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The people vs. the state



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# The people vs. the state: Reflections on UN authority, US power and the Responsibility to Protect

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Ramesh Thakur

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**United Nations  
University Press**

TOKYO • NEW YORK • PARIS

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United Nations University Press  
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Shibuya-ku, Tokyo 150-8925, Japan  
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<http://www.unu.edu>

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2 United Nations Plaza, Room DC2-2062, New York, NY 10017, USA  
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United Nations University Press is the publishing division of the United Nations University.

Cover design by Andrew Corbett

Cover photograph by Logan Abassi / UN Photo

Printed in the United States of America

ISBN 978-92-808-1207-7

Library of Congress Cataloging-in-Publication Data

Thakur, Ramesh Chandra, 1948–  
The people vs. the state : reflections on UN authority, US power and the  
responsibility to protect / Ramesh Thakur.

p. cm.

Includes bibliographical references and index.

ISBN 978-9280812077 (pbk.)

1. Intervention (International law). 2. Humanitarian intervention. 3. United Nations. I. Title.

JZ6368.T48 2011

341.5'84—dc23

2011031854

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# Endorsements

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“I am a regular reader of Dr Ramesh Thakur’s writings. I have been impressed by his clear thinking and analysis of world politics. Dr Thakur has challenged me many times to review my own thinking on important issues.”

**Martti Ahtisaari**, *Nobel Peace Prize Laureate, former President of the Republic of Finland and Chairman of the Crisis Management Initiative*

“Ramesh Thakur has established a solid reputation for himself as an international public intellectual. The articles assembled in this book have contributed in no small measure to that achievement. Between them these articles show a keen understanding of the main currents of international affairs. Ramesh’s subtle analysis is well served by an elegant and limpid writing style. Academics, diplomats, journalists as well as the wider public will all welcome the fact that these enduring essays have been brought together in one book.”

**Lakhdar Brahimi**, *former Special Adviser to the United Nations Secretary-General*

“In recent years Ramesh Thakur has provided the world with brilliant commentary on the passing global scene. To have this wisdom and insight gathered in a single volume provides an invaluable resource that should be made required reading for leaders and citizens alike.”

**Richard Falk**, *Emeritus Professor, Princeton University*

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# Foreword

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There are few more important challenges to our common humanity than mass atrocity crimes. There are few issues on which the international community has moved faster towards achieving positive change. And there are few individuals who have contributed more to that process than Ramesh Thakur. This book, bringing together his many published opinion pieces on the subject, often passionately argued, always carefully crafted, and invariably stimulating – whether or not one agrees with him on particular issues – is a storehouse of evidence for all three propositions.

The 1990s was the decade of truth for the international community in confronting genocide, ethnic cleansing, and major crimes against humanity and war crimes. After decades of political leaders and policymakers saying “never again” to another Holocaust or Cambodia, they failed the test miserably when it came to a series of unfolding catastrophes in Africa and the Balkans: responding either not at all, with too little too late, or with insufficient UN authority. The debate was always about the pros and cons of coercive military intervention – and an apparently unbridgeable gulf opened up between those, mainly from the global North, arguing for a “right of humanitarian intervention”, and those, mainly from the global South, insisting that, whatever the nature or scale of human rights horrors occurring behind state walls, national sovereignty was sacrosanct and coercive intervention impermissible.

This was the climate that led UN Secretary-General Kofi Annan, in his 2000 Millennium Report, to make his famous challenge: “If humanitarian intervention is indeed an unacceptable assault on state sovereignty, how

should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?” And it was this challenge that stimulated the Canadian Government to establish the International Commission on Intervention and State Sovereignty (ICISS), which we had the honour to co-chair – with Ramesh Thakur a key member – which initiated, in our report of that name published in 2001, the new concept of “the responsibility to protect”.

We had several major objectives. First, to recast the language of the debate in a way that encouraged consensus rather than reflex confrontation – by focusing on “responsibility” rather than “right” (including in the first instance the responsibility of each sovereign state towards its own people), and “protection” rather than “intervention”. Second, to change the focus from after-the-event reaction to before-the-event protection. And third, to shift the emphasis away from a single-minded focus on coercive military intervention towards a nuanced approach recognizing the utility of a whole continuum of measures, beginning with the supportive and persuasive, extending to non-military forms of pressure, and only as a last resort embracing coercive military force – if prudential criteria we defined could be satisfied, and there was clear UN Charter authority.

Ten years later, we can say with some confidence that these objectives have very largely been met – certainly to our gratification, but also rather to our surprise, given that there is nothing harder in international affairs than achieving a shift in basic normative thinking, not least when something so fundamental as state sovereignty is in issue. The UN General Assembly, sitting as the 2005 World Summit, has endorsed the basic concept. “Responsibility to protect” language has become embedded in diplomatic, commentariat and academic discourse on these issues. There is now a large measure of consensus, after some initial confusion, as to what kinds of cases it does and does not cover. The debate has shifted away from one-dimensional focus on military intervention, to recognition of the applicability – at both the prevention and reaction stages – of a large range of other tools. But at the same time it has been recognized that in very extreme cases, as a last resort, coercive military intervention may be necessary – and in 2011 the Security Council has endorsed just that, specifically invoking responsibility-to-protect language, in the cases of Cote d’Ivoire and Libya.

The best evidence that the responsibility to protect is a genuine new norm of international behaviour, here to stay, is the outcome of the successive major debates on the subject in the UN General Assembly in 2009, 2010 and 2011. Each time there has been an attempt by a small group of spoilers to derail the 2005 consensus, and each time those efforts

have been clearly rebuffed by the great – and now overwhelming – majority of other member states. It is certainly true that most states remain more comfortable with measures at the less intrusive end of the spectrum – going to individual states’ own responsibility (“Pillar One”), and other states’ responsibility to assist them (“Pillar Two”), rather than the more robust forms of engagement, and ultimately intervention, envisaged when a state is “manifestly failing” to protect its own people (“Pillar Three”).

It is also true that NATO’s pushing of its Libya mandate to the limit during the course of 2011 – arguing that if civilians were to be protected in all areas of the country it had to embrace forcible regime change – has reinforced the reluctance of a number of major countries to ever authorize coercive military force. It was never going to be easy to assemble a Security Council majority for this kind of Chapter VII action, and it may be even harder to do so in the future. But the crucial point about the July 2011 General Assembly debate was that this controversy did not in any way derail the mainstream consensus. The responsibility to protect was overwhelmingly accepted as the appropriate overarching normative and policy framework, with the focus of the debate being on what institutional structures and processes were needed to effectively implement it in practice, in all of its dimensions.

Looking back to where we were in 2001, that is a huge change for the better. And one of those who has been most influential in bringing it about is the author of this collection, Ramesh Thakur, both in his capacity as one of the most thoughtful and constructive of the co-authors of our original *Responsibility to Protect* report, and as a very widely read commentator on this and related issues in the years since. His personal and professional identity is, as he has himself noted elsewhere, “at the intersection of East and West, North and South, and of international relations scholarship and the international policy community”. As the detailed contents of this excellent volume make amply clear, this combination of perspectives has made him a uniquely effective contributor to one of the great policy debates of our time.

*Gareth Evans*  
*Mohamed Sahnoun*  
*Co-Chairs, International Commission on Intervention and*  
*State Sovereignty*  
*July 2011*

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# Preface

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From the opening articles on the intervention in Kosovo by the North Atlantic Treaty Organization (NATO) in 1999, to the concluding articles on the Arab Spring and the authorization of military action in Libya by the UN Security Council, this book deals with the changing norms and laws regulating the international use of force. At the heart of those changes is the principle of the responsibility to protect, commonly known as R2P, first articulated by the Canadian-sponsored but independent International Commission on Intervention and State Sovereignty (ICISS). Between December 2001 when ICISS first published its report with the title *The Responsibility to Protect*, through the unanimous endorsement of R2P by the largest gathering of world leaders in history at the United Nations in October 2005, to the first military action to implement it in Libya in March 2011, the principle has moved to an actionable norm in the blink of a historical eye.

I was fortunate and privileged to be a member of ICISS and one of the three principal authors of its report. Subsequent to the report's release, the three people from the original commission to have been most active in disseminating its conclusions, promoting its recommendations and explaining its reasoning have been Gareth Evans, co-chair of ICISS; Thomas G. Weiss, co-research director of ICISS; and myself. We have publicized and defended the report's analysis and conclusions to the policy, scholarly and public communities. A major vehicle for reaching the broad audience of policymakers, policy advisers, and the interested and informed public is the media. This book brings together a collection of



my opinion articles from a range of newspapers in Australia, Canada, India and Japan, as well as from the *International Herald Tribune* as a globally-branded newspaper.

The chapters to book-end the debate on R2P could not have been better chosen by design. NATO's justification of its military action in Kosovo in 1999 as "humanitarian intervention" sparked a furious international controversy that was the midwife to the establishment of ICISS. The authorization to use all necessary measures in Libya under UN Security Council Resolution 1973 in March 2011 was both the first UN authorization for a combat operation since the 1990–91 Gulf War and the first effort to implement R2P at the military intervention end of the scale of international engagement. In between these two events, the international community was roiled by the divisions and bitterness generated by US-led unilateral intervention in Iraq in 2003 where, once it was confirmed that the much-derided UN inspectors had indeed disarmed Saddam Hussein of all weapons of mass destruction, the only possible remaining justification for military aggression was humanitarian protection.

The topics covered in the selection of articles include wars, armed conflicts and international military interventions as the primary focus of what R2P is all about. But they also include the changing international diplomatic landscape within which such a major normative shift has taken place; the changing nature of warfare and diplomacy; the declining salience of state sovereignty; the question of who has the responsibility to protect the cultural heritage of humanity like the Bamiyan statues and the Taj Mahal; the roles of and relationships between the United Nations and the United States as the exemplars of legitimate international authority and leading global power who need to work in tandem if R2P is to be successfully institutionalized as an integral component of the new normative world order; and boundary limitations that set out the outer limits of the norm beyond which the broad but brittle and fragile consensus on R2P may shatter, for example natural emergencies and interventions in "kin-states". A recurring theme in many of the essays is the importance of agreed rules of the game and the rule of law to govern world affairs.

The chapters are organized in chronological order of publication. No instant analyses, conclusions and judgments have been altered. No sentence has been deleted, let alone any new one added, in order to realign past judgements with present values or hindsight. The article titles are those used in the original publications and therefore reflect the sub-editors' judgements rather than the author's choice. There are only two types of changes to the articles as originally published. The first is stylistic, to ensure consistency of spelling and usage. The second change is de-

letion of passages to avoid duplication, other than where I considered it necessary to retain the integrity of the argument within the scope of the article. Thus while each article is self-contained and can be read as such, between them they do attempt to map the dramatically changing world order over the past dozen years, from the closing year of the last millennium to the opening decade of the new.

I was fortunate to be able to combine the roles of an international civil servant as a senior UN official at the rank of assistant secretary-general with that of an academic with an advantageous perch at a global university. My ruminations no doubt also reflect my original identity as a person born, brought up and educated in a developing Asian country and my acquired identity as a worldly-wise student of international politics with professorial positions in different Western countries over several decades. I am grateful for the interest shown by the United Nations University Press in bringing together this collection in a more permanent form. As two-thirds of the articles were written while I was still with the United Nations University, this is only appropriate. I hope the interest of the readers justifies their faith.

*Ramesh Thakur  
Canberra  
June 2011*



## 1

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# Kosovo teaches might is right

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*The Japan Times*, 19 April 1999

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Force and diplomacy, when used in tandem, can underpin each other. But when force becomes a discontinuation of policy by other means, the goals of both are jeopardized.

Few observers have any illusions left about Yugoslav President Slobodan Milosevic. Most agree that the attacks on Serbia violate international law. Even the Rambouillet peace deal acknowledged Kosovo as part of Serbia. Because Yugoslavia has not attacked any NATO member, the out-of-area strikes violate NATO treaty. Because they have not been authorized by the United Nations, they violate its Charter.

Such questions pose challenges, but not necessarily insurmountable ones. The doctrine of national sovereignty, which gave the most brutal tyrant protection against attack from without while engaged in oppression within, has gone with the wind. The tragedy of Rwanda diminished us all as members of the human family.

Equally important, however, we cannot accept the doctrine that any one state or coalition can decide when to intervene with force in the internal affairs of other countries, for down that path lies total chaos. War is itself a major human tragedy. The use of force to attack a sovereign state is an extreme measure. It can be justified only under the most compelling circumstances regarding the provocation, the likelihood of success and the consequences that may reasonably be predicted. The burden of proof does not rest on the opponents of force. Has the case for NATO strikes been made with persuasive enough force to overcome the presumption of doubt?

The inconsistencies with regard to striking Belgrade for its Kosovo policy are substantial and numerous. There are graver and more unprovoked attacks against other minorities in many parts of the world, some of long standing, and some indeed involving regimes with continuing military links to Western nations. No regional organization, and in fact not even the United Nations, has the right to impose the terms of political settlement between the central and provincial governments of sovereign countries.

Bombing was the second option of choice (not first, nor the last) for those innocent of the history, demographics and passions of the region. (They are innocent also of the historical role of force and conquest in making America the paragon of pluralistic multi-ethnicity it is today.) The use of force requires moral clarity between the good and bad, not shades of ambiguity. The colour of truth in Kosovo is grey. Efforts to demonize Milosevic deflect attention from those who until recently were branded terrorists by Western governments, but are today the principal beneficiaries of the bombing. The argument about NATO's credibility, with echoes of Vietnam, confuses ends and means. NATO exists to deter and win wars; war is not the instrument for preserving an alliance.

Success is hard to measure because of the vague, confused and contradictory goals that have been given by different spokesmen. Goals are also metamorphosed in the crucible of war once started. To be sure, Milosevic is no longer in doubt that NATO takes the issue seriously. But the human plight of Kosovars has worsened, and predictably so. Even if the Serbs were to be defeated and Kosovo taken by force, the problem would fester, perhaps for centuries. Will NATO be the perpetual guarantor of an independent Kosovo protectorate and the indefinite guardian of a sullen and defeated Serbian ward?

The local, regional and international consequences are likely to prove to be the most enduring and damaging. The Serb nation has rallied around Milosevic and his political position is stronger. The tribal hatreds of the different communities will be hardened for decades. The peace plan required coexistence; the bombings were meant to coerce one party into accepting that peace plan; instead they have sabotaged any hopes of inter-ethnic peaceful coexistence.

The depth of anger and resentment in Russia is equally pronounced. Kosovo might mark the watershed in its transition from strategic partner to dormant, bankrupt but still nuclear-armed rival. It will surely harden the determination of security planners in Moscow, Beijing and New Delhi to put their faith in survivable nuclear forces rather than the enlightened goodwill of the most powerful. Other countries too will conclude that they had better look to their own military force, perhaps with nuclear and missile cores, if they are not to become the victims of

the use of force by some future self-appointed guardians of international morality.

The prospects of a world order based on the rule of law are no brighter. The overriding message is not that force has been put to the service of law, but that might is right. The symbolism of the United Nations as the institution for moderating the use of force to settle international quarrels has been dealt a body blow, though hopefully not a mortal blow.

All this is a high price to pay. We can only hope that those who have elected to pay the price in our name – in the name of the international community – know what they are doing.

## 2

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## Kosovo's lessons in racism

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*The Japan Times*, 21 May 1999

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When US President Bill Clinton declares that the bombs will continue to rain down on Serbia until peace and harmony prevail, the unintended irony echoes another war that he opposed and avoided. In a speech at Johns Hopkins University in April 1965, US President Lyndon B. Johnson declared that for centuries nations had struggled but held fast to the dream “of a world where disputes are settled by law and reason”. This was a very old dream, he said. “But we have the power, and now we have the opportunity to make it come true.”

To paraphrase a saying from the Vietnam War, graduate students will be writing theses about the Kosovo War for many years yet. The remarkable thing is how many of the Western leaders prosecuting the war in Kosovo today are the antiwar protesters of the Vietnam era. The difference, they say, is that this war is a humanitarian campaign uncomplicated by national interests. To those of us who come from countries that were colonized by the “civilizing” zealots of earlier centuries, this is not quite as reassuring as Westerners innocent of their own history seem to think.

Will the Kosovo War at least advance the cause of anti-racism? If it does, then those of us whose doubts have intensified about the morality, legality, political wisdom and military strategy of the war will be grateful for small mercies. But even on this, the picture is not so clear-cut.

The entire basis for discriminating between the Serbs and Kosovars ignores the decades, if not centuries, of conflict between the two sides. The group in power has oppressed and repressed the group out of power: hence the resonance of Milosevic's pledge 10 years ago that the Kosovo

Serbs would not have to live in fear anymore. To compare this in overblown rhetoric to the Holocaust is to trivialize the latter. The Kosovars cannot appropriate the mantle of innocent "victimhood" of the Jews under the Nazis.

NATO's Kosovo campaign has dealt four setbacks to the struggle against racism. First, the sole basis for discriminating between Kosovo and any number of other tragedies, comparable and worse in their atrocities against the victims, is that this is barbarity in Europe. Far from eradicating racism, this reinforces it. In Rwanda, Sri Lanka, Timor, Tibet, Kashmir, etc., it is natives murdering natives – what else can one expect from savages? But Kosovo – by God, this is intolerable, this is Europe, this is the cradle of civilization.

Second, the costs of the war in Kosovo will drain development funds away from needy populations in Africa and Asia. The speed with which vast sums of money can be found for a war, but not for development, gives the lie to the purity of humanitarian motives. The poor of Africa and Asia will pay through opportunity costs for the white man's war in Europe.

Third, Islamic countries have lined up behind the NATO campaign, in some cases negating years of angry speeches against Western interference in internal affairs, for the sole reason of ethnic Albanians being Muslim. Turkey, a NATO country with a less-than-shining record against its own ethnic minority, supports the strikes against the Serbs in defence of minority rights? One does not promote race-blind equality by framing foreign policy on a racial basis. Islamic countries also ignore, but will certainly be reminded again, that the most frequent targets of past unilateral Western attacks have been Islamic victims.

Fourth, NATO has ignored and bypassed the legitimate channels for seeking the opinion and the mandate of the international community. In rejecting UN constraints, NATO has chosen not to play by the rules of the game when the result was not to its liking. More worrying, no system has been put in place instead of the United Nations. Does this mean that any regional hegemon can impose its morality on states in its neighbourhood? Outside its region? Who decides, and on what basis? Does India have the right to tell Sri Lanka the terms of a peace deal with the Tamils, or else?

Of course not. Whether articulated or not, the reason for denying such unilateral judicial and enforcement authority to anyone other than NATO is also intrinsic racism. Only the enlightened United States and the West can be trusted to judge and act on behalf of "the international community". Ethnic cleansing in Kosovo is an affront to the liberal conscience; the blacks and browns of the world will never have the right to usurp the Europeans' claim to represent world conscience.



So, one step forward, four steps back in the fight against racism? The Russians could be forgiven for concluding ruefully that the Warsaw Pact held NATO in check during the Cold War, rather than the reverse. At a function in Tokyo recently, one Westerner could not understand why the Chinese were making such a fuss over three deaths in their embassy in Belgrade, “when there are so many of them”. Just so.

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## The UN at millennium's end

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*The Japan Times*, 23 June 1999

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The UN Charter was signed at San Francisco on 26 June 1945. Today, international organizations, with the United Nations at the legislative and normative centre, touch our daily lives in myriad ways. If the United Nations did not exist, would we invent it?

Yes. Considering the ill-fated history of the League of Nations, the UN founders would surely have felt pride and satisfaction at their creation still being intact at the dawn of the new millennium, embracing virtually the entire international community. Yet their vision of a world community equal in rights and united in action is still to be realized.

The United Nations presided over decolonization, one of the great achievements of this century. It has promoted the universalization of human-rights norms and machinery, another major advance of the twentieth century. It is still the symbol of our hopes and dreams for a better world, where weakness can be compensated for by justice and fairness and the law of the jungle replaced by the rule of law.

But the United Nations has not lived up to expectations in securing a disarmed and peaceful world. Its financial difficulties are compounded by perceptions, often unjustified, of bureaucratic inefficiency. The World Bank and the International Monetary Fund have displaced the United Nations as the centre of gravity of economic development and financial management.

For romantics, the United Nations can do no wrong and is the solution to all the world's problems. Its failures are seen as being really the failures of its member states. If only they had the necessary political will, the

organization would fulfil its destiny as the global commons, the custodian of the international interest and the conscience of all humanity.

Cynics question the respect paid to the United Nations by the credulous. For them, it exists so that nations, unable to do anything individually, can get together to decide that nothing can be done collectively. The price of inaction on a grand scale is paid by the people of Bosnia, Rwanda and others.

The United Nations must meet the challenge of a balance between the desirable and the possible. The Charter was a triumph of hope and idealism over the experience of two world wars. The flame flickered in the chill winds of the Cold War. But it has not yet died out.

The United Nations' greatest strength is that it is the only universal forum for cooperation and management. The global public goods of peace, prosperity, sustainable development and good governance cannot be achieved by any country acting on its own.

For the United Nations to succeed, the world community must match the demands made on the organization by the means given to it. Based on human solidarity and transcending national perspectives, the United Nations provides and manages the framework for bringing together the world's leaders to tackle the pressing problems of the day for the survival, development and welfare of all human beings everywhere.

The United Nations has to strike a balance between realism and idealism. It will be incapacitated if it alienates its most important members, in particular the United States. Its decisions must reflect current realities of military and economic power. But it will also lose all credibility if it compromises core values. Utopia is fundamental to the UN identity.

Kosovo captures the tension. From the critics' point of view, NATO unilateralism was a powerful threat to the prospects of a rules-based world order centred on the United Nations. Its primary purpose is the maintenance of international peace and security and the guarantee of the territorial integrity and political independence of member states. Kuwait's call on the world conscience in 1990 against attack by a powerful neighbour was satisfactorily met. Serbia's call for protection from a powerful military alliance was dishonourably ignored. Coalition might triumphed over international right, force over the rule of law. By retroactively legitimizing NATO aggression, the United Nations has been subverted from a coalition to protect the weak into one to serve big-power interests.

But NATO countries are not the usual suspect of rogue states. They include some of the brightest and the best of UN citizen states. For them, military action against Yugoslav President Slobodan Milosevic was an affirmation and materialization of an emerging new order that juggles geopolitical realism with normative idealism. Allowing a regime to get away

with flouting the core ideals of the United Nations would have eroded the legitimacy of the organization as the custodian of the world conscience. The war was the practical expression of the historic shift from old-style balance of power to the new-age community of power.

The fact that NATO sought and received UN Security Council endorsement, even if retroactively, is proof that many supporters of NATO strikes had remained troubled with the precedent of collective military action outside the UN framework. A UN role is indispensable even for the most powerful military coalition in history.

The United Nations represents the idea that unbridled nationalism and the raw interplay of power must be mediated and moderated in an international framework. It is the centre for harmonizing national interests and forging the international interest. The Kosovo learning curve shows that the UN ideal can neither be fully attained nor abandoned. The organization is condemned to this eternal credibility gap between aspiration and performance. The real challenge is to ensure that the gap does not widen, but stays close.

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## Defining new goals for diplomacy of the twenty-first century

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*The International Herald Tribune*, 19 January 2000

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Diplomacy is undergoing a revolutionary change. For example, last month, at the World Trade Organization meeting in Seattle, an odd alliance of opponents including environmental and human rights activists, organized labour, and cultural and economic nationalists helped defeat efforts to begin a new round of negotiations to liberalize world trade in many areas.

Trade may be global, but politics is still local, and the alliances of convenience forged in Seattle to frustrate the World Trade Organization proved more effective than the standard model of diplomatic negotiation among governments.

Not long after the Seattle battle, the same government in India that conducted controversial nuclear weapons tests in 1998 found itself negotiating with a handful of airplane hijackers. The hijacking showed the increasing irrelevance of nuclear weapons to the types of security threats confronting countries today. It also illustrated the complex demands on modern diplomacy.

Foreign policy attention to child soldiers, children as war victims, and child poverty represent another element of a shift from “national security” to “human security”.

This shift presents a great challenge to national diplomats, nongovernmental organizations and the United Nations to work in partnership. All three sets of actors are being challenged to reinterpret and use the UN Charter in pursuit of security for the peoples of the world, if necessary against the member governments of the world body.

For diplomats, the old order of state-to-state relations, pursuit of national interest and formal alliances is giving way to ad hoc “coalitions of the willing” in pursuit of agreed international goals.

“National security” is now more of a slogan for political mobilization than a helpful concept. It breaks down when the state itself becomes a threat to the security of its citizens.

When the pursuit of national security by Serbia and Indonesia threatened the human rights of Kosovars and East Timorese, the outside community felt compelled to intervene.

To many Tamils in Sri Lanka and Muslims in Kashmir, the state is the principal security threat. To others who are the victims of secessionist violence, the failure of state protection is the basic threat to personal security. Prolonged civil wars and failed states undermine the concept of national security. When rape is used as an instrument of war, or when thousands are killed by their own security forces, then the concept of national security is immaterial and of zero use.

Being wedded still to national security may be one reason why half the world’s governments spend more to protect their citizens against undefined and improbable external military attack than to guard them against the omnipresent enemies of good health.

On environmental and human rights issues in particular, the people of the world, in whose name the United Nations was founded, have grown tired of years of negotiations leading to a final product that may be accepted or rejected by countries. They look instead for a rolling process of self-adjusting agreements that can respond quickly to growing scientific understanding.

Prime Minister Keizo Obuchi of Japan has declared that human security will be one of the essential principles for the conduct of Japanese foreign policy. Foreign Minister Lloyd Axworthy of Canada, acting in concert with nongovernmental organizations and like-minded countries, is among those who seek to embed in international institutions the idea that the state exists for the security and well-being of its citizens.

The shift to human security also underlines what Joseph Nye of Harvard University calls soft power, or the attraction of a way of life and the supremacy of the liberal internationalist ideology as embedded in major multilateral institutions like the European Union and the International Monetary Fund. In today’s world, the cogent marshalling and clear communication of ideas and information are as important to international leadership as are military firepower and gross domestic product. Countries that lead by example will be more successful than those relying only on coercion or bribery. A plural society rich in knowledge and skills will prevail, at least in the leadership contest, over an authoritarian regime.

An enduring basis for a stable world order lies not in the threat or use of military force, but in the patient building of institutions that embody norms and behaviour that ordinary people and countries value and seek, backed if necessary by force.

The changes in international diplomacy offer new opportunities to move beyond the bloody nationalisms of the past century, to a new century of peace based on the welfare of people, not states.

## Note

Article co-authored with Steve Lee. At the time of article publication Steve Lee was executive director of the Canadian Centre for Foreign Policy Development in Ottawa.

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## NATO in the Balkans: Between failure and disaster

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*The Japan Times*, 1 April 2000

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One year after the start of the war over Kosovo, it is clear that those who thought they understood the Balkans were sadly wrong. A graveyard for would-be statesmen throughout the twentieth century, the Balkans throws up a difficulty for every solution. NATO's effective choices in Kosovo seem to have been reduced today to policy failure (abandon the dream of a multi-ethnic society living peacefully together) or policy disaster (be drawn increasingly into a quagmire that turns NATO into an object of hatred and attacks by both sides).

Kosovo confronted us with an abiding series of challenges regarding humanitarian intervention. Is it morally just, legally permissible and militarily feasible? If there are massive human-rights atrocities, can sovereignty be forfeited – either temporarily or for a limited part of territory – on humanitarian grounds? Is the use of force to settle international disputes justified outside the United Nations framework and without the prior authorization of the UN Security Council? Who decides (and following what rules of procedure and evidence) that mass atrocities have been committed, and by which party? Similarly, who decides what the appropriate response should be?

Military power is a brutal, ugly instrument and should only be used as a last resort. But once the decision is made, then from an operational and humanitarian point of view (because only so can military personnel, facilities and assets be most forcefully hit and civilian casualties be minimized), maximum force should be applied to achieve the goal of defeating the enemy as swiftly as possible. Air Marshal Ray Funnell, retired chief



of the Royal Australian Air Force, comments that the slow and hesitant use of military power transformed Operation Instant Thunder into Operation Constant Drizzle.

The United Nations is committed to the protection of the territorial integrity, political independence and sovereignty of all its member states. The Security Council lies at the heart of the international law-enforcement system. The justification for bypassing it to launch an offensive war remains problematic, and the precedent that was set remains deeply troubling.

It used to be said during the Cold War that the purpose of NATO was to keep the Americans in, the Germans down and the Russians out. Does Kosovo mark a turning point, changing NATO into a tool for keeping the Americans in, the Russians down and the United Nations out?

To supporters, NATO cured Europe of the Milosevic-borne disease of ethnic cleansing. To its critics, the NATO cure only worsened the disease. The trickle of refugees before the war turned into a flood during it, and afterward the Serbs were ethnically cleansed by the Albanians in revenge attacks.

In today's dangerously unstable world, full of complex conflicts, we face the painful dilemma of being damned if we do and damned if we don't. To use force unilaterally is to violate international law and undermine world order. To respect sovereignty all the time is to be sometimes complicit in human-rights violations. To argue that the UN Security Council must give its consent to humanitarian war is to risk policy paralysis by handing over the agenda to the most egregious and obstreperous.

The bottom-line question is this. Faced with another Holocaust or Rwanda-type genocide on the one hand and a Security Council veto on the other, what would we do? A new consensus on humanitarian intervention is urgently needed.

Part of that consensus must include promotion of discussion and agreement about, first, the point at which a state forfeits its sovereignty, and second, suspension of veto power in the Security Council in exceptional circumstances so that the support of a majority of the great powers is all that is required to permit states to engage in humanitarian war. One veto should not override the rest of humanity. Otherwise we might see more NATO-style actions with less or no UN involvement – and thus less order and less justice in the global community.

Formal amendment of the UN Charter is neither feasible in the foreseeable future nor necessary. In the 1990s, the veto-wielding powers generally abstained from the use and misuse of that power. The history of Russian and Chinese policy in the 1990s in the Security Council with respect to Yugoslav President Slobodan Milosevic is essentially one of co-

operation, not obstructionism. The major powers need to return to the shared management of a troubled world order.

Many of today's wars are nasty, brutish, anything but short, and mainly internal. The world community cannot help all victims, but must step in where it can make a difference. Selective indignation is inevitable, for we simply cannot intervene everywhere, every time. But we must still pursue policies of effective indignation. Humanitarian intervention must be collective, not unilateral. And it must be legitimate, not in violation of the agreed rules which comprise the foundations of world order.

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## Peace's high price in Kosovo

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*The Japan Times*, 9 April 2000

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I previously argued that to supporters, NATO cured Europe of the Milosevic-borne disease of ethnic cleansing. To critics, however, the NATO cure worsened the disease.

Most of the debate has centred around the impact of the war in Europe. There are two major extra-European ramifications regarding the use of force and the prospects of nuclear proliferation that may be even more significant for world affairs.

The paradox of war and peace is a constant refrain in human history. The incidence of war is as pervasive as the wish for peace is universal. Over the course of the twentieth century, from the Pact of Paris in 1928, through the League of Nations to the United Nations and the Geneva Protocols, the international community has progressively circumscribed the use of force. This was done first by narrowing the range of circumstances under which recourse to force is permitted; second, by subjecting the actions of states to the consent of the legitimate international authorities; and third, by bringing more and more of warring behaviour under the scope of the laws of war and international humanitarian law.

The Kosovo war was a major setback to this cause of progressively constricting the resort to force other than in self-defence. Would-be secessionists learned the lesson that terrorism can succeed in internationalizing a local conflict and provoking outside intervention against the state authorities. But governments concluded that if the most enlightened can use force outside their borders without UN authorization, then their own latitude for using force internally must be even greater.

The NATO campaign united Russians of all political persuasions in deep anger against the West. While the ailing and erratic Boris Yeltsin played Russian roulette with his prime ministers, wide swathes of people and politicians lost faith in the “good faith” of liberal democracies in conducting foreign relations on the basis of justice, equality and non-use of force. Western criticisms of the Russian use of massive force against Chechnya later in 1999 drew angry reminders of NATO action in Kosovo: an international war of aggression against a country that had not attacked any NATO member, as opposed to Russia’s actions within its borders against a group whose terrorist acts had reached all the way to Moscow, noted Russian commentators.

The prospects of a world order based on the rule of law are no brighter therefore as a result of Kosovo’s “liberation”. The overriding message was not that force was put to the service of law, but that might is right. This is especially so with the clear demonstration that the UN proscriptions on the use of force, and the authority of the UN Security Council as the sole legitimate custodian of international peace and security, can be so easily circumvented.

The national security calculations of many countries are likely to be affected in profound ways. It will surely have hardened the determination of security planners in Moscow, Beijing, Islamabad, New Delhi, Jerusalem and Pyongyang – not to mention Baghdad and Tehran – to put their faith in survivable nuclear forces rather than risk becoming the victims of the use of force by some future self-appointed guardians of world morality. At the Third Preparatory Committee meeting of the NPT 2000 Review Conference in New York last May, the Chinese publicly wondered if NATO would have bombed Belgrade had Yugoslavia been nuclear armed. Many other governments, alarmed at NATO triumphalism, made the same obvious connection in corridor conversations. They, too, might become interested in nuclear weapons to leverage future NATO or US military action.

Critics of the Kosovo war must concede the many positive accomplishments. Almost a million of Kosovo’s displaced inhabitants returned to their homeland. Milosevic was thrown out of Kosovo and has been confined to his lair in Serbia. The credibility of NATO was preserved, its new role of peace-enforcement throughout Europe was validated and Washington remains firmly anchored to Europe.

Supporters of NATO action may well argue that the price paid was acceptable in the circumstances. What they may not do is to deny that the price has been and is still being paid in and outside Europe, and that it is quite high.

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## The UN's impossible task

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*The Japan Times*, 28 May 2000

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The UN peacekeeping mission in Sierra Leone has drawn criticism from many commentators. While much of this may be justified, there is a danger of missing the forest for the trees. The specifics of what went wrong and what could have been done better and how are important. However, the more critical point is the structural dilemmas inherent in today's typical peacekeeping missions.

The United Nations was designed to cope with interstate war. Repelling or reversing a clear-cut cross-border aggression of one state by another, as of Kuwait by Iraq in 1990, is one of the few bottom lines in international affairs. Yet the disputes clamouring for UN attention today are almost all internal. Founded on the principle of national sovereignty, the United Nations is ill-equipped to cope with civil conflict.

Most civil conflicts have deep historical roots and are characterized by broad and mutual suspicions based on past traumatic experiences. UN intervention in sectarian strife must accordingly acknowledge the prospect of an indefinite commitment, which is not very attractive to Western governments with professional military forces.

To be effective in a peacekeeping role, the United Nations must negotiate with all significant sectarian leaders. But in doing so, the United Nations endows them with a degree of legitimacy. The Revolutionary United Front leader Foday Sankoh was, in fact, brought into the government of Sierra Leone. In return, however, leaders of ill-disciplined and uncoordinated guerrilla groups may be unable or unwilling to honour

the agreements made with the United Nations, as happened with the RUF.

By freezing a conflict, peacekeeping favours the status quo at the time of its deployment. This makes it more difficult for UN peacekeeping forces to stay neutral in a civil conflict than in an interstate war. Ceasefires “in-place” might legitimize ethnic cleansing by the militarily most powerful; efforts to delay a ceasefire until territorial gains have been forcibly reversed will drag the United Nations into the quagmire of an internal war.

Traditional peacekeeping forces interposed lightly armed troops to separate consenting combatants after a ceasefire. Civil wars scatter UN troops thinly over a wide geographical area under a tenuous ceasefire. These are more vulnerable to attacks when not deployed at fixed positions in a neutral area. The result can be that the United Nations has to devote more time, resources and personnel to protecting its mission than to accomplishing its goals – or risk having its soldiers taken hostage. All this explains why it is difficult to inject UN forces into active civil wars in which the fighting forces are unwilling to cooperate with the United Nations and there is little possibility of bringing pressure to bear on the several factions involved. The war in the Democratic Republic of the Congo has the potential for an even greater embarrassment for the United Nations than Sierra Leone.

The roles of peacekeeping operations have expanded to include humanitarian assistance and electoral supervision. These, requiring more military personnel, civilian police and technical experts, face distinctive difficulties in civil wars.

Should the United Nations use force against those who would challenge its authority? The difficulties associated with the organization, deployment and use of military force do not disappear simply because of UN authorization. States are reluctant to transfer control over their national armed forces to the United Nations because of doubts over its managerial capacity for military operations, scepticism about its institutional capacity to police the world wisely and effectively, and the fear of creating a military monster that might one day turn against them. A UN force is less than the sum of its parts.

The consensus on traditional peacekeeping was that peacekeepers should not have the obligation, the soldiers or the equipment to engage violators in hostilities. International peacekeeping forces express and facilitate the erstwhile belligerents’ will to live in peace; they cannot supervise peace in conditions of war. Turning a peacekeeping operation into a fighting force erodes international consensus on their function, encourages withdrawals by contributing contingents, converts it into a factional

participant in the internal power struggle and turns it into a target of attack by rival internal factions.

That is, peace-enforcement leads to “mission creep”, which in turn leads to ‘peacekeeping fatigue’. The predicament of peacekeeping soldiers on the ground is that they are unable to move forward into an unwinnable battle, unable to stay put taking casualties for no purpose and unable to withdraw without repercussions for national foreign policies and UN credibility. Australian General John Sanderson (retired), force commander of the generally successful UN operation in Cambodia, argues that peace enforcement is “war by another name”. Often the choice for the peacekeepers, he says, is “you either go to war or go home”.

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## Partnerships for humanitarian crises

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*The Japan Times*, 22 January 2001

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The number of refugees, displaced people and others of concern to the United Nations High Commissioner for Refugees (UNHCR) jumped from under 15 million in 1990 to over 22 million in 2000: a 50 per cent increase over the decade. Refugees are a symptom of a deeper malaise in the polities from which they have fled. The failure to establish satisfactory coping mechanisms is a symptom of a deeper malaise afflicting the world. The treatment meted out to refugees by the host countries – including the entire infrastructure of laws, regulations, administrative practices and personnel – separates a civilized from an uncivilized society.

Poverty, natural and man-made disasters spawn refugees. The demons of displacement include too much government, leading to tyranny; too little government, leading to anarchy; civil, revolutionary and international warfare; economic collapse; epidemics; and mass expulsions.

One catalyst to the sharp rise in refugee numbers is the phenomenon of complex humanitarian emergencies that produce multiple crises: collapsed state structures; humanitarian tragedies caused by starvation, disease or genocide; large-scale fighting and slaughter between rival ethnic or bandit groups; horrific human-rights atrocities; and the risks of competitive intervention by outside powers. The nature, frequency and scale of such emergencies have strained the capacity of international relief agencies, heightened social concerns in host countries and increased the interest in addressing the roots of the problem and searching for other preventive measures.



Refugees need protection, integration in neighbouring countries and resettlement in third countries. Wealthy countries' aid programmes aim in part to eliminate the causes of the refugee problem by contributing to peace, prosperity and stability. Success in development would help the most needy and alleviate the pressures for economic refugees, while peacebuilding efforts would prevent the eruption of violent conflicts and so avoid the exodus of refugees from war.

We have to address the questions of repatriation to home countries, resettlement in host countries and credible and effective international mechanisms and regimes for coping with refugees. Refugees must not become victims twice over, first of war and then again of peace by being forced to return home before conditions are right.

The response-time axis may be divided into three phases: before, during and following the crisis of displacement. The degree of government – tyranny and anarchy as causes of refugees – can be addressed in a preventive way if outsiders give greater attention to incipient problems and confront the myth of state sovereignty that precludes outside intervention until after the onset of a full-blown crisis. Economic collapse can be averted through timely and adequate foreign investment and stabilization of commodity prices. One possible solution to the problem of multi-ethnic societies is partition into two or more states: except that partition too can leave its own enduring legacies of conflict, as in Northern Ireland, the Indian subcontinent and the Korean Peninsula.

The most effective and least disruptive solution would be to institute preventive measures before the situation deteriorates to the point of a massive outflux of refugees. This can include the construction or strengthening of civil society and democratic institutions. Peacebuilding measures before the onset of a major crisis can be followed by a range of peace-keeping efforts during the immediate crisis of refugees. After the crisis is over, the palliative measures undertaken during it must be followed once again by curative measures designed to tackle the deeper underlying causes.

If the problem of refugees is exacerbated by weakened state structures, then one solution is to strengthen the institutional foundations of fragile states. But a word of caution is in order. In some countries the state is a tool of a narrow family, clique or sect. Strengthening the apparatus of the state in such contexts will give more powerful means of oppression to the dominant group.

The mandate of UNHCR has shifted subtly to provide “protection plus solution”. Because it is very difficult to provide protection to skeletons, the UNHCR has moved towards an activist role in the delivery of emergency relief. Humanitarian responses must be guided by protection principles, not political expediency. But because the refugee problem is political as well as humanitarian, the political dimensions of the tragedy must not be ignored.

There is the need to create early warning systems for alerting us to the danger of imminent humanitarian tragedies. Nongovernmental organizations could be especially useful components in the early warning network. But again, two notes of caution. First, in many recent cases we have not lacked for early warning of impending disasters. The greater need may be to examine how the world community can be made to heed such warnings.

Second, there is the opposite danger of adopting policies that are driven by the CNN factor – by the electronic images of horror flooding our living rooms during the daily news bulletins. The international media, dominated by Western conglomerates, interprets the world through their eyes. Our responses to humanitarian tragedies should be driven by the needs of the victims and by our capacity to render effective assistance. The resemblance between this and the CNN factor can sometimes be coincidental.

Other genuine tensions and dilemmas confront our efforts to deal with the refugee problem, for example between the logics of peace and justice. Peace is forward-looking and may require reconciliation between rival communities that have to learn to live together once again. Justice looks back and requires trial and punishment of the perpetrators of crimes against humanity. But the pursuit of human-rights violators can delay and impede the effort to establish conditions of security so that displaced people can return home and live in relative peace once again. The tension must be reconciled on a case-by-case basis rather than on a rigid formula. And it is best resolved by the countries concerned, not by outsiders.

Humanitarian agencies are also having to face up to ambiguities in the field. The Cambodian refugee camps on the Thai side of the border were the main catchment area for the Khmer Rouge cadres. Were international agencies, in helping the Cambodian refugees, in effect sustaining the Khmer Rouge? Likewise, to what extent were outside agencies, in helping to alleviate the sufferings of Rwandans in refugee camps, sustaining rival groups of killers?

How do we reconcile community obligations towards large numbers of internally and externally displaced people with the sacrosanct principle of state sovereignty? On the other side of the equation, limits exist to the physical, environmental, bureaucratic and social capacity of any country to absorb refugees.

The dilemmas and tensions in turn highlight the need for strategies and solutions that integrate national, regional and global efforts, and for mechanisms that coordinate the efforts of national governments, NGOs and international organizations. Partnership is called for between the different provider organizations, not conflict and competition.

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## Vandalism in Afghanistan and no one to stop it

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*The International Herald Tribune*, 6 March 2001

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The world has watched the destruction of Afghanistan's Buddha statues with impotent horror. Among the outraged spectators is the Bharatiya Janata Party government of India. The party's ideological extremists destroyed the 400-year-old mosque in Ayodhya in December 1992. One wonders if they see the parallel.

The barbarism of the Taliban Islamic militia in Afghanistan seems to know no bounds. After placing most of Afghanistan under the harshest rule, the Pakistan-backed Taliban is now setting out to destroy Afghanistan's historical treasures and identity.

Its reclusive and faceless leader, Mullah Mohammed Omar, who has hardly ventured anywhere beyond his sanctuary in the southern Afghan city of Kandahar and parts of Pakistan and has not been photographed to date, has issued the order for the destruction of all "statues" as "un-Islamic". His main target is a 1,500-year-old statue of the Buddha in the central Afghan province of Bamiyan. This 53-metre high sculpture, carved into a cliff face, is the most famous landmark in Afghanistan and the most visible testimony to the country's Buddhist past before the arrival of Islam in the ninth century. It is one of the few historical treasures to have survived the country's turbulent and violent history.

The statue happens to be located in the province that has traditionally housed the Afghan Shiite Muslim minority, which has been a target of the Taliban's Sunni sectarian hatred. The Taliban took over the province in 1998. In the last few months Bamiyan has changed hands several times between the Taliban and the opposition. Since 1998 the Taliban has

threatened to destroy the Buddha statue and its subsidiaries and has carried out horrific massacres of the province's Shiite inhabitants. But not until now did the Taliban leader issue the specific order for destruction of the statues. This comes at a time of mounting failure to crush all opposition to the Taliban's barbaric rule in the name of Islam. There is frustration, too, at failure to gain international recognition as the legitimate government of Afghanistan.

The destruction of pre-Islamic statues ought to prove counterproductive. It is important that the international community stand firm against this act of the Taliban. There is nothing in Islam that could justify the destruction of history and culture. Islam is a rich religion that aims to enlighten its followers about their past and to guide them to a bright future. It shares with Buddhism an emphasis on enlightened compassion and tolerance. The most important aesthetic quality of all statues of the Buddha is serenity.

In India, meanwhile, a group of militants has been determined to prove that Hindus can match the Taliban in discrediting a great religion. Having destroyed the sixteenth century mosque eight years ago, religious nationalists now embarrass the nation by attacking Christians for being un-Indian. The political payoff to the Bharatiya Janata Party comes from attention being drawn to Sonia Gandhi's Italian Catholic background. The party is committed to refashioning the Indian polity in the image of "Hinduness". Party candidates ask voters to choose between "Rome rule" and "Rama rule", Rama being one of the main Hindu gods and "Rama rule" being a popular metaphor for an idealized state of affairs. Like the Taliban, the Hindu extremist movement draws vitality from a reaction to the perceived evils of foreign cultural imperialism. In the name of cultural purity, they engage in cultural vandalism of the most primitive sort.

To destroy history is to erase collective identity. The Bamiyan Buddha was as much a part of every Afghan's cultural treasure as the Taj Mahal, an Islamic monument and still a functioning mosque, is part of every Hindu's cultural inheritance.

For 1,500 years the Buddha smiled down to travellers on the great silk road. One of those was Babur, founder of the Mughal empire, after whom the sixteenth century mosque in Ayodhya was named. Truly the statues were a common heritage of mankind. Now they are disappearing.

