



**CONSIDERATION BY THE GENERAL ASSEMBLY
ON THE RESPONSIBILITY TO PROTECT**

(21, 23 July 2009, United Nations, New York)

Programme

Tuesday, 21 July 2009 - General Assembly Hall

10:00 am – Plenary meeting of the General Assembly

Presentation by the Secretary General of his report entitled “*Implementing the Responsibility to Protect*”, document A/63/677

Followed by an informal session, of one hour or so, for Questions and Answers.

Thursday, 23 July 2009

10 a.m. - Trusteeship Council Chamber

Informal Interactive Dialogue on the Responsibility to Protect

Opening Segment:

Statement by the President of the General Assembly

Statement by the Secretary-General (or his representative)

Moderator:

H.E. Mr. Raymond Wolfe (Jamaica)

Panelists:

Prof. Noam Chomsky (United States)

Prof. Jean Bricmont (Belgium)

Prof. Gareth Evans (Australia)

Prof. Ngugi wa Thiong’o (Kenya)

Followed by an interactive discussion.

3 p.m. – General Assembly Hall

Plenary meeting of the General Assembly on the Responsibility to Protect (2nd item on the agenda)



Office of the President of the General Assembly

Concept note on responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity

The five main documents in which responsibility to protect has been articulated are the High Level Panel's "Report on Threats, Challenges and Change"; the Secretary-General's Report "In Larger Freedom"; the Outcome Document of the World Summit 2005; UN Security Council Resolution 1674; Secretary-General's Report on "Implementing the Responsibility to Protect". None of these documents can be considered as a source of binding international law in terms of Article 38 of the Statute of the International Court of Justice which lists the classic sources of international law.

At the negotiations on the World Summit Outcome Document, the then US Permanent Representative John Bolton stated accurately that the commitment made in the Document was "not of a legal character". The Document is carefully nuanced to convey the intentions of the member states. Paragraph 138 when it deals with the individual state's responsibility to its own people is clear in its commitment. When it comes to the international community helping states, the phrase used is a general appeal – "should as appropriate". Paragraph 139 continues this nuanced approach. The language is clear and unconditional when it speaks of "the international community through the UN" having the "responsibility to use appropriate diplomatic, humanitarian and other peaceful means in accordance with Chapters VI and VIII of the Charter". The Document is very cautious when it comes to responsibility to take action through the UN Security Council under Chapter VII. Paragraph 139 uses at least four qualifiers. Firstly, the Heads of State merely reaffirm that they "are prepared" to take action, implying a voluntary, rather than mandatory engagement. Secondly, they are prepared to do this only "on a case by case basis", which precludes a systematic responsibility. Thirdly, even this has to be "in cooperation with regional organizations as appropriate". Fourthly, this should be "in accordance with the Charter" (which covers only immediate threats to international peace and security). Finally, the Heads of State emphasize "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 (emphases ours). It is therefore, amply clear, that there is no legally binding commitment and the General Assembly is charged, in terms of its responsibility under the Charter to develop and elaborate a legal basis.

It is the great anti-colonial struggles and the anti-apartheid struggles that restored the human rights of populations across the developing world and therefore were the greatest application of responsibility to protect in world history. Their success probably led to more humane governance in Europe and thereby, at least indirectly, increased the protection of European populations also. Colonialism and interventionism used responsibility to protect arguments. National Sovereignty in developing countries is a necessary condition for stable access to political, social and economic rights and it took enormous sacrifices to recover this sovereignty and ensure these rights for their populations. As the U.S. Declaration of Independence says, the people have the right to get rid of their government when it oppresses them and has thereby

failed in its responsibility to them. The people have inalienable rights and are sovereign. The concept of sovereignty as responsibility either means this and therefore means nothing new or it means something without any foundation in international law, namely that a foreign agency can exercise this responsibility. It should not become a “jimmy in the door of national sovereignty”. The concept of responsibility to protect is a sovereign’s obligation and, if it is exercised by an external agency, sovereignty passes from the people of the target country to it. The people to be protected are transformed from bearers of rights to wards of this agency.

The international community cannot remain silent in the face of genocide, ethnic cleansing, war crimes, and crimes against humanity. But the UN response should be predictable, sustainable and effective without undermining the UN’s credibility based on consecrated cornerstone values enshrined in the UN Charter. Therefore, it is the preventive aspects of responsibility to protect that are both important and practicable but these need both precise understanding and political will. Genuine economic cooperation in an enabling international environment would do much to prevent situations calling for responsibility to protect. This requires an urgent reform of international economic governance, specifically of the Bretton Woods Institutions with their pro-cyclical advice, including shifting to cash crops and eliminating subsidies. Political will is needed for coordinated international action focused on development in order to implement the Monterrey Consensus, the Millennium Development Goals and the consensus Outcome of the High Level UN Conference on the World Financial and Economic Crisis and its impact on development. In the Human Rights Council and the Peacebuilding Commission we possess important instruments for capacity building and prevention.

On the other hand the elements of a so called timely and decisive response are far more problematic. Articles 2.4 and 2.7 of the Charter prohibit the use of force. Article 24 confers on the UN Security Council responsibility to maintain peace and Article 39 to determine any threat, breach of peace or aggression and measures to restore peace. Article 41 spells out breaking diplomatic relations, sanctions, and embargoes. If these fail Article 42 empowers force. None of these would cover responsibility to protect unless the situation is a threat to international peace and security. The Security Council’s powers are not directed even against violations of international legal obligations but against an immediate threat to international peace and security. Collective security is a specialized instrument for dealing with threats to international peace and security and not an enforcement mechanism for international human rights law and international humanitarian law. The discretion given to the Security Council to decide a threat to international peace and security implies a variable commitment totally different from the consistent alleviation of suffering embodied in the responsibility to protect. The Security Council has not been willing to relinquish to the International Criminal Court its power to determine crimes of aggression.

In case a responsibility to protect type of situation becomes a threat to international peace and security, the question of the veto will arise. The veto ensures that any breach committed by a permanent member or by a member state under its protection would escape action. Member states, therefore, need to decide whether “a mutual understanding” among permanent members “to refrain from employing or threatening to employ the veto” in responsibility to protect situations is adequate or whether an amendment of the Charter is necessary. A “mutual understanding” implies no enduring obligation and therefore has no legal force. The problem is that if a veto has been cast, the General Assembly cannot overturn it; even without it, the General

Assembly cannot take up a matter that is on the agenda of the Security Council. The International Law Commissions draft Articles and the Third Report on responsibility of International Organizations states that internal rules provide no excuse for failing to discharge its obligations. If internal rules and the Charter [Article 27 (3) on the veto] prevent exercising any future responsibility to protect then should the veto go in such cases or should the responsibility be abdicated? The existence of the veto and the erosion of globalization strengthen the Westphalia paradigm as against the individual rights centered paradigm of responsibility to protect. Neither do the Councils procedures have any provision for due process of law nor are its decisions subject to judicial review. Moreover member states need to consider whether, as Secretary General Kofi Annan used to say, the political basis for Security Council decision making is far too narrow. The provisions of the Genocide Convention provide for a State to approach the appropriate organs of the United Nations to take action to prevent and suppress genocide, as well as actions in preparation thereof. It is the veto and the lack of UN Security Council reform rather than the absence of a responsibility to protect legal norm that are the real obstacles to effective action (in an article on the Rwanda genocide Under Secretary General Ibrahim Gambari reached a similar conclusion).

Similarly, is it enough to simply ask member states to become parties to the Rome Statute of the International Criminal Court? Is it not also essential to have a definition of aggression under the Rome Statute in order to deter adventurism before the responsibility to protect can be developed? Moreover, the International Criminal Court remains accountable to the Security Council in the sense that the Council has the power to delay consideration of a case by a year and then another year, indefinitely.

In case peremptory norms are breached, the International Law Commission's draft Articles on State Responsibility specify two sets of consequences: 1) a positive obligation of States "to cooperate to bring the serious breach to an end through lawful means" [Article 41 (i)] and 2) not to recognize as lawful a situation created by the breach and not to render aid in maintaining that situation [Article 41 (ii)]. The use of military force is expressly excluded from the realm of possible counter measures. Article 50 (i) (a) categorically says that counter-measures shall not affect "the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations". It is for member states to consider if responsibility to protect in its non coercive dimensions adds anything to the International Law Commission's Articles or to the provisions of international human rights law and international humanitarian law.

The International Court of Justice has ruled that "where human rights are protected by International Conventions, that protection takes the form of such arrangements for monitoring or ensuring the respect for human rights as are provided for in the Conventions themselves. The use of force could not be the appropriate method to monitor or ensure such respect". Can any troops wage a war for human rights without causing more harm than the violations they set out to correct? In terms of the suffering of the population would this also not be true of sanctions that cause the deaths of the most vulnerable – women and children – from malnutrition and lack of medicines? Will not an association with the use of force also compromise and weaken International humanitarian law?

In terms of the actual resource situation when there are not enough troops available even for vital peacekeeping, would there be any capacity for rapid deployment or preventive deployment?

His Holiness Pope Benedict XVI spoke of responsibility to protect in the General Assembly in April 2008 but he emphasized that the “juridical means” employed should be those “provided in the UN Charter and in other international instruments”. These do not include the use of military force. The Pope also said that “the principles under girding the international order” must be respected. These principles include sovereignty and exclude the use of force. Jesus’ emphasis on redistribution of wealth to the poor and on nonviolence reinforces the right perspective on responsibility to protect.

On any early warning mechanism, apart from UN Secretariat accountability and General Assembly oversight, member states would need to consider whether the Secretariat should take any action at all before the UN General Assembly has developed the concept and elaborated its legal basis.

Finally any decision taken by the General Assembly would need to ensure that it does not inadvertently or even remotely, in the words of Jurgen Habermas, “break the civilizing bounds which the Charter of the United Nations placed with good reason upon the process of goal-realization”.

Short biographies:

Avram Noam Chomsky is an American linguist, philosopher, cognitive scientist, political activist, author, and lecturer. He is an Institute Professor and professor emeritus of linguistics at the Massachusetts Institute of Technology. Prof. Chomsky is well known in the academic and scientific community as one of the fathers of modern linguistics. He is also considered a prominent cultural figure.

Jean Bricmont is a Belgian theoretical physicist, philosopher of science and a professor at the Université catholique de Louvain. He works on renormalization group and nonlinear differential equations. He is mostly known to the non-academic audience for his political work on various central issues to our time, including humanitarian intervention.

Gareth John Evans, AO, QC, was born in Australia and served as Attorney-General and Foreign Minister of Australia. He was President of the International Crisis Group from 2000 to 2009. He co-chaired the International Commission on Intervention and State Sovereignty (ICISS), which published its report, *The Responsibility to Protect*, in 2001. He was also a member of the UN Secretary General's Panel on Threats, Challenges and Change, whose report *A More Secure World: Our Shared Responsibility*, was published in December 2004. He is a member of the Commission on Weapons of Mass Destruction, and of the International Task Force on Global Public Goods. He is an endorser of the Genocide Intervention Network and serves on the International Editorial Board of the *Cambridge Review of International Affairs*. Evans is also member of the Board of Advisors of the Global Panel Foundation. In June 2008, he was appointed co-chair of the International Non-Proliferation and Disarmament Commission. In July 2008, Gareth Evans was selected as an inaugural fellow of the Australian Institute of International Affairs.

