war-fighting that it involves, is also extremely expensive. While the military interventions in Afghanistan and Iraq should not be viewed as responsibility to protect-type interventions – in neither case was a humanitarian concern to improve the situation of ordinary civilians a significant factor in the decision to intervene – they do illustrate, nevertheless, how extraordinarily costly such operations can be. The Iraq war alone is estimated to have cost a staggering US\$318bn to date.

It is a reasonable assumption that investing even a small proportion of this resource in longer term structural prevention and development, or in mediation, diplomacy, negotiations, sanctions or legal instruments could have a greater overall impact in preventing war crimes and mass human rights abuses in Africa and elsewhere.

While it is important to acknowledge the operational differences between Afghanistan and Iraq, these interventions do provide two other general lessons that are of relevance to the responsibility to protect debate. First, they both demonstrate that early military success is no guarantee of lasting political success. The latter requires a political process in which local actors assume responsibility for the running of their own affairs and for addressing those factors that led to the international intervention in the first instance.

Five years after the intervention in Afghanistan and four years after the intervention in Iraq, both countries are more unstable and insecure than

before the interventions took place (despite other advances that may have resulted from the interventions).

Second, the interventions in Afghanistan and Iraq – and the retrospective and selective use of humanitarian arguments to justify them – have seriously damaged the cause of the responsibility to protect. While the concept is emphatically not an imperial one, many countries now fear that it will be used or misused by powerful states to further their own agendas.

All of these points suggest that non-consensual military intervention will remain very much the exception rather than the rule – in Africa and elsewhere. This is not an argument for failing to develop much more effective military capacity to better protect civilians – far from it. However, it does indicate that future international military missions in Africa and elsewhere are more likely to be semi-consensual rather than non-consensual.

These missions still present major operational challenges, but they are less dramatic than those involved in wholly non-consensual interventions, where the parties intervening are effectively declaring war on the country concerned. In the remainder of this chapter, we make some recommendations for how Africans and the broader international community can develop the requisite capacity, systems and mandates to more effectively protect civilians in these kinds of environment.

## African military intervention

This section looks primarily at the African Union, but also examines African regional capacity, as the ‘building-blocks’ of the African Standby Force (ASF). It assesses briefly a number of recent African military interventions, highlighting key issues of capacity, mandates, doctrine and training.

The Constitutive Act of the AU affirms the organisation’s right ‘to intervene in a Member State ... in respect of grave circumstances, namely war crimes, genocide and crimes against humanity’ (AU 2000). The AU is also developing the ASF as its operational tool for putting into effect its commitment to the responsibility to protect, with a pledge that it will have reached full operational capacity by 2010. This is defined as being capable of delivering various military responses to continental humanitarian crises, including non-consensual interventions and multi-dimensional peace operations.

The ASF will be formed of regional brigades from Africa’s five Regional Economic Communities (RECs), with each contributing between 3,000 and 4,000 troops, and between 300 and 500 military observers, police units, and civilian specialists (Powell 2005). Progress has been slow, with serious shortfalls in a number of key areas, including human resource capacity, logistics, financing, doctrine and training (Ramsbotham *et al* 2005). The deployment of the AU Mission in Sudan (AMIS) has seriously stretched the AU’s nascent capacity in the area of peace and security. As is

discussed in more detail below, the AU has also had difficulties coordinating relationships with large numbers of bilateral and multilateral international partners (House of Lords 2006).

#### AU deployments in Burundi, Darfur and Somalia

In April 2003, the AU deployed its first peace operation. The South African-led AU Mission in Burundi (AMIB) comprised around 2,500 peacekeepers, drawn from Mozambique and Ethiopia, but primarily from the South African Defence Force. AMIB was mandated to observe a loose ceasefire agreed between the main parties to the conflict, to assist in the demobilisation of combatants, and to protect vulnerable civilians at risk of violence.

However, resource and capacity constraints and ongoing insecurity meant that AMIB was only partly successful in implementing its mandate (Baranyi and Powell 2004). That said, the Mission did do a reasonably effective job in stabilising the situation in Burundi, and it played a useful 'bridging' role, facilitating the deployment of the larger and better-resourced UN mission in 2004.

The AU launched its mission in Darfur in 2004. But AMIS starkly illustrates the limitations of AU military capacity. The geographical area in which AMIS is operating is huge – larger than France. And the region is characterised by massive insecurity and violence. The 7,000 AMIS peacekeepers are also working to a broad mandate: overseeing implementation of the May 2006 Darfur Peace Agreement (DPA), helping establish a secure environment for humanitarian assistance and trying to provide protection to civilians under imminent threat.

AMIS's efforts have brought some relief from the worst excesses of the conflict (UN 2006c). For example, AMIS deployments in Kebkabiyah in North Darfur in late 2004 and in Labado and Gaida in South Darfur in early 2005 contributed to a reduction in violence and civilian insecurity. AMIS also helped open up space for what became one of the largest humanitarian operations in the world, with some 14,000 relief workers assisting in improving food security, health and sanitary conditions (Baldo 2006).

But these limited achievements notwithstanding, AMIS has clearly failed to provide effective civilian protection to the people of Darfur. Even at the peak of its authorised strength, AMIS was hamstrung by an inadequate mandate and insufficient forces and capabilities. A fundamental problem remains that the AMIS mandate is premised on agreements that no parties to the conflict have ever intended to honour, and on a political and operational necessity for Khartoum's consent and cooperation, which have never been forthcoming.

AMIS was initially mandated to protect civilians under imminent threat 'within resources and capability' (AU 2004). But it was desperately short of both. In 2006, the AU Peace and Security Council expanded the AMIS man-

date, authorising the mission to take all necessary steps 'to ensure a more forceful protection of the civilian population' (AU 2006). However, a slow deployment rate and severe limitations in terms of quality of troops, training and equipment meant that AMIS was never in a position to achieve any of its objectives effectively. A major shortcoming has been AMIS's weak command and control capability. It was slow to develop operating procedures, and it did not produce rules of engagement until late 2005/early 2006.

By late 2005, the stalemate in political negotiations and the failure of Khartoum to live up to its commitments to disarm the Janjaweed led to a steady rise in levels of violence. The fragmentation of the rebels and the intensified government military campaign that followed the partial signing of the DPA completely overwhelmed AMIS, exposing its structural weaknesses and its inability to respond to ceasefire violations by all parties. The DPA has since all but disintegrated and civilian security is more precarious than ever. It is for this reason that the UN Security Council has called for the replacement of AMIS by a UN or UN/AU hybrid force (an issue discussed in the next section).

The AU is also currently developing plans to intervene in Somalia. On 27 February 2007, UN Security Council Resolution 1744 authorised the AU to establish a Chapter VII mission to promote security in southern Somalia (UN 2007a). The AU Mission in Somalia (AMISOM) will comprise approximately 8,000 peacekeepers (AU 2007a). It is mandated to: assist with the free movement, safe passage and protection of the parties involved with the dialogue and reconciliation process in Somalia; support implementation of Somalia's National Security and Stabilisation Plan; and help foster the necessary security conditions for humanitarian assistance.

Yet, as with AMIS, AMISOM's mandate promises much more than its military component could hope to deliver effectively. Strikingly, civilian protection is not one of its mandated tasks. More fundamentally, there are real questions about whether the AU will be able to generate the force in the first place. Meanwhile, the humanitarian and human rights crisis in Somalia continues to escalate.

AMISOM anticipates handing over to a UN force after a year. And Resolution 1744 authorised a technical assessment mission to explore modalities for a follow-on UN operation (UN 2007a). However, it is far from clear whether this stage will ever be reached, and the problems experienced in delivering the transfer of AMIS to a UN or a hybrid force do not set a hopeful precedent. In the meantime, what will happen in Darfur, where the AU is already severely overstretched? There is a genuine risk that the AU is setting itself up to fail in Somalia, and an abortive mission there could deliver a very serious blow to all of the AU's peacekeeping aspirations.

### African regional interventions

There are also major issues relating to capacity within African regional bodies. Of the five RECs that are supposed to be supporting the ASF structure, only West and East Africa have made significant progress in establishing their standby forces. ECOWAS is the only African regional organisation with significant operational experience.

The ECOWAS intervention in Liberia in the early 1990s was highly controversial, as West African troops committed widespread abuses of human rights. But a second operation in Liberia in 2003 proved more effective. In late 2003, ECOWAS agreed to deploy a 3,500-strong operation to oversee implementation of the recent peace agreement. The ECOWAS Mission in Liberia (ECOMIL) was to act as a vanguard mission ahead of a larger, UN operation. It was mandated to establish zones of separation between warring parties, to secure an agreed ceasefire line and to create conditions for the arrival of the UN Mission in Liberia (UNMIL).

ECOMIL helped to promote civilian security in Liberia in the longer term. It has also been credited with doing an effective job in stabilising the situation in the country sufficiently to hand over operational responsibilities to the UN.

However, it is questionable how far ECOWAS's experiences relate to the current challenge of developing African regional capacity for direct civilian protection. Civilian protection was not a mandated task for ECOMIL peacekeepers. And observers have stressed that ECOMIL lacked capacity to provide a serious deterrent to human rights abusers, as civilians were still subject to murder, rape, forced recruitment, looting and forced displacement at the hands of rebel groups and government militias during its deployment (Human Rights Watch 2003).

In summary, while there have been some advances in strengthening African capacity for military intervention for humanitarian protection purposes, and while the AU has commendably led responses to the crisis in Darfur when no one else was prepared to act, Africa's operational capacity is severely limited. For example, it looks unlikely that the AU's 2010 deadline for getting the ASF fully up and running will be met. The AU and its external donor partners need to think much more clearly about the precise role the AU should play in military intervention for civilian protection and build capacity explicitly for this.

The AU and ECOWAS have both played useful and effective roles as bridging forces in advance of the deployment of UN missions. This provides a plausible model for the development of the ASF, aligned with Kofi Annan's vision of an 'interlocking system of peacekeeping capacities', in which different international agencies provide various components for peace operations, playing to their relative strengths (UN 2005a).

A number of international partners have supported AU peace and secu-

rity initiatives. NATO has provided AMIS with logistic and other operational support. And the G8 and a number of Scandinavian countries have supplied financial and technical support and training to help build the ASF. The EU has been a particularly important partner, primarily through its African Peace Facility (APF), established in 2004 as a €250m commitment to support African-led peace operations. This has been the single most important external factor facilitating the deployment of AMIS in Darfur. €35m of the APF was explicitly earmarked for capacity-building. And, in April 2006, the EU Council agreed to another €300m for the APF from 2008, plus an extra €50m to finance the extension of EU support for AMIS (House of Lords 2006). Much more needs to be done, however, if the AU is to develop a truly effective African intervention capacity.

*ippr recommends that:*

- The African Standby Force should be given much greater support by African states and international donors, so that it has the necessary equipment, resources, mandate and operational doctrine to make an effective contribution to the protection of civilians in acute crises in Africa.

Capacity-building programmes should pay careful attention to the precise functions of the ASF relative to other operational partners, based on a broader process to develop a more rationalised and integrated system for intervention in Africa, in order to maximise the effectiveness of African capability and of international support. International support needs to be much better coordinated. Much more thought also needs to be given to an often-neglected component of capacity-building: developing effective and accountable African militaries at the national level that can provide well-trained and equipped personnel for African peace operations.

## International military intervention in Africa

This section looks at international capacity and willingness to undertake military intervention in Africa. Military intervention for civilian protection is a serious commitment for the UN. In April 2006, the Security Council unanimously reaffirmed the 2005 UN World Summit language on the responsibility to protect (UN 2006b). And it has increasingly included language on protecting vulnerable civilians in mandates for UN peace operations in Africa, including in Sierra Leone, DRC, Liberia, Burundi, Côte d'Ivoire, and Sudan (Berkman and Holt 2006).

Since 1999, there has been a 500 per cent expansion in UN peace operations globally, and more than 80 per cent of these have been deployed to Africa (Center on International Cooperation 2006). The UN has also made

progress in strengthening the Department of Peacekeeping Operations (DPKO), increasing numbers of headquarters staff to around 600. But new UN Secretary-General Ban Ki-moon has warned that the unprecedented global surge in UN peacekeeping operations has left its leadership 'impossibly overstretched' and unable to cope without serious reform and additional resources (UN 2007d).

In March 2007, the UN General Assembly endorsed Ban's plans to restructure DPKO. But Ban's proposals say nothing about enhancing the capacity of UN peace operations to promote civilian protection, a serious oversight given the increasing emphasis placed on civilian protection in UN mandates.

*ippr recommends that:*

- UN member states should implement Secretary-General Ban Ki-moon's proposals to create two new UN peacekeeping departments, a Department of Peace Operations and a Department of Field Support, making sure that a unity of command is maintained so as to ensure better planning, faster deployment and a more responsive system of support for those working on the ground.
- The UN should develop a working concept for civilian protection, and should build this into UN peacekeeping training modules and doctrine, containing a detailed breakdown of the specific requirements of civilian protection.

Western militaries have provided vital operational capacity to underpin UN peace operations in Africa, including US and French deployments in Liberia and Côte d'Ivoire, respectively, and EU support for the UN mission during elections in the DRC in 2006. But the vast majority of personnel for UN deployments are contributed by developing countries. Western commitments have been very selective, and their contributions have been 'stand-alone', operating outside UN command and control structures. Both Kofi Annan and the independent UN High-level Panel on Threats, Challenges and Change voiced concerns over western governments' increasing reluctance to contribute troops to UN peace operations (UN 2004a: para 216, UN 2005a: para 111).

*ippr recommends that:*

- Western states should do more to transform their existing force capacities into suitable contingents for the specific tasks of civilian protection, and should be prepared to deploy troops and other military assets to UN peace operations in Africa.

Nevertheless, western support has sometimes played a pivotal role in enhancing the capability of UN operations to deliver civilian protection. This section looks in detail at two specific examples: UK support for the UN mission in Sierra Leone; and the French-led EU deployment to support the UN mission in the Democratic Republic of Congo (DRC). Finally, this section considers how EU Battlegroups and NATO's Response Force could make a much greater contribution to the responsibility to protect in Africa.

### UN interventions in Sierra Leone and the DRC

The UN military interventions in Sierra Leone and the DRC, both deployed in 1999, illustrate some of the challenges facing UN peace operations in Africa when it comes to the protection of civilians. In both cases, it took military action by western states to shore up weak UN missions and to provide more effective civilian security and protection.