Who has responsibility for protecting humanity's common heritage? How can we hold cultural criminals accountable for their acts of desecration and destruction?

## Note

Article co-authored with Amin Saikal. Amin Saikal is professor of political science and director of the Centre for Arab and Islamic Studies at the Australian National University.

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## Injustice across borders?

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*The Japan Times*, 13 July 2001

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The arrest and transfer of former Serbian strongman Slobodan Milosevic to the international tribunal at The Hague is but the latest of several dramatic twists and turns in the last few years in the search for universal justice. Just as the indictment issued against him during the NATO war in Kosovo was described as an electrifying moment, so his passage to The Hague has been hailed as a defining moment in international justice.

Activists assert the primacy of justice without borders; sceptics warn of international anarchy if we depart from *realpolitik* in a state-based system of world order; opponents fear outcomes of injustice across borders. More worrisome than the challenge to national sovereignty is the unpredictability of the potent new weapon as an instrument of the new international order. Its potential for abuse for mischievous, vexatious and vindictive purposes is unlimited unless codified in permanent and universal institutions.

As we move inexorably from the culture of national impunity of previous centuries to a culture of international accountability more suited to the modern sensibility, it is worth making four arguments.

First, in East Timor justice was seen not to have been done when six men convicted of killing three UN aid workers (an American, a Croat and an Ethiopian) were given sentences of 10 to 20 months by a Jakarta court on 4 May. The UN personnel were stabbed and stoned to death and their bodies were set alight by pro-Indonesian militias in one of the worst attacks ever against UN staff anywhere in the world. The sentences were so manifestly inadequate to the gravity of the crimes that they were tan-

tamount to a very public slap in the face of the international community. The injustice must not be permitted to stand.

Second, with regard to former Presidents Suharto of Indonesia and Augusto Pinochet of Chile, as well as others around the world, justice has not yet been seen to be done. Former dictators need to be called to account for their past deeds. If the judicial route is taken, they must be subjected to free and fair trials, but in their own countries. In the end, the decision on whether to try them or go down the route of truth and reconciliation commissions has to be made by the people and the countries concerned, not by outsiders.

Europeans in particular need to avoid the temptation of launching a fresh wave of judicial colonialism, substituting their courts and morality for the choices made by the affected societies. It is patently absurd for Israeli President Ariel Sharon, or any other former head of government or state (or former secretaries of state like Henry Kissinger), to have to risk being arrested, for past actions in their own or in a second country, in a third country on the orders of an investigating magistrate in a fourth country (like Belgium or Spain), following the precedent of the Spanish Inquisition against Pinochet while he was visiting Britain. Only the previously traumatized and war-torn societies can make the delicate decisions and painful choices between justice for past misdeeds, political order and stability today, and reconciliation for a joint future tomorrow.

Third, it will be difficult for justice to be seen to be done in the case of Milosevic at The Hague tribunal. As the first international trial of a former head of state, this would have been challenging enough in any case. NATO's unlawful war against Serbia in 1999 has made it deeply problematic, for a familiar litany of reasons. The tribunal is sited in a NATO country, it was set up by a Security Council in which NATO countries are disproportionately dominant, its expenses are met mainly from NATO members' contributions, the indictment of Milosevic during the war on the basis of evidence supplied by NATO infected the process of criminal justice with security-political calculations, and the enforcement of the tribunal's indictment of Milosevic and cronies as war criminals has been totally dependent on the same NATO powers.

The US rejection of the International Criminal Court seriously compromises American moral standing with respect to ad hoc international criminal tribunals. Some wonder if fears of politically motivated prosecution of Americans – a stated reason for staying outside the ICC – are not derived from experience of selective (and highly expensive) prosecutions of demonized adversaries and enemies through political organs like the Security Council. International economic blackmail – financially on its knees, Yugoslavia was promised almost \$1.3 billion in aid immediately after Milosevic was turned over to The Hague – and domestic power

struggles have been greater determinants of the fate of Milosevic than concerns about criminal justice.

Ad hoc tribunals leave the process of international law more vulnerable to the pursuit of power politics than would be possible in the ICC. Legal principles should be used to advance the cause of universal justice, not to settle political scores and advance victors' justice.

The failure to prosecute with matching zeal mass crimes committed against Serbs by their historic Balkan enemies, including acts of reverse ethnic cleansing by Kosovars since the 1999 war under the protective noses of NATO troops, feeds the sense of victimhood among Serbs. What is most needed instead is an open trial within Serbia that brings home to the Serbs beyond any reasonable doubt the crimes that were committed in their name. They are the ones who need to confront the recent ugly past, punish the guilty in their midst and move on with their lives. It is difficult to see how overriding the constitutional court by domestic political rivals will help to embed and strengthen democratic structures of governance that are robust and resilient and a system of power based on the rule of law. Only an open trial conducted inside Serbia will hold up a mirror in which the collective past can be seen in all its ugliness.

Fourth, the above doubts notwithstanding, justice must and will be done at The Hague with regard to Milosevic. There is no question but that he was at the centre of the most murderous decade in Europe since World War II. That others may have escaped justice is regrettable. That may detract but cannot negate the importance of bringing the first former head of state to international criminal judgment. At the end of the day, most of us will go to bed with the sense of quiet satisfaction that the wheels of justice have caught up with him, and that he will get his just desserts.

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## When to intervene: Collective might in service

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*The Japan Times*, 20 December 2001

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*The Responsibility to Protect*, the report by the International Commission on Intervention and State Sovereignty, was presented to UN Secretary-General Kofi Annan in New York on 18 December. ICISS was set up by Canadian Foreign Minister Lloyd Axworthy and fully supported by his successor, John Manley, in response to Annan's challenge to forge a new consensus on the competing principles of international humanitarian concerns and national sovereignty. ICISS members were carefully chosen to reflect a range of geographic, political and professional backgrounds. The work over the past year took us to all continents and most major capitals to hear and reflect on different streams of international opinion.

The report was aimed at changing conceptual language from "humanitarian intervention" to "responsibility to protect" and ensuring that intervention is carried out with due diligence.

Our core principle is that the primary responsibility for protecting people of a state lies with the state itself. When a population of state suffers serious harm because of civil war, insurgency, repression or government failure and the government of the state is unwilling or unable to halt or avert the harm, the principle of non-intervention yields to the international responsibility to protect.

The responsibility to protect embraces prevention, reaction and reconstruction. The responsibility to prevent requires that we address the causes of internal conflict and other man-made crises that put populations at risk. The responsibility to react may require responding to situations of compelling human need with sanctions and international



prosecution and, in extreme cases, military intervention. Reconstruction requires us to provide, particularly after military intervention, full assistance with recovery and reconciliation, addressing the causes of the harm that led to the intervention. The costs of having walked away from this responsibility in Afghanistan a decade ago are obvious.

We believe prevention is the most important dimension. Prevention options should be exhausted before military intervention is contemplated. Prevention and reaction should always involve considering less intrusive and coercive measures first. For military intervention to be warranted, people must be suffering, or face the imminent threat of:

- Large-scale loss of life due to deliberate state action, neglect or inability to act, or a failed state situation; or
- Large-scale ethnic cleansing, whether carried out by killing, forced expulsion, acts of terror or rape.

Even when loss of life or ethnic cleansing crosses the “just-cause threshold”, intervention must be guided by the precautionary principles of right intention, last resort, proportional means and reasonable prospects for success.

The primary purpose of intervention, regardless of what other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned. Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored. The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the human-protection objective. The consequences of inaction must be judged likely to be worse than those of action.

Who decides these questions? We believe that there is no better or more appropriate body than the Security Council to authorize military intervention for human-protection purposes. The task, therefore, is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has.

Security Council authorization should in all cases be sought prior to any military intervention. Those calling for intervention should formally request such authorization, or have the Security Council raise the matter on its own initiative, or have the secretary-general raise it under Article 99 of the UN Charter.

The Security Council should deal promptly with any request for authority to intervene amid allegations of large-scale loss of human life or ethnic cleansing. It should seek adequate verification of facts or conditions on the ground that may support a military intervention. The permanent five members of the Security Council should agree not to apply their

veto power in matters where their vital state interests are not involved, or to obstruct the passage of resolutions authorizing military intervention when majority support exists otherwise.

If the Security Council rejects a proposal or fails to deal with it in a reasonable amount of time, the General Assembly in Emergency Special Session may consider the matter under the “Uniting for Peace” procedure. Or, regional/subregional organizations with jurisdiction may take action, subject to subsequent authorization by the Security Council.

During all deliberations, the Security Council should take into account that its failure to discharge its responsibility to protect people in conscience-shocking situations may lead to concerned states using other means to resolve the crisis followed by further erosion in the stature and credibility of the United Nations.

Another aim of the report is to identify operational guidelines for intervention. Objectives and mandates must be clear with the resources to match. Involved partners must have a common military approach – unity of command as well as unequivocal communications and chain of command. There should be an acceptance of limitations; the objective must be to protect a victimized population – not defeat an enemy state.

The fact that a dozen people of diverse backgrounds and different starting position have been able to agree on the above encourages us to believe that an international consensus can indeed be forged around these ideas and principles.

When the world is again confronted by challenges on the scale of Rwanda, Kosovo and East Timor, we hope it will be better prepared to act with principled force, rather than as a coalition of the unwilling, unable and unlike minded.

## 12

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## Commission a model of global cooperation

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*The Japan Times*, 28 January 2002

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Responding to the call by UN Secretary-General Kofi Annan in September 1999, Canadian Foreign Minister Lloyd Axworthy set up an independent, 12-member International Commission on Intervention and State Sovereignty to try to bridge the divide between international intervention and national sovereignty. The report of the commission was formally presented to Annan in New York on 18 December 2001.

There is already a vast literature on the subject that ICISS was set up to address, including studies by the Danish and Dutch governments. Why bother with another study? What did we do that was a substantial advance?

My answer is that ICISS had six distinguishing features: balance, independence, outreach, comprehensiveness, innovativeness and political realism.

The commission was very balanced in composition, starting with the co-chairs, with regard to professional backgrounds (former heads of state and Cabinet ministers, long-serving UN officials, military generals, scholars and journalists), continents-cum-civilizations, industrialized-developing country perspectives, and initial starting positions on the intervention-sovereignty debate, with some pro-intervention and others anti-intervention. The co-chairs were Gareth Evans of Australia and Mohamed Sahnoun of Algeria, and the remaining 10 commissioners were Gisele Côte-Harper (Canadian), Lee Hamilton (American), Michael Ignatieff (Canadian), Vladimir Lukin (Russian), Klaus Naumann (German), Cyril Ramaphosa (South African), Fidel Ramos (Philippine),

Cornelio Sommaruga (Swiss), Eduardo Stein (Guatemalan) and myself (Indian).

The excellent personal chemistry between the commissioners, combined with their willingness to listen to one another and adapt and evolve their thinking, without necessarily giving up bottom lines, enabled us to come up with a unanimous report that is not merely a collection of clichés and platitudes. As is noted in the foreword from the co-chairs, “The commissioners brought many different personal views to the table, and the report on which we have agreed does not reflect in all respects the preferred views of any one of them. In particular, some of our members preferred a wider range of threshold criteria for military intervention than those proposed in our report, and others a narrower range. Again, some commissioners preferred more, and others less, flexibility for military intervention outside the scope of Security Council approval.”

If just 12 reasonable, experienced and intelligent people had failed to come to an agreed report, the prospects of the international community forging a new consensus on the contentious subject of military interventions would have been bleak indeed.

Of course, such a stellar assembly of talent and experience would have been wasted had the Canadian government tried to exercise political control over the work of the commission, by setting the agenda and pre-determining the outcome. Instead, the commission functioned as a genuinely independent body, with no commissioner being a “shrinking violet” and all prepared to speak their minds.

Third, the willingness to listen and adapt was put to the test in an extensive outreach exercise that was one of the most valuable parts of the ICISS process. Commission meetings and round tables were held in almost all continents and major capitals, involving continent-wide representatives, over 200 in total, from all sectors and with a cross-section of views. In chronological order, commission meetings were held in Ottawa, Maputo, New Delhi, Wakefield (Canada) and Brussels; round tables and consultative meetings were held in Ottawa, Geneva, London, Maputo, Washington, Santiago, Cairo, Paris, New Delhi, Beijing and St. Petersburg.

Had we not undertaken such an intensive and extensive round of consultations, the ICISS report would have been substantially different. The final report does reflect a genuine effort to incorporate as many of the views that were expressed in Cairo, New Delhi and Santiago as well as Beijing, London, Paris and Washington as possible.

Fourth, the ICISS report is comprehensive in three senses. It covers prevention, intervention and reconstruction, as well as the question of lawful authority and the operational dimension of military interventions. The inputs from the round-table discussions contributed greatly to the comprehensiveness of the commission’s final product, which consists of

a supplementary research volume in addition to the main report. The commission was assisted not just by a secretariat provided by Canada's Department of Foreign Affairs and International Trade, but also by a research team under the direction of Stanlake Samkange of Zimbabwe and Thomas G. Weiss of the United States. The work of the second volume was greatly assisted by several specially commissioned essays, plus additional submissions and contributions, from over 50 specialists. The research volume is supported by an extensive and annotated bibliography that contains more than 2,200 entries, and the entire report and volume is available in a CD-ROM that is key-worded and indexed to facilitate ease of research.

Fifth, the "responsibility to protect" formulation is, we believe, genuinely innovative, as was the "sustainable development" of the Brundtland Commission. Indeed the Brundtland Commission's success in reconciling the previously opposed concepts of development (which is exploitative) and conservation had formed an inspiring model for us from the start of our deliberations. It is worth noting that ICISS co-chair Sahnoun was a member of the Brundtland Commission. The responsibility to protect encapsulates international solidarity and links the state to the international community in a responsibility continuum.

Finally, the ICISS discussions and report were always grounded in political realism. For example, we were not interested in solving all the world's problems, but stuck narrowly to our mandate on intervention and sovereignty. Thus we resisted the temptation to recast our report in the light of the terrorist attacks of 11 September 2001, concluding that horrific and urgent as the latter was, self-defence is conceptually and operationally distinct from the protection of at-risk foreign populations.

Similarly, we resisted the temptation to urge amendments to the UN Charter, for example with respect to the composition and functioning of the Security Council. And the work of the commission, including possible follow-up action after publication of the report, was planned to be plugged into international political circuits through an International Advisory Board comprising several serving and former foreign ministers, as well as a select few other eminent experts, under the chairmanship of Lloyd Axworthy.

## 13

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## Help the huddled masses

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*The Japan Times*, 25 February 2002

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To Canberra's continuing irritation, the scandal of the Norwegian freighter Tampa will not go away. It now turns out that the Australian government's election victory last year may have been conceived in deceit and born in sin.

To the evident distress of the highly professional Australian military forces, false statements were made about their encounter with the refugees aboard the Tampa. Parents aboard the ship, it was said in the lead-up to the election, had thrown children overboard to force the Australian Navy to rescue them. Australia did not need and would not admit such despicable people, declared the stout-hearted prime minister. Doubts were stilled with the publication of a navy photograph showing the children in water.

Well, we now know that their boat had already sunk and that they needed rescuing. Photographs exist to prove all this but the distortions of truth were maintained throughout the election campaign until election day. In addition, conventions governing the "collateral" collection of domestic-sourced data by Australia's intelligence services may also have been breached. The legitimacy of the government's mandate is in doubt, and the prime minister's future is being called into question by political opponents and some independent commentators.

Australia today is a wonderful country to live in as an Asian. Hence, of course, its attraction to many who in their home countries are trapped in endless cycles of violence, upheaval and carnage. Desperate situations drive them to desperate measures, like putting their lives in the hands of

human traffickers in the hope that they can cross the seas to the safety of Australian shores, and then somehow become permanent residents.

Last year's Tampa saga revealed critical gaps in international law and conventions and the bankruptcy of international morality. Australia's humanitarian reputation took an international battering with the Rambo-like subordination of diplomatic dialogue to commando raids. But then decency, compassion and humanity are not the first words that come to mind in thinking of Australia's current official policy towards (non-white) refugees. Electoral calculations influenced the decisions of a government that had trailed the opposition in most opinion polls for most of last year. Had the boatload of refugees been white farmers fleeing a reign of terror in Zimbabwe, would Canberra have reacted equally harshly? I doubt it.

Of course, as a matter of law, asylum-seekers have no right of entry to Australia or any other country. Nor does the law seem to be clear on what country, if any, had the responsibility to accept the refugees aboard the Tampa: Australia, Indonesia, Norway or another place?

As a matter of politics, acting and talking tough towards detainees – "illegals" – played well to the voting gallery. But has the government boxed itself into a lose-lose situation? Amid growing international shame among the Western countries, whose opinion matters to a people who are fundamentally decent at heart and have a deeply ingrained sense of fair play, tragedy among the refugees, the mounting political and financial costs of the "Pacific solution" (whereby the refugees are dispersed among the small Pacific island countries), will Australia have to climb down from its perch eventually and grant them residency anyway?

As a matter of morality, the government has precious little credit left. The Tampa was penalized by Canberra for responding to a ship-distress call for the area issued by Canberra. Scenes of heavily armed soldiers in combat fatigues repelling unarmed refugees, including pregnant women and children, were an international public relations disaster. Continuing daily images from the detention centre at Woomera have merely reinforced the initial shock at realizing the ugliness of Australia's detention policy. And this from a country that presumes to lecture others on human rights and humanitarian principles.

Clearly the huddled masses cannot be forced back to the countries whence they fled in such desperation. Nor does it make sense to force them into other countries farther away against their will. It makes no sense to send them to Norway, for example, when Australia is already here, the people want to stay in Australia, and official UN statistics show Norway's refugee intake per capita to be three to four times that of Australia. The public-relations photographs of a geographical distribution of refugees among a handful of host countries around the South Pacific may

not be entirely honest. What proportion will eventually come back quietly into Australia after proper processing?

The queue-jumper argument, used for effect by the government in domestic politics, is conceptually flawed. If this group of people waited patiently in “queue”, they would not be admitted into Australia in due course when it came to their turn. That is why they are not interested in forming a queue as such. The floodgates argument also seems rather far-fetched.

Leadership consists of setting standards of behaviour, explaining to people why they matter, and persuading and coaxing them into adopting proper behaviour. There is a difference between being resolute and strong – a “compassionate conservative”, if you will – on one hand, and being stubborn and bone-headed, on the other. It requires wisdom to know the difference, and courage to act on the difference.

Instead, in Australia the currency of parliamentary politics and democratic elections has been debased and the integrity of defence forces and intelligence services put at needless risk of being compromised. Australian moral and political leadership has been found sorely wanting.



## 14

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## In the wake of India's tragedy, six reasons for hope

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*The International Herald Tribune, 25 March 2002*

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The death of more than 600 people in the recent sectarian riots in Gujarat state was a sobering reminder of the primeval passions and tribal savagery that can be unleashed so ferociously and quickly in India. They were a corrective to the excessively optimistic view of the world's second most populous nation that saw only an emerging information technology powerhouse and a vibrant, modern, democratic country.

With the riots, the mask of sophistication slipped to show the ugly face of Hindu India. Independent India was founded as a secular liberal democracy at home and a nonaligned crusader for nuclear disarmament abroad. Jettisoning the economic statism of the Nehru era has done much to unshackle India's entrepreneurial skills and jump-start economic growth, although the reforms have been neither broad, deep nor fast enough.

The abandonment of the rest of the Nehru legacy has been less welcome. The Bharatiya Janata Party, which governs Gujarat and is the dominant coalition partner in the federal government, has a different vision of India – as a Hindu nuclear power, with Muslims accepted on the majority's terms.

Dependent on other parties to retain power, the BJP-led government has sought to keep Hindu chauvinism in check at the federal level. But the party's ideologues and activists, unhappy with the compromises of office, are determined to rub Muslims' noses in the dirt of where once stood Ayodhya's sixteenth century mosque, demolished in December 1992 by extremists who want to construct a Hindu temple on the site.

Yet there are six developments that observers have largely overlooked in the recent tragedy. They give some hope for the future of India.

First, most Indian Muslim leaders condemned the burning alive of Hindu activists in train carriages that caused the riots. The retaliatory attacks on Muslims were condemned with equal passion by Hindu religious and political leaders across the party spectrum. Such immediate, unequivocal and forceful condemnations are rare but welcome. Prime Minister Atal Behari Vajpayee, the BJP leader, expressed his anguish by saying that Indians must hang their heads in shame.

Second, the riots were confined to one state. A decade ago, if a large group of Hindus were burnt alive in railway carriages by Muslims, rampaging Hindu mobs would have killed Muslims in other states. The death toll was less than half that of the riots that followed the destruction of the Ayodhya mosque.

Third, the fact that the last major Hindu–Muslim riots took place a decade ago is a pleasant shock, precisely because they have been so commonplace in modern Indian history. The riots were an atavistic regression, not the continuation of an inexorable trend.

Fourth, even in Gujarat there were examples of Hindu families sheltering Muslim neighbours from marauding mobs. Maybe not many, certainly not enough; but more than the press covered, preoccupied as it was with the horrific killings.

Fifth, Indian democracy has called those allegedly involved in the riots to account. The press was uniformly hostile to the BJP in the state and federal governments. Opposition parties have held the BJP's collective feet to the fire for their failures at both state and federal levels. Voters will punish the governing party in the next round of elections.

Sixth, democratic government is aided by the supremacy of the rule of law. Since the riots, the Supreme Court of India has ruled that Hindu militants may not perform their prayers at the disputed site in Ayodhya. The Hindu identity of the judges was irrelevant to their deliberations and verdict.

This is not to deny the horror of what happened in Gujarat, nor downplay the gravity of the challenge to secular, inclusive rule in India. Religious nationalists have defiled Hinduism, violated its core tenets and endangered national integration and strength.

It would be ironic if India should head down the self-destructive path of sectarian extremism just as its neighbours Pakistan and Sri Lanka are making determined efforts to cleanse themselves of such violence.

## 15

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## Peacekeeping: Diplomacy's odd couple, the US and the UN

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*The International Herald Tribune*, 26 June 2002

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As the United Nations marks the fifty-seventh anniversary this Wednesday of the signing of its founding charter, many Americans see the United Nations as a pretentious, ponderous and pompous non-power in world affairs. They believe it should scale down its ambitions to a much more modest level.

The United States, of course, has much to be immodest about. The basic structure of the United Nations reflects the assumption of a world of five major powers. But today there is only one superpower, the United States, coexisting uneasily alongside only one overarching international organization.

Americans bemoan the inability of the United Nations to bring rogue states to heel. Yet many non-American critics of the United Nations also despair at the periodic US tendency to behave like a rogue superpower, responsible to no one but the US Congress and the American voter.

The terrorist attacks on America in September showed that the US homeland is vulnerable to quarrels rooted in complex conflicts in distant lands. Outsiders hoped that September 11 would change the United States and prompt it to re-engage with the international community. Yet it appears Americans concluded that September 11 reduced their need to make concessions to the nebulous “international community” on vital national security issues.

But US power, wealth and politics are too deeply intertwined with the crosscurrents of international affairs for unilateral disengagement to be an option. The UN Security Council, the proper body for authorizing

international use of military force, is bad at waging wars. As a result, maintaining world order in the past 50 years has depended more on United States than UN ability and will.

The United States is uniquely qualified to be the sole superpower because it is a virtuous power. No other country, historically or in recent memory, has a better record of major power behaviour. But Washington cannot construct a world in which all others have to obey universal norms and rules, while it can opt out whenever, as often, and for as long as it likes on such norms concerning nuclear tests, landmines, international criminal prosecution, climate change and other regimes.

Peacekeeping will remain the instrument of choice for contemporary conflicts in places like Afghanistan, East Timor, Sierra Leone and the Balkans. Peacekeeping will thus define the United States–United Nations relationship. If Washington is perceived to be unwilling to support peacekeeping in messy conflicts in faraway countries, it will erode America's ability to harness UN legitimacy to causes and battles that may be more important to the United States, such as the war on terrorism.

In addition to being the pivotal permanent member of the Security Council, the United States is the main financial underwriter of UN peace operations and exercises. It has unmatched influence on their establishment, mandate, nature, size and termination.

America's goal is to make UN peace operations efficient, cost effective and selective, increasing the professional military capabilities of the United Nations but leaving war fighting to multinational coalitions.

The level of informed American interest about the United Nations is so low that any administration will always be able to distance itself from spectacular failures of UN peacekeeping, as with Somalia and Srebrenica. Washington was jointly culpable in both disasters.

US participation in enforcement operations under direct UN command can be ruled out. Its participation in other operations, whose creation requires US consent, will be limited to providing key transport, communications and logistics units and skills, and bearing the main financial burden.

UN peace operations – some of which are coalitions of the unwilling, unable and unlike minded – are only one of many foreign policy tools available to the United States. Others include multilateral action through the North Atlantic Treaty Organization (Kosovo), ad hoc multinational coalitions (the Gulf War), or unilateral action if vital US interests are involved.

In non-UN operations, the United States would prefer to act after Security Council authorization, but will not accept that as a mandatory requirement for the use of military force overseas. The United States has an equally compelling interest in promoting the norm that the United

Nations is the only acceptable legitimator of international military action for all except the United States and NATO.

Washington thus faces a tough dilemma between instilling the principle of multilateralism as the norm of world order, and exempting itself from the same principle because of a strong belief in exceptionalism – and in its identity as the virtuous power.

## 16

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## Reforming the UN: An encouraging start under Annan

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*The International Herald Tribune*, 19 July 2002

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When Kofi Annan was re-elected unanimously and six months earlier than necessary as secretary-general of the United Nations, one of the arguments was that he had injected a spirit of reform into the organization. Indeed, under his stewardship the United Nations has been more receptive to reform than commonly realized.

Internal structural changes have streamlined coordination, facilitated information sharing, strengthened cohesion and given greater strategic direction to the work of the world body. The introduction of a results-based budgeting system has helped the Secretariat to better shape the intended outcomes of its work. Changes in recruitment, promotion and rotation procedures are creating a work force whose performance is driven increasingly by merit and competence, not tenure and precedent.

This does not mean that the United Nations can sit back and rest on its laurels. The gap between promise and performance remains unacceptably large. For example, it is feared that the next group turning to the United Nations for protection may be cruelly betrayed because the world body lacks the mandate or resources to act.

Structural reforms in the Security Council remain stalemated and most countries see it as having been captured by the major powers. The main donors are frustrated with the protracted, wasteful and counterproductive posturing in the General Assembly. Summit conferences become battlegrounds for vested groups to carry on ideological trench warfare by other means. But the burden of changing all this rests with governments, not the organization.

Still, for most people, the United Nations takes on practical meaning in their own country. It has moved increasingly to a common framework for the provision of services and adopted the concept of unified country teams. It has strengthened the capacity of resident coordinators to serve the whole system, avoid a proliferation of UN offices, and enable country teams to draw on the best expertise throughout the system to meet the needs and requirements of developing countries.

The United Nations works increasingly closely with civil society to combat disease, poverty and humanitarian disasters. The Global Compact, a principles-based framework for engaging the private sector with the United Nations, may ultimately prove important in instilling civic virtue in the global marketplace.

The Brahimi Report contained far-reaching recommendations on improving the efficiency and effectiveness of UN peace operations. Many have already been implemented, leading to a strengthened Department of Peacekeeping Operations through a substantial augmentation of staff and more integrated management of peace operations.

An externally commissioned report on Rwanda and an in-house report on Srebrenica offered candid, critical accounts of flawed operations.

In Kosovo, the United Nations has helped large numbers of people return home and rebuild lives with a semblance of normalcy. In East Timor, it helped a traumatized people give birth to a new nation through a ring of fire. Despite initial wobbles, it has overseen the transition to free and fair elections in Sierra Leone and perhaps helped avert another famine in Ethiopia-Eritrea.

The Security Council has been working better. It is now more open and transparent in decision-making. There is wider consultation with non-members. Recently the council held an open session on the contentious subject of the International Criminal Court on which the five permanent members are deeply divided.

The council has been more daring and imaginative in tackling threats to peace and security on a broader front, including trade in conflict diamonds and a special session on AIDS.

The Monterrey Conference on Financing for Development was unprecedented in bringing together different parts of the international system, including the international financial institutions.

The net result of the reinforcing cycle of reforms, reviews and recommendations has been to transform the UN leadership culture and management structure, enabling it to act with greater unity of purpose.

But the agenda for reform is never complete. The United Nations must anticipate and lead change. But it can do so only with the will of member states, the commitment of staff and the support of the peoples of the world.

The United Nations must continue to change the way decisions are made. It must lift the overall quality of decision-making in response to the rising tide of demands and expectations at a time when resources are limited.



## 17

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## The ICC: When guilt goes beyond crime

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*The Japan Times*, 24 August 2002

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If you kill one person, an old joke goes, you get sent to jail. Kill 20, you get sent to a mental asylum. Kill 20,000, you get sent to Geneva for peace talks. The story is very much a reflection of the mass atrocities of the twentieth century. The search for universal justice is rooted in the determination to get rid of the source of such cynicism.

Writing in 1946 to her former professor Karl Jaspers, who had remained at Heidelberg University throughout World War II, renowned political philosopher Hannah Arendt questioned how one could comprehend what the Nazis had done within the existing compass of criminal law. “The Nazi crimes explode the limits of the law”, she wrote. “We are simply not equipped to deal with a guilt that is beyond crime and an innocence that is beyond goodness or virtue.”

Objecting that such a moral vocabulary would endow Nazi crimes with “satanic greatness”, Jaspers insisted on seeing them instead “in their total banality” – a phrase that Arendt famously used in the subtitle of her book published nearly two decades later.

The International Criminal Court, or ICC, is both the culmination of the search for universal jurisdiction, where jurisdiction depends not on the location of the crime but its nature, and an emblem of the difficulties that lie ahead in translating the vision into reality.

These are especially challenging times for multilateralism, when the very principle as well as some of its institutional manifestations are under attack in parts of the world. The strategic logic underpinning multilateral institutions is that of a world united in action on the road to a common

destiny. The United Nations is at once the main embodiment of the principle of multilateralism in a world of sovereign states, and the principal vehicle for the pursuit of multilateral goals. The ICC is the institutional embodiment of the principle of multilateralism with respect to international criminal justice, which can take its rightful place alongside force and diplomacy as the organizing principles of international behaviour.

The strong affirmation of the ICC by the Europeans and most of the international community has collided with the determined rejection of the new court by the Americans. If the European stance is more evolutionary and progressive, Washington's is more consistent over time. The United States has always acted in the belief that when it comes to international criminal justice, politics trumps law. It's the Europeans who wish to advance to elevating law above politics. While the US tradition is to rely on military power for national security, Europe, reflecting its own troubled history, has succeeded in establishing peace on the continent through embedding cooperation in inclusive economic, political and military institutions.

In the context of the state of evolution of the institutions of world order, however, Washington has a point. In stable polities, constitutional order has advanced to the point where the justice system is separated from the legislative and executive branches in order to enhance the credibility of all three. But this is only possible because the constitution articulates the agreed political vision for the community as a whole. Such first-order questions are yet to be settled for the international community, and therefore the interplay of law and politics is far more intimate.

With the ICC, the United States may have been tripped by its own cleverness in setting up the ad hoc criminal tribunals for Yugoslavia (International Criminal Tribunal Yugoslavia; ICTY) and Rwanda. But both were odd mixtures of idealism, opportunism and guilt. They were alibis for inaction, not indicators of toughening new standards of international criminal accountability. And by keeping them under the jurisdiction of the UN Security Council, the United States made sure that it controlled their destiny.

Unfortunately for Washington, they seem to have generated an unstoppable momentum for a permanent ICC with genuinely universal jurisdiction, with the authority to investigate heinous international crimes wherever, whenever and by whoever they are committed. Ad hoc international criminal tribunals are important, but episodic advances in the evolution of individual criminal accountability. They leave the process of international law more vulnerable to the pursuit of power politics than would be possible in the ICC. The court thus marks a major milestone on the road to being rescued from the tyranny of the episodic in international criminal justice.

To advocates of the ICC, permanent status and institutionalized identity attenuate perceptions of politically motivated investigations and selective justice. Permanence also helps to cumulate and build on precedents. The ICC will be an efficient and cost-effective alternative to ad hoc tribunals with respect to money, time and energy. Subjecting prosecutorial investigations and indictments to Security Council authorization, one of the key US demands, would have politicized the process and tainted the Court's impartial credibility from the very start.

But by extending jurisdiction over non-party nationals, the ICC displaces the state as the conduit of democratic representation without providing an alternative mechanism for democratic governance. It is not embedded in a broader system of democratic policy-making and there is no political check on it. Why then should it have the authority to overturn policy established by national democracies?

There is another respect in which the US fears may be well founded. For justice to be done, it is not enough that the accused actually have done the crimes for which he or she is charged. It is just as important to ensure that the rule-of-law standard is observed with regard to the collection and presentation of evidence, the right to cross-examination of witnesses, and all the other procedures that we associate with due process and a fair trial. For the trial to be authentic, the possibility of acquittal must be as much a requirement as the possibility of conviction.

In the US legal-constitutional culture in particular, human rights law gives primacy to protecting the rights of the arrested and the accused without regard to guilt or innocence. Impelled by the momentum of international accountability, the balance has shifted in favour of the victim and in favour of conviction. The conviction rates of the international criminal tribunals have been notably higher than for criminal prosecutions in the established Western democracies (although not Japan).

Washington has itself been complicit in this transformation from protecting the rights of the accused to privileging the case for the prosecution, for example in insisting that Milosevic be handed over to the ICTY in the Hague regardless of Serbian legal niceties, or else.

Professor David Forsythe of the University of Nebraska has argued that the US rejection of the ICC betrays a curious mixture of exceptionalism and power politics. Washington may preach universalism, but it practices national particularism and cultural relativism. Much of US foreign policy rests on the self-image of a good and great people divinely ordained to lead the world by example at home and by activism abroad. This intensified after the end of the Cold War, and then again with the present administration.

Washington bristles at the audacity of the "international community" to constrain or direct US international behaviour. Just as any law con-

strains any power, so international law would constrain US global power: there lies the rub. For Washington, the United Nations exists to expand national policy options, not limit them. The effort to establish an effective, impartial and universal rule of law is precisely the problem, not the solution that one might mistakenly construe from the rhetoric.

The real difficulty could come not with rogue prosecutors as argued by Washington, but with responsible ones. It is easy to imagine circumstances in which the US political atmosphere is too hostile to permit national investigations and prosecutions, and a conscientious ICC prosecutor decides to take up the case. Similarly, the problem may not lie so much with regard to junior and middle-ranking military personnel as with generals and defence secretaries and even presidents: those with command responsibility, not the foot-soldiers merely carrying out orders.

## 18

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## Testing times for the UN

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*The Japan Times*, 21 September 2002

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In finally taking the vexed issue of war with Iraq to the United Nations, US President George W. Bush has presented the organization with a double-edged test of credibility. Will it lift its performance and remain relevant to US foreign policy on Washington's terms, or in doing so will it be seen as bending to US will without demanding American compliance with global norms, from arms control to environmental regimes and international criminal justice?

The United Nations has the moral legitimacy and political credibility to mediate, moderate and reconcile the competing pulls and tensions that still plague international relations. But it lacks the military muscle to enforce its edicts.

The United States, which is both today's supreme power and the historic nation of laws, is the world's de facto sheriff, enforcing international norms and law, often with the aid of deputy sheriffs, in various parts of the world. US rejections of specific global regimes undermine respect for a world order based on collective norms and international law: Even the sheriff must respect law and be seen to be impartial in dispensing frontier justice.

The United Nations is the principal institution for building, consolidating and using the authority of the international community. It is the main framework within which nations negotiate agreements on the rules of behaviour and the legal norms of proper conduct in order to preserve the society of states. Thus simultaneously the United Nations is a forum for mediating power relationships, accomplishing political change that is just

and desirable, promulgating new norms and conferring the stamp of collective legitimacy.

These tasks acquired particular urgency in the revolutionary conditions after World War II. The new power relationships were untested; revulsion against old-style management of power relationships remained strong even while the sobering experience of the inter-war years had tempered the idealism associated with the League of Nations experiment; colonialism was not just physically on the retreat but also politically on the defensive against passionate denunciations of its illegitimacy; the incipient and inchoate sense of one interdependent community was heightened under the impact of the atomic bombing of Hiroshima and Nagasaki.

The United Nations seeks to replace the balance of power with a community of power. It represents the dream of a world ruled by reason, where force is put to the service of law. It is the means of outlawing war and mobilizing the collective will of the world community to deter, apprehend and punish international lawbreakers.

The United Nations is also the symbol of what member states must not do. In the field of state-citizen relations, the totality of UN Charter clauses and instruments like the Universal Declaration of Human Rights restrict the authority of states to cause harm to their own people within territorial borders. In the sphere of military action across territorial borders, UN membership imposes the obligation on the major powers to abjure unilateral intervention in favour of collectively authorized international intervention.

Article 24 of the UN Charter confers upon the Security Council the primary responsibility for the maintenance of international peace and security, as well as the duty to fulfil this responsibility. As its authorization is in every instance preferable to all other alternatives, the Security Council should always be the first port of call on any matter relating to the international use of force.

But the burden of responsibility for maintaining international peace and security, from having the power to make the most difference, falls today on the United States. The conceptual connecting rod that links US power to UN authority is the legitimacy of enforcement action sanctified by the Security Council.

The legitimacy of the Security Council has been subject to a fourfold erosion. It has been perceived as being increasingly ineffective in results, unrepresentative in composition, undemocratic in operation and unaccountable either to the General Assembly or an independent judiciary.

The industrialized Western countries often chafe at the ineffectual performance legitimacy of the Council, and their desire to resist the Council's role as the sole validator of the international use of force is the product of this dissatisfaction at its perceived sorry record. Hence Bush's

challenge to the United Nations: Enforce your demands on Iraqi President Saddam Hussein, or I will do it for you (and, implicitly, rub your nose in the dirt of your impotence).

Secretary-General Kofi Annan has warned in the past that “if the collective conscience of humanity cannot find in the United Nations its greatest tribune, there is a grave danger that it will look elsewhere for peace and for justice”. If the Council members – and the five permanent members in particular – fail to make it relevant to the critical issues of the day, then they can only expect it to diminish in significance and stature.

But if the Security Council is to become increasingly active, interventionist and effective, then it is highly likely that the erosion of representational and procedural legitimacy, and the lack of parliamentary scrutiny and judicial accountability, would lead many developing and non-Western countries to question the authority of the Council even more forcefully – no authorization without representation.

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## Intervention could bring safeguards in Asia

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*The Daily Yomiuri*, 3 January 2003

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In December 2001, the independent International Commission on Intervention and State Sovereignty (ICISS) submitted its final report called *The Responsibility to Protect*. The title itself captures the Commission's effort to reconceptualize "humanitarian intervention". How does that apply to Asia?

Two of the 12 commissioners were Asian: Fidel Ramos, the former president of the Philippines, and myself. In addition, the commission held one of its regional round table seminars in New Delhi, which was attended by a cross-section of people from different parts and sectors of Asia.

A second preliminary point to bear in mind is that neither the industrial nor developing countries are united and cohesive on the tension between intervention and sovereignty. Significant differences exist between Africa, Latin America and Asia. But nowhere in the world did we find an outright and absolute rejection of intervention in favour of sovereignty. Instead, we found much greater focus on issues like consistency/double standards of response, agency of authorization, clear and consistent rules of the game, and so on. On balance, the desire to avoid another Rwanda (where the world stood by passively during genocide) was more powerful than the desire to avoid another Kosovo (where the North Atlantic Treaty Organization [NATO] intervened without UN authorization).

There is no uniformity of views within Asia. This is not surprising, for Asia is a geographical construct of an essentially European worldview and mindset, not a "natural" continent with an innate sense of identity. In



the United Nations, the Asia group has less unified positions than Africa and Latin America, for example in competitions for the elected seats on the UN Security Council. Australia and New Zealand do not even belong to the Asia group in the UN system, being lumped together with “West European and others” instead.

Historically, some of the clearest, most unambiguous examples of “humanitarian intervention” have come from Asia: Bangladesh in 1971, Cambodia in 1978, even India’s airdrop of food supplies in Sri Lanka in 1987. Yet these were not described as “humanitarian intervention” by India and Vietnam at the time, though today they almost certainly would be. Rather, the discourse of justification was still very much within the traditional vocabulary of self-defence and threats to national and regional security and stability. Part of India’s justification was also self-defence against the “demographic aggression” in the form of 10 million refugees.

Asians account for 54 per cent of the world’s population, but the number of territorially bounded states into which we are divided as citizens is – relative to other continents – few. Asia is the continent of mega-states – China, India, Indonesia. There are three implications arising from this:

- The shift from national to human security, when applied to Asia, will at one stroke benefit more than half of humanity;
- As a corollary, the same shift will not be to the automatic liking of the governments of the continent;
- The reality of mega-countries means that there is a correspondingly greater risk of mega-breakups.

This suggests several potential cases of intervention for human protection purposes (whose threshold causes are large-scale loss of life or ethnic cleansing, actual or apprehended). The first may result from state breakup and national disintegration (wars of secession and the resulting chaos, anarchy and massive human insecurity). This is possible, but extremely improbable for China and India, possible but also unlikely for Indonesia and Sri Lanka.

Second, there may be state breakdown (failing state) and national debilitation in North Korea, Nepal, Papua New Guinea, Pakistan or Afghanistan.

Third, we could face instances of humanitarian disasters because of state incapacity without breakup or breakdown, for example in Mongolia (with its harsh environment), or East Timor.

Or finally, there could be state complicity/perpetration, for example in Myanmar, North Korea, Indonesia, Fiji (divisions between Fijians and Indians), Sri Lanka (Sinhalese and Tamils), India (in Kashmir in particular or with respect to Muslims in general), or China (Tibet in particular or in general).

Asia also contains four potential interveners (countries with the military capacity to launch interventions): China, India, Australia and Japan.

Of course, interventions could be authorized by regional organizations, from South Asia to East Asia and the South Pacific. But at present, none of these has the political will (and some do not have the military capacity) for the task. Whether undertaken by individual or groups of states, or authorized by regional agencies, military interventions must be subject to the precautionary principles identified in the responsibility to protect: right intention, last resort, proportional means and reasonable prospects.

Asia cannot be sanguine about the future. Calls for humanitarian intervention could arise from any one or more of potential flash points; humanitarian carnage could be triggered by any combination of contingencies. We can take the attitude, like Charles Dickens' Mr. Micawber, that she'll be right on the day – if anything can go right, it will – and repeat the tragedies of the 1990s. The price of a policy of denial will be paid by the victims, but also by our children tomorrow when they too are reduced to being passive and helpless spectators to atrocities, if not victims themselves.

If we are going to get any sort of consensus in advance of a crisis requiring urgent responses, including military intervention, the ICISS report, *The Responsibility to Protect*, points the way forward. If Asian governments and critics can move beyond their reflexive hostility and suspicion of the very word “intervention” itself, they are likely to find that the responsibility to protect contains all the safeguards they need, and all that they are going to get, with respect to threshold causes, precautionary principles, lawful authorization (the United Nations) and operational doctrine. For instance we explicitly rejected human rights abuses and overthrow of democratic governments as in themselves being sufficient to justify military interventions.

There was unanimity in ICISS that after 9/11:

- Some military response by the United States was justified as self-defence (if within limits, obviously);
- Self-defence – “us against them – is conceptually and operationally different from intervention for human protection purposes – “us between them” (between victims and perpetrators).

The threatened war against Iraq, as framed by Washington to date, does not meet our intentionally tough criteria with respect to threshold causes and precautionary principles.

The same applies to the talk of pre-emptive strikes by US President George W. Bush and Australian Prime Minister John Howard. Unfortunately, in the real world of politics based on perceptions and emotive rhetoric, such loose talk may serve to complicate the task of mobilizing the requisite political will for those occasions on which the responsibility to protect must be discharged by the international community.

## 20

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## War vindicates UN stance

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*The Japan Times, 27 April 2003*

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Are not the scenes of joy and jubilation from Iraq an embarrassing indictment of the United Nations' failure to support the war? Well, no, not really. On the contrary, the course and outcome of the war is a strong vindication of the UN stance. To argue that military victory bestows legitimacy is to say that might is right. It also begs the question: will others politely accept the new US imperial order, or will they begin to arm and align themselves so as not to become tomorrow's Iraq?

The big story of this war so far surely has been proof that the United Nations was right, that Iraqi President Saddam Hussein did not possess usable weapons of mass destruction and therefore he did not pose a threat to regional, US or world security of an urgency and gravity that required instant war to topple him. The UN inspectors could indeed have been given more time to complete their job. After all, they destroyed more Iraqi armaments between 1991 and 1998 than did the multinational coalition during the 1991 Persian Gulf War itself.

Moreover, the speed of the victory by the American, British and Australian forces (the three countries that made up the coalition of the willing on this occasion) vindicates those opponents of the war who argued that Saddam had been so weakened since 1991 that he did not pose a credible threat to anyone outside Iraq. To credit the lightning victory to brilliant coalition generalship rather than basic Iraqi weakness is a triumph of spin over substance.

Saddam did of course pose a grave threat to the human security of his own people within Iraq's borders. But that was not the stated justification

for trying to get the UN Security Council to authorize military action. So the euphoria following his defeat does not damn the United Nations' failure to authorize war – unless of course the coalition governments are prepared to argue that their real goal all along was regime change. But that would mean that for six months since September they engaged in an elaborate charade at the United Nations in claiming that the issue was an imminent and serious threat posed by Saddam's weapons of mass destruction.

Saddam was a thug. No tears will be shed at his fall, or even at his death. And we all welcome the liberation of the Iraqi people from his tyranny. But that is a collateral benefit amid the carnage of destruction to the agreed principles and established institutions of world order. The ouster of Saddam flows from strategic not ethical calculations of foreign policy. It is difficult to be joyous at the descent from the ideal of a world based on the rule of law to that of the law of the jungle – though one can see why the lion would welcome such a change.

If I have witnessed murder and know who the murderer is, but that person escapes justice through the clever pyrotechnics of an expensive trial lawyer, do I have the right to take the law into my own hands and kill him? And does the cheering by the victim's family vindicate my vigilante justice? For that is what regime change in Iraq amounts to.