Ngugi wa Thiong'o is a Kenyan and is the greatest writer to have come from East and Central Africa and one of the most prominent intellectuals from Africa. His work includes novels, plays, short stories, essays and scholarship, criticism and children's literature. He taught at Yale University, and has since 1992 also taught at New York University, with a dual professorship in Comparative Literature and Performance Studies. He is currently a Distinguished Professor of English and Comparative Literature as well as the Director of the International Center for Writing and Translation at the University of California, Irvine. His novels show passionate commitment to the rights of ordinary people for which he has personally struggled and suffered.

23 July 2009

**Statement of Mr. Miguel d'Escoto Brockmann,
President of the 63rd Session of the General Assembly,
at the Opening of the Thematic Dialogue of the General Assembly on
the Responsibility to Protect**

Excellencies,
Distinguished members of this morning's panel,
Mr. Edward Luck, Special Advisor to Secretary-General on the Responsibility to Protect,
Representatives of the United Nations System,
Friends all,

The world has remained silent and stood still in the face of gross violations of the most basic sentiments of humanity all too many times. This paralysis resulted in shameful situations like the Holocaust, the Khmer Rouge killing fields, the massacres in Rwanda and in the former Yugoslavia, just to name a few. After so much suffering, there is finally broad agreement that the international community can no longer remain silent in the face of genocide, ethnic cleansing, war crimes and crimes against humanity. This is a great progress. At this very moment there are too many places where violence is causing much death and suffering. We all understandably feel we should do something.

What is debatable though is the best form to respond to that imperative in a predictable, sustainable and effective manner, without preconditions and double standards that would ultimately unravel the UN's credibility. I hope this debate will contribute to that purpose.

First and foremost, in dealing with this serious threat, the consecrated cornerstones values enshrined in the UN Charter and in international law, such as the principles of sovereignty and non-intervention, should not be subverted. Weakening those principles would be equal to undermining the international system created after the tragic experiences that lead to World War II.

That, however, does not mean that the UN should be indifferent to the fate of the weakest peoples, who are the most likely to being exposed to large-scale violations and deprivations.

The authors and proponents of R2P, I do not doubt, have the best of intentions and seek to be prudent, realistic and wise in pushing for its gradual implementation and evolution. Moreover, I understand and share their sense of urgency. And I share their commitment to strengthening the United Nations as the last best hope for preserving our common humanity and our Mother Earth. Though I personally hold very strong views, I respect and commend the work they are doing to force our global community to confront its past failures and think hard about what needs to be done to prevent future repetitions.

I believe the subject is one that we must all take seriously because it concerns our fundamental moral obligations to our fellow human beings. The doctrine of R2P calls for solidarity in the pursuit of

justice, and it seeks to put finite limits to what nation-states may do to their own citizens. It challenges all of us in the international community to take the full measure of our moral progress. It forces us to declare not only who we would become, but also to look honestly at who we are today.

So why do many of us hesitate to embrace this doctrine and its aspirations? Certainly it is not out of indifference to the plight of many who suffer and who may yet be caused to suffer at the hands of their own governments. Recent and painful memories related to the legacy of colonialism, give developing countries strong reasons to fear that laudable motives can end-up being misused, once more, to justify arbitrary and selective interventions against the weakest states. We must take into account the prevailing lack of trust from most of the developing countries when it comes to the use of force for humanitarian reasons.

In filling that gap of confidence, we must endeavor to find ways to prevent such crises from occurring, not only by crisis management, but rather through dealing with their roots causes. Quite often, those causes involve under-development and social exclusion. Due attention should therefore be placed in exploring the true potential of preventive UN action.

Rather than embark on a long list of issues, I want to highlight four benchmark questions that should determine, in my judgment at least, whether and when we and our system of collective security are ready to begin to implement R2P.

The first test is: Do the rules apply in principle, and is it likely that they will be applied in practice equally to all nation-states, or, in the nature of things, is it more likely that the principle would be applied only by the strong against the weak? In fact, in today's system – the one we have, rather than the one we want – the rules don't apply equally even in principle, and so they aren't applied equally. Under the present rules, a few states, sometimes only one state, apply rules or benefit from treaties that carry the sanctions of law, but to which they are not subject. The Security Council should not have recourse to the International Criminal Court, for example, until all UN member states are party, or at least until all Security Council members, are party to its convention. What is more, the operation of the veto assures that the doctrine cannot be applied to the permanent members of the Security Council. No system of justice can be legitimate that, by design, allows principles of justice to be applied differentially.

A second benchmark question is: Will adoption of the R2P principle in the practice of collective security more likely enhance or undermine respect for international law? To the extent that the principle is applied selectively, in cases where public opinion in P5 Member States supports intervention, as in Darfur, and not where it is opposed, as in Gaza, it will undermine law.

Given the extent to which some great powers have recently avoided the strictures of the Charter in resorting to the use of force, and have gone out of their way to denigrate international law as being an impediment to both national policy and justice, there is little reason to doubt that endorsement of R2P by the General Assembly will generate new “coalitions of the willing”, crusades such as the intervention in Iraq led by self-appointed saviours who arrogated to themselves the right to intervene with impunity in the name of overcoming nation-state impunity.

A third benchmark question is: Is the doctrine of R2P necessary and, conversely, does it guarantee that states will intervene to prevent another Rwanda? Here the unfortunate reality is that the absence of the doctrine was not what prevented the international community from acting in Rwanda; we could have acted and our actions would have been fully lawful in compliance with the Charter, but we chose not to act. It is vital to recognize, as well, that if proponents are correct in claiming that R2P is permissive, not obligatory, then it cannot compel action where the international community may believe strongly that it is necessary. This is not a desirable situation, but it is a fact that is not remedied in any way by the R2P concept.

The case of Iraq raises a fourth vital benchmark test of the adequacy of our present system of collective security – do we have the capacity to enforce accountability upon those who might abuse the right that R2P would give nation-states to resort to the use of force against other states? The capacity to review and hold accountable those who violate international law or abuse their legal rights is fundamental to any functioning legal system. We Nicaraguans have our own deeply ambiguous experience in this regard. When we challenged the paramilitary actions organized, funded and directed by the United States against Nicaragua in the World Court in the mid-1980s, the Court surprised many when it ruled in Nicaragua's favor. But the real test came with enforceability. Nearly two and a half decades after the judgment was rendered, the actions that were judged to be illegal were never stopped and not a penny of compensation was ever paid. It would be appropriate to insist that nations meet their obligations under existing law before giving them the opportunity to ignore or violate new legal obligations.

For all of these reasons, I wonder whether we are ready for R2P? It is and should remain an important aspirational goal. We should all be willing to support collective action not just to preserve international peace, but to assure a minimum level of security in all its dimensions – including, today especially, the economic dimension.

There are many ways to improve our system of collective security. And many ways to demonstrate our solidarity and concern for all of our fellow human beings.

Let us begin by fixing our broken system of collective security, and let us, by first demonstrating generosity and flexibility in fixing our broken global economic system and architecture, prove that we are indeed prepared to build a better world.

By and large, the UN already has the institutional instruments necessary to deal with those challenges. Yet, political constraints have prevented them from being used to their fullest capacity to promote true human security.

I hope this dialogue will contribute towards a common understanding of the urgent steps required to deal with those challenges.

Today's panel is intended to open the discussion and to help us in this important task. Responsibility to Protect is too important an issue to be left to narrow specialists, and those who have made it a

profession or an industry. And this has dictated the choice of the panel. I am both pleased and honored to introduce each and every member of our panel.

Professor Jean Bricmont is a theoretical physicist, philosopher of science and a professor at the Catholic University at Louvain in Belgium. He works on renormalization group and nonlinear differential equations, and this has enabled him to see through many misconceptions. He will concentrate mainly on the question of a timely and decisive response.

Professor Noam Chomsky is a specialist linguistics and this gives him an uncanny power to detect this phenomena. In his books he has analyzed such interventions with impeccable vigor. A self-described libertarian socialist, he is universally recognized as one of the world's leading intellectuals.

Professor Gareth Evans is no narrow specialist either. Among his many achievements and positions, he was the president and CEO of the International Crisis Group from 2000 to just recently, and has written widely on the subject of Responsibility to Protect. He was co-chair of the International Commission on Intervention and State Sovereignty (2000-2001), which is credited with initiating the Responsibility to Protect concept, and he has led the movement of its worldwide adoption and application.

And Ngugi wa Thiong'o is one of the greatest writers of Africa and has passionately defended human rights in his novel and personally suffered on this account. At the same time he has been an ironic satirist of political and economic intervention in developing countries, including those by the Bretton Woods institutions.

In short, we have with us today a highly distinguished panel of great intellectual ability and we look forward to a rich debate.

Thank you.

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EDWARD C. LUCK
SPECIAL ADVISER TO THE SECRETARY-GENERAL

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REMARKS TO THE GENERAL ASSEMBLY
ON THE RESPONSIBILITY TO PROTECT (RtoP)
New York, 23 July 2009

Thank you, Mr. President, for the opportunity to address this informal interactive dialogue of the General Assembly on behalf of the Secretary-General. He would have liked to have joined you on this occasion, but, as you may know, he had a long-scheduled trip to Asia at this point.

Mr. President,
Excellencies,
Ladies and Gentlemen,

We gather today with a single objective: to consider the Secretary-General's report on *Implementing the Responsibility to Protect (RtoP)*. The mandate could not be clearer or come from a higher authority. At the 2005 World Summit, all of the heads of state and government, without reservation, committed themselves to preventing genocide, war crimes, ethnic cleansing, and crimes against humanity, as well as their incitement. The General Assembly, in resolution 60/1, adopted the Summit Outcome Document unanimously. Subsequently, the RtoP provisions of the Outcome Document were reaffirmed by the Security Council in resolution 1674 (2006).

With the Secretary-General's presentation of his report to the Assembly two days ago, the process of implementation has begun. Paragraph 139 of the Outcome Document stresses that the Assembly's consideration of RtoP should be a continuing one. The Secretary-General welcomes the prospect of an interactive dialogue with the Member States on how best to operationalize

RtoP, at this session of the General Assembly and well beyond. He would value candid, constructive, and specific comments on his proposals as part of this ongoing conversation. The more focused the comments are, the more helpful they will be.

What we do not need at this point, however, are efforts to turn back the clock, to divide the membership, or to divert attention from our central task. The world is changing. Our thinking needs to evolve with it.

This is not 1999. Ten years ago the Assembly addressed the concept of humanitarian intervention and found it wanting. Unilateral armed intervention under the guise of humanitarian principles was – and is – seen as morally, politically, and constitutionally unacceptable. That is not the UN way. But neither is standing by in the face of unfolding mass atrocities a morally or politically acceptable option for this Organization. Kofi Annan, Gareth Evans, Mohamed Sahnoun, Jean Ping, and Francis Deng, among others, led the search for a better way. The broader, more multilateral, more nuanced, and more positive notion of the responsibility to protect was their answer. Prevention and state responsibility were to be the keys.

This is not 2005. Then, through hard bargaining and astute and forward-looking diplomacy, the detailed RtoP provisions of paragraphs 138 and 139 of the Outcome Document emerged as an integral package. The Secretary-General was careful to preserve this hard-won balance in his proposals. His mandate is to implement all – not some – of those provisions. All three pillars of his strategy are needed to support the Summit Outcome. We cannot pick and choose among them. For practical reasons, of course, the implementation of different pieces may proceed at different rates and in different places, but only within the agreed 2005 framework. Today, our task is to move forward by maintaining this balance and by preserving our unity of purpose.