In 1999, the Security Council authorised the deployment of a UN mission to Sierra Leone to help implement the recently signed peace agreement (UN 1999). Protecting civilians 'under imminent threat of physical violence' was one of the many tasks included in the mandate of the UN Mission in Sierra Leone (UNAMSIL). Other responsibilities included supporting implementation of the peace agreement between the parties, overseeing disarmament, demobilisation and the reintegration of combatants, and facilitating the delivery of humanitarian assistance (UNDPKO 2005).

However, given the intense insecurity in Sierra Leone at that time, and the widespread belief that the rebel RUF was not going to comply with the peace agreement, UNAMSIL was chronically under-resourced for the breadth of tasks assigned to it. The mission was initially mandated with only 6,000 troops. Moreover, deployment was piecemeal and many of the troops lacked vital equipment and training.

It became clear very quickly that UNAMSIL could not hope to achieve any of its objectives effectively, and, in February 2000, the Security Council authorised an expansion in force strength up to 11,100 troops (UN 2001). Despite this, in May 2001 the RUF, the main rebel movement in Sierra Leone, kidnapped hundreds of UN peacekeepers, plunging UNAMSIL into near fatal crisis.

Around 1,000 British troops were then deployed very rapidly to support UNAMSIL. They managed to present an effective military challenge to the RUF, and ultimately saved UNAMSIL from humiliating collapse. British intervention prompted a strengthening of UNAMSIL, with the numbers of military personnel raised to 13,000 in May 2000 and then 17,500 in March 2001.

Ultimately, UNAMSIL was able to disarm and demobilise 75,000 ex-fighters, and a reasonably stable peace was established. UNAMSIL then played an important role in advancing long-term civilian security, by helping to extend government authority and the rule of law to all parts of the country. But UNAMSIL peacekeepers had not been able to provide immediate, direct pro-

tection to vulnerable civilians in any comprehensive way. Indeed, the mission was only ever expected to provide 'at most' a temporary 'protective umbrella' for some civilians in isolated situations (Cunningham 2001).

To some extent, the UN intervention in DRC parallels events in Sierra Leone. Again it took military action by western states, this time from a French-led EU mission, to give the UN mission credibility. DRC presented a very difficult operational environment. It is a huge territory: the size of Western Europe. The conflict has been the most bloody since World War II, with an estimated four million civilians killed as a result of violence since the war began in 1998. And the parties' commitment to the Ceasefire Agreement was tenuous at best.

In February 2000, the Security Council agreed to establish the UN Operation in the DRC (MONUC), with 5,500 peacekeepers to support a broad range of tasks relating to human rights and humanitarian affairs, as well as a specific Chapter VII commitment 'to protect civilians under imminent threat' (UN 2000b).

But MONUC was far too weak and poorly configured to attempt any meaningful civilian protection. MONUC peacekeepers were neither equipped nor trained for the job. There was no common understanding of mandate and rules of engagement for civilian protection, nor consistent willingness to use force to protect those at risk. And interpretation of rules of engagement was left to individual political and military commanders of national contingents, leading to a highly erratic approach to civilian protection.

In reality, MONUC continued to operate closer to a traditional Chapter VI peacekeeping operation, using force only in self-defence (Berkman and Holt 2006).

Many of MONUC's problems were played out in the Ituri province in eastern DRC, which was the scene of some of the worst atrocities of the war. Massacres of civilians were a recurrent feature of violent clashes between Hema and Lendu ethnic militias in the region. Attacks on civilians were sometimes carried out in clear view of MONUC personnel. But MONUC's response was to concentrate primarily on self-protection, and it largely abandoned its mandate to protect Congolese civilians (International Crisis Group 2004b).

In response to an appeal by the then UN Secretary-General Kofi Annan, France agreed to deploy an international force under the auspices of the EU, within the framework of the European Security and Defence Policy (ESDP). Operation Artemis comprised 1,400 troops, deployed to promote security in the town of Bunia in Ituri, from July through to September 2003.

Artemis adopted a very aggressive approach towards civilian protection. It used light armoured vehicles, observation helicopters, and French air support from Mirage 2000 fighter jets stationed in neighbouring Uganda. It

was able to establish itself quickly in Bunia, enforcing a weapons-free zone and responding rapidly and decisively to armed challenges to its authority. Artemis cut off shipments of arms into Bunia by monitoring airstrips and running vehicle patrols. Thousands of displaced people returned to Bunia between June and August 2003 (Berkman and Holt 2006).

As well as establishing humanitarian space within Bunia, Artemis enabled MONUC to build up in the region. Around 5,500 combat-capable UN troops were deployed to Ituri, supported by heavy armaments, armed personnel carriers and combat helicopters. This did not mean that MONUC was instantly transformed into an effective operation capable of stopping atrocities in Ituri. Serious MONUC military operations against Congolese militia in Ituri were still many months away.

In mid-2005, by which time MONUC was the UN's largest peace operation with around 16,500 troops, critics were complaining that the Security Council had still not learnt a key lesson from Sierra Leone: that MONUC needed the authority and the obligation to act *pre-emptively* to oppose threats to civilians (Terrie 2005). Even today, its operations against Rwandan Hutu rebels, the remnants of the 1994 genocide, have been very limited and have had little effect.

