

## Review - International Responses to Mass Atrocities in Africa

Written by Christof Royer

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International Responses to Mass Atrocities in Africa – Responsibility to Protect, Prosecute and Palliate  
by Kurt Mills  
University of Pennsylvania Press, Philadelphia, 2015

“How have, can, and should mass atrocities be addressed?” (Mills 2015, p.1). In the aftermath of 2016, a year in which we witnessed atrocities in Syria on an almost unimaginable scale and a year in which the so-called “international community” responded to the ongoing slaughter with cataclysmic (yet, of course, not unfamiliar) inactivity, which question could possibly be more topical for students, scholars and practitioners of international relations?

Precisely this question constitutes the linchpin of Kurt Mills’ book *International Responses to Mass Atrocities in Africa – Responsibility to Protect, Prosecute and Palliate*. In seeking to shed light on it, Mills tries to combine a historical (“have”) with an analytical (“can”) and a normative (“should”) approach and weave them into a coherent narrative. This, no doubt, is an ambitious and complex undertaking which requires Mills to strike a balance between theoretical and empirical analysis. Therefore, Mills structures his book in the following way: He starts with a (mainly) theoretical Chapter that “interrogates international obligations” in the context of mass atrocities such as genocide, crimes against humanity, war crimes or ethnic cleansing. This Chapter, in other words, establishes the theoretical framework for the subsequent four case studies on Rwanda, the Democratic Republic of Congo (DRC), Uganda and Darfur. In the last – and, unfortunately, by far the shortest – Chapter, Mills addresses some of the normative questions and conundrums that have emerged from the previous analysis: In particular, Mills argues that labels (such as “mass atrocities” or “genocide”) matter and that the media, diplomats and activists should employ these labels with increased sensitivity; secondly, he maintains that it would be a mistake to believe that different actors, norms and institutions of the “international community” necessarily pursue the same goals and purposes in a given conflict; and finally, he concludes that questions of global authority which inevitably arise in the context of mass atrocities are – despite the existence of organs like the UN Security Council or the International Criminal Court (ICC) – presently not sufficiently understood and, as a consequence, cannot be satisfactorily addressed.

Having provided this necessarily brief overview of the book’s structure, let us return to and look in more detail at Chapter 1 in which Mills constructs the theoretical lens through which he later analyses a selection of conflicts. The core argument developed here is that the international community’s responsibility with respect to mass atrocities entails, in fact, three separate responsibilities – he refers to this tripartite responsibility as “R2P<sup>3</sup>”: First, the international community has what Mills calls the “responsibility to palliate”, that is, the duty to provide humanitarian aid in cases of mass atrocities (p.16). The second international obligation, according to Mills, is the “responsibility to prosecute” perpetrators of mass atrocities under international law, primarily, of course, through the ICC. Finally, there is an international “responsibility to protect” civilians from mass atrocities. While this “responsibility to protect” is, as Mills indicates, the central dimension of R2P<sup>3</sup>, it has only recently been recognised as an international responsibility, most notably, with the publication of the report of the International Committee on Sovereignty and State Sovereignty in 2001 and the universal endorsement of its underlying principles at the 2005 World Summit (pp.31-39). The central theme of the book, and, in my view, its most valuable and original contribution to the existing literature on mass

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atrocities, is Mills' diagnosis of the inherently problematic relationship between these three international responsibilities. This problem is succinctly summarised in the following way (p.48):

They all have the same goal – to protect lives. One might assume, then, that they are mutually enforcing. That is, the implementation of one would support the implementation of another...However, this is not necessarily the case. Indeed, applying one or more of these responses may, in fact, get in the way of, or undermine other responses.

According to the author, this “very complicated relationship” (p.51) between the responsibilities to palliate, prosecute and protect stems from the fact that “they all have a different balance” (p.39): Palliation, Mills maintains, is based on humanitarianism, prosecution is, in principle, legal action, and protection is, first and foremost, a political activity. This can lead to vexed conundrums in real-life situations: The paradox of palliation, for example, is that while it often provides desperately needed humanitarian assistance on the ground, it can also create a dangerous “illusion of adequate response when, in fact, the response is far from adequate” (p.48); after all, humanitarianism can only alleviate the suffering of victims but lacks the potential to end the conflict itself. This, Mills argues, is precisely what happened during the genocide in Rwanda in 1994 where the presence of aid workers created a deceiving illusion of protection which provided a fatal cover for inaction, reduced the prospects of effective protection and thus contributed to the continuation of the conflict (p.75).

