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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.