How many are ready to accept the doctrine that the administration of the day in Washington may decide who is to be which country's leader, and who is to be toppled? Perhaps some kind reader will enlighten me about the last occasion when, faced with a choice between a pro-US strongman and a democratic resistance movement, Washington actually sided with the people against the tyrant. Or the last time that Washington urged the abolition of the veto power of the five permanent members because it was an obstacle to effective decision-making by the United Nations.

This is not to deny that many of today's institutions and systems are indeed out of date and incapable of meeting contemporary challenges. The basis of world order, with the United Nations at the centre of the system of global governance, has come under increasing strain in recent years.

One reason for this is the growing disconnect between the threats to peace and security, and the obstacles to economic development, lying increasingly within rather than between states. A second reason is the growing gravity of threats rooted in non-state actors, including but not limited to terrorists. A third is the growing salience of weapons of mass destruction that in their reach and destructiveness challenge the basis of the territorial state. And the fourth is the growing disparity between the power of the United States and that of all others, and the challenge that

this poses to the Westphalian fiction of sovereign states equal in status and legitimacy.

In short, the evolution of institutions of international governance has lagged behind the rapid emergence of collective problems with on-border and cross-border dimensions. The solution to this lies in amending existing rules and institutions. If they are incapable of change, they deserve to be abandoned, but only when replaced by new and improved successor laws and institutions. Otherwise, in the resulting authority vacuum, anarchy rules – and this is not OK.

I would be delighted if we insist that only governments that are democratic at the national level can take part in democratic decision-making at the international level – but first let us embed that principle in international institutions.

“Regime change” lies at the intersection of two major trends under UN auspices. The first is the progressive universalization of the human rights norm carried out through a large number of legal conventions and promoted, however imperfectly, through a substantial legal machinery. The second is the central and irreplaceable role of the Security Council as the core of the international law enforcement system. If regime change is to be a legitimate goal, let us argue for that, agree on the criteria of legitimate statehood and amend or replace the UN Charter accordingly.

Victory in Iraq comes at the price of relegitimizing wars of choice as an instrument of unilateral state policy – something that we have struggled against for centuries – and will usher in more determined efforts by many countries to acquire weapons of mass destruction, since nothing else is capable of deterring the US juggernaut.

So one cheer only for the fall of Saddam the tyrant. A second cheer can be kept in cold storage until credible links are established between his regime and international terrorism. And the third cheer would have been forthcoming if weapons of mass destruction had been found or used.

One final historical footnote: the Taliban too were welcomed into Kabul as liberators when they first went in, amid wild scenes of cheering and celebration. We know what happened next.

## 21

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## End of the old world disorder?

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*The Japan Times*, 10 May 2003

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Wars are cataclysmic events. Out of the destruction of major wars emerge new fault lines of international politics. To this extent, wars are the international, political equivalent of earthquakes, eruptions on the surface reflecting deeper underlying seismic shifts in the pattern of major-power relations.

The Cold War was unusual because of the longevity of the conflict and because of the peaceful manner in which it ended. The tectonic shifts ushered in by the realignment of forces after the Cold War were all the more significant, but they were hidden from view for an unusually long time because of the peaceful resolution.

It took the 9/11 terrorist attacks to force the pace of change and sharpen the new post-Cold War contours of international politics. This new shape is more visible after the Iraq war.

Washington did not help its case for war against Iraqi President Saddam Hussein by issuing a confused mix of motives and explanations. In the resulting “noise” of diplomatic traffic, answers were not forthcoming to two crucial questions: Why Iraq, and why now? Any single answer to the first – such as known/suspected links to terrorism or to weapons of mass destruction – would always complicate attempts to answer the second, since people could instantly counter with more compelling cases of the same pathology.

For instance, with respect to weapons of mass destruction, while evidence of such remained elusive in Iraq, North Korea did almost everything but actually conduct a nuclear test. The glib conclusion drawn by

the antiwar lobby, therefore, was that Washington's inconsistent response to the simultaneous crises showed two things: that Iraq did not possess usable nuclear weapons, and North Korea does not have oil.

Yet, glibness aside, Washington could have constructed a powerful case for its action on Iraq precisely by linking the two crises. We know that Saddam had pursued the nuclear option in the past, possessed and used biochemical weapons against his own people as well as Iran, and played a dangerous game of hide and seek with UN weapons inspectors for over a decade.

To the extent that we cannot be certain that North Korea has not already crossed the nuclear threshold, what options are available to the international community for dealing with Pyongyang without causing grave damage to ourselves?

Thus the two questions – why Iraq and why now – can be answered simultaneously and symbiotically. They also provide the justification for strategic pre-emption. Instead of proving that Saddam had “weapons of mass destruction”, Washington found itself tied in knots and on shaky moral ground arguing that Saddam had to prove that he did not have them.

Pre-emption is not permitted under the UN Charter as it is not considered within the acknowledged right of self-defence. And this is precisely the point that got Australian Prime Minister John Howard into difficulty with some Asian neighbours after his musings after the terrorist carnage in Bali last October.

If pre-emption is strategically necessary and morally justified (why should an American president or an Australian prime minister wait for another mass murder, and be prohibited from taking preventive action?) but not legally permitted, then the existing framework of laws and rules – not the anticipatory military action – is defective.

The Iraq war proved to be mercifully swift and decisive. Now the most pressing task in Iraq is to stabilize the security situation; establish a transitional political authority; initiate the necessary steps for post-war reconstruction, peacebuilding and reconciliation; and embed these in durable institutions and structures that will be sufficiently resilient to survive the withdrawal of a foreign presence in due course. The larger goal in the region must be to assuage the humiliation inflicted on the collective Arab identity, deal with legitimate Palestinian grievances with the same mix of boldness and firmness shown in Iraq, and impress upon the Arab world in general the need for deep political, social and economic reforms.

There is also the larger question of the changing nature of threats in the modern world, the inadequacy of existing norms and laws in being able to address such threats and thus the need for new “rules of the game” to replace them. The urgent task now is to devise an institutional

framework that can marry prudent anticipatory self-defence by the democracies to the centuries-old dream of a world where force is put to the service of law that protects the innocent without shielding the criminals.

This is why the Iraq war has the potential to reshape the bases of world order in fundamental, profound and long-lasting ways. For, arguably, the Bush Administration seeks to replace:

- Self-defence (wars of necessity) with preventive aggression (wars of choice);
- The tried, tested and successful strategy of containment with the untried, untested, potentially destabilizing yet possibly unavoidable doctrine of pre-emption;
- Negative deterrence with positive compulsion;
- Non-proliferation and disarmament, as represented in the Nuclear Non-proliferation Treaty (NPT) package, with non-proliferation only;
- Universal non-proliferation as per the NPT with differentiated non-proliferation, where the proliferating countries' relationship with the NPT is subordinated to their relations with the America. US-friendly countries like Israel are not on the list of countries of concern, while US-hostile countries are grouped into the axis of evil countries and US-ambivalent/neutral countries like India become objects of watchful caution;
- A multilateral system of global governance centred on the United Nations with a unilateral system of US pre-eminence;
- Leadership by consent-cum-persuasion with leadership by command and control;
- The European search for a new world order, based on the Kantian transition from barbarism to culture through liberal institutionalism, with the old world order discarded by Europe after centuries of increasingly destructive warfare, based on force of arms; and
- The Westphalian order of sovereign states, of equal status and legitimacy, with a post-Westphalian order of one pre-eminent if virtuous power.

The long list of fundamental changes suggests that we shall continue to live in interesting times.



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## US considers UN approval of force optional

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*The Daily Yomiuri*, 9 July 2003

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US Defense Secretary Donald Rumsfeld was recently reported as having participated in discussions on a possible US-organized standing international peacekeeping force outside the auspices of the North Atlantic Treaty Organization and the United Nations. The idea would need to overcome deep-seated scepticism within the US Army, which tends to view peacekeeping as a distraction from its real job of war fighting, and among other countries reluctant to participate in such operations outside the comforting umbrella of the United Nations and NATO.

The United States is the world's indispensable power; the United Nations, the world's indispensable institution. The United Nations has unmatched legitimacy and authority on the one hand, and convening and mobilizing power on the other. But the United Nations does not have its own military and police forces. A multinational coalition of allies can offer a more credible and efficient military force when robust action is needed and warranted. The United Nations would be hard pressed to achieve anything of note without active US engagement, let alone against its vital interests and determined opposition.

The benefits of UN peacekeeping to the United States, although uneven, are considerable. For decades, UN peace operations have served US security interests from the Middle East to southern Africa, Central America, Southeast Asia and Haiti. By their very nature, peacekeeping operations cannot produce conclusive results either on the battlefield – they are peace operations, after all, not war – or around the negotiating table – they are military deployments, not diplomatic talks.

Conversely, the disengagement of the United States from UN peace-keeping has had a spillover effect, eroding partially the legitimacy of UN operations and therefore the effectiveness of the United Nations as a manager of international security. This, in turn, has reduced US leverage by spreading the burden of providing international security and lessening the demands and expectations on the United States to take up the slack. At the same time, scapegoating the United Nations has produced a backlash among other nations and so reduced the ability of the United States to use the United Nations in pursuit of US goals, where the interests of the two do coincide.

Moreover, the war against global terrorism is one from which America can neither stay disengaged, nor win on its own. Nor is it one that can be won without full US engagement. A world in which every country retreated into unilateralism would not provide a better guarantee of US national security, now and for the foreseeable future, than multilateral regimes.

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## Why India said “no” to US

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*The Japan Times*, 17 July 2003

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Those who think little of the United Nations are constantly puzzled by the authority it continues to exert for many others around the world. On Monday, India decided against sending a major contingent of troops to Iraq because the operation would be outside the UN mandate, thereby reconfirming Secretary-General Kofi Annan’s point about the unique legitimacy of the world organization. Having initially been sympathetic to Washington’s request to contribute an army division (some 17,000 troops) for post-war security duty in Iraq – in particular to stabilize the situation in northern Iraq – Delhi in the end, “on balance of considerations”, said no.

The very keen desire to consolidate improved relations with Washington was insufficient to overcome deep domestic divisions about the stability of the theatre of operations being assigned to India and the financial costs of an operation.

India was attractive to Washington for a number of reasons. One of the largest troop contributors to UN peacekeeping operations, the Indian Army has adequate manpower readily available and trained for peacekeeping, experience in all types of climate and terrain and military capabilities ranging from mechanized operations to dismounted infantry, engineers and humanitarian support.

In the scope and sophistication of its democracy and the size and professionalism of its armed forces, India is closer to some of the Western powers. But as a very poor country, it is acutely representative of developing, formerly colonized countries.

As a rule, India has favoured authorization for the international use of force by representative international organizations or bodies, preferably the United Nations. Its motives for participating in UN peace operations are a mix of idealism (commitment to internationalism) and pragmatic calculations (pursuit of national interests, in particular the claim to permanent membership of the Security Council).

A well-crafted policy exists to decide India's participation in overseas military missions. The Ministry of External Affairs determines the international political acceptability of a proposed peacekeeping mission and whether it serves national interests. The Ministry of Defence examines the request from the perspective of domestic political acceptability. The Armed Forces Headquarters examines the operational requirements.

The political and military risk analysis used to determine India's participation in peace operations has included questions of national security interests, whether the host country has a history of friendly relations with India (as Iraq did), the likelihood of Indian troops becoming involved in sectarian strife in which one or more parties is Islamic, the precedent-setting dangers of violating a host country's sovereignty and territorial integrity, the extent of regional and global support for the operation, UN command and control, a clear mandate and time frame, and financial arrangements for compensating troop-contributing countries.

The one clear advantage to India of saying yes would have been the gratitude of the Bush Administration, which has made it a very public point to reward risk-taking military partners and punish recalcitrant allies. Paradoxically, as the situation on the ground in Iraq remained unstable, the wish of the administration for visible support from a broader international coalition grew even as the resolve of others to contribute was weakened. The failure to find weapons of mass destruction has also sapped the will to help Washington. The war enthusiasts are described as pursuing a faith-based approach to intelligence: we know the answers, just give us the evidence to back us up.

India's powerful Deputy Prime Minister and Home Minister L. K. Advani joined Finance Minister Jaswant Singh in supporting the deployment of an Indian division to Iraq, but changed his mind as the extent and persistence of domestic opposition became clear. National Security Adviser Brajesh Mishra too shifted into the uncertain and probably opposed camp. Foreign Minister Yaswant Sinha was said to be ambivalent, with Defence Minister George Fernandes opposed. In the crucial meeting of the Cabinet committee on security on Monday, Prime Minister Atal Behari Vajpayee sided with the opponents and the matter was settled.

Almost all political parties voiced strong opposition to sending Indian troops to Iraq to serve under US command. The memory of Indian soldiers having done London's "dirty work" in the far-flung outposts of the

British Empire continues to exert a powerful pull against participation in modern-day “Empire Lite” ventures.

Some Indian business firms could see profit opportunities if construction contracts were to come their way with Indian military operations in Iraq. But former prime minister I. K. Gujral scoffed that “there is something un-Indian and undignified in becoming a subcontractor to the Pentagon in order to become a subcontractor to American multinationals”.

Kashmir was as much a pull as a push factor in the decision. There is anxiety, on the one hand, that if India says no and Pakistan says yes, then Washington’s fault tolerance of Pakistani behaviour will be strengthened. On the other hand, India has enough problems in its sole Muslim-majority province without aggravating the situation by taking part in what has widely been seen in the Islamic world as an unjustified assault on a hapless Muslim country. India’s “no” will likely turn up the heat on Pakistan to stand firm against the US request as well, sharpening General Pervez Musharraf’s painfully acute dilemma of wanting to please the Americans without antagonizing his Muslim population.

New Delhi concluded that its army does not need the sort of divisiveness in Indian society and politics that would be guaranteed by sending troops to Iraq. With Washington reportedly unwilling to underwrite the financial costs of Indian participation, Delhi balked at having to pay to get its soldiers shot at in a risky, possibly open-ended, overseas venture.

This could yet change if Washington could bring itself to seek and accept UN Security Council blessing for a peace operation in Iraq under UN command. Participation in UN peace operations is neither a politically contentious issue in India, nor a constitutionally complicated exercise. It has not been a divisive subject of public debate. The larger lesson for Washington should be to be careful not to trash the United Nations and diminish its authority, for the organization is often useful in picking up the pieces after others have shattered the fragile edifice of world order.

## 24

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## Chrétien was right: It's time to redefine a "just war"

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*The Globe and Mail*, 22 July 2003

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The 1990s was a challenging decade. Our consciences were shocked by atrocities from Rwanda to Bosnia and beyond, and by the price that innocent men, women and children paid because of the world's failure to rise to such challenges.

Though the terrorist attacks of 9/11 shifted attention to the war on terrorism, the debate about the need to intervene in sovereign countries for the purpose of human protection has not gone away. Indeed, since coalition forces in Iraq have failed to find any weapons of mass destruction, human protection has become the only remaining significant justification for the US-led war on the dictator Saddam Hussein.

But does Iraq meet the test of "humanitarian intervention"? See for yourself by taking a look at the report, *The Responsibility to Protect*, by the International Commission on Intervention and State Sovereignty (dubbed "R2P"). Prime Minister Jean Chrétien tried valiantly to promote this report at the recent Progressive Governance Summit in England. He ran into difficulty because some at the conference feared that the concept could be used to justify the war on Iraq.

This is ironic, for most ICISS commissioners (I was one) would argue that the Iraq war would not have met our criteria for justifying intervention.

Because it's easy to label a war as a "humanitarian intervention" – deflecting critics who don't want to be cast as "anti-humanitarian" – we recommended a change in terminology. It's important to focus attention on needs of victims, including the prevention and follow-up assistance

components of external action (issues that are becoming major concerns in post-war Iraq).

As such, we found it useful to reconceptualize sovereignty, viewing it not as an absolute term of authority but as a kind of responsibility. State authorities are responsible for the functions of protecting the safety and lives of citizens, and accountable for their acts of commission and omission in international as well as national forums. While the state has the primary responsibility to protect its citizens, the responsibility of the broader community of states is activated when a particular state either is unwilling or unable to fulfil its responsibility to protect; or is itself the perpetrator of crimes or atrocities; or where populations living outside a particular state are directly threatened by actions taking place there.

We sought to define thresholds when atrocities are so grave, they clearly require armed international intervention. Such thresholds are crossed when large-scale loss of life or ethnic cleansing is occurring or is about to occur (this rule is not retroactive, and does not justify intervention now for atrocities committed years ago).

As well, we argued that all military interventions must be subject to four precautionary principles: right intention, last resort, proportional means and reasonable prospects. Iraq would likely have failed on all four principles.

Intervention for human protection purposes occurs so that those condemned to die in fear may live in hope instead. The goal is not to wage war on a state in order to destroy it and eliminate its statehood, but to protect victims of atrocities inside the state, to embed the protection in reconstituted institutions after the intervention, and then to withdraw all foreign troops.

Given the enormous normative presumption against the use of deadly force to settle international quarrels, who has the right to authorize such force?

Even if we agree that military intervention may sometimes be necessary and unavoidable in order to protect innocent people from life-threatening danger, key questions remain about the international authority that can override national sovereignty.

R2P came down firmly on the side of the central role of the United Nations as the indispensable font of international authority and the irreplaceable forum for authorizing international military enforcement. While its work can be supplemented by regional organizations acting within their own jurisdictions, only the United Nations can build, consolidate and use military force in the name of the international community.

Our choice is no longer between intervention and non-intervention, but between ad hoc, or rules-based, intervention. If we are going to get any sort of consensus in advance of crises requiring urgent responses, in-

cluding military intervention, the principles outlined in *The Responsibility to Protect* point the way forward. If hostile governments and critics can move beyond their reflexive suspicion of the very word "intervention", they'll find that R2P contains the safeguards they need with respect to threshold causes, precautionary principles, lawful authorization and operational doctrine.



## 25

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## Reforming the United Nations

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*The Japan Times*, 8 December 2003

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The United Nations is our collective instrument for organizing a volatile and dangerous world on a more predictable and orderly basis than would be possible without the existence of the organization. As the year that saw war in Iraq draws to a close, the future and prestige of the United Nations is under scrutiny as never before. It is seen far too often as a bloated, high cost, junket loving irrelevance to the real needs and concerns of the nations of the world. Yet most people still look to the United Nations as our best hope for a shared future, especially if it could somehow be reformed to reflect today's needs and realities.

Speaking to the UN General Assembly on 23 September, Secretary-General Kofi Annan noted that "we have come to a fork in the road . . . a moment no less decisive than 1945 itself, when the United Nations was founded". Accordingly, he announced his intention to form a panel of eminent persons to make recommendations on significant political and structural reforms to bring the United Nations into line with current threats and challenges to peace and security. The 16-member panel, announced subsequently, includes Sadako Ogata of Japan.

In most peoples' minds, talk of UN reform signifies one of two things. Either it implies the need to tackle the problem of a polemical, wasteful organization, staffed by self-serving, overpaid bureaucrats and little more than a talk-fest. Or it implies surgical reforms of a Security Council that is 1945 vintage in its composition, opaque in its workings and obstructionist in its effect. The first is caricature, the second exaggerated. But

perceptions matter and there is enough truth in both for the harsh perceptions to persist and to damage the organization.

In a number of key meetings during and after World War II, world leaders drew up rules to govern international behaviour and established a network of institutions, centred on the United Nations, to work together for the common good. Both the rules and institutions – the system of global governance with the United Nations as the core – are under serious challenge. On the one hand, Annan noted, the Iraq war could set a precedent for the “proliferation of the unilateral and lawless use of force”. On the other hand, he asked, to what extent might states be resorting to unilateral instruments because of a loss of faith in “the adequacy and effectiveness of the rules and instruments” at their disposal?

This is why, he concluded, we need to take a hard look both at fundamental policy issues and at structural changes that may be necessary for the United Nations to win back and retain the confidence of peoples and governments.

The central doctrinal dispute concerns the Westphalian fiction, which pervades the UN structure and workings, of sovereign states that are supposedly equal in effectiveness, status and legitimacy. In reality states are not of equal worth and significance, neither militarily, economically, politically nor morally. Some countries indeed can only be called criminal states. Their membership of the United Nations – let alone their presence on the Security Council, or their leaders being feted as honoured guests when they address the General Assembly – is an affront to the ideals and values symbolized by the august organization. The commitment to “We, the peoples of the world” in the opening words of the UN Charter could be profoundly subversive of many governments of the world who take their countries’ seat at the United Nations.

Equally, though, there is a contradiction between the roles of the five permanent members as the chief guardians of international security and their status as the major arms exporters of the world. To be able to see others’ double standards with ease while rationalizing one’s own is a common human failing.

In turn this affects the discussion of structural reforms. All countries agree on the need to reform the Security Council, but there is no majority support for any one concrete package with regard to the numbers of permanent and elected members, and the veto power. As Annan remarked, “the difficulty of reaching agreement does not excuse failure to do so”. The difficulty for him is that this is a decision to be made in the national capitals of the world, not in the UN Secretariat. The formula of an independent and prestigious panel, even if appointed by the secretary-general, allows him to short-circuit the difficulty. The Iraq war highlighted

the gravity of structural inadequacies and the urgency of reform; the panel can be a circuit-breaker to open the impasse.

While some chafe at the sorry performance of the Security Council and attribute its declining role and legitimacy to ineffectiveness, others blame this on its increasingly unrepresentative composition. How can Africa and Latin America, or from another perspective on representation the Islamic world, not have any permanent members? For that matter how can Asia, home to more than half the world's total population, have only one permanent seat? How can Japan, which pays more to the UN coffers than France, the UK, China and Russia (four of the five existing permanent members) combined, not be a permanent member? And does the Security Council gain or lose legitimacy if it is representative of governments who do not represent their own people?

The answers to these questions are coloured by self-interest on all sides, with the collective interest of the international community being relegated to secondary status. But those determined to obstruct any meaningful reform have worked together more cleverly and more energetically than those who wish to promote major structural reform.

Some believe that the more urgent and feasible part of the reform agenda is to tackle the excessive politicization and trivialization of the work of the General Assembly rather than the Security Council. If the Council is the geopolitical centre of gravity of the United Nations, the secretary-general is the custodian of the world's conscience and the personification of the international interest and the Assembly is the normative centre of gravity.

Its work is notorious for fixation with procedures, preference for point scoring and finger pointing over problem solving, with little sense of custodial responsibility for the world. The Council has had to expand its agenda and workload not because of imperial ambitions, but because of the Assembly's profoundly diminished capacity to make meaningful decisions.

The mirror opposite of this are those who insist that reforms in the Assembly must not even be addressed until the Council's reform agenda is completed. They are suspicious of talk of Assembly reform as a diversionary ploy, an alibi for inaction on the Council front.

A third group acknowledges the need for and reality of stalled Council reform, but argues that the task of reforming the Assembly is equally urgent and must not be held hostage to what happens in the Council. The Assembly belongs to us, runs this view, and we should not let our agenda be determined by the games big powers play in the Council. Instead, let us get our own act together and the prestige and authority of the Assembly will rise in correspondence with its successful revitalization.

The General Assembly is the only universal forum in which all countries have an equal voice. Its budgetary powers give it considerable authority over the work of the organization. But its contribution has been diminishing due to some serious flaws. It must rationalize its agenda, reform its workings and clarify its responsibilities vis-à-vis other UN bodies. As the one body that houses the divided fragments of humanity, it must lead the way, not be content simply to follow.

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## Celebrating Human Rights Day in an oppressive world

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*The Daily Yomiuri, 9 December 2003*

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The universalization of the human rights norm is one of the great achievements of the twentieth century. It was accompanied and underpinned by the internationalization of the human conscience, as a result of which we feel the urge and the duty to speak, and sometimes even to act, on behalf of oppressed people anywhere and everywhere.

The font of all international efforts to advance the norm and protect human rights is the Universal Declaration of Human Rights. Adopted 55 years ago on 10 December by the United Nations in the shadow of the atrocities committed by the Nazis while the world looked silently away, the Universal Declaration is on par with other great historical documents like the French Declaration of the Rights of Man and the American Declaration of Independence. Unlike them, the Universal Declaration was the first international affirmation of the rights held in common by all.

The Universal Declaration of Human Rights is both the embodiment and proclamation of the human rights norm. The two covenants of 1966 added force and specificity, one affirming civil–political and the second social–economic–cultural rights, without privileging either. Together they mapped out the international human rights agenda, established the benchmark for state conduct, inspired provisions in many national laws and international conventions, and provided a beacon of hope to many whose rights had been snuffed out by brutal regimes.

A right is a claim, an entitlement that may neither be conferred nor denied by anyone else. A human right, owing to every person simply as a

human being, is inherently universal. Held only by human beings, but equally by all, it does not flow from any office, rank or relationship.

The idea of universal rights is denied by some who insist that moral standards are always culture-specific. If value relativism were to be accepted in extremis, then no tyrant – Hitler, Stalin, Pol Pot, Saddam Hussein – could be criticized by outsiders for any action. Relativism is often the first refuge of repressive governments. The false dichotomy between development and human rights, usually a smokescreen for corruption and cronyism, is less and less accepted.

Relativism merely requires an acknowledgment that each culture has its own moral system. The important point is not that they are different, but that every culture does have a moral code. Hardly any proscribes the act of killing absolutely under all circumstances. At different times, in different societies, war, capital punishment, suicide or abortion may or may not be morally permissible. Yet for every society, murder itself is always wrong. All societies require retribution to be proportionate to the wrong done. Every society prizes children, the link between succeeding generations of human civilization; every culture abhors their abuse.

The doctrine of national security has been especially corrosive of human rights. It is used frequently by governments – responsible for protecting citizens – to kill them instead. Under military rule, the instrument of protection from without becomes the means of attack from within. Japan has been at the forefront of trying to promote a human security that puts individual welfare first.

An argument sometimes invoked for a policy of “see nothing, hear nothing, do nothing” is that an activist concern would merely worsen the plight of victims. Prisoners of conscience beg to disagree. It is important to them to know that they have not been forgotten. Lack of open criticism is grist to the propaganda mill of repressive regimes.

The United Nations has been more successful in promoting the norm and establishing standards of human rights and less successful in monitoring abuses and enforcing compliance. The modesty of UN achievement should not blind us to its reality. The Universal Declaration embodies the moral code, political consensus and legal synthesis of human rights. The world has grown vastly more complex in the 55 years since. The simplicity of language belies the passion of conviction underpinning them: its elegance has been the font of inspiration down the decades, its provisions comprise the vocabulary of complaint.

UN efforts are greatly helped by nongovernmental organizations and other elements of civil society. NGOs work to protect victims and contribute to the development and promotion of social commitment and enactment of human rights laws. Activists and NGOs use the Universal Declaration as the concrete point of reference against which to judge

state conduct. The two covenants, by requiring the submission of periodic reports by governments, have facilitated the creation of long-term national infrastructures for the protection and promotion of human rights.

The most recent advances on international human rights are the progressive incorporation of wartime behaviour and policy within international humanitarian law. The Ottawa Treaty banning antipersonnel land mines subordinated military calculations to humanitarian concerns about a weapon that cannot distinguish a soldier from a child. The International Criminal Court marks a watershed in the evolution from a culture of sovereign impunity of yesteryears to the more enlightened culture of international accountability today.

The US absence from both the Ottawa Treaty and the ICC shows the extent to which human rights have moved ahead of their strongest advocate in the past. In a public lecture on 25 November, Johan Steyn, one of the law justices in the British House of Lords, described the American policy of detaining prisoners in Guantánamo Bay, a tactic designed to take them beyond the jurisdiction of the legal process of any country, including the United States, as “a monstrous failure of justice”.

Emboldened by the curtailment of civil liberties in the bastion of democracy, the language of the war on terror has been appropriated by many other governments to wage their own wars on domestic dissidents. Over the past weekend the Commonwealth grappled with the thorny issue of dealing with the collapsing structure of human rights in Zimbabwe. This year’s Nobel Peace Prize was awarded to an Iranian woman for her courageous championing of human rights in a difficult political and religious environment.

These examples illustrate the enduring power of the human rights norm despite the many violations of its precepts. Concerned governments must engage with civil society and work in partnership with NGOs and the United Nations to demand adherence to internationally accepted benchmarks. The transition from the barbarism of atrocities to the culture of human rights requires no less.

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## How the legitimacy of US goals has been undermined by its war on Iraq

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*The Canberra Times*, 11 March 2004

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Washington had five claims for the war on Iraq: the threat posed by weapons of mass destruction; international terrorism; the need to establish a beachhead of democratic freedoms and the rule of law in the Middle East; the need to bring Saddam Hussein to justice; and the duty to be the international community's enforcer. It is not clear that even now, the war protagonists appreciate how each goal has been badly undermined by the means chosen; nor the fact that their collective damage to the "Empire Lite" enterprise is greater than the sum of their separate parts.

It is impossible to convince all others of the futility of nuclear weapons when the facts of continued possession, continual technological improvements and ongoing doctrinal refinements demonstrate their utility to the United States. Washington has also seriously downgraded a number of key arms control regimes seeking to check the role of weapons of mass destruction (WMD), thereby weakening the system of institutional international checks on the WMD ambitions of others and undermining the anti-WMD norm.

Can the country with the world's most powerful nuclear weapons forcibly prevent their acquisition by others? In the short term, yes. Long term, though, many prudent national security planners around the world will be more attracted than before the Iraq war to nuclear weapons for deterring possible attack on their countries in the suddenly harsher jungle of international relations, especially as the more clear-cut threat from North Korea was dealt with differently.



Second, is it possible to achieve victory in the war on international terrorism against American targets by inciting a deeper hatred of US foreign policy? Iraq was a distraction from the war on terror. In the weeks preceding and during the war, Osama bin Laden effectively became Osama bin Forgotten. Iraq has become a central front of terrorism as a result of the war. The world, which has a vital stake in stabilizing Iraq, containing terrorism and promoting liberal democracy and market economy in the Middle East, cannot afford a spectacular American defeat in Iraq.

Third, the search for liberal democracy, market economy and secular society may be put at risk by the wish for a quick transfer of power after rushed elections. This would be an exit without a strategy. Nor is it possible to promote the rule of law in world affairs by undermining international law with respect to war.

Fourth, against the backdrop of US rejection of the International Criminal Court and active efforts to undermine it, the denial of basic justice to prisoners at Guantánamo Bay and the history of supporting and arming repressive regimes, justice meted out to Saddam by the United States as an occupying power will be seen as being of questionable legality and legitimacy.

Finally, it is difficult to see how one country can enforce UN resolutions by defying the authority of the world body, denigrating it as irrelevant and belittling its role in reconstruction efforts after the war. In the court of world opinion, the collective voice of the United Nations still carries some weight.

Secretary-General Kofi Annan is the first to acknowledge that the changing nature of fundamental threats to our security makes it critically urgent to adapt UN structures and procedures to confront today's challenges, not run away from them. Even so, for any international enforcement action to be efficient, effective and enduring, it must be legitimate; for it to be legitimate, it must be in conformity with international law; for it to conform to international law, it must be consistent with the Charter of the United Nations.

## 28

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## The Iraq war in retrospect

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*The Japan Times*, 28 March 2004

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The question that crops up repeatedly when we register our opposition to the Iraq war is: would you rather then have Saddam Hussein still in power? It's a fair question that deserves a serious answer. Unlike in 1990, when Saddam did have a few admirers, last year he had none. This makes the failure of the American–British alliance to win any significant international support for the war all the more remarkable. It's not that we disliked the dictator less, but we disliked the war option even more.

Say I have a rat in my kitchen. I call in the exterminators. When they are finished, my crockery and glassware are shattered, my kitchen shelves and cupboards are broken, the food in my pantry is poisoned, and even my house is wrecked. If I complain about the cost being too high in relation to the removal of one rat, does that mean I like having a rat in the kitchen?

Saddam is gone, but let's look at the collateral wreckage.

First, the United Nations stands doubly damaged. Many say we failed the test of standing up to a tyrant who had brutalized his own people, terrorized his neighbours and thumbed his nose at the United Nations for 12 years. Many more say we failed to stand up to the United States in defence of a country that no longer threatened outsiders. As we are reminded on almost a daily basis, UN help could be quite useful now in repairing the damage because of its political legitimacy, moral authority and nation-building expertise. Those who wish to degrade the United Nations should be careful of what they wish.

Second, the relationship between the United Nations and the United States is badly frayed. Yet they need each other, not just in Iraq, but also in Afghanistan, Haiti and elsewhere. Everyone in the United Nations recognizes the importance of the United States for the health of the international organization – but not at any cost. The credibility of the United Nations, its capacity to deliver on many US-supported and US-led goals are enhanced with the clear demonstration that on some issues of principle, the United Nations can say no to Washington. A completely pliant United Nations would indeed become irrelevant, even to the United States.

Third, transatlantic relations have been damaged. Statements by the new Spanish prime minister have been quite robust about the need to realign Spain with its natural friends and allies in Europe. When the major European nations said the case for war had not been proven beyond reasonable doubt, instead of dialogue they got bad-tempered insults. British support for Washington was so far removed from the dominant European sentiment that the British leader is in the last position to be helpful to Washington in gaining a respectful hearing in Europe.

Fourth, the fragile single European project has been badly shaken. The characterization of old and new Europe was in fact quite mistaken. Compared to the past few centuries of European history, France and Germany standing together in resisting war is the new Europe, built on peaceful relations embedded in continental institutions and the supremacy of the rule of law. And the former Soviet satellites that sided with the United States represent the continuity from the old Europe built on balance-of-power policies that had led to world wars.

Fifth, the United States has been deeply divided from world opinion. The latest cross-national public opinion polls continue to show plummeting confidence in US credibility and leadership. When two-thirds of Canadians – America's closest neighbours – believe that the US president lied his way into war, Washington does have a serious problem. Instead of shouting still more loudly and in greater numbers at an ungrateful world that has turned anti-American, Americans should pause, hold their breath and listen to others for a change. The major mainstream US news media could adopt a deliberate policy of exposing their American audiences to contrarian outside voices, instead of bombarding us with still more US points of view.

Sixth, the problem of US credibility with the Islamic world is more acute. Anecdotal evidence backs up poll after poll that Muslims are embittered and resentful of a perceived assault on Islam. Their sense of grievance is inflamed by perceptions of collective humiliation and rank double standards. The United States is so deeply unpopular that even pro-Western governments hesitate to speak in support of it these days.

Seventh, the US people are domestically divided with an edge to their opinions that is quite disheartening for all well-wishers of the country and those who recognize that the American role in world affairs as a virtuous great power has been historically unique, essentially beneficial and generous to a fault. The deep internal frictions are especially troubling because of the impressive national unity shown in the aftermath of the terror attacks on 11 September 2001.

Eighth, the precedent has been set for attacking another country on the basis of unilateral allegations and suspicions of a threat to national and international security. How are we going to prevent the proliferation of the unlawful and unjustified use of force as an instrument of state policy by other countries? Neither America nor anyone else needs a permission slip from the United Nations to defend itself. The UN Charter recognizes the right to self-defence. But the permission slip is required for another country to attack you, or for you to attack another country, other than in self-defence.

Ninth and finally, the net result of all this has been a distraction from the war on terror.

The fall from grace of an America that was the object of everyone's sympathy and support after 9/11 is nothing short of astonishing. That support understood and backed the war against the Taliban government of Afghanistan. It fractured when Washington turned its attention to Iraq, whose links to 9/11 were tenuous at best.

Am I glad that Saddam is gone? You bet. There are other benefits as well. Rogue regimes of proliferators, torturers and mass murderers have been put on notice. Some like Libya have tried to pull back from the brink, though others like North Korea may have been spurred in the opposite direction. There is still the potential to remake the regional order in Iraq's neighbourhood.

The war has also given real urgency to the debates on reforming the system of multilateral governance so that we focus on real threats through collective efforts.

Was the war worth it? For Saddam's tribal supporters in the Tikrit region, no. For the minority Kurds and majority Shiites, yes. For the world as a whole? You be the judge.

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## Stepping in to protect oppressed people

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*The Canberra Times*, 12 April 2004

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Ten years ago this month, as genocide unfolded in Rwanda and 800,000 people were butchered in three months, the world bore silent and very distant witness to its own apathy. That indifference and inaction by the international community remains one of the most shameful episodes since the Holocaust.

This was not a matter of lack of knowledge and awareness, or even of lack of capacity. Rather, it was a failure of collective conscience.

What if a coalition of the willing had been prepared to move in with military force, but the United Nations Security Council was deadlocked?

The worst act of domestic criminal behaviour by a government is large-scale killings of its own people; the worst act of international criminal behaviour is to attack another country. The history of the twentieth century is in part a story of a twin-track approach to tame both impulses to armed criminality by states. Saddam Hussein's record of brutality was a taunting rebuke for the failure to achieve the first goal. His ouster and capture by unilateral force of arms was a challenge to the effort to outlaw and criminalize wars of choice.

But what if the second is a response to the first: if a country is invaded in order to halt killings inside it by the "legitimate" government (a troubling appropriation and corruption of the word "legitimate")?

For answers to both these painful dilemmas, study the report *The Responsibility to Protect*, produced by an independent international commission co-chaired by Gareth Evans. In writing the report we were strongly influenced by the dominant sentiment all over the world that,

faced with a choice between “No more Rwanda” (no intervention) and “No more Kosovo” (intervention without UN authorization), we must avoid another tragedy like Rwanda.

In order to ground outside intervention in more widely shared international morality, the report changes “humanitarian intervention” into the “responsibility to protect”, and pins that responsibility on state authorities and the UN Security Council.

“Humanitarian intervention” was a persistent challenge in the 1990s: Somalia, Rwanda, Srebrenica, East Timor. The challenge has not gone away: the continuing tragedies of Liberia, Burundi, Congo and Sudan come readily to mind.

It is easy to justify any war by calling it “humanitarian intervention” and labelling critics “anti-humanitarian”. *The Responsibility to Protect* more accurately captures the sense of solidarity without borders from which external help should spring.

We reconceptualize sovereignty as responsibility. In part this expressed what we heard from a cross-section of Africans. Governments are responsible for protecting the safety and lives of citizens and accountable internationally and domestically for their acts of commission and omission.

While the state has the primary responsibility to protect its citizens, the responsibility of the broader community of states is activated when a particular state either is unwilling or unable to fulfil its responsibility to protect or is itself the perpetrator of crimes or atrocities.

We sought to define thresholds when conscience-shocking atrocities are so grave that they clearly require armed international intervention. To enhance the prospects of broad agreement for intervention, the circumstances have to be narrow, the bar high and the procedural and operational safeguards tight. Such thresholds are crossed when large-scale loss of life or ethnic cleansing is occurring or is about to occur.

All military interventions must be subject to four further precautionary principles: right intention, last resort, proportional means and reasonable prospects.

Our ability and tools to act beyond our borders have increased tremendously and thereby increased demands and expectations “to do something”. Rapid advances in medical technology have greatly expanded the range, accuracy and number of medical interventions. With enhanced capacity and increased tools have come more choices that have to be made, often involving philosophical, ethical, political and legal dilemmas. The idea of simply standing by and letting nature take its course has become less and less acceptable, to the point where in many countries today parents can be held criminally culpable for failure to exercise due diligence in refusing all available treatment for their children.

Similarly, calls for military intervention happen. Living in a fantasy world is a luxury we can ill afford. In the real world, our choice is not between intervention and non-intervention. Rather, it is between ad hoc or rules-based, unilateral or multilateral, and consensual or deeply divisive intervention. The challenge is neither to deny the reality of intervention nor to denounce it, but to manage it for the better, so that all of us come out of it better, with our common humanity not diminished as in Rwanda, but enhanced as in East Timor.

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# New jailers, same prison?

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*The Japan Times*, 15 May 2004

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The stage-managed toppling of ex-Iraqi President Saddam Hussein's statue will not, after all, be the image defining the Iraq war. Like the famous photo of the young girl on fire running naked to escape the horror of napalm in the Vietnam War, the photographs emerging from Abu Gh-raib prison will be the icons defining this most ill-advised and ill-planned war. They have managed to combine everything that is most depraved in victors by inflicting the worst possible humiliations and indignity in the Arab world: the grotesque pyramid of naked bodies in suggestive poses while soldiers ham it up for the camera; a woman guard with a naked prisoner on a leash; forcing men in hoods to kneel before the guards in the presence of their wives and children.

The inhuman cruelty is exceeded only by incompetence beyond belief. The conquerors have sunk to the same level of depravity as the thugs they sought to displace. Yet the reactions within America also point to the fallacy of imposing moral equivalence between Saddam's regime and the US administration.

It is worth making four arguments:

- The abuses are not isolated incidents, but reflect a systemic mal-aise;
- The abuses flow from the backdrop and manner of going to war;
- Also on display have been the self-correcting mechanisms of a great and enduring democracy;
- The need for a constructive cleanup of the Iraq mess is more urgent than ever.



In an article immediately after 9/11, I wrote: “To defeat the terrorists, it is absolutely critical that the symbolism of America – not just the home of the free and the land of the brave, but the bastion of liberty, freedom, equality between citizens and rulers, democracy and respect for law – be kept alive.”

In another article I highlighted the contradictions between the goals being pursued in Iraq and the methods used to reach them. I questioned how it is possible to achieve victory in the war on international terrorism directed at American targets by inciting a deeper hatred of US foreign policy around the world, and how democracy and the rule of law could be promoted in Iraq by undermining respect for international law and curtailing civil liberties within the United States.

Elaborating on the theme in a public lecture last month, I said: “The implications of Guantánamo Bay (Cuba) are so revolutionary, so far-reaching and so frightening that they are worth underlining.” In effect the United States asserted the right to be able to “pick up foreign citizens anywhere in the world, spirit them off to Guantánamo and lock them up forever, with no court questioning its actions” (David Cole, *Nation*, 8 December 2003). The main purpose was to take the prisoners beyond the reach of any law that could protect them.

Moreover, emboldened by the curtailment of civil liberties in the bastion of democracy, many other governments have appropriated the language of the war on terror to wage their own wars on domestic dissidents. Now we learn of how Macedonia killed a group of Pakistani immigrants in cold blood in 2002 to impress upon Washington the sincerity of their commitment to the war on terror.

This is why Abu Ghraib is a logical and predictable outcome of the consistent and repeated pattern of abuse of human rights in violation of international conventions and norms, based on a cavalier dismissal of centuries-old legal principles to protect prisoners from abuse at the hands of captors and guards.

Over the last few years, hubris has grown as Washington became openly dismissive of many international regimes, including arms control, climate change and international criminal justice. When US Defense Secretary Donald Rumsfeld arrogates the right to determine unilaterally the status of captured people and their proper treatment, and then dismisses allegations of mistreatment and torture with “stuff happens”; when captives (many subsequently confirmed to be innocent) are handed over for interrogation to regimes where torture is known to be practiced, should ordinary soldiers be faulted for concluding that their prisoners – who must be guilty, otherwise they wouldn’t be prisoners, right? – are sub-human scum unworthy of being treated like human beings?

Worse is to root this in the war itself. The restraints of international law on waging war were pushed aside as mere inconveniences. Soldiers were ordered to war on the basis of falsehoods, no matter how sincerely believed. They were asked not just to die, but to kill. The administration misled them and the public into identifying the Iraqi regime with 9/11, the thirst for vengeance for which is yet to be sated.

Should we be surprised if some soldiers square their conscience by concluding that the enemy is subhuman? How else to account for the killing of 300 to 600 Fallujans, including many innocent women and children, in vengeance for four Americans who were killed and mutilated? When leaders exempt themselves from the norms of international behaviour, a few foot soldiers will free themselves from the norms of civilized conduct.

And yet.

It is Americans who led the world in publishing the pictures, reacting to them as a society with revulsion and deep disgust, conducting an anguished debate in the opinion columns and shows, promising a due accounting and justice for the perpetrators, and issuing apologies from the president down. Were that other countries could match them in such swift and honest introspection. I hope the lights shining in the city on the hill – a powerful symbol for millions of us from and in developing countries whose significance sadly escapes too many Americans – are not extinguished in my lifetime, if ever.

In the meantime, we do have a mess on our hands. Iraqi transition, reconstruction and nation-building cannot be allowed to fail, not after everything that has happened. The United Nations has expertise, credibility and legitimacy in reintegration of former combatants, reconciliation of former enemies and reconstruction of war-torn societies. Genuine control and authority needs to be transferred to the world body, for surely the United States now has passed irretrievably into the enemy camp as far as Iraqis are concerned. The damage to US credibility and image in the Arab and Islamic world will take at least a generation to recover; Iraq's recovery must start now. Time for the surreal coalition of the willing to hand over charge to the real international community.

The whole sorry episode also underlines the urgent need for the International Criminal Court's jurisdiction to cover the international military actions of all countries without class distinctions based on wealth and power.

Absolute power corrupts absolutely. Those in charge of guarding prisoners amid an ongoing war need to establish and assert absolute control over captives. They do so under conditions of almost total secrecy. Because the psychological restraints of ordinary day-to-day living on the

urge to sadistic behaviour begin to fall away, it is imperative that control systems be put in place to ensure that the actions and behaviour of captors conform to international conventions and humanitarian law. Otherwise there will indeed be moral equivalence between the bad and good guys, and they might as well put up a sign at the entrance saying “Open for business under new management”.

## 31

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## Save us from the humanitarians for war

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*The Daily Yomiuri*, 9 September 2004

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Who will save us from virtue run amok, from humanitarians clamouring for yet another war? Those who claim the moral high ground are disdainful of diplomats on the low road to compromise based on negotiations. In the realm of righteous cause and moral rectitude, principles are not for sale, values are not for bargaining.

Now the humanitarians' moral imperative is on the march again in Darfur. The tragedy is genuine and the Sudanese regime may well be guilty of serial genocide over decades. Yet war is such a terrible calamity, with so much suffering and so unpredictable, that it must always be the very last and rare option. A Western intervention, far from offering a solution, may add to the problems. Especially after Iraq, we have to work on regional governments and through the United Nations.

The paucity of non-Western voices in the discourse in the opinion pages of the dominant world media is striking. There seems to be little interest even in contemplating the possibility that developing countries might have some justice on their side in resisting assaults on sovereignty. The most important clue to understanding their concerns is the history of Europe's encounter with Arabs, Africans and Asians.

The relentless march of colonialism and imperialism is never based on anything so vulgar as commercial and geopolitical calculations: land and wealth grabs. No, it is always driven by far more lofty goals, such as spreading Christianity, or mentoring us in the virtues of democracy, human rights and the rule of law, or giving us peace.

They came to deliver us from local tyrants and stayed to rule as foreign despots. In the name of enlightenment, they defiled our lands, plundered our resources and expanded their empires.

Some, like the rapacious Belgians in the Democratic Republic of Congo, left only ruin, devastation and chaos whose dark shadows continue to blight. Others, like the British in India, left behind ideas, ideals and structures of good governance and the infrastructure of development alongside memories of national humiliation.

The record of Western colonizers as peacemakers is a sorry one, from Cyprus and Palestine to Congo, Zimbabwe, Sudan, and South Asia. The legacy of smouldering sectarian conflicts and ethnic hatred should induce caution, diffidence and humility. Yet the last few years have been one of Britain's most war-prone periods since empire, rooted, remarkably, in an irresistible sense of moral mission.

Western colonialism explains why the fine talk of "humanitarian intervention" translates in our historical consciousness into efforts to resurrect and perpetuate rule by foreigners, why we are suspicious of military action guided by an enduring belief in being a virtuous power, and why we look for the ugly reality of geostrategic and commercial calculations camouflaged in lofty rhetoric.

Should we be mute accomplices when Westerners substitute their mythology of humanitarian intervention for our histories of colonial oppression? Do they think we do not remember or do they simply not care?

If the major powers wish to help victims instead of helping themselves, they would do well to abandon the language of "humanitarian intervention" and embrace instead the vocabulary of the "responsibility to protect" as recommended by a broadly representative and independent international commission.

There is no question that we do face a crisis of horrific proportions in Darfur, where 30,000 people have died and over a million are displaced. It is also beyond dispute that the government in Khartoum bears direct complicity at worst, for having encouraged, armed and aided the Janjaweed militias in their orgy of atrocities in Darfur; or indirect culpability at least for lacking the will or capacity to halt the atrocities.

But given the history of past interventions by Westerners, wiser counsel should prevail and the African Union or the United Nations – which has been trying for over a year to alert everyone to the urgency and gravity of the Darfur crisis – must accept the lead responsibility. If London and Washington lead the charge to eliminate the veto power in the Security Council, then – but only then – can they claim legitimacy for military intervention outside the UN framework if UN authorization is vetoed.

There have been suggestions from some, such as the *Economist*, that Beijing and Moscow might tacitly accept Western intervention rather than set the precedent of authorizing UN intervention.

This is specious and self-serving. A history and pattern of interventions unauthorized by the Security Council creates new law in its wake progressively legalizing such habitual state practice, without the compensating benefit of shared control over the policy through the United Nations. Why would Beijing and Moscow want to be party to such a self-defeating subterfuge?

The African Union, with 53 UN members, was created to provide African solutions to Africa's problems and crises. The Darfur crisis is an excellent opportunity for Africans to take collective action, with the encouragement, support and assistance of outsiders. If developing countries wish to end interference by outsiders, they simply must assume the burden of responsibility for ending atrocities by one of their own. A very good example along these lines is to hand in East Timor, where the lead was taken by the regional community (including Australia and New Zealand) with UN backing.

Given the size of the region (Sudan, Africa's largest country, is as big as Western Europe), the complex historical roots of the present crisis which cloud the moral clarity on which military action on perpetrators against victims has to be based, and the ease with which Western intervention could be exploited as yet another assault on Arabs and Muslims, the prospects of a successful outcome of the use of unilateral military force are questionable.

Those impatient for war against Sudan should also answer other critical questions. If deadlines are set by outsiders, does this not reduce rebels' incentives to negotiate an end to the conflict? How do they propose to address the moral hazard of encouraging all rebel groups to internationalize their crisis by intensifying violence? Do developing countries not have the right to use force to put down armed challenge to their authority? Who decides the answers to these questions other than regional countries and the United Nations?

## 32

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## Choosing how to intervene

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*The Japan Times*, 10 October 2004

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From Iraq to Darfur, the topic of international intervention to protect people from the brutality of their own governments remains a deeply divisive one for the international community. Western countries are likely to be the subjects not objects of intervention, and their worldview is coloured by this simple fact. Developing countries are seen as being bitterly opposed to such interventions.

Yet in extensive consultations across the world, the International Commission on Intervention and State Sovereignty (ICISS) found a surprising degree of agreement among developing countries that belies the rhetoric of rejectionism.

On the one hand, there is general acknowledgment of a disturbing vacuum in our collective humanitarian system to cope effectively with massacres and other tragedies. On the other hand, the attachment to sovereignty is rooted in painful historical encounters and many have understandable fears that generalizing a supposed right to intervention could be abused by the great powers to launch unilateral interventions.

It is also important for leaders of the South to examine their policies and strategies critically. Instead of forever opposing, complaining and finding themselves on the losing side anyway, developing countries must assume the burden of responsibility for ending atrocities by one of their own. Otherwise they risk simply being dismissed as the international “nattering nabobs of negativism”.

Nowhere did we encounter an absolute rejection of intervention. In all consultations, people were prepared to concede that, sometimes, out-

siders may indeed have to step in with military force to protect innocent victims from perpetrators of mass killings and ethnic cleansing.

Most interlocutors expressed reservations regarding the term “humanitarian”, saying it should never be associated with war. The weight of historical baggage is too strong for a new consensus to be formed around the concept of “humanitarian intervention”.

In all our consultations, people emphasized the central importance of the United Nations. The organization is the only authentic representative of the international community. If the moral code and political consensus embodied by the Charter have become obsolete, then the United Nations is still the only proper forum and arena for renegotiating the terms of engagement of individual states with a single international standard of civilization.

Any one intervention does not simply violate the sovereignty of any given target state in any one instance; it also challenges the principle of a society of states resting on a system of well-understood and habitually obeyed rules. If the United Nations is unequal to the international responsibility to protect, then it must be reformed.

Neither Britain nor the United States has ever indicated that the elimination of the veto clause would be acceptable to them. That being the case, developing countries can be forgiven for concluding that calls for a derogation of sovereignty whenever coalitions of the willing so decide is simply yet another power grab, based on the negotiating adage that what we have is ours, what you have is open to negotiation.

In fact the point was made repeatedly and everywhere that if the Security Council is going to be more assertive in authorizing military interventions, then it will fail the test of legitimacy without a major reform of the composition and procedures of the Council.

There is unanimous opposition to the idea of Western military interventions unauthorized by the United Nations. There is far too much historical baggage for suspicions and fears to be allayed simply on assurances of good faith and intention. And yet, paradoxically, there is reluctance to rule out the idea that sometimes some individual or groups of states may have to take military action in the face of a paralysed United Nations.

A new international consensus can come about only in the UN forum. Given the changing nature and victims of armed conflict, the need for clarity, consistency and reliability in the use of armed force for civilian protection now lies at the heart of the United Nations’ credibility in the maintenance of peace and security.

Absent a new consensus and clarity, the United Nations’ performance will be measured against contradictory standards, exposing it to charges of ineffectiveness from some and irrelevance from others, increasing the



probability of unauthorized interventions and further eroding the Security Council's primacy in the realm of peace and security.

All parts of the developing world (as well as others) are seriously concerned with issues of double standards and selectivity. Developing countries are united in the insistence that external intervention must never lead to territorial breakup. Protection of at-risk peoples must not lead to new political or territorial arrangements imposed by external actors.

All this suggests that a new consensus on the tension between intervention and sovereignty is possible. But if we are going to get a new consensus, then the bar for intervention has to be set quite high. Interventions cannot become the pretext for imposing external political preferences with regard to regimes and political and economic systems. Cases justifying such action must be tightly restricted to such heinous crimes as genocide and mass murders.

Intervention must always be the last resort, and intervening forces must withdraw as soon as possible. The actions of intervening forces inside the target country must be guided by considerations of political impartiality and neutrality between the domestic political contenders as well as strict fidelity to international humanitarian law. Above all, intervening forces must respect and ensure the territorial integrity of the target state.

It would be better to embed international intervention within the constraining discipline of the principles and caution agreed to in advance than to risk the inherently more volatile nature of unilateral interventions. Establishing agreed principles to guide the use of force to protect civilians under threat will make it more difficult, not less, to appropriate the humanitarian label to self-serving interventions while simultaneously making the Security Council more responsive to the security needs of civilians.

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## Did Kosovo illuminate Iraq?

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*The Japan Times*, 17 October 2004

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One of the curious features of the Iraq war last year was the serious split across the Atlantic. And what seemed to puzzle as much as infuriate Americans was why the major European powers, having signed on to war without UN authorization in 1999 against Slobodan Milosevic, “the butcher of Belgrade”, refused to do so in 2003 against Saddam Hussein, “the butcher of Baghdad”.

On balance, the Americans would appear to have just cause for their complaint of double standards. To be sure, there are important differences. But in some respects the differences are exaggerated and, in other respects, important similarities overshadow the differences.

In 1999, on the one hand, there was compelling television footage of the humanitarian tragedy in Kosovo that outraged an internationalized human conscience. But just as the claims of weapons of mass destruction have been shown to have been greatly exaggerated and amplified through a surprisingly gullible media, so were the claims of mass murders of up to 200,000 people in Kosovo.

On the other hand, there was every prospect of prompt and effective military action being vetoed in the UN Security Council. So NATO launched a “humanitarian war” – a war over values, not interests – without UN authorization.

“Humanitarianism” was thus married to “war” in a clever and successful ploy that labelled opponents of the war as anti-humanitarian. Few noticed that the intervention was confined to bombing, leading to the logically absurd “humanitarian bombing”.

The justification for a regional organization bypassing the international organization to wage an offensive war was as problematic then as last year. The Kosovo precedent remains deeply troubling for having posed a fundamental challenge to the normative architecture of world order.

The Independent International Commission on Kosovo concluded that NATO's intervention was illegal but legitimate. The intervention was illegal because the use of force is prohibited by the UN Charter except in self-defence or when authorized by the Security Council.

The intervention was legitimate, nevertheless, because of the scale of human rights atrocities by the Milosevic regime, the failure of other means used to try to stop those atrocities and the political stalemate in the Security Council created by Russia and China. Proponents of this argument clearly believe that legitimacy is on a higher plane than legality. Thus opposition to the perfectly legal apartheid regime in South Africa was fully justified: illegal, but legitimate

A normative commitment to the rule of law implies a commitment to the principle of relations being governed by law, not power. It also implies a willingness to accept the limitations and constraints of working within the law in specific instances of an illegitimate outcome.

The UN Security Council, as the core international law-enforcement system, has a monopoly on the legitimate use of coercive measures in international affairs. The best that can be said of the NATO actions was that they fell into "grey area" between lawfulness and legitimacy, where the use of force is neither condemned nor condoned, but tolerated.

Critics argued that NATO acted illegally in terms of its own constitution, the UN Charter and state practice. Supporters turned the normal process of reasoning upside down. The war was illegal, yet necessary and justified. Therefore the war highlighted defects in international law, not shortcomings in NATO action. The (anticipated) failure of the Security Council to authorize the war was a reflection on flaws in the Council's functioning, not on the invalidity of NATO bombing. The moral urgency underpinning NATO's actions, and the military success of those actions, would in due course shape legal justification to match the course of action.

In Kosovo, in 1999, a draft resolution to condemn NATO bombing was defeated 3–12, despite two permanent Council members voting for it. Many interpreted the failure to flash the red light as tacit authorization. Therefore NATO neither flouted international legitimacy nor challenged Security Council authority. Rather, the Security Council failed to meet the challenge of international moral authority.

Put like this, the essential structural continuity from Kosovo in 1999 to Iraq in 2003 is at once apparent. For this was precisely the challenge posed to the United Nations by London and Washington: act to enforce

your own resolutions and your own authority, or suffer a decline in your authority and become irrelevant.

It could be argued that the case against Iraq was not framed in terms of the humanitarian argument, but in terms of weapons of mass destruction, which have fallen apart completely.

True, but the case against Serbia in 1999 was not framed in humanitarian language either. People overlooked then that NATO's case was equally dubious. They went to war because Milosevic rejected the Rambouillet ultimatum. Had the Rambouillet diktat been given as close a scrutiny in 1999 as the WMD argument in 2003, it would likely have met with matching scepticism.

NATO succeeded in 1999 in diverting attention from Rambouillet to the humanitarian liberation argument. British Prime Minister Tony Blair and US President George W. Bush have had more difficulty trying to shift the chief justification from WMD to humanitarian outcomes in the case of Iraq.

The differences were that the ethnic cleansing by Milosevic was much closer in time to the 1999 war, not 15 years in the past. No NATO power had been complicit through diplomatic and material assistance to Serbia in the perpetration of those atrocities at the time that they were committed. The European powers collectively were simply sick and tired of Milosevic's deceit, evasions and atrocities being committed in Europe itself.

The Rambouillet diktat reflected the transatlantic horror at Milosevic's record and there was no oil that could be pointed to as the main motive for intervention. The humanitarian motive stood out far more clearly as the main driver of the intervention for most countries that went to war. Because of this, the major Western allies stood solidly united at the level of both people and governments in 1999, whereas the democratic alliance was deeply fractured last year.

Saddam's alleged links to international terrorism and al-Qaeda have also turned out to be based on deceptions and flawed conclusions drawn from heavily qualified, faith-based intelligence. Instead of policy being influenced by intelligence, a predetermined policy shaped the collection, analysis and interpretation of intelligence.

In the case of Serbia, one wonders how much closer scrutiny would have been given by NATO to the links between al-Qaeda and Serbia's main military opponents in Kosovo, the Kosovo Liberation Army, after 9/11?

The majority of developing countries were strongly opposed to the NATO intervention in Kosovo at the time. Their strongest opposition was grounded in the violation of the norm of non-intervention without UN authorization. Most NATO countries insisted that their action did not set a precedent. The Iraq war proves that claim to have been false.

In world affairs we do not have the luxury of “cherry-picking” parts of international law and norms. International do-gooders, like their domestic counterparts, must accept responsibility for the unintended but predictable consequences of their actions.

For nongovernmental organizations, countries and international groups, including both NATO and the United Nations, choices today have consequences on the morrow.

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## Reshaping the concept of shared responsibility for global security

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*The Canberra Times*, 10 February 2005

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In a number of key meetings during and after World War II, world leaders drew up the rules to govern international behaviour and established a network of institutions to work together for the common good. Both the rules and institutions – the system of global governance with the United Nations as the core – are under serious challenge.

The United Nations has to operate today in a global environment that is vastly more challenging, complex and demanding than the world of 1945. On the one hand, the crisis over Iraq was as much a symptom of underlying seismic shifts in world politics. On the other hand, the war itself further damaged UN authority.

In order to forge a new consensus on the norms and laws governing the use of force in world affairs, Kofi Annan brought together a group of 16 distinguished experts, including former Australian foreign minister Gareth Evans, to probe the nature and gravity of today's threats and recommend collective solutions to them through a reformed United Nations. The composition of the panel was initially ridiculed for its average age (around 70) when the task was to look to the future: "Alzheimer's commission", "relics trying to reform a relic", and "a cross between nostalgia and déjà vu" were among the (unattributed) choice descriptions.

In the event the panel's report has confounded the most sceptical and exceeded the expectations of most, even while it falls short of the boldness of vision and action demanded by the most keen.

The report is both comprehensive and coherent, presenting a total of 101 recommendations in furtherance of the conviction that "The mainte-

nance of world peace and security depends importantly on there being a common global understanding, and acceptance, of when the application of force is both legal and legitimate.”

The overarching themes are our shared vulnerability and the primacy of the rule of law embedded in universal institutions and procedures that are efficient, effective and equitable. The central thesis is that no country can afford to deal with today’s threats alone, and no threat can be dealt with effectively unless other threats are addressed at the same time.

For example, the failure of a poor or fragile state to contain an emerging mass infectious disease can have a devastating impact on the life and security of the citizens of the most affluent and powerful state. And we have just witnessed the raw power of a natural catastrophe across southern Asia.

The report identifies the major threats as war and violence among and within states; the use and proliferation of weapons of mass destruction; terrorism; transnational organized crime; and poverty, infectious disease and environmental degradation. The threats can come from state and non-state actors and endanger human as well as national security.

Collective security is necessary because today’s threats are interconnected, cannot be contained within national boundaries and have to be addressed simultaneously at all levels. The primary challenge to the international community is to ensure that imminent threats do not materialize and distant threats do not become imminent. This requires early, decisive and collective action against all the threats before they can cause the worst devastation. Such a prophylactic approach must emphasize development as a structural prevention approach while including the possibility of preventive military action.

The panel endorses UN-authorized preventive action, but not unilateral preventive action. Because the use of force is legal does not mean that it is thereby also ethical and wise. Instead the panel proposes five criteria of legitimacy: seriousness of threat, proper purpose, last resort, proportional means and balance of consequences.

With respect to internal conflicts, the panel argues that “the issue is not the ‘right to intervene’ of any state, but the ‘responsibility to protect’ of every state”. The mutual vulnerability and “multiplier effects” of threats help to explain why sovereignty today has to include the state’s responsibility to protect its own people and obligations to the wider international community alongside the privileges of sovereignty. Hence too the need to enhance state capacity in order to enable it to exercise sovereignty responsibly.

The legitimacy criteria will simultaneously make the Security Council more responsive to outbreaks of humanitarian atrocities and make it more difficult for individual states or ad hoc “coalitions of the willing” to

appropriate the language of humanitarianism for geopolitical and unilateral interventions.

But can any criteria overcome the problem of competing ideologies and divided interests? Or, to put it bluntly: how can the United Nations be empowered to enforce resolutions against recalcitrant regimes like Saddam Hussein's but not take any action against Israel? Without such selectivity, Washington may not recommit to the United Nations. With such double standards, many other countries could walk away from the United Nations. No amount of articulation and clarification of agreed criteria can compensate for their selective application.

Much of the recent selectivity has come in the context of the so-called war on terror. The report's section on terrorism achieves a good balance between immediate threats and root causes, between short term tactics and comprehensive strategies, between assistance and sanctions, and between local, national, regional and global efforts.

This is buttressed by three significant strengths. First, it proposes a clear yet simple definition of terrorism: "any action that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act". Second, it affirms that "terrorism is never an acceptable tactic, even for the most defensible of causes" and therefore "must be condemned clearly and unequivocally by all". And third, recalling that existing normative instruments with regard to the use of force by states are well developed and robust, the panel calls for a similar degree of normative strength concerning the use of force by non-state actors.

Many NGOs should take heed of this: sometimes states can be the good guys.



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## Freedom, when it suits US

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*The Japan Times*, 12 February 2005

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No one who watched the exhilaration and exuberance of Iraqis facing down the threat of bullets in order to cast their ballots can fail to have been moved. And for those who were actually in Iraq to witness this first hand, battle-hardened and cynical journalists included, it must have been bliss indeed to be alive at dawn 30 January and relief to be still alive at dusk. Ironically, the enthusiasm and courage with which ordinary people seized their opportunity to choose their own leaders is a repudiation of central parts of American foreign policy.

It is also a paradoxical explanation for the intensity of much anti-American sentiment. For it is a forceful reminder of just how strong the passion for freedom is, how strong the loathing for regimes and rulers who brutalize their own people is, and how bitter the feelings are towards outside powers who prefer to prop up friendly dictators rather than team up to topple them. The balance sheet of American support for, and opposition to, dictatorships has usually been negative for any given year since the end of World War II.

In pursuing such short-term tactics, US governments have betrayed not just the people yearning to overthrow their local tyrants, but also their own ideals. Many Americans fail to grasp the power of the metaphor of the shining lights of the city on the hill, the hypnotic pull of the ringing American declaration of independence, the stirring inspiration of President Abraham Lincoln's Gettysburg Address (1863). These are not just American treasures; they are the common heritage of mankind.

For India, the speech that most closely matches Gettysburg is Prime Minister Jawaharlal Nehru's address to the nation on 14 August 1947, when the country became independent. At the stroke of midnight, when the world slept, he proclaimed, an ancient nation awoke to freedom, keeping its tryst with destiny. The same festive atmosphere marked South Africa's liberation from apartheid; the same carnival-like celebration of freedoms has accompanied the holding of popular elections following the fall of every dictator of left and right.

Yet it is difficult to recall instances when, faced with a choice between a people rising in revolt and an oppressive but US-friendly regime, Washington actually sided with the people. The world today would have been poorer and sadder for many people if America had not helped to bring about an end to their tormentors, from Poland to Georgia and Ukraine. Nor can Washington fairly be asked to assume the burden of changing history for the better in all places all alone.

But the world is also poorer and sadder for many people because Washington so often compromised its ideals for the sake of stable relations with undemocratic regimes. Their people, including Mideast Arabs and Muslims, seek exactly what Americans take for granted: political freedoms, civil liberties, material prosperity, the right to hold on to legitimately acquired property and wealth, and the accountability of rulers to the rule of law. They are bewildered and embittered when Washington turns its face away from them so as not to antagonize friendly regimes or important allies.

The gap between the lofty, soaring rhetoric of liberty (mentioned 15 times) and freedom (27 times) in US President George W. Bush's second inaugural speech on 20 January and the reality of his administration's ties to authoritarian regimes is pronounced. In an especially eloquent passage, the president said:

We have seen our vulnerability – and we have seen its deepest source. For as long as whole regions of the world simmer in resentment and tyranny – prone to ideologies that feed hatred and excuse murder – violence will gather, and multiply in destructive power, and cross the most defended borders, and raise a mortal threat. There is only one force of history that can break the reign of hatred and resentment, and expose the pretensions of tyrants, and reward the hopes of the decent and tolerant, and that is the force of human freedom.

Just so. And yet the passage is at odds with the actual record of the administration in its first term.

Similarly, in the light of the known treatment of prisoners in US military custody from Afghanistan and Guantánamo to Iraq, what is one to make of the president's boast that "from the day of our Founding, we

have proclaimed that every man and woman on this earth has rights, and dignity, and matchless value, because they bear the image of the Maker of Heaven and Earth"? Or that "freedom, by its nature, must be sustained by the rule of law"?

And dare Palestinians put faith in the promise that "We will persistently clarify the choice before every ruler and every nation: the moral choice between oppression, which is always wrong, and freedom, which is eternally right"?

If all this marks an implicit acknowledgment of mistakes made in the first and a promise to do better in the second four years, then US precepts and practice may yet converge.

The United Nations too has been guilty of compromising core values, perhaps even more so than the United States. On some issues like racial equality and apartheid, the United Nations was well ahead of Washington in leading the good international fight. But overall, no objective historian of the past 60 years could credibly claim that victory in the great battles for defeating the evil of communism, or promoting the onward march of human rights and freedoms, was won by the world body rather than America.

In 1993, the people of Cambodia were given the chance to vote under UN supervision. Like terrorists in Iraq this year, the dreaded and barbaric Khmer Rouge tried to intimidate the people against voting. Instead the Cambodians showed great courage in voting in large numbers under UN-supervised elections. There is an argument to be made that the United Nations connived in negating the verdict at the polls because of the dominant power of the ruling regime in Cambodia, betrayed the people and undermined whatever prospect the tiny nation might have had for a democratic future within a foreseeable time frame.

For the international organization as for the sole superpower, there is a price to be paid in the long run for expedient decisions in the short term.

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## Peer review of human rights

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*The Japan Times*, 29 May 2005

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The spread of human rights norms and conventions and the extension and diffusion of international humanitarian law were among the truly great achievements of the last century. The United Nations was at the centre of that effort.

In 1948, conscious of the atrocities committed by the Nazis while the world looked away, the United Nations adopted the Universal Declaration of Human Rights. Sometimes, especially around Asia, it is mistakenly described as an imposition of values and norms by the West on the rest of the world. In fact, it marked a repudiation of trends in Western civilization that had led, in particular, to the Holocaust, the attempted extermination of Jews by Nazi Germany.

The Universal Declaration was followed by two international covenants in 1966: one on civil and political rights, and the second on social, cultural and economic rights.

According to UN Secretary-General Kofi Annan, “The promotion and protection of human rights is a bedrock requirement for the realization of the Charter’s vision of a just and peaceful world.”

Yet the UN Human Rights Commission is so dysfunctional and discredited today that it is dragging down the image of the rest of the world body among many people and governments. In some ways the 52-member commission became a victim of the world body’s growing success in promoting human rights and monitoring abuses. As the international community aimed the searchlight of critical scrutiny more directly on the

human rights abuses of governments, many regimes decided that their best defence was to join the commission.

To reverse growing cynicism about the hypocrisy of existing institutions and practices, and noting that states often seek membership on the commission to shield themselves from scrutiny, the high-level panel on UN reforms recommended universal membership.

But this would not prevent human rights violators from acting in a bloc to shield themselves and their abusive peers from international scrutiny. The more challenging recommendation would have been to strengthen, not enlarge, the commission, by laying down benchmarks for election such as ratification of all UN human rights treaties, cooperation with UN investigations and willingness to discuss country-specific allegations of abuse.

In a report, Annan affirms that the promotion and protection of human rights does not have to entail tradeoffs with security or development. Despite many real human rights successes, he acknowledges that “the system for protecting human rights at the international level is today under considerable strain”. The Commission on Human Rights, in spite of some notable strengths, has been overtaken by new needs and undermined by the politicization of its sessions and the selectivity of its work.

Annan’s solutions include more dedicated resources for the UN human rights machinery and a more active role for the high commissioner in discussions with the Security Council and with the proposed new Peacebuilding Commission. Noting the “credibility deficit” of the Human Rights Commission, he rejects the idea of universal membership in favour of a smaller Human Rights Council that would facilitate more focused debate and discussions.

Basing it in Geneva and treating it as a principal organ would give it more status alongside the Security Council and the Economic and Social Council. But this would require UN Charter amendment, which is a very difficult task. Alternatively, it could be a subsidiary body of the General Assembly with lower status, but much more easily accomplished. Its composition and term of office will also need to be determined.

Unlike the present commission, which meets for a few fixed months every year, the new council would be a standing body, able to meet regularly, allowing for timely and in-depth discussion of human rights issues. It would also be able to meet at any time to deal with imminent crises.

Its members would be elected directly by two-thirds of the General Assembly, free of the regional rotation system that has seen some of the worst abuser regimes elected to the watchdog body. Election by all members would give the council greater authority while ensuring its accountability.

Its functions would include giving technical assistance to states and policy advice to governments and UN bodies alike. While continuing to be a forum for dialogue among states with the involvement of civil society, it should play a pivotal role in overseeing and contributing to the interpretation and development of international human rights law.

Describing the proposed council as “a chamber of peer review” with the power of “universal scrutiny” over the human rights performance of all countries over “the entire spectrum” of civil, political, economic, social and cultural rights seems somewhat optimistic with respect to the international tolerance threshold of the United States and some other Western democracies.

One of the questions not addressed – maybe because it is too sensitive – is why the community of democracies should subject their actions to critical scrutiny by self-serving regimes with dubious domestic records.

## 37

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## The UN at 60: The place where humanity's divisions meet

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*International Herald Tribune, 25 June 2005*

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The United Nations Charter was signed in San Francisco 60 years ago on Sunday, with a sense of excitement and romantic adventure. Yet today the organization is in turmoil, struggling to cope with a string of allegations of fraud and misconduct by foot soldiers and senior officials that has produced demoralization throughout the UN system.

The Charter begins with the grand words “We the peoples”. The reality is that it functions as an organization of, by and for member states. Sometimes the people of the world are served up to the designs of governments. The United Nations needs to achieve a better balance between the wish of the peoples and the will of governments; between the aspirations for a better world and its performance in the real world; between the suffocating political reality and the vision of an uplifting world that has inspired generations of dreamers and idealists to work for the betterment of humanity across cultural, religious and political borders.

The causes and consequences of public policy challenges and decisions are international, but the authority for addressing them is still vested in states. The United Nations' mandates are global, but its staffing and financial resources are less than that of major municipal authorities.

The United Nations promised much but has accomplished little. Set up as a many-splendored forum for realizing humanity's loftiest aspirations, it has often been reduced to a many-splintered organization mired in petty squabbles.

The founders created the General Assembly as the forum of choice for discussing the world's problems and articulating global norms, the Secur-

ity Council for keeping the peace and enforcing the norms, the specialized agencies to address transnational technical problems, and the office of secretary-general to run this vast machinery smoothly and efficiently. In fact the Assembly has become a forum for public recriminations more than public diplomacy, the Cold War was won by the United States and its allies rather than being resolved by the United Nations, and countries have moved from poverty to prosperity by embracing market principles and engaging with the world economy rather than relying on UN hand-outs.

For critics, the organization has played a scarcely discernible role in keeping the peace, promoting successful development or defeating the worst enemies of freedom and human rights since 1945. Moral clarity and backbone, essential for courage of convictions, do not sit easily alongside institutional timidity and instinctive risk-aversion.

Yet the United Nations also can claim many real accomplishments: decolonization, elimination of apartheid, peacekeeping missions, behind-the-scenes peacemaking, the development and extension of the rule of law, the promotion of the norms of human rights, gender empowerment, assistance to refugees, and collective action for such common problems as resource depletion and environmental degradation. On balance, the world has been a better and less bloodier place with the United Nations' help.

The United Nations must manage its most critical relationship, with Washington, without compromising its independence and integrity.

The United Nations is universal in membership. It has authority without power. It symbolizes global governance but lacks the attributes of international government.

The United States, on the other hand, is global in reach and power but lacks international authority. It often acts as a *de facto* world government but disclaims responsibility for the worldwide outcomes of its actions.

The UN Charter was written in another age for another world. The establishment of the United Nations was a small but symbolically important step on the journey to tame the use of aggressive, unlawful and unjustified force. Towards the end of his 21 March report on the package of UN reform proposals, Secretary-General Kofi Annan argued that "it is for us to decide whether this moment of uncertainty presages wider conflicts, deepening inequality and the erosion of the rule of law, or is used to renew our common institutions for peace, prosperity and human rights".

The United Nations has many failings and flaws. It is often used and abused by governments for finger-pointing, not problem-solving. It is an international bureaucracy, a politicians' talk shop and can be a spineless and toothless cop on the beat.



Yet the world organization remains the focus of international expectations and the locus of collective action. Despite bureaucratic rigidity, institutional timidity and intergovernmental trench warfare, the United Nations is the one body that houses the divided fragments of humanity. It is an idea, a symbol of an imagined and constructed community of strangers. It exists to bring about a world where fear is changed to hope, want gives way to dignity and apprehensions are turned into aspirations.

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## Balancing security and rights

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*The Japan Times*, 30 July 2005

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On 23 July, Jean Charles de Menezes, a young Brazilian legally living and working in Britain, was killed at Stockwell Underground Station in a tragic case of mistaken identity. Police have confirmed he had no links whatsoever to terrorism. But he had come out of a house under surveillance by anti-terrorist undercover police, was overdressed on a warm day, ran in panic when challenged by the police, and was shot eight times at point-blank range. From his point of view, in the heightened state of fear in London, perhaps he ran because a group of suspicious men had stalked him and were now chasing him.

Sympathy for the police dilemma is tempered by still greater sympathy for Menezes and his family. The case highlights the need for a proper balance between civil liberties and human rights, and the responsibility of the state to protect its citizens from terrorists.

The death of Menezes is a small victory for Osama bin Laden and his followers. Michael Ignatieff, director of the Carr Centre for Human Rights at Harvard University, has argued it is possible to resort to the lesser evil of curtailing liberties and using violence in order to defeat the greater evil of terrorism, but we must be careful not to succumb to the greater evil of destroying the very values for which democracies stand.

The way to do this is to require of governments that they justify all restrictive measures publicly, submit them to judicial review and circumscribe them with sunset clauses to guard against the temporary becoming permanent. The safeguards are especially important because the history

of the great democracies themselves suggests that most people privilege the security of the majority over the harm done to minorities deprived of their rights in the name of national security.

After 9/11, some Western democracies recalibrated the existing balance between national security and civil liberties in their laws and practices. American priorities shifted to subordinate human rights to victory in the “war” against terrorism. A counterterrorism expert testified that “After 9/11 the gloves came off”, while another official remarked that “if you don’t violate someone’s human rights, you aren’t doing your job”. There developed also the distasteful practice of “rendition to torture”, sending prisoners to their home countries because the latter were known to practice torture as a routine part of their interrogation.

Many other democracies joined the United States in shifting the balance of laws and administrative practices towards state security. In Australia, the post-9/11 hysteria was harvested by the government to introduce tough detention laws against illegal immigrants in defence of the policy of Fortress Australia.

Thus terrorism has an impact on human rights in three ways. First, it is itself an extreme denial of the most basic human right, namely to life, and it creates an environment in which people cannot live in freedom from fear and enjoy their other rights. Second, the threat of terrorism can be used by governments to enact laws that strip away many civil liberties and political freedoms. One simple yet popular technique is to reverse the burden of proof: those accused of terrorist activities, sympathies or even guilt by association on the basis of accusations by anonymous people are to be presumed to be guilty until they can prove their innocence of unspecified charges. Third, without necessarily amending laws or enacting new ones, governments can use the need to fight terrorism as an alibi to stifle dissent and criticism, and imprison or threaten domestic opponents.

US President George W. Bush’s response to 9/11 was to elevate terrorism from a tactic or a method into a transcendental conflict that was at once simpler yet more fundamental: an epic struggle of historic proportions between the greatest force for good on Earth, responding to a calling from beyond the stars, against enemies bent on destroying it. Neutrality was not an option. But this reinterpretation of 9/11 in Manichaean terms of good and evil that lumped the jihadists of al-Qaeda with the terrorists of Hamas, Hizbollah and Chechnya also allowed many other governments to relabel their domestic difficulties as part of the global war on terror and to justify their own versions of a might-is-right approach to governance.

The dream of a world ruled by law is a shared vision. We must not privilege security and order to such an extent as to destroy our most

cherished values of liberty and justice in the search for an unattainable absolute security. As Benjamin Franklin, one of the fathers of American independence, said, those who would sacrifice essential liberty to temporary safety deserve neither liberty nor safety.

The robustness and resilience of the civilized world's commitment to human rights norms and values will be judged in the final analysis not by the breaches in the aftermath of 9/11, but by the reversal and attenuation of the breaches through judicial and political processes as well as the pressure of domestic and international civil society.

Equally, the sincerity and depth of the Islamic world's commitment to civilized dialogue will be judged by a public, unequivocal and emphatic repudiation of terrorism as a tactic. No excuses, no alibis, no mantras about how one man's terrorist is another man's freedom fighter. Islam is a religion of peace. Muslims should reclaim their religion from the fanatics.

Tough on terrorists. Tough on the causes of terrorism. And tough on the virtues of tolerance, human rights and civil liberties.

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## East Timor: When peace and justice collide

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*The International Herald Tribune*, 31 August 2005

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The Truth and Friendship Commission established jointly by East Timor and Indonesia in March, which began work on 11 August, is the first example of a bilateral such body: hence its name. The 10-member panel, based in Bali, will be given access to legal documents and is expected to conduct interviews in both countries. But its remit is to reveal the truth and promote reconciliation, not to recommend prosecution of offenders.

East Timor's decision against criminal prosecution was neither easy nor uncontested. Human rights groups and East Timor's Catholic Church have criticized the commission as an attempt to bury the past rather than to pursue justice. A UN Commission of Experts has urged international criminal prosecution by the United Nations if Jakarta does not prosecute the war criminals of 1999, when the Indonesian military and its proxy militias killed at least 1,450 people and left 300,000 homeless.

Criminal law, however effective, cannot replace public and foreign policies. The issue confronting East Timor and Indonesia is primarily political, not judicial.

Peace and justice can sometimes collide. Justice is retributive, backward-looking and can be divisive. Peace is integrative, forward-looking and should be conciliatory. The legal clarity of judicial verdicts sits uncomfortably with the nuanced morality of confronting and overcoming, through a principled mix of justice and high politics, a jointly troubled past.

A criminal trial is not always the best avenue to communal healing. In Rwanda, for example, the international criminal tribunal deprived the

people and government of the right to decide whether, how and who to prosecute for mass crimes, and what punishment to inflict.

The international criminal justice system also removes the options of alternative modes of healing and restitution with a view to reconciliation that puts the traumas of the past firmly in the past. In South Africa, this was successfully done through the Truth and Reconciliation Commission chaired by Archbishop Desmond Tutu.

In Mozambique, it was equally successfully done through communal healing techniques. In the peace agreement signed a decade ago after 17 years of bitter civil war, all participants were given complete amnesty for acts committed during the war. As warriors, victims, exiles and the displaced came home, communities reverted to traditional healing rituals designed to take the violence out of the individual person and facilitate reintegration into the community. Their belief is that all those affected by the violence – perpetrators and victims alike – need to be purified of its effects.

In Rwanda, the traditional system of people's courts, known as *gacaca*, has been more productive and efficient, whereas the international criminal tribunal has been time-consuming and expensive, with little to show for its work.

The purely juridical approach to transitional justice traps communities in past hatreds. Traditional justice systems, however, which are restorative rather than retributive, have a better record than international criminal justice of ending savage cycles of retributive violence in deeply-conflicted societies.

The choice between restorative and retributive justice may be a painful one; the government and the people may be divided on the issue and the resulting public policy may turn out to be flawed. But the point is that these are profoundly political choices that involve complex tradeoffs, not primarily and simply legal decisions.

East Timor's president, Xanana Gusmao, has declared that justice for the perpetrators of the violence of 1999 must be subordinated to development and social justice. "We fought, we suffered, we died for what?" he asks. "To try other people, or to receive the benefits of independence?"

East Timor has recognized the futility of pursuing perpetrators outside its jurisdiction, given that the Indonesian authorities have refused to cooperate. Academic experts might express distaste for such compromises based in realism. But East Timor's destiny is tied to good relations with its powerful neighbour, and the government believes that the Truth and Friendship Commission will bring closure by telling the truth, acknowledging responsibility and apologizing to the victims.

For foreigners to reject this judgment would be to start a new wave of judicial colonialism. The choice is one that only the concerned countries

can make. They paid the price in the past and will have to live with the immediate and long-term consequences of the decisions they have made.

In the long term, it is also important to remember that a society may choose to begin with one form of justice but move to bring closure with the other, as is starting to happen in Argentina and Chile with respect to their legacies of “dirty wars”.

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## UN's "Einstein" moment

*The Japan Times*, 3 October 2005

The optimists had hoped for a "San Francisco moment" in New York, as decisive and momentous as the signing of the UN Charter 60 years earlier in the city by the bay. Critics might well conclude that instead the United Nations had an Einstein moment, recalling his definition of madness as doing something over and over again and expecting a different result each time. The organization has been a graveyard of every previous major reform effort.

Shaken by Iraq and beset by allegations of fraud and mismanagement, UN Secretary-General Kofi Annan brought together a group of 16 distinguished experts to probe the nature and gravity of today's threats and recommend collective solutions to them through a reformed United Nations. Saying that he had "resisted the temptation to include all areas in which progress is important or desirable" in order to concentrate on items on which "action is both vital and achievable", Annan drew on its report to present "an agenda of highest priorities" for forging a new consensus on key challenges and collective action.

With respect to internal conflicts, the high-level panel argued, and Annan agreed, that "the issue is not the 'right to intervene' of any state, but the 'responsibility to protect' of every state". This is one of the few substantive items to survive. The summit's "outcome document" contains acceptance of the new norm of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and willingness to take timely and decisive action through the Security Council when peaceful means prove inadequate and national authorities



are manifestly failing to do it. I have a proprietary interest in this norm as a member of the international commission that promulgated it, and as one of the principal authors of the report.

Both the panel and Annan proposed a simple definition of terrorism. Its focus on the nature of the acts breaks the unhelpful link with causes and motivations. The proposed definition brought clarity and rigor, removed the ideological edge from the debate and muted the charges of inconsistency and double standards.

Because terrorism deliberately targets civilians to achieve political goals, it always represents a conscious choice of one tactic over others. The strong condemnation of terrorism “in all its forms and manifestations”, no matter what the cause, is reiterated in the outcome document. The call for a comprehensive convention is endorsed. But there is no agreed definition.

The triple crisis of nuclear weapons arises from noncompliance with obligations of the Non-proliferation Treaty by some states engaged in undeclared nuclear activities and others that have failed to honour their disarmament obligations; states that are not party to the NPT; and non-state actors seeking to acquire nuclear weapons. Annan warned that “Progress in both disarmament and non-proliferation is essential and neither should be held hostage to the other.”

The NPT Review Conference in May collapsed into complete failure. The summit failed to come to any agreement on non-proliferation and disarmament, a failure described as “inexcusable” and “a disgrace” by Annan. More and more countries are bumping against the nuclear-weapons ceiling at the same time as the world energy crisis is encouraging a move to nuclear energy.

There is agreement on a weakened Human Rights Council and Peacebuilding Commission, and on “early reform” of the Security Council through continued efforts. After a decade of talks, they agreed to talk some more. And they wonder why the United Nations is falling into disrepute.

There are two possible explanations for the underwhelming outcome, one cynical, the other charitable. For a UN official, it is a tossup as to which is the more dispiriting.

The cynical explanation is that all sides pushed their own interests, blocked items not of interest to them, and criticized others for not elevating the common interest. While pushing items of importance to themselves, they rejected others as not being all that urgent and distracting attention from their own pet reforms.

Canada’s Paul Martin expressed “profound disappointment” at the failure to agree on an operational and powerful human-rights council and

criticized the fondness for "empty rhetoric" over concrete results, ignoring Canadians' spoiler role in thwarting an enlarged permanent membership of the Security Council.

South Africa's Thabo Mbeki criticized "rich and powerful nations" for blocking attempts to widen the Security Council to include more developing nations, ignoring how the head of momentum built by the G4 (Brazil, Germany, India and Japan) was stalled by the African Union's insistence on full veto powers for all new permanent members. Washington wanted to focus on non-proliferation and management reform, but betrayed an instinct for mismanaging international diplomacy in presenting a list of demands for hundreds of amendments at the 11th hour to a text that had been under negotiation for months, and in the refusal to link non-proliferation to disarmament.

But Americans have yet to receive a convincing answer as to why the world's only superpower should acquiesce in its own "Gulliverization", bound and tethered by the many fine strands of international treaties and conventions. Or why they should not seek to refashion institutions to reflect their pre-eminence. Or why indeed the growing circle of democratic countries should accept moral equivalence with regimes which are anything but when it comes to collective decision-making.

Westerners blamed the developing countries for blocking efforts at management reform that would give greater discretionary authority to the secretary-general in hiring and firing UN personnel. This ignores how the senior ranks of the UN system are already disproportionately dominated by Westerners. Developing countries fear that Americans and Europeans would commandeer even more positions if the General Assembly surrendered its prerogatives.

The charitable interpretation is that the sense of shared values and solidarity that makes up an international community may have frayed a thread too far. UN membership has not just quadrupled since 1945, but grown far more diverse. There are many more states today, with markedly diverging interests and perspectives. The range of issues they have to confront are more numerous, complex and challenging, for example, hot-button items like global warming, HIV/AIDS and nuclear terrorism that were not on the international agenda in 1945. There are also many more non-state actors.

A "community" exists if members share core values and agree on legitimate behaviour. The struggle for UN reform is a battle over policy, not just process and management. Should it be the forum of choice or last resort for collective-action solutions to global problems: less or more environmental regulation, non-proliferation and/or disarmament, counter-terrorism vs. human rights, a strong state that provides social

protection and regulation or an unobtrusive state that lets capital and markets rule? It is a struggle between international Keynesianism and neoliberalism.

The serious disagreements between the countries of the world on the answers to these questions and other key issues may be evidence of the growing loss, not betrayal, of the sense of international community on which the United Nations is predicated.

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## From national security to human security

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*The Japan Times*, 13 October 2005

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The suffering and death inflicted by last December's tsunami and Hurricane Katrina shows the need to reframe security in human terms.

Human security puts the individual at the centre of the debate, analysis and policy. He or she is paramount, and the state is a collective instrument to protect human life and enhance human welfare. The fundamental components of human security – the security of people against threats to personal safety and life – can be put at risk by external aggression, but also by factors within a country, including “security” forces like the police, paramilitary and soldiers.

The reformulation of national security into the concept of human security is simple, yet has profound consequences for how we see the world, how we organize our political affairs, how we make choices in public and foreign policy, and how we relate to fellow-human beings from many different countries and civilizations.

One “leg” of human security is in the human rights tradition that sees the state as the problem and the source of threats to individual security. The other is in the development agenda that sees the state as the necessary agent for promoting human security. Both are reflected in the UN policy discourse, and indeed may well explain why the human security discourse first arose within the United Nations.

Its theoretical and policy significance is underlined in a major new report being launched at the United Nations today. The Human Security Report, compiled by Professor Andrew Mack at the University of British Columbia, contains some startlingly good news that should help offset

the prevailing pessimism on the state of the world and the United Nations' performance in protecting peace and promoting progress. Evidence in the report explodes widely-believed myths about wars, battle deaths, genocide and terrorism and shows the United Nations has been more effective in promoting peace than commonly believed.

By 2003, there were 40 per cent fewer conflicts than in 1992. The deadliest (over 1,000 battle deaths) fell by 80 per cent. Nearly 700,000 people were killed in battle in 1950 in total; in 2002 the figure was 20,000. The average number of those killed per battle in 1950 was 38,000, plummeting to 600 in 2002.

The nature of warfare has changed fundamentally in the past 50 years. There has been a massive shift away from huge mechanized armies. Today's wars are mostly fought in poor countries with small arms and light weapons, between weak government forces and ill-trained rebels. Although often brutal, these wars kill far fewer people. In most of today's armed conflicts, for example Darfur, disease and malnutrition resulting from warfare kill far more people than missiles, bombs and bullets.

There has also been a shift over time in where wars are being fought. From 1945 to the mid-1970s, most battle deaths were in East Asia; in the 1980s, in the Middle East, Central and South Asia, and sub-Saharan Africa. Now more people are being killed in Africa's wars than in the rest of the world combined. Armed conflicts in sub-Saharan Africa are difficult to avoid, contain or end because of pervasive poverty, reduced aid, poor infrastructure, weak administration, external intervention, cheap weapons and a bitter legacy of past wars. Moreover, violent conflicts in Africa exacerbate the very conditions that gave rise to them in the first place, creating a classic "conflict trap" from which escape is difficult.

Genocides, international crises and military coups are dramatically down too. And human rights abuses have declined in five out of six regions in the developing world since the mid-1990s. International terrorist attacks are becoming more numerous and more deadly. Even so, fewer than 1,000 people a year on average have been killed by international terrorists over the past 30 years, a fraction of those killed in warfare.

The Human Security Report identifies three major political changes over the past 30 years that have altered the global security landscape. The first was the end of colonialism. Until the 1980s, colonial wars made up 60–100 per cent of all international conflicts. There are no colonial wars today. The second was the end of the Cold War, which had driven approximately one-third of all conflicts since 1945. This removed any threat of war between the major powers, and Washington and Moscow stopped fuelling "proxy wars" in the developing world. Third, after the end of the Cold War there was an unprecedented explosion of inter-

national activities designed to stop ongoing wars and prevent new ones from starting.

The report presents compelling evidence that the United Nations has played a critical role in driving these positive changes. UN efforts increased between fourfold to tenfold to stop wars starting, end ongoing conflicts, mount peace operations and impose sanctions. Of course, the United Nations did not act alone. The World Bank, donor states, regional organizations and thousands of nongovernmental organizations worked with UN agencies, often playing independent roles of their own. But the United Nations has been the leading player.

Despite these positive changes, the report warns against complacency. There are still 60 armed conflicts raging around the globe, gross abuses of human rights, widespread war crimes, and ever-deadlier acts of terrorism. Moreover, the underlying causes of conflict are rarely addressed, so the risk of new wars breaking out and old ones starting up again remains very real. The world becoming more peaceful is no consolation to people suffering in Darfur, Iraq, Nepal or New Orleans.

The reality of human insecurity cannot simply be wished away. To many poor people in the world's poorest countries today, the risk of being attacked by terrorists or with weapons of mass destruction is far removed from the pervasive reality of the so-called soft threats – hunger, lack of safe drinking water and sanitation, and endemic diseases – that kill millions every year, far more than the “hard” or “real” threats to security. They are neither unconnected to peace and security, nor can they be ignored until the hard threats have been taken care of.

The security of most Africans, for example, is threatened more by state weakness, incapacity and absence of control over its territory, people and resources than by threats of armed attack by other countries. At the same time, individuals cannot be secure in conditions of anarchy. The state must be efficient in the provision of law and order and other public goods.

The shift from national to human security is of historic significance for scholars and policymakers. Three years in the making, the Human Security Report has been eagerly awaited, is much needed and will be widely welcomed as the most comprehensive compilation of data and analysis of key trends. As proven by the shifting of funds from building levees in New Orleans to bridges in Alaska, and the redeployment of National Guards to Iraq, policy choices can have deadly consequences. This is why human security is as much a policy as a conceptual template.

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## Tyrants under the gun: The reduction of impunity

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*The Japan Times*, 10 November 2005

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Government is about making and implementing public policy choices. These are neither always easy nor always right. Governments, like individuals, do make mistakes. But in democracies, the task of making decisions on behalf of the people is delegated to elected representatives who then answer to the courts on constitutionality and to the people on the consequences of their choices.

At the same time, every society, including international society, always has some members whose intellectual conceit and moral arrogance lead them to want to substitute their judgment for the outcome of the democratic process.

David Forsythe of the University of Nebraska uses the phrase “judicial romanticism” for the idea of always looking to courts for a solution to every problem. In the commitment to justice at any price, the romanticists discount political and diplomatic alternatives. In the United States, President Richard Nixon would have been prosecuted for Watergate.

I saw this romanticism in action in New Zealand in the mid-1980s when many were unhappy that the government succumbed to French economic pressure and released the intelligence agents convicted of the Rainbow Warrior bombing. Not everyone in South Africa was happy with the amnesty granted to some apartheid-era criminals by the Truth and Reconciliation Commission. Some in Britain would like to see the Irish Republican Army (IRA) terrorists brought to book even at the cost of imperilling the peace accords. And we see it within East Timor in calls for no compromise with the murderers of 1999.

Romanticism turns into judicial colonialism with demands that the political and diplomatic decisions made by democratically elected governments of other countries be subordinated to “international” judicial processes that reflect the values of the most dominant countries of the day. It is based in moral imperialism: our values are so manifestly superior to theirs that we have the right to impose it on them.

To appreciate this, consider two examples in the contrary direction. It is possible for reasonable people to disagree on the rights and wrongs of homosexuality and abortion. Both acts are prohibited in many countries, perhaps accounting for a majority of the world’s population. Would those countries be justified in insisting that their moral position on homosexuality must be written into the domestic laws of Western countries? If so, is this an example of moral imperialism?

And, if they had the economic and military muscle, would strongly pro-life countries have the right – nay, the moral duty, in the language of the humanitarian warriors – to coerce us into ending the killing of thousands of innocent lives every year by taking doctors and women to criminal courts? If so, is this an example of judicial colonialism?

Unlike domestic society, we lack functioning mechanisms of judicial accountability in world affairs. Some day hopefully every tyrant and warmonger will be hauled before international criminal courts. The UN Charter was never meant to be a tyrant’s charter of impunity or his constitutional instrument of choice for self-protection.

The Holocaust in which several million Jews were systematically killed in the Nazi programme to exterminate them – the familiar cycle of pogroms modernized into industrialized and highly efficient mass slaughter – retains a unique emotional resonance. But repeating the slogan of “Never Again” requires *chutzpah* after the repeats of the horror of mass killings in Rwanda, Srebrenica, Darfur and elsewhere.

Much as humanitarians might want to believe that they still hold up the virtue of truth to the vice of power, the truth is that the vocabulary of virtue has just as often been appropriated in the service of power. Nuremberg and Tokyo were instances of victors’ justice. Yet by historical standards, both tribunals were remarkable for giving defeated leaders the opportunity to defend their actions in a court of law instead of being dispatched for summary execution.

The ad hoc tribunals of the 1990s for Rwanda and former Yugoslavia are important milestones in efforts to fill institutional gaps in international criminal justice. They have been neither unqualified successes nor total failures. While the international criminal tribunals have primacy over the operation of domestic court systems, the International Criminal Court has been constructed to give primacy to domestic systems and become operative only in the event of domestic unwillingness or incapacity.



After the Iraq war started in 2003, British Prime Minister Tony Blair and his defence and foreign ministers were accused of crimes against humanity by Greek lawyers who lodged a case with the ICC on 28 July 2003. The doctrine of universal jurisdiction was employed also to threaten prosecution against US President George W. Bush and General Tommy Franks (commander of the US forces in Iraq).

Defense Secretary Donald Rumsfeld retaliated by warning that if US officials could no longer travel to Brussels without fear of prosecution, NATO headquarters would clearly have to be relocated to another country. In July 2003 Belgium amended its controversial law on universal jurisdiction and restricted trials in Belgian courts to crimes committed or suffered by its citizens or residents.

Truth commissions provide a halfway house between victors' or foreigners' justice and collective amnesia. The ad hoc tribunals have helped to bring hope and justice to some victims, combat the impunity of some perpetrators and greatly enrich the jurisprudence of international criminal and humanitarian law. But they have been expensive, time-consuming and contributed little to sustainable national capacities for justice administration. Truth commissions take a victim-centred approach, help to establish a historical record and contribute to memorializing defining epochs in a nation's history.

The ethic of conviction would impose obligations to prosecute people for their past criminal misdeeds to the full extent of the law. The ethic of responsibility imposes the countervailing requirement to judge the wisdom of alternative courses of action with respect to their consequences for social harmony in the future.

Of the four sets of actors in global governance, nongovernmental organizations remain more fiercely resistant to calls for independent accountability for the consequences of their actions than governments, international organizations and multinational corporations. The fault line between activists and policymakers is no longer as sharp as it used to be.

Harvard University's David Kennedy argues that humanitarian actors often deny the reality of bad consequences flowing from good intentions. Humanitarian actors are participants in global governance as advocates, activists and policymakers. Their critiques and policy prescriptions have demonstrable consequences. With influence over policy should come responsibility for the consequences of policy.

In 1990, a tyrant would have been reasonably confident of escaping international accountability for any atrocities. Today, there is no guarantee of prosecution and accountability, but not a single brutish ruler can be confident of escaping international justice. The certainty of impunity is gone. Fifteen years is a very short time in the broad sweep of history for such a dramatic transformation of the international criminal landscape.

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## In selecting new UN secretary-general, leadership most important factor

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*The Daily Yomiuri*, 3 February 2006

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This year's UN agenda will be dominated by the choice of the next secretary-general who, under the convention of regional rotation, should be Asian. Choosing the best available candidate is a good principle, like the one that would impose two-term restrictions on chief executives of all international organizations (which the UN University follows). Washington's and London's pursuit of this noble course would have been more credible if the same principle had been followed in choosing the World Bank and International Monetary Fund chiefs instead of a cosy gentlemen's agreement that sees these divided between Americans and Europeans.

Some Eastern Europeans are claiming they have never had a UN secretary-general. Three of the six secretaries-general to date have been European, and only one Asian, despite Asia accounting for 60 per cent of the world's population. Can countries claim to be Eastern European for this purpose while also clamouring for membership of the European Union?

A practical compromise would be for all to agree that the secretary-general will be Asian, but many candidates can be nominated. The Security Council votes on them all, eliminating losing candidates in successive rounds until one person secures the necessary votes and avoids a veto by any of the five permanent members (P5) on the council. This way the secretary-general is Asian but everyone gets to vote. The Asians do not impose their choice on the world.

Trygve Lie, the first secretary-general, famously remarked that it was the most impossible job in the world. It is now even more so. The UN

chief must cultivate six different constituencies simultaneously without being captured by any one.

First and most important, he must not alienate those who control the Security Council, especially the P5 members, and in particular the United States. He must be attentive to the priorities of the council whilst sensitive to the passions of the General Assembly. During the Cold War, deadlock in the council often produced a policy vacuum that only the secretary-general could fill through creative interpretations of his role, oversight of peacekeeping operations and crisis mediation.

Peacekeeping requires leadership by the secretary-general because it falls between war-fighting and diplomatic negotiations, both of which are undertaken mainly by states. The Security Council establishes, renews and terminates peacekeeping operations and gives them their mandate, the General Assembly appropriates funds, and the secretary-general exercises oversight. Occasionally he must exercise independent judgment with little time for guidance by the Security Council or General Assembly.

Second, the secretary-general must retain the confidence of the majority of countries in the General Assembly. The end of the Cold War greatly expanded the agenda and activities of the Security Council alongside a decline in the role and influence of the General Assembly. The fate of the United Nations' peace and security agenda then often hinged on the relationship between the Security Council and the secretary-general. The UN chief found himself at the heart of a complex web of several peace operations, directing the military and humanitarian operations, engaging in conflict prevention and resolution activities, and supervising elections and post-conflict reconstruction efforts. There was a commensurate enlargement of his day-to-day operational responsibilities and political judgment calls.

The proper balance between the United Nations' major member states and different principal organs proved impossible to strike amidst the passions stirred by the Iraq war. Kofi Annan was left to improvise as best he could, seeking to chart a steady course for the organization amidst the transatlantic clash of civilizations between Old Europe and the New World. While US critics thought he was too ready to appease Saddam Hussein, critics of US policy thought he failed to stand up to US war-mongering.

Third, he must ensure he has the support of those who control the resources without which the United Nations cannot pay its bills, implement its mandate and carry out its necessary operations. This is an especially sensitive issue for countries like Japan, Germany and India, which contribute so much financial and human resources to the United Nations' budget and peace operations, yet are repeatedly thwarted in efforts to become permanent members of the Security Council.

Fourth, his staff must be in broad sympathy with his vision for the organization, responsive to his wishes and commands, motivated and competent. International secretariats often are riven by factional jealousies, jurisdictional turf wars and national loyalties. Equally, though, the staff look to the secretary-general to articulate UN values, be the voice of moral clarity on behalf of the international community as a whole and issue clarion calls for action in defence of the international interest.

Fifth, the UN chief must mobilize civil society. They are a ready resource and reservoir of support and goodwill for the United Nations. Some in civil society say that the Iraq crisis has heightened the need for a global peoples' assembly to counter the repeated betrayals by governments. Others look to the secretary-general as the last line of defence of the UN Charter's principles. But this places an impossible burden on him. If the Security Council is united, he cannot be an alternative voice of dissent. If it is divided, he cannot be a substitute for inaction by a splintered council.

Finally, of course, the secretary-general must represent and give voice to the people of the world. To do this he must sometimes rise above the interests and preferences of governments but not alienate them, for they are his political masters.

The single most important challenge for the secretary-general is to provide leadership: the elusive ability to make others connect emotionally and intellectually to a larger cause that transcends their immediate self-interest. Leadership consists of articulating a bold and noble vision for the international community, establishing standards of achievement and conduct for states and individuals, explaining why they matter and inspiring or coaxing everyone to adopt the agreed goals and benchmarks as their own goals.

And this still leaves the question of administrative and management skills of the highest order.

Like Groucho Marx not wanting to join any club that would admit him as a member, perhaps anyone who seeks the office should be rejected, and anyone who wins should demand a recount.

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## Scapegoating the United Nations would erode its legitimacy

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*The Canberra Times*, 6 February 2006

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If wars begin in the minds of men, as UNESCO's preamble famously declares, then it is in the minds of men that the defences of peace must be constructed.

The search for a world free of the use of force in relations between the different nations that make up the human family is a very old dream. Worthy enough, it is destined to remain a dream for some time yet. Meanwhile we have to live in and manage a world in which the threat and use of force remain an ever-present reality.

The material capacity, economic efficiency, political organization, and military skills in the use of force determine which countries are great powers. Great powers rise and fall on the tide of history. Rivalry between the great powers of the time led to two World Wars in the last century, which in turn strengthened the determination to tame the use of military force as an accepted part of sovereign statehood.

The right to wage war in self-defence was kept by states, but otherwise the decision to use force across borders was transferred to the United Nations. That is, the conviction was that for peace to be maintained, we needed an international organization able and willing to use force in the name of the international community against outlaw states. This proved unduly optimistic. The typical UN deployment of military troops took the form of "peace operations", not military combat missions.

But the need for collective use of force against particular threats did not disappear. The United States formed a military coalition to depose Saddam Hussein at least partly in derision at the UN lacking the courage

of conviction to do so. Iraq was not the first and is not likely to be the last US-led military mission outside the UN framework.

The California-based Rand Corporation undertook a comparative study of UN and US experiences. The United Nations is better at low-profile, small-footprint operations where its soft power assets of international legitimacy and local impartiality compensate for hard power deficit. The quality of UN peacekeeping troops, police officers and civilian administrators is more uneven and has become worse with the retrenchment of Western nations from UN operations, and their arrival on the scene is often tardy.

Military reversals are less consequential for the United Nations because military force is not the source of its credibility, whereas they strike at the very heart of the basis of US influence.

To overcome domestic scepticism for overseas missions, American policymakers define the mission in grandiloquent terms and make the operations hostage to their own rhetoric, while UN missions are outcomes of highly negotiated, densely bureaucratic and much more circumspect documents. UN operations are undermanned and under-resourced, deploying small and weak forces into hopefully post-conflict situations under best-case assumptions.

If the assumptions prove false, the forces are reinforced, withdrawn or rescued. Washington deploys troops under worst-case assumptions with overwhelming force to establish a secure environment quickly.

The United States spent US\$4.5 billion a month just in Iraq in 2004, compared to under \$4 billion a year for all the 17 UN missions combined. This does not mean that the United Nations could do the job in Iraq better, more efficiently or more cheaply, but it did mean that there were at least 17 other places where the United States did not face calls to intervene because the United Nations was already doing the job.

UN missions have also been relatively more successful – a higher proportion of local countries were left in peaceful and democratic conditions than with US operations.

This could be a statistical artifice, in that a different selection of cases might have produced different results. Or it could indicate that the American operations have been intrinsically more difficult, requiring larger forces, more robust mandates and greater combat weight. Or it could even be that the United Nations has been better at learning lessons.

James Dobbins, lead author of the Rand study, notes that the US tends to staff each new operation as if it were its first and is destined to be its last. Non-UN operations tend to be more costly, as with US or EU missions in Europe, or less competent, as with regional organizations other than European. The total number of UN peacekeepers – about 65,000 –

is modest by the standards of American expeditionary capability. But it is more than any other country or coalition can field.

UN operations allow the United States to choose how, where and how deeply to engage in different conflicts around the world. Participation in UN peace operations symbolizes solidarity and shared responsibility, without taking away the option of “coalitions of the willing” to lead military interventions to stop atrocities where the United Nations fails to act.

Successful operations that need robust mandates might still have to depend on coalitions of the able and willing – but also duly authorized.

Peace operations cannot produce conclusive results either on the battlefield: they are peace operations, not war; or around the negotiating table: they are military deployments, not diplomatic talks.

A drawdown of UN peace operations would reduce US leverage in spreading the burden of providing international security and lessening the demands and expectations on the United States to take up the slack.

Conversely, scapegoating the United Nations will erode its legitimacy and so reduce the US ability to use the United Nations in pursuit of US goals – for example in enforcing non-proliferation.

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## Action must be taken against peacekeeper sexual predators

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*The Daily Yomiuri*, 6 March 2006

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United Nations leadership on human rights has helped to change the public policy discourse in all parts of the world. As a universal organization, it provides a unique institutional framework to develop and promote human rights norms and practices and to advance legal, monitoring and operational instruments to uphold the universality of human rights while respecting national and cultural diversity.

The revolution in human rights rests on a partnership between the intergovernmental and nongovernmental actors with regard to standard setting, rule creation, monitoring and compliance. If the United Nations is to maintain its human rights credibility, soldiers committing abuses in its name must face investigation and prosecution by effective international machinery. Over a decade ago Amnesty International argued that the time was overdue for the United Nations to build measures for human rights promotion and protection into its own peacekeeping activities. Among other things blue-helmeted troops were alleged to have patronized brothels containing captive Croat and Muslim women in Bosnia and paid for sex with children in Mozambique.

In what has been described as a kiss-and-tell book, three UN staffers – Kenneth Cain, Heidi Postlewait and Andrew Thomson – write of allegations like Bulgaria recruiting prisoners to fill their quota for peacekeepers to be sent to the UN mission in Cambodia, who drank too much, raped Cambodian women and crashed their landcruisers with remarkable regularity; and UN peacekeepers being more concerned to save their own lives than to protect their wards. Equally, though, the book is an account



of the alienation and sense of betrayal felt by many idealistic recruits who are disillusioned by the realities of power, politics, greed and bureaucracy surrounding the machinery of international organization in the midst of many long-running conflicts and their deeply traumatized victims.

The UN Office of Internal Oversight Services conducted a probe of 72 allegations of sexual abuse in Bunia (eastern Congo) in 2004. They fully substantiated abuses of underage girls in six cases, where UN peacekeepers procured girls aged 12–14 for sex in return for 2 dollars to 3 dollars or its equivalent in food. There have also been cases of rape.

Many of the allegations are difficult to prove in a court of law. Worse, the United Nations has no power to try the offending soldiers, who are subject to the disciplinary authority of their own military. The South African government decided to take action against two of its soldiers, and a French civilian with pornographic pictures and video of his victims was arrested in Paris pending prosecution. There were even suggestions that the existence of photographs could potentially mark this as the United Nations' own Abu Ghraib.

But the abuses are not confined to UN peacekeepers. Amnesty concluded that “the international community” (that is, peacekeepers of the North Atlantic Treaty Organization as well as UN civilian personnel) made up about 80 per cent of the clientele of women trafficked into prostitution in Kosovo.

In his package of reform proposals last year, UN Secretary-General Kofi Annan admitted to being “especially troubled by instances in which United Nations peacekeepers are alleged to have sexually exploited minors and other vulnerable people”, repeated his policy of zero tolerance of such offences, and reaffirmed the United Nations' commitment “to respect, adhere to and implement international law, fundamental human rights and the basic standards of due process”. Annan appointed Prince Zeid al-Hussein, Jordan's ambassador to the United Nations with personal civilian peacekeeping experience in Bosnia, to study the abuses and make recommendations on improving the accountability of UN peacekeeping missions.

Prince Zeid's report, submitted in March 2005, concluded that sexual exploitation of women and girls by UN security and civilian personnel in Congo was significant, widespread and ongoing. His recommendations included withholding the salary of guilty peacekeepers and putting the money in a fund to care for their victims, requiring troop-contributing countries to prosecute perpetrators identified by UN investigative teams, and making soldiers financially liable for “peacekeeper babies” they have fathered as determined by DNA testing. Annan concurred with the analysis and recommendations with respect to the investigative processes; the

organizational, managerial and command responsibility; and individual disciplinary, financial and criminal accountability.

Despite the problem of peacekeepers as sexual predators being known at least since the Namibia and Cambodia operations in the late 1980s and early 1990s, the necessary action does not seem to have been taken to catch and end the abuses. In updating the Security Council on 23 February, Prince Zeid said that three to four years may be required for the reform programme to take hold. In the meantime, charges of sexual abuse by UN peacekeepers remain unacceptably high. Undersecretary-General Jean-Marie Guehenno informed the Security Council that on the basis of investigations against 295 peacekeeping personnel, 170 individuals (137 soldiers, 16 policemen and 17 civilians) had been sent home or dismissed.

Interestingly, in a UN report commissioned from DeLoitte Consulting, UN staff reported that the infrastructure to support ethics and integrity is already in place but accountability is not. The General Assembly has voted for the establishment of a new ethics office to be located directly in the secretary-general's office. Another major lesson has to be the importance of educating and training UN peacekeepers – soldiers, police and civilian officials – in international humanitarian and human rights laws, with a particular focus on gender protection laws and norms.

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## North–South fault line in global politics

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*The Japan Times*, 10 May 2006

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On 28 April developing countries voted as a group at the United Nations to shelve management reforms proposed by Secretary-General Kofi Annan in the wake of the oil-for-food scandal. Annan had requested more discretion and latitude in hiring, shifting and firing his staff, and controlling the organization's resources. The developing countries first want many more clarifications and reassurances.

The explanation for the developing countries' reservations is not that they are necessarily opposed to making the United Nations more effective. Rather, they are concerned about a power grab by the rich and powerful at their expense. They fear that if the General Assembly ceded control of the UN budget and staffing, the powers would quickly be appropriated by an ever more power-hungry Security Council.

In other words, the majority of the poor countries do not trust the secretary-general to be able to resist the Security Council's relentless encroachments. India's ambassador Nirupam Sen complained recently that the secretary-general has functioned as a secretary to the Security Council and a general to the General Assembly. Developing countries, which make up the numerical, and therefore voting, majority in the General Assembly but are largely ignored in the Security Council, want this reversed.

As the East–West divide ended with the passing of the Cold War, underlying differences between North and South became sharper. They are also more acute to the extent that the North coincides largely with the West while the global South corresponds largely with non-Western coun-

tries. This has become manifest not just in relation to UN management reforms, but also with regard to the relative priority given to development and security, the Doha round of trade negotiations, and relative responsibilities for protecting the environment.

The richer countries – the European Union, the United States, Japan and other Western countries, in order of contributions, pay 82 per cent of the UN budget – supported the reform proposals. A financial crisis – yet another one – looms in June, especially as Washington has insisted on linking payment of the next stage of the UN budget to progress on management reform.

The impasse over management reform underlines two UN verities. First, reforming the composition and procedures of the Security Council is central, not peripheral, to broader UN reform agenda. Precisely because the Council is at the heart of the UN system and has become dramatically more active and assertive in recent years – the Iranian nuclear crisis is the latest case in point – enhancing its representational, democratic and accountability credentials is critical to regaining the faith of the international community (which is wider than the West) in the United Nations.

Westerners want to use the United Nations to prescribe justice within borders, to reach deep into the domestic jurisdictions of other states, while preserving the status quo order among states. But many developing countries reverse the priority and wish to use the United Nations as the forum in which to bring greater justice in relations among nations, while privileging the status quo-oriented order within states.

The reason for much developing-country disquiet with the precedent of NATO action in Kosovo in 1999 was not because their abhorrence of ethnic cleansing was any less. Rather, it was because of their dissent from a world order that permitted or tolerated unilateral behaviour by the strong and their preference for an order in which principles and values were embedded in universally applicable norms and the rough edges of power were softened by institutionalized multilateralism.

The lesson has been strongly reinforced by the Iraq war and is complicating efforts by the world community to fashion a robust collective response to the ongoing humanitarian tragedy in Darfur.

The hardening rift between the Western and developing countries extends well beyond the question of military intervention. Many developing countries assert a claim to the privilege of managing world order on a shared basis but exhibit a strong reluctance to accept the responsibility flowing from such privilege, for example with respect to protecting the victims of humanitarian atrocities.

Some powerful countries insist on claiming the benefits flowing from collective decision-making, in the form of greater legitimacy and

authority, but resist constraints on policy options that would result from a genuinely shared process of international policy-making.

Curiously, the two feed on each other. The South points to the North's monopoly of power to excuse its own lack of a sense of international responsibility; the North points to the many instances of the South's failure to honour the international responsibility to protect to justify its refusal to restrict international policymaking to the collective UN forum.

The industrialized North demands tighter fiscal discipline, better governance, more respect for human rights, greater adherence to international regimes and more positions at senior policy levels in international organizations to ensure greater donor accountability. The developing countries demand more aid, better access to rich markets, greater international labour mobility, a more equitable sharing of wealth and resources across the globe and – with markedly less success than the rich countries – more positions at senior policy levels in international organizations to redress a serious representational deficit.

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## UN is still the world's best hope for peace

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*The Canberra Times*, 15 June 2006

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Last month I argued that the world would be a better and safer place for all of us if the United States and the United Nations worked together, not at cross-purposes. I tempted fate.

In a speech in New York on 6 June, UN Deputy Secretary-General Mark Malloch Brown alleged that the United States tolerated too much unchecked UN bashing and stereotyping and failed to keep the American people informed of the extent to which the United Nations was useful to US goals, preferring instead to make use of the United Nations “almost by stealth”. As a result, “Much of the public discourse that reaches the US heartland has largely been abandoned to its loudest detractors, such as Rush Limbaugh and Fox News.”

The next day an incensed US ambassador to the United Nations John Bolton described this as “the worst mistake by a senior UN official” that he had seen since being involved with the United Nations from 1989, and “a very, very grave” breach of civil service neutrality. He found it condescending and patronizing towards the American people and called on Kofi Annan to repudiate his deputy “personally and publicly”.

Instead his spokesman said that Annan stood by his deputy “and agrees with the thrust of the speech”.

Bolton retaliated by saying that although the target of the speech was the United States, the victim would be the United Nations. Senator Christopher J. Todd, a senior Democrat on the Senate Foreign Relations Committee, issued a statement saying that “Mr. Bolton falls back on bullying and threats rather than constructively engaging other delegates.”

Well! Perhaps if Bolton had been familiar with Australian idioms he would have dismissed Malloch Brown as a “whingeing Pom”.

The controversy should dispel any remaining rumours that Malloch Brown wants to stay in his position after Annan’s retirement on 31 December. This may have freed him to speak his mind.

The thrust of his critique was that the US Administration tries to persist with initial maximalist positions rather than looking for the middle ground. Instead it needs to engage with the rest of the international community represented at the United Nations, and success in this requires a better explanation to domestic American audiences of why the United Nations is important to US interests.

Contrary to some instant explanations offered after 9/11 that the United States is the terrorists’ target of choice because of its success, dynamism and openness, the core basis of international respect for the American Republic, albeit with reservations and caveats, is its extraordinary success as a society, economy and polity. In truth the peace of the world since 1945 has depended more on American power and wisdom than UN felicity.

The United Nations is the repository of international idealism (but not sentimentality), the belief that human beings belong to one family, inhabit the same planet and have joint custodial responsibility to preserve the peace, promote human rights, husband resources and protect the environment.

The global public goods of peace and prosperity cannot be achieved by any country acting on its own. Under conditions of modern civilization, no country is an island sufficient unto itself any more.

The US commitment to the post-1945 order had emphasized the protection of the democratic community through rules constraining the use of force by “the other side”. The impact of 9/11 in the moment of unipolar triumph saw an expansion in the use of force to promote and export the democratic franchise.

Because of the sustaining belief in being a virtuous power, the United States is averse to domesticating international values and norms on greenhouse gas emissions, the death penalty, landmines, and the international criminal court. But this self-image of exceptionalism is neither congruent with how others see it nor conducive to securing the cooperation of others.

Imperialism is not a foreign policy designed to promote, project, and globalize the values and virtues of the dominant centre, but a form of international governance based on an unequal hierarchy of power. The reality of inequality structures the relationship between the imperial centre and all others. This is not a matter of malevolence on the part of a particular administration in the United States, but an artefact of the real-

ity of a unipolar world that will shape the foreign relations of any administration. All sides must learn to live with this reality.

The UN Charter articulates quintessentially American values. Progress towards the good international society requires that force be harnessed to authority. The United Nations has authority but no power. It seeks to replace the balance of power with a community of power. The United States has global power and reach but lacks international authority.

Just as America is a nation of laws, so the United Nations is dedicated to replacing the law of the jungle by the rule of law in world affairs. It remains our one and best hope for unity of purpose and action in a world of almost infinite diversity – a world in which problems without passports require solutions without passports.

In the words of the illustrious Secretary-General Dag Hammarskjöld, the United Nations was “not created in order to bring us to heaven, but in order to save us from hell”. The concept of hell is incomplete without the accompanying concept of heaven.



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## A war that was won by not losing, and lost by not winning

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*The Canberra Times*, 30 August 2006

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So who won the war? A telling clue: while Hizbollah is being hailed as a hero by Lebanese, Arabs and Muslims, parliamentary, public and press recriminations and finger-pointing began in Israel as soon as the ceasefire took effect.

Regardless, the Lebanese lost.

As in any classic war between a state and an insurgency, Hizbollah won by not losing; Israel lost by not winning. The physical, political, and psychological price may yet be judged by Israelis as a debacle.

Hizbollah proved a surprise for everyone. Its potency lies in combining the sophistication, weaponry and fighting discipline of a regular army with the decentralized flexibility, mobility, blending-into-the-people invisibility, familiarity with the local terrain and tenacity of a hit-and-run guerrilla force. It used modernized guerrilla tactics on the battlefield while holding territory and seats in parliament and the government. Forming a coalition with external leaders and groups, it had and held its own local power base. The combination of attributes allowed it to wage a successful war of attrition against a state across an international border.

In the Arab narrative, Hizbollah is credited with having forced Israel to withdraw from southern Lebanon in 2000. In 1967, the combined force of Arab armies was defeated in six days. By absorbing Israeli attacks for a month and continuing to rain down rockets deep inside Israel, Hizbollah undermined the mystique of Israeli power, dented the myth of Israeli invincibility and shattered its posture of asymmetric deterrence (which relies on the threat of massive retaliation out of proportion to the provo-

cation, and is not too tender in discriminating between combatants and civilians).

Hizbollah will claim a three-front victory: for Shiites whose patron is Iran; for Lebanese nationalism whose military defender henceforth is Hizbollah and not the Lebanese Army (whose soldiers served tea to the invading Israelis); and of Arab resistance to Israel and the United States. Lebanon is more, not less, likely to fall into the Shiite orbit; Hizbollah is resurgent, with its recruiting lines getting longer; the hatred of Israel is more intense among sullen and vengeful young Arabs and Muslims; and the Islamic world is further radicalized against Israel, the United Kingdom and the United States.

If there is a silver lining, it is that the futility of this tragic war and the uncertain nature of the outcome might make it possible for both sides to shift from trying to achieve victory on the battlefield to peace through diplomacy. One negotiates with enemies, not friends. Given the scale of devastation in Lebanon, even Hizbollah cannot afford too many such victories.

Myth-making is critical in forging and sustaining communal identity – national or sectarian – and that is why history can be such a fiercely contested terrain. In 1857 did Indian soldiers in the British Indian army rise up in mutiny or in the country's first war of independence? Every 15 August, Japan is reminded of how the past can be a barrier to a friendly future.

Among the most poignant tragedies, and one that continues to exercise a powerful hold on the minds and destinies of the world as well as the Middle East, is the Holocaust. The scale is beyond most human comprehension: the crime of crimes, evil beyond imagination, whatever words we chose, they are inadequate.

It is easy to understand that the searing memory of the Holocaust might be part of every Jew's emotional DNA. The same Holocaust can also explain the abiding individual and collective guilt in the largely Christian West. Equally, the fate of Palestinians, especially as taught in the Arab-Muslim narrative, explains Muslim ambivalence about Israel.

All three groups need to navigate their way through the emotional thicket of the Holocaust. The charge of anti-Semitism, all too often used as a substitute for evidence-based argument, may have reached the point of diminishing returns. There are victims in the world in addition to the Jews.

Palestinians have the right to defend themselves and resist occupation. But this cannot whitewash their role in provoking particular battles and sustaining the conflict with Israel. Just like even the paranoid do have some real enemies, Jewish paranoia about their very survival can be traced, not just to the Holocaust, but also to the Arab world's deeds and

rhetoric. This has a profound effect in conditioning the minds of otherwise peaceable young Jews, just like Israeli strikes in Lebanon will condition the minds of another generation of Palestinian youth.

The credibility and authority of the UN Security Council has suffered further erosion. The best way to recoup it would be for the United Nations to take the lead in brokering a comprehensive peace deal. US leadership credentials for this are discredited. Successive administrations have shown a steadily softening capacity and will to acknowledge (let alone deal with) that the root cause of the problem is the theft of Palestinian land.

The broad outlines of a settlement will be based on existing UN resolutions and peace plans which require a three-way deal between land, recognition and peace. That both sides choose rival UN resolutions suggests that its overall record over time is not quite as imbalanced as critics make out.

The devil, as always, will lie in the details of any package.

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## Know the goals of military intervention

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*The Japan Times*, 20 November 2006

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In a *Washington Post* article reprinted in these pages on 10 October, “The humanitarian war myth”, Eric Posner writes: “If the United Nations were to have its way, the Iraqi debacle would be just the first in a series of such wars – the effect of a well-meaning but ill-considered effort to make humanitarian intervention obligatory as a matter of international law. Today Iraq, tomorrow Darfur.”

Not so.

Later he writes: “humanitarian war is an oxymoron”.

Just so.

The International Commission on Intervention and State Sovereignty was the midwife to “the responsibility to protect” precisely because we recognized “humanitarian intervention” to be an oxymoron. It is not obvious that Posner read our slim report before proceeding to criticize its main conclusions.

In using Iraq to attack the new norm, Posner sets up a straw target. Most ICISS Commissioners argued that Iraq did not meet our threshold criteria; some of us said so publicly in 2003.

Our choice of “responsibility” over “duty” flowed in part from the wish to indicate a moral but not legal obligation. We concluded that actual decisions will always be based on political judgments to meet specific contingencies case by case.

Still, the fact is that our ability and tools to act beyond our borders have increased tremendously. This greatly increases demands and expectations “to do something”. Darfur is indeed the current poster case for

this. It meets all our threshold criteria for the international community to shoulder its responsibility to protect.

But we also put in another essential principle: before undertaking military intervention, be confident of reasonable prospects for success in the mission. Given Sudan's size and regional geopolitics, this is a big problem in Darfur. By its very nature, including unpredictability, unintended consequences and the risk to innocent civilians caught in the crossfire, warfare is inherently brutal: there is nothing humanitarian about the means.

Still, the fundamental question cannot be avoided. Under what circumstances is the use of force necessary to provide effective international humanitarian protection to at-risk populations without the consent of their own government?

Without the responsibility to protect norm and principles, the intervention is more likely to be ad hoc, unilateral, self-interested and deeply divisive. With the norm and principles agreed to in advance, military action is more likely to be rules-based, multilateral, disinterested and consensual.

War is the use of force by enemy armies: us against them. It is by no means obsolete. But states can no longer use force as and when they want, either domestically or internationally.

Collective security requires the use of force by the community of states against an aggressor: all against one. It has proven illusory.

Peacekeeping operations insert neutral and lightly armed third-country soldiers as a physical buffer between enemy combatants who have agreed to a ceasefire. "Humanitarian intervention" is the use of force by outsiders for the protection of victims of atrocities inside sovereign territory.

In the 1990s, conscience-shocking atrocities in Somalia, Rwanda, Srebrenica and East Timor revealed a dangerous gap between the codified best practice of international behaviour in the UN Charter and the distressing state of affairs in the real world.

Rwanda in 1994 caused lasting damage to basic human ideals and UN credibility when we refused to stop, as we could have, a three-month genocide that killed 800,000 people.

Kosovo in 1999 gravely damaged UN credibility and fractured international opinion when NATO intervened without UN authorization.

ICISS held that while the state has the default responsibility to protect its people, a residual responsibility also rests with the broader international community. This is activated when a particular state is either unwilling or unable to honour its responsibility to protect; or is itself the perpetrator of atrocity crimes.

The goal of protective intervention is never to wage war on a state to destroy it and eliminate its statehood, but always to protect victims of

atrocities inside the state, embed the protection in reconstituted institutions after the intervention, and then withdraw all foreign troops.

Military intervention, even for humanitarian purposes, is a polite euphemism for the use of deadly force on a massive scale. Even when there is agreement that intervention may be necessary to protect innocent people from life-threatening danger by interposing an outside force between actual or apprehended victims and perpetrators, key questions remain about agency, lawfulness and legitimacy.

Based on the pragmatism of consequences as much as legal doctrine, ICISS concluded that there is no substitute for the United Nations as the authorizing agent.

Iraq reinforces the lesson that the sense of moral outrage provoked by humanitarian atrocities must be tempered by an appreciation of the limits of power, a concern for international institution-building and institution-wrecking, and sensitivity to the law of unintended and perverse consequences.

Acceptance of the responsibility to protect norm no more guarantees military intervention than its nonexistence had foreclosed it as a tool of statecraft. But, by shaping the calculation of the balance of interests, the norm makes it modestly more rather than less likely that victims will not be callously abandoned. We are indeed our brothers' and sisters' keepers.

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## What Annan has contributed to world

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*The Daily Yomiuri, 26 December 2006*

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If a week is a long time in national politics, then a decade is an eternity in international politics. The world has witnessed many profound changes in the 10 turbulent years of Kofi Annan's term as secretary-general of the United Nations. Many – but not all – were for the good. Thus, he oversaw an explosion in UN peace operations as testament to the numerous demands and expectations on the organization, yet many operations were dogged by charges of ineffectualness, financial corruption and sexual exploitation.

For some, Annan's legacy is indelibly stained by the horrors of Rwanda, Srebrenica and the oil-for-food scandal. For others, the tragedy of Iraq happened on his watch. Certainly, he must accept some blame for management lapses and bad judgment calls. Yet as the inquiry into the Australian Wheat Board's role in Iraqi sanctions-busting proved conclusively, the major sins of commission and omission, whether intentional or incidental, were committed by national governments, including members of the Security Council, not UN officials. If the Security Council is divided, the secretary-general cannot be an alternate locus of international diplomacy. If it is united, he cannot be an alternative focus of international dissent.

A central challenge that Annan was not able to meet successfully in every instance will continue to confront his successor: how to combine the United Nations' unique legitimacy and international authority with the United States' global reach and power. Washington too must aug-

ment its waning power with the United Nations' force-multiplying international legitimacy.

Annan's most precious legacy will probably be the elevation of human rights and humanitarian protection as a central plank of UN concern, spurred by the shocking failures of Rwanda and the Balkans. With the decline in interstate wars, the primary responsibility for maintaining international peace and security in practice translates into tackling internal armed conflicts. The world has made significant progress in criminalizing atrocity crimes and enhancing the prospects of holding perpetrators to international account. The confidence of sovereign impunity that perpetrators of atrocities enjoyed has softened, if not entirely disappeared. Slobodan Milosevic and Augusto Pinochet may have cheated criminal conviction, but the circumstances of their deaths would not have been of their own choosing.

The new norm of the responsibility to protect, championed by Annan, captures the convergence of some significant trends in world affairs. Previously, there were few restrictions on the right of states to use force within and across borders. Our understanding and appreciation of human rights and commitment to their promotion and protection have deepened and broadened. The vocabulary of democracy, good governance and human rights has become the language of choice in international discourse.

Because human rights champions the cause of the rights and dignity of individual human beings, it is entirely fitting that the great champions of the human rights and international humanitarian law movements were such giants of individuals as Raphael Lemkin, who brought the Genocide Convention into being, Peter Benenson, who founded Amnesty International, and Henri Dunant, who started the Red Cross.

Their examples demonstrate powerfully that the chief impulse to human rights is the recognition that every human being is deserving of equal moral consideration. It is an acceptance of a duty of care by those living in safety towards those trapped in zones of danger. The United Nations' normative mandates on security, development and human rights alike embody this powerful intuition.

Over time, the chief threats to international security have come from violent eruptions of crises within states, including civil wars, while the goals of promoting human rights and democratic governance, protecting civilian victims of humanitarian atrocities, and punishing governmental perpetrators of mass crimes have become more important.

The UN record of policy innovation, conceptual advances, institutional adaptation and organizational learning under Annan has been underappreciated. We have seen this over the last decade with respect to peace operations, human security and human rights, atrocity crimes and



international criminal justice, smart sanctions, and what Annan describes as particularly precious to him – the responsibility to protect innocent civilians caught in the crossfire and victims of atrocity crimes.

Some argue that the UN Charter was written in another age for another world. For many others, it remains vitally relevant. It is the framework within which the scattered and divided fragments of humanity come together to look for solutions without passports to problems without borders.

Many of the most intractable problems are global in scope and will most likely require concerted multilateral action that is also global in its reach. But the policy authority for tackling them remains vested in states, and the competence to mobilize the resources needed for tackling them is also vested in states. This strategic disconnect goes some way to explaining the United Nations' recurrent difficulties on many fronts and the often fitful nature of its responses. How Ban Ki-moon, Annan's successor, handles it will help to determine his legacy in turn.

The temper of the times condition expectations of the role of the UN secretary-general. The changing contours of world politics provide the context in which opportunities, requirements and constraints on the scope for UN role and independent action by the secretary-general are shaped. For example, Annan is personally credited with reaching out to the business sector through his Global Compact that seeks to instil civic virtue in the global marketplace, as well as to civil society representatives who have found the United Nations a far more hospitable place under his stewardship.

Yet both of these were made possible by major changes in a much larger context. The end of the Cold War marked the triumph of liberal economics over the command economy and the concurrent rise of civil society activism within and across borders. This was reflected in the abatement of reflexive hostility to market capitalism and nongovernmental activism by many UN member states. Annan's genius lay in channeling the historic ideational transformations into new institutional linkages. Ban must remain hospitable to partnerships with these vital actors in driving desirable changes and delivering growth, services and security in the field.

The United Nations' very strength as the common meeting house of all the world's countries is a major source of weakness with respect to efficient decision-making. Even so, we must never fall victim to the soft bigotry of low expectations. Rather, we must always hold the organization to the more exacting standard of exalted expectations. That is the final tribute to a fundamentally decent man with generous instincts who raised the bar of people's aspirations, but whose generous interpretations of the conduct of others sometimes proved sadly misplaced.

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## The responsibility to protect revisited

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*The Daily Yomiuri*, 12 April 2007

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The landmark report on *The Responsibility to Protect* was published with exceptionally bad timing in December 2001. Yet the concept has proven remarkably resilient and gained rapid traction in international policy as well as in the humanitarian and scholarly communities, culminating in the adoption of the new norm by world leaders meeting at the United Nations in the autumn of 2005.

At a conference in Berkeley, California, on 13–15 March to discuss the operationalization of the norm, the point was made that the “protection” half of the formula has been around for a long time in concept and practice. The international commission that published the report was innovative, people argued, in redefining sovereignty as responsibility.

As a member of that commission and one of the principal authors of the report, I responded that even here, the commission was a norm broker more than a norm entrepreneur. We consolidated a number of disparate trends, borrowed language first developed by former UN official Francis Deng to help address the problem of internally displaced people in his home continent of Africa, and adapted it to the so-called challenge of humanitarian intervention in the 1990s. Rather than create a new norm, we registered and dramatized a norm shift already under way. It is the implications of acting by the standards of the new norm that are revolutionary.

The importance of sovereignty as the key organizing principle of the modern world order needed and received a strong affirmation. We took pains to emphasize that a cohesive and peaceful international system is

more likely to be achieved through the cooperation of effective and legitimate states, confident of their place in the world, than in an environment of fragile, collapsed, fragmenting or generally chaotic states.

Sovereignty provides order, stability and predictability in international relations. But it also implies a dual responsibility: externally – to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state.

Reconceptualizing sovereignty as responsibility has a threefold significance. First, it implies that the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare. Second, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the United Nations. And third, it means that the agents of states are responsible for their actions, that is to say, they are accountable for their acts of commission and omission.

This, too, is less radical a departure from established precept and practice than it appears. The authority of the state is nowhere regarded as absolute. Internally, it is constrained and regulated by constitutional power-sharing arrangements. It is shared between different levels of governmental authorities, from the local through the provincial to the national. And it is distributed among different sectors of authorities even at any one given level, such as the legislature, executive, judiciary and bureaucracy.

Consider the example of India, a powerful country that expressed strong opposition to “humanitarian intervention”. The chapter on fundamental rights in its constitution guarantees the dignity and worth of individuals essentially against the state and empowers the judiciary to monitor and enforce state compliance. In enumerating the basic rights of Indian citizens, the framers of its constitution were influenced from abroad by the tradition of the English rule of law (for example, in guaranteeing equality before the law and equal protection of the laws), the American Bill of Rights, and the Universal Declaration of Human Rights. That is, the state is responsible and can be held accountable for acts of commission that violate citizens’ rights.

At the same time, many of India’s independence leaders also believed that liberty is an empty abstraction to the hungry; freedom is meaningful only with economic security. In the light of India’s poverty, “economic rights” (for example, the right to an adequate means of livelihood) could not realistically be enshrined as a basic right enforceable in the courts; but they could be and were enshrined as ideals.

India’s constitution accordingly incorporated them as directive principles, describing them as “fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making

laws". Some of these are in the nature of socioeconomic rights, except that they cannot be enforced through the courts, for example the right to an adequate means of livelihood. Others are in the nature of directives to the state on the manner of exercising its legislative and executive powers, for example in regard to promoting prohibition.

