

# The Responsibility to Protect, the International Criminal Court, and Foreign Policy in Focus

Subverting the UN Charter in the Name of Human Rights

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Theme: [US NATO War Agenda](#)

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It was just a matter of time before members of the collapsing left enlisted in the imperial attack on the most fundamental principles of the UN Charter, and added their voices to the growing chorus of support for Western power-projection under the Responsibility to Protect doctrine (R2P) and the International Criminal Court (ICC). But this has now been done in *Foreign Policy in Focus* by [John Feffer](#), [Ian Williams](#), and [David Greenberg](#).<sup>1</sup> That such a rightward turn could find a home at the Institute for Policy Studies, whose biweekly bulletins still arrive under the heading “Unconventional Wisdom,” and which connects the “research and action of more than 600 scholars, advocates, and activists seeking to make the United States a more responsible global partner,” we find deeply troubling.

Chapter I of the UN Charter states: “To maintain international peace and security,” all member states shall respect the “principle of the sovereign equality” of their fellow members, “settle their international disputes by peaceful means,” and “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.”<sup>2</sup> These principles rest on the fact that at the end of World War II, in 1945, it was understood that the greatest threat to world order was posed, not by events occurring inside single countries, whether caused by natural or human agency, and no matter how catastrophic the loss of life, but by aggressive, cross-border wars waged by states — “not only an international crime,” in the Nuremberg *Judgment’s* famous phrase, rendered 15 months after the UN’s founding conference in San Francisco, but the “supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.”<sup>3</sup> Article 2(7) therefore wisely removes the temptation to intervene, with its unlimited potential for abuse by the greater powers, from even the United Nations itself: “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.” It is not by fetishizing “national sovereignty” over human rights (though this canard has spread like a weed the past 20 years<sup>4</sup>), but by raising a barrier to aggression and its threat to human rights that the Charter organizes its world order. When purported “revolutions” in the advancement of human rights and international justice are purchased at the price of overturning this order, we ought to regard them with the utmost skepticism. Particularly when the cases in hand reveal no real difference from the past.

In reality, the UN Charter did little to impede the exercise of U.S. power from 1945 on. Instead what impeded its exercise were the military constraints that other powers placed on its capacity to act. But while the collapse of the Soviet bloc and of the Soviet Union itself (1989-1991) removed the most important of these constraints, it also removed the standard

Cold War framework of propaganda for U.S. action. In his prepared remarks for the UN General Assembly's [Thematic Dialogue on the Responsibility to Protect](#) on July 23, Noam Chomsky pointed out that the so-called "'normative revolution' declared by Western commentators took place in the 1990s, immediately after the collapse of the Soviet Union, which had, in earlier years, provided an automatic pretext for intervention. . . . New pretexts for intervention were needed," Chomsky continued, "and the 'normative revolution' entered the stage. The natural interpretation of the timing gains support from the selectivity of application of R2P"<sup>5</sup> — not, for example, to protect Iraqis against "sanctions of mass destruction," not in response to the 2003 U.S.-U.K. military attack and occupation, not to defend the people in the eastern Congo against the transnational corporate networks and their local agents who "loot and plunder the country's resources with impunity," and not to defend the Gaza Palestinians against the Israeli military, even though Palestinians are supposedly protected under the Geneva Conventions, but to protect Kosovo Albanians against the Serbs, and Darfur's "African" tribes against the "Arab Islamists" in Khartoum.<sup>6</sup>

The moral basis for getting R2P accepted by so many states over the past 10 years was, first, the so-called "consequences of inaction," the alleged *failures* on the part of the "international community," when confronted with Rwanda in 1994,<sup>7</sup> and then again the eastern Bosnian enclave of Srebrenica in 1995, "to forge unity behind the principle that massive and systematic violations of human rights — wherever they may take place — should not be allowed to stand," in former UN Secretary-General Kofi Annan's early iteration of the standard appeal.<sup>8</sup> The other moral basis was the alleged *success* of the U.S.-NATO war on Yugoslavia in 1999, which was sold by NATO officials, advocacy journalists, and prominent human rights organizations as the only means capable of reversing massive and systematic atrocities against the Kosovo Albanians that included Serb aggression, ethnic cleansing, war crimes, and the threat of genocide.<sup>9</sup> This, at last, was a war in which the "international community" could take pride, waged for "humanitarian" objectives, a war "not for territory but for values," in then-British Prime Minister Tony Blair's words, for a "new internationalism where the brutal repression of ethnic groups will not be tolerated," and a "world where those responsible for such crimes have nowhere to hide."<sup>10</sup> Prosecuted without the authorization of the UN Security Council, NATO's 1999 war was "illegal but legitimate,"<sup>11</sup> in one of the classic formulations of the emerging Imperial New World Order — the signature humanitarian war, even though waged in violation of the UN Charter and international law.

It was also important that before, during, and after this 1999 war, the U.S.-NATO combine was able to gain the support of top UN officials like Kofi Annan — and now his successor, Ban Ki-moon — to press the case for R2P. In fact, Annan was elevated to the post of Secretary-General by U.S. preference, with the U.S. vetoing a second five-year term in 1996 for his less amenable predecessor Boutros Boutros-Ghali to clear the ground for Annan, who at the time had been serving as the Under-Secretary-General for Peacekeeping and was Boutros-Ghali's Special Envoy for Yugoslavia, and had sanctioned Operation Deliberate Force, NATO's bombing campaign against the Bosnian Serbs in 1995.<sup>12</sup> Annan's prominent support for NATO's 1999 war was significant. In an address he delivered at NATO headquarters in Brussels two months before the war, he urged NATO members to "recall the lessons of Bosnia" — "particularly those with the capacity to act."<sup>13</sup> NATO's 1999 bombing war against Yugoslavia was an early but clear example of what R2P means in the real world, long before the phrase "responsibility to protect" had entered common usage.

Interestingly, former NATO Supreme Allied Commander General Wesley Clark recalls that

when he visited the Pentagon in November 2001, a “senior military staff officer” told him that the Bush administration was “still on track for going [to war] against Iraq.” But “there was more,” Clark adds. The imminent Iraq war “was being discussed as part of a five-year campaign plan, . . . and there was a total of seven countries, beginning with Iraq, then Syria, Lebanon, Libya, Iran, Somalia, and Sudan.” Coming only two months into the U.S. war on Afghanistan, “This is what they mean when they talk about ‘draining the swamp’,” Clark concluded.<sup>14</sup> In her Foreword to Amnesty International’s 2005 Annual Report, AI Secretary General Irene Khan wrote that, “as the unrivalled political, military and economic hyper-power, [the United States] sets the tone for governmental behaviour worldwide.” But “[w]hen the most powerful country in the world thumbs its nose at the rule of law and human rights, it grants a licence to others to commit abuse with impunity and audacity,” and both the rule of law and human rights are rolled back.<sup>15</sup>

It should also be noted that that “most powerful country in the world” has increasingly depended on strategic bombing to achieve its objectives, with a lavish use of ever-more lethal weaponry. As Beau Grosscup describes in book, *Strategic Terror*, “The new cluster bombs, such as the BLU-26, are filled with Sadeye, a cast steel shell with TNT and 600 razor-sharp steel shards embedded in it. The CBU-75 disperses its deadly Sadeye contents over an area 800 feet in diameter. . . .”<sup>16</sup> The United States is their heaviest user, and regards them an “integral part of our and many of our coalition partners’ military operations,” in Defense Secretary Robert Gates’s words.<sup>17</sup> Thus it has fought hard to prevent any limitation on the use of such weaponry (as with landmines and anti-personnel weapons in general). Despite claims of trying to minimize civilian casualties, Grosscup notes that U.S. wars display a pattern in which, as a conflict intensifies, “any pretense of a distinction between military and civilian targets is dropped.”<sup>18</sup> But none of these realities seemed to faze Kofi Annan, who never once used the office of Secretary-General to champion the need to protect potential victims of the hyper-power with the greatest “capacity to act.”

Asked at his final UN news conference what he thought were his “top achievements” as well as his “worst moments,” Annan called the onset of the Iraq war his “worst moment,” and the “work we did on human rights and the approval of the responsibility to protect” his top achievement.<sup>19</sup> But while he formally opposed the invasion of Iraq as illegal (i.e., as “not in conformity with the Charter,” in his milquetoast phrase<sup>20</sup>), this never caused Annan to question whether those states possessing the “capacity to act” could be trusted to use their power responsibly, and in this decade alone he hastened to accept and give a UN imprimatur and support to the U.S.- and U.K.-invaders’ right to occupy and pacify first Afghanistan and then Iraq within a span of less than 18 months. When, during the first weeks and months following the October 2001 invasion of Afghanistan and the March 2003 invasion of Iraq, different organs of the United Nations (especially the Security Council, but also the Secretariat and various humanitarian mop-up agencies) began to provide *ex post facto* legitimation to these military occupations, the UN clearly was not acting as an impartial, neutral, and independent international organization, as outlined by the UN Charter. Likewise with the many UN member states which began to provide *ex post facto* legitimation to both invasions and occupations, they manifestly were not acting as responsible sovereigns.

In concluding his address at NATO headquarters in January 1999, Annan congratulated NATO “on the upcoming 50th anniversary of the alliance,” and wished the NATO ministers “success in your deliberations on devising a new strategic concept for the next century.” And he reminded NATO that “How you define your role, and where and how you decide to

pursue it, is of vital interest to the United Nations, given the long tradition of cooperation and coordination between NATO and the UN in matters of war and peace.”[21](#) This frank acknowledgement of the collaborative relationship between the United Nations and a military organization controlled by a few powerful states illustrates not only the subordination of Kofi Annan’s Secretariat to the demands of the United States and NATO, but also the subversion of UN impartiality, neutrality, and independence on questions of war and peace that is the true legacy of the Annan years.[22](#)

Annan’s successor, Ban Ki-moon, has displayed the same willingness to live with and support aggression by those states with the capacity to act. Early in his tenure he met with U.S. President George Bush, and declared his eagerness to “partner” with Bush in achieving his war on terror objectives — particularly as the “UN and the U.S. have a shared objective of promoting human rights, democracy and freedom and peace and security, as well as mutual prosperity.”[23](#) This was the same U.S. President who had organized a global system of “rendition” and torture, who had declared plans to violate the Treaty on the Non-Proliferation of Nuclear Weapons by redesigning U.S. nukes so that their use is more practicable, and who was in the midst of pursuing two wars in violation of the UN Charter. Later, in the case of Israel’s late 2008 attack on the Gaza, at no point did Ban suggest the need for any “collective action, in a timely and decisive manner, through the Security Council, including Chapter VII,” to protect the virtually defenseless Gaza Palestinians from slaughter. Yet, as Ian Williams enthuses, “Ban Ki Moon is a staunch supporter of the concept of R2P.”

### **R2P, FPIF, and “Responsible Sovereignty”**

[John Feffer](#) introduces his own defense of R2P by patting Ban Ki-moon on the back, and noting that [Ian Williams](#) “points out that Moon has been an effective advocate of [R2P] against those who insist on the priority of national sovereignty.” But neither Feffer nor Williams points out that Ban failed the test of advocacy posed by the Israeli attack on the Gaza Palestinians, who are a protected population under the Geneva Conventions, and, like his predecessor, Ban also failed to invoke R2P for the vulnerable civilian victims of Afghanistan, Iraq, and Pakistan. As we noted, Ban was eager to partner with George Bush back in 2007, long after his program of serial aggressions had been launched and his global system of secret “renditions” and torture gulag had been exposed. Kofi Annan was also clear that he was counting on those states “with the capacity to act,” and notably the United States and NATO, to bring “peace and security” to the world. R2P would explicitly make it easier for Bush, Obama, and NATO to intervene militarily across the globe. Afghanistan, Iraq, and Gaza illustrate clearly the murderous implications of this new “right,” but John Feffer and Ian Williams swallow this and even ask for more of the same.

### **Ian Williams, R2P Warrior**

According to Williams, “apologists for authoritarian sovereignty imply that they would happily let all murders go unchecked because some states get away with it. This argument boils down to saying that if the United States can do something, everybody else can as well, an anti-imperialism that ends up playing into the hands of leaders like Saddam Hussein, Slobodan Milosevic, Fidel Castro, and Jong Il.” Williams’ almost unintelligible passage seems to argue that, just because the United States gets away with committing war crimes, it is still wrong to let others do the same. But this demagogic rhetoric could be stood on its head: “Apologists for the right of the United States to invade other countries at its discretion imply that, without R2P aggression-rights, civilians in weaker states would lack the same

protection that the Afghans has enjoyed since October 2001, and the Iraqis since March 2003 (or even 1991)." Williams-Feffer should recall how well Guatemalans were protected by the U.S.-sponsored invasion and counter-revolution of 1954, and the Chileans by September 11, 1973. It should also be recalled that Williams' bad guy, Fidel Castro, engaged in a major and successful "anti-imperialist" operation in Angola in 1975 to protect the civilians of that country from an invasion by Apartheid South Africa, an aggression supported by the United States.[24](#)

"Despite their disparate ideologies," Williams adds, "these authoritarian leaders [Saddam, Milosevic, Castro, Kim Jong Il] share a deep rhetorical attachment to their countries' national sovereignty combined with a cavalier disregard for the sovereignty of others, including their own citizenry." Do these bad guys have a less genuine and more rhetorical regard for their national sovereignty than Western leaders? Do they have a more cavalier disregard for the sovereignty of others than U.S., U.K., and Israeli leaders? Is the seeming disregard for the sovereignty of others like the Iraqis and Pakistanis by U.S. leaders acceptable because they are there to "protect" the citizens of those distant places?

It is clear that Ian Williams adores Kofi Annan and Ban Ki-Moon for their devoted pursuit of R2P and "responsible sovereignty" (Ki-Moon's phrase, which Williams cites approvingly[25](#)). "Responsible sovereigns" respect the human rights of their citizens, and protect them from "genocide, war crimes, ethnic cleansing and crimes against humanity," in the now deeply engrained slogan of R2P. But what "responsible sovereigns" do to the populations of *other* sovereigns is another matter. Thus R2P had downgraded aggression, the "supreme international crime," of which those states "with the capacity to act" may be the most guilty, as will be the self-appointed avengers of R2P actions. Williams acknowledges that there is a problem of "implementation," because "expediency" rules widely, and with the "onus of decision-making in the Security Council," it can be awkward that the Permanent Five "use their veto power to protect their friends." Williams suggests that the "R2P principle will in the end come to life because of global public opinion forcing action." But global public opinion didn't force action to protect the Gaza Palestinians from Israel in January 2009. In fact, Ban was as paralyzed as the Security Council in this case of "unbridled and irresponsible sovereignty," and global opinion was eminently ignorable by the U.S. and UK governments, and by Kofi Annan, in the major violation of the UN Charter in the invasion-occupation of Iraq from March 2003.

There is the deeper problem with R2P — namely, that the states with the "capacity to act" may use this new right and escape from the sovereign equality premise of the UN Charter to attack as a matter of expediency and self-interest. Is there any reason to believe that there is a new morality in the leaders of the dominant states to prevent this, and is it a coincidence that, in this era of pressure for a R2P, it comes primarily from a country that has openly declared a determination to dominate and has committed major Charter violations repeatedly in the past decade? Williams doesn't cope with these central questions, except for his puny expression of faith in global public opinion and closing admonition that "the United States must end its own double standards." But meanwhile, until it does this, R2P stands as an instrument of those states which can effectively apply double standards.

Ian Williams has long believed that 1999 U.S. and NATO war on Yugoslavia was a noble effort that was protecting civilians, and on this score, he goes out of his way to attack Noam Chomsky, using as his weapon Chomsky's factually correct claim that the NATO bombing raids on Serbia "actually precipitated the worst atrocities in Kosovo." To this, Williams replies: "This latter claim is not only untrue but morally unpalatable in its spurious causality,

like claiming that the British air raids on Germany precipitated the Nazi gas chambers. But at least Chomsky admitted that atrocities had taken place in Kosovo, which is much farther than some of his would-be acolytes have gone.”

Chomsky has since published his own rebuttal to Williams’ charges.<sup>26</sup> Here we add that the most spurious causality is Williams’ belief that the NATO bombing war had anything to do with countering “atrocities” and was a validating advance-case of R2P in action. In the past, Williams has referred to Kosovo as a site of “genocide,” and though he doesn’t use the ‘G’-word here, he has never mentioned that the earlier, hugely inflated death toll for Kosovo has shrunk to well below 10,000, or that the propaganda lie of 250,000 deaths in Bosnia, which he earlier swallowed, has fallen to some 100,000 (on *all* sides, and including soldiers). While Chomsky of course has never contended that atrocities did not take place in Kosovo, Williams has never admitted that the NATO bombing war involved precisely the categories of serious atrocities that he decries. As the British legal expert Ian Brownlie stated before the House of Commons on May 20, 2000: “The claim to be acting on humanitarian grounds appears difficult to reconcile with the disproportionate amount of violence involved in the use of heavy ordnance and missiles. The weapons had extensive blast effects and the missiles had an incendiary element. A high proportion of targets were in towns and cities. Many of the victims were women and children. After seven weeks of the bombing at least 1,200 civilians had been killed and 4,500 injured.”<sup>27</sup> This statement does not begin to address the surge in casualties, the renewed refugee crisis, and the destruction of property that occurred inside Kosovo during NATO’s bombing war.

But on the former Yugoslavia, Ian Williams has always been hugely biased and bloodthirsty, so that the victimization of Serbs has never been on his agenda, or peace without victory over the forces of evil. This is why he has shown a furious antipathy to Lord David Owen, the EU mediator who strove to bring about a settlement of the Bosnian wars from 1992 to 1995. Owen (like his one-time co-negotiator Cyrus Vance, and his later co-negotiator Thorvald Stoltenberg) pushed for a settlement based on cantons that would force Bosnians “to give up their dreams of a multicultural democracy,” Williams wrote back in 1993.<sup>28</sup> However, as former National Security Agency Balkans-area analyst John Schindler shows in detail in his book *Unholy Terror*, Bosnian leader Alija Izetbegovic, who fooled gullible “safari journalists” like Williams, was an Islamic fundamentalist and wanted no part of a “multicultural democracy.”<sup>29</sup> For Williams, however, a peaceful settlement without the proper bloodletting was surrendering. Instead he wanted war, and he got it. This was an R2P war for Williams, based on staggering bias and a stream of selective misinformation.<sup>30</sup>

Williams also mentions the International Criminal Court, and the indictment and arrest warrant that it has issued for Sudan’s President Omar Hassan Ahmad Al-Bashir, as an implicit case of good R2P in action. “Washington can hardly call upon the Sudanese to respect the indictment of a court that it has refused to accept itself,” he writes. “To ensure greater global public support for R2P . . . the United States must end its own double standards on international treaties and military intervention.”

Williams doesn’t mention that these double standards are long-standing and rest on structural facts and interests. Neither does he discuss why the United States hasn’t joined the ICC, nor does he mention the “Netherlands Invasion Act” and the scores of bilateral agreements into which the United States has entered with foreign partners under Article 98 of the Rome Statute, all of which secure the impunity of U.S. actors from ICC prosecution.<sup>31</sup> Thus Williams’ plea for changes on the part of the United States government that we have no reason to expect will be forthcoming merely serves to divert attention from its actual

impunity.

Williams writes that the “African Union’s charter specifically adopted ‘non-indifference’” as a guiding principle, and that its Charter also “includes the organization’s obligation to intervene.” But these assertions are bald-faced lies. The 53 signatories to the [Constitutive Act of the African Union](#) (July 11, 2000) adopted a series of principles not unlike those that animate the UN Charter (see, e.g., [Article 4](#) [Principles]), and though it is frequently cited by R2P advocates as an early institutionalization of R2P, the Act is nothing of the kind. Crucially, the Act does not grant the AU a simple right to intervene in matters which are within the jurisdiction of AU member states, but grants this right only pursuant to a two-thirds vote by the AU’s members “in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity” (Article 4h). Moreover, the term “non-indifference” does not occur anywhere in the Act. Indeed, the remainder of the AU’s 16 principles unambiguously affirm the “sovereign equality” of its members (4a), the “peaceful resolution of conflicts” (4e), the “prohibition of the use of force or threat to use force” (4f), the “non-interference by any Member State in the internal affairs of another” (4g), and the “condemnation and rejection of unconstitutional changes of governments” (4p).<sup>32</sup> In stark contrast to the version of R2P advocated by the International Commission on Intervention and State Sovereignty and its acolytes, the Act does not grant to AU members either the individual or collective right of military intervention in matters which are within the domestic jurisdiction of states *outside* the AU, however grave the circumstances and persuasive the humanitarian cause. In short, the African Union’s Constitutive Act is if anything an even more careful prohibition of what it calls the “scourge of conflicts,” echoing the Preamble of the UN Charter. What the Act most assuredly is *not* is an R2P-like declaration to intervene.

### **The ICC, the Politics of “International Justice,” and David Greenberg**

[John Feffer](#) also cites David Greenberg’s contribution, “African Union Declaration against the ICC Not What It Seems.” For both of these men, the ICC is a force for justice in the world. But Greenberg’s account of the AU’s position on the conflict in the western Sudan, and the AU’s disenchantment with the ICC, as expressed recently at the AU’s assembly in Sirte, Libya, is grossly misleading. In Greenberg’s telling, the AU declaration does not express the view of a majority of its members, but is the result of the “manipulative tactics and bullying” of current AU Chairman Muammar Gaddafi. There is no hint by Feffer or Greenberg that the ICC deserves serious criticism on grounds of its bias and ready exploitation by the great Western powers. Instead, the AU “resolution isn’t what it seems,” Greenberg insists; it is merely an “effort by a handful of countries to foist on others their regressive view that there should be no accountability for mass slaughter of civilians,” in the words of Human Rights Watch’s Richard Dicker.

But the AU’s positions on Sudan and the ICC have been consistent throughout. When ICC chief prosecutor Luis Moreno-Ocampo first petitioned the Court in July 2008 to charge Sudan’s President Omar Hassan Ahmad Al-Bashir with genocide, crimes against humanity, and war crimes,<sup>33</sup> the AU expressed its “strong conviction that the search for justice [in the Sudan] should be pursued in a way that does not impede or jeopardize efforts aimed at promoting lasting peace,” and it reiterated its longstanding “concern with the misuse of indictments against African leaders. . . .” More important from the AU’s perspective was its request that the Security Council “defer the process initiated by the ICC, taking into account the need to ensure that the ongoing peace efforts are not jeopardized, as well as the fact that, in the current circumstances, a prosecution may not be in the interest of the victims

and justice. . . .”[34](#)

This was the AU’s position in July 2008, prior to any alleged “corrupt tactics” orchestrated by the new AU chairman, who only assumed this post in March, 2009 — roughly the same time the ICC handed down its indictments for Al-Bashir.[35](#) Twelve months after requesting that the Security Council defer the Al-Bashir process, at the July 2009 summit in Sirte, the AU once again noted “with grave concern the unfortunate consequences that the indictment [of Al-Bashir] has had on the delicate peace process underway in The Sudan and the fact that it continues to undermine the ongoing efforts aimed at facilitating the early resolution of the conflict in Darfur.” Most important of all, however, the AU now decided that, “in view of the fact that the request by the African Union [to the Security Council to defer the proceedings initiated against Al-Bashir] has never been acted upon, the AU Member States shall not cooperate pursuant to the provisions of Article 98 of the Rome Statute of the ICC relating to immunities, for the arrest and surrender of President Bashir.”[36](#)

Thus the AU’s July 2008 request that the Security Council defer any proceedings against Al-Bashir, the U.S. and U.K. refusal to grant this request a hearing within the Council, and the ICC’s March 2009 indictment of Al-Bashir, to a resounding applause in the great white-northern capitals, where they believe in “accountability for mass slaughter of civilians,” provide the real context for the AU declaration in Sirte — not some parliamentary vote-rigