

Keynote Address - Gareth Evans

THE RESPONSIBILITY TO PROTECT: ENGAGING AMERICA

Wednesday 15 November - Friday 17 November 2006

Chicago, Illinois

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15 NOVEMBER 2006

The last six years have been rather comprehensively desolate ones for U.S. foreign policy, as the rest of the world has been saying for some time, and a majority of the American people seem at last now to agree. But every now and again a little candle flickers in the darkness, as someone somewhere in high places says something that does squarely hit the mark. Condoleezza Rice had such a moment on 23 September this year, in a statement she made in the margins of the UN General Assembly. After noting, accurately, that 'the violence in Darfur is not subsiding, it is getting worse', the Secretary of State said this: "If the notion of our responsibility to protect the weakest and most powerless among us is ever to be more than an empty promise, then we must action to save lives."

This statement is worth close attention for two reasons. First, because it squarely recognizes and embraces the new international norm of the 'responsibility to protect' - or 'R2P' as we are all now calling it in this age of acronymphomania - and does so precisely in the context where its application is most immediately called for, the situation in Darfur. The dream of Richard Cooper - the Convenor of the R2P Coalition and the force of nature behind this conference - of an America restoring its moral authority in the world, leading the way in recognizing that when it comes to atrocity crimes we are all our brothers' keepers, seems not so far from realization after all.

But Secretary Rice's statement also demands attention for a more depressing reason: like most of the high-sounding calls to action that have preceded it, the long trail of 'never agains' that have stretched from the Holocaust to Cambodia to Rwanda to Srebrenica, it has not been followed by any meaningful action at all, from the U.S. or anyone else, in the UN Security Council or anywhere else.

Not only has the most extreme form of coercive response in the R2P repertoire - non-consensual military force in the form of a full-fledged ground invasion - been ruled out as unthinkable (which may be a defensible position right now, but the option has to be kept on the table), but so too, it seems, have been much less extreme but potentially very effective lesser coercive measures like an enforced no-fly zone, and a series of targeted sanctions measures directed against key members and supporters of the Khartoum regime which would, if past behaviour is any guide, concentrate minds wonderfully on the advantages of allowing into Darfur a full-size and fully-capable international peacekeeping force and embarking on meaningful political settlement negotiations.

And so it is that, in the absence of any such effective action, the talk continues, and so far just as unproductively as all the talk that has preceded it - in a region where over the last three years at least 200,000 people have died, over 2 million have been displaced, 5,000 more are dying each month from war-related disease and malnutrition as well as continuing outright violence, international peacekeeping efforts have been manifestly inadequate, humanitarian relief is faltering and the overall situation is again deteriorating. If the responsibility to protect is a new international norm, setting new standards to guide international behaviour, it is one that has a long way to go before it is effectively operationalised in practice.

All that said, however, my purpose in this opening address is not to depress but to encourage you: not to emphasise how far we have yet to go with R2P, but to lay a positive foundation for our discussions over the next two days by describing how far we have actually come. The concept of the 'responsibility to protect' has now been formally and unanimously embraced by the whole international community in the UN 60th Anniversary World Summit in September 2005, and reaffirmed subsequently by the Security Council in April this year, and that really is something to celebrate.

In just five years - a remarkably short time when set against other movements in the history of ideas - we have seen the emergence of what can reasonably be described as a brand new international norm of really quite fundamental ethical importance and novelty in the international system. On any view that is unquestionably a major breakthrough, and one that, for all the grinding and wearying task of implementation that lies ahead, should regenerate our optimism about the art of the possible in international relations.

To see how far we have come, we have to remember where we were. For centuries, going all the way back to the emergence of the modern system of sovereign states in the 1648 Treaty of Westphalia, the view has prevailed that, to put it bluntly, sovereignty is a license to kill: what happens within state borders, however grotesque and morally

indefensible, is nobody else's business. Although the language of the 1945 UN Charter is more delicate, it essentially reflects this traditional view, with Article 2(7) providing: "Nothing should authorise intervention in matters essentially within the domestic jurisdiction of any State". The UN founders were overwhelmingly preoccupied with the problem of states waging war against each other, and took unprecedented steps to limit their freedom of action in that respect. But, notwithstanding all the genocidal horrors inflicted during the Second World War, they showed no particular interest in the question of what constraints might be imposed on how states dealt with their own subjects.