Serious tensions can also arise between the responsibilities to prosecute and protect. Legal prosecution of perpetrators, Mills rightly observes, can, in theory, work at three different levels: First, international criminal law has, of course, primarily been developed as a “retrospective system” which is designed to legally prosecute perpetrators *after* they had committed atrocities (p.42). Recently, however, the idea has emerged that international criminal law can and should be used as a tool to prevent atrocities; the threat of criminal prosecution, so the argument goes, can be utilised as an effective deterrent to prevent the further escalation of crises. For Mills, however, empirical evidence clearly demonstrates that the deterrent capability of the ICC is “close to non-existent” (p.42). Finally, there remains the so-called “conflict management strategy”, that is, the prosecution of perpetrators during ongoing conflicts with the aim to facilitate the protection of potential victims. Again, Mills regards this strategy as deeply problematic (p.49):

Prosecution can punish people for their crimes. This is its institutional purpose. However, inserting prosecution into the middle of a conflict can have unforeseen consequences and require difficult trade-offs. The most obvious...is that potential prosecution can have an impact on peace negotiations, with the very unhumanitarian impact of prolonging the conflict. Combatants with arrest warrants against them may be less likely to come to an accommodation, knowing what possible fate might await them. Such international action might also interfere with domestic efforts to institute amnesty laws which might contribute to peace processes and post-conflict reconciliation.

Here Mills alludes to a problem which is known as the “peace versus justice” debate in the international criminal justice literature. The dilemma, to put it simply, is that the goal of delivering justice through criminal prosecution is often detrimental to efforts to establish peace. The textbook example in this context is, of course, the recent conflict in Uganda which Mills discusses at length in Chapter 4. This Chapter, in my view, perfectly reveals the true complexity of Mills' task, a complexity that excuses, maybe even justifies, Mills' habit of drawing seemingly overly cautious conclusions such as this: “Peace and justice are not inherently dichotomous” but “the dominant discourse in Uganda has put peace and justice in opposition” (p.159). All three dimensions of R2P<sup>3</sup>, Mills further argues, have been (and still are) at work in the Ugandan conflict; at times they have supported and at other times of the conflict they have undermined each other. Chapter 3, which analyses the protracted conflict in the Democratic Republic of Congo, leads to a broadly similar picture. For what we see in the DRC, Mills concludes, “is a muddled mess where precursor and proto R2P activities debuted, international criminal justice gained prominence but was also problematized, and the dilemmas for humanitarians continued” (p.83). Needless to say, then, that the two remaining case studies on Rwanda and Darfur only confirm this general picture of highly complicated and, indeed, impenetrable crises in which it is a delicate task to balance the imperatives of humanitarian palliation, legal prosecution and political protection[1].

To be clear, Mills' emphasis on the complexity and intractability of these crises should be regarded as one of the book's strengths. What I do find disappointing, though, is the absence of constructive proposals how the tensions between the three responsibilities of R2P<sup>3</sup> could be defused. Hence, while Mills, more elaborately than anyone before

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him, I believe, demonstrates that and how the imperatives of palliation, prosecution and protection can be mutually undermining, he, unfortunately, stops short of contriving substantiated solutions for this problem. In particular, it would be interesting to know whether Mills thinks that there are context-independent guidelines which could facilitate the easing of tensions between the three respective responsibilities or – as I think he does – if he insists on the unique nature and peculiar complexities of each and every conflict and thus advocates a case-by-case approach. This question, I think, could and should have been addressed in a more comprehensive final Chapter.

This critical remark, however, should by no means diminish the overall quality of this remarkable work. Mills' convincing core thesis of the three frequently colliding responsibilities of R2P<sup>3</sup> is skillfully developed in theory and corroborated by meticulously researched case studies. As such, this book should be required reading not only for students and scholars of International Relations but also for practitioners who all too often rather uncritically assume a harmony between humanitarian palliation, legal prosecution and political protection[2].

[1] Mills nicely illustrates this by providing tables which succinctly summarise the “Protection Conundrum” generated by each of the four conflicts (pp. 80, 127, 172, 203).

[2] See, for example, Fatou Bensouda's recent argument that “accountability and the rule of law provide the framework to protect individuals and nations from massive atrocities...The Court (ICC) – and justice in general – are part of the responsibility to protect” (Stanley Foundation 2012).

### References

Mills, Kurt, 2015, *International Responses to Mass Atrocities in Africa – Responsibility to Protect, Prosecute and Palliate* (Philadelphia: University of Pennsylvania Press)

Stanley Foundation 2012, *ICC Prosecutor Elect Talks Court's Role in R2P*, Video, [ONLINE] Available at: <https://www.youtube.com/watch?v=suJIXSsGzL0&feature=youtu.be> [Accessed 9 January 2017]

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### About the author:

Christof Royer is currently undertaking a PhD at the University of St Andrews. In his research he is investigating how the ICC and the Responsibility to Protect uncover mass atrocities and bring perpetrators to justice.