But over time the reconfigured UN troops developed a clearer focus on civilian protection, including a preparedness to use force to guarantee it. UN forces in DRC have conducted highly assertive actions, including aggressive cordon-and-search operations, direct confrontation of armed groups threatening violence against civilians, the setting up of buffer zones between combatants and safe areas, patrols and overflights in unstable areas, and provision of humanitarian escorts (Berkman and Holt 2006).

### The EU and NATO

The EU has become an increasingly important player in African peace and security. The Artemis deployment outlined above was the first example of the EU's increasing willingness to develop its operational military capacity on the ground in Africa. More recently, in June 2006, the EU sent a small military operation (EUFOR DR Congo) to help MONUC deter anticipated violence during elections in the DRC in July.

Deployment was delayed as EU member states were slow to come forward to contribute troops. Germany had previously agreed to lead the mission, but spent weeks in negotiations to build up sufficient numbers of personnel. EUFOR DR Congo was eventually deployed with an element of 400-450 troops stationed in Kinshasa, and a battalion-sized 'on-call' force outside the country, ready for rapid deployment when needed (House of Lords 2006). To what extent EUFOR DR Congo improved civilian security in reality is not clear, however.

The 'Battlegroups' concept is, at present, the primary operational tool

for EU military interventions. In 2004, the EU agreed to establish 13 Battlegroups, which are based on a battalion-sized force of 1,500 troops, formed by a framework nation or by a multinational coalition of EU member states. Battlegroups are intended to be deployable within 15 days and sustainable for 30 days (but extendable up to 120 days). They are designed to be compatible with UN Chapter VII mandates, and will, in most instances, be deployed in response to a request from the UN.

They will be capable of robust peace enforcement on a limited scale, such as local suppression of hostilities, separation of parties and prevention of atrocities. Battlegroups are intended to become fully operational in 2007, with the EU able to undertake two concurrent single Battlegroup-size rapid response operations simultaneously (Hoon 2005).

On paper, Battlegroups appear to be highly relevant to rapid military interventions for humanitarian protection purposes in Africa. The December 2005 EU *Strategy for Africa* pledged to deploy operations 'involving EU Battlegroups' to promote African peace and security (EU 2005). However, Battlegroups have not been configured for the specific tasks of civilian protection, and no framework nations or multinational coalition members have made clear commitments to deploy them to crises in Africa.

Discussions between the EU and NATO have reached broad agreement that Battlegroups will be mutually reinforcing with the larger NATO Response Force (NRF). Standards, practical methods and procedures for Battlegroups are designed to be compatible with those defined within the NRF, so that there should be considerable potential for synergy between the two initiatives (Hoon 2005).

The NRF comprises 25,000 troops for rapid deployment with global reach. The NRF is a ready and highly technologically advanced force comprising land, air, sea and special forces components. It is intended to be capable of performing missions worldwide across the whole spectrum of operations, including crisis management, and as 'an initial entry force' for larger, follow-on operations. The NRF has the capacity to start to deploy after five days notice and to sustain itself for operations lasting 30 days, or longer with reinforcements.

At the NATO Summit meeting in Latvia in November 2006, NATO Secretary-General Jaap de Hoop Scheffer announced that the NRF had reached full operational capability (NATO 2006).

The NRF appears exceptionally well placed to respond to a fast-moving war crimes or genocide-type situation like Rwanda in 1994. But how far NATO will be prepared to deploy the NRF or other key assets to support military interventions in Africa is unclear. To date, NATO's operational activities in Africa have been restricted to providing logistic support to AMIS in Darfur, and some minor training and capacity-building assistance. With NATO assets already severely stretched in Afghanistan and Kosovo, and

with the UK and the US still heavily committed in Iraq, there seems little immediate prospect of that changing. The international political fallout from the Afghanistan and Iraq interventions raises further questions about the willingness of NATO to support military intervention in Africa.

*ippr recommends that:*

- The EU should mandate Battlegroups to prioritise civilian protection in crises in Africa, through configuring, training and equipping them for the specific tasks of civilian protection.
- The North Atlantic Council should be prepared to deploy the NATO Response Force and other key assets to support AU or UN peace operations, or stand-alone interventions in Africa if necessary.

### International military options in Darfur

Earlier in this chapter, we argued against the non-consensual deployment of international troops in Darfur, on the grounds that fighting their way into Sudan in the face of Khartoum's armed opposition would be likely to do more harm than good. However, there are other international military options that should be considered in relation to Darfur.

The main focus should continue to be on getting a UN or UN/AU hybrid force into Darfur. UN Resolution 1706, agreed in August 2006, called for a force of more than 17,000 troops and as many as 3,300 civilian monitors. A UN peace operation cannot sort out all of the problems in Darfur (UN 2006d). But a well configured, mandated and resourced UN force can undertake some key functions to improve security and physical protection for vulnerable civilians.

It should actively provide security by patrolling demilitarised buffer zones, and by deploying personnel to areas where internally displaced persons (IDPs) are concentrated, and along key routes of migration and 'humanitarian corridors'. It should be mandated to take 'all necessary measures' to protect vulnerable civilians under imminent threat through robust action. And it should participate actively in the disarmament, demobilisation and reintegration of combatants (UN 2006c).

But the Khartoum government has resisted this, arguing that the deployment of such a force would be a violation of its sovereignty and tantamount to a declaration of war. This claim is inaccurate and disingenuous. There are already UN troops with the UN Mission in Sudan (UNMIS) in south Sudan. They are there with the consent of the government of Sudan to underpin the January 2005 north-south peace agreement.

While Khartoum continues to oppose the deployment of a UN force,

there are precedents for encouraging recalcitrant governments to accept an international troop presence.

In 1999, international pressure of this kind compelled an equally reluctant Indonesia to accept international peacekeepers into the then occupied territory of East Timor. Clearly, there are limits to the correlation with Darfur. Direct economic pressure had an impact on Jakarta at a time when the Indonesian economy was vulnerable. With an oil boom in Sudan, China's reliance on it and diplomatic support from the Arab League, pressure would need to work differently to hold sway with Khartoum. Nevertheless, as we have argued in earlier chapters, economic and political pressure can make a difference, and should be increased on Khartoum until it agrees to the deployment of such a force.

*ippr recommends that:*

- Increased international pressure – in particular, carefully targeted sanctions – should be exerted on the Khartoum government to get it to consent to the deployment of a properly resourced and mandated UN force in Darfur.

There is one other military option that should be considered seriously: the enforcement of a no-fly zone over Darfur. In principle, this has been agreed in successive UN resolutions, including UN Security Council Resolution 1591 in 2005. Although this is a Chapter VII resolution, there has been no effective system of surveillance or airport monitoring put in place, and aerial attacks have continued.

While a decision to enforce a no-fly zone would need to be approved in a new UN Security Council resolution, NATO countries would then be well placed to implement it. Monitoring Sudanese aircraft would require the kind of assets they possess, including Airborne Warning and Control Systems (AWACS) and Joint Surveillance Target Attack Radar Systems (JSTARS). Enforcing the zone would require fighter aircraft: again, NATO countries could provide these. The French have fighter jets and reconnaissance aircraft in neighbouring Chad, and the US and UK also have military assets that could be made available.

Clearly, a no-fly zone will not by itself be sufficient to protect civilians in Darfur, and there are risks associated with it. But it would send a clear message of international resolve, as part of a broader package of measures to bring about a change in the policies of the Khartoum government.

*ippr recommends that:*

- NATO should consider imposing and enforcing a no-fly zone over Darfur if Khartoum continues to use aircraft for attacks on civilians, and

an explicit proposal to enforce a no-fly zone should be brought to the UN Security Council as a matter of urgency.

## 6. Where there's a will

In the previous four chapters, this report has highlighted some of the specific options available to policymakers for delivering on the responsibility to protect in Africa. We have focused to a considerable degree on capacity – the systems and resources required in relation to military force or sanctions or legal measures if greater civilian protection is to be achieved in Africa.

But delivering on the responsibility to protect in Africa is not just about establishing criteria for intervention or the necessary mechanisms or institutions, but also about building a constituency of support for the concept and generating the political will and sense of leadership on the part of governments and international institutions to act decisively when faced with real instances of abuse. In this brief concluding chapter, we suggest how this might be done.

While the absence of political will and leadership is commonly invoked in humanitarian crisis situations, it is often poorly defined. For example, the failure of the international community to intervene in Rwanda in 1994 or to respond early enough in Bosnia in the mid-1990s is attributed to a lack of will and leadership. But what does this mean precisely? We suggest that it is best understood in the following terms: in these cases, and many others like them, governments that were potentially in a position to do something about these crises judged that the costs of action were outweighed by the risks or disadvantages of doing so.

Creating the political will and leadership from governments to act therefore means addressing these kinds of judgments, and providing compelling arguments as to why governments should come to different conclusions in future cases.

The ICISS report suggested that arguments for international action fall into four broad categories: moral, financial, national interest, and partisan. We would add a fifth category: that of legal obligation. It is worth reflecting briefly on each of these, in particular addressing some of the changes that have occurred since 2001 when the ICISS report was published.

Contrary to the claims of foreign policy realists, morality does play a role in international affairs. At the very heart of the idea of the responsibility to protect is the notion that it is ethically intolerable for the international community to be aware that crimes against humanity are taking place but to do nothing to try to stop them. The starting point, if not necessarily the clinching argument, for international action should, therefore, be to focus on the abuses themselves and to shame international policymakers into

considering policy options for addressing them.

For decades now, governments have been subject to the terms of international human rights and humanitarian law. This includes the Genocide Convention of 1948, which requires governments to act to prevent instances of genocide wherever they are occurring in the world. Since September 2005, the world community has been committed to the responsibility to protect norm, which was endorsed the following year in a separate Security Council resolution on the protection of civilians in armed conflict, and it has been referred to in UN resolutions towards particular countries, for example Sudan. It is important that governments should be pressed to uphold their international legal obligations to protect vulnerable civilians.

The key to the effective use of financial arguments is to show that early action – prevention or speedy reaction – is more cost effective than belated responses to complex humanitarian crises. In the case of Bosnia and Darfur, for example, there is good evidence that early action would have been less costly and more effective than the drawn-out approaches actually pursued (ICISS 2001, Kapila 2006).

Humanitarian purists argue that international humanitarian action can never be genuinely humanitarian if those who act have national interests for doing so. But such a position is intellectually flawed and politically counterproductive. Interests and values do not always coincide, but sometimes they pull in a similar direction. And while humanitarian action should be underpinned by strong humanitarian motives, it is helpful – not harmful – if there is also a strong national interest argument for taking the action. This national interest may relate to security or economic concerns.

Partisan arguments for responsibility to protect actions should address the issue of public opinion within the country or countries that might take such action. How can a sceptical public be persuaded that action is warranted and what counter-arguments should be used to address the concerns of critics? These arguments need to be particularly persuasive in circumstances in which the government is proposing to deploy troops overseas, with all the attendant risks and costs associated with that.

But who should make these arguments?

## The role of civil society

There is a particularly important role for African and wider international civil society in making the case to governments for action on the responsibility to protect. NGOs and civil society groups can put pressure on governments to act, and contribute information, arguments and energy to influence the decision-making process. For example, think tanks and research institutes like the International Crisis Group (ICG) and South

African-based Institute for Security Studies provide essential analyses of African crisis situations that are widely read by policymakers, and they offer policy recommendations as to how to respond to specific crises.

In Africa, NGO and civil society advocates could usefully direct their energies at the AU's Peace and Security Council, lobbying AU Peace and Security Council (PSC) member states to give greater priority to civilian protection issues. Constitutionally, the chairperson of the AU Commission and AU member states can all submit proposals to the PSC. The Council is also mandated to invite civil society to participate in discussions on particular situations (AU 2000: Article 7, 10(c)).

African NGOs and civil society groups should use this opportunity to press for a more sustained and serious engagement by African governments with the responsibility to protect agenda. International NGOs and civil society actors should work with African partners to share resources and analysis and to enhance their capacity for effective advocacy.

At the UN, NGO and civil society advocates of the responsibility to protect are increasingly focusing on the five permanent members of the Security Council (the P5). They should continue to do so. But, in addition, they could usefully target non-permanent Council members.

These states are often heavily dependent on UN reports and other official information that has in some way been 'vetted' by the P5. This leaves them with few credible and independent sources of information, and makes it much more difficult for them to take the P5 to task on particular strategies, or to propose credible alternatives. International NGOs and civil society groups should work together to enhance their capacity to deliver timely information and accurate briefings to non-permanent members on responsibility to protect cases (Bellamy 2006).

Civil society groups can also make good use of the media as a tool for applying pressure on governments. The media is often criticised for the selectivity of its attention to crisis situations and for its superficial and sensationalist coverage. But this is an argument for more intelligent use of the media by advocates of the responsibility to protect, not for dismissing its role altogether.

In the right circumstances, media images of human suffering can be a powerful stimulus to international political action. Good reporting is vital to raise the profile of specific conflict situations and to help convince international policymakers that a particular crisis needs to be addressed. By putting issues on the political agenda, the media can further help to ensure that governments are answerable for how they respond, and convince them that there are serious political costs if they fail to act at all.

## AU, UN and EU advocacy for the responsibility to protect

Pressure on governments to exert greater leadership on responsibility to protect issues can also come from within regional and international institutions.

During his time as UN Secretary-General, Kofi Annan was a particularly outspoken and eloquent advocate for the responsibility to protect, using his unique position and his individual moral standing and credibility to advance the agenda. It is unlikely that the concept of the responsibility to protect would have made so much progress at the normative level without his tireless efforts. It is essential that his successor, Ban Ki-moon, should also invest time and political capital in this issue, building on what has been achieved to date, but also strengthening the UN's role in building wider global support for the responsibility to protect.

There are two other recent institutional developments that are relevant here. In September 2004, the Chairperson of the AU Commission, Alpha Oumar Konare, appointed Mame Madior Boye, former Prime Minister of the Republic of Senegal, as his Special Representative for the Promotion of the Protection of Civilians in Armed Conflicts. This is a four-year project, funded by the Canadian government. The Special Representative is mandated to help strengthen the AU's institutional capacity to promote civilian protection, and to raise awareness among AU member states and African non-state actors on respect for human rights and the protection of civilians in conflict situations (AU 2004).