Like everyone else in this chamber, I am eager to hear the intellectual exchange that is about to unfold before us. Rarely have so many prominent theorists and academicians graced a single rostrum in this house. As a some-time scholar, I would like to join you, Mr. President, in welcoming them. They have an opportunity to shed light where too often rhetoric has replaced reason and the spectacle of debate threatens the quiet search for common ground. They have the opportunity, as well, to help dispel some of the myths that have clung to RtoP like so many unwanted barnacles from an earlier time and place. Among these are:

- one, the old caricature that RtoP is another word for military intervention, when it seeks the opposite: to discourage unilateralism, military adventurism, and an over-dependence on military responses to humanitarian need;
- two, the tired canard that RtoP offers new legal norms or would alter the Charter basis for Security Council decisions, when it is a political, not legal, concept based on well-established international law and the provisions of the UN Charter;
- three, the twisted notion that sovereignty and responsibility are somehow incompatible when, as the Secretary-General has often underscored, they are mutually reinforcing principles and his plan aims to strengthen, not weaken, state capacity; and
- four, the recurring distortion that RtoP favors big states over smaller ones, when in fact large countries were the last to come aboard in 2005, they have their own sovereignty concerns, and efforts to bolster the rule of law and international institutions serve the interests of all.

As the Secretary-General noted in Berlin a year ago, “the responsibility to protect does not alter the legal obligation of Member States to refrain from the use of force except in conformity with the Charter. Rather, it reinforces this obligation. By bolstering United Nations

prevention, protection, response and rebuilding mechanisms, RtoP seeks to enhance the rule of law and expand multilateral options.”

We are pleased, Mr. President, to see wide academic interest in RtoP, because we believe that rigorous scholarship can be an important ally in our common quest for better means of preventing the commission of mass atrocities. There is much that we do not know. The Secretary-General, in his report, underlines the need for more knowledge and keener analysis about which preventive measures have worked best in various places and circumstances. For instance, what kinds of assistance or capacity-building would be most helpful to states seeking to forestall future rounds of violence and social fragmentation? We need carefully documented case studies, particularly about good/best practices in different parts of the world. We need more sober reflection and less polarizing rhetoric in our RtoP discourse. We know, as well, that if we don't ask the right questions, we'll never get to the right answers.

We also believe in the General Assembly and in the quiet work of building and sustaining consensus. Values matter. Over the years, the Assembly has arguably done more than any other body to advance international norms and standards. At its best, the Assembly has truly unique contributions to make.

Mr. President, as you well appreciate, RtoP principles are universal. Every part of the world has suffered mass atrocity crimes at one point or another. Publics everywhere are counting on us to do our best to implement fully and faithfully the decisions of the 2005 Summit. So we look forward to the debate commencing this afternoon with a strong sense of optimism, pragmatism, and conviction.

Thank you, Excellencies, for your attention.

**Statement by Professor Jean Bricmont to the United Nations General Assembly
Interactive Thematic Dialogue on the Responsibility to Protect
United Nations, New York 23 July 2009**

A More Just World and the Responsibility to Protect

I would like, in this talk, to challenge the intellectual assumptions underlying the notion and the rhetoric of R2P. In a nutshell, my thesis will be that the main obstacle to the implementation of a genuine R2P are precisely the policies and the attitudes of the countries that are most enthusiastic about this doctrine, namely the Western countries, and in particular the US.

During the past decade, the world has looked on helplessly as innocent civilians were murdered by American bombs in Iraq, Afghanistan and Pakistan. It has been a helpless bystander of the murderous Israeli onslaught on Lebanon and Gaza. Previously, we have seen millions of people perish under American firepower in Vietnam, Cambodia and Laos; and many others have died in American proxy wars in Central America or Southern Africa. In the name of those victims, shall we say: never again! From now on, the world, the international community, will protect you!

Our humanitarian response is yes, we want to protect all victims. But how, and with which forces? How are the weak ever to be protected from the strong? The answer to this question must be sought not just in humanitarian or in legal terms, but first of all in political terms. The protection of the weak always depends on limitations of the power of the strong. The rule of law is such a limitation, so long as it is based on the principle of equality of all before the law. Achieving that requires clear-headed pursuit of idealistic principles accompanied by realistic assessment of the existing relationship of forces.

Before discussing politically the R2P, let me stress that what is at issue are not its diplomatic or preventive aspects, but the military part of the so-called “timely and decisive response”, and the challenge that it represents for national sovereignty.

R2P is an ambiguous doctrine. On the one hand, it is being sold to the United Nations as something essentially different from the “right of humanitarian intervention”, a notion that was developed in the West at the end of the 1970's, after the collapse of the colonial empires and the defeat of the United States in Indochina. This ideology has been relying on the human tragedies of the newly decolonized countries to lend a moral justification to the failed policies of intervention and control by the Western powers over the rest of the World.

Awareness of this fact exists in most of the world. The “right” of humanitarian intervention has been universally rejected by the South, for example at the South Summit in Havana in April 2000 or at the meeting of the Non Aligned Movement in Kuala Lumpur in February 2003, shortly before the US attack on Iraq. The R2P is an attempt to fit this rejected right into the framework of the UN charter, so as to make it appear acceptable, by stressing that military actions are to be the last resort, and must be approved by the Security Council. But, then, there is nothing

legally new under the sun, and I refer you to the concept note of the Office of the President of the General Assembly for a precise discussion of the legal aspects of the problem.

On the other hand, R2P is being sold to public opinion in the West as a new norm in international relations, one that authorizes military interventions on humanitarian grounds. For example, when President Obama, at the recent G8 meeting, stressed the importance of national sovereignty, the influential French newspaper *Le Monde* called it a step backwards, since R2P has already been accepted. There is a big difference between R2P as a legal doctrine and its ideological reception in the Western media.

However, in a post-World War II history that includes the Indochina wars, the invasions of Iraq and Afghanistan, of Panama, even of tiny Grenada, as well as the bombing of Yugoslavia, Libya and various other countries, it is scarcely credible to maintain that it is international law and respect for national sovereignty that prevent the United States from stopping genocide. If the US had had the means and the desire to intervene in Rwanda, it would have done so and no international law would have prevented that. And if a "new norm" is introduced, within the context of the current relationship of political and military forces, it will not save anyone anywhere, unless the United States sees fit to intervene, from its own perspective.

Moreover, it is beyond belief that the supporters of R2P speak of an obligation to reconstruct (after a military intervention). How much money exactly did the United States pay as reparations for the devastation it inflicted on Indochina or in Iraq, or that was inflicted on Lebanon and Gaza by a power it notoriously arms and subsidizes ? Or to Nicaragua, to which reparations for the Contra activities are still unpaid by the US, despite their condemnation by the World Court of Justice ? Why expect R2P to force the powerful to pay for what they destroy if they do not do so under current legal arrangements?

If it is true that the 21st century needs a new United Nations, it does not need one that legitimizes such interventions by novel arguments, but one that gives at least moral support to those who try to construct a world less dominated by the United States and its allies. The very starting point of the United Nations was to save humankind from "the scourge of war", with reference to the two World Wars. This was to be done precisely by strict respect for national sovereignty, in order to prevent Great Powers from intervening militarily against weaker ones, regardless of the pretext. The wars waged by the United States and NATO show that, despite some significant accomplishments, the United Nations has not yet fully achieved this primary goal. The United Nations needs to pursue its efforts to achieve its founding purpose before setting a new, supposedly humanitarian priority, which may in reality be used by the Great Powers to justify their own future wars by undermining the principle of national sovereignty.

When NATO exercised its own self-proclaimed right to intervene in Kosovo, where diplomatic efforts were far from having been exhausted, it was praised by the Western media. When Russia exercised what it regarded as its R2P in South Ossetia, it was uniformly condemned in the same Western media. When Vietnam intervened in Cambodia, or India in what is now Bangladesh, their actions were

also harshly condemned in the West.

This indicates that Western governments, media and NGOs, calling themselves the “international community”, will judge the responsibility for a human tragedy quite differently, depending on whether it occurs in a country where the West, for whatever reason, is hostile to the government, or in a friendly state. The United States in particular will try to pressure the United Nations into endorsing its own interpretation. The United States may not always choose to intervene, but it may nevertheless use non-intervention to denounce the United Nations as ineffective and to suggest that it should be replaced by NATO as international arbiter.

National sovereignty is sometimes stigmatized by promoters of humanitarian intervention, or of R2P, as a “licence to kill”. We need to remind ourselves of why national sovereignty should be defended against such stigmatization.

First of all, national sovereignty is a partial protection of weak states against strong ones. Nobody expects Bangladesh to interfere in the internal affairs of the United States to force it to reduce its CO2 emission because of the catastrophic human consequences that the latter may have on Bangladesh. The interference is always unilateral.

US interference in the internal affairs of other states is multi-faceted but constant and always violates the spirit and often the letter of the UN charter. Despite claims to act on behalf of principles such as freedom and democracy, US intervention has repeatedly had disastrous consequences: not only the millions of deaths caused by direct and indirect wars, but also the lost opportunities, the “killing of hope” for hundreds of millions of people who might have benefited from progressive social policies initiated by people like Arbenz in Guatemala, Goulart in Brazil, Allende in Chile, Lumumba in the Congo, Mossadegh in Iran, the Sandinistas in Nicaragua, or President Chavez in Venezuela, who have been systematically subverted, overthrown or killed with full Western support.

But that is not all. Every aggressive action led by the United States creates a reaction. Deployment of an anti-missile shield produces more missiles, not less. Bombing civilians - whether deliberately or by so-called “collateral damage” - produces more armed resistance, not less. Trying to overthrow or subvert governments produces more internal repression, not less. Encouraging secessionist minorities by giving them the often false impression that the sole Superpower will come to their rescue in case they are repressed, leads to more violence, hatred and death, not less. Surrounding a country with military bases produces more defense spending by that country, not less.

The possession of nuclear weapons by Israel encourages other states of the Middle East to acquire such weapons. The humanitarian disasters in Eastern Congo, as well as in Somalia, are mainly due to foreign interventions, not to a lack of them. To take a most extreme case, which is a favorite example of horrors cited by advocates of the R2P, it is most unlikely that the Khmer Rouge would ever have taken power in Cambodia without the massive “secret” US bombing followed by US-engineered regime change that left that unfortunate country totally disrupted and destabilized.

The ideology of humanitarian intervention is part of a long history of Western attitudes towards the rest of the World. When Western colonialists landed on the shores of the Americas, Africa or Eastern Asia, they were shocked by what we would now call violations of human rights, and which they called “barbaric mores” – human sacrifices, cannibalism, women forced to bind their feet. Time and again, such indignation, sincere or calculating, has been used to justify or to cover up the crimes of the Western powers: the slave trade, the extermination of indigenous peoples and the systematic stealing of land and resources. This attitude of righteous indignation continues to this day and is at the root of the claim that the West has a “right to intervene” and a “right to protect”, while turning a blind eye to oppressive regimes considered “our friends”, to endless militarization and wars, and to massive exploitation of labor and resources.

The West should learn from its past history. What would that mean concretely? Well, first of all, guaranteeing the strict respect for international law on the part of Western powers, implementing the UN resolutions concerning Israel, dismantling the worldwide US empire of bases as well as NATO, ceasing all threats concerning the unilateral use of force, lifting unilateral sanctions, in particular the embargo against Cuba, stopping all interference in the internal affairs of other States, in particular all operations of “democracy promotion”, “color” revolutions, and the exploitation of the politics of minorities. This necessary respect for national sovereignty means that the ultimate sovereign of each nation state is the people of that state, whose right to replace unjust governments cannot be taken over by supposedly benevolent outsiders.

Next, we could use our overblown military budgets (NATO countries account for 70 per cent of world military expenses) to implement a form of global Keynesianism: instead of demanding “balanced budgets” in the developing world, we should use the resources wasted on our military to finance massive investments in education, health care and development. If this sounds utopian, it is not more so than the belief that a stable world will emerge from the way our current “war on terror” is being carried out.

Defenders of R2P may argue that what I say is besides the point or needlessly “politicizes the issue”, since, according to them, it is the international community and not the West that will intervene, with, moreover, the approval of the Security Council. But in reality, there is no such thing as a genuine international community. NATO’s intervention in Kosovo was not approved by Russia and Russian intervention in South Ossetia was condemned by the West. There would have been no Security Council approval for either intervention. Recently, the African Union rejected the indictment by the International Criminal Court of the President of Sudan. Any system of international justice or police, whether it is R2P or the ICC, needs a relationship of equality and a climate of trust. Today, there is no equality and no trust, between West and East, between North and South, largely as a result of past US policies. If we want some version of R2P to work in the future, we need first to build a relationship of equality and trust and what I said before goes to the heart of the matter. The world can become more secure only if it first becomes more just.

It is important to understand that the critique made here of R2P is not based on an “absolutist” defense of national sovereignty, but on a reflection on the policies

of the most powerful states that forces weaker states to use sovereignty as a shield.

The promoters of R2P present it as the beginning of a new era; but in fact it is the end of an old one. From an interventionist viewpoint, the R2P backtracks with respect to the old right of humanitarian intervention, at least in words, and that old “right” was itself a step back from traditional colonialism. The major social transformation of the 20th century has been decolonization. It continues today in the elaboration of a genuinely democratic world, one where the sun will have set on the US empire, just as it did on the old European ones. There are some indications that President Obama understands this reality and it is only to be hoped that his actions will match his words.

I want to end with a message for the representatives, and for the populations, of the “Global South”. The viewpoints expressed here are shared by millions of people in the “West”. This is unfortunately not reflected in our media. Millions of people, including American citizens, reject war as a means to settle international disputes and strongly oppose the blind support of their country for Israeli Apartheid. They adhere to the goals of the non-aligned movement of international cooperation within the strict respect for national sovereignty and equality of all peoples. They risk being denounced in the media of their own countries as being anti-Western, anti-American or anti-Semitic. Yet, they are the ones who, by opening their minds to the aspirations of the rest of mankind, carry on what is genuinely of value in the Western humanist tradition.

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Statement by Professor Noam Chomsky to the United Nations General Assembly Thematic Dialogue on the Responsibility to Protect

United Nations, New York 23 July 2009

The discussions about Responsibility to Protect (R2P), or its cousin “humanitarian intervention”, are regularly disturbed by the rattling of a skeleton in the closet: history, to the present moment.

Throughout history, there have been a few principles of international affairs that apply quite generally. One is the maxim of Thucydides that the strong do as they wish, while the weak suffer as they must. A corollary is what Ian Brownlie calls “the hegemonial approach to law-making”: the voice of the powerful sets precedents.

Another principle derives from Adam Smith’s account of policy-making in England: the “principal architects” of policy -- in his day the “merchants and manufacturers” -- make sure that their own interests are “most peculiarly attended to” however “grievous” the effect on others, including the people of England -- but far more so, those who were subjected to “the savage injustice of the Europeans,” particularly in conquered India, Smith’s own prime concern.

A third principle is that virtually every use of force in international affairs has been justified in terms of R2P, including the worst monsters. Just to illustrate, in his scholarly study of “humanitarian intervention,” Sean Murphy cites only three examples between the Kellogg-Briand pact and the UN Charter: Japan’s attack on Manchuria, Mussolini’s invasion of Ethiopia, and Hitler’s occupation of parts of Czechoslovakia, all accompanied by lofty rhetoric about the solemn responsibility to protect the suffering populations, and factual justifications. The basic pattern continues to the present.

The historical record is worth recalling when we hear R2P or its cousin described as an “emerging norm” in international affairs. They have been considered a norm as far back as we want to go. The founding of this country is an example. In 1629, the Massachusetts Bay Colony was granted its Charter by the King, stating that rescuing the natives from their bitter pagan fate is “the principal end of this plantation.” The Great Seal of the Colony depicts an Indian saying “Come Over and Help Us.” The English colonists were thus fulfilling their responsibility to protect as they proceeded to “extirpate” and “exterminate” the natives, in their words -- and for their own good, their honored successors explained. In 1630, John Winthrop delivered his famous sermon depicting the new nation “ordained by God” as “a city on a hill,” inspirational rhetoric that is regularly invoked to this day to

justify any crime as at worst a “deviation” from the noble mission of responsibility to protect.

There is no difficulty adding similar examples from other great powers in their day in the sun. It is understandable that the powerful should prefer to declare that we should forget history and look forward. For the weak, it is not a wise choice.

The skeleton in the closet made an appearance in the first case considered by the International Court of Justice (ICJ) 60 years ago, the Corfu Channel case. The Court determined that it “can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the defects in international organization, find a place in international law...; from the nature of things, [intervention] would be reserved for the most powerful states, and might easily lead to perverting the administration of justice itself.”

The same perspective informed the first-ever meeting of the South Summit of 133 states, convened in April 2000. Its declaration, surely with the bombing of Serbia in mind, rejected “the so-called ‘right’ of humanitarian intervention, which has no legal basis in the United Nations Charter or in the general principles of international law.” The wording reaffirms the important UN Declaration on Friendly Relations (UNGA Res. 2625, 1970). It has been repeated since, among others by the Ministerial Meeting of the Non-aligned Movement in Malaysia in 2006, again representing the traditional victims in Asia, Africa, Latin America, and the Arab world.

The same conclusion was drawn in 2004 by the high-level UN Panel on Threats, Challenges and Change. The Panel adopted the view of the ICJ and the Non-aligned Movement, concluding that “Article 51 needs neither extension nor restriction of its long-understood scope.” The Panel added that “For those impatient with such a response, the answer must be that, in a world full of perceived potential threats, the risk to the global order and the norm of nonintervention on which it continues to be based is simply too great for the legality of unilateral preventive action, as distinct from collectively endorsed action, to be accepted. Allowing one to so act is to allow all” – which is, of course, unthinkable.

The same basic position was adopted by the UN World Summit in 2005. While reaffirming stands that had already been accepted, the Summit also asserted the willingness “to take collective action...through the Security Council, in accordance with the Charter...should peaceful means be inadequate and national authorities are manifestly failing to protect their populations” from serious crimes. At most, the phrase sharpens the wording of Article 42 on authorization for the Security Council to resort to force. And it keeps the skeleton in the closet – if, and it is a large *if*, we can regard

the Security Council as a neutral arbiter, not subject to the maxims of Thucydides and Adam Smith, a matter to which I will return.

There have been efforts to draw a sharp distinction between R2P and its cousin. They may have some merit, but they go far beyond the evidence. There is a good reason why “the right of humanitarian intervention” has been hotly contested, in substantial part along North-South lines, while R2P was affirmed – more accurately reaffirmed -- by consensus at the Summit. The reason is that the Summit acceptance of R2P rhetoric adds nothing substantially new.

The rights articulated in the crucial paragraphs 138 and 139 of the Summit declaration had not been seriously contested, and in fact had been affirmed and implemented, for example, with regard to apartheid South Africa. Furthermore, the Security Council had already determined that it can even use force under Chapter VII to end massive human rights abuses, civil war, and violation of civil liberties: Resolutions 925, 929, 940, June-July 1994. And as J. L. Holzgrefe observes, “most states are signatories to conventions that legally oblige them to respect the human rights of their citizens.” The few successes of R2P that have been widely hailed, as in Kenya, had no need for the Summit resolution, though the terminology of R2P was invoked.

In substance, R2P as formulated at the South Summit is a subcase of the “right of humanitarian intervention,” omitting the part that has been contested: the right to use force without Security Council authorization. That does not imply that there is no significance to the more explicit focus on rights that had already been widely accepted. The significance of the rhetorical shift will be determined by how it is implemented. On that matter, there are few grounds for celebration.

There have been departures from the Corfu Channel restriction and its descendants. The Constitutive Act of the African Union asserts “The right of the Union to intervene in a Member State...in respect of grave circumstances.” That differs crucially from the Charter of the Organization of American States, which bars intervention “for any reason whatever, in the internal or external affairs of any other state.” The reasons for the difference are clear. The OAS Charter seeks to deter intervention by the “colossus of the North” – and has of course failed to do so. But after the collapse of the apartheid states, the African Union faced no comparable problem.

If the African Union doctrine were to extend to the OAS or NATO, then they would be entitled to intervene within their own alliances. That idea yields interesting and revealing conclusions about the OAS and NATO, which should not need elaboration. But the conclusions would be inoperative, as in the recent past, thanks to the maxim of Thucydides.

I know of only one high-level proposal to extend R2P beyond the Summit consensus and the African Union extension, namely, in the Report of the International Commission on Intervention and State Sovereignty on Responsibility to Protect (2001). The Commission considers the situation in which “the Security Council rejects a proposal or fails to deal with it in a reasonable time.” In that case, the Report authorizes “action within area of jurisdiction by regional or sub-regional organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorization from the Security Council” ((3) E, II).

At this point, the skeleton in the closet rattles quite loudly. One reason is that the powerful unilaterally determine their own “area of jurisdiction.” The OAS and AU cannot do so, but NATO can, and does. NATO unilaterally determined that its “area of jurisdiction” includes the Balkans – but not NATO itself, where shocking crimes were committed against Kurds in southeastern Turkey through the 1990s, off the agenda because of the decisive military and diplomatic support for them by the Clinton administration, with the aid of other NATO powers.

NATO has also determined that its “area of jurisdiction” extends to Afghanistan, and beyond. Secretary-General Jaap de Hoop Scheffer informed a NATO meeting in June 2007 that “NATO troops have to guard pipelines that transport oil and gas that is directed for the West,” and more generally have to protect sea routes used by tankers and other “crucial infrastructure” of the energy system. The expansive rights accorded by the International Commission are in practice restricted to NATO alone, radically violating the principles of Corfu Channel and its descendants, and opening the door for resort to R2P as a weapon of imperial intervention at will.

The Corfu Channel principle provides considerable insight into both the timing of the rhetorical invocation of R2P and its cousin, and the selectivity of their application in this new incarnation. The “normative revolution” declared by Western commentators took place in the 1990s, immediately after the collapse of the Soviet Union, which had, in earlier years, provided an automatic pretext for intervention.

The Bush senior administration reacted to the fall of the Berlin Wall with an official exposition of Washington’s new course: in brief, everything will stay much the same, but with new pretexts. We still need a huge military system, but for a new reason: the “technological sophistication” of third world powers. We have to maintain the “defense industrial base” – a euphemism for state-supported high-tech industry. We must maintain intervention forces directed at the Middle East energy-rich regions -- where the threats to our interests that required military intervention “could not be laid at the Kremlin’s door,” contrary to decades of pretense. New pretexts for intervention were needed, and the “normative revolution” entered the stage – once again.

The natural interpretation of the timing gains support from the selectivity of application of R2P. There was of course no thought of applying the principle to the Iraq sanctions administered by the Security Council, condemned as “genocidal” by the two directors of the oil-for-food program, Denis Halliday and Hans von Sponeck, both of whom resigned in protest. Von Sponeck’s detailed study of the horrendous impact of the sanctions has been under a virtual ban in the US and UK, the primary agents of the programs.

Similarly, there is no thought today of protection of the people of Gaza, also a UN responsibility, along with the rest of the “protected population” (under the Geneva Conventions), denied fundamental human rights. Nothing serious is contemplated about the worst catastrophe in Africa, if not the world: Eastern Congo, where only a few days ago, BBC reported, multinationals are once again being accused of violating a UN resolution against illicit trade of valuable minerals and thus funding the murderous conflict.

In another domain, there is no thought of invoking even the most innocuous prescriptions of R2P to respond to massive starvation in the poor countries. The UN recently estimated that the number of those facing hunger has passed a billion, while the World Food Program of the UN has just announced major cutbacks of aid because the rich countries are reducing their meager contributions, giving priority to bailing out banks.

Several years ago UNICEF reported that 16,000 children die every day from lack of food, many more from easily preventable disease. The figures are higher now. In southern Africa alone, it is Rwanda-level killing, not for 100 days, but every day. There is surely ample warning, but no thought of action under R2P, though it would be easy enough if the will were there.

In these and numerous other cases the selectivity conforms with painful precision to the maxim of Thucydides, and the expectations of the ICJ 60 years ago.

Perhaps the most striking illustration of the consistent radical selectivity was in 1999, when NATO bombed Serbia, an attack featured in Western discourse as the jewel in the crown of the “emerging norm” of humanitarian intervention, when the US was at the “height of its glory” in leading the “enlightened states,” and the “idealistic New World bent on ending inhumanity” opened a new era in history by acting on “principles and values,” to cite just a few of the accolades by Western intellectuals.

There are a few difficulties confronting this flattering self-image. One problem is that the traditional victims of Western intervention vigorously objected. I have already quoted the stand of the Non-aligned movement; Nelson Mandela was particularly harsh in his condemnation. That was unproblematic: the views of the unworthy are easily ignored.

Furthermore, the bombing plainly violated the UN Charter. That problem too was easily put to rest. Some resorted to legalistic maneuvering, but as the Goldstone Commission more forthrightly determined, the bombing was “illegal but legitimate,” a conclusion reached by reversing the chronology of bombing and atrocities.

That leads to a third problem: the facts, which happen to be richly documented from impeccable Western sources. What they reveal is unequivocal. The NATO bombing did not end the atrocities but rather precipitated by far the worst of them, as had been anticipated by the NATO command and the White House. The conclusions that are so richly documented by the Western records are reinforced by the indictment of Milošević, issued by the International Tribunal at the height of the bombing.

With a single exception, the crimes charged follow the bombing. And we can be confident that the one pre-bombing charge – the Racak massacre – was of little principled concern to the US and Britain, if only because at the very same time they were not merely condoning but actively supporting much more serious crimes in East Timor, where the background of atrocities was incomparably more grotesque than anything that had happened in the Balkans. And that is only one of many examples right at that time.

This problem too was overcome quite simply: by virtual suppression of the ample record.

The case of East Timor is particularly instructive. On a personal note, I testified about it at the Fourth Committee in 1978, when atrocities reached the level of “extermination as a crime against humanity committed against the East Timorese population,” in the words of the later UN-sponsored Truth Commission, and Britain and France joined the US in supporting them, along with Australia and others, continuing to do so right through 1999 as atrocities sharply mounted again. After the final paroxysm of state terror in September 1999, which destroyed most of what remained of the country, National Security Adviser Sandy Berger said that the US would continue its support for the aggressors, explaining that “I don’t think anybody ever articulated a doctrine which said that we ought to intervene wherever there’s a humanitarian problem.” R2P vanished in the familiar way.

To end the atrocities in this case would not have required bombing, or sanctions, or indeed any act beyond withdrawal of participation. That was demonstrated shortly after Berger’s reaffirmation of Western policy, when, under strong domestic and international pressure, Clinton formally ended US participation. The invaders immediately withdrew, and a UN peacekeeping force was able to enter facing no army. That could have been done any time in the preceding quarter-century. Astonishingly, this horrendous story was soon reinterpreted as vindication of R2P, a reaction so shameful that words fail.

I mentioned that the consensus of the World Summit adheres to the Corfu principle and its descendants only if we assume that the Security Council is a neutral arbiter. It plainly is not. The Council is controlled by its five permanent members, and they are not equal in operative authority. One indication is the record of vetoes – the most extreme form of violation of a Security Council Resolution. The relevant period is from the mid-1960s, when decolonization and recovery from wartime destruction gave the UN at least some standing as representative of world opinion. Since then, the US is far in the lead in vetoes, Britain second, no one else even close. In the past quarter-century, China and France vetoed 3 resolutions, Russia four, the UK ten, and the US 43, including even resolutions calling on states to observe international law. The skeleton in the closet nods in recognition as the maxim of Thucydides strikes again.

One way to mitigate this defect in the World Summit consensus would be to eliminate the veto – incidentally, in accord with the will of most Americans, who believe that the US should follow the will of the majority and that the UN, not the US, should take the lead in international crises. But here we run up against Adam Smith's maxim, which ensures that such heresies are unthinkable, as much so as applying R2P right now to those who desperately need protection but are not on the favored list of the powerful.

American public opinion brings up a further consideration. The maxims that largely guide international affairs are not graven in stone, and, in fact, have become considerably less harsh over the years as a result of the civilizing effect of popular movements. For that continuing and essential project, R2P can be a valuable tool, much as the Universal Declaration of Human Rights has been.

Even though states do not adhere to the UDHR, and some formally reject much of it (crucially including the world's most powerful state), nonetheless it serves as an ideal that activists can appeal to in educational and organizing efforts, often effectively. My suspicion is that a major contribution of the discussion of R2P may turn out to be rather similar, and with sufficient commitment, unfortunately not yet detectable among the powerful, it could be significant indeed.

Statement By

The Hon. Gareth Evans

President Emeritus, International Crisis Group and
Co-Chair, International Commission on Intervention and
State Sovereignty

Statement to United Nations General Assembly
Informal Interactive Dialogue on the Responsibility to Protect

23 July 2009, New York
(Check Against Delivery)

IMPLEMENTING THE RESPONSIBILITY TO PROTECT

Statement by Hon. Gareth Evans, President Emeritus, International Crisis Group and Co-Chair, International Commission on Intervention and State Sovereignty, to United Nations General Assembly Interactive Dialogue on the Responsibility to Protect, New York, 23 July 2009

I thank the President of the General Assembly for his invitation to participate in the Dialogue, and welcome the opportunity to do so in the company of such distinguished fellow panelists.

In my initial remarks I want to focus squarely on the issues that are at the heart of this debate, and avoid the distractions that so often accompany it. I want to talk about first, the actual problem that the principle of the responsibility to protect seeks to address – and what it does not; second, the critical importance of a consensual solution to that problem; third, the nature of the consensus that has already been achieved in the 2005 General Assembly resolution; and fourth, the need now to consolidate and build on that consensus to ensure that it is properly and effectively implemented in practice.

In everything I say I will be urging you to welcome and support the Secretary-General's Report which is now before us. It accurately describes all the elements of the 2005 consensus; it is balanced and nuanced in its discussion of the relevant issues; and it is wholly constructive in the many suggestions it makes as to how we should move forward in implementing that 2005 consensus.

The problem that 'the responsibility to protect' concept was designed to meet

The problem that the concept of the responsibility to protect was designed to address is a very specific and quite narrowly focused one. What should the international community do about the very worst things that human beings can do to each other, the mass atrocity crimes of genocide, ethnic cleansing, other crimes against humanity and war crimes? What should we do if and when we are confronted with the horror of another Cambodia, another Rwanda, another Bosnia?

The responsibility to protect is not about conflict more generally, or human rights violations more generally, or human security more generally: it's not about solving all the world's problems, just one small sub-set of them. Around the world there are, at any given time, many situations of actual or potential conflict within or between states, which justify international attention and concern, to a greater or lesser extent, in the Security Council or elsewhere: the International Crisis Group reports each month on around 70 of them. And around the world at any given time there may be as many as 100 different human rights situations which may justify, to a greater or lesser extent, concern or attention in the Human Rights Council or elsewhere.

But the country situations which will properly justify concern on responsibility to protect grounds are many fewer than these, probably no more than 10-15 at any given time. They are countries where mass atrocity crimes are clearly being committed, here and now; those where such crimes seem to be imminently about to be committed, because all the early warning signs

have been building to a crescendo; and also – a little harder to pin down, but still important – those countries where there seems a serious risk that such crimes will be committed in the foreseeable future unless effective preventive action is taken, with that risk being evident on the basis of such factors as a history of such crimes in that country, the continuation or re-emergence of relevant internal tensions, and weak or struggling institutional capacity to keep a potentially explosive situation under control.

The critical importance of a consensual solution to the problem of mass atrocity crimes

Until very recently there was no consensus at all on how the international community should respond to these situations. The prevailing notion was that it was no-one's business but their own if states murdered or forcibly displaced large numbers of their own citizens, or allowed atrocity crimes to be committed by one group against another on their soil. Even after World War II – with creation of the UN and many new notional international human rights protections, including the Genocide Convention – there was no generally accepted principle in law, morality or state practice to challenge that approach.

The state of mind that even massive atrocity crimes like those of the Cambodian killing fields were just not the rest of the world's business prevailed throughout the UN's first half-century of existence: Vietnam's invasion, which stopped the Khmer Rouge in its tracks, was universally attacked, not applauded; and Tanzania had to justify its overthrow of Uganda's Idi Amin by invoking 'self-defence', not any larger human-rights justification.

With the arrival of the 1990s, the break-up of various Cold War state structures, and the removal of some superpower constraints, conscience-shocking situations repeatedly arose, above all in the former Yugoslavia and in Africa. But old habits of non-intervention – the focus to the exclusion of anything else on Article 2(7) of the UN Charter – died very hard. Even when situations cried out for some kind of response, and the international community did react through the UN, it was too often erratically, incompletely or counter-productively, as in the debacle of Somalia in 1993, the catastrophe of Rwandan genocide in 1994 and the almost unbelievable default in Srebrenica, Bosnia, just a year later, in 1995.

Things came to a head again with the new round of killing and ethnic cleansing starting in Kosovo in 1999. Most governments and commentators – though not all – accepted that the situation was deteriorating so rapidly and alarmingly that external military intervention was the only way to stop it; but the Security Council found itself unable to act in the face of a threatened veto by Russia. The action that was then taken, by a so-called coalition of the willing, was outside the authority of the Security Council, in a way that challenged the integrity of the whole international security system (just as did the invasion of Iraq four years later, in far less defensible circumstances).

Throughout the decade of the 1990s a fierce argument raged, not least here in the General Assembly, with the trenches dug deep on both sides and the verbal missiles flying thick and fast. On the one hand, based largely in the global North, there were those who rallied to the cry of 'humanitarian intervention': the notion that there was a 'right to intervene' (*droit d'ingérence* in Bernard Kouchner's influential formulation) militarily, against the will of the government of the

country in question, in these cases. On the other hand, those in the global South were much more inclined to take an absolute view of state sovereignty, understandably enough given that so many of them very proud of their newly won sovereign independence, very conscious of their fragility, all too conscious of the way in which they had been on the receiving end in the past of not very benign interventions from the imperial and colonial powers and not very keen to acknowledge the right of such powers to intervene again, whatever the circumstances.

The nature of the consensus that has already been achieved in the 2005 General Assembly resolution

This was the divide that cried out for a new consensual approach to be forged. And this was the divide which the new concept of the responsibility to protect was designed to bridge. The core idea was first articulated in the report in 2001 of the International Commission on Intervention and State Sovereignty (ICISS), which I co-chaired with Mohamed Sahnoun, and has continued through to underlie the unanimous resolution of the General Assembly in 2005, adopting the Outcome Document of the 2005 World Summit. And that core idea is a very simple one.

The issue is not the ‘*right*’ of big states to do anything, including throwing their weight around militarily, but the ‘*responsibility*’ of *all* states to protect their own people from atrocity crimes, and to assist others to do so by all appropriate means. The core responsibility is that of the individual sovereign state itself, and it is only if it is unable or unwilling to do so that the question arises of *other* states’ responsibility to assist or engage in some way. The core theme is not intervention but *protection*: look at each issue as it arises from the perspective of the victims, the men being killed or about to be killed, the women being raped or about to be raped, the children dying or about to die of starvation; and look at the responsibility in question as being above all a responsibility to *prevent*.

The question of *reaction*—through diplomatic pressure, through sanctions, through international criminal prosecutions and ultimately through military action – arises only if prevention has failed. And coercive military intervention, so far from being the heart and soul of the doctrine – as was the case with ‘humanitarian intervention’ – should be considered only as an absolute last resort, after a number of clearly defined criteria have been met, and the approval of the Security Council has been obtained.

The language of the World Summit Outcome Document did contain some changes as compared with the original proposals in the ICISS and the other reports which preceded the 2005 Summit from the High Level Panel and the Secretary-General, but they were essentially presentational: the core underlying ideas remained unchanged.¹ The ‘four crimes and three pillars’ of paragraphs

¹ There was a tightening in the description of the conduct – or feared conduct – necessary to make a case one of R2P concern, with the focus now on four specific categories of crime under international law, rather than ‘serious harm’ to populations more generally. And when it came to describing the nature of the response required, whereas the earlier documents cut the cake horizontally (into three layers: prevention, reaction and rebuilding), the summit document sliced it vertically into three segments, emphasizing, respectively: the role of the state itself, that of others to assist it and that of others to take appropriate action if it was ‘manifestly failing’ to prevent its own people suffering atrocities, with the emphasis in each case being primarily on prevention, but embracing reaction and rebuilding as well.

138 and 139 of the 2005 Outcome Document are described with great clarity in the Secretary-General's report now before us, and I would like to make it clear that I personally – although one of the primary authors of the original formulations – am completely comfortable with, and supportive of, this language and do not argue for amending it in any way.

So in 2005, with the Outcome Document language unanimously adopted by more than 150 heads of state and government, we did achieve the long-dreamed of international consensus. It was not a matter of the North pushing something down the throats of the South: there was strong support in the debate from many countries across the developing world, and from sub-Saharan Africa in particular, with many references to antecedents for the new principle in the Constitutive Act of the African Union, and the AU's insistence that the real issue was not 'non-intervention' but 'non-indifference'. And there was certainly recognition that mass atrocity crimes had occurred as terribly in the North – most recently in the Balkans – as they ever had in the South: this was a universal problem demanding a universal solution. The new language – with its fundamental conceptual shift from 'the right to intervene' to 'the responsibility to protect' enabled us to find at last common ground on what had been for decades a hugely divisive issue, and for centuries a neglected one.

I do not argue that the responsibility to protect can be properly described at this stage as a new rule of customary international law. That will depend on how comprehensively this new concept is implemented and applied in practice, as well as recognised in principle, in the years ahead. But I do argue that, with the weight behind it of a unanimous General Assembly resolution at head of state and government level, the responsibility to protect can already be properly described as a new international norm: a new standard of behaviour, and a new guide to behaviour, for every state.

The need now to consolidate and build on the 2005 consensus to ensure that it is properly and effectively implemented in practice

The task now – as the Secretary-General makes clear in his report, and has emphasized in his statement to the General Assembly earlier this week – is not to revisit or renegotiate the 2005 consensus, but to ensure that the responsibility to protect concept is properly and effectively implemented in practice.

The S-G's report is an excellent description of the many different kinds of action that are relevant, under each of the three pillars, if states are to meet their own responsibility to protect their own people; if other states are to discharge their responsibility to assist those seeking help and support in achieving more effective protection; and if other states are to respond in a 'timely and decisive fashion' if a state is 'manifestly failing', for whatever reason, to protect its own people.

The report recognizes that while many UN member states may be more comfortable focusing just on the first two pillars, which are about prevention rather than reaction, and by definition do not have any element at all of involuntary intervention or coercion, it is crucial – if we are to be really serious about ending mass atrocity crimes once and for all – that there be equal readiness to act under the third pillar if circumstances cry out for this. And that doesn't just mean 'sending

in the Marines': it can mean, for example, diplomatic persuasion and pressure of the kind that was exercised so well by Kofi Annan in Kenya, the threat of international criminal prosecution, arms embargoes, targeted sanctions, or perhaps the jamming of hate radio stations.

The report also makes clear, as does the 2005 consensus resolution, that if coercive military force does seem the only way of stopping mass atrocity crimes, it has to be done absolutely in compliance with the UN Charter, which means for most practical purposes by resolution of the Security Council under Chapter VII. Part of the unfinished business of 2005 is to reach agreement on the criteria for the use of force the Security Council should apply in deciding whether coercive military force is justified in any particular case. If the Security Council behaves erratically or disappointingly on these issues, as it sometimes has in the past, the task is not to find alternatives to the Security Council, or go round it, but to make the Security Council work better.

What does *not* need any further clarification is the Security Council's power to make such a decision. The suggestion we have heard from some quarters that, when atrocity crimes are being committed within the boundaries of a single state there cannot be a threat to "*international peace and security*", as Chapter VII of the UN Charter requires, is completely at odds not only with the Security Council's own practice, but also the very long chain of General Assembly resolutions from the 1960s to the late 1980s, describing the monstrous apartheid regime in South Africa as just that.

The debate you are about to have in the General Assembly will be an extremely important one, for at least three reasons. First, it will be an opportunity to clarify some of the conceptual misunderstandings which still continue to exist about the scope and limits of the responsibility to protect.² Secondly, the debate will be an excellent opportunity to explore in detail the range of policy options available to states under all three pillars, and the many institutional and resource-availability challenges which will have to be overcome if we are going to be able in practice to put in place effective preventive measures, effective reaction measures, and effective post-crisis rebuilding measures to ensure that underlying causes are addressed and the problem does not recur.

And third, and in many ways most important of all, this debate will be an opportunity, if it is approached in the right spirit, to build the foundations for the exercise of political will, which we all know is the ultimate critical ingredient. It is not enough just to have a common conceptual

² I believe that the definitional lines are now clearer and better understood than they were even just a year ago. I don't think most of us would have too much difficulty, for example, in characterizing as clear-cut responsibility-to-protect situations Kenya in early 2008, Sri Lanka earlier this year, and Darfur and Eastern Congo on a continuing basis. Equally I think most of us would agree that the coalition invasion of Iraq in 2003 and Russia's intervention in Georgia 2008 were, by just about any objective view, not such cases. Other cases have in the past and may in the future generate more argument, but all these distinctions can now be discussed, with hopefully everyone coming out of the debate with a much clearer sense of what we are, and are not, talking about.

understanding of what we should all be doing, and the practical capacity ready and available to do it, as crucially important as these elements are. There must be the will to act as well. And now is the time to be looking forward, not backward, and building that will.

The bottom line challenge for all of us in this respect can be very simply stated. Whatever else we mess up in the conduct of our affairs, let us ensure that we never again mess up – as we have so terribly often in the past – when it comes to protecting people from mass atrocity crimes: genocide, ethnic cleansing, other major crimes against humanity and war crimes. Let's get to the point when another Cambodia, or Rwanda, or Bosnia or Darfur looms on the horizon, as it surely will, that our reflex response as an international community is not to say, as states have been saying for centuries, 'this is none of our business' but rather to accept immediately that it *is* the business of all of us, and have the debate only about who should do what, when and how.

And let us recognize, above all when we have these debates, that the crucial concern should not be national interest, or ideology, but our common humanity – our obligation simply as human beings not to stand by watching our fellow human beings suffering unbearable, unutterable horrors. That's what the responsibility to protect is all about, that's why it is so important that it be effectively implemented in practice, and that's why this General Assembly debate must be about building on the consensus we have already, remarkably, achieved in 2005, looking not backwards, but forwards.

Thank you.

Uneven Development is the Root of Many Crimes

By Ngugi wa Thiong'o¹

The phrase, responsibility to protect, brings to my mind painful memories of lack of protection of many people who died of ethnic cleansing in Kenya earlier this year. The incidents of ethnic cleansing followed disputed results of the Presidential elections. The character of the gruesome scenes was captured in the story of a child fleeing from the flames of a torched church where he and his parents had sought refuge only to be captured and thrown back into the flames. Even in times of war, in pre-colonial times among neighboring communities, there had always been rules protecting children and women. Questions asked by survivors expressed shock and incomprehension: they were our neighbors; our children played together; how could they do this to us? The scene was set for counter acts of ethnic cleansing, the new wave of

¹ Distinguished Professor of English and Comparative Literature, University of California, Irvine. Author of Wizard of the Crow.

victims only connected to the original perpetrators by their ethnicity. Ordinary working people, often united by their poverty, were set against one another by a middleclass political elite tele-guiding the horror from the safety of their palaces and cocktail circuits in the cities. I felt paralyzed by helplessness which must have been a thousand times more intense for those in the country especially when the State, for a time, seemed unable to control the situation. Far away in California in response to a call by the BBC I could only think of the United Nations as the only body that could intervene, investigate and hopefully hold those who incited the war of poor on poor to account. As it turned out, it was the efforts of UN through Kofi Annan as the emissary that eventually helped in putting down the flames and ensuring an uneasy peace that stopped the flow of blood.

Even so, I knew that what was happening in my beloved Kenya had already been enacted in Rwanda, Bosnia, Iraq, reminding

me of Shakespeare in Julius Ceaser where the assassins, after bathing in the blood of their victims, ask how many times shall this our deeds be done in nations and states as yet unborn?

Yes, how many times! I personally welcome the very impressive report of the Secretary General on the implementation of the responsibility to protect, derived from the thoughtful declaration of the 2005 World Summit. It should be an excellent basis for response to that question by Shakespeare. For, even one more time, anywhere in the world, is one too many. We have to free humanity from the scourges of genocide, war crimes, ethnic cleansing and crimes against its very human essence. The ideal calls for implementation.

The devil, however, lies in the context of implementation in terms of definition, history and the contemporary global situation. Terms like the International Community have often been too narrowly evoked to make it sound as if the West is the gatekeeper who determines who is to be allowed into that

community and who is to be outlawed. The emphasis on the United Nations is the right one; but it should be noted that e United Nations cover, the security council blessings in particular, has sometimes been used to legitimate invasions and overthrow of regimes the West deems intolerable. In Africa, Patrick Lumumba of the Congo was killed with the eyes of the United Nations forces he had invited, looking the other way. Europe is disproportionately represented in the Security Council; and that one continent, Africa, has no veto.

A degree of humility is called for in all nations, big and small, and a holier than thou attitudes will not do, for history of the modern tells of a more complicated story. The worst instances of genocide and wanton massacres of other people have come from Europe. Hitlerism was not an exception in European history of relationship with other peoples. Every colonizing nation in the past has been involved in crimes against humanity. Slave trade and plantation slavery are obvious.

Africa, America, and Australia have got stories of indigenous populations depleted, displaced, by Europe. Historian David Stannard has written of the American holocaust in relationship to the fate of Native peoples. In my own country Kenya, in their war against the Mau Mau Resistance Movement, the British put thousands into concentration camps and villages; and it is to be noted that for the duration of the British colonial state, Africans in Kenya could form political organizations only on ethnic basis, except for three years before independence. It is not a matter of dwelling on the past. But the past has lessons for us all.

The document rightly calls for timely and decisive response. The spectre of Rwanda will long haunt our memory. But obviously long term preventive measures that would make interventions unnecessary should be an integral part of the implementation. In the annex, the document, again talks of early warning and assessment. One of those early warning is

right in front of our eyes: it is there in the economic world we have today.

There are two major divisions or faultlines in the world today. One is the division between a minority of very wealthy nations and a majority of very poor nations. The gap between them in terms of wealth and power increases and deepens daily. The irony is that this minority of nations consume ninety per cent of the resources of the poor nations. The poor nations end up giving aid to the wealthy. This pattern is often reproduced within nations where some regions are wealthier than others within the same territory. Oil may be discovered in one region of a country but the benefits may even bypass the dwellers of the region where it was discovered. The same story on the global level, where the resources of poor nations end up befitting elsewhere. This is the vertical division between nations in the world and between regions in the same territory. But within all nations (and even regions), there is another

division between a minority of social haves and a majority of social have-nots. And yet once again, the minority of haves depend on the majority of have nots. The beggar and the homeless proliferate in the major cities of the world. The third figure, the prisoner, probably the fastest growing demographic in all nations, is often hidden from view. Some nations have over a million people in prison, more than the population of a quite number of member states of the UN. There are many nations hidden from view within many nations. These two divisions of wealth and power, between nations and regions; and within nations and regions, are the structural basis of the instability in the world today and of the many of these crimes we are talking about today.

It seems to me that if we are looking for long term solutions that would make interventions unnecessary, we also ought to question the view of development which focuses on the middleclass and above. The middleclass does not constitute a

nation. People do, working people. It seems to me that what Obama is calling development from bottom up should be the goal of all nations. Development should not be measured from the point of view of those at the top of the mountain but those at the bottom. Only by closing the two major divisions between nations/regions and within nations/regions can we begin to address the structural basis of crimes against humanity. Man made poverty is also a crime against humanity. That's why I think that the global community, through a strengthened and democratic United Nations and its organs, should look at structural uneven development as an integral part of the implementation of the responsibility to protect.



THE PRESIDENT
OF THE
GENERAL ASSEMBLY

6 July 2009

Excellency,

Following the requests of a broad range of Member States, and in cooperation with the UN Secretary-General Mr. Ban Ki-Moon, I have the honour to inform you that I am scheduling the discussion on the subject of the Responsibility to Protect for Thursday, 23 July 2009.

In the morning of 23 July, I will be convening an informal General Assembly thematic dialogue at United Nations Headquarters, New York. The morning's interactive dialogue will consist of an introductory segment, followed by a panel bringing together key voices in the international debate on responsibility to protect.

In the afternoon, I will be convening a plenary meeting of the General Assembly to consider the matter under agenda items 44 entitled "Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields" and 107 entitled "Follow-up to the outcome of the Millennium Summit".

The thematic dialogue will serve as a prelude to the formal discussion in plenary. Please note that a brief concept note to facilitate the interactive dialogue, together with a draft programme containing biographical information on the invited speakers will be submitted in due course.

Due to prior travel commitments, the Secretary-General will not be able to participate in the proceedings on 23 July. For this reason, I have invited the Secretary-General to present his report on the Implementation of Responsibility to Protect (A/63/677) to the Membership on Tuesday, 21 July, at a time and venue to be confirmed.

I look forward to your cooperation and personal participation on both the 21st and 23rd of July.

Please accept, Excellency, the assurances of my highest consideration.

Miguel d'Escoto Brockmann

All Permanent Representatives and
Permanent Observers to the United Nations
New York



THE PRESIDENT
OF THE
GENERAL ASSEMBLY

17 July 2009

Excellency

With reference to my letter dated 6 July 2009, I am pleased to present additional information about the discussion in the General Assembly on the Responsibility to Protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, to be held in the United Nations on 21 and 23 July 2009.

On 21 July, the Secretary-General will present his report entitled "*Implementing the Responsibility to Protect*", document A/63/677, in plenary meeting at 10:00 am in the General Assembly Hall. This session will be followed immediately by an informal session, envisaged to last for an hour or so, for Questions and Answers. Member States are urged to make short interventions and to keep their questions focused on the report.

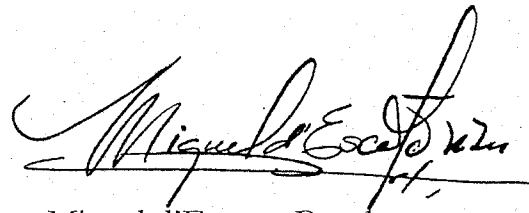
On 23 July, starting at 10 a.m. an informal interactive dialogue of the General Assembly on the Responsibility to Protect will be held in the Trusteeship Council Chamber. The meeting will consist of an opening segment with statements by me and the Secretary-General or his representative, followed immediately by a 15 to 20 minute presentation from each of the four panelists, and thereafter an interactive exchange. The panelists are key voices on this subject. They are Prof. Noam Chomsky from the United States; Prof. Jean Bricmont from Belgium, Prof. Gareth Evans from Australia and Prof. Ngugi wa Thiong'o from Kenya. I encourage Member States to avoid reading from prepared statements and to focus their comments on the issues raised. Interventions should not exceed 3 minutes, in order to allow the participation of as many Member States as possible.

All Permanent Representatives
and Permanent Observers to the
United Nations

The formal debate on the Responsibility to Protect will begin, in plenary meeting in the General Assembly Hall at 3 p.m. Interested Member States are invited to inscribe on the list of speakers with the Secretariat (1-212-963-5063).

Please find attached a two-day programme of meetings and a brief concept note to facilitate the discussions, as well as biographical information about the invited speakers. I look forward to a productive interactive debate on this important issue.

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Miguel d'Escoto Brockmann', written in a cursive style with a horizontal line underneath.

Miguel d'Escoto Brockmann



**CONSIDERATION BY THE GENERAL ASSEMBLY
ON THE RESPONSIBILITY TO PROTECT**

(21, 23 July 2009, United Nations, New York)

Programme

Tuesday, 21 July 2009 - General Assembly Hall

10:00 am – Plenary meeting of the General Assembly

Presentation by the Secretary General of his report entitled “*Implementing the Responsibility to Protect*”, document A/63/677

Followed by an informal session, of one hour or so, for Questions and Answers.

Thursday, 23 July 2009

10 a.m. - Trusteeship Council Chamber

Informal Interactive Dialogue on the Responsibility to Protect

Opening Segment:

Statement by the President of the General Assembly

Statement by the Secretary-General (or his representative)

Panelists:

Prof. Noam Chomsky (United States)

Prof. Jean Bricmont (Belgium)

Prof. Gareth Evans (Australia)

Prof. Ngugi wa Thiong’o (Kenya)

Followed by an interactive discussion.

3 p.m. – General Assembly Hall

Plenary meeting of the General Assembly on the Responsibility to Protect (2nd item on the agenda)

Short biographies:

Avram Noam Chomsky is an American linguist, philosopher, cognitive scientist, political activist, author, and lecturer. He is an Institute Professor and professor emeritus of linguistics at the Massachusetts Institute of Technology. Prof. Chomsky is well known in the academic and scientific community as one of the fathers of modern linguistics. He is also considered a prominent cultural figure.

Jean Bricmont is a Belgian theoretical physicist, philosopher of science and a professor at the Université catholique de Louvain. He works on renormalization group and nonlinear differential equations. He is mostly known to the non-academic audience for his political work on various central issues to our time, including humanitarian intervention.

Gareth John Evans, AO, QC, was born in Australia and served as Attorney-General and Foreign Minister of Australia. He was President of the International Crisis Group from 2000 to 2009. He co-chaired the International Commission on Intervention and State Sovereignty (ICISS), which published its report, *The Responsibility to Protect*, in 2001. He was also a member of the UN Secretary General's Panel on Threats, Challenges and Change, whose report *A More Secure World: Our Shared Responsibility*, was published in December 2004. He is a member of the Commission on Weapons of Mass Destruction, and of the International Task Force on Global Public Goods. He is an endorser of the Genocide Intervention Network and serves on the International Editorial Board of the *Cambridge Review of International Affairs*. Evans is also member of the Board of Advisors of the Global Panel Foundation. In June 2008, he was appointed co-chair of the International Non-Proliferation and Disarmament Commission. In July 2008, Gareth Evans was selected as an inaugural fellow of the Australian Institute of International Affairs.

Ngugi wa Thiong'o is a Kenyan and is the greatest writer to have come from East and Central Africa and one of the most prominent intellectuals from Africa. His work includes novels, plays, short stories, essays and scholarship, criticism and children's literature. He taught at Yale University, and has since 1992 also taught at New York University, with a dual professorship in Comparative Literature and Performance Studies. He is currently a Distinguished Professor of English and Comparative Literature as well as the Director of the International Center for Writing and Translation at the University of California, Irvine. His novels show passionate commitment to the rights of ordinary people for which he has personally struggled and suffered.



Office of the President of the General Assembly

Concept note on responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity

The five main documents in which responsibility to protect has been articulated are the High Level Panel's "Report on Threats, Challenges and Change"; the Secretary-General's Report "In Larger Freedom"; the Outcome Document of the World Summit 2005; UN Security Council Resolution 1674; Secretary-General's Report on "Implementing the Responsibility to Protect". None of these documents can be considered as a source of binding international law in terms of Article 38 of the Statute of the International Court of Justice which lists the classic sources of international law.

At the negotiations on the World Summit Outcome Document, the then US Permanent Representative John Bolton stated accurately that the commitment made in the Document was "not of a legal character". The Document is carefully nuanced to convey the intentions of the member states. Paragraph 138 when it deals with the individual state's responsibility to its own people is clear in its commitment. When it comes to the international community helping states, the phrase used is a general appeal – "should as appropriate". Paragraph 139 continues this nuanced approach. The language is clear and unconditional when it speaks of "the international community through the UN" having the "responsibility to use appropriate diplomatic, humanitarian and other peaceful means in accordance with Chapters VI and VIII of the Charter". The Document is very cautious when it comes to responsibility to take action through the UN Security Council under Chapter VII. Paragraph 139 uses at least four qualifiers. Firstly, the Heads of State merely reaffirm that they "are prepared" to take action, implying a voluntary, rather than mandatory engagement. Secondly, they are prepared to do this only "on a case by case basis", which precludes a systematic responsibility. Thirdly, even this has to be "in cooperation with regional organizations as appropriate". Fourthly, this should be "in accordance with the Charter" (which covers only immediate threats to international peace and security). Finally, the Heads of State emphasize "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 (emphases ours). It is therefore, amply clear, that there is no legally binding commitment and the General Assembly is charged, in terms of its responsibility under the Charter to develop and elaborate a legal basis.

It is the great anti-colonial struggles and the anti-apartheid struggles that restored the human rights of populations across the developing world and therefore were the greatest application of responsibility to protect in world history. Their success probably led to more humane governance in Europe and thereby, at least indirectly, increased the protection of European populations also. Colonialism and interventionism used responsibility to protect arguments. National Sovereignty in developing countries is a necessary condition for stable access to political, social and economic rights and it took enormous sacrifices to recover this sovereignty and ensure these rights for their populations. As the U.S. Declaration of Independence says, the people have the right to get rid of their government when it oppresses them and has thereby

failed in its responsibility to them. The people have inalienable rights and are sovereign. The concept of sovereignty as responsibility either means this and therefore means nothing new or it means something without any foundation in international law, namely that a foreign agency can exercise this responsibility. It should not become a “jimmy in the door of national sovereignty”. The concept of responsibility to protect is a sovereign’s obligation and, if it is exercised by an external agency, sovereignty passes from the people of the target country to it. The people to be protected are transformed from bearers of rights to wards of this agency.

The international community cannot remain silent in the face of genocide, ethnic cleansing, war crimes, and crimes against humanity. But the UN response should be predictable, sustainable and effective without undermining the UN’s credibility based on consecrated cornerstone values enshrined in the UN Charter. Therefore, it is the preventive aspects of responsibility to protect that are both important and practicable but these need both precise understanding and political will. Genuine economic cooperation in an enabling international environment would do much to prevent situations calling for responsibility to protect. This requires an urgent reform of international economic governance, specifically of the Bretton Woods Institutions with their pro-cyclical advice, including shifting to cash crops and eliminating subsidies. Political will is needed for coordinated international action focused on development in order to implement the Monterrey Consensus, the Millennium Development Goals and the consensus Outcome of the High Level UN Conference on the World Financial and Economic Crisis and its impact on development. In the Human Rights Council and the Peacebuilding Commission we possess important instruments for capacity building and prevention.

On the other hand the elements of a so called timely and decisive response are far more problematic. Articles 2.4 and 2.7 of the Charter prohibit the use of force. Article 24 confers on the UN Security Council responsibility to maintain peace and Article 39 to determine any threat, breach of peace or aggression and measures to restore peace. Article 41 spells out breaking diplomatic relations, sanctions, and embargoes. If these fail Article 42 empowers force. None of these would cover responsibility to protect unless the situation is a threat to international peace and security. The Security Council’s powers are not directed even against violations of international legal obligations but against an immediate threat to international peace and security. Collective security is a specialized instrument for dealing with threats to international peace and security and not an enforcement mechanism for international human rights law and international humanitarian law. The discretion given to the Security Council to decide a threat to international peace and security implies a variable commitment totally different from the consistent alleviation of suffering embodied in the responsibility to protect. The Security Council has not been willing to relinquish to the International Criminal Court its power to determine crimes of aggression.

In case a responsibility to protect type of situation becomes a threat to international peace and security, the question of the veto will arise. The veto ensures that any breach committed by a permanent member or by a member state under its protection would escape action. Member states, therefore, need to decide whether “a mutual understanding” among permanent members “to refrain from employing or threatening to employ the veto” in responsibility to protect situations is adequate or whether an amendment of the Charter is necessary. A “mutual understanding” implies no enduring obligation and therefore has no legal force. The problem is that if a veto has been cast, the General Assembly cannot overturn it; even without it, the General

Assembly cannot take up a matter that is on the agenda of the Security Council. The International Law Commissions draft Articles and the Third Report on responsibility of International Organizations states that internal rules provide no excuse for failing to discharge its obligations. If internal rules and the Charter [Article 27 (3) on the veto] prevent exercising any future responsibility to protect then should the veto go in such cases or should the responsibility be abdicated? The existence of the veto and the erosion of globalization strengthen the Westphalia paradigm as against the individual rights centered paradigm of responsibility to protect. Neither do the Councils procedures have any provision for due process of law nor are its decisions subject to judicial review. Moreover member states need to consider whether, as Secretary General Kofi Annan used to say, the political basis for Security Council decision making is far too narrow. The provisions of the Genocide Convention provide for a State to approach the appropriate organs of the United Nations to take action to prevent and suppress genocide, as well as actions in preparation thereof. It is the veto and the lack of UN Security Council reform rather than the absence of a responsibility to protect legal norm that are the real obstacles to effective action (in an article on the Rwanda genocide Under Secretary General Ibrahim Gambari reached a similar conclusion).

Similarly, is it enough to simply ask member states to become parties to the Rome Statute of the International Criminal Court? Is it not also essential to have a definition of aggression under the Rome Statute in order to deter adventurism before the responsibility to protect can be developed? Moreover, the International Criminal Court remains accountable to the Security Council in the sense that the Council has the power to delay consideration of a case by a year and then another year, indefinitely.

In case preemptory norms are breached, the International Law Commission's draft Articles on State Responsibility specify two sets of consequences: 1) a positive obligation of States "to cooperate to bring the serious breach to an end through lawful means" [Article 41 (i)] and 2) not to recognize as lawful a situation created by the breach and not to render aid in maintaining that situation [Article 41 (ii)]. The use of military force is expressly excluded from the realm of possible counter measures. Article 50 (i) (a) categorically says that counter-measures shall not affect "the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations". It is for member states to consider if responsibility to protect in its non coercive dimensions adds anything to the International Law Commission's Articles or to the provisions of international human rights law and international humanitarian law.

The International Court of Justice has ruled that "where human rights are protected by International Conventions, that protection takes the form of such arrangements for monitoring or ensuring the respect for human rights as are provided for in the Conventions themselves. The use of force could not be the appropriate method to monitor or ensure such respect". Can any troops wage a war for human rights without causing more harm than the violations they set out to correct? In terms of the suffering of the population would this also not be true of sanctions that cause the deaths of the most vulnerable – women and children – from malnutrition and lack of medicines? Will not an association with the use of force also compromise and weaken International humanitarian law?

In terms of the actual resource situation when there are not enough troops available even for vital peacekeeping, would there be any capacity for rapid deployment or preventive deployment?

His Holiness Pope Benedict XVI spoke of responsibility to protect in the General Assembly in April 2008 but he emphasized that the “juridical means” employed should be those “provided in the UN Charter and in other international instruments”. These do not include the use of military force. The Pope also said that “the principles under girding the international order” must be respected. These principles include sovereignty and exclude the use of force. Jesus’ emphasis on redistribution of wealth to the poor and on nonviolence reinforces the right perspective on responsibility to protect.

On any early warning mechanism, apart from UN Secretariat accountability and General Assembly oversight, member states would need to consider whether the Secretariat should take any action at all before the UN General Assembly has developed the concept and elaborated its legal basis.

Finally any decision taken by the General Assembly would need to ensure that it does not inadvertently or even remotely, in the words of Jurgen Habermas, “break the civilizing bounds which the Charter of the United Nations placed with good reason upon the process of goal-realization”.



20 July 2009

Open Letter to Member States of the United Nations

We are writing to urge your constructive participation in the 23 July 2009 General Assembly debate on the Report of the UN Secretary-General, Implementing the Responsibility to Protect.

Whether as ministers, mediators, diplomats, or scholars, each of us has witnessed unspeakable violence perpetrated against innocent civilians in times of war, and persecution and extermination in times of so-called peace.

In September 2005, during the World Summit, more than 170 heads of state and governments agreed to build a better future for human kind: they agreed that it is the state's responsibility to protect its population from genocide, war crimes, crimes against humanity and ethnic cleansing. And if a state cannot, or will not, prevent or end these crimes, then the international community must – collectively – take timely and decisive action by assisting willing States that are unable to protect their population, or by protecting vulnerable peoples when States are unwilling to do so. This is the responsibility to protect.

We are aware of misperceptions about the responsibility to protect: that this is a western-imposed norm, that it sanctions unwarranted military intervention in violation of sovereignty. We know, too, there are fears that this principle will be misused to justify action by those whose goals are political and not the protection of populations at grave risk. In his report, the Secretary-General carefully details how the doctrine as adopted in 2005 addresses these concerns.

We are aware of questions about how to make this abstract goal a reality. But this is precisely why the General Assembly debate has been convened. The Secretary-General's report gives concrete examples and asks specific questions about how states can do better internally, how they can do better helping one another, and finally, the many ways in which the international community might respond in a timely way, if prevention fails.

This is a moment to boldly confront these challenges: how will your national systems meet the challenge of protecting people from mass violence and abuse? What assistance do you require or are you willing to provide to other states? What institutions and agencies within your government, in your region, or globally must be strengthened or created?

We hope you will welcome the Secretary-General's report as a first step for opening this dialogue within the General Assembly. The victims and survivors of Rwanda, Srebrenica, Cambodia and the Holocaust deserve nothing less.

Sincerely,

Desmond Tutu, Founder, The Elders, former chair, South African Truth and Reconciliation Commission, and Patron of the Global Centre for the Responsibility to Protect

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Lee Hamilton, President and Director, Woodrow Wilson International Center for Scholars, and Patron of the Global Centre for the Responsibility to Protect

Jan Eliasson, Former Special Envoy of the UN Secretary-General for Darfur, and Patron of the Global Centre for the Responsibility to Protect

Roméo Dallaire, Senior Fellow, Montreal Institute for Genocide and Human Rights Studies, and Patron of the Global Centre for the Responsibility to Protect

Lloyd Axworthy, President, University of Winnipeg, former Canadian Foreign Minister, and Patron of the Global Centre for the Responsibility to Protect

Gareth Evans, President Emeritus, International Crisis Group, former Australian Foreign Minister, and co-chair of the International Advisory Board of the Global Centre for the Responsibility to Protect

Mohamed Sahnoun, Former UN Secretary-General's Special Adviser, and co-chair of the International Advisory Board of the Global Centre for the Responsibility to Protect

Kwesi Aning, Head, Conflict Prevention Management and Resolution Department of the Kofi Annan International Peacekeeping Training Centre, and member of the International Advisory Board, Global Centre for the Responsibility to Protect

Kenneth Bacon, President, Refugees International, and member of the International Advisory Board, Global Centre for the Responsibility to Protect

Jan Egeland, Director, Norwegian Institute of International Affairs, former UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, and member of the International Advisory Board, Global Centre for the Responsibility to Protect

Thelma Ekiyor, Executive Director, West Africa Civil Society Institute, and member of the International Advisory Board, Global Centre for the Responsibility to Protect

Rama Mani, Councilor, World Future Council, and member of the International Advisory Board, Global Centre for the Responsibility to Protect

Mónica Serrano, Executive Director, Global Centre for the Responsibility to Protect

Juan Méndez, Former UN Secretary-General's Special Adviser on the Prevention of Genocide, and member of the International Advisory Board, Global Centre for the Responsibility to Protect

Ramesh Thakur, Distinguished Fellow, Centre for International Governance Innovation, former Senior Vice-Rector of the UN, and member of the International Advisory Board, Global Centre for the Responsibility to Protect

Thomas G. Weiss, Presidential Professor of Political Science, CUNY Graduate Center, Director, Ralph Bunche Institute for International Studies, and member of the International Advisory Board, Global Centre for the Responsibility to Protect