



THE “RESPONSIBILITY TO PROTECT:”

THE NEW GLOBAL MORAL COMPACT

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Foreword

Letter from the Convenor of the R2P Coalition

Over time, we the American people have been driven by our thirst for freedom, our mission to right wrong and to serve man. We have known periods of darkness in the past. But those difficult times triggered giant leaps towards a greater civilization for the benefit of our fellow men. Our ancestors rose in the face of turmoil and overcame formidable challenges. Their own consciences drove them to aspire to the best possible human behavior and to ascertain the high moral ground. Two hundred years ago, on March 2nd, 1807, the American people took the first historical step that would eventually lead to the abolition of slavery. And it was led by the conviction that racial segregation was immoral, that the American people outlawed this abhorrent practice nearly half a century ago.

There is no doubt in my mind: the desire for peace, justice and human dignity is written in the hearts and minds of all the American people. It is deeply rooted in our tradition. And it must remain so. Yet today, as mass atrocities repeatedly stain humanity, the world no longer turns to America for those moral inspirations that lie at the basis of freedom and human security. The abuses in Abu Ghraib and Guantanamo remind us that moral decay can be contagious and that we are not immune to evil behavior. And it should not come as a surprise that people around the globe have come to disbelieve that our country puts human rights above all other rights and that its flag is the flag not only of America but of humanity. Today, indeed, the claim that America is the greatest nation on earth and the leader of the civilized world is held in abeyance until we, the people of America, reestablish our country's moral authority.

I was born in the age of genocide and other mass atrocities. I grew up and led my life truly believing that “never again” would, indeed, never be heard again. Yet, nestled in the comfort of a prosperous country where people lived in peace, I remained a bystander as sheer barbarity wrecked various corners of our world: Cambodia, the former Yugoslavia or Rwanda. When told or reminded of these atrocities, my senses were revolted, my soul was in turmoil, my heart bled, and with all my might – or so I thought - I condemned humanity for being so full of evil. I am today a senior citizen, and I still live in the age of genocide, crimes against humanity and war crimes. I realize that I can no longer be an occasional witness, a sincere yet superficial enemy of some of the most monstrous behaviors ravaging Uganda, the Democratic Republic of Congo and Darfur. Because mass atrocities not only disgrace their perpetrators. They shame all of us who, whether by calculation or indifference, default on our duty to uphold the lives and dignity of men.

Yet as I write, a quiet revolution is under way. In September 2005, the United Nations General Assembly adopted a declaration - the World Summit Outcome - whereby each and every State in the world accepted its *responsibility to protect* populations from genocide, crimes against humanity, ethnic cleansing and war crimes. The declaration also emphasizes that if a State relinquishes its *responsibility to protect* – whether by will or lack of capacity - this responsibility must be borne by the international community that can decide to intervene as a last resort. In the face of mass atrocities, every nation and thus every people on earth have pledged to be our brothers’ keepers. Without fanfare and with little notice, the obsolete principles underlying the Westphalian ordering of world affairs have been dramatically rewritten. We can no longer hide behind State sovereignty, a 400-years old shield, to excuse the shameful reflex and ongoing practice of remaining passive in the face of the most outrageous behaviors.

The United Nations has given us a historical opportunity. And we, the American people, must seize it now. We owe it to our ancestors. We owe it to ourselves. We owe it to future generations. We owe it to humankind.

It is prophecies and rebels that make history. In this case, the prophecy has already been uttered: atrocity crimes will be abolished. We all know this must be. We cannot afford to relegate the principle of the *responsibility to protect* to a set of enlightening words, an empty theory. What we need are for rebels against indifference and rebels against intolerance to gather and fulfill this prophecy. These rebels are the people who reject the horror of mass atrocities, wherever they occur. They are the people who believe that lofty ideals and high-mindedness must continue to drive the destiny of their country and of humanity. These rebels are the people who embrace their *responsibility to protect* any population from atrocity crimes. These rebels will turn a grand declaration into deeds. They will free humanity from hell on earth. These rebels are me ... and you. The responsibility to protect is ours.

Yours respectfully,

Richard H. Cooper

Synopsis

Atrocity crimes¹ – genocide, crimes against humanity, ethnic cleansing and war crimes - punctuate human history. Today, Darfur is in the public eye. Tomorrow, Northern Uganda or the Democratic Republic of Congo, whose populations have long suffered from atrocities, might shock the American people in a similar way. Or perhaps it will be another place on earth. What is certain, and however unfortunate you may think it is, is that we are not over with hell on earth.

Yet no one in his right mind would wish or not mind being a victim of massive killings, torturing or sexual assault. No one should be allowed to not care that fellow human beings are being slaughtered because of their religion, because of their race, because of the place they were born. All human beings are bound by the very fact that they are human and share many identical fears and hopes. As Martin Luther King Jr. expressed it: “All men are caught in an inescapable network of mutuality.” Each one of us should feel some level of responsibility in preventing human beings from becoming the victims of lunatics, whether in our country or in a distant land.

The purpose of this paper is to present the American people with the **historical opportunity to engage in the abolition - in practice - of the most barbaric human behaviors: genocide, crimes against humanity, ethnic cleansing and war crimes**. Two hundred years ago we succeeded in putting an end to one of the biggest disgraces for humanity - slavery – the time has come to eradicate atrocity crimes.

On September 2005, the United Nations General Assembly endorsed the norm of the “responsibility to protect” populations from mass atrocities. The World Summit Outcome reads:

“Each and individual State has the “responsibility to protect” its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. 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 organizations 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. We stress the need for the General Assembly to continue consideration of the “responsibility to protect” populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.”

The **core principles of the doctrine of the “responsibility to protect”** are the following:

- State sovereignty includes the “responsibility to protect” populations from genocide, crimes against humanity, war crimes and ethnic cleansing.
- The “responsibility to protect” embraces the responsibility to prevent and the responsibility to react to such atrocities, as well as the responsibility to rebuild societies shattered by such atrocities.
- The prevention of genocide, crimes against humanity, war crimes and ethnic cleansing should be given priority.
- The international community also has the responsibility to help States protect their populations from genocide, crimes against humanity, war crimes and ethnic cleansing.
- If a State relinquishes its “responsibility to protect” - whether by lack of will or lack of capacity – this responsibility should be borne by the international community that can decide enforcement measures, including the use of force as a last resort.

Last fall, world leaders unanimously embraced the international community’s responsibility towards our fellow human beings victim of atrocity crimes. And on 28 April 2006, the Security Council reaffirmed the doctrine of the responsibility to protect². These are huge steps forward. A unique opportunity we must seize. **We too, the American People, must embrace our Nation’s “responsibility to protect” populations from hell on earth.**

Introduction

In September 2005, the United Nations General Assembly took a historical step. By endorsing the “responsibility to protect,” world leaders, including our own - President Georges W. Bush - laid the founding block for a revolutionary approach to dealing with the mass atrocities that have, over time, plagued nearly every corner of our planet. Yet this doctrine, and the potential it offers for putting an end to the most serious and massive human rights violations, remains surprisingly little noticed in our country.

Mass atrocities are man-made, therefore they may be solved by man. “No problem of human destiny is beyond human beings³.” The time is ripe for the American People to grasp the rationale and embrace the extraordinary potential of the norm of the “responsibility to protect.” Both our past and current events command that we live up to our responsibilities as members of a global human society that wants to be freed from mass atrocities. Over time and step by step, individual nations and the international community have endorsed the rules and built the delicate structure that are prerequisites for the abolition of genocide, crimes against humanity and war crimes. Today, with a 21st century still in its infancy, we have reached a tipping point. The foundations have been laid for the abolition of some of the biggest disgraces for humankind.

I. The “responsibility to protect”: an historical breakthrough

The “responsibility to protect” calls on each individual State to protect its populations from genocide, crimes against humanity, war crimes and ethnic cleansing. The international community shares this “responsibility to protect” populations from mass atrocities and should encourage and help individual States to exercise their responsibility. In case national authorities manifestly fail to protect their populations and if peaceful means are inadequate, the international community, through the United Nations Security Council, may take collective enforcement action to protect populations from genocide, war crimes, crimes against humanity and ethnic cleansing⁴.

The doctrine of the “responsibility to protect,” one of the greatest achievements of the 2005 General Assembly World Summit, seems quite straightforward and convincing. The “responsibility to protect” populations from atrocity crimes resonates well with some of our deepest and most noble human values: empathy and compassion. Yet what may seem at first as the reaffirmation of normally expected human behavior is actually a huge step forward as far as the international community is concerned: **a new global social**

contract. The norm of the “responsibility to protect” consecrates a **new paradigm of international relations** that affects the relationships not only between States, but between each State and populations threatened by mass atrocities, wherever part of the world they might be. This norm encapsulates a much-needed redefined balance between the contents of State sovereignty and the duty to not interfere in the internal affairs of States, two fundamental principles enshrined in the United Nations Charter⁵. The doctrine of the “responsibility to protect” also builds on the **formidable expansion of human rights law** that has progressively come to prohibit and criminalize genocide, crimes against humanity and war crimes.

I.1. BRINGING HUMAN RIGHTS PROTECTION TO ANOTHER LEVEL

The doctrine of the “responsibility to protect” builds on the twentieth century unprecedented growth of institutions and rules aimed at protecting human rights. Most recently, such achievements include the **1998 Rome Statute establishing the International Criminal Court** - the ICC. This permanent judicial body - whose role is often ill-understood in our country - has jurisdiction over atrocity crimes. This Court will help ensure that the “architects of hell on earth,” to paraphrase Professor David Scheffer, are brought to justice. Fifty years before the establishment of the ICC, the **1948 Universal Declaration of Human Rights** was the first global political instrument to articulate the most fundamental individual human rights.

Yet the origin of modern positive human rights and humanitarian international law predates the aftermath of the second-world war and the crisis of conscience its horrors triggered among many. The universal endorsement, in 1948, that all men are born free and have inalienable rights finds its roots in previous national and international achievements in the field of human rights. The 1800s in particular, the century of the Enlightenment that led to the American Revolution, sowed the seeds of the moral outrage that would dictate the ban of the biggest disgraces for humanity. Today a number of appalling behaviors are labeled crimes against humanity, genocide or war crimes. We owe this a great deal to the historical first steps taken two hundred years ago.

Our goal here is not to saturate you with the history of the human rights or humanitarian law movement. But it is sometimes helpful to look to the past - both our successes and our failures - to see with much greater clarity where we come from and what the obvious next steps are: what the future must be and, therefore, what we have to do today. A brief overview⁶ of what culminated in the abolition of **enslavement**, the commission of which may amount today to a **crime against humanity**, substantiates why the abolition - in practice and not just in theory- of genocide, crimes against humanity and war crimes, is the logical and necessary next step.

When the Founding Fathers of our Nation adopted the **1776 Declaration of Independence**, they affirmed:

“We hold these truths to be self-evident, that all men are created equal, that they

are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

This did not mean that slavery was abolished when our Nation was founded. To the contrary, our Constitution was specifically drafted in a way that could accommodate different interests within our Nation. On one hand were those that saw a contradiction between bondage for slaves and freedom for whites. Slavery was perceived as immoral and the terrible fate of slaves - “miserable creatures” – had to be ended. By the end of the 1700s, several States in our country had passed emancipation laws, for example Vermont and Connecticut. But few slaves lived in those States. On the other hand were those that considered that slavery and the slave trade associated with it amounted to a common and legitimate practice. Slavery had always existed it seemed, and at the end of the eighteenth century, more than three quarters of the world population lived in bondage of one kind or another, captive of various systems of serfdom or slavery. Slavery was even considered necessary: it provided cheap labor and it was felt that putting an end to this practice would, as we would say today, impose too high a burden on the economy. Slavery was so essential to some that its abolition plainly threatened the unity of our Nation.

The compromise reached on this sensitive issue back in 1776 is clear from Article 1 section 9 of our Constitution. This provision bars Congress from prohibiting, prior to 1808, the “migration or importation of such persons as any of the States now existing shall think proper,” but a tax or duty may be imposed on such importation. As appalling as it seems today, our Constitution was built on the premise that, technically, slaves were merchandise⁷.

Yet the Declaration of Independence would prove to be **prophetic**. Thirty years after the birth of our Nation, on **2 March 1807**, the U.S. Congress passed an act to “prohibit the importation of slaves into any port or place within the jurisdiction of the United States ... from any foreign kingdom, place, or country.” This act banning the importation of slaves on our soil entered into force on **1 January 1808, marking the United States’ historical first step towards the abolition of slavery**⁸. Slavery itself was abolished throughout the United States on **18 December 1865** - following the end of the Civil War and two years after Lincoln’s symbolic 1863 Emancipation Proclamation⁹.

The 13th Amendment to the US Bill of Rights affirms that:

“Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

Section 2. Congress shall have power to enforce this article by appropriate legislation.”

We mention Section 2 of the 13th amendment - which the State of Illinois was the first to ratify - not only to offer a comprehensive reading of this constitutional provision. Section 2 of the 13th amendment is as cardinal as section 1: it ensures that the abolition of slavery is not merely a wish: it has to be reality. And for slavery to disappear from our soil, the ban needed to be - and is indeed still today - **enforced**.

The United States did not abolish the slave trade and slavery in isolation from the rest of the world. In the late years of the eighteenth century, the disgrace of this practice shocked the conscience of men not only in our country but in Europe, in Russia and in other parts of the American continent¹⁰. Laws abolishing the slave trade and emancipating slaves gradually reversed what had been the norm until then. And on **25 September 1926**, the international community, through the League of Nations - the predecessor of the United Nations -, adopted the first international treaty that abolished worldwide all types of slavery¹¹.

Yet even today, there remains **a gap between these normative steps to abolish slavery and reality**. Today, there are still nearly 3 million individuals worldwide that are slaves in the narrow sense. This figure rises to 27 million if one takes a broader definition of slavery that includes pawns, bonded labor and servile concubinage¹². The vast majority of the world's slaves are in South Asia. But slavery is also practiced on our very soil. According to the CIA, 14,500 to 17,000 victims are trafficked into the "Land of the Free" every year, mostly due to human trafficking for domestic work, migrant farm labor, or work in the sex industry¹³. Still today, States, the United Nations, non governmental organizations, religious organizations and dedicated individuals are devoted to making the abolition of slavery a reality, in every corner of the world. And there is no doubt in my mind that they will succeed.

The world has come a long way from the days where it was perfectly normal to have two categories of human beings: those born and living free, and those born or held as slaves. Starting from the late 1700s, two hundred years of ongoing efforts were not in vain. The early abolitionists knew there simply could not be any another way: humanity had to be freed of the scourge of slavery. The remarkable time that was the eighteenth century marked the beginning of the end of slavery.

What we wanted to show here, and what we hope you will retain from this little exposé on the abolition of slavery, are the following five points.

- 1. Goals must not be shied away from merely because of their ambitious nature. The history of the abolition of slavery, for one, teaches us that **even some of the most unthinkable goals can be achieved**. In the 1800s, slavery was the norm. And many thought that the economy of the European empires as well as our own would collapse without slaves and the slave trade.
- 2. **Goals that bring humanity to a higher level of civilization** should guide us, with the conviction that these goals will, over time, be reached. Abolitionists were guided by their conscience: there was something inherently wrong in slavery, there was something inherently right in the fight for all human beings to be born and remain free in dignity and rights¹⁴.
- 3. Great achievements are built on a multitude of small steps that gradually converge, but whose ultimate success is triggered by **tipping points**: defining moments that will change the course of history. In our country, the 1808 ban was

an historical step towards the abolition of slavery. Similarly, even though the 1863 Emancipation Proclamation was a weak document for freeing slaves, it did have great moral force. It not only represented a major step toward the ultimate abolition of slavery in the United States: it had a great international impact. As the then historian Henry Adams noted, "The Emancipation Proclamation has done more for us than all our former victories and all our diplomacy¹⁵."

- 4. **Global goals are best achieved through global efforts.** Here, I am not only thinking in terms of efficiency. But if our goal is to liberate humanity from some shameful behavior, then we, as human beings, will only truly be set free when all human beings are set free.
- 5. The entry into force of a legislative act prohibiting some type of behavior is not enough. For slavery to end, it is not enough to outlaw it: **rules need to be implemented and enforced**, with the use of force if necessary as a last resort.

Just as the 1808 ban and the 1863 Emancipation Proclamation were historical steps in our country towards the abolition of slavery, the endorsement of the "responsibility to protect" is an historical step towards the abolition of the worst crimes affecting populations: genocide, crimes against humanity and war crimes. The **moral and political acceptance by world leaders, last September, of the doctrine of the "responsibility to protect" is the tipping point** for the abolition of the most outrageous, barbaric and gravest crimes on earth.

Of course everyone - with the exception of a handful of lunatics - condemns mass atrocities. Alas, there is an ocean between rhetoric and practice as far as genocide, crimes against and humanity and war crimes are concerned. Proclaiming "not on my watch" or "never again" gives us this false comfort that we are righteous. Yet the idea of abolishing, in practice, such mass atrocities is generally considered to be quite far fetched. After all, mass atrocities punctuate human history despite our legendary statements that "something should be done." Many steps have been taken already in order to abolish mass atrocities. But as often, there remains a gap between the development or enactment of laws and their practical effect. For half a decade, the commission of genocide, war crimes and crimes against humanity has been outlawed. Yet the criminalization of these acts did not mean that such mass atrocities would no longer take place. A decade ago, genocide unfolded in Rwanda and in the former Yugoslavia. And today, although the International Criminal Court is up and running, populations in Darfur are victims of crimes against humanity. And populations in Northern Uganda and in the Democratic Republic of Congo are the victims of mass atrocities. What was missing until now, and what the endorsement of the "responsibility to protect" offers to us for the first time, is a **founding block upon which the whole international community can build legitimate and effective tools to prevent and put an end to the most serious crimes affecting humankind, as well as rebuild societies shattered by such atrocities.**

What is so special about this doctrine, what sets it a step ahead of so many efforts undertaken so far is that it revolutionaries two of the most cherished and fundamental

rules of international relations: the principle of equal sovereignty and the principle of non-interference in States' internal affairs. Today, the international community accepts that State sovereignty knows limits when mass atrocities are occurring. Today, every single State agrees that the international community has responsibilities towards populations in other States. In other words, **the international community can no longer afford to witness mass atrocities: it bears moral and political responsibility for their occurrence and should act accordingly.**

I. 2. A NEW PARADIGM OF INTERNATIONAL RELATIONS: WE ARE OUR BROTHERS' KEEPERS

The doctrine of the “responsibility to protect” has the potential of bringing the protection of human security to an unprecedented level, an achievement that was possible thanks to the steady strengthening of human rights institutions over the years. The doctrine of the responsibility also encapsulates a much-needed redefined balance between the contents of State sovereignty and the duty to not interfere in the internal affairs of States. The endorsement of the “responsibility to protect” lays the foundations of a new paradigm of international relations based on the affirmation that we are our brothers' keepers.

One can only really grasp the extent of the impact of the doctrine of the “responsibility to protect” on international relations by looking back in time. We previously used our past to show that unthinkable successes – the abolition of slavery – could become reality, therefore lifting what we would call “mental” barriers to the abolition of mass atrocities. Let us briefly ponder over the evolution of international relations in order to evidence the significance of the doctrine of the “responsibility to protect.”

It is often said that the 1648 Peace of Westphalia initiated modern times as it marked the beginning of the modern **system of nation-states**. Yet internally, the essence of sovereignty was then of control by the sovereign over its people – not of responsibility by the sovereign for his people. Externally, the principle of sovereignty upon which the Westphalian Order relied produced the basis for rivalry, not community of States. The international system of States was guided by exclusion, not integration. International relations were scarce and based on strictly reciprocal terms. The idea that all States and all Peoples had interests in common which would better be pursued on a collaborative basis would have been viewed as sheer fantasy, an unrealistic and dangerous fantasy.

The end of the nineteenth century witnessed two trends. Industrialization, the expansion of international commerce and the growing interdependence of economies, for one, made it clear that there is some meaning in developing international relations based on cooperation. But the expansion of international relations on the eve of the twentieth century is as much influenced by a more ethical approach to world affairs: the realization that all humans are bound by the very fact that they are humans. The promotion of peace, economic and social development as well as the protection of human rights become a flagship of international relations. To summarize, and up to this day, **two forces drive the evolution of international relations: realist concerns and idealist objectives.**

Following the second world war, the international community enshrined the new principles that would govern the relations between States in the United Nations Charter. You will find there the principle of States' equal sovereignty, which finds its roots in the Westphalian Order. You will also find the principle of non-interference in internal affairs, which is a corollary of the principle of equal sovereignty. But the post-1945 era rejects the Westphalian narrow approaches to State sovereignty and international relations by laying the foundation of an international community **united in the promotion of peace, justice, social and economic progress and human rights for all Peoples.**

The founding members of the Charter stroke a **delicate balance between the prerogatives of individual States and their commitment to humanity.** This balance is evolving by nature and has evolved over the past. The expansion of the international mechanisms to protect human rights for example witnesses our common will to make the world a better place. But States, just like individuals, have conflicting interests or views that can hamper progress. And States, just like individuals, do not automatically have the same view of what "progress" actually is. This is where the doctrine of the "responsibility to protect" finds all its relevance.

The "responsibility to protect" is a judicious way to **reconcile**, on one hand, **the attributes of State sovereignty and the duty to not interfere in domestic issues** with, on the other hand, **the international community's purpose to promote and encourage respect for human rights and fundamental freedoms.** First, it is now acknowledged that **State sovereignty** implies the following dual responsibility. At the external level, and according to the principle of equal sovereignty, each State must respect the sovereignty of other States. Internally, each State has responsibilities towards the dignity and basic rights of all the people within that State: the protection of human rights must be seen as part of the definition of State sovereignty. Second, the **duty to not interfere in domestic issues** is a relative, not an absolute concept. Even at the time of its adoption, the Charter acknowledged that the existence of a "threat to international peace and security" under Chapter VII legitimized the Security Council to take enforcement action against a State. During the 1990s, the international community gradually labeled internal situations, such as massive human rights violations or humanitarian emergencies, as "threats to international peace and security" which could justify enforcement action. And from now on, under the doctrine of the "responsibility to protect," the commission of genocide, crimes against humanity, war crimes as well as ethnic cleansing constitutes a threat to international peace and security. Such mass atrocities are not "domestic issues": they are issues of concern to the whole community of States, and by implication to all of us. Accordingly, **the international community must join forces to preserve all populations from atrocity crimes.**

The doctrine of the "responsibility to protect" was first elaborated by the International Commission on Intervention and State Sovereignty in 2001¹⁶. The formulation of this norm was one attempt to lift the deadlock between those favorable and those opposed to so-called "**humanitarian interventions.**" Humanitarian intervention is a controversial concept. It has sometimes been stretched so far as to give a general and unlimited right to

States to militarily intervene in another State in order to put an end to a humanitarian crisis. From the perspective of a number of countries, including many from the developing world, the humanitarian objective of intervention may well not be a genuine goal: it might mask indirect attempts by rich and powerful countries not only to impose their values on weaker States, but to actually control their government and get access to their resources. To support this assertion, these countries can easily pinpoint to inconsistencies in the Security Council responses to crises - remember Rwanda - and to the underlying economic, geo-strategic and political motivations of permanent members when deciding to intervene on humanitarian grounds – see Iraq¹⁷. For a number of other countries, on the other hand, the international community has a moral duty to stop mass atrocities that shock the conscience of humanity. The dividing issue for those countries supporting humanitarian intervention is whether or not to develop a framework that will offer more legal and political certainty to military intervention for humanitarian purposes. Can the use of force be selective or does it need to be standardized?

Fundamentally, the substantive issues are still the same today, but the new language proposed by the ICISS, endorsed by the 2004 UN report of the High-level panel on threats, challenges and changes¹⁸ and unanimously embraced by world governmental leaders in September 2005, is allowing the international community to look at them from a new perspective: from now on, **the focus is on the victims** of atrocity crimes and on the **responsibilities** of States and the international community towards them.

II. A holistic approach to protecting populations from atrocity crimes

The “responsibility to protect” calls for a continuum of actions that are clustered in three categories: the responsibility to **prevent**, the responsibility to **react**, and the responsibility to **rebuild**.

II.1. AN INTRODUCTION TO ATROCITY CRIMES: GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY

Of the three types of crimes that currently fall within the jurisdiction of the ICC, “genocide” is by far the one that has the most resonance in the general public. “**Genocide**” means any of the following acts committed with the **intent to destroy**, in whole or in part, a **national, ethnical, racial or religious group, as such**:

- killing members of the group;
- causing serious bodily or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- imposing measures intended to prevent births within the group;
- forcibly transferring children of the group to another group.

The definition of genocide, which was engraved in the 1949 Genocide Convention, is quite narrow. The intention to destroy a group may be difficult to prove. And “genocide” cannot qualify acts committed against political or social groups.

“**Crimes against humanity**” are a much broader category of crimes. A crime against humanity means specific acts committed as part of a **widespread or systematic** attack directed against any **civilian populations**, with knowledge of the attack. Such acts include: murder, extermination, enslavement, deportation or forcible transfer, imprisonment, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, some types of persecution, enforced disappearance of persons, apartheid, and other inhumane acts of similar character intentionally causing great suffering or serious injury to body or to mental or physical health. In our opinion, “ethnic cleansing” falls within this definition of “crimes against humanity”.

Both genocide and crimes against humanity may be committed during or in the absence of a conflict.

“**War crimes,**” on the other hand, means specific acts committed against people who do not take part in the fighting (civilians, medics, chaplains, aid workers) and those who can no longer fight (wounded, sick and shipwrecked troops, prisoners of war).

II.2. THE RESPONSIBILITY TO PREVENT

The responsibility to prevent crimes against humanity, genocide, war crimes and ethnic cleansing encompasses a whole range of actions to address both the root-causes and the direct causes of mass atrocities. During the 2005 World Summit, the international community agreed that prevention should be the **priority focus** of the efforts aimed at protecting populations from mass atrocities. This makes perfect sense: if prevention succeeds, mass atrocities will not occur.

a) Addressing the root-causes of mass atrocities

Addressing the **root causes** of mass atrocities means tackling those causes that constitute underlying factors for instability in a country. Poverty, political repression and uneven distribution of resources are generally considered as some of the structural causes of civil unrest and conflict. Preconditions for genocide and other mass killings include structural causes such as political systems based on exclusionary ideologies and autocratic rule, ethnic and religious cleavages, low economic development and a low economic and political interdependence¹⁹.

The prevention of mass atrocities thus calls for a whole range of measures such as economic and social development, protection of the environment, promotion of the rule of law and of justice, respect for human rights, good governance and security sector reform.

Adopting and implementing preventive measures at the domestic level is an ongoing responsibility of each and every State. In the United States as well, we do so, and must continue to do so. The international community also has an important role to play in this regard, whether through bilateral relations, regional concerted efforts or global endeavors. The provision of development assistance, the promotion of private investment, training programs and, as a general rule, friendly relations among States based on cooperation all contribute to the building of stable societies.

At the global level, a number of initiatives have been taken to establish a framework conducive to preventing mass atrocities. The United Nations Secretary General Kofi Annan has recently put greater effort to prevent genocide. In 2004, he appointed a **Special Advisor on the prevention of genocide** as one effort to put in place a high-level official with a specific responsibility to act as an early warning mechanism. And in May 2006, Kofi Annan appointed a high-level panel of individuals whose mandate is to provide guidance and support to the work of the Secretary-General's Special Adviser on the Prevention of Genocide, Juan E. Méndez, and to contribute to the broader efforts of the United Nations to prevent genocide. In the eyes of Gareth Evans, member of this panel, the task will be to fully operationalize the international community's "responsibility to protect" populations from genocide²⁰.

The international community has in the past and must continue in the future to build a network of incentives, both positive and negative, that will influence behaviors in a decisive way. Some of the preventive measures adopted by the international community can provide **positive incentives** for the leaders in a country, in the sense that a specific course of action that is expected to be taken will be rewarded. This is for example the case with conditional foreign assistance. The preventive measures adopted by the international community can also provide **negative incentives** in the sense that the lack of progress by a country in tackling the structural causes of mass atrocities or worse, the building of a climate conducive to mass atrocities, might generate consequences that the country will try to avoid. One example of such a preventive mechanism is the newly established **Human Rights Council** that will undertake a universal review of the fulfillment by each State of its human rights obligations²¹. Another example of a prevention mechanism that recently came into operation is the **International Criminal Court (ICC)**²². We mentioned this institution earlier on, and because it is such a breakthrough in the ordering of world affairs we will repeat what we said: the ICC is the first permanent international judicial body that has the competence to prosecute and try the alleged perpetrators of genocide, war crimes or crimes against humanity when the case is not being investigated or prosecuted by any state that has jurisdiction over it. It is the Court of last resort for those most responsible for mass atrocities. For humanity, it means moving towards the end of impunity. For unscrupulous leaders, it means thinking twice before engaging in barbaric behavior.

There is still ample room and serious need for a **strengthening of preventive mechanisms**: the picture needs to be completed. We know that if prevention fails, we have basically failed our primary responsibility to avoid mass atrocities. This is why it is

so important to develop the appropriate rules and mechanisms for prevention to actually work. The use of “soft power” tools is common practice and their role is important. But when we are faced with atrocity crimes, the international community must stand ready to put in place preventive mechanisms that will have a decisive impact. The international community desperately needs to put in place a vital piece of the prevention puzzle: a standing mechanism that will have the capacity to deter the commission of genocide, crimes against humanity and war crimes.

In order for the international community to fulfill its responsibility to prevent genocide, crimes against humanity and war crimes, we need:

- To empower the international community with a **standing mechanism that will have the capacity and the legitimacy** to enforce the judicial mandate of the ICC by **arresting alleged perpetrators of atrocity crimes and stop mass atrocities in their infancy**²³.

Now, let’s assume that these preventive steps have not been taken or that, for whatever reason, they have failed. When a country is on the bridge of chaos, this is when the direct causes of mass atrocities must be tackled.

b) Addressing the direct causes of mass atrocities

Addressing the **direct causes** of mass atrocities also calls for a whole set of actions to be taken. Yet these efforts do not focus on the long or medium term. They are intended to address **short-term issues** whose resolution, or at least tackling of, is expected to have a decisive impact on the possible degeneration of a situation. Direct prevention efforts include diplomatic efforts (good offices, mediation, preventive deployment of peacekeepers), the imposition of sanctions and the threat of the coercive use of force.

II.3. THE RESPONSIBILITY TO REACT

When prevention has failed and a situation degenerates in the commission of mass atrocities, the “responsibility to protect” requires that the State concerned respond appropriately. This is an essential attribute of its sovereignty. If that State does not assume this responsibility, be it by will or by lack of capacity, then a secondary responsibility to react falls on the international community.

a) Helping the State protect its populations

There are two kinds of steps that the international community should take in order to help a State protect its populations. On one hand, the international community has the responsibility to use peaceful means to **help leaders put an end to a crisis**. Diplomatic efforts such as mediation, negotiation, enquiry and conciliation, should be used as a priority and may very well be used alongside other types of reactive measures. Such peaceful means do not exclude using diplomatic pressure and various forms of arm-

twisting that will induce State leaders to comply with their responsibilities towards their populations²⁴. On the other hand, the international community has the responsibility to directly **protect populations** in danger through the delivery of humanitarian assistance and the provision of protective measures to refugees and internally displaced persons.

b) Coercive measures

There may very well be situations where the State whose populations are subjected to atrocity crimes does not want any help. Either its leaders are the very perpetrators of crimes, or they are accomplices of other groups committing genocide, crimes against humanity and war crimes, or they just fear any type of foreign intrusion.

Recourse to coercive measures means that specific steps are taken by the international community without the consent of the government concerned. Under the UN Charter, the international community can adopt coercive measures through the Security Council when a situation amounts to a threat to international peace and security and when peaceful measures have not led to a satisfactory outcome. Coercive measures include sanctions and the use of force.

The imposition of **sanctions** by the Security Council is still the subject of controversies. You may have heard of the terrible impacts of the sanctions that were imposed without discrimination on the Iraqi population. And you certainly have heard on the Oil-for-food scandal that has plagued the United Nations. Sanctions are a very delicate tool, which explains why, despite several years of efforts to develop guidelines regulating the imposition of sanctions, little progress has formally been made²⁵. Even more controversial, and actually extremely sensitive, is the **use of force without the consent of the parties involved**, a measure all agree should only be resorted to in extreme cases.

The rules regulating the resort to the use of force against a State were very carefully drafted by the founders of the United Nations. The basic rule then - and still now - is that **States are prohibited from having recourse to the threat or use of force against another State**. This rule, of paramount importance, can be overruled only in two cases: when a State exercises its right to self defense; and when the Security Council has determined, under UN Charter Chapter VII, the existence of a threat to the peace, breach of peace or act of aggression.

When they adopted the United Nations Charter, the founding States were quite ambitious. And as you surely know, the United States – in particular Eleanor Roosevelt - was a driving force behind the drafting of this treaty. The founding States knew that in order for the Security Council to effectively discharge its primary responsibility for the maintenance of international peace and security, that body needed the **capacity** to do so. This is why the founders of the UN expressed in the Charter their willingness to empower the international community, through the Security Council, with the capacity to react forcefully to threats to the peace. Under **article 43** of the Charter, all members undertook

to make available to the Security Council **armed forces, assistance and facilities necessary for the purpose of maintaining international peace and security**. These would be available to the Security Council on its call, should it decide that the existence of a threat to peace, breach of peace or act of aggression required coercive action to be taken. If that was the case, the forces would come under the strategic direction of the Military Staff Committee composed of the Chiefs of Staff of the five Security Council permanent members (China, France, Russia, the United Kingdom and the United States). What a wonderful plan. What visionaries of a credible collective system of security. If only it had worked...

In the 1950s, it became apparent that the arrangements under article 43 would not materialize. And for the fifty years that the Cold War lasted, the Security Council's ability to authorize or use coercive action to restore peace was hijacked by the political opposition between the East and the West. This does not mean that the international community did not engage at all within the framework of the UN in order to stabilize conflict situations and protect populations from mass atrocities. But this engagement - which took the form of **peacekeeping** - was grounded on the following three principles: the consent of the parties involved, the impartiality of peacekeepers, and a use of force limited to self-defense²⁶.

You can easily see the limitations of this approach: what if the parties to a conflict do not consent to the deployment of peacekeepers? What if they do, but then engage in mass atrocities? The 1990s, in particular the genocides that occurred in the former Yugoslavia and in Rwanda despite a peacekeeping presence, are cruel reminders that on some occasions there is no peace to keep: peace still has to be made and in the meantime **populations need to be protected - with or without the consent of their torturers**.

Since 1999²⁷, and this is extremely encouraging, peacekeepers have been increasingly authorized to use force under UN Charter Chapter VII in order to "protect civilians under imminent threat" of physical violence²⁸. In other words, the consent of isolated peace spoilers is no longer a requirement for the deployment of a peacekeeping operation: **operations must have the adequate capacity to counter hostilities and protect populations**²⁹. This welcome trend was confirmed on 28 April 2006 in the Security Council's resolution on the protection of civilians in armed conflicts³⁰. Yet despite these improvements, peacekeeping remains confined to situations where a peace agreement has been signed and where the main parties to the conflict consent to the presence of the peacekeepers. We do not mean to not do justice to such operations: in the last decade, peacekeeping operations, together with peacemaking activities, have fulfilled their promise to reduce conflicts and their usual share of mass atrocities³¹. However, in situations where there is no consent and where diplomacy and sanctions have failed, the last resort remains the use of force by the international community to protect populations from crimes against humanity, war crimes and genocide.

The deadlock characterizing the recourse to the use of force without the consent of the parties in conflict - **peace enforcement** - was lifted in 1990 when the Security Council, for the first time, authorized the use of force under Chapter VII. Following the invasion

of Kuwait by Iraq, the Security Council authorized member States to use “all necessary means” to “restore international peace and security.” Since 1990, the Security Council authorized, or subsequently endorsed, the use of force under UN Charter Chapter VII in several instances. In most of these cases, the use of force was requested or supported by the legitimate government of the targeted State – whether in charge or in exile. This type of intervention occurred in Liberia³², in Haiti³³, in Sierra Leone³⁴, in East Timor³⁵ and in the Democratic Republic of Congo³⁶. In a minority of cases, the use of force was decided without the consent of the authorities in charge, whether there was no clear authority in charge - like in Somalia³⁷ - or whether the consent was not given at the time of the adoption of the resolution – like in Rwanda³⁸. Still on other rare occasions, a coalition of States used force to restore peace and security without a clear mandate from the Security Council acting under Chapter VII, such as in Kosovo³⁹ and more recently in Iraq⁴⁰.

In all these cases, humanitarian concerns were put forward as a key justification for military intervention⁴¹. Yet the international community did not intervene in a principled manner in order to prevent and stop mass atrocities. Genocide unfolded in Rwanda and Bosnia under the eyes of a rather passive international community before a more robust action was decided. Also disturbing, it was argued that intervention in Kosovo actually made the human rights situation worse.

We want to make a point clear: under the current institutional framework, the use of force to protect populations from genocide, war crimes, crimes against humanity and ethnic cleansing still falls in two distinct categories - peacekeeping or peace enforcement. If the main parties involved in a conflict agree to a peace agreement and to the deployment of peacekeeping troops, such troops **can** be deployed with a protective mandate, **if and only if** States volunteer the necessary troops and equipment. If the main parties involved in a conflict still want to fight and engage in atrocity crimes, the Security Council – since it is devoid of any capacity to act on behalf of the international community – **can** authorize **those States that volunteer to do so** to use force in order to restore peace and security.

We will draw two lessons from the current framework. First, the doctrine of the “responsibility to protect” is a **moral and political** duty for States to prevent and stop genocide, mass atrocities and war crimes wherever they occur. This doctrine does not, in itself, legally bind States to protect the vulnerable. Second, the UN, acting for the international community, was **not empowered** with the capacity to deliver on the “responsibility to protect”: it does not yet have the personnel – civilian, police or military - to go on the ground and stop acts of hell. And it has to rely on *ad hoc* arrangements that have to be negotiated, one by one, with individual countries⁴².

What more noble goal for us, for our country, to build on the doctrine of the “responsibility to protect” and, together with the other members of the international community, fulfill its promise and abolish mass atrocities?

In order to fulfill the responsibility to react to genocide, crimes against humanity and war crimes, we would ideally need:

- To transform the doctrine of the “responsibility to protect” into a **legally binding commitment**;
- To put in place a legitimate and effective **triggering mechanism** that will provide the link between early warning and an actual response on the part of the international community.
- To develop a **doctrine in the area of peace operations** that includes guidelines (mandates and rules of engagement) on the legitimate, coherent and effective use of force to enforce the “responsibility to protect” populations from atrocity crimes whether in the framework of a peacekeeping operation, or during a peace enforcement operation⁴³.
- To develop **precautionary principles** such as those recommended by the ICISS: that the intention of intervening States be right, that the use of force is used as a last resort, that means are proportional to ends, and that there is a reasonable prospect that the consequences of action are not likely to be worse than the consequences of inaction.

II.4. THE RESPONSIBILITY TO REBUILD

The third aspect of the “responsibility to protect” is the responsibility to rebuild societies in post-conflict situations with a view to achieving sustainable peace. In theory, this is the least controversial aspect of the “responsibility to protect.” Indeed, experience has shown that only careful consolidation of peace and the laying of a sound basis for development can avoid the recurrence of armed conflict or mass atrocities. Take Rwanda, Burundi, Uganda, Indonesia or Iraq: mass atrocities occurred more than once. In practice, however, the responsibility to rebuild faces a number of challenges.

The 2005 World Summit Outcome does not expressly endorse the terminology “responsibility to rebuild”, yet one can argue that the notion of rebuilding is included in each State’s commitment to build its own capacities - and help other States build theirs - to protect populations from atrocity crimes. More specifically, the World Summit Outcome establishes a **Peacebuilding Commission**⁴⁴, one small step towards rebuilding. This intergovernmental advisory body will bring together all relevant factors to marshal resources and to advise on and propose integrated strategies for post-conflict peace building and recovery⁴⁵. Despite the inherent difficulties in rebuilding societies shattered by mass atrocities, there is hope that the Peace Building Commission will deliver on its promise and contribute to avoiding recurring instabilities with their potential share of mass atrocities.

III. The “responsibility to protect” and the United States of America

III.1. THE UNITED STATES CURRENT FOREIGN POLICY AND THE “RESPONSIBILITY TO PROTECT”

a) *From a minimum common denominator...*

The endorsement of the doctrine of the “responsibility to protect” during the General Assembly 2005 World Summit means that the international community was able to find a common base upon which to elaborate further measures aimed at preventing and reacting to atrocity crimes as well as rebuilding societies shattered by genocide, war crimes, crimes against humanity and ethnic cleansing.

The overarching goal of the “responsibility to protect” is to free humanity from the commission of atrocity crimes. This revolutionary doctrine offers the perspective of a **holistic approach** that transcends time lines – prevention, reaction, rebuilding – and calls for the use of a variety of tools – diplomatic, legal, judicial, economic, social, police and military.

The unanimous embrace of the “responsibility to protect” is but one step, even if historical, towards actually dealing with mass atrocities: it is the **minimum common denominator** States with various and sometimes opposing national interests could agree upon. The next step – the **strengthening and the implementation** of all the components of the doctrine of the “responsibility to protect” – is still a long and tortuous way ahead.

A first step towards the implementation of some aspects of the “responsibility to protect” was taken on 28 April 2006 when the **Security Council** adopted its resolution on the **protection on civilians in armed conflict**⁴⁶. It is the first time that the Security Council endorses the doctrine of the “responsibility to protect,” a step that has a major significance since it is the UN body that has primary responsibility for dealing with threats to international peace and security, including atrocity crimes. Although the scope of the resolution is not the same as that of the doctrine of the responsibility to protect⁴⁷, the Security Council requires specific steps to be taken by States and the international community in order to protect civilians. These include:

- To **end impunity and prosecute** those responsible for atrocity crimes;
- To ensure that the mandates of **peacekeeping, political and peacebuilding missions** include *where appropriate and on a case-by-case basis*, provisions regarding the protection of civilians and clear guidelines on what missions can do to achieve this goal.

b) ... to a fully fledged answer to atrocity crimes

During the negotiations of the World Summit Outcome⁴⁸, our government expressed support for the “responsibility to protect,” underlining that **there is “clear” risk to international peace and security** in cases of genocide, war crimes, crimes against humanity and ethnic cleansing. Our government underscored that the international community must, in these circumstances, be prepared to use peaceful means to protect populations. Our government, however, **opposed any step aimed at regulating the use of force to protect populations from mass atrocities**. As Gareth Evans wrote: the US “very definitively did not want any guidelines adopted that could limit in any way the Security Council’s - and by extension its own - complete freedom to make judgments on a case by case basis”⁴⁹.

Today, the slaughter in Darfur is in the public eye. We owe it in part to a handful of dedicated journalists and to an amazing grassroots movement who is appealing to our country to act⁵⁰. Even our officials invoke the norm of the “responsibility to protect” to call for stronger measures in order to both induce the Sudanese government to comply with its “responsibility to protect” as well as to deliver protection to the victims of mass atrocities⁵¹. Yet we must go beyond. Mass atrocities **do not deserve *ad hoc* responses**. *Ad hoc* responses are inefficient and costly, not only in terms of financial costs. *Ad hoc* responses have great political costs. And they waste precious time. *Ad hoc* responses have no logic but to lead to institutionalized and standing mechanisms. We cannot, should not, have to nearly reinvent the rule each time our conscience is so shocked that we feel the urge to march down the streets of Washington or Chicago.

More than fifty years have elapsed since the founders of the United Nations laid down their vision of a peaceful world. Their vision encompassed a **collective system of security** which was only **credible and effective** because the promise of peace could be delivered, if required, on the ground. Yes indeed, it is time to build on the norm of the “responsibility to protect” and to fulfill the promises of the founding fathers of the United Nations.

These are exciting and decisive times for humankind. It is our aspiration that we, the American People, take advantage of such remarkable times to lead the way for the abolition of mass atrocities. It is our wish that the American people and its leaders will seize this opportunity and make the “responsibility to protect” a flagship of our country’s foreign policy. It is our hope that a contemporary historian will, in the future, be remembered for saying:

“The way America has strengthened and implemented the “responsibility to protect” has done more for us and the world than all our former victories and all our diplomacy.”

III.2. AN OPPORTUNITY TO REASSERT AMERICA'S LEADERSHIP

Strengthening and implementing the doctrine of the “responsibility to protect” can help the United States restore its credibility in the international arena. And this, to our chagrin, we badly need.

a) The perception of the United States in the world

During the 1990s, the United States had a commanding position in the world. Today, the perception of our country has dramatically changed. A majority of people in the world feels that our country is not having a positive influence in the world⁵². According to a 2005 study by the Pew Research Center⁵³, “anti-Americanism is deeper and broader now than at any time in modern history.” Why? The size and overwhelming power of the United States is one part of the answer. The rest of the world fears and resents this colossus. Even in the United Kingdom, the United States’ most trusted ally, 55% see our country as a threat to global peace. This fear is exacerbated, and that’s the other part of the answer, by the way the United States behaves at the international level: too quick to act unilaterally, not properly addressing the world’s problems (such as climate change, peace in the Middle East, or the International Criminal Court) and widening the gulf between the rich and the poor.

Let’s face it. The anti-American sentiment stems from a widespread disagreement over **specific policy issues coupled with the unfortunate perception that our government is acting in an arrogant way and on the basis of double standards**. How far have we come from the Wilsonian dream whereby the world will turn to America for those moral inspirations that lie at the basis of all freedom, the dream that America puts human rights above all other rights, and that her flag is the flag not only of America but of humanity⁵⁴?

It's time for America to get right⁵⁵.

b) Why the United States should act upon the responsibility to protect

Implementing the “responsibility to protect” has a broad range of fundamentally important practical implications:

- To prevent or, to the very least, put an end to mass atrocities;
- To hold perpetrators of mass atrocities accountable for their acts, thereby putting an end to impunity in cases of genocide, crimes against humanity and war crimes;
- To promote reconciliation in crisis-afflicted societies;
- To contribute to the building of stable societies less prone to mass atrocities;
- To reinforce the rule of law by ensuring the effectiveness of - and compliance with - international law, in particular the UN and the ICC;
- To guarantee and enforce international justice;
- To contribute to the maintenance of international peace and security.

All these objectives are in the interest of America for they lead to a more **just and stable world community**. For some of us, these goals are sufficiently noble and wise to justify a passionate engagement in favor of embracing and fully realizing the potential of the norm of the “responsibility to protect.” Yet for others, these practical implications might seem too abstract. How palatable is the “maintenance of international peace and security?” How much does the delivery of justice to a victim of mass atrocities in a distant country directly impact me, as an individual? You may ask yourself: why should I care beyond feeling sorry for those miserable people? Or, is it that we find refuge in the dehumanization of a situation? Do we allow ourselves to consider that the victims of mass atrocities are no more than the “miserable creatures” that our ancestors saw in the victims of slavery?

Beyond the political and legal arguments, there are two distinct and compelling cases to be made in favor of the “responsibility to protect.” The first one stems from prudence and enlightened self interest. The second is commanded by ethics.

- Prudence and enlightened self interest

Preventing and putting an end to atrocity crimes is in every individual’s own interest. Nobody would want to be the victim of genocide, of torture, of slavery. Everyone wants to live in a society where the chance of occurrence of mass atrocities is null. Every society should be built in a way that will prevent the commission of genocide, crimes against humanity as well as war crimes. This is why the sum of individuals that compose American society certainly want to live in a country whose leadership has embraced and fully implements the “responsibility to protect” **on its very soil**. This means, for example, promoting tolerance between communities, fighting social and economic exclusion, promoting justice and the rule of law, ensuring our leadership’s accountability, and making sure our military troops are properly trained about the *jus in bello* i.e. the laws applicable in warfare.

Embracing the international community’s “responsibility to protect” populations **in other countries** from genocide, crimes against humanity and war crimes is also in each individual’s self interest. We will agree with many that it seems more difficult to make the case for the global dimension of the “responsibility to protect.” But we only agree in as far as this statement is built on the assumption that there is indeed no global dimension to world affairs. And to take this view is to look at the world through the lenses of the seventeenth century, when the Westphalian Order called for world affairs to be based on the control of populations, not their protection; on the rivalry, not community of States; on exclusion, not integration. But can we live in the 21st century and conduct world affairs based on a vision of the world that is four centuries old? When our very own country did not even exist? Surely no.

We are convinced that there is a relationship between the protection of human most basic rights and wider international security, including our own national and personal **security**. It is unfortunate, but barbaric acts by some too often lead to objectionable behavior by

others. Let's not forget the reports of abuses at Guantanamo⁵⁶. War and mass atrocities bring out the evil in us. Let's remember Abu Ghraib. Moral decay may be contagious and those to whom evil is done might do evil in return. The pious pretense that evil does not exist within us, but only within others and that therefore it is of no concern to us, only makes evil vague and menacing⁵⁷. And we quote: "Only among people who think no evil can Evil monstrously flourish⁵⁸." Prudence and self-interest command that we do not ignore hell on earth. Prudence and self interest forbid us to think that somehow we cannot, will not, be affected by evil.

Those of you who still do not see the necessary connection between us and victims of atrocity crimes cannot seriously remain deaf to prudential arguments based on human and countries' **interdependence**. We live in a global economy. Events in a distant country may have clear impacts at home. Today we are dependant on the provision of goods that are produced in some countries with weak human rights records. Some think the way forward is to put an end to such relationships before we might suffer from an overnight social uprising with potential mass atrocities that will have impacts on our economy. But this approach – isolationist in nature – will contribute to destroying the delicate web among nations and Peoples that we have contributed to build over years, over centuries. And we know that unstable societies, abandoned nations or failed States can be the ultimate refugee for terrorists. Why take the risk, especially when we know far too well the price we then might have to pay.

Prudence and self-interest invite us to cooperate with States and help them build stable societies that will bring out **the best in them, and thus the best in us**, societies that will not be prone to large-scale horrors, societies that will not be the cradle for breeding terrorists.

- Morality

Why should we care about ethics and morality? Because philosophers as ancient as Plato have taught us that ethics provide us with the most sensible and sustainable answers to the question: "How should we live?" **Moral guidance is what we seek when we aspire to the best possible human behavior, including when we are dealing with world affairs.**

Let us start with the obvious. Today, there is universal acceptance that mass atrocities should not happen. There is no society or culture on earth that values genocide, crimes against humanity or war crimes. And the immorality of such behaviors was unanimously embraced by world leaders during the 2005 World Summit. This is a field where moral relativism simply does not exist. The basic moral question to be answered is not **why** we should care for populations that are victim of mass atrocities. This question has already been answered. Rather, what we must ask ourselves is: **how** should we, the American people, want our country to protect populations from atrocity crimes?

Before turning to this more delicate question, let us summarize the moral case for the doctrine of the “responsibility to protect”: **why – as world leaders have already agreed – should the international community have the moral and political “responsibility to protect” populations from atrocity crimes?**

The answer is that the protection of those going through hell is deeply rooted in **empathy**, a very deep human feeling. It is no coincidence that all religious traditions impose an obligation of immediate help to a person in need regardless of who she or he is. In the Christian tradition, for example, the classic story of this kind is that of the Good Samaritan. Mercy, compassion and practical charity all stem from various religions and, together, form a **universal moral code**. As Elie Wiesel so rightly expressed it as he referred to ongoing mass atrocities: “How can a citizen of a free country not pay attention? How can anyone, anywhere not feel outraged? How can a person, whether religious or secular, not be moved by compassion?”⁵⁹

Indeed, we cannot. But how far should we go?

c) The new global social contract

It is when we talk about the **means** to prevent or stop mass atrocities, that one realizes how much different countries, different cultures, different societies, different groups, even different individuals will offer differing assessments. Beyond the general framework endorsed by the General Assembly and the requirements adopted by the Security Council, there is no obvious universal code of conduct on how to implement all the facets of the “responsibility to protect.” Especially **when we ponder over the use of force to protect populations, we enter the realm of moral relativism, political controversy and legal uncertainty**. But let’s not stop here, because moral relativism is often the refuge of repressive regimes. And, in our quest for moral guidance on how to prevent and stop mass atrocities, let’s not succumb to the dangers of moralism⁶⁰:

- moral self-inflation, whereby one instinctively adopts a stance of moral superiority over others and thereby becomes insensitive to the flaws in its own;
- moral oversimplification, whereby outrage acts as a substitute for insight;
- the illicit imposition of values on others.

Let’s not allow political controversies stop us. Political will is something that needs to be built. Political consensus is the result of delicately conducted negotiations. Yes, it requires work and the capacity to not only take, but to give. Let’s get to work. And finally, let’s overcome the current legal uncertainties and build a normative framework based on legitimate, strong and enforceable rules of law.

How does this vision translate itself in concrete steps? In order for our country to exert itself nobly, we need our leaders to **pledge to the American People and to all the Peoples of the world** that our country will protect populations from mass atrocities. This is the first step we must take to abide by the “responsibility to protect”: to make this new global social contract a **flagship of our country’s foreign policy**. We must also ask from

our leaders that they reclaim collaborative leadership at the global level. The United States must **lead in the establishment of effective, legitimate and consistently applied mechanisms - based on the rule of law - to prevent and react to mass atrocities, as well as guide the rebuilding of societies shattered by such atrocities.**

The norm of the “responsibility to protect” offers humanity a universal moral and political foundation that compels us to abolish genocide, crimes against humanity and war crimes not only on paper, but on the ground. The norm of the “responsibility to protect” also provides us with a comprehensive approach to reach this goal. **Doing so is not only in our hands, it is within our reach.**

Conclusion

A hundred and fifty years ago, Abraham Lincoln stated:

*“This declared indifference, but as I must think, covert real zeal for the spread of slavery, I can not but hate. I hate it because of the monstrous injustice of slavery itself. I hate it because it deprives our republican example of its just influence in the world ... and especially because it forces so many really good men amongst ourselves into an open war with the very fundamental principles of civil liberty.”*⁶¹

Today, to not act upon our moral obligation to stop the monstrous injustice of atrocity crimes does a very similar thing: it forces each and every one of us into an open war with the very fundamental principles of our Nation and it deprives our Nation of its just influence in the world.

The universal endorsement of the doctrine of the “responsibility to protect” populations from atrocity crimes is an historical opportunity for our country and the world to put an end to genocide, crimes against humanity and war crimes. We cannot afford to not seize it and truly realize the new global moral compact that we all aspire to.

Annex 1: Excerpt from A/RES/60/1

United Nations

A/RES/60/1



General Assembly

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Resolution adopted by the General Assembly

[without reference to a Main Committee (A/60/L.1)]

60/1. 2005 World Summit Outcome

The General Assembly

Adopts the following 2005 World Summit Outcome:

2005 World Summit Outcome

I. Values and principles

1. We, Heads of State and Government, have gathered at United Nations Headquarters in New York from 14 to 16 September 2005.
2. We reaffirm our faith in the United Nations and our commitment to the purposes and principles of the Charter of the United Nations and international law, which are indispensable foundations of a more peaceful, prosperous and just world, and reiterate our determination to foster strict respect for them.
3. We reaffirm the United Nations Millennium Declaration,¹ which we adopted at the dawn of the twenty-first century. We recognize the valuable role of the major United Nations conferences and summits in the economic, social and related fields, including the Millennium Summit, in mobilizing the international community at the local, national, regional and global levels and in guiding the work of the United Nations.
4. We reaffirm that our common fundamental values, including freedom, equality, solidarity, tolerance, respect for all human rights, respect for nature and shared responsibility, are essential to international relations.
5. We are determined to establish a just and lasting peace all over the world in accordance with the purposes and principles of the Charter. We rededicate ourselves to support all efforts to uphold the sovereign equality of all States, respect their territorial integrity and political independence, to refrain in our international relations from the threat or use of force in any manner inconsistent with the purposes and principles of the United Nations, to uphold resolution of disputes by

¹ See resolution 55/2.

Democracy

135. We reaffirm that democracy is a universal value based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. We also reaffirm that while democracies share common features, there is no single model of democracy, that it does not belong to any country or region, and reaffirm the necessity of due respect for sovereignty and the right of self-determination. We stress that democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing.

136. We renew our commitment to support democracy by strengthening countries' capacity to implement the principles and practices of democracy and resolve to strengthen the capacity of the United Nations to assist Member States upon their request. We welcome the establishment of a Democracy Fund at the United Nations. We note that the advisory board to be established should reflect diverse geographical representation. We invite the Secretary-General to help to ensure that practical arrangements for the Democracy Fund take proper account of existing United Nations activity in this field.

137. We invite interested Member States to give serious consideration to contributing to the Fund.

Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. 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 organizations 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. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.

Annex 2: S/RES/1674 (2006)

United Nations

S/RES/1674 (2006)



Security Council

Distr.: General
28 April 2006

Resolution 1674 (2006)

**Adopted by the Security Council at its 5430th meeting,
on 28 April 2006**

The Security Council,

Reaffirming its resolutions 1265 (1999) and 1296 (2000) on the protection of civilians in armed conflict, its various resolutions on children and armed conflict and on women, peace and security, as well as its resolution 1631 (2005) on cooperation between the United Nations and regional organizations in maintaining international peace and security, and further reaffirming its determination to ensure respect for, and follow-up to, these resolutions,

Reaffirming its commitment to the Purposes of the Charter of the United Nations as set out in Article 1 (1-4) of the Charter, and to the Principles of the Charter as set out in Article 2 (1-7) of the Charter, including its commitment to the principles of the political independence, sovereign equality and territorial integrity of all States, and respect for the sovereignty of all States,

Acknowledging that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and *recognizing* in this regard that development, peace and security and human rights are interlinked and mutually reinforcing,

Expressing its deep regret that civilians account for the vast majority of casualties in situations of armed conflict,

Gravely concerned with the effects of the illicit exploitation and trafficking of natural resources, as well as the illicit trafficking of small arms and light weapons, and the use of such weapons on civilians affected by armed conflict,

Recognizing the important contribution to the protection of civilians in armed conflict by regional organizations, and *acknowledging in this regard*, the steps taken by the African Union,

Recognizing the important role that education can play in supporting efforts to halt and prevent abuses committed against civilians affected by armed conflict, in particular efforts to prevent sexual exploitation, trafficking in humans, and violations of applicable international law regarding the recruitment and re-recruitment of child soldiers,

Recalling the particular impact which armed conflict has on women and children, including as refugees and internally displaced persons, as well as on other civilians who may have specific vulnerabilities, and stressing the protection and assistance needs of all affected civilian populations,

Reaffirming that parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of affected civilians,

Bearing in mind its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security, and *underlining* the importance of taking measures aimed at conflict prevention and resolution,

1. *Notes with appreciation* the contribution of the Report of the Secretary-General of 28 November 2005 to its understanding of the issues surrounding the protection of civilians in armed conflict, and *takes note of* its conclusions;

2. *Emphasizes* the importance of preventing armed conflict and its recurrence, and *stresses in this context* the need for a comprehensive approach through promoting economic growth, poverty eradication, sustainable development, national reconciliation, good governance, democracy, the rule of law, and respect for, and protection of, human rights, and in this regard, *urges* the cooperation of Member States and *underlines* the importance of a coherent, comprehensive and coordinated approach by the principal organs of the United Nations, cooperating with one another and within their respective mandates;

3. *Recalls* that deliberately targeting civilians and other protected persons as such in situations of armed conflict is a flagrant violation of international humanitarian law, *reiterates* its condemnation in the strongest terms of such practices, and *demand*s that all parties immediately put an end to such practices;

4. *Reaffirms* the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity;

5. *Reaffirms also* its condemnation in the strongest terms of all acts of violence or abuses committed against civilians in situations of armed conflict in violation of applicable international obligations with respect in particular to (i) torture and other prohibited treatment, (ii) gender-based and sexual violence, (iii) violence against children, (iv) the recruitment and use of child soldiers, (v) trafficking in humans, (vi) forced displacement, and (vii) the intentional denial of humanitarian assistance, and *demand*s that all parties put an end to such practices;

6. *Demand*s that all parties concerned comply strictly with the obligations applicable to them under international law, in particular those contained in the Hague Conventions of 1899 and 1907 and in the Geneva Conventions of 1949 and their Additional Protocols of 1977, as well as with the decisions of the Security Council;

7. *Reaffirms* that ending impunity is essential if a society in conflict or recovering from conflict is to come to terms with past abuses committed against civilians affected by armed conflict and to prevent future such abuses, *draws attention* to the full range of justice and reconciliation mechanisms to be considered, including national, international and "mixed" criminal courts and tribunals and truth and reconciliation commissions, and *notes* that such mechanisms can promote not

only individual responsibility for serious crimes, but also peace, truth, reconciliation and the rights of the victims;

8. *Emphasizes* in this context the responsibility of States to comply with their relevant obligations to end impunity and to prosecute those responsible for war crimes, genocide, crimes against humanity and serious violations of international humanitarian law, while recognizing, for States in or recovering from armed conflict, the need to restore or build independent national judicial systems and institutions;

9. *Calls on* States that have not already done so to consider ratifying the instruments of international humanitarian, human rights and refugee law, and to take appropriate legislative, judicial and administrative measures to implement their obligations under these instruments;

10. *Demands* that all States fully implement all relevant decisions of the Security Council, and in this regard cooperate fully with United Nations peacekeeping missions and country teams in the follow-up and implementation of these resolutions;

11. *Calls upon* all parties concerned to ensure that all peace processes, peace agreements and post-conflict recovery and reconstruction planning have regard for the special needs of women and children and include specific measures for the protection of civilians including (i) the cessation of attacks on civilians, (ii) the facilitation of the provision of humanitarian assistance, (iii) the creation of conditions conducive to the voluntary, safe, dignified and sustainable return of refugees and internally displaced persons, (iv) the facilitation of early access to education and training, (v) the re-establishment of the rule of law, and (vi) the ending of impunity;

12. *Recalls* the prohibition of the forcible displacement of civilians in situations of armed conflict under circumstances that are in violation of parties' obligations under international humanitarian law;

13. *Urges* the international community to provide support and assistance to enable States to fulfil their responsibilities regarding the protection of refugees and other persons protected under international humanitarian law;

14. *Reaffirms* the need to maintain the security and civilian character of refugee and internally displaced person camps, *stresses* the primary responsibility of States in this regard, and *encourages* the Secretary-General where necessary and in the context of existing peacekeeping operations and their respective mandates, to take all feasible measures to ensure security in and around such camps and of their inhabitants;

15. *Expresses its intention* of continuing its collaboration with the United Nations Emergency Relief Coordinator, and *invites* the Secretary-General to fully associate him from the earliest stages of the planning of United Nations peacekeeping and other relevant missions;

16. *Reaffirms* its practice of ensuring that the mandates of United Nations peacekeeping, political and peacebuilding missions include, where appropriate and on a case-by-case basis, provisions regarding (i) the protection of civilians, particularly those under imminent threat of physical danger within their zones of operation, (ii) the facilitation of the provision of humanitarian assistance, and

(iii) the creation of conditions conducive to the voluntary, safe, dignified and sustainable return of refugees and internally displaced persons, and *expresses its intention* of ensuring that (i) such mandates include clear guidelines as to what missions can and should do to achieve those goals, (ii) the protection of civilians is given priority in decisions about the use of available capacity and resources, including information and intelligence resources, in the implementation of the mandates, and (iii) that protection mandates are implemented;

17. *Reaffirms* that, where appropriate, United Nations peacekeeping and other relevant missions should provide for the dissemination of information about international humanitarian, human rights and refugee law and the application of relevant Security Council resolutions;

18. *Underscores* the importance of disarmament, demobilization and reintegration of ex-combatants (DDR) in the protection of civilians affected by armed conflict, and, in this regard, *emphasizes* (i) its support for the inclusion in mandates of United Nations peacekeeping and other relevant missions, where appropriate and on a case-by-case basis, of specific and effective measures for DDR, (ii) the importance of incorporating such activities into specific peace agreements, where appropriate and in consultation with the parties, and (iii) the importance of adequate resources being made available for the full completion of DDR programmes and activities;

19. *Condemns in the strongest terms* all sexual and other forms of violence committed against civilians in armed conflict, in particular women and children, and *undertakes* to ensure that all peace support operations employ all feasible measures to prevent such violence and to address its impact where it takes place;

20. *Condemns in equally strong terms* all acts of sexual exploitation, abuse and trafficking of women and children by military, police and civilian personnel involved in United Nations operations, *welcomes* the efforts undertaken by United Nations agencies and peacekeeping operations to implement a zero-tolerance policy in this regard, and *requests* the Secretary-General and personnel-contributing countries to continue to take all appropriate action necessary to combat these abuses by such personnel, including through the full implementation without delay of those measures adopted in the relevant General Assembly resolutions based upon the recommendations of the report of the Special Committee on Peacekeeping, A/59/19/Rev.1;

21. *Stresses* the importance for all, within the framework of humanitarian assistance, of upholding and respecting the humanitarian principles of humanity, neutrality, impartiality and independence;

22. *Urges* all those concerned as set forth in international humanitarian law, including the Geneva Conventions and the Hague Regulations, to allow full unimpeded access by humanitarian personnel to civilians in need of assistance in situations of armed conflict, and to make available, as far as possible, all necessary facilities for their operations, and to promote the safety, security and freedom of movement of humanitarian personnel and United Nations and its associated personnel and their assets;

23. *Condemns* all attacks deliberately targeting United Nations and associated personnel involved in humanitarian missions, as well as other humanitarian personnel, *urges* States on whose territory such attacks occur to

prosecute or extradite those responsible, and *welcomes* in this regard the adoption on 8 December 2005 by the General Assembly of the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel;

24. *Recognizes* the increasingly valuable role that regional organizations and other intergovernmental institutions play in the protection of civilians, and *encourages* the Secretary-General and the heads of regional and other intergovernmental organizations to continue their efforts to strengthen their partnership in this regard;

25. *Reiterates* its invitation to the Secretary-General to continue to refer to the Council relevant information and analysis regarding the protection of civilians where he believes that such information or analysis could contribute to the resolution of issues before it, requests him to continue to include in his written reports to the Council on matters of which it is seized, as appropriate, observations relating to the protection of civilians in armed conflict, and encourages him to continue consultations and take concrete steps to enhance the capacity of the United Nations in this regard;

26. *Notes* that the deliberate targeting of civilians and other protected persons, and the commission of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict, may constitute a threat to international peace and security, and, *reaffirms in this regard* its readiness to consider such situations and, where necessary, to adopt appropriate steps;

27. *Requests* the Secretary-General to submit his next report on the protection of civilians in armed conflict within 18 months of the date of this resolution;

28. *Decides* to remain seized of the matter.

About the authors

Richard H. Cooper is the Convenor of the R2P Coalition. He is also the Founder of General Welfare Group LLC, a family owned Investment Company with over 100 investment partnerships, joint ventures and strategic alliance in the United States and abroad. He has been with the company for 30 years.

General Welfare Group LLC provides joint venture capital for knowledgeable well organized institutional partners. General Welfare Group LLC can also function as an intermediary on complex projects requiring both technical and financial expertise. General Welfare Group LLC can also act as a guarantor on worthy high-risk projects having appropriate social significance.

Mr. Cooper is a graduate of New York University. He completed the program on Investment Decisions & Behavioral Finance at the John F. Kennedy School of Finance at Harvard University and is a member of the Society of Quantitative Analysts. He is married with four children. He is a member of the Board of the Chicago Council on Foreign Relations and serves on its executive Committee. He also serves as a member of the International Advisory Committee of the International Crisis Group. He is a Life Trustee of the Chicago Symphonic Orchestra. He is on the Board of Directors of the Boy Scouts of America, Chicago Council and is a Life Member of the National Eagle Scout Association. He also serves on the Board of Directors of the Lupus Foundation of America. He is also on the Governor's Public Arts Advisory Committee.

Juliette Voinov Kohler is the Deputy-Convenor of the R2P Coalition and the Executive Director of the Committee for Humanitarian Justice. She specializes on the doctrine of the responsibility to protect and on how to ensure the effectiveness of the international criminal justice system.

Dr. Voinov Kohler obtained her PhD *summa cum laude* from the Law Faculty of the University of Geneva (Switzerland). Her thesis analyzed the compliance mechanism of the Kyoto Protocol on climate change. This work was awarded the "Professor Walter Hug" prize and was published by Schulthess ed. in April 2006. Dr. Voinov Kohler holds a law degree from the University of Geneva and an L.L.M. *with merit* from the London School of Economics. She also was admitted to the bar in Geneva.

Dr. Voinov Kohler worked for three years for the Federal Department of Foreign Affairs of Switzerland (Berne, New York). For two years she was the Deputy Head of the environmental office. In her capacity as a government representative, she elaborated and negotiated the legal, institutional, budgetary and political aspects of several multilateral environmental agreements. During her one-year appointment at the Swiss Mission to the United Nations in New York, she managed a project on fostering a donor-recipient dialogue on humanitarian assistance. Prior to joining the public service, Dr. Voinov Kohler practiced law for three years in a Geneva-based law firm.

About the R2P Coalition

The R2P Coalition is a nonpartisan and not-for-profit grassroots organization. The mission of the R2P Coalition is to **convince the American people and its leaders to embrace the norm of the responsibility to protect as a domestic and foreign policy priority.**

The **Convenor** of the R2P Coalition is Richard H. Cooper. The **Deputy Convenor** is Juliette Voinov Kohler.

A core-group of individuals - **the R2P Steering Committee** – provides guidance as well as oversight on how the goals of the R2P Coalition are achieved.

The members of the R2P Coalition Steering Committee are:

- Gareth Evans, President and CEO, The International Crisis Group
- Susan Mayer, Dean, Harris School of Public Policy, University of Chicago
- William Pace, Executive Director, Institute for Global Policy
- Ken Roth, Executive Director, Human Rights Watch
- Paul Rutgers, Executive Director, Council of Religious Leaders of Metropolitan Chicago
- Adele Simmons, President, Global Philanthropy Partnership

The **R2P Advisory Board** is composed of eminent personalities who provide advice to the R2P Steering Committee and the R2P Coalition Convenor.

The members of the Advisory Board are:

- Cherif Bassiouni, President Emeritus, International Human Rights Law Institute, DePaul University
- Marshall Bouton, President, The Chicago Council on Global Affairs
- David Scheffer, Director, Center for International Human Rights, Northwestern University School of Law
- Ruth Messinger, President, American Jewish World Service
- Mary Page, Director, Human Rights and International Justice, MacArthur Foundation
- Gloria White-Hammond, Chairwoman, One Million Voices for Darfur

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¹ The terminology “atrocities crimes” was introduced by David Scheffer as including: genocide, crimes against humanity (including ethnic cleansing) and serious war crimes. See David Scheffer, *The Future of Atrocity Law*, 25 Suffolk Transnat'l Law Review 389 (2002). In this paper, we include “war crimes” as defined under the ICC Statute.

² SC res. 1674 (2006).

³ John F. Kennedy.

⁴ See Para. 138 and 139 of GA resolution A/RES/60/1 (World summit outcome) available at <http://www.un.org/Depts/dhl/resguide/r60.htm>.

⁵ See article 2.2 and article 2.7 of the UN Charter.

⁶ See ADAM HOCHSSCHILD, *BURY THE CHAINS*, Houghton Mifflin Company (Boston/New York), 2005.

⁷ Desiree R. Hopkins, “Abolition of the Atlantic Slave Trade in the United States,” 7 July 1999, TED Case Studies available on: <http://www.american.edu/TED/slave.htm>

⁸ This ban, which did not ban the internal slave trade, or the involvement in the international slave trade externally, preceded the adoption, in the United Kingdom, of the Abolition of the Slave Trade Act on March 25, 1807.

⁹ Amendment XIII, proposed to the legislatures of the several states by the Thirty-eighth Congress on January 31, 1865, ratified on December 6, 1865, with final recognition of the amendment on December 18 1865.

¹⁰ Sweden was the first country to abolish slavery in 1335. During the eighteenth century, abolitionist movements sprung in various parts of the world, especially in Europe and America. In Portugal, slavery was abolished in 1761 (but not until 1847 in the colony of St Barthélemy). In Canada, the Act Against Slavery was passed by Upper Canada on 9 July 1793. France actually abolished slavery twice. On 4 February 1794 France freed all the slaves in its Empire, yet Napoleon reinstated slavery in 1802 and it was definitively abolished in 1848. In Britain, the slave trade was banned on 1 January 1808. The Slavery Abolition Act, passed on 23 August 1833, outlawed slavery itself in the British colonies. On August 1, 1834 all slaves in the British Empire were emancipated, but still indentured to their former owners in an apprenticeship system which was finally abolished in 1838.

¹¹ The Convention entered into force on 9 March 1927. Under this Convention slavery is “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised,” whilst slave trade “includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.”

¹² See: http://en.wikipedia.org/wiki/Slavery#The_contemporary_status_of_slavery

¹³ See: <http://www.freetheslaves.net/slavery/faqs/>

¹⁴ As Abraham Lincoln declared: “I am naturally anti-slavery. If slavery is not wrong, nothing is wrong. I can not remember when I did not so think, and feel.” Letter to Albert G. Hodges, April 4, 1864. Collected Works of Abraham Lincoln, vol. 7, p. 281, Rutgers University Press (1953, 1990).

¹⁵ See wikipedia: http://en.wikipedia.org/wiki/Emancipation_Proclamation#Immediate_historical_impact

¹⁶ Report of the ICISS: <http://www.iciss.ca/menu-en.asp>

¹⁷ For an analysis of how the US misused the concept of humanitarian intervention to invade Iraq, see Kenneth Roth, “War in Iraq: not a humanitarian intervention.” 2004, available on: http://hrw.org/wr2k4/3.htm#_Toc58744952

¹⁸ UN doc. A/59/565, Para. 199-203, available on: <http://www.un.org/ga/59/documentation/list5.html>.

¹⁹ Barbara Harff, “No lessons learned from the Holocaust? Assessing risks of genocide and political mass murder since 1955,” *American Political Science Review*, vol. 97 N.1, February 2003.

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- ²⁰ Although the official UN press release is not as explicit (<http://www.un.org/News/Press/docs/2006/sga1000.doc.htm>), this is how Gareth Evans sees the mandate of the committee (<http://www.crisisgroup.org/home/index.cfm?id=4094>)
- ²¹ See GA res. A/60/L.48 of 24 February 2006.
- ²² For the text of the Rome Statute of the ICC, see: <http://www.icc-cpi.int/about.html>
- ²³ For an analysis of this issue, see Juliette Voinov Kohler, Cooper Family Foundation, “A judicial approach to mechanism to operationalize the “responsibility to protect”: The case for an international Marshals service,” March 2006, on file with author: voinovkohler@mac.com. For a similar idea about the need to rely on an international judicial approach to trigger the enforcement role of the Security Council, see Rev. Dr. Konrad Raiser, “The responsibility to protect,” 13 November 2003, available on: <http://www.globalpolicy.org/empire/humanint/2003/11raiser.htm>
- ²⁴ Pressure can be brought upon government leaders by stalling progress on issues of interest to the State concerned (adhesion to an international organization for example) or the referral of a situation to the ICC.
- ²⁵ The Working Group on General Issues on Sanctions has issued some recommendations in September 2002, including that the guidelines of the various sanctions committees established by the Security Council be harmonized. See <http://www.un.org/Docs/sc/committees/sanctions/documents.htm>. For an update on progress made so far, in particular the stumbling blocks preventing an agreement to be reached, see the Chairman’s report on the 2002-2003 work of the working group, doc S/2003/1197.
- ²⁶ This rule was included in the guidelines issued by UN Secretary General Kurt Waldheim in 1973. See UN Doc S/11052/Rev.1 (27 October 1973)
- ²⁷ In 1961, peacekeepers were authorized to use force to prevent the occurrence of civil war in the Republic of Congo. This was an exception that States carefully avoided to repeat in the future peacekeeping operations until the end of the 1990s. See res. 161 of 21 February 1961 and res. 169 of 24 November 1961 regarding ONUC, the peacekeeping force in the Republic of the Congo.
- ²⁸ See Simon Chesterman, “The use of force in UN peace operation,” external study for the Peacekeeping Best Practices Section (August 2004); and Victoria K. Holt, “The “responsibility to protect”: considering the operational capacity for civilian protection,” Discussion paper (January 2005), Henry L. Stimson Center
- ²⁹ See para. 92 of GA resolution A/RES/60/1 (World summit outcome) available at <http://www.un.org/Depts/dhl/resguide/r60.htm>.
- ³⁰ SC res 1674 (2006).
- ³¹ HUMAN SECURITY CENTRE, LIU INSTITUTE FOR GLOBAL ISSUES, HUMAN SECURITY REPORT (2005), available on: <http://www.humansecuritycentre.org>.
- ³² On 19 November 1992, the SC adopted resolution 788 that calls for a complete weapons embargo against Liberia and authorizes ECOWAS, through ECOMOG, to enforce it under the terms of Chapter VII.
- ³³ On 31 July 1994, the SC adopted resolution 940 which authorized a multinational force to “use all necessary means” to, *inter alia*, maintain a secure and stable environment.
- ³⁴ On 8 October 1997, the SC adopted resolution 1132 which determined the existence of a threat to international peace and security and authorized ECOWAS to enforce an arms embargo against the Armed Forces Revolutionary Council. On 7 February 2000, the SC adopted resolution 1289 that strengthens the UNMASIL peace keeping force and gives it an extended mandate under Chapter VII.
- ³⁵ On 15 September 1999, the SC adopted resolution 1264 which authorizes, under Chapter VII, an Australian-led multinational force to restore peace and security in East Timor. The resolution however expressly acknowledges Indonesia’s consent to the enforcement operation and it is doubtful whether all five permanent members would have agreed to such military action without Indonesia’s consent.
- ³⁶ The SC did not authorize the use of force before the March 2003 invasion, and the Iraqi government violently opposed it.
- ³⁷ On 3 December 1992, the SC adopted resolution 794 that recognizes that the “magnitude of the human tragedy” in Somalia constitutes a “threat to international peace and security” and authorizes the use of “all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia.”
- ³⁸ On 22 June 1994, the SC adopted resolution 929 that recognizes that the “magnitude of the humanitarian crisis in Rwanda constitutes a threat to peace and security in the region” and authorizes France to use “all necessary means” to improve security and protect civilians. At the time of the adoption of this resolution,

Kagame was opposed to the french intervention. It however unilaterally declared a ceasefire following the deployment of the troops under UN mandate and, as a consequence, consented to this military intervention.

³⁹ On 23 September 1998, the SC adopted resolution 1199 which affirmed that the situation in Kosovo constituted a threat to peace and security in the region and demanded action to improve the humanitarian situation. It also specified that if there was no progress, the SC would consider further action. On 13 October 1998, NATO started an air campaign, invoking resolution 1199 as legitimizing the use of force.

⁴⁰ The United Nations Organization Mission in the Democratic Republic of Congo (MONUC) was established by SC resolution 1258 of 6 August 1999 and SC resolution 1279 of 30 November 1999. On 24 February 2000, the SC, acting under Chapter VII, adopted resolution 1291 which strengthens the mandate of MONUC and authorizes the use of “necessary means” to fulfill its mandate. On 1 October 2004, resolution 1565 further strengthened MONUC’s mandate and authorized it “to use all necessary means, within its capacity and in the areas where its armed units are deployed, to carry out the above tasks.” MONUC operates with the consent of the government of the DRC.

⁴¹ See THOMAS G. WEISS & DON HUBERT, THE “RESPONSIBILITY TO PROTECT”: RESEARCH, BIBLIOGRAPHY, BACKGROUND, SUPPLEMENTARY VOLUME TO THE REPORT OF THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY (IDRC 2001), available on: http://www.idrc.ca/en/ev-9439-201-1-DO_TOPIC.html.

⁴² At the UN, there is currently a lot of work going into the establishment of a “strategic reserve”: the commitment of a particular State to keep units at a certain level of readiness and for which the State has given some sort of pre-authorization for rapid deployment if needed.

⁴³ See Simon Chesterman, “The use of force in UN peace operation,” external study for the Peacekeeping Best Practices Section (August 2004). The development of guidelines is particularly opposed by the US (who refuses to limit its freedom to make judgments on a case by case basis) and a number of developing countries (who argue that regulating the use of force would somehow encourage it).

⁴⁴ Para. 97-105 of GA resolution A/RES/60/1 (World summit outcome) available at <http://www.un.org/Depts/dhl/resguide/r60.htm>.

⁴⁵ GA res. A/60/180

⁴⁶ SC res. 1674 (2006). For background information on the negotiations of this resolution, see the Security Council Report, “Update report on the protection of civilians in armed conflict,” 8 March 2006 and 20 April 2006, available on: <http://www.securitycouncilreport.org/>.

⁴⁷ The resolution is limited to civilians (not populations), it is limited to protection in times of armed conflict, and it has a wider scope than atrocity crimes.

⁴⁸ See the US written position on the “responsibility to protect,” 30 August 2005, available on: <http://www.un.int/usa/reform-un.htm>

⁴⁹ Gareth Evans “From humanitarian intervention to the responsibility to protect,” Keynote address to the Symposium on Humanitarian intervention, University of Wisconsin, Madison, 31 March 2006, on file with author. See also William Pace and Nicole Deller, “Preventing future genocides: an international responsibility to protect,” in *World Order* (2005), vol. 36 No 4.

⁵⁰ See the “Save Darfur Coalition”: <http://www.savedarfur.org/home>.

⁵¹ See the statement by US Secretary of State Condoleezza Rice on 13 April 2006, available on: <http://www.alertnet.org/thenews/newsdesk/N133221996.htm>; and the letter from Senator Clinton to President Bush on 16 March 2006, available on: http://www.vote-smart.org/speech_detail.php?speech_id=160291&keyword=sudan&phrase=&contain=

⁵² World Public Opinion, 4 June 2004, available on: <http://www.worldpublicopinion.org/pipa/articles/btglobalizationtradera/90.php?nid=&id=&pnt=90&lb=brglm>

⁵³ Pew Research Center, Trends 2005, Chapter 7 “Global Opinion,” available on: <http://pewglobal.org/commentary/display.php?AnalysisID=104>

⁵⁴ Woodrow Wilson (1856-1924), U.S. president. Address at Independence Hall, Philadelphia (July 4, 1914).

⁵⁵ Maria Weston Chapman (1806-1885), U.S. abolitionist. Speech, 1855, New York. "How Can I Help to Abolish Slavery."

⁵⁶ See the 16 February 2006 Report of five independent investigators of the United Nations Commission on Human Rights.

⁵⁷ This is an adapted quote from Aleister Crowley (1875-1947), British occultist. *The Confessions of Aleister Crowley*, ch. 33 (1929, revised 1970).

⁵⁸ Logan Pearsall Smith (1865-1946), U.S. essayist, aphorist. "Other People," *Afterthoughts* (1931).

⁵⁹ Elie Wiesel, "On the atrocities in Sudan," Remarks delivered at the Darfur Emergency Summit convened at the Graduate Center of the City University of New York on July 14, 2004, by the American Jewish World Service and the United States Holocaust Memorial Museum.

⁶⁰ See C. A. J. Coady, "The Ethics of armed humanitarian intervention," July 2002, United States Institute for Peace, available on: <http://www.usip.org/pubs/peaceworks/pwks45.html>

⁶¹ Abraham Lincoln (1809-1865), U.S. president, speech at Peoria, Illinois, Oct. 16, 1854. *Collected Works of Abraham Lincoln*, vol. 2, p. 255, Rutgers University Press (1953, 1990).