When critics and political opponents criticize the government for failure to honour the directive principles, in essence they are arguing for holding the state responsible for acts of omission.

Internationally, too, in human rights covenants, UN practice, and state practice itself, sovereignty is understood as embracing responsibility. The Charter of the United Nations is itself an example of an international obligation voluntarily accepted by member states. On the one hand, in granting membership to the United Nations, the international community welcomes the signatory state as a responsible member of the community of nations. On the other hand, the state itself, in signing the Charter, accepts the responsibilities of membership flowing from that signature.

There is no transfer or dilution of the status of state sovereignty. But there is a necessary change in the exercise of sovereignty: from sovereignty as control to sovereignty as responsibility in both internal functions and external duties.

Put like this, "responsibility to protect" is not merely deradicalized; it is also cross-ideological, embracing liberal humanitarians and right to life conservatives. But acting on the strong convictions of liberal internationalism or right to life alike would see the international community engaged with atrocity crimes – genocide, other mass killings, ethnic cleansing, rape as a deliberate weapon of intergroup war – far more frequently than has been the case. Darfur is the current poster case of critical international action being urgently needed.

The responsibility to protect norms is a call to action on prevention, intervention and post-conflict reconstruction – not the opening lines of a Socratic dialogue by diplomats.

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## Law versus legitimacy at the United Nations

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*The Hindu*, 11 May 2007

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For most countries and people, the United Nations' somewhat tired looking headquarters is located at the intersection of Interdependence Avenue and Multilateral Cooperation Street in Manhattan. On balance, the world is a better place because of UN contributions to normative advancement, preventive diplomacy, peace operations, peacemaking, and humanitarian relief and assistance missions.

But for some, it lies at the crossroads of Indifference Avenue and Hostility Street in Washington. Part of the reason for this is that the organization has been leaking legitimacy – its one great claim for international respect – through long-festering sores. Consequently, it is respected today more for what it represents and symbolizes than for what it actually does and accomplishes. For example, over the past decade, its many peace-keeping achievements have been tainted by sexual abuses of the very civilians under its protection.

Power is the capacity to enforce one's preference on others. Authority is the capacity to create and enforce rights and obligations that are accepted as legitimate and binding by those who are subject to it. The greater the gap between power and authority, the closer we are to anarchy, to the law of the jungle where might equals right. The greater the gap between power and justice in world affairs, the greater is the international legitimacy deficit.

The United Nations is the site where power should be moderated by lawful authority as law and legitimacy come together. The bases of UN legitimacy include its credentials for representing the international com-

munity, agreed procedures for making decisions on behalf of international society and political impartiality.

The gulf between law and legitimacy is an altogether more serious crisis-in-the-making for the United Nations than is commonly realized. The reason for the underestimation of the extent and gravity of the gap is that different segments of the international community have problems with different elements of the gap and fail to capture the several dimensions in their cumulative effect.

The Security Council and the General Assembly are the geopolitical and normative centres of gravity respectively. The clash of corporate interests between them intersects with the increasingly bitter North–South divide that goes to the heart of the law versus legitimacy debate. International law was a product mainly of the European states system and international humanitarian law too has its roots essentially in Europe. Afro–Asians and Latin Americans are the objects but not the authors of supposedly international norms and laws. That is, the very universality from which the United Nations draws its legitimacy is in some crucial respects more token than real.

The legal competence of the Security Council to impose sanctions is clearly spelt out in the UN Charter. Supposedly an attractive non-violent alternative to war, sanctions became progressively discredited for their harsh humanitarian consequences on the civilian population. Instead of the authority of the United Nations legitimizing sanctions regimes, the baleful effects of sanctions have eroded the legitimacy of the United Nations.

With respect to the use of international force to avert or halt atrocity crimes inside state borders, the consensus is shifting away from the norm of non-intervention to the new norm of the responsibility to protect that was formally adopted at the UN world summit in 2005. But the sad fact is that while the doctrine has gained rapid acceptance normatively, it is yet to be translated into action operationally. The rhetoric–action gap is not due to an absence of fit cases crying out for urgent international action.

Part of the explanation for the gap is deep scepticism among many developing countries that the main motive for intervention is disinterested humanitarianism and not self-serving commercial and geopolitical calculations. Partly it is due also to repeated instances of double standards. In effect the West is saying to the rest: the amount of force you may use to quell internal dissent, insurgency and terrorism is not solely a matter of your judgment and discretion. The era of sovereign immunity from international accountability for internal use of force is gone. However, our use of force internationally is not subject to any international authorization, oversight or accountability. We will decide, solely as a matter of our

judgment and discretion, when, where and how much force to use, and for how long.

The most lethal force known to man is nuclear weapons. The biggest tension in arms control regimes is between non-proliferation and disarmament. If nuclear weapons did not exist, they could not proliferate. Because they do, they will. For the P5–N5 to insist that non-proliferation is an enforceable obligation while disarmament can be postponed indefinitely seriously compromises the authority of the Security Council as the enforcer of the anti-nuclear norm.

Even with respect to the process for selecting the secretary-general, effectively the P5 determine the short-list. After several rounds of indicative balloting, Ban Ki-moon was the only one to escape the threat of a P5 veto, and his choice was then ratified by the General Assembly by acclamation. He is the legally elected head of the organization. But does he command legitimacy? Having been given neither voice nor vote in his selection, why should the “international community” of states and peoples accept him as “their” leader and spokesman?

All the above examples involve the Security Council as the underwriter of international security. It suffers from a quadruple legitimacy deficit. Its performance legitimacy suffers from an uneven and selective record. It is unrepresentative from almost any point of view. It is hard to see how any global decision-making body, whether the G8 or the Security Council that does not include a seat at the top table for India can call itself legitimate. Its procedural legitimacy is suspect on grounds of lack of democratization and transparency in decision-making. It is unanswerable to the General Assembly, the World Court or the nations of the world. George Monbiot argued recently that “Global governance is a tyranny speaking the language of democracy” (*Guardian*, 24 April). Many believe that the only solution to the Security Council’s twin democratic deficit (representation and accountability) is an elected Peoples’ Assembly.

The United Nations’ legitimacy has also suffered because of the oil-food scandal which showed up lapses and weaknesses in UN management culture and practices. But in the total sweep of the scandal, these were minor. The really important lessons were three. First, the United Nations lacks the capacity and expertise to manage such a complex programme and should firmly refuse such tasks in future. Second, UN officials did in fact raise queries about potential shenanigans with the Security Council but were ignored. The Council’s main members had other priorities. Third, the real money was changing hands between business firms and executives and government ministers and officials, not UN officials. The biggest dubious payment, AUD300 million, concerned the Australian Wheat Board’s dealings with Saddam Hussein and showed remarkable lapses of oversight and memory by Australian officials and

ministers. Also, after the US-led invasion, the Coalition Provisional Authority lost \$9 billion handed over to it by the United Nations.

Until World War I, war was an accepted and normal part of the states system, with distinctive rules, norms and etiquette. The only protection against aggression was countervailing power, which increased both the cost of victory and the risk of failure. Since 1945, the United Nations has spawned a corpus of law to stigmatize aggression and create a robust norm against it. Since 9/11, an America that was already overarmed has militarized its foreign policy to frightening levels. In light of this, dare one suggest that US irritation at the United Nations is due as much to its effectiveness in constraining US international behaviour as alleged UN ineffectiveness against others?

The Bush Administration has rejected President Harry Truman's counsel that America must deny itself the licence to do as it pleases, ignored President John F. Kennedy's wisdom that America is neither omnipotent nor omniscient, and ridden roughshod over four decades of tradition of enlightened self-interest and liberal internationalism as the guiding normative template of US foreign policy.

US assaults on the law of the UN Charter governing the international use of force have undermined the norm of a world of laws, the efficacy of international law and the legitimacy of the United Nations as the authoritative validator of international behaviour. As my colleague Paul Heinbecker, Canada's former UN ambassador, notes, the distance from hubris to delusion is short; the Bush Administration covered it in a sprint.



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## Unintended consequences of blue berets' actions

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*The Hindu*, 25 May 2007

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Protection of civilians is now at the centre of the United Nations' peace and security agenda. The 18 peacekeeping missions around the world, in which almost 90,000 soldiers, military observers, civilian police, and international civilian staff serve, form its most visible global footprint. The number of missions and the rising demand for UN peacekeepers is proof positive that their accomplishments are genuine and substantial. They do a lot of good, often under very challenging conditions.

Even so, the real UN scandal over the last decade was not the oil-for-food programme in Iraq but the continuing abuse of civilians by UN peacekeepers. Preying on the people peacekeepers are meant to protect violates the core integrity of the missions and the United Nations. From 1 January 2004 to 21 November 2006, the United Nations investigated 319 personnel alleged to have committed abuses across all missions from East Timor to Europe, the Middle East and Africa. Two-thirds of the allegations involved sexual exploitation and abuse. Following the investigations, 18 civilian personnel were summarily dismissed and 17 police and 144 military personnel were repatriated.

With the typical tour of peacekeeping duty being six months, almost 200,000 personnel from more than 100 countries are rotated through the UN operations every year. One-third of civilians are new to the missions at any given time. In such an environment, there is a constant need for vigilance and training on standards of conduct. After the damaging allegations of UN peacekeepers having turned from protectors into predators in the Democratic Republic of Congo, usually in exchange for food

or change money, Jordan's UN Ambassador Prince Zeid al-Hussein wrote a damning report that led to a new and stringent code of conduct. The problem is yet to fade.

Charges of sexual exploitation and abuse have been among the most publicized misdeeds by UN peacekeepers. But by no means are they the only side-effect of the large number of missions and very large number of personnel living and working in isolation, far away from home, in conditions of loneliness, and without the discipline of the behaviour regulating norms and codes of conduct of their home countries.

UN peace operations are designed to achieve a myriad of goals. They seek to advance the international interest: promotion of peace, stability, democracy, markets, civil society and good governance in countries in conflict. Countries contributing personnel to the missions may also have additional motives more closely tied to their national interests, like helping to stabilize an ally or prevent terrorists groups from exploiting the chaos and fragility of failed states like al-Qaeda did in Taliban-ruled Afghanistan, or establishing order so as to stem the flow of refugees as in the Balkans in the 1990s.

The achievement of intended goals constitutes success for the operations. Non-achievement of the goals represents mission failures but does not constitute unintended consequences. Conversely, not all unintended consequences are bad; some can be pleasantly positive in their net outcome. A major unintended consequence of the Indian Ocean tsunami was peace in Aceh. Soldiers from Bangladesh, India and Pakistan working together in UN missions around the world is another unintended but positive side-effect. Soldiers from some South American countries with a history of military rule are socialized into the precept and practice of civilian supremacy.

Or consider another pioneering development. In Liberia, earlier this year the United Nations deployed its first-ever all-woman peacekeeping unit – a contingent of 103 Indian police officers. They perform guard duty, street patrols, crowd control, and respond to calls for armed back-up from the national police who, unlike the Indian unit, do not carry arms. Commander Seema Dhundia hopes that the very visible presence of her officers will help to raise awareness of and respect for women in Liberia and in peacekeeping, and citizens will respond positively to role models of women in strong positions.

Most studies of peace operations have focussed on the stated mandates and implicit goals of the United Nations and the troop-contributing countries, and the success or failure in implementing the mandates with skill and efficiency. This probably reflects the liberal bias informing the missions, that they are good-intentioned on the part of the United Nations and those contributing the personnel.

Yet peace operations can and do produce negative consequences that were never intended – such as an increase in corruption and inflation, an explosion of sex trafficking and an upsurge in underworld criminal activity – caused by the flood of international money. In East Timor, for example, given the size of the fledgling nation's economy, the presence of a sizable number of international personnel seriously distorted the economy, including the housing and hotel rental market. Often the presence of large numbers of people on international salaries creates a shadow economy that drains skills, experience and talent away from the national bureaucracy.

A significant unintended consequence of the Indo-China peacekeeping missions after the 1954 Geneva Agreements was damage to the bilateral relations between Canada and India owing to a failure to grasp each other's foreign policy imperatives.

Another unintended consequence of peace operations has been the spread of HIV/AIDS. This is due to factors both in countries contributing troops and host nations. It is a lethal mix with no easy solution. In some of the war-affected countries of deployment in sub-Saharan Africa, the HIV prevalence rate is as high as 40–60 per cent.

Soldiers tend to be mainly men of a sexually active age, with money in their pockets well in excess of prevailing per capita income levels, deployed away from home for months at a time and, by temperament and training, prone to risk-taking behaviour. Often they come into contact with young boys and girls who are poor, unemployed and with a higher than normal rate of having been sexually exploited as casualties of armed conflict. The Joint UN Programme on HIV/AIDS referred to a study that showed some 45 per cent of Dutch military personnel serving with the UN peacekeeping mission in Cambodia in the early 1990s had had sexual contact with prostitutes or other local women during a five-month tour of duty.

According to an International Crisis Group study, troops from countries with high HIV/AIDS prevalence rates account for one-third of UN peacekeepers. Some African military forces have infection rates as much as five times that of the civilian population. Some countries, for example Ghana, conduct compulsory testing before selecting soldiers for mission deployment. Others resist for reasons of social and cultural sensitivity; some simply lack testing facilities.

The number and seriousness of side-effects of UN missions increased along with the growing numbers and complexity of the peace operations after the Cold War. Some, for example children being raped by soldiers, cause serious harm to individuals and communities that the peacekeepers are meant to protect, weaken the ability of the mission to fulfil its mandate, erode the United Nations' legitimacy as the organization deploying

and managing the peace operations, and soften support for it in host and troop-contributing countries.

To improve the effectiveness and enhance the legitimacy of peace operations, we must understand how unintended consequences are generated and how they can be anticipated and mitigated.

It is not always easy to identify proper legal remedies. Many of the allegations are difficult to prove in a court of law. Worse, the United Nations has no power to try the offending soldiers, who are subject to the disciplinary authority of their own military. Usually, the alleged perpetrator has returned home while the victims and witnesses are from countries hosting the peace mission, often with weak criminal justice systems.

Yet somehow peacekeepers must be held internationally accountable for criminal acts. In addition to training in human rights standards and international humanitarian law, they must be brought within the jurisdiction of the International Criminal Court and be made subject to prosecution. Prince Zeid also recommended that the salaries of the guilty personnel should be withheld and the countries from whence they came should prosecute them in appropriate forums. Model actors are better than model codes; both require partnership and cooperation between the UN Security Council, Secretariat, Department of Peacekeeping Operations, the High Commissioner for Human Rights, and the ICC prosecutor. Countries that demur on more stringent standards, codes of conduct and international investigations and prosecution should be excused from contributing personnel to UN operations.

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## Human rights, national security and terrorism

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*The Hindu*, 20 July 2007

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Who would have thought that India would need to tutor Australia on protecting individual human rights? Yet here we have the case of the Government of India summoning the Ambassador of Australia to remind his government of the need for due process in the treatment of an Indian doctor detained in Brisbane.

The case highlights the importance of a proper balance between civil liberties, individual human rights and the responsibility of the state to protect inhabitants from terrorists. Before 9/11, Western governments and human rights champions were prone to moral ambivalence between perpetrators of terrorism and efforts of legitimate governments to maintain national security and assure public safety. After 9/11, Western governments began to view other countries' parallel wars against terrorism through the prism of a fellow-government facing agonizing policy choices in the real world, rather than single-issue groups whose vision is not anchored in any responsibility for policy decisions. Many governments used to be at the receiving end of moral and political judgment about robust responses to violent threats posed to their authority and order from armed dissidents. They now get a more sympathetic hearing and mature understanding forged in the crucible of shared suffering.

This does not give any government a licence to trample rights won at great cost over many centuries: rights of people against governments. Success in defeating terrorism can come only if we remain true to values that terrorists reject. This is where the case of Dr. Mohamed Haneef is so very disturbing. On the evidence presented to the Brisbane court, he

made the mistake of giving his prepaid SIM card to a second cousin in the United Kingdom because the card would not be of any use to him in Australia for whose sunny shores he was departing. The card was found in a car used by a terrorist a year later.

Hardly surprising that the magistrate granted bail. This is where the case gets curiously and curiously, as Alice remarked in her wonderland. Having spent 12 days in custody before being questioned, then granted bail pending trial, Dr. Haneef had his multi-year work visa cancelled on “character” grounds.

No country will strip its immigration minister of the power to cancel a visitor’s visa. But the purpose is to prevent someone from entering or, if he is already in the country, to terminate his presence and deport him. In Dr. Haneef’s case the primary motivation would appear to be to keep him in Australia under detention – and require him to pay for the privilege at the end of it all, even if he should be acquitted.

To top it all, the government has made it clear that Dr. Haneef will be deported even if he is ultimately found innocent. A case perhaps of guilty even if proven innocent?

It is hard not to infer that this is a case of a serious misuse of power and political interference in the process of criminal justice.

The dream of a world ruled by law is a shared vision. We must not privilege security and order to such an extent as to destroy our most cherished values of liberty and justice in the search for an unattainable absolute security.

The response of the Australian community to the prima facie abuse of executive power by the Australian Government is reassuring: the legal fraternity, civil liberties groups, other sectors of society and even the state premier have either roundly condemned the extrajudicial detention of Dr. Haneef or demanded a public explanation from the government. The one disappointment has been the federal opposition Labor Party which, frightened of being wedged on an issue of national security, has once again resorted to “me tooism”.

If and when Dr. Haneef is tried in a court of law, the trial will be about him: his beliefs, actions and links to terrorism.

The manner, forum and rules of procedure of the trial are not about him, but about the quality and credibility of the Australian justice system. Specifically, does the Australian government believe in, respect and abide by the rule of law or disregard it as a mere inconvenience when judicially tested?

The question of indifference or active concern about Dr. Haneef’s fate in a foreign land is about Indian values and beliefs. A failure by the government to demand justice for him would be an abdication of its responsibility to protect citizens.

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## War in our time: The myth of appeasement

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*The Hindu*, 1 November 2007

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In 2002–03, President George W. Bush presented the United Nations with an interesting test of relevance. If the Security Council did not endorse the ultimatum to force Iraqi compliance on American terms, he warned, Washington would reserve the right to launch a full-fledged military assault on its own. Analysts and commentators wondered: would the United Nations lift its performance and remain relevant to the US foreign policy on Washington's terms, or in doing so would it risk being seen as bending to the US will without demanding American compliance with global norms from arms control to environmental regimes and international criminal justice; that is, a quintessentially unilateralist version of multilateralism?

The gauntlet-cum-ultimatum came after weeks of raging debate on whether the war clouds were a genuine or fabricated crisis, and whether President Bush was being remarkably prescient or provoking a crisis where none existed. Part of the publicity spin in the preceding weeks had drawn historical parallels with the discredited and dangerous policy of appeasement. Saddam Hussein was the contemporary Hitler (an evil dictator bent on aggression). President Bush was portrayed by spinmasters as the modern-day heroic Winston Churchill, crying his warnings in the wilderness against a chorus of voices to the contrary. The international isolation of the American president thus was turned into a virtue.

One of the great success stories of the twentieth century was the progressive delegitimization of aggression and war. Once considered a normal and acceptable condition of sovereign statehood, warfare has been

so successfully stigmatized that the bar became extraordinarily high for any country to launch an unprovoked attack on another.

Among other tragic setbacks to international order and justice, the neoconservatives succeeded in reversing the burden of proof. Opponents of war had to prove beyond reasonable doubt and to the warmongers' satisfaction why war should not be waged. Else, they would be tarred and dismissed as wimps and peaceniks. So when UN Secretary-General Kofi Annan counselled patience and cautioned against the war option, the neocons waged a war of words against him, branded him guilty of appeasement and compared him to Neville Chamberlain. Thus was virtue turned into evil.

As a student of world affairs, I had definite views on the gathering war clouds and on the metaphor of appeasement. As a senior UN official at the time, I deemed the risk worth taking of writing on the substance of the Iraq crisis but chose discretion as the better part of valour on the analogy with 1938. If anything, though, far from changing, my views have hardened.

Historical metaphors are powerful tools of political mobilization for all sides. In the debate over the Kosovo war in 1999, calls of "No more Vietnams" collided with warnings of another "Munich".

But the lessons of history are as open to political manipulation as any other tool of rallying the troops. And they are full of pitfalls if misapplied. Anthony Eden was misled into the Suez debacle in 1956 in part because of his fixation with Gamel Abdel Nasser as another Hitler and Mussolini. In 2003, the Munich and Hitler analogies proved useful to the task of demonizing Saddam Hussein (not a very difficult task).

But how accurate was the analogy of appeasement?

The lesson of Munich in 1938 for the major powers (Britain and France) was that you do not buy peace with fellow-major powers tomorrow by giving in to their demands today. This merely whets their appetite. They live by the sword and shall perish only by the sword. Better therefore to confront them, including risking going to war if necessary, at a time and place of your choosing before they become fully armed.

But most countries of the world are not major powers and the lesson for smaller powers was different. Faced with the prospect of war with a major power, your allies and guarantors will sell you out rather than risk a war. Thus the motor of appeasement was the wish to avoid war at any cost.

The same logic has led to repeated efforts to appease the US appetite for war, with results no more promising than history's big lessons. The party threatening to go to war in 2003 was the United States, not Iraq. Saddam Hussein had been quite successfully contained. His regime was pathetic, weak and isolated. He had been defanged and disarmed through



international coercion and UN inspections. These could have been toughened still more, with the right to any-time-any-place search and investigation, without having to wage war to unseat him.

There were three pertinent attributes about Hitler's Germany at the time of the Munich Pact in 1938: dictatorship, major power status and territorial imperialism.

Dictatorship in itself is irrelevant to appeasement: no one would contemplate giving in to bluster from a weak tin-pot dictator. Saddam Hussein's challenge in 1990 – when he was a relatively powerful regional power – was met with decisive force by the US-led international community. In 2003 no credible analysts considered him powerful enough to be a threat to any other nation in the region, let alone to the world.

In 1938, Germany was Europe's strongest power and bent on military aggression. The others were so terrified of war breaking out that they forced Czechoslovakia, the intended victim, to cede to German demands as the only way of avoiding war.

The world's strongest power in 2003 threatened a war of aggression under the label of preventive defence. Public speculation on motives ranged from defeating and killing evil to preventing a threat from materializing, completing the unfinished agenda of 1991, avenging the attempt on the life of President George H. Bush, diverting attention from corporate scandals at home that had come uncomfortably close to the administration with mid-term Congressional elections looming, catering to oil interests that also have extremely close connections with this administration, or an ideological belief in manifest global destiny. Regardless, the world was so terrified of a new war that it wanted to force the intended target of attack, Iraq, to give in to US demands without a war.

The result? War in our time, yet again. The analogy with Munich 1938 did not quite work. The strength of the German opposition to the war option was intriguing. Maybe, an intuitive grasp of what appeasement means?

There was a simple way to grasp the point in 2003 in relation to Iraq which can yet be grasped today in relation to Iran. Take out a map of the world. Free yourself of all preconceptions. Put green-coloured pins for Iran's military forces stationed, based or in any form deployed outside its territory. Now place blue-coloured pins for US military forces stationed or deployed outside the United States, including – indeed especially – in the Middle East and Central Asia, the energy heartland of the world.

Then think through the implications of this.

Leaving aside the question of the source of moral authority of nuclear-armed France threatening war on Iran if it seeks to acquire nuclear weapons: are Europeans pressuring Iran because they fear that otherwise Washington will go to war? Since the end of World War II, has Iran or

the United States been the more belligerent and aggressive in its foreign policy? Which country promulgated the doctrine that no other country must be allowed to acquire the capacity to defend itself even in its own region against the one and only superpower? Excuse me?

The European backing for “tough” American policy towards Iran suggests, therefore, that the age-old instinct for appeasing the predatory propensity of the great and powerful – another abiding lesson of history – is alive and well.

By the standards of great-power behaviour throughout history and occasional lapses notwithstanding, the United States was exceptional as an essentially benevolent hegemon from 1945 until the advent of this administration. Maybe it will revert to being a benign hegemon with a change of administration in January 2009. In the meantime, we cannot fault other countries for taking to heart the old national security adage about hoping for the best but preparing for the worst.

Before some readers put furious pen to paper about intellectual pacifists, let me confess: in 1990–91, from the start, I supported firm military action to oust Iraq from Kuwait. Aggression must be opposed, not appeased. Opposition should be based on the fact of aggression and not on the identity of the aggressor.

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## Protection and punishment

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*The Japan Times*, 12 December 2007

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December 9 and 10 marked the anniversaries of the Genocide Convention and the Universal Declaration of Human Rights (1948). Both were an acknowledgment of the dark side of European history and embodied the determination to ban vices that had been let loose with terrible consequences by Westerners. Both the vices and the values they offended are universal, not characteristic of any particular civilization or culture but inherent to human nature.

As human beings, we bear rights that are inalienable. Because these arise from the fact of us being human, they are necessarily universal, held equally by all humans. The parallel growth and expansion of human rights and international humanitarian law converged in the protection of civilians and punishment of perpetrators against the backdrop of government-instigated atrocity crimes like genocide, ethnic cleansing and large-scale killings.

Changes in the nature of armed conflict have put civilians on the front-line of conflict-related casualties as well, from about 25 per cent during World War I to around 65 per cent in World War II and up to 90 per cent today. Meantime, globalization has shrunk distances, brought images of human suffering into our daily lives in graphic detail and expanded our capacity to respond meaningfully, thereby increasing the calls to do so. Burma in 2007 was vastly different from Burma in 1988 on this count.

Yet the generals got away with it. Revulsion at the murder of large numbers of civilians in serial atrocities in many parts of the world pro-

duced a softening of support for norms and institutions that shield the perpetrators of atrocity crimes from international accountability.

At a time when Darfur continues to tug at consciences without borders, in a year in which the military thugs in Burma cracked down on peaceful Buddhist monks and amid the continuing shame of Guantánamo that mocks the worldwide legacy of the previous champion-in-chief of human rights, it is worth highlighting two notable advances that give cause for cheer: the establishment of the International Criminal Court (ICC) in 1998 and the United Nations' adoption of the responsibility to protect in 2005. Canada played a starring role in the first and the lead role in the second.

Both encroach substantially on national sovereignty with respect to non-intervention and the sovereign impunity of heads of state. Without an international criminal court with universal jurisdiction, the Genocide Convention remained an incomplete instrument. Without R2P, the Universal Declaration of Human Rights was a hollow mockery for many.

The prosecution, conviction and punishment of perpetrators helps to bring closure to victims of past atrocities, on the one hand, while also acting as a deterrent to wannabe mass killers and so preventing atrocities in the future.

Both with protection and prosecution, the default responsibility remains with states. Only if and when they are unable or unwilling does the community of states have the duty to step in with international protection and prosecution.

But who is "the international community"? The UN Security Council is the only international law enforcement body but faces serious leakage of representational legitimacy with each passing year. How, given their own domestic records, can Russia and China, two permanent members, condemn atrocities by others? The moral authority of the United States, a third permanent member, is also compromised in the aftermath of serious weakening of international humanitarian law, retrenchments from human rights practices, outsourcing of torture and a campaign of active opposition to the ICC. The fixation with the misdirected war on terror has taken America far from its core ideals and handed political victory to the autocrats and jihadists alike.

The North Atlantic Treaty Organization intervention in Kosovo in 1999 in particular popularized the argument that "humanitarian interventions" might be illegal yet could still be considered legitimate. But what of the opposite: some Security Council-authorized interventions being legal but illegitimate? Absent significant structural and procedural reforms, this will remain a real concern.

The alternative of non-UN authorized interventions is even more deeply flawed. The rest of the world is not going to accept that

Washington, unilaterally or in concert with coalitions of the willing, has the right to define the thresholds of acceptable and intolerable behaviour by everyone else. It is fallacious and wrong to insist that the rest need a permission slip from the United States and NATO on what force they may use internally, but Westerners need no permission slip from the United Nations for the use of force internationally.

The solution to both dilemmas is to return to the rule of law that tames the use of force both internally and internationally. And that means codifying the responsibility to protect, acting on it through agreed procedures and institutions, buying into the ICC, and then having the moral force, legal authority, material capacity and courage of conviction to topple the domestic tyrants and international warmongers of the world, from Taliban-ruled Afghanistan and Saddam Hussein's Iraq to Burma and Darfur, and put them on trial at The Hague.

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## Operationalizing the “responsibility to protect”

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*The Hindu*, 15 February 2008

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No idea has moved faster in the international normative arena than the “responsibility to protect” (R2P), the title of the 2001 report issued by the Canadian-sponsored but independent international commission. When UN Secretary-General Kofi Annan issued his famous “challenge of humanitarian intervention” in September 1999, he provoked such a furious backlash from so many countries that some wondered about his future in the United Nations. Yet a mere six years later, the norm was endorsed by the world leaders gathered at the United Nations. Annan called it one of his most precious achievements.

There is always a danger with revolutionary advances that commitments made at grand summits will suffer many a slip by the time action is required. Make no mistake: R2P is not just a slogan but a call for action by the international community. Failure to act will make a mockery of the noble sentiments.

Recognizing that the global endorsement of the norm in 2005 was but the prelude to translating it into timely action to prevent crises and stop atrocities, a new Global Centre for R2P was launched on Thursday (14 February) at the UN headquarters in New York.

Consider this. In 2005, world leaders agreed that every country “has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity” and “should peaceful means be inadequate and national authorities are manifestly failing to protect their populations”, the “international community, through the United Nations, also has the responsibility to help to protect populations

from genocide, war crimes, ethnic cleansing and crimes against humanity". Yet some national diplomats insist, with straight faces, that the World Summit rejected R2P in 2005.

The first danger is thus a shamefaced edging back from the agreed norm of 2005, a form of buyer's remorse. We need continued advocacy and activism by civil society and concerned governments to remain steadfast and hold all governments' feet to the fire of individual and collective responsibility to protect at-risk populations. When Gareth Evans, co-chair of the R2P commission, gave a lecture last August in Colombo about R2P and what it meant for Sri Lanka, he unleashed a storm of hostility around the theme that the "so-called" R2P "is nothing but a licence for the white man to intervene in the affairs of dark sovereign countries, whenever the white man thinks it fit to do so". Rather flatteringly, Evans' 2007 visit to the island armed with R2P was compared to the coming of Christopher Columbus in 1492 and Vasco da Gama in 1498 with the Bible and the sword. One newspaper reported on "crackpot ideas" like R2P that have been "dismissed in academic and political circles as the latest 'neo-imperialist' tactic of the big powers to intervene in the affairs of small nations".

Many regimes which fear the searchlight of international attention being shone on their misdeeds will try to chip away at the norm until only a façade remains. They must not be allowed to succeed. Better that they live with this fear than their people fear the death and disappearance squads. Of course, they could remove the cause of such fear by working, by themselves or in concert with international friends, to remove the causes and prevent a crisis from arising.

A second, opposite danger of rollback lies with the aggressive humanitarian warriors who gave "humanitarian intervention" such a bad name in the first place. Iraq is the best example of why we, the authors and promoters of R2P, should fear our "friends" as much as our opponents in this cause. The developing countries' histories and their peoples' collective memories are only too full of past examples of trauma and suffering rooted in the white man's burden. The weight of that historical baggage is simply too strong to sustain the continued use of the language of "humanitarian intervention".

The addiction of some analysts to that language is puzzling and problematic. Puzzling, because our R2P report argued explicitly and forcefully about the shortcomings of this terminology and the merits of a deliberate shift to the conceptual vocabulary of R2P. Many commentators simply ignore that, as if the argument has not been made. If they disagree with the report, they should confront the issue and explain why.

The problematic element arises from the politics of the discourse. Our report (2001) offered, and the UN High-Level Panel's and Secretary-

General Kofi Annan’s reports (2004 and 2005) preferred, the R2P formulation as less confrontational and polarizing, more likely to lead to a consensus across the bitter North–South divide. “Humanitarian intervention” approaches the topic explicitly from the Western interveners’ perspective and isolates and privileges “intervention”. R2P is victim-centred and surrounds intervention with prevention before and rebuilding afterwards.

History proves that sovereignty and the norm of non-intervention notwithstanding, regional and global powers have intervened, repeatedly, in the affairs of weaker states. R2P offers them better protection through agreed and negotiated-in-advance rules and roadmaps for when outside intervention is justified and how it may be done under UN authority rather than unilaterally. It will thus lead to the “Gulliverization” of major power use of force, tying it with numerous threads of global norms and rules. Absent R2P, they have relatively more freedom, not less, to do what they want.

Another danger from over-enthusiastic supporters is misuse of the concept in non-R2P contexts. A group of retired NATO generals, for example, recently used it to justify the first use of nuclear weapons to prevent nuclear proliferation. R2P is rooted in human solidarity, not in exceptionalism of the virtuous West against the evil rest.

To date, our responses have typically been ad hoc and reactive, rather than consolidated, comprehensive and systematic. We need a “paradigm shift” from a culture of reaction to one of prevention and rebuilding. Millions lost their lives during the Holocaust and in Cambodia, Rwanda, Srebrenica, and Darfur. After each we said “Never Again”, and then looked back each next time, with varying degrees of incomprehension, horror, anger and shame, asking ourselves how we could possibly have let it all happen again.

The Global Centre for the Responsibility to Protect (<http://www.GlobalCentre2p.org>) will work to make this doctrine a reality. Secretary-General Ban Ki-moon has welcomed its establishment as “an effective advocate in the struggle to prevent the world’s most heinous mass crimes”. Supported by Australia, Belgium, Britain, Canada, Netherlands, Norway, Rwanda and other foundations and private donors, it will generate research, conduct high-level advocacy and facilitate activities of those working to advance the R2P agenda. It will be the hub of affiliated regional centres in Asia, Australia, Africa, Europe and elsewhere.

As Dag Hammarskjöld, the secretary-general who invented UN peacekeeping, famously said, it is not a proper job for soldiers yet only soldiers can do it. Traditional warfare is full-scale combat between enemy soldiers: us against them. Collective security is about combined military action against an aggressor: all against one. Traditional peacekeeping used



neutral soldiers to separate rival forces: us between enemy armies. Peace enforcement operations authorized UN units to use force when challenged: us between civil war factions and against spoilers.

Intervention to protect civilian victims of atrocities is us between victims and perpetrators. As such it requires different guidelines and rules of engagement, as well as relationship to civil authorities and humanitarian actors, compared to other types of military operations. These differences need to be identified, articulated and incorporated into officer training manuals and courses.

Operationalizing R2P with respect to the protection agenda in the field will mean adopting a bottom-up approach that brings together the humanitarian actors on the ground in conflict zones. Each context requires its own specific protection actions against threats to the people at risk there. The United Nations can provide the normative mandate at the global level for their protection and the forces and arms necessary for intervention if need be. The necessary action to prevent and rebuild has to be undertaken by the UN agencies acting collaboratively with local civil society actors, NGOs and representatives of the International Red Cross and Red Crescent. They can be brought together in a distinct protection cluster to assess needs and priorities for each vulnerable group requiring protection and identifying, in advance, the custom-tailored responses for prevention and rebuilding.

With a strong North–South character reflected by links to associated centres and affiliated research networks throughout the world, the Global Centre for R2P will be a catalyst for implementing the commitment of all countries to protect people around the world from genocide, crimes against humanity, ethnic cleansing and war crimes. Based in our common humanity, R2P aims to rescue vulnerable communities so that groups condemned to die in fear can live in hope instead – else we will not be able to live with ourselves.

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## Kosovo's new status will not erase centuries of Serbian history

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*The Canberra Times*, 22 February 2008

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The trouble with the Balkans, it has been said, is that they produce far more politics than can safely be consumed at home. As an Indian, I can relate to this.

On Sunday Kosovo formally declared independence to the accompaniment of festive celebrations by the good citizens of the world's newest country. We can but wish them well as they chart a new course inside a new Europe, free of the distracting conflicts that had ravaged the continent until the middle of the twentieth century.

The two iconic cases of international intervention in 1999 were Kosovo and East Timor. Canada was involved in the first, Australia led the second. As the recent attempted assassinations of East Timor's President Jose Ramos Horta and Prime Minister Xanana Gusmao show, the euphoria of independence is not enough to sustain the structures and practices of a civic community and viable polity.

It would be naive to believe that the centuries-old history of Serbian-Kosovar conflict was brought to an end on Sunday. The Serbs venerate Kosovo as the cradle of their nationhood, dating back to the war with the Ottoman Empire in 1389, which they lost. Their sense of victimhood and grievance has deep historical roots that will likely outlast Sunday's "set-back".

Like East Timor, Kosovo may prove to be a postmodern "sovereign" state dependent for economic survival and territorial integrity on outsiders: "an entity that may be sovereign in name but is a US-EU protectorate in practice" (John Laughland in the *Guardian*, 19 February).

The EU will underwrite the country's economy and security and its high representative can override decisions by Kosovo's government, just like in Bosnia. Thus is power fatally disconnected from responsibility.

The same, we might note, is true of East Timor. Why else, more than eight years after independence, would they be casting stones at the failures of Australia and the United Nations in the attacks on Ramos Horta and Gusmao?

There is a larger question for outsiders. Do we really want to take on the burden of determining by force the quest for independence by all the world's wannabe secessionists?

Slobodan Milosevic's Serbia was guilty of ethnic cleansing and unspeakable atrocities against Kosovars. His quest for Greater Serbia produced the opposite effect, of continually shrinking borders as more and more territorial units peeled away along ethnic fault lines: a classic example of the enormous disconnect between the goals sought, means used and results achieved.

This still does not mean that the blame lay 100 per cent with the Serbs and that the Kosovars were nothing but innocent victims. Lawrence S. Eagleburger, the former Secretary of State (1992–93) and also a former US Ambassador to Yugoslavia (1977–81), in an article in the *International Herald Tribune* in 1999 not exactly friendly to Milosevic, wrote, "The Kosovo Liberation Army earned its reputation as a terrorist group."

NATO became the tool for the KLA's policy of inciting Serb reprisals through terrorist attacks in order to provoke NATO intervention. How many Western countries had the KLA on their security watchlist as a criminal and terrorist organization before 1999?

The liberation of Kosovo by NATO was followed by reverse ethnic cleansing of Serbs and Romas, which did not receive anywhere near the matching coverage that Serbian atrocities against Bosnians and Kosovars did in the international media.

Since 1999, while many mosques have been built in Kosovo (with Saudi and Iranian funding?), many churches have been burnt. Will Europe and NATO stand in the way of the quest for Greater Albania across Kosovo, southern Serbia, Macedonia, Montenegro, perhaps even Greece?

UN Secretary-General Kofi Annan acknowledged in 2000 that his call for a debate on "the challenge of humanitarian intervention" had led to fears that the concept "might encourage secessionist movements deliberately to provoke governments into committing gross violations of human rights in order to trigger external interventions that would aid their cause".

Indeed. By one estimate, in rough, round and easily remembered figures, there are about 20 broadly homogenous nation-states, 200 states and over 2000 nationalities in the world today. To support, or to give the im-

pression of international encouragement to armed secessionists, is to risk unleashing the most violent phase of history ever.

Let's start with the more than 100,000 or so remaining Serbs inside Kosovo. Will they accept Kosovo's new status? Why should they?

The rest of the world is not short of secessionist and irredentist movements, including in Europe. Will separatists in Basque and Catalan be encouraged or discouraged? Have independistas in Aceh, Kashmir and Taiwan been delighted or perturbed? It's hard to see after this why the Turkish Cypriots will accept reunification of Cyprus under any formula, or why Sri Lanka's Tamils should not lay fresh claims on the world's conscience for a north-eastern enclave of the island nation. Similarly, the Kurds might be encouraged to step up their campaign and move beyond peaceful means.

Unlike Australia, Canada, conscious of its own little difficulty in Quebec, has not rushed to recognize the new country. The online edition of the *Globe and Mail*, Canada's national newspaper, announced Kosovo's independence declaration with the headline, "Proud, independent and free". The next day, a correspondent from Quebec City asked the paper to please keep the headline in "the archives and use it to announce the independence of Quebec, when it happens".

Maybe the collapse of colonial-era borders and the dismantling of dysfunctional states is an irresistible force of contemporary world politics. If so, if bad borders mean mounting bloodshed, our most interesting times are just beginning.

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## Let the Asians push aid to Burma

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*The Japan Times*, 12 May 2008

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CNN has quoted Shari Villarosa, the top US diplomat in Burma, as saying that more than 100,000 may have died in the country's delta region alone from the deadly cyclone that hit 3 May.

Although humanitarian aid is desperately needed, its expeditious delivery does not justify going to war as demanded by French Foreign Minister Bernard Kouchner. To overcome Burmese official reluctance to accept international assistance, he has urged the UN Security Council to pass a resolution under the "responsibility to protect" (R2P) norm to force through the delivery of aid.

"Humanitarian warriors" had given "humanitarian intervention" such a bad name that we had to rescue the deeply divisive idea and repackage it into the more unifying and politically marketable R2P concept and language that was then endorsed by world leaders at the UN summit in the fall 2005.

Kouchner's motivation and impatience are understandable. After all, he was one of the founders of Doctors without Borders, a great Nobel Peace Prize-winning humanitarian organization. And his sympathy for the cyclone victims is commendable.

Still, I can think of no better way to damage R2P beyond repair in Asia and most of the rest of the developing world than have humanitarian assistance delivered into Burma backed by Western soldiers fighting in the jungles of Southeast Asia again. If France has soldiers ready to spare for serious combat, perhaps they could assist or relieve beleaguered Canadian soldiers in southern Afghanistan.

John Holmes, a former ambassador to France, has rightly rejected Kouchner's call as unnecessarily confrontational. He added that cooperation from Burmese authorities was "reasonable and heading in the right direction".

Burma's military junta has been an unmitigated disaster for the country. My all too vivid impressions of Burma are of a gentle people suffering horribly under an unrelentingly oppressive regime that has stolen and squandered the nation's wealth and driven it to ruin and misery. Where in most cases there is some redeeming feature, I could neither see nor think of one insofar as this distasteful regime is concerned.

Hesitations about invoking R2P is not based therefore in any tender thoughts about the junta. R2P is one of the most important advances in global governance since World War II. We managed to find international consensus on it by creatively formulating it in non-confrontational language, restricting the circumstances in which outside military intervention is justified to large-scale killings and ethnic cleansing, and surrounding it with prevention before and reconstruction after military intervention.

The prospects of R2P providing the legal and normative foundation for military intervention when it is really needed to stop killings will diminish if it is abused and misused. As it is, we can detect signs of a rollback as some countries that previously endorsed it in 2005 now develop symptoms of buyer's remorse. Cuba and Sri Lanka are among the more prominent, but the sentiment is widely shared to the extent that the General Assembly forced the secretary-general to drop R2P from the title of his special adviser on the subject.

The R2P cause is not helped by over-enthusiastic supporters misapplying it to non-R2P type situations, which Burma since the cyclone undoubtedly is. Instead of securing timely action, this will complicate humanitarian relief efforts in this particular case and more generally afterwards.

The solution lies in invigorated efforts at four levels, based on solidarity with the victims – not on the rights and privileges of would-be interveners.

In direct exchanges with the Burmese authorities. At the end of the day, they are in effective control and any action requires both their consent and cooperation. Fighting them will worsen an already terrible humanitarian tragedy.

At the opposite end of the scale, in encouraging but nonthreatening resolutions and statements at the United Nations from the secretary-general and presidents of the General Assembly and Security Council. There is no substitute for the United Nations' unique global legitimacy.

By the major Asian powers: China, India and Japan. With major-power status comes matching responsibility and they should step up to the plate.

By the Southeast Asian neighbours of Burma, including the Association of Southeast Asian Nations as the regional organization. ASEAN has never fully recovered from the premature and ill-advised decision to admit Burma, and its policy of constructive engagement and absolute non-interference in each other's internal affairs has been progressively discredited. It's time for them to show some backbone and regain slipping legitimacy, credibility and relevance.

If the Asians come on board, political progress will be swift in unblocking obstacles and the delivery of humanitarian aid will be effective. And using the prevention and reconstruction language of R2P will promote the political legitimacy of the military intervention component when and where it becomes necessary.

Without the Asians on board, forget it.

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## Burma and the responsibility to protect: First, do more good than harm

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*eInternational Relations*, 20 June 2008

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Paranoid and mistrustful of the outside world, Burma's generals were criminally tardy in permitting emergency humanitarian supplies and personnel to come into the country after a devastating cyclone in early May. More than 100,000 may have been killed and over 2 million displaced and made homeless by the cyclone. Casualty figures should always be treated with caution in such contexts as they are easily inflated or downsized for partisan purposes, and already the indications are that the consequences were less grim than initially feared.

In the immediate aftermath, the rising tide of anger, outrage and frustration led France's Foreign Minister Bernard Kouchner to suggest invoking the "responsibility to protect" (R2P) in the UN Security Council as the legal means to prise open Burma's borders to outside help. The call, later retracted by Kouchner as being inappropriate in a non-conflict situation, generated an intense debate in policy, advocacy and media circles that is worth parsing into moral, conceptual, legal, political and practical components.

R2P was a creative and innovative reformulation of the old "humanitarian intervention" debate by a Canadian-sponsored but independent international commission. With singularly bad timing, we published our report at the end of 2001. Yet less than four years later – a uniquely rapid time-frame for such a landmark normative shift – it was adopted without a dissenting vote by world leaders at the UN summit. In paragraphs 138 and 139 of the summit's outcome document, the prime ministers and presidents of the world affirmed that every state bears the responsibility



to protect its population. They further declared that they were “prepared to take collective action, in timely and decisive manner, through the Security Council and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations”.

There is no morally significant difference between large numbers of people being killed by soldiers firing into crowds or the government blocking help being delivered to the victims of natural disasters.

Conceptually, the shift from the crime of mass killings by acts of commission like shooting people and acts of omission like preventing them from getting food and medical attention is a difference of degree, not kind.

Legally, the four categories where R2P apply are genocide, war crimes, ethnic cleansing and crimes against humanity. In our original report, we had explicitly included “overwhelming natural or environmental catastrophes” causing significant loss of life as triggering R2P if the state was unable or unwilling to cope, or rebuffed assistance. This was dropped by 2005. But “crimes against humanity” was included and *prima facie* would seem to apply to the Burmese generals’ actions in blocking outside aid.

Politically, however, we cannot ignore the significance of the exclusion of natural and environmental disasters in 2005. Clearly, the normative consensus on the new global norm did not extend beyond the acts of commission of atrocity crimes by delinquent governments. To attempt to reintroduce it by the back door today would strengthen suspicion of Western motivations and reinforce cynicism of Western tactics. The United Nations must base its decisions on the collectively expressed will of its member states, not on that of an independent commission or individual member states. Unlike previous decades, the new unity of the global South, led by Brazil, China, India and South Africa, is based in a position of strength, not weakness. The West can no longer set or control the agenda of international policy discourse and action.

Practically, there is no humanitarian crisis so grave that it cannot be made worse by military intervention. Unappealing as they might be, the generals are in effective control of Burma. The only way to get aid quickly to where it is most needed is with the cooperation of the authorities. If they refuse, the notion of fighting one’s way through to the victims is ludicrous. The militarily overstretched Western powers have neither the capacity nor the will to start another war in the jungles of Southeast Asia. If foreign soldiers are involved, it does not take long for a war of liberation or humanitarian assistance to morph into a war of foreign occupation in the eyes of the local populace. It’s interesting that the further away countries are from Burma geographically and the less they know about it, the more of a macho stance they were willing to embrace.

Asians forcefully reject any Western right to set the moral compass for the West's and everyone else's behaviour. It's easy for those who have no interests engaged there to accuse China and India of standing shoulder to shoulder with the butchers of Burma. Their protestations and censure would carry more moral weight if their conduct showed a consistent privileging of principles over national strategic or commercial interests in their own dealings around the world. Asians today are better educated and better informed on world affairs. Gross double standards, that give the lie to beliefs of the virtuous West fighting the evil rest, can no longer be hidden from them. Any effort to invoke R2P formally in the Security Council would have the counter-productive effect of damaging R2P permanently across Asia and more widely in developing countries.

Diplomatic pressure was better exerted on the basis of humanitarian principles enshrined in a number of UN General Assembly resolutions than on the coercive language of military intervention for which no one had the stomach and few had the capacity. These include the Guiding Principles for humanitarian assistance of Resolution 46/182 in 1991, the 2005 world summit outcome document, Resolution A/RES/61/134 of December 2006 and, most recently, Resolution A/RES/62/93 of December 2007. There are also the agreed norms and guiding principles in relation to internally displaced persons. All of these recognize and reaffirm the norm of state sovereignty and the principle of state consent. But they also do call on the afflicted states to facilitate the work of humanitarian actors providing relief and assistance and provide safe and unhindered access to humanitarian personnel. In the end, Secretary-General Ban Ki-moon's use of the bully pulpit, good offices and personal on-the-spot diplomacy did make a difference that may not have been enough to satisfy the habitual UN critics but was nonetheless critical in helping many in distress through relaxing some curbs on international relief efforts.

Still, it would be short-sighted to rule out the relevance and application of R2P should the situation not improve and people start dying in large numbers from the after-effects of Cyclone Nargis. Victims have the right to receive all available assistance; governments, host as well as foreign, have a duty to provide and facilitate it. We should not rule out laying charges of crimes against humanity against the top leaders in due course after the emergency has passed.

In the meantime, though, it bears emphasizing that R2P is much more fundamentally about building state capacity than undermining state sovereignty. The scope for military intervention under its provenance is narrow and tight. The instruments for implementing its prevention and reconstruction responsibilities on a broad front are plentiful.

While the reconstruction agenda for Burma is self-evident, it is worth returning to the tsunami of Boxing Day 2004 to illustrate the prevention

agenda. The responsibility to prevent would have meant, firstly, installing an early detection and warning system for earthquakes and tsunamis around the Indian Ocean along the lines of that already in place around the Pacific. Second, it would have required such preventive measures as strengthening instead of eroding natural barriers like mangrove swamps that absorb and dilute the destructive power of tsunamis. And third, it would have meant advance training and stockpiling of supplies for effective civil defence measures like food, medicines and paramedical personnel.

In other words, capacity, capacity and capacity that strengthen sovereignty and help state authorities to exercise it more responsibly.

Finally, there is also the question of which is more damaging to R2P in the longer term: invoking or ignoring it in the context of natural disasters like Cyclone Nargis. If the invocation does not help in the immediate emergency and may indeed cause even more determined opposition; and if it causes the growing backlash against R2P to gather pace; then the painfully forged consensus on the R2P norm will fracture without any material help being provided to the displaced and distressed. And that means that help will be less forthcoming to the next group of victims of large-scale killings.

The correct equation thus is that invoking R2P in Burma would have endangered lives elsewhere tomorrow without saving any and possibly even delaying help for the Nargis victims today. Feeling good about one's own moral superiority by accusing others of privileging a norm over saving lives is a peculiar form of self-indulgence that perpetuates the killing fields without alleviating anyone's suffering.

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## If you are an Iraqi, how do I kill thee?

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*The Hindu*, 31 July 2008

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Truth is the first casualty of war, they say. One of the ways in which this is true is in relation to the casualty statistics themselves. As part of the time-tested war propaganda, each side minimizes its own casualties and exaggerates estimates of the damage inflicted on the enemy forces, strategic-industrial targets, and public morale. The estimates of costs and timelines for victory are similarly downsized.

All of this has been evident with respect to the Iraq War. Much as Senator John McCain might want to trumpet his support for the successful surge (itself an Orwellian euphemism for escalation), the US press has largely given him a free pass on his statements in the lead-up to the war in which he bought into the neocons' fantasies of how short the war would be, how few the casualties, and how little it would cost the American taxpayer. On the economic costs, people like Paul Krugman in his New York Times column and Nobel Laureate Joseph Stiglitz have done much to highlight the magnitude of the true figures.

With respect to the numbers of Iraqi civilians killed and wounded in the aftermath of the 2003 war and the ensuing insurgency, however, the Bush Administration has largely got away with little or no international accountability. The American public has been left dazed and confused with a maze of claims, counter-claims and disinformation campaigns where often if the statistics are damning, the methodology is criticized and the motives of the scientists are questioned. Some of the tactics to discredit the studies' findings and their authors are lifted straight from

the old (and enduringly relevant) “Yes Minister” and “Yes Prime Minister” television series.

The first point to note is the moral bankruptcy of an administration and a coalition that would wage a war of aggression retroactively in response to humanitarian atrocities committed by the Saddam Hussein regime, yet, as a matter of deliberate policy, refuse to collect statistics on how many civilians were being killed as a consequence and in the wake of the war. Where is the outrage in the US press and public at this gross immorality?

Others stepped in, in an effort to fill the statistical breach. For the 18-month period after the war, a US medical team calculated the civilian casualty based on a scientific household survey and came up with the stunning figure of 98,000 deaths, without counting Fallujah (because it had been the scene of the fiercest and most prolonged fighting, Fallujah was categorized as an outlier). Moreover, 84 per cent of the casualties were attributable to coalition air strikes, not rebels, and women and children made up more than half the total killed. The results were published in the highly regarded medical journal *Lancet* in October 2004.

The team (Les Roberts, Riyadh Lafta, Richard Garfield, Jamal Khudhairi and Gilbert Burnham) was from Johns Hopkins University’s Bloomberg School of Public Health and was assisted by doctors from al-Mustansiriya University Medical School in Baghdad. Coalition governments disputed the findings but failed to provide numbers of civilian casualties themselves whose accuracy can be assessed against the *Lancet* article’s. Because the study attracted great international coverage but was criticized for its methodology in many US circles, it is worth a comment.

The methodology the team employed is called clustered sampling, which is the rule in public health studies, for example of epidemics. The alternative technique, called passive-surveillance systems, relies on waiting for reports of deaths to come in, rather than reporters going out randomly into the field to see if anyone has been killed in a violent attack. For this reason, it tends seriously to undercount mortality, in epidemics as in violence.

The Iraq study team picked out 33 towns in Iraq at random, then within each town, picked out 33 neighbourhoods – clusters – at random, and then visited the nearest 30 households. A total of 7,868 people in 988 households were interviewed in all about births and deaths that had occurred since 1 January 2002. Based on these interviews, the team calculated the number of deaths caused by the war by comparing the aggregate death rates before and after 18 March 2003, and attributing some 60 per cent of the excess deaths directly to the violence (from both sides), with the remaining being due to accidents, disease and infant mortality.

Because of the variable distribution of deaths in a war, violence can be highly localized. From that point of view, 33 clusters is a relatively small sample size, perhaps too small to be representative. In fact the decision to exclude Fallujah reflected precisely the study team's concerns that its violence was far too unrepresentative. The rather large range of possible death numbers, from 8,000 to 194,000, reflects the small sample size for a study of this type.

Nevertheless, the figure of 98,000 is the most likely number in that huge range. This does not mean, therefore, that any number in that range is just as probable as any other number. The further away we move from 98,000, in either direction, the lower the probability of that number, so that the lowest estimate of 8,000 is just as (un)likely as the highest estimate of 194,000. Experts consulted by the *Economist* (6 November 2004) – not one's average leftwing antiwar propaganda tract – confirmed that the study had been carried out to the standard professional level. Epidemiologists and public health experts I spoke to in Australia confirmed that the methodology used for the *Lancet* study is a standard practice in the profession and was correctly followed by the Johns Hopkins team.

Unfortunately, because the study was published on the eve of the last US presidential election, it became an easy target for suspect political motives rather than the quest for scientific truth. While the public database, Iraqi Body Count, estimated the Iraqi civilian toll at around 25,000 deaths, the Graduate Institute of International Studies in Geneva re-examined the *Lancet* study to conclude that the more accurate estimate should be around 40,000 deaths.

A second Johns Hopkins team (Burnham, Lafta and Roberts from the first team plus Shannon Doocy and Elizabeth Dzung) went back and replicated the study, using a 12,801-person sample drawn from 1849 households, and published their second round of findings in *Lancet* as well (October 2006). The repeat exercise broadly confirmed the large numbers of excess deaths compared to pre-2003 levels. Their revised total of the "excess" number of people killed was 655,000 in the three-year period from March 2003 to March 2006. Of these, they estimated that 601,000 were due to violent causes.

Since then, the widely watched website Iraqi Body Count has revised its figures to between 80,000 and 88,000 killed by 2008. But a survey conducted by the UK-based, non-government-funded Opinion Research Business (ORB), published early this year (*Reuters*, 30 January), concluded that more than a million Iraqis have died as a result of the conflict caused by the 2003 US-led invasion. It conducted face-to-face interviews with 2,414 adults and found that around 20 per cent had experienced at least one death in their household as a result of the conflict. The last complete census in Iraq (1997) had established that there were 4.05

million households in Iraq. Extrapolating from this, the ORB calculated that about 1.03 million Iraqis had perished as a result of the war. They gave their margin of error as 1.7 per cent, meaning that the likely range of the true figure was 946,000 to 1.2 million.

Readers, like governments, will no doubt tend towards the casualty figures that best suit their views and opinions on the war. The basic sad fact remains that very large numbers of Iraqi civilians have been killed, many through direct violence of sectarian and revenge killings, and many through the structural violence of disruptions to critical health services, medical supplies and nutritional requirements. The still sadder fact is that neither the Iraqi government nor the coalition forces have deemed Iraqi lives lost worthy enough to be counted accurately. Dignity in death is clearly not a human right for Iraqis.

And no one will be called to account in national or international criminal justice forums.

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## Post-Cold War era over, but not US primacy

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*The Hindu*, 11 October 2008

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The end of the Cold War had a triple significance for world affairs: the defeat of one power by another, the triumph of one political ideology over another, and the discrediting of one economic model in favour of another. All three have now been attenuated.

The Cold War was a global and transcendental struggle centred on and led by the Soviet Union and the United States. They were able to structure the pattern of international relations because of the qualitative discrepancy between their power, capacity and influence, on the one hand, and that of everyone else, on the other. The struggle for power and influence between them was global, leaving no corner of the world untouched or uncontested. And it was transcendental because of competing ideologies that could not tolerate each other's existence but were committed to the eventual destruction of the other.

Between 1989–91, the Soviet Union imploded and collapsed as a major power, leaving the United States as the only remaining superpower. The commanding position of the United States as a power was quite astonishing and heady and indeed it went to the head of the neocons. They proclaimed quite openly, unencumbered by any inhibition or embarrassment, their desire to keep the United States not only as the No. 1 power, but as one that would not permit any potential opponent to acquire the means to be the dominant power in its own region or even to defend itself against US attack. Iraq was meant to demonstrate both unlimited American power and limitless American willpower to enforce US military superiority. Not just Saddam Hussein,



but the world was to be shocked and awed into unquestioning submission to US will.

Instead, Iraq ended up demonstrating the limits to American power and influence, with a ragtag cadre of insurgents thwarting every effort to convert battlefield victory into lasting military victory or political influence. Russia's invasion of US ally Georgia earlier this year might well mark the bookend of post-Cold War US military dominance. The response of the neocons to having their grandiose ambitions frustrated in Iraq was interesting, and is best captured in the French phrase "*fuite en avant*", which roughly translated means that when a venture goes wrong, instead of retreating and regrouping, we advance still farther in the initial direction: forge ahead or "Forward, Ho".

So, if Afghanistan is not succeeding, let's attack targets inside Pakistan without observing the niceties of Pakistani sovereignty and seeking its government's consent. The insurgency is still alive and kicking in Iraq? Well then, let's attack Iran, and all our problems will be solved. The imperial mindset of the neocons posited the United States as the indispensable, virtuous and exceptional nation. To their minds, only the unpatriotic could possibly question policies based in these delusional self-beliefs.

The second dimension of the US victory in the Cold War was the triumph of the ideology of liberal democracy and political pluralism over communism. Intoxicated by this success, the neocons not only declared history to be at an end (although Francis Fukuyama later recanted on Iraq), they decided also to export democracy riding tank turrets and helicopter gunships. Iraq marks the graveyard of this democratic enterprise as well. When lectured by President George W. Bush at the St. Petersburg G8 summit, Vladimir Putin commented caustically that Russia could do without Iraq-style democracy, thank you very much.

The push for democracy was undermined also in two other respects. Contrary to his repeated rhetoric, Bush continued the decades-old US policy of ignoring the democratic shortcomings of allies (Saudi Arabia, Central Asian stans, Pakistan), coddling tyrants and dictators who kowtowed to Washington, and rejecting the outcomes of democratic elections that were not to US liking, as with Hamas in Palestine.

Even more disastrously, for the Bush Administration "exporting democracy" in practice translated into exporting it out of America. This too took several forms. First, Bush became president against the preference of most Americans, courtesy of the US Supreme Court rather than citizens' votes. Second, the administration systematically and substantially subverted the carefully constructed and painstakingly nurtured separation of powers that had limited executive power as a way of protecting US democracy and safeguarding its citizens' liberties. Third, the administration substantially curtailed many liberties and freedoms that were the

bedrock of the US version of liberal democracy, tilting the balance hugely towards the government and away from people. Fourth, it resorted to torture, the ultimate sacrifice of democracy on the altar of state security. Not victory in Iraq or in the war on terror, but the memories of Guantánamo Bay and the photographs from Abu Ghraib prison – the pornography of torture – will be the defining icons of this administration's legacy.

Militarily contained in Iraq and increasingly checkmated also in Afghanistan, politically discredited by abusive practices at home and rank double standards abroad, morally compromised in Guantánamo and soiled in Iraq, the United States still chugged along on the back of its powerful economy. Yet the historian Paul Kennedy's decades-old thesis, about empires falling as they become militarily overstretched to protect the economic and political spoils of empire, was waiting for the right opportunity to be validated. The Nobel Laureate Joseph Stiglitz has calculated the true cost of the Iraq War to exceed 3 trillion dollars. The United States was courting bankruptcy, and its courtship has been rewarded.

Where at the end of World War II the United States accounted for more than half the world's economic output, today it accounts for a quarter of it; and yet it accounts for half the world's military expenditure. Overseas military adventurism has been made possible by a reckless combination of domestic deficit financing and overseas borrowing. That has come to a crashing halt with the humungous crisis on Wall Street. The third aspect of the Cold War victory, the triumph of market capitalism over the command economy, must also now be severely qualified. The crisis vindicates Winston Churchill's pithy assessment that if socialism suffers from the vice of an equal sharing of misery, then capitalism is afflicted with the vice of an unequal sharing of affluence. Where the Asian financial crisis of 1997 proved the perils of crony capitalism, the 2008 crisis on Wall Street shows the pitfalls of unbridled capitalism. Governments may be fallible, but markets too are imperfect. Both the Asian crisis of a decade ago and the current US market collapse demonstrate the need for efficient, effective and transparent regulatory and surveillance instruments and institutions. Unchecked greed is not good. The state has an essential role to play. Those countries where the state has not abandoned the market to its own supposedly self-regulating devices are the better placed to weather the current crisis of confidence in capitalism.

The threefold decline of US power, prestige and influence was in clear evidence during the annual opening of the UN General Assembly session. Yet rumours of the death of American supremacy may be much exaggerated. Even while American dominance may have come to an end, American pre-eminence is likely to endure for some time yet. The fundamentals, to paraphrase Senator John McCain, are indeed strong. The US military remains unchallengeable for the foreseeable future in its core

tasks of asserting itself on the battlefield, particularly in the defence of genuinely vital US interests. The US economy is still the world's biggest by far and the best balanced, most productive and most innovative in the world. And, if Senator Barack Obama should become president, as seems likely on current opinion polls, much of America's lost international lustre would see a rapid recovery and the city on the hill would once again shine a beacon to the rest of the world. It will need to work harder than ever before to regain its former reputation as a benign and benevolent rather than a self-aggrandizing hegemon. Still, America has proven many critics wrong before who saw in temporary setbacks, no matter how severe, the signs of a terminal decline. No one has yet lost money overestimating US capacity to bounce back.

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## How to help Zimbabweans

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*The Ottawa Citizen*, 22 December 2008

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The notion of an international “responsibility to protect” (R2P) is widely embraced yet remains operationally elusive. Calls are growing for international intervention to lift the shroud of Robert Mugabe’s ruinous reign from Zimbabwe’s body politic.

A country that was once a verdant and prosperous bread-basket has become a basket case with nearly total unemployment, stratospheric inflation, widespread brutality and a cholera epidemic. The official death toll is more than 1,000; unofficial estimates run into the many thousands.

With the collapse of the country’s health system, growing food scarcity and the approaching rains, the toll will climb steeply. All this because one ageing tyrant would rather rule by thuggery than give up power. Mugabe gets ever more delusional, declaring the epidemic is over while blaming it on a conspiracy hatched in London to provide the pretext to invade.

Neighbouring Botswana expresses frustration. Kenya’s prime minister Raila Odinga is urging the African Union to authorize emergency UN intervention to take control of the situation and ensure humanitarian assistance. The Southern African countries, led by South Africa, are launching an urgent campaign to help Zimbabwe fight cholera and overcome its acute food shortages. Archbishop Desmond Tutu calls for intervention under the R2P norm. US Secretary of State Condoleezza Rice is appalled at our collective inability to deal with tyrants. British Prime Minister Gordon Brown says it is time for the bloodstained regime to be ousted.

Adopted unanimously at the UN summit in 2005, R2P holds that every state has the responsibility to protect all people inside its borders. When

its failure to do so results in ethnic cleansing, war crimes, crimes against humanity or genocide, world leaders promised, the international community, acting through the UN Security Council, will take “timely and decisive action”.

The United Nations and “timely and decisive action” have an estranged relationship. Yet the secretary-general has a Charter route and responsibility to bring situations of international concern to the attention of the Security Council. He could do so based on advice and information from his genocide prevention adviser, human rights chief, emergency relief coordinator, or chief political and peacekeeping advisers. Robust UN action by an independent-minded secretary-general was not the uppermost qualification in former US ambassador John Bolton’s mind when he manoeuvred Ban Ki-moon into the office.

The Security Council can launch investigations on its own or receive informal briefings from NGOs in the field. Unfortunately, as the Global Centre for R2P notes, “the Council can never bring itself to act before a situation becomes catastrophic”. Once atrocity crimes are being perpetrated, the Council has the choice of taking far more costly, complex and difficult interventions or doing nothing – and it has a grand tradition of inaction that the major powers who run it are manifestly reluctant to disturb. The recurring cycle is to urge, and follow, a wait-and-see policy until the bodies pile up in the streets and waterways, are shown graphically on worldwide TV, and a general wringing of hands ensues along with repeats of “Never Again”.

The alternative is to launch preventive action that is robust and effective in averting man-made tragedies. In retrospect, in our original R2P report we blurred the salient moral difference between incapacity and perpetration. Where states have the will but lack the capacity – Afghanistan, Kosovo, East Timor, Nepal – prevention measures can include humanitarian relief, economic assistance, rule-of-law and security sector reforms, and democratic institutional machinery.

But when despots inflict grave harm on their people, international prevention should cross the threshold from consensual to coercive measures.

A good example was direct mediation by former secretary-general Kofi Annan to end post-election violence in Kenya earlier this year before it spun out of control into mass killings. In Zimbabwe it should include broad global pressure, coordinated with regional organizations such as the Southern African Development Community (SADC) and the African Union (AU), in the form of targeted financial, educational and travel sanctions on all high-ranking officials and their families; their removal from all positions of authority in international institutions; arms embargoes; and the threat or actual referral of officials to the International Criminal Court (which Barack Obama should join early into his presidency).

Should these measures fail, as a last resort but only at the request or with the support of SADC and the AU, an international military intervention should be authorized. Zimbabwe's defence force is unlikely to offer formidable resistance. A time limit and benchmarks will prevent it from turning into an occupying force.

By refusing to sanction international intervention, African countries reinforce outside scepticism about their capacity for good governance as the key to lifting them out of conflicts, poverty and other pathologies. But without African backing an international intervention becomes a colonial enterprise.

It raises the further question of who in practice will provide the necessary troops. Combat-capable Asian countries with the requisite military slack will not consider the idea without African backing. Western countries are already overstretched and domestically queasy about the existing engagements. Moreover, their moral authority is compromised. US moral leadership sank in the morass of Guantánamo, the Iraq invasion, Abu Ghraib, international renditions and the pornography of torture. A country that asserts it can kidnap anyone anywhere in the world, whisk him off beyond the protection or jurisdiction of any legal regime and torture him, is in no position to wage war on another country that exercises the same powers within its territorial jurisdiction.

Having failed to establish lasting good government, order and peace after 100 years of direct colonial rule, from South Asia to the Middle East, Cyprus and Zimbabwe, Britain cannot return and solve the problems with a few quick military jabs to the same societies.

Many other Western governments too were passively complicit in the practice of rendition of captured prisoners to countries known to torture suspects. In Canada, policemen trained, tasked and armed to protect the innocent, killed a lost and confused foreign visitor at Vancouver's airport. The incident was captured on video and broadcast around the world, yet no one will be charged. Nor will anyone be held criminally accountable for the police killing of an innocent Brazilian in London.

To be sure, one isolated incident each in Canada and Britain cannot be equated with the systematic, large-scale and sustained brutality inflicted on the long suffering people of Zimbabwe. Yet Mugabe must have smiled on learning that, faced with certain defeat on a confidence vote, his Canadian counterpart simply shut down parliament for several weeks as the means of staying in power.

Do we really think others don't catch the hypocrisy and double standards when we lecture them on democratic shortcomings, human rights violations and responsibility to protect?

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## Ban a champion of UN's role to protect

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*The Daily Yomiuri*, 10 March 2009

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One of former US Ambassador to the United Nations John Bolton's parting gifts to the international community was the selection of Ban Ki-moon as UN secretary-general. Among the chief qualities that Bolton was interested in a candidate was a man of modest ambitions and talent to match in order to bury the conceit of liberal internationalism. Ban may yet surprise us all.

A bit more than a year before Ban took office, a summit of world leaders, meeting at the United Nations in autumn 2005, unanimously adopted "the responsibility to protect" – now commonly referred to as R2P – as a powerful new global norm.

Former UN Secretary-General Kofi Annan described R2P as one of his most precious achievements. Ban has not been shy of adopting R2P as his own cause, confident enough of his own worth not to worry that he will merely be advancing his predecessor's legacy. (There is a lesson in this for the Canadian government of Prime Minister Stephen Harper, which sees R2P as a Liberal Party legacy.)

After Ban took office, his task was complicated as many countries saw him as Washington's choice. The problem was compounded by choosing American Ed Luck as his special adviser, one with little professional background on the subject.

Luck did come to the post with several other key assets and advantages: a deep knowledge of UN–US relations; intimate familiarity with the UN system and structures, including the institutional bottlenecks to reform; the ability to think, speak and write clearly and succinctly; and

the confidence of Ban. Despite ceding ground to critics and dropping R2P from Luck's title, Ban remained focused on the issue and fully supported Luck's efforts to discuss the agenda with the various UN constituencies.

Drawing on Luck's wide-ranging consultations and reflections, on 12 January Ban published his report on *Implementing the Responsibility to Protect*. It rightly takes as a key point of departure not our original 2001 report, but the relevant clauses from the 2005 outcome document. It clarifies and elaborates that "force as the last resort" does not mean we have to go through a sequential or graduated set of responses before responding robustly to an urgent crisis. It does not add much to the substance of what we said in 2001, and therefore could have been shorter instead of exceeding the length guidelines instituted by Annan for such reports. At the very least, it is a good read and eschews bureaucratese.

The new report is effective and clever in repackaging R2P in the language of three pillars: the state's own responsibility to protect all peoples on its territory; international assistance to help build a state's capacity to deliver on its responsibility; and the international responsibility to protect. If the metaphor helps to garner more widespread support, all praise to Ban and his team. But, while the resistance of people to abbreviating the norm into R2P is understandable, reformulating R2P as "RtoP" as a distinguishing contribution is just plain silly.

More seriously, the report goes over the top in elaborating on the metaphor by insisting that the "edifice" of R2P will tilt, totter and collapse unless all three pillars are of equal height and strength. This is simply not true. The most important element – the weightiest pillar – has to be the state's own responsibility. And the most critical is the international community's response to fresh outbreaks of mass atrocity crimes.

Mercifully, and contrary to what many of us feared, the report does not retreat from the necessity for outside military action in some circumstances. But it does dilute what was the central defining feature of R2P. The commission was called into existence to deal with the problem of brutal leaders killing large numbers of their own people. In this it built on the landmark Lakhdar Brahimi report of 2000 that noted the United Nations can't be neutral between perpetrators and victims of large-scale violence. We're all happy to assist the good guys build state capacity; the challenge is what to do with the bad guys, those intent on grave harm who use sovereignty as a license to kill with impunity.

R2P's added value is that it crystallized an emerging new norm of using international force to prevent and halt mass killings by reconceptualizing sovereignty as responsibility. It aims to convert a shocked international conscience into timely and decisive collective action. This requires urgent clarification both with respect to when it should kick in



as an international responsibility (Darfur? Zimbabwe?) and when not (Russia in Georgia last year? Israel in the Gaza Strip this year? To deal with natural disasters? To enforce nuclear non-proliferation?); who makes these decisions; and on what basis. Do R2P operations require their own distinctive guidelines on the use of force? How and where can we institute systematic risk assessments and early warning indicators to alert us to developing R2P-type crises? How do we build international capacity to deliver R2P?

On these key issues, we are no further ahead today. We seem to be recreating the 2005 consensus instead of operationalizing and implementing the agreed collective responsibility. The use of force by the United Nations against a state's consent will always be controversial and contested. That is no reason to hand over control of the pace, direction and substance of the agenda of our shared, solemn responsibility to the R2P sceptics.

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## Bringing justice to torture enablers

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*The Hindu*, 16 April 2009

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When, after his 16-month arrest, General Augusto Pinochet was sent back from London to his native Chile, Geoffrey Robertson, a constitutional lawyer, was asked whether it was likely that the general would spend any time behind bars. “No . . . but a fate worse than prison awaits him. He will spend the rest of his days surrounded by lawyers” – which is exactly what happened.

The Spanish judge who hounded, humiliated and ultimately humbled Pinochet was Baltasar Garzón. He now has the torture enablers of the Bush Administration in his cross hairs. The development comes with the confluence of three forces.

First, humans have a powerful sense of justice for the satisfaction of which they are prepared to pay a cost if need be. Where wrong has been seen to be done and the decent opinion of mankind has been outraged, punishment is demanded. Second, in a deeply globalized world, with an internationalized human conscience, justice too has a global domain. Citizens expect and demand accountability for overseas and domestic acts of criminality, and foreigners demand it for criminal acts committed within domestic jurisdictions. And third, where wrong has been done to fellow-citizens, and institutions and regimes in whose jurisdictions the crime was committed are unwilling or unable to bring the perpetrators to justice, people want their own governments to reach on to the world stage to inflict punishment and exact justice.

President George W. Bush tapped into these sentiments in the immediate aftermath of 9/11 when he promised that whether the murderers

came to justice or justice came to them, justice would be done. How fitting then that those who exploited the post-9/11 fear to take him down the wrong turn to violate fundamental American precepts and international laws against torture now have cause to fear international justice.

Judge Garzón is gearing for a criminal investigation of the Bush lawyers who constructed the legal scaffolding for army and CIA interrogators to engage in torture. The principals involved – Alberto Gonzales, Douglas Feith, David S. Addington, Jay S. Bybee, William J. Haynes, John C. Yoo – should not take this lightly.

Every day, the evidence that is released of what happened in the so-called “black sites”, under the legal umbrella provided by the legal memos of the Justice Department Office of Legal Counsel, is more disturbing. Waterboarding, beatings and locking up in coffin-like boxes seem to have been established practices – all of these aided by medical personnel.

When Judge Garzón, by now a legendary figure in the Spanish-speaking world and the subject of an acclaimed documentary film (*El Caso Pinochet* by Patricio Guzmán), started the criminal proceedings against Pinochet in the mid-1990s on the basis of a complaint filed by a human rights NGO, he was widely derided as a latter-day Don Quixote taking on a general 10,000 km away, with no jurisdiction over problematic cases that, if at all, fell under the purview of the Chilean judiciary.

Yet, slowly but surely, he kept building up his case. In a remarkable case of deploying the law to bring about both criminal and, in the deepest sense of the word, political justice, the lawyer behind that case was Joan Garces who, 25 years earlier, as a freshly minted political scientist, had been Salvador Allende’s political adviser and speechwriter, and got to know Pinochet in the days when the latter put on his mask as a strict constitutionalist and ardent supporter of Allende.

When Pinochet, after leaving his position as Army Chief, and taking up the one as appointed Senator he had engineered in his own 1980 constitution, was imprudent enough to travel to London in October 1998, shortly after the 25th anniversary of the military coup that he led to topple President Salvador Allende, under the false impression that a diplomatic passport and his friendship with Margaret Thatcher would provide him with immunity in a country he much admired, Garzón pounced.

Contrary to what is sometimes argued because he was ultimately not convicted of any crime, that arrest marked the end of the Pinochet legend and the halo that had surrounded him until then, as the dictator who had opened up the Chilean economy and brought modernity to his country. Upon his return to Chile, the Supreme Court lifted his parliamentary immunity and he had to face hundreds of criminal cases. In 2003, the government appointed a Commission on Political Imprisonment and Torture

to investigate the human rights violations that had not fallen under the mandate of Chile's Truth and Reconciliation Commission in the early 1990s. A few years later, a US Senate investigation on the financing of terrorist activities uncovered hundreds of bank accounts of his at the Riggs Bank, leading to further prosecutions. By the time he died a few years ago, his reputation was in tatters.

In a vivid proof of the "snowball effect" these legal precedents have internationally, the Peruvian courts recently took this one step further. After extraditing him from Chile, where he had sought refuge, they convicted and sentenced the former dictator Alberto Fujimori (known popularly as "Chinochet") to 25 years in prison for the human rights violations committed during his two-term presidency, mainly for excesses in the repression against the Maoist Shining Path guerrilla movement. This group was a bad lot but the Peruvian courts decided that even the imperatives of the struggle against such a cruel terrorist movement did not justify state actions leading to torture and illegal killings.

Why should a Spanish judge take on a Chilean dictator, and now a bunch of US lawyers?

The answer is "universal jurisdiction": the legal capacity to bring to justice human rights violators anywhere in the world, and one of the most encouraging trends in international human rights law. Although as a rule criminal jurisdiction is determined by the crime's location rather than by the nationality of the victim, in today's globalised world strict territorial jurisdiction is less clear-cut. Pinochet was the first former head of state arrested for crimes committed at home, followed shortly by the indictment of Slobodan Milosevic: the first sitting head of state, and that too in the midst of war. The recent international order for arrest of Sudanese President Omar al-Bashir, issued by the International Criminal Court (ICC), has made world headlines.

The United States, which did not ratify the Rome Treaty that established the ICC in 1998 – it has by now been ratified by 108 countries, a majority of the UN members – has not exactly been in the forefront of this trend (having gone to the extreme of actually unsigned this treaty). Yet, it has not been totally estranged from it either. In October 2008, a Miami court convicted Liberian strongman Charles Taylor of torture crimes committed in Liberia, a decision praised by the then US Attorney-General, Michael B. Mukasey.

Spain's 1985 law allows for universal jurisdiction in crimes against humanity if there is a Spanish connection. In the case of Spanish citizens living in Chile who travelled to Argentina, were kidnapped there, and sent back to Chile to be tortured and killed, the question who prosecutes the culprits did not have an obvious answer – until Judge Garzón stepped in.

What about Spanish citizens or residents of Spain kidnapped somewhere around the world, forcibly taken to Guantánamo and tortured there? Given Guantánamo's legal limbo (which is precisely why the detention camps were set up there in the first place), the answer is not obvious either.

Practices such as waterboarding, beatings and placement in coffin-like boxes, described in detail in a leaked ICRC report about the treatment of detainees in US custody, could constitute war crimes and/or violate the 1984 Convention Against Torture, to which the United States is party.

In arguing against a truth commission to investigate torture practices under Bush, Senator Arlen Specter said, "This is not Latin America." Well, in some ways it is. "Enhanced interrogation techniques" were originally exported by US specialists to Latin American military regimes, including Pinochet's, in the 1960s–70s to help fight the enemy of the day – communism. They were then applied at home to fight the new enemy of choice, terrorism.

There are some 50 former senior aides to Pinochet, both military and civilian, who have been advised not to travel abroad if they want to avoid being arrested. They have not dared to leave Chile for 10 years now. If Judge Garzón were to go ahead with his criminal investigation of the former Bush Administration lawyers, it is unlikely these defendants would be extradited to Spain. But it would probably be advisable for them not to leave the United States.

## Note

Article co-authored with Jorge Heine. Jorge Heine is professor of political science, Wilfrid Laurier University and distinguished fellow, Centre of International Governance Innovation, Waterloo, Canada.

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## West shouldn't fault Sri Lankan government tactics

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*The Daily Yomiuri*, 12 June 2009

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Sri Lanka's quarter-century-long brutal civil war came to a bloody end recently. But it left the world with some troubling questions to which no definitive answers are obvious. What, if any, limitations exist on governments' right to use force to crush terrorist organizations? How can the responsibility to protect norm be extended to non-state actors? Do Westerners have divine dispensation to be the moral arbiters of the conduct of others as well as their own?

The world was gravely concerned over the fate of civilians caught in the crossfire between the Tamil Tigers and Sri Lanka's defence forces. In May, UN Secretary-General Ban Ki-moon pressed Colombo to grant unrestricted access to aid agencies, which the Government of Sri Lanka resisted on the grounds that more time was needed to flush out Tamil Tigers hiding among the displaced people in the camps.

Just a fortnight earlier, Ban had received a report on incidents in the Gaza Strip in January from his own inquiry board that indicted Israel for "reckless disregard" for human life, accused it of making a direct and intentional strike on UN premises, and recommended an impartial inquiry to investigate incidents that were beyond its own deliberately narrow terms of reference. On 5 May, Ban submitted this report to the Security Council with a terse statement that he did not intend to establish any further inquiry. Yet presumably Ban expects to be taken seriously on his call for greater transparency, access and accountability by Sri Lanka.

The double standards and selectivity of Western governments who have aggressively promoted the rhetoric of the war on terrorism, waged

an illegal war of aggression in Iraq where civilian lives are so devalued they are not even counted, and support the war on terrorism in the Afghanistan–Pakistan battle space with its high toll in civilian casualties, has been breathtaking. Sri Lanka was waging a military offensive against a guerrilla force that had fought a brutal war against the legitimate state for 26 years. With the Tamil Tigers, there was a unique fusion of Buddhist–Hindu religious cleavage, insurgency, terrorism and secession that over a quarter century had killed up to 80,000 people and assassinated an Indian prime minister as well as a Sri Lankan president.

The Tigers have been among the most ruthless terrorist organizations and were designated as such by more than 30 countries by 2009. They pioneered the use of women suicide bombers and invented the explosive suicide belt. They killed many civilians, including Tamils, recruited child soldiers and often raised funds from the Tamil diaspora community through extortion. Post-conflict recovery and progress was not possible until the Tigers had been decisively defeated on the battlefield.

Civilians were held against their will by the Tigers, not the army. Many who tried to flee were shot by the Tigers – an act of depravity against their own to which even Hamas and Hizbollah, other practitioners of the art of using civilians as human shields, have not stooped. Tellingly, there were no reports of civilians trying to flee from the Sri Lankan forces to the Tigers. A movement that began as the protector of the nation's oppressed Tamil minority had mutated into their killers. Along the road it is the Tigers who fought for a solely military solution to the three-decade conflict, spurning the few opportunities that were presented for a political settlement through dialogue and negotiations, including through Indian and Norwegian mediation, when the military advantage was held by them; insisted on being the sole representative of the Tamil population and cause, liquidating all rival challengers; and lost international goodwill after 9/11 as the global tolerance for terrorism as a tactic collapsed, regardless of the justice of the cause.

Yet, even if true – and, as always, much of this was contentious and furiously contested – this did not obscure the humanitarian tragedy of large-scale civilian deaths and shelling of civilian targets like schools and hospitals in the shrinking area still held by the Tigers as government troops closed in. Around 7,000 civilians are estimated to have died this year alone. To what extent did the unanimously endorsed responsibility to protect norm apply to the Tigers, the government and the international community for evacuating – by land, sea and air – the civilians caught in the crossfire?

The notion of a responsibility to protect places the responsibility first and foremost on the state itself. Given the Tigers' nature and record, it was not unreasonable for the government to acquire the capacity and demonstrate the determination to defeat the Tigers as part of its respon-

sibility to protect. Proponents of the responsibility to protect cannot advocate the international use of force against government troops engaged in atrocities against civilians, but not permit governments to use military force to protect their people from atrocities being perpetrated by terrorists. Pacifists can decry, renounce and denounce all use of force. Those who accept that the use of force is sometimes necessary cannot deny that option to governments engaged in fighting a brutal insurgency that kills civilians without compunction.

Had the Tigers been amenable to letting civilians caught in the cross-fire escape, outsiders could legitimately have asked for another pause or ceasefire in order to help evacuate them. Another means for avoiding a bloodbath was for the Tigers to surrender. Absent this, it was hypocritical and wrong – morally, politically and militarily – of Westerners to fault Sri Lanka. Ceasefires are not neutral in their impact on the warring sides. The Tigers used previous pauses to rest, recover, regroup, recruit, rearm and return to terrorism. Another 25 years of war would have killed many more civilians. There is also the moral hazard of validating the tactic of taking civilians hostage as human shields. Calls for a ceasefire, without materially helping the Tamil civilians, infuriated the government and reduced space for those making the calls to establish their bona fides with the government for how best to move from a civil war into a post-conflict peacebuilding environment.

Where the responsibility to protect does apply to the government is in its preventive and rebuilding components. The fact remains that the Tigers were the after-product of systematic and institutionalized discrimination by the Sinhalese majority against the Tamil minority that quickly degenerated into oppression and then killings. Calls for equal treatment when ignored escalated into demands for autonomy and finally their own homeland.

A military victory, while necessary, will not guarantee a peaceful future for a united Sri Lanka. The responsibility to reconstruct and rebuild, with international assistance, shows the way forward. The best time for the state to adopt measures of accommodation and power sharing within a federal framework is in the flush of military victory, when no one can accuse it of weakness. The Sri Lankan Tamils as well as the international community will mark the government's noble magnanimity. Conversely, should there be vulgar triumphalism, gloating and an atavistic return to oppression and killings, Sri Lanka will suffer a reprise of the brutal civil war.

India has a stake in avoiding secession and instability in its neighbourhood. India's Tamils, who outnumber Sri Lanka's total population 3:1, will not tolerate their kin being reduced to permanent second class citizens across the strait. India provides a great model of pluralistic democracy and social inclusion; it should be seen and copied as an example and welcomed as a partner in peacebuilding, not feared as a threat.



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## Next word on intervention

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*The Japan Times*, 31 July 2009

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The 1990s was a decade of conscience-shocking atrocities in Rwanda, the Balkans and East Timor. Unilateral actions by India and Vietnam to end atrocities in the 1970s had drawn international opprobrium and condemnation. The crises of the 1990s provoked agonized soul-searching on how to reconcile a newly energized international conscience with clashing principles of world order that privileged sovereignty over intervention.

The result was the new norm of the “responsibility to protect”, commonly abbreviated as R2P, endorsed unanimously by world leaders in 2005. Yet many countries remain suspicious of R2P. Opponents – not advocates – sought and organized the debate on the subject held by the UN General Assembly last week.

All too often, supporters are trapped into providing ammunition to critics by their failure to pay attention to politics. UN Secretary-General Ban Ki-moon’s choice of an American special adviser, no matter how good – and Ed Luck is very good indeed – was impolitic. Ban’s own Asian identity is neutralized by the general perception that he was former US Ambassador and UN-sceptic John Bolton’s choice for secretary-general.

The powerful sense of grievance and resentment is missed by Western academics who read and cite one another to the near-total exclusion of colleagues from developing countries.

In his background note for the debate, General Assembly president Miguel D’Escoto Brockmann of Nicaragua openly described R2P as “re-decorated colonialism”. His advisers organized a pre-debate discussion

on the topic among four experts, of whom three were Westerners. This all too easily allows opponents to reinforce dormant fears that R2P is a debate for and by Westerners in which developing countries are the objects, not authors, of policy and of the exercise of Western power.

A more honest effort would have mainly developing country protagonists arguing the case for and against R2P. For the norm is principally about protecting their peoples by collective international means. As argued recently by Mohamed Sahnoun, the other co-chair of the original international commission, in many ways R2P is a distinctly African contribution.

Asia too has its own rich traditions that vest sovereigns with responsibility for the lives and welfare of subjects. At the same time, developing countries, not Western ones, are the likely targets of international military interventions. If they are the principal beneficiaries and victims when R2P is put into practice, they should be the lead debaters. Instead they were asked, by one of their own, to be in the audience. Was this a subconscious deference to racial superiority, a devious but deliberate plot to plant R2P as a Western preoccupation, or an innocent slip?

The debate is also wrongly framed on substance. In the real world, we know there will be more atrocities, victims and perpetrators – and interventions. They were common before R2P and are not guaranteed with R2P. During the debate on 23 July, D’Escoto cited the case of Iraq as an example of R2P being abused – seemingly unaware of the irony that it took place more than two years before R2P was adopted. Ed Luck emphasized that R2P seeks to “discourage unilateralism, military adventurism and an over-dependence on military responses to humanitarian need”. Navi Pillay, the High Commissioner for Human Rights, urged that “We should all undertake an honest assessment of our ability to save lives in extraordinary situations”, like Rwanda in 1994. It was good to have the likes of Nigeria, South Africa and Japan speak in support of R2P.

The real choice is when, why, how and by whom. Three choices will have to be made:

- First, are interventions to be unilateral or multilateral?

Clearly, the comfort level for all developing countries and most Westerners is much greater with UN-authorized interventions rather than those led by self-appointed sheriffs and their deputies. The rancour and recriminations of NATO’s unauthorized intervention in Kosovo were in marked contrast to the impressive unity of the UN community in East Timor in 1999.

- Second, will the interventions be rules-based or ad hoc?

Safety and protection for the poor, weak and vulnerable countries is better provided when principles and guidelines on when and how

interventions are to be conducted have been agreed to in advance and are commonly understood.

Alternatively, the absence of rules gives much greater freedom of action to the global and regional hegemony to act (or not) when, where and how they please.

- Third, will the interventions promote bitter divisions or cement consensus on the normative underpinnings of world order and stability?

Unilateral and ad hoc interventions will sow and nourish the seeds of international discord. Multilateral and rules-based interventions will speak powerfully to the world's determination never again to return to institutionalized indifference to mass atrocities.

That is the true promise and potential of R2P, to convert a shocked human conscience into timely and decisive action to halt and prevent genocide, crimes against humanity, war crimes and ethnic cleansing.

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## Responsibility to protect is universal

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*The Daily Yomiuri*, 17 November 2009

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The challenge of humanitarian intervention in conflicts, as former UN Secretary-General Kofi Annan originally framed it, saw a bitter divide split Western from developing countries. When the Canadian-sponsored independent international commission held a regional meeting in New Delhi in June 2001, only the protocol officer from the External Affairs Ministry attended the reception hosted by the Swiss ambassador. India's opposition was that strong.

When the commission reformulated the challenge as the "responsibility to protect" (R2P) and a slightly diluted version of the concept was adopted at the UN World Summit in 2005, some Western humanitarian warriors thought the body had conceded too much to developing countries. Many in the latter however continued to be strongly opposed to the R2P agenda.

As Sri Lanka's war against the Tamil Tigers climaxed in May, Indian Foreign Minister Pranab Mukherjee found it useful to remind Colombo of its responsibility to protect everyone living in the country. India is not the only country to have softened its initial strong opposition to the norm.

When R2P-sceptics organized a debate on R2P at the UN General Assembly in July, many of us feared the worst. It turns out we had mistaken the volubility of the few for broad support among many. Because the expected sparks did not fly, the international press did not follow up pre-debate warnings of a bust-up with post-debate coverage of strong support for R2P – what bleeds leads, what does not bleed dies as a news story.

Consequently, many retain an erroneous impression of the extent of opposition to R2P.

Compared with the industrialized Western countries, developing countries are generally more interested in justice among rather than within nations, more concerned about the root causes of terrorism such as poverty, illiteracy and territorial grievances, more interested in economic development than worried about nuclear proliferation, and more committed to the defence of national sovereignty than the promotion of human rights. Individual differences within developing countries and among Westerners does not invalidate the generalization.