In a similar vein, in July 2004, the UN established a new post of Special Adviser on the Prevention of Genocide. The Special Adviser, Juan Mendez, is tasked with focusing international attention on situations of mass killing, with the aim of making it much harder for the UN and its member states to ignore warnings of developing crises or impending war crimes. Mendez is supposed to act as a focus point within the UN system for the collation of information on massive violations of human rights. He also has the formal authority to alert the Security Council, via the Secretary-General, to potential situations of genocide (see [www.un.org/depts/dpa/prev\\_genocide/](http://www.un.org/depts/dpa/prev_genocide/) for information).

The appointment of the AU Special Representative and the UN Special Adviser are important developments, with the potential to enhance the African and wider international response to mass human rights abuses and war crimes on the continent. But their resources are limited: Mendez's office is currently very small and his relationship with the Security Council and other key UN bodies is still evolving. Boye faces even more severe institutional and political constraints, and she is reliant on external funding from Canada, which is due to run out in 2008.

There is also an important role that the EU could play in furthering the responsibility to protect in Africa, possibly by establishing its own Special Representative on these issues or by explicitly incorporating civilian protection

into the mandate of the new EU Personal Representative on Human Rights.

*ippr recommends that:*

- The new UN Secretary-General, Ban Ki-moon, should prioritise the responsibility to protect and use his position to build wider global support for this norm and the measures necessary to deliver on it.
- The AU Special Representative for the Promotion of the Protection of Civilians in Armed Conflicts and the UN Special Adviser on the Prevention of Genocide both need increased resources and high-level political support at the AU and the UN to ensure that they have the institutional capacity to process early warning information and garner effective action by governments.

## National champions of the responsibility to protect

A number of governments have made strong commitments to the responsibility to protect, at the UN and elsewhere. These include states like Australia, Canada, Ghana, Guinea-Bissau, Japan, Korea, Netherlands, New Zealand, Nigeria, Norway, Rwanda, Sweden, South Africa, Tanzania and the United Kingdom. These states might be considered as national champions of the responsibility to protect and their role is crucial in building a broader coalition of support for this agenda.

There are three specific things that these states might do to help achieve this. First, they should use every opportunity to put the responsibility to protect and civilian protection on the agenda of international meetings. Those states that are members of the UN Security Council or the AU Peace and Security Council should particularly use this opportunity to press these issues in these bodies and to raise questions about the extent to which the UN and the AU are investing in the capacity and organisational structures to give effect to the responsibility to protect.

Second, they need to press the responsibility to prevent and the responsibility to rebuild, alongside the responsibility to react. This report has focused on the latter because the other two areas are already well covered in terms of the research agenda. In respect of advocacy, however, the three responsibilities are best presented as a package.

Critics of the responsibility to protect view it as a licence or pretext for western governments to intervene militarily in pursuit of their own interests. Countering these claims requires that wealthier and more powerful countries do not use humanitarian arguments to justify interventions carried out for other reasons. We have already noted that the Iraq war has weakened the cause of the responsibility to protect. But a clear willingness

to invest in sustainable development – to help reduce the conditions that breed humanitarian crises – is good in itself, a useful response to the critics, and a means to build further support for this agenda.

Third, national champions of the responsibility to protect need to support stronger systems of public and political accountability: to ensure that decision-makers are required to answer for the way in which they act or fail to act when faced with crisis situations.

To date, no one in key governments or at the UN has been held accountable for mistakes made in relation to Rwanda or Darfur. The independent reports commissioned by the UN into the disasters of Rwanda and Srebrenica in the 1990s were a useful step in advancing international accountability. But much more needs to be done (Kapila 2006).

This is true at the UN. Faced with clear evidence of massive human rights abuses or war crimes, the Security Council should be required to explain and justify its responses to the wider UN membership in the General Assembly. Perhaps initially this could be limited to the Permanent Five members of the Council.

It is also true at the national level. National governments should be more transparent and answerable to their own parliaments and electorates about how they are delivering on their responsibility to protect obligations.

*ippr recommends that:*

- Members of the Security Council, initially the P5, should be required to report annually to the General Assembly on the steps they have taken to follow through on the ‘responsibility to protect’ pledge made at the 2005 UN meeting.
- At the national level, governments should be held to account for their obligations under the responsibility to protect, either through hearings before parliamentary committees or through a regular debate in Parliament.

## Conclusion

We hope that this report will stimulate debate and discussion in Africa and beyond, and that it will help to galvanise the necessary political will and leadership to act decisively when faced with acute crises.

After Rwanda, and several times since, the world said ‘never again’. In 2005, world leaders endorsed an international responsibility to protect. But did they really mean it? The policy responses suggested in this report can and should be implemented if Africans and the wider international community are really serious about upholding that most basic of humanitarian

norms: that there is no justification – political or cultural – that can ever excuse gross human rights abuses or the deliberate infliction of massive human suffering.

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# Appendix

Throughout the course of this research project, expert advice was sought from officials in national governments and international organisations, and from practitioners, academics and civil society representatives. This involved discussions in high-level symposia, as well as face-to-face, telephone and email interviews with individuals in Africa, North America and Europe. We are grateful to all of them for their comments, but exclusive responsibility for this report rests with ippr and the two authors.

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