The slate in this respect was not entirely blank. Individual and group human rights were recognized in the UN Charter and, more grandly and explicitly, in the Universal Declaration. With the drafting of the Charter of the Nuremberg Tribunal in 1945 came the recognition in international law of the concept of 'crimes against humanity', which could be committed by a government against its own people, and not necessarily just during wartime. And then came the Genocide Convention of 1948, with its apparently explicit override of the non-intervention principle for the most extreme of all crimes against humanity.

But it was almost as if, with the signing of the Genocide Convention, the task of addressing man-made atrocities was seen as complete: it was rarely invoked, and never effectively applied. And it is only in very recent years - with the establishment of the international criminal tribunals on the former Yugoslavia and Rwanda, and now the creation (over U.S. objections) of the International Criminal Court - that anything remotely systematic measures have been taken by the international community against individuals committing crimes against humanity.

The state of mind that even massive atrocity crimes like those of the Cambodian killing fields were 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. The traditional view of sovereignty, as enabling absolute control of everything internal and demanding immunity from external intervention, was much reinforced by the large increase in UN membership during decolonisation era - the states who joined were all newly proud of their identity, conscious in many cases of their fragility, and generally saw the non-intervention norm as one of their few defences against threats and pressures from more powerful international actors seeking to promote their own economic and political interests.

With the arrival of the 1990s, and the end of the Cold War, however, the prevailing complacent assumptions about non-intervention came under challenge as never before. The quintessential peace and security problem became not interstate war, but civil war and internal violence perpetrated on a massive scale. With the break-up of various Cold War state structures, most obviously in Yugoslavia, and the removal of some superpower constraints, conscience-shocking situations repeatedly arose. But old habits of non-intervention 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 Somalia in 1993, Rwanda in 1994 and Srebrenica, in 1995. Then came Kosovo in 1999, when the international community did in fact intervene as it probably should have, but did so without the authority of the Security Council in the face of a threatened veto by Russia.

All this generated very fierce debate about came to be called the issue of "the right of humanitarian intervention. On the one hand there were those - mostly in the north - who argued strongly for the 'the right to intervene'; on the other hand, claims were equally vehemently made - mostly in the south - about the primacy and continued resonance of the concept of national sovereignty. Battle lines were drawn, trenches were dug, and verbal missiles flew: the debate was intense and very bitter, and the 90s finished with it utterly unresolved in the UN or anywhere else. This led Secretary-General Kofi Annan to make his agitated plea to the General Assembly in 2000, which brought the issue to a very public head, and which resonates to this day:

If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violations of human rights?

The task of meeting this challenge fell, in the event, to International Commission on Intervention and State Sovereignty (ICISS), sponsored by the Canadian Government - and more particularly its wonderfully principled and far-sighted and principled then foreign minister Lloyd Axworthy - and also supported by Chicago's ever-innovative and generous MacArthur Foundation. I had the privilege of co-chairing the Commission with the Algerian diplomat and veteran UN Africa adviser Mohamed Sahnoun, and we presented our report, entitled *The Responsibility to Protect*, at the end of 2001.

The objectives of the Commission, as we defined them to ourselves from the outset, were essentially threefold: to produce a guide to action on responses by the international community to internal, man-made, human-rights violating catastrophe, which would be intellectually credible and satisfying, not profoundly offending either the lawyers or philosophers; politically credible enough not to be rejected out of hand, as a framework for action, by either North or South, the permanent five members of the Security Council or any other major international constituency; and compelling enough in its basic message to be able in practice to actually motivate action and mobilise support when a situation demanding such a response arose.

There were several reasons for thinking that we might not be totally deluding ourselves. The Commission's membership was strong - with its U.S. member, for example, being Lee Hamilton - and well balanced regionally; we engaged in consultations just about all round the world; the report was succinct but comprehensive in scope, addressing not just the legal and moral dilemmas which have been at the heart of most of the academic and policy debate about coercive intervention so far, but political and operational issues as well; its recommendations had a sharply practical political focus; and, above all, its approach was innovative, bringing to the table some genuinely new ways of thinking about the issue, encapsulated in the title of our report. We made, I think it is fair to say, four main contributions to the international

policy debate which have been resonating ever since.

The first, and perhaps ultimately the politically most useful, was to invent a new way of talking about 'humanitarian intervention'. We sought to turn the whole weary debate about the 'right to intervene' on its head, and to re-characterise it not as an argument about the 'right' of states to anything, but rather about their 'responsibility' - one to protect people at grave risk: the relevant perspective, we argued, was not that of prospective interveners but those needing support. The searchlight was swung back where it should always be: on the need to protect communities from mass killing and ethnic cleansing, women from systematic rape and children from starvation. The Commission's hope - and so far, broadly, our experience - was that using 'responsibility to protect' rather than 'right to intervene' language would enable entrenched opponents to find new ground on which to more constructively engage, just as proved to be the case, after the Brundtland Commission years earlier introduced the concept of 'sustainable development', between developers and environmentalists. With a new script, the actors have to change their lines, and think afresh about what the real issues in the play actually are.

The second contribution of the Commission, perhaps most conceptually significant, was to insist upon a new way of talking about sovereignty: we argued that its essence should now be seen not as 'control', as in the centuries old Westphalian tradition, but, again, as 'responsibility'. The starting point is that any state has the primary responsibility to protect the individuals within it. But that is not the finishing point: where the state fails in that responsibility, through either incapacity or ill-will, a secondary responsibility to protect falls on the wider international community.

The third contribution of the Commission was to make it clear that the 'responsibility to protect' was about much more than intervention, and in particular military intervention. It extends to a whole continuum of obligations: the responsibility, most important of all, to prevent these situations arising; the responsibility to react to them when they did, with a whole graduated menu of responses, from the persuasive to the coercive; and the responsibility to rebuild after any intrusive intervention - of which the most important is the responsibility to prevent.

The remaining contribution of the Commission was to come up with guidelines for when the most extreme form of coercive reaction, military action, would be appropriate. The first criterion was obviously legality, and here we saw our task as not to try and find alternatives to the clear legal authority of the Security Council, but rather to make it work better, so there was less chance of it being bypassed. That was followed by five criteria of legitimacy, designed as a set of benchmarks which, while they might not guarantee consensus in any particular case, would hopefully make its achievement much more likely. These criteria were, in short, the seriousness of the harm being threatened (which would need to involve large scale loss of life or ethnic cleansing to prima facie justify something as extreme as military action); the motivation or primary purpose of the proposed military action; whether there were reasonably available peaceful alternatives; the proportionality of the response; and the balance of consequences - whether more good than harm would be done.

It is one thing to develop a concept like the responsibility to protect, but quite another to get any policy maker to take any notice of it. Departmental bookshelves are full of barely opened reports by blue ribbon commissions and panels, including some in which I have participated myself. The most interesting thing about the Responsibility to Protect report is the way its central theme has continued to gain traction internationally, even though it was almost suffocated at birth by being published in December 2001, in the immediate aftermath of 9/11, and by the massive international preoccupation with terrorism, rather than internal human rights catastrophes, which then began.

The concept was first seriously embraced in the doctrine of the newly emerging African Union, and over the next two to three years it won quite a constituency among academic commentators and international lawyers (a not unimportant constituency, given that international law is the rather odd beast that it is - capable of evolving through practice and commentary as well as through formal treaty instruments).

But the big step forward came with last year's UN 60th Anniversary World Summit, which followed a major preparatory effort involving the report of a High Level Panel on new security threats (of which I also happened to be a member) which fed in turn into a major report by the Secretary-General himself. Both these reports emphatically embraced the responsibility to protect concept, and the Summit Outcome Document, unanimously agreed by the more than 150 heads of state and government present and meeting as the UN General Assembly, unambiguously picked up their core recommendations. Its language, though a little wordier and woollier than it needed to be, was quite clear-cut in picking up the core theme of the Commission report:

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

That this endorsement happened was anything but inevitable. Not much else of any significance was agreed by the Summit, despite all the preparatory buildup and high expectations. A fierce rearguard action was fought almost to the last by a small group of developing countries, joined by Russia, who basically refused to concede any kind of limitation on the full and untrammelled exercise of state sovereignty, however irresponsible that exercise might be. What carried the day in the end was not so much consistent support from the EU and U.S. - support which after the invasion of Iraq was not particularly helpful, it has to be acknowledged, when it came to meeting these familiar sovereignty concerns. The support that mattered, rather, was persistent advocacy by sub-Saharan African countries, led by South Africa; a clear - and historically quite significant - embrace of limited-sovereignty principles by the key Latin American countries. And

above all what carried the vote over the line was some very effective last minute personal diplomacy with major wavering-country leaders by Canadian Prime Minister Paul Martin, demonstrating not only Canada's commitment, a model of its kind, to following through on the report that it had commissioned, but the clout that middle power countries can have when they try.

A further important conceptual development has occurred since last September's Summit: the adoption by the Security Council in April of a thematic resolution on the Protection of Civilians in Armed Conflict which contains, in an operative paragraph, an express reaffirmation of the World Summit conclusions relating to the responsibility to protect. And we have now begun to see that resolution in turn now being invoked in subsequent specific situations, as with Resolution 1706 of 31 August on Darfur. A General Assembly resolution may be helpful, as the World Summit's unquestionably was, in identifying relevant principles, but the Security Council is the institution that matters when it comes to executive action. And at least a toehold there has now been carved.

On any view, the evolution in just five years of the responsibility to protect concept, from literally an idea under the shower (as I can testify), to a gleam in a commission's eye, to what now has the pedigree to be described as a broadly accepted international norm (and one with the potential to evolve into a rule of customary international law) is an extremely encouraging story, and we ought to be encouraged by it.

But we also have to be frank with ourselves that this is pretty much where the good news ends. We simply cannot be at all confident that the world will respond quickly, effectively and appropriately to new human catastrophes as they arise, as the current case of Darfur is all too unhappily demonstrating. There is much unfinished business to attend to, and this conference is could not be a more timely vehicle for identifying and getting started on it.

From my perspective, that unfinished business falls into three main categories. The first is completing the task of norm-setting, by persuading the Security Council to embrace specific guidelines for the legitimate use of military force, at least in the specific context of R2P, but desirably more generally. The concept of R2P is of course about much more than the use of force - the responsibility to protect begins, and in an ideal world would end, with the responsibility to prevent - but the issue of when, where and how to apply military force is unquestionably the most divisive issue in the whole continuing debate. No criteria of the kind the Commission argued for, even if agreed as guidelines by the Security Council, will ever end argument on how they should be applied in particular instances: Darfur is a case in point. But I cannot believe they would not be more helpful than the present totally ad hoc system in focusing attention on the relevant issues, revealing weaknesses in argument, and generally encouraging consensus.

And it is not only the ultimate policymakers who need to have their heads clear on these issues: those of us in the advocacy business are likely to be taken much more seriously by those in the decision making business if we are able to intelligently distinguish between different cases in the way R2P principles are implied, understanding which are suitable cases for military treatment and those which are better advanced by less extreme measures. That way, when a case comes along - and Rwanda, Srebrenica and Kosovo were all clear examples - that can only be resolved by tough military action, our argument for taking it will be much more clearly heard.

The second piece of unfinished business, if R2P is not to remain more theoretical than real, is to somehow solve the problem of capacity, ensuring that the right civilian and, as necessary, military resources are always there in the right amounts and with the appropriate capability. The experience of the current AU mission in Darfur is a classic demonstration of the problem - too few troops, too poorly equipped, and too immobile to perform effectively even the limited civilian protection task required by their present mandate. The UN is currently feeling desperately overstretched, with over 80,000 military and 15,000 civilian personnel deployed worldwide, but with the world's armed services currently involving some 20 million men and women in uniform (with another 50 million reservists, and 11 million paramilitaries, according to the IISS which somehow manages to keep count of these things), it hardly seems beyond the wit of man to work out a way of making some of that capacity available when and where it's needed to prevent and react to man-made catastrophe. Again it's important for those of us in the advocacy business to be conscious of these issues, to know ourselves what kind of resources, both military and civilian, need to be available, when, where and how, and to campaign for change accordingly.

And the third piece of unfinished business, the biggest of all as always, is the ever-recurring problem of generating the political will to act. We just have to get to the point where, when the next conscience-shocking mass human rights violation comes along, as it inexorably will, the reflex response of both governments and publics around the world, will be to talk immediately about the responsibility to protect, and find reasons to act, not to pretend that it is none of our business.

When we say that R2P is the responsibility of the international community, that means all of us. It is other sovereign states, with the capacity to help and support those with the will to protect their own people but the inability to do so. It is the intergovernmental organizations, above all the United Nations. And here it's the Secretary General with his persuasive authority; the Security Council with its unique executive authority; and within the Security Council the Permanent Five - who don't always have the capacity to make things happen but certainly can ensure they don't, as was the case, so tragically, with Rwanda in 1994. It's also all the other global organizations and agencies with preventive or reactive roles; the regional organizations; and the courts, particularly the new international criminal courts, the new instruments of not just retributive but deterrent justice.

The responsibility to protect is also the responsibility of non-governmental organizations, the media and civil society more generally. It is to prevent through all the strategies of community reconciliation, government capacity building and economic empowerment that so many international NGOs are implementing on the ground; it is to analyse, to warn, to alert in the way done by my own International Crisis Group, and organizations like Human Rights Watch; and, in the case of both international and domestic NGOs, it's to mobilize and ring alarm bells when the occasion demands.

And ultimately the responsibility to protect is that of all of us individuals - whether we be government officials, with all the

temptation and opportunity in the world to claim that a problem is someone else's business, or ordinary members of the public, who can make our voices heard if we want them to be heard. How all of this translates into a strategy for action, particularly here in the United States, is what we need now to be talking about, and will be talking about over the next two days of this very timely conference.

At the core of our task is the reality that there is a role for morality in the foreign policy of every country in the world, from the greatest to the smallest. True it is that a foreign policy built almost entirely and self-consciously around some sense of moral mission can be equally misguided, as we have seen all too clearly in this great country, with the neocon democracy, human rights and regime change agenda - all now in tatters - in Iraq, Iran and North Korea.

My Crisis Group Board member colleague Ken Adelman - himself a fierce supporter of the Iraq war and the rest of original Bush administration mission - now laments, in the current issue of Vanity Fair, that after Iraq 'the idea of a tough foreign policy on behalf of morality, the idea of using our power for moral good in the world' is 'not going to sell' for a generation. If he means the particular kind of idealistic foreign policy that has been pursued over the last six years - impervious to demonstrable facts, naïve in its assumptions, crude in its application of military power, and totally bungled in its general execution - then we should be grateful to be spared any more of the same.

But if idealism has its limits, the alternative is not a crude and one-dimensional brand of foreign policy realism either. We can, if we need to, always justify making R2P a reality on hard-headed, practical, national interest grounds: so called rogue states, or evil states, or failed or failing states, that either perpetrate terrible crimes against their own people or are powerless to stop them, are now - we know much better than we used to - a risk to all of us in this globalised interdependent age: we know what they can do in harbouring or supporting terrorism, and weapons proliferation, and drug and people trafficking, and failing to curb health pandemics and all the rest.

But a foreign policy that is founded only on hard-headed realism is a policy that can all too readily descend into cynical indifference: the kind that enabled successive previous US administrations (whose foreign policy performance in many other ways I much admired) to shrug their shoulders about Saddam Hussein's genocidal assaults on the Kurds in the north in the late 80s and the Shiites in the south of Iraq in the early 90s, or to find reasons for ignoring the rapidly unfolding Rwandan genocide in 1994.

What this country needs, and what all the polling evidence suggests its public will support, is a foreign policy based on a principled and judicious mixture of both idealism and realism. And that's a foreign policy, for the US as everywhere else, in which the new international norm of R2P can sit both comfortably and proudly.

At the end of the day the case for R2P rests simply on our common humanity: the impossibility of ignoring the cries of pain and distress of our fellow human beings. For any of us in the international community - from individuals to NGOs to national governments to international organizations - to yet again ignore that distress and agony, to once again make 'never again' a cry that rings totally emptily, is to diminish that common humanity to the point of despair. All of us here are determined to not let that happen, and there is no greater or nobler cause on which any of us could be embarked.