The General Assembly debate was addressed by 94 speakers, nearly two-thirds from developing countries. Almost all reaffirmed the 2005 consensus, expressed opposition to any effort to reopen it and insisted that its scope be restricted to the specified four crimes of genocide, crimes against humanity, war crimes and ethnic cleansing. Several expressed reservations about selectivity and double standards. Some urged voluntary self-restraint in the use of the veto when faced with atrocity crimes.

There was near-unanimity in accepting state and international responsibility to prevent atrocities through building state capacity and will, and providing international assistance, and in grounding these fundamental obligations in the UN Charter, human rights treaties and international humanitarian law. Most nations affirmed that, should other measures be inadequate, timely and decisive coercive action, including the use of force, was warranted to save lives. Few rejected the use of force in any circumstance. Only Cuba, Nicaragua, Sudan and Venezuela sought to roll back the 2005 consensus. It was good to have countries such as Japan and Indonesia speak out in support of R2P. To have India endorse it was especially gratifying.

Several speakers referred to such “root causes” as poverty and underdevelopment. Many talked of the need for a proper balance of responsibilities between the General Assembly and the UN Security Council in developing and implementing the new norm. Some pointed to a linkage between R2P and the agenda of international criminal prosecution.

The caveats notwithstanding, several kept coming back to the core of the R2P norm – that in extremis, something needed to be done to avoid a shameful repeat of Rwanda-type inaction. Thus Ghana’s delegate noted that R2P attempted to strike a balance between non-interference and what the African Union called non-indifference. The pro-R2P interventions in the debate by the delegates of East Timor and Rwanda were particularly poignant.

Secretary-General Ban Ki-moon is right to warn “it would be counter-productive, and possibly even destructive, to try to revisit the negotiations” that produced the 2005 consensus. China’s Ambassador Liu

Zhenmin, speaking in the Security Council, warned that “it’s not appropriate to expand, wilfully to interpret or even abuse” R2P.

R2P will help the world to be better prepared – normatively, organizationally and operationally – to meet the challenge wherever and whenever it again arises, as assuredly it will. To interveners, R2P offers the prospect of more effective results. To potential targets of intervention, R2P offers the reassurance of a rules-based system. Absent an agreed new set of rules, there will be nothing to stop the powerful from intervening “anywhere and everywhere”. This is why in the General Assembly debate, speaker after speaker, from the global North and South, described the 2005 endorsement of R2P as historic, because it spoke to the fundamental purposes of the United Nations and it responds to a critical challenge of the twenty-first century.

When post-election violence broke out in Kenya in December 2007 and January 2008, UN Special Adviser for the Prevention of Genocide Francis Deng urged the authorities to meet their responsibility to protect the civilian population. Archbishop Desmond Tutu interpreted the African and global reaction to the Kenyan violence as “action on a fundamental principle – the responsibility to protect”. Called in to mediate, Annan too saw the crisis in R2P terms. His successful mediation to produce a power-sharing deal is our only positive R2P marker to date.

Contrary to what many claim, R2P is rooted as firmly in indigenous values and traditions than in abstract notions of sovereignty derived from European thought and practice. Many traditional Asian cultures stress the symbiotic link between loyalty of citizens to sovereigns and duties owed by kings to subjects, a point made by civil society representatives who accordingly conclude that, far from abridging, R2P enhances sovereignty. As argued by Mohamed Sahnoun, co-chair of the original international commission, in many ways R2P is a distinctly African contribution to global human rights. Similarly, India’s constitution imposes R2P-type responsibility on governments in its chapters on fundamental rights and directive principles of state policy.

Still, support for R2P in the UN community is broad but not very deep. The July debate helped to sideline the small minority of sceptics, but probably only temporarily.

R2P is more about building state capacity than undermining state sovereignty. The scope for military intervention is narrow and tight. The instruments for implementing prevention and reconstruction responsibilities are plentiful. The 2005 formulation of R2P meets the minimum requirement of the call to action of classical humanitarian intervention while protecting the bottom line interests of developing countries and thereby assuaging their legitimate concerns. It navigates the treacherous shoals between the Scylla of callous indifference to the plight of victims and the Charybdis of self-righteous interference in others’ internal affairs.

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## The growing threats to human rights

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*The Hindu*, 5 December 2009

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The Universal Declaration of Human Rights, signed on 10 December 1948, transformed an aspiration into legally binding standards and spawned a raft of institutions to scrutinize government conformity and condemn noncompliance. It remains the central organizing principle of global human rights and a source of power and authority on behalf of victims. Numerous UN conventions, declarations and protocols produced the progressive result of universalizing human rights. They are our “fire-walls against barbarism” (Michael Ignatieff).

Human rights establish boundaries between individuals, society and the state. The assertion of a human right is a claim on protection from threats from people, groups or public authorities. Human rights are endangered in conditions of anarchy when there is no functioning law enforcement and judicial machinery to defend them. In most cases, however, the gravest threats to the human rights of citizens emanate from states.

Over the past decade state-based threats to human rights have taken several forms. Many civil liberties have been curtailed in recent years through law or by administrative decisions and infringements on freedoms that would have been challenged in the pre-9/11 environment. Western governments have sometimes abandoned nationals overseas if their detention or abuse is carried out in the name of anti-terrorism. Their troops in Afghanistan may have colluded in handing over suspects to local interrogators skilled at breaking more than toothpicks. Their law enforcement officers have transferred the burden of risk of death and injury to inno-

cent people, for example through lax protocols governing the use of tasers.

Border agents everywhere seem to be drifting into a make-my-day machismo as their default mode of dealing with the travelling public. Banning the gadfly British MP George Galloway from visiting Canada in March 2009 was especially egregious and counterproductive in giving him dollops of extra oxygen for free publicity. The banning of minarets by the good citizens of Switzerland is illiberal democracy at its worst, fanned by the flames of group hysteria against the backdrop of post-9/11 Islamophobia. The ceremony of innocence will be truly drowned if the Western centre of civilization cannot hold.

The problem was aggravated with the former chief champion of human rights becoming a leading delinquent. US abuses in Guantánamo and Iraq significantly weakened the world's ability to protect human rights. When a dominant country like the United States openly defies the law, others mimic its policy and its leverage over them is reduced: Washington cannot call on others to uphold principles it itself violates.

In a landmark case involving the CIA's extraordinary rendition programme as part of the war on terror, on 24 November, an Italian judge convicted 23 Americans of kidnapping an Egyptian cleric on a Milan street in 2003. They were tried in absentia and may never see jail time. But they are in effect fugitives in the 25 EU countries and subject to arrest and extradition to Italy. The case thus is another nail in the coffin of impunity and sends a warning shot across Washington's bow that if the United States fails to hold its officials accountable for breaking foreign laws, other countries will.

Once, torture was acknowledged to be so abhorrent that no one publicly approved the practice. The post-9/11 climate of fear encouraged debate on whether torture is justified if it prevents mass terrorist attacks.

A second set of threats is posed by the creation of human rights machinery that has become a monster mocking the meat it feeds on. Human rights seek to protect individuals from oppression by political, social and religious authorities. The responsibility for enacting laws and constructing the bureaucratic, police and judicial machinery to monitor and enforce human rights lies with the state. Social and religious groups can capture the political agenda and subvert the process to "protect" group human rights by penalizing individuals who dissent and depart from community-sanctioned views and behaviour.

Criminalizing hate speech is a case in point, especially when offence is established not by the intent of the doer but the hurt sensibilities of a complainant. University campuses, which should be among the frontline defenders of free speech – a defence that has no meaning if it does not include the freedom to offend – have been among the first to succumb to



political correctness or lobby group pressure. Yale University Press sunk to a new depth in low farce recently in publishing a book on the Danish cartoons controversy but pre-emptively censoring itself and not reprinting the cartoons.

In some jurisdictions, in hearings before quasi-judicial bodies like human rights commissions (with members appointed by governments), complainants suffer no financial or other penalty even if their case is found to be frivolous and wholly without merit. Defendants can have their lives ruined financially, professionally and socially. Eventual vindication is inadequate solace or compensation. Thus has machinery meant to defend human rights become politically motivated attack organs, using taxpayers' money to chip away at their freedoms. They are paradigms of a bureaucratic solution: well intentioned, labour intensive and expensive. The value of an end – promoting human rights – is used to set in motion a self-defeating means to achieve it.

The final source of state-based threats to human rights is from inter-governmental organizations. International norm shifts in human rights include outlawing genocide, delegitimizing institutionalized racial discrimination (especially apartheid), moving from sovereign impunity to international criminal accountability, improving the status of women, and developing the concepts of dignity and the protection of minorities and vulnerable groups.

Here too there has been a distressing reversal, for example a Canadian citizen being put on a secret UN blacklist with no judicial oversight on the basis of unknown and therefore unchallengeable evidence – some of which can turn out to be flimsy. Abousfian Abdelrazik spent almost six years in detention in Sudan and may have been tortured before being returned to Canada in 2009. No national or UN official has been held to account.

Somewhere along the line, the UN human rights machinery got captured and subverted by its enemies. Its actual performance was scandalous and a travesty of the noble vision and ideals animating the global movement. The protection of internationally recognized human rights will remain fraught in the years to come. The United Nations' main collective body on human rights affairs is made up of states. Claims by citizens against governments are unavoidably political. States are less eager to create enforceable police and judicial machinery than to endorse human rights in the abstract, and less open to effective UN enforcement of rights than to weak supervision of policies.

Even liberal democratic states often sacrifice human rights on the altar of national security and commercial profit. Western governments have not been notably anxious to use the UN machinery to criticize China or Saudi Arabia. Changing the nomenclature of the Commission on Human

Rights to the Human Rights Council will not change the reality of double standards based on national interest calculations.

States can band together at the United Nations to proscribe injuries to religious sensibilities, for example by publishing cartoons that some spokesmen of some religion find offensive. In March 2009, the UN Human Rights Council passed a Pakistan-sponsored and Organization of Islamic Conference supported resolution calling on all countries to pass laws banning criticism of religion. The resolution was dressed up in the language of human rights (freedom of religion).

This is why, even as advocates seek desirable advances in the global governance of human rights, they must constantly hold fast to the critical kernel of truth that human rights is about protecting individual beliefs and actions from group-sanctioned morality at local, national and global levels of governance.

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## China's "world order" implies responsibility

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*The Daily Yomiuri*, 3 April 2010

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The China–US relationship will be the pivot of the post-unipolar world order. Western perceptions of China tend to oscillate between confrontation and fascination, either inflating or downsizing its importance. The benign view sees China taking its rightful place as a responsible stakeholder in the management of regional and world order; the pessimistic assessment worries about its potential for mischief across a broad range of issues around the world.

Driven by strategic narcissism, the \$3 trillion wars in Iraq and Afghanistan have helped to bankrupt the United States and, by outsourcing manufacturing to China and services to India, enfeeble US capacity to produce enough goods and services to pay its bills.

The US economy used to be the biggest, best balanced and most productive and innovative. Now, it is saddled with debts, deficits and distortions. The US deficit, projected at about 11 per cent of economic output for the next year, will still be about 5 per cent of gross domestic product in 2020. A seemingly dysfunctional political system neuters most efforts to address structural problems. If by the end of the decade the United States is still the world's biggest borrower – though 10-year economic forecasts lack credibility – will it still be the world's biggest power?

China is the world's largest auto market by unit volume, the biggest exporter of merchandise and will account for the largest growth in world trade for some time. The United States remains the finance and consumption capital of the world, but the new production capital is China. It is dependent no longer on US markets, managerial know-how and technol-

ogy, nor on US power as a counterweight to a Soviet threat. A dominant player in setting energy, mineral and other commodity prices, China is the world's major net emitter of greenhouse gases and determinant of climate change.

As *New York Times* foreign affairs columnist Thomas Friedman has noted, the loss of faith in Western prescriptions is driving efforts to replace the discredited Washington Consensus of free-market, pro-trade and globalization policies with a Beijing Consensus of a one-party state-guided development, strictly controlled capital markets and an authoritarian decision-making process that can make tough strategic choices and long-term investments without being distracted by daily polls.

The Chinese save as stubbornly as US citizens spend borrowed money. US President Barack Obama's China visit in November was of a supplicant paying tribute to his chief creditor. His refusal to meet the Dalai Lama before the trip reinforced the symbolism. Their White House meeting in February drew fresh protestations from Beijing for seriously undermining bilateral relations.

Yet, while the United States needs China to finance a mounting debt projected to hit \$9 trillion over the next decade, a collapse of the US economy would mean drastic cutbacks in sales of made-in China products in the United States – the world's biggest consumer market – and erode the value of China's \$2.4 trillion currency reserves.

China used to believe that the world order of one superpower and several great powers would continue. The Iraq and Afghanistan wars hastened the military, financial and moral decline of the United States. To protect their interests, some Chinese debated how they could arrest the pace of the US descent from heaven. Since the financial crisis, which proved China's remarkable resilience, there has been a flood of declinist commentary about the United States by Chinese analysts.

For the first time in two centuries, the world must engage with a united and powerful China that has become more aggressive on several issues, including climate change, Internet freedom and the border dispute with India. But China, too, must come to terms with its new status: the Middle Kingdom has no historical, philosophical or literary tradition of diplomatic intercourse as a great power in a system of great powers. This will become especially relevant as China's footprint becomes increasingly global and its interests, presence and activities mushroom around the world.

Treating China as an enemy could turn it into one. But should the United States underwrite the rise of a one-party state that is its only plausible geopolitical rival? The China policies of the administrations of former US Presidents Bill Clinton and George W. Bush had rested on the assumption that exposure to free trade in the information age would

release and strengthen the forces of liberalization and political change. What if that premise is false?

Washington approved arms sales to Taiwan worth \$6 billion, calculating that with more than 1,300 Chinese missiles pointed at Taiwan, bolstering the latter's military preparedness may be a prudent hedge against having to defend it from attack. It simultaneously raises the risks of failure and the costs of success should Beijing choose to go to war. China retaliated immediately, suspending bilateral military exchanges and imposing sanctions on companies selling arms to Taiwan.

Yet calculations of relative US decline are more likely to nudge Beijing towards exerting leverage over US international policy than outright confrontation. It will want to recalibrate the multilateral order on its terms, setting aside questions of human rights and political values to focus instead on solving common problems. It will be more willing and able than before to proactively shape the international environment and world order, rather than react passively to it.

China's rise has been welcomed by many as a counterweight to US military muscle and political arrogance. China could also be the world's engine of growth. But if not careful, Beijing could encounter a grating wall of resistance as countries, multinational companies and nongovernmental organizations begin to push back against heavy-handed assertiveness. Is China prepared to shed its late leader Deng Xiaoping's anachronistic adage to keep a low profile and not take the lead? Will it use growing wealth, power and influence for narrow mercantilism or for the common good? How long can it question the dollar's status as the global reserve currency without loosening its iron grip on the renminbi or facing counter-measures from Washington as a currency manipulator to the detriment of global economic recovery?

Google's refusal to deepen complicity in China's censorship of the Internet might be a harbinger of a changing international mood. Google's fight with China is more likely to be motivated by commercial calculation than concerns about freedom of information. As most foreign companies have discovered, it is not easy to move from China's massive potential to massive profits. Their willingness to resist political pressure from US trade hawks is weakening. Google's one-third share of China's search engine market provides just 5 per cent of its global revenue. On a level playing field, Google could potentially wrest a much larger market share from Baidu, its government-connected chief competitor in China. The risk assessment of the strategy of standing up to Beijing may reflect this cost-benefit analysis.

In China's implicit social contract, the citizens acquiesce to political control in return for the government overseeing continuing prosperity that delivers the same goods and services to them as to Westerners. With

communism discredited, the government lacks an alternative to economic growth as a legitimizing ideology. If this model is put under threat with major multinational firms pulling out, the strategic loss for the Chinese government could be bigger than the lost revenues for the firms.

China basks in the growing acknowledgment of its rising global status. It is happy to reap the benefits flowing from it but is less keen to stop being a free rider, to exercise international leadership and to accept the burdens of being a great power. That mindset helps explain Chinese currency manipulation to protect exports at the expense of other countries, unwillingness to commit to internationally verifiable cuts in emissions, and courting of pariah authoritarian regimes to gain access to raw materials and resources. China is as unwilling as the George W. Bush Administration was to bind itself to agreed global norms. Beijing could find itself in somewhat lonesome company with arms-length relationships of convenience rather than true friends and allies – of which the United States still has plenty, including Australia, Canada, the European Union and Japan.

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## Governments have responsibility to protect people

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*The Canberra Times*, 28 April 2010

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Australian businessman Stern Hu has been convicted of taking bribes and stealing state secrets and sentenced to 10 years' jail in China. International standards of a free and fair trial do not seem to have been met. Did the Rudd Government do all within its powers to help him? Did the Howard government do enough, and early enough, to help Australian citizen David Hicks who was caught up in the nightmare of Guantánamo?

Canadians, too, have been caught up in nightmarish situations overseas, from being trapped in Lebanon during the 2006 war to being renditioned to Syria, sent to Guantánamo, being imprisoned in Mexico and detained in Kenya. Canadian courts have become increasingly involved, despite claims of executive privilege, as family, friends and well-wishers try desperately to seek judicial redress for many apparently legal black holes.

Seventeen Indians were recently sentenced to death in the United Arab Emirates for the murder of one man; what is the limit of assistance that the Indian government should provide them? On 30 March, New Delhi announced that it would help the 17 to file an appeal in a superior court.

For much of last year, relations between India and Australia were under some strain owing to the Indian media-driven narrative that many Indians were being subjected to racist attacks in Australia and the authorities, particularly in Victoria, were in a state of denial over the problem.

Was New Delhi right – perhaps even duty-bound – to act as the custodians of last resort of the security of its student citizens trapped in racially drawn zones of danger in Australia?

Given the numbers of people who travel internationally for tourism, recreation, education and business, it is easier for most of us to think “There but for the grace of God” for these types of problems than to empathize with foreign victims of atrocity crimes. The responsibility to protect (R2P) doctrine was developed to help the latter; does the notion of responsibility as sovereignty have anything to contribute to helping fellow citizens trapped in difficulties abroad?

The idea of sovereignty as responsibility to people within and the world community without, rather than sovereignty as a shield for internal abuses against external scrutiny, has been around for some time. Popularized by a Canadian-sponsored but independent international commission, it was adopted unanimously by world leaders at the United Nations summit in 2005 and reaffirmed by the UN General Assembly last year.

Sovereignty confers domestic and international responsibility as well as rights on a state. When a state cannot honour this responsibility, for whatever reason, the responsibility to protect at-risk populations from mass atrocities trips upwards to the international community acting through the United Nations.

But responsible sovereignty cannot be restricted just to one function. In an age when travel is increasingly commonplace, does not a government have a corresponding duty to protect citizens on foreign soil?

There are five critical differences between R2P and the duty to protect.

First, R2P is about the responsibility of a state for actions within its own territory, whereas the duty to protect is about its responsibility to protect its nationals trapped in foreign jurisdictions.

Second, R2P applies to everyone physically present in a state: citizens, immigrants, tourists, students, etc. The duty to protect would be limited to citizens when overseas.

Third, R2P concerns mass atrocities (war crimes, genocide, crimes against humanity and ethnic cleansing). The duty to protect can be activated when crimes and injustices are committed against individuals.

Fourth, it is the large numbers and the gravity of the crimes (atrocities) that together would shock the international community’s conscience and activate the international responsibility to protect if and when the host government is unwilling or unable to do so. But where the numbers affected are just one or a few, and in cases where the harm falls short of atrocity crimes, for example being falsely charged and imprisoned but not tortured or killed, there is no international or global remedy available today. This becomes a matter for the country in whose jurisdiction the breach occurs and for the country whose national is being harmed.

Fifth, R2P was carefully chosen to emphasize the moral dimension without stepping over into a legal obligation as exists, for example, under the Genocide Convention (which is one reason why the United States



was so resistant to calling the Rwanda killings in 1994 genocide). The duty to protect, on the other hand, does impose a legal obligation.

Therein lies the problem. Leaving it as a state prerogative would, from a government's perspective, permit it a welcome degree of discretionary latitude. It could choose to come to the assistance of citizens caught in nightmare situations in unpleasant or rogue regimes but stay away from cases in friendly countries.

The difficulty with this is, how do we know the discretion is applied fairly, objectively and on reliable and credible evidence as opposed to wilfully, whimsically and erroneously?

If we want to live in a nation of laws, there is little practical alternative to grounding our protection in the majesty of laws. It is not possible to be tough on terrorists and criminals while being soft on the rule of law and human rights protection.

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## America's rhetorical gap riles the Arab street

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*The Japan Times*, 11 February 2011

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Writing in the *New York Times* on 20 August, 2002, Jeffrey C. Goldfarb quoted an Asian activist's conviction that "American democracy requires the repression of democracy in the rest of the world."

This explains why Washington finds itself both behind the curve and on the wrong side of history in struggling to cope with the crisis in Egypt, despite the \$1.3 billion annual US stipend since 1979.

The privileging of "our" geopolitical and commercial interests over "their" freedoms and aspirations has been a toxic legacy of wrongheaded Western policies for more than half a century. The face of America in the Arab world today is that of ageing autocrats using US-backed and armed security forces to rob and brutalize their own people while presiding over corrupt and rotting political systems.

The postcolonial Arab state was custom-built to serve Western interests: strong enough to keep the restive natives in check and maintain "stability" at home, but too weak to challenge foreign influence and too intimidated to champion the Palestinian cause. The dramatic explosion of pent-up anger in the Arab street means that Washington has to find the right balance among backing popular will, standing by a long-time ally, promoting regional stability, containing the threat to Israel, stopping the spread of Islamist influence, and safeguarding economic interests.

Throughout the former Soviet satellite states in Central and Eastern Europe, there remains a residue of popular goodwill towards Americans for the unflagging support for their political aspirations during the dark decades of the Cold War when their destiny was under the Soviet thumb.

Nevertheless, much of the anti-American sentiment among Arabs arises not because they hate what America stands for but because they aspire to American values and freedoms that have been systematically crushed on the back of US money, arms and training. President Barack Obama's record has been hardly less duplicitous, with his Cairo speech juxtaposed uneasily alongside reduced support for the freedom agenda in Egypt.

From Egypt to Pakistan and beyond, Washington's problems will not end unless and until US policymakers recognize, and act on the acknowledgment, that dictatorship and military rule is the problem, not a solution, and that democracy based on the rule of law, messy and untidy as it might be, is always preferable to the alternative.

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## Hold your head high, you are Egyptian [*“Irfa rasak, anta misri!”*]

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*The Daily Yomiuri*, 17 February 2011

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In the end it was President Hosni Mubarak who proved the truth of the crude joke that “denial” is the name of a river in Egypt. With peaceful change impossible, US President John F. Kennedy said, violent revolution is inevitable. With no obvious leader or political vision, Egypt’s peaceful, youth-led mass social uprising dethroned an entrenched dictator and his heir apparent son in a mere 18 days.

Tahrir Square was testimony to the declining global influence of the US media and government. This was Al Jazeera’s moment, like the 1991 Gulf War was CNN’s. The Arabic channel played a more influential role in promoting democracy in Tunisia and Egypt than anything done by Westerners. The crisis highlights, yet again, why it is important for Westerners to be exposed, on a regular basis, to news analysis and commentary from other cultures.

Should the larger meaning of Egypt’s revolt be anchored in the revolutions that swept Eastern Europe in 1989, Iran’s Islamic revolution in 1979, or the anti-regime upheaval in Iran in 2009? Strikingly, there were no death chants this time. Instead of fanaticism, the dominant narrative expressed hope, pride, nationalism and, eventually, exhilaration. Images from Tahrir Square brought tears to our eyes and joy to our souls. A proud people, their past defiled, present compromised, and future mortgaged, reclaimed their destiny. This was not anti-others but pro-themselves. As the old song says, “Freedom’s just another word for nothing left to lose”, which in turn explains their loss of fear.

But there is nothing self-guaranteeing about any revolution. Mob rule may overthrow a dictator but not give birth to democracy. Because powerlessness has been displaced by ownership does not mean that deprivations will disappear. A revolution can devour its authors and lead to even greater tyranny: Witness the reigns of terror after the French, Russian, Chinese and Iranian revolutions. Or it can lead to a republic founded in laws and ruled by democratic consent, as in America and Eastern Europe after the collapse of the Soviet Union.

It therefore behoves analysts to be prudent and cautious and not succumb to irrational exuberance. There is no despot so vile that a violent uprising cannot produce a worse tyrant. Even so, the world should adapt to foreign policy the wisdom of Benjamin Franklin: those who would sacrifice the essential freedom of a people to the temporary stability of a dictator deserve and will get neither freedom nor stability.

Egypt is the intellectual, cultural and political hub of the Arab nation. Saudi Arabia may be the financial powerhouse and religious centre of the Arab-Islamic worlds, but its emotional core is Egypt. This is why Tahrir Square will reverberate across the world's last remaining strongholds of authoritarianism.

The legacy of authoritarian but brittle and fragile Arab rule has been political repression, economic stagnation and disorderly, high-risk transitions of power. Represented by the twin pillars of the Egyptian and Saudi regimes, the once-proud postcolonial Arab state became intellectually bankrupt and politically exhausted, missing in action in the great issues of the region since the 1960s.

Today the Arab state is crumbling under assault from the Arab street. Tunisia and Egypt have fallen, Algeria and Yemen are quaking, and Jordan, Libya, Sudan and Syria vibrate to the distant but approaching tremors.

The Arab internal security state has been propped up by the US national security state with US military bases on its territory, US weapons for its armed forces and US training for its police. The rhetoric-reality gap has crippled President Barack Obama's Middle East policies just as it did his predecessors'. Compulsions of short-term expediency trumped strategies of long-term vision as, in a lazy stereotype, the Arab world was used as simply a vast oilfield. Lacking clear guiding principles, the freedom agenda was not converted into a freedom doctrine.

Mubarak extracted a fat rent from Washington by invoking the alternative of an anti-Israeli, terrorism-spawning Islamist state. Egypt's stagnation under his three-decade rule was mistaken for stability, a conflation that extended to other key pillars of Western interests in the postcolonial Arab world. Obama seemed determined to prove the correctness of Churchill's cutting remark that the Americans can always be depended

on to do the right thing – having tried everything else first. Except in this case, most Western governments were equally culpable.

For every two hesitant steps forward, Washington took one frightened step back. Mercifully, it was not the other way round. It could not be prescriptive, telling Egyptians what to do. But silence was seen as failing to support a popular uprising for fear of damaging US–Israeli interests. Obsessed first with the comatose Middle East peace process and second with Iran, Washington took Egypt’s stability for granted. It failed – despite the roots of some of the 9/11 hijackers in its festering conditions – to grasp Egypt’s social stagnation and political decay. Too many bought the line that the continuance of Mubarak in office was a guarantee of stability, when in reality it guaranteed continuing turmoil.

Israel and the West have legitimate concerns should Egypt be captured by Islamists. Israel lives in a dangerous neighbourhood and faces real existential threats. Even one strategic mistake could be fatal for it. The fate of its 1979 peace treaty with Egypt, the anchor of the US–Israeli search for stability in the Arab–Israeli conflict, is somewhat uncertain. Should Jordan be the next domino to fall, Israel’s other peace treaty will also come under threat of repeal. Calls will intensify for an end to Israeli occupation of Palestinian territory, colonization of Palestinian land and confiscation of Palestinian property.

But anti-Israeli outcomes must not be made self-fulfilling by adopting anti-Arab policies. The democratic future of 340 million Arabs can no more be surrendered to the convenience of 7 million Israelis than Israel can be abandoned to its enemies. The West must somehow reconcile commitment to the Jewish state with its own democratic convictions. It would be cruel irony indeed to suppress Arab democracy and then justify unconditional support to an isolated Israel as the region’s only democracy.

Washington calibrated its public comments and behind-the-scenes diplomacy to reflect multiple interests. It refused to back Mubarak or call explicitly for his immediate departure, hinting that it could accept his continuance until September. But he who ruled through every dirty dictator’s trick for 30 years could not be left in charge to guide the transition to political civility. His every grudging concession was too little and too late. He would have strained every sinew to embed the essential props of an authoritarian state structure.

Canadians, who suffer from an excess of civil obedience, politeness and political passivity, seem less moved by popular passions than most Westerners. In backing Mubarak’s call to stay until September, as support for Israel trumped sympathy for Egyptians, Prime Minister Stephen Harper’s government betrayed core Canadian values. But then, in trampling constitutional conventions, undermining parliamentary procedures, starving

critical NGOs of funds, browbeating opponents, and in myriad other ways, his government has widened the democracy deficit in Canada itself.

While the West succumbed to cultural relativism which held Arabs incapable of democracy, Egyptians embraced the universal values of the Enlightenment: the essential dignity of every human being in a system of social justice. Only Angela Merkel, who grew up in East Germany in the shadow of the totalitarian Soviet Union, was forthright in insisting that the “one red line that we should not cross” is “a commitment to human rights, the respect of the dignity of the human being”.

The likes of Iran, China and Myanmar too must be unsettled by the latest proof that people power is the irresistible force that shifts immovable regimes. Even a democratic regime like India, beset by a cascade of mega-corruption scandals, should beware the people’s rage.

This was a made-in-Egypt revolution of, by and for the people, not one rooted in UN tutelage or US training and money. Tomorrow reason will return, reality will reassert itself and the head can rule the heart again. For today let emotions run free as the world celebrates and embraces the euphoria and elation of the Egyptians.

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## Responsibility to protect

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*The Times of India*, 4 March 2011

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In 2005, world leaders unanimously and solemnly declared that where governments were manifestly failing in their sovereign duty, the international community, acting through the United Nations, would take “timely and decisive” action to honour the collective responsibility to protect people against atrocity crimes. Libya today is the place and time to redeem that pledge.

The United Nations’ record on the Arab world is no less patchy than the West’s. Having degenerated into internal security states backed by the US national security state, one after another Arab regimes were politically exhausted and morally bankrupt. It was the United Nations that, almost a decade ago, provided the moral compass and intellectual leadership with the Arab Human Development Report, written mainly by Arabs themselves. Yet Libya was also elected to the United Nations’ main human rights watchdog.

Even more shameful was the United Nations’ inaction, led by the most powerful countries of the world, in the Rwanda genocide and the Srebrenica massacre. Both happened on Kofi Annan’s watch as the top UN official for peacekeeping. When he became secretary-general, his instinctive humanitarianism was stiffened by the memory of these two searing experiences and he pushed for a doctrine to take effective action. With the help of Canada, an international commission formulated the innovative principle of the responsibility to protect, commonly known as R2P.

The language of R2P refers to state inability or unwillingness to discharge its responsibility to protect as the catalyst to the collective



international responsibility being activated. Because it would have been impolitic, we did not explicitly say that the most critical and offensive situation is when the state itself is the perpetrator of atrocity crimes, when the security forces, meant to protect their people, are instead let loose in a killing spree by predatory rulers.

That is the situation we face in Libya. Not satisfied with 42 years of autocratic rule, the erratic Colonel Muammar Gaddafi is using deadly violence to crush and kill his people in open revolt against his brutal regime. He has vowed to fight to the last drop of his blood. The United Nations should grant him his wish.

R2P provides the normative tool of choice and political cover to deal robustly, promptly and effectively with the threat that Gaddafi poses to his people. Doing so will also help both the United Nations and the West to cleanse their conscience of the stain of being passive spectators in Rwanda and Srebrenica, and of complicity in privileging stability over freedoms for the Arabs, in effect declaring all of the Arab world as a democracy- and human rights-free zone.

R2P is narrow – it applies only to the four crimes of ethnic cleansing, genocide, crimes against humanity and war crimes – but deep: there are no limits to what can be done in responding to these atrocity crimes. In a matching symmetry, support for R2P so far has been broad but shallow. Libya is the perfect opportunity to convert the noble sentiments and words of R2P into meaningful action through deeds.

The crisis in Libya has escalated to beyond the point of return. Calls for restraint are no longer enough. When Gaddafi says that the protesters deserve to die and his son – he who has cultivated an international image of moderation – warns of a river of blood, the world must meet the challenge, not duck it yet again.

Helped by so many Libyan diplomats defecting en masse and joining calls for international intervention, the Security Council must forthwith implement R2P and declare and enforce a no-fly zone – if Libyan officers fly, they die.

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## International community has responsibility and must act now to protect Libyans

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*The Daily Yomiuri*, 9 March 2011

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In response to fast-paced events in Libya, the international community has used two relatively new instruments: the International Criminal Court and the responsibility to protect (R2P) principle. Both are designed to deal with atrocities – the mass killing of civilians. The twin challenge is to protect potential victims and punish perpetrators. Both give primacy to domestic means of redress but imply that responsibility could fall on the shoulders of outsiders.

As the crisis drags on, the difficulties of both instruments are becoming apparent. So far, because of the practical difficulties and costs of implementing R2P, the World Court option has been the more favoured. But its problems are, if anything, deeper and more serious.

On 22 February, the UN Security Council called on Libya “to meet its responsibility to protect its population”. The Human Rights Council did the same on 25 February while suspending Libya’s membership. UN Secretary-General Ban Ki-moon and his special advisers on genocide prevention and R2P have warned of egregious violations of human rights and international humanitarian laws while reminding Libya of its R2P obligations.

In a unanimous vote on 26 February, the Security Council demanded an end to the violence in Libya, which “may amount to crimes against humanity”. It took note of the condemnation by the African Union, the Arab League and the Organization of the Islamic Conference of the incitement to hostility and violence against civilians. Resolution 1970 imposed sanctions on Libya, forbidding the sale of arms, freezing the assets

of Libya's leaders and imposing a travel ban on them. It affirmed Libya's R2P obligations and referred Muammar Gaddafi to the ICC.

The Security Council referred the issue to the ICC's special prosecutor. The institutional integrity of the ICC imposes the requirement that, like Caesar's wife, the special prosecutor must be above suspicion. Unfortunately, this tough bar is not met: see the troubling 2009 article in *World Affairs* by Julie Flint and Alex de Waal ([www.worldaffairsjournal.org/2009%20-%20Spring/full-DeWaalFlint.html](http://www.worldaffairsjournal.org/2009%20-%20Spring/full-DeWaalFlint.html)).

Those who reject the World Court but refer others to it – China, India, Russia, the United States – violate natural justice and are guilty of gross hypocrisy. Many of the most influential countries voting to refer Libya to the ICC refused to back the Goldstone Report on Israel's actions in the Gaza Strip with matching enthusiasm.

The charge of hypocrisy is made worse by the common perception that Western leaders are guilty of the crime of aggression against Iraq, and Western commanders who may be guilty of war crimes in that country – Fallujah comes to mind – and in Afghanistan (drone strikes may violate international humanitarian law) have not and will not be put in the international dock to answer criminal charges.

There is little likelihood that those who sold arms to Gaddafi – now trained on the people – will be called to account either.

Thus the ICC has been subverted into a tool of the powerful to be used only against the others. This is a perversion of the principle of justice and the rule of law that is meant to be impartially applied to all and put the weak and the strong, the rich and the poor, on equal footing.

For Gaddafi's trial at the ICC to be morally credible, it must be backed by criminal investigations of the foreign banks that have parked his ill-gotten gains in violation of global anticorruption agreements, and public shaming of Africans who elected Libya to the Human Rights Council and Westerners who armed his thugs.

Finally, the ICC referral could complicate efforts to persuade Gaddafi to end the killings and leave Libya.

In poignant testament to its tragic origins and normative power, R2P is the discourse of choice around the world – from Asia and Africa to Australia, Europe and North America – in debating what must, should and can be done in Libya. On 4 March, both the Global Centre and International Coalition for R2P published an open letter to the Security Council pointing out that although Resolution 1970 may have a long-term impact, it has failed to halt attacks taking place at the moment. They called on the council, both for its own credibility and for the sake of Libya's people, to determine the appropriate protective measures, authorize them and identify those with the capacity to implement them.

R2P is not solely about military intervention but, if it is to have any meaning at all, must include that option as a last resort.

But how? Premature and overeager outside intervention will pollute the “Made by Arabs” revolution. Boots on the ground may be neither wanted, helpful nor even feasible. The more common call has been for a no-fly zone – if Libyan Air Force officers fly, they die. But even here US Defense Secretary Robert Gates has pointed out that this would first require the destruction of the Libyan Air Force, not an easy task.

Yet it was done for quite a long time and successfully in Iraq. Those who have supplied Gaddafi with his weaponry might be said to have a particular responsibility to protect civilians from being harmed by those weapons.

More than operational complexities, the real difficulty is political: can those with the military capacity get the authorization from the Security Council? Tellingly, both the Arab League and the African Union have indicated support for a no-fly zone.

Standing idly on the sidelines yet again will mean that the sin of having intervened in Iraq illegally and illegitimately is compounded by the sin of inaction when it would be both lawful and just. (Some of us did warn at the time that such paralysis would be yet another long-term cost of the Iraq invasion.)

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## Realigned values help global order evolve

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*The Japan Times*, 10 April 2011

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On 17 March, Security Council Resolution 1973 authorized the use of “all necessary measures”, short of an invasion and occupation, “to protect civilians and civilian-populated areas”: the first UN-sanctioned combat operations since the 1991 Persian Gulf War.

Resolution 1973 was passed by a 10–0 vote within 24 hours of being introduced, contrary to prevailing expectations that the world once again would watch fecklessly from the sidelines.

In the Balkans, it took NATO almost the full decade to intervene with air power in Kosovo in 1999. In Libya, it took just one month to mobilize a broad coalition, secure a UN mandate to protect civilians, establish and enforce no-fly and no-drive zones, stop Muammar Gaddafi’s advancing army, and prevent a massacre in Benghazi.

The game-changer was the juxtaposition of “R2P” (responsibility to protect) as a powerful new galvanizing norm; the defection of Libyan diplomats who joined the chorus of calls for immediate action to protect civilians; and the request for a no-fly zone by the Arab League.

The key decision was made by President Barack Obama at a White House meeting of top officials on 15 March. His speech on 28 March, spelling out the rationale and terms of Libyan engagement very much in the language of R2P, showed the decisive influence of aide Samantha Power, who previously had written about the searing legacy of doing nothing during the Rwanda genocide.

There are many risks and dangers. The military operations could prove inconclusive, inflaming the region further. Obama’s pivot from no action

to intervention suggests that US policy is reactive, not strategic. There are inconsistencies in the muted response to protests and uprisings in Bahrain and Saudi Arabia where vital US geopolitical and oil interests are directly engaged.

Every government has the right to fight an armed uprising. How, exactly, can R2P be implemented to protect civilians without intervening in a civil war? Who are the rebels? What do they stand for? For whom do they speak? How much popular support do they command?

With humanitarian protection, the balance of risks has to be shifted back from civilians to soldiers.

There are “unknown unknowns”, in former US Defense Secretary’s Donald Rumsfeld’s memorable phrasing. The risks of no action were “known knowns”. Gaddafi would have prevailed and embarked on a methodical killing spree of rebel leaders, cities and regions. The decisive factor for many was the threat, entirely credible, to hunt down opponents house by house, room by room, without mercy or pity.

The recapture of Benghazi would have marked the end of the rebellion against Gaddafi’s rule. Had the world shirked its responsibility, Libya could have been the graveyard of the new R2P norm and the United Nations might as well have sounded the last post for it. Instead, the UN-mandated intervention may mark the beginning of the end for Gaddafi.

It also marks a pivotal rebalancing of interests and values by the Arabs, the West and the United Nations. For the first time in half a century, the West is aligning itself with the Arab peoples’ aspirations for dignity, democracy and respect instead of humiliation and brutalization.

In the old world order, international politics, like all politics, was a struggle for power. The new international politics will be about the struggle for the ascendancy of competing normative architectures based on a combination of power, values and ideas. In his 28 March speech, Obama explained that the United States is “reluctant to use force to solve the world’s many challenges. But when our interests and values are at stake, we have a responsibility to act.”

R2P responds to the idealized United Nations as the symbol of an imagined and constructed community of strangers. It gave Obama the necessary intellectual and normative tool to act. He decided to side with pro-interventionist advisers in favour of a definition of the Libyan crisis that was closer to his instincts and consistent with the narrative that won him the White House.

The Arab League and Franco-British urgings gave him political cover and international legitimacy. In Iraq in 2003, Washington had done all the pushing but doors had stayed firmly shut in most capitals. In Libya, Washington has been the reluctant follower, not the ardent suitor for military intervention.

Resolution 1973 restricts military action to protecting Libya's civilian population from attacks by its own government. It prohibits occupying or dismembering the country. Any final settlement of the conflict must be political, not military. Thus Libya is not Iraq nor even Afghanistan. The international community is as sensitive as Americans to fears of Western occupation of yet a third Muslim country.

Obama's insistence that the United States will not be deploying ground troops aligns military means to the limited ambitions and objectives: humanitarian protection, not regime change. In contrast to the Bush doctrine, under Obama the United States will act in concert with others, not alone; coax, persuade and heed, not impose its will, on others; and set clear limits on goals and means.

UN Secretary-General Ban Ki-moon has been impressively firm and consistent on R2P, leading from the front. He noted that Resolution 1973 "affirms, clearly and unequivocally, the international community's determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own government". The future of R2P will be shaped by the course of events in Libya.

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## Jury's still out on nations that abstained from Libyan vote

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*The Canberra Times*, 15 April 2011

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Brazil, Germany and India have failed the test to be members of the UN Security Council.

Great power status is not for the faint of heart. The difference between aspiring and pretending to be a global power will depend in part on a country's capacity and willingness to use military force both to defend its own immediate interests and as a guardian of the international interest.

On the first, successive Indian governments over several decades have flattered to deceive in relation to the terrorist attacks originating from Pakistan. Even India's nuclear policy betrays little evidence of strategic purpose or direction. Pakistan is more purposeful. Bradford University's Shaun Gregory has argued that, uniquely among nuclear-armed states, Pakistan's nuclear policy, programme and weapons are under military control; it hosts and supports terrorist and insurgent groups as instruments of security policy; and it is a revisionist and irredentist state. As a result, unlike other dyadic nuclear rivalries that focus on managing stability, Pakistan seeks "managed instability" which is poorly understood, analysed and theorized

On the second, India's failure to distinguish between taking a middle position and sitting on the fence calls into question its quest for permanent membership of the UN Security Council. Similarly, Joschka Fischer, Germany's foreign minister during the Kosovo intervention, writes that because of its failure to support Resolution 1973 on Libya, Germany's "claim to a permanent seat on the Security Council has just been trashed for good". Ridiculing the slippery slope argument whereby the resolution



risks a ground invasion, he adds that “balancing on slippery slopes is what the job is about”.

The primary purpose of the United Nations is the maintenance of international peace and security. The UN body with the chief responsibility for doing this is the council. The United Nations was neither designed nor expected to be a pacifist organization. On the contrary, learning from the experience of the inter-war years and the impotence of the League of Nations, the council was given much sharper focus and much tougher powers for the purpose of international law enforcement.

The United Nations’ origins lie in the anti-Nazi wartime military alliance among Britain, the United States and the Soviet Union. In recognition of their special responsibilities stemming from their capacity both to threaten and to enforce peace, the great powers were made permanent members of the council.

This history is important for examining the readiness of those who knock ever more loudly at the doors of permanent membership to reflect the reality of contemporary rather than historical power and influence. By their vote on Security Council Resolution 1973 authorizing all necessary measures to protect civilians and civilian-populated areas in Libya, several of them failed the test of responsible leadership for the world on the big issues of when, where and how to use force.

This may reflect their failure to understand how the nature of threats to international peace and security have changed, and how the international competition for influence is no longer just a struggle for power, wealth and resources. Much more fundamentally, it is a competition for the best normative world order in which power, values and ideas are all important.

In part because of the Cold War divisions and in part because of conceptual contradictions and intrinsic operational difficulties, the UN-based system of collective security to prevent and defeat inter-state aggression never materialized. UN-authorized uses of force were rare exceptions in Korea in the 1950s and in the first Gulf War in 1991. Instead, the deployment of military personnel under UN auspices typically took the form of non-threatening and consensual peace operations which became more complex but not greatly more militarized from the 1990s.

In the meantime the nature of armed conflict was transformed and its location shifted principally, but not solely, to Africa. The nature of the state too changed from its idealized version in liberal European theory. Many of the communist and newly-decolonized countries were internal security states where regimes maintained themselves in power through terror. The principal victims were civilians and not soldiers. Advances in live communications brought the full horror of their plight into the world’s living rooms.

Failure to act in the 1994 Rwanda genocide and non-UN-authorized humanitarian intervention in Kosovo in 1999 set off angry and deeply divisive recriminations around the world for acts of omission and commission. In Kosovo NATO took forceful action in the name of humanitarian intervention but set off an international storm as Serbia was not guilty of an armed attack on any independent country, let alone on a NATO member.

The responsibility to protect, developed and promoted by the International Commission on Intervention and State Sovereignty in 2001 and unanimously adopted by the world in 2005, spoke to the need to change the United Nations' normative framework in line with the changed reality of threats and victims. Its preventive and rebuilding pillars involve strengthening state capacity to handle its own law and order problems. But its hard edge requires the international community, acting through the United Nations, to take up the slack when any state defaults on its sovereign responsibility to protect all people inside its borders.

This is what Resolution 1973 seeks to do. Carefully crafted both to authorize and delimit the scope of intervention, it specifies the purpose of military action as humanitarian protection and limits the means to that goal. Of course, using military force is always the last resort. The sober fact remains that the recapture of Benghazi, with a million people, by Gaddafi loyalists was imminent. The chilling threat to go looking for enemies of the regime house by house, with no mercy, was entirely credible.

Resolution 1973 authorizes military action to prevent such civilian slaughter but not intervene in the civil war (any state has the right to use force to suppress armed uprisings), nor effect regime change, nor even target Gaddafi directly (his ouster as a collateral outcome would not be unwelcome).

Had the big regional powers of the global south voted against Resolution 1973, they would have found themselves on the wrong side of history. By voting for it, Nigeria and South Africa positioned themselves on history's right side while Brazil and India, by abstaining, took up a watchful perch on history's fence. The council is first and foremost the world's duly sworn in sheriff for enforcing international law and order. Brazil, Germany and India are yet to satisfy critics that they are ready to assume the burden of global leadership with a permanent seat at the world's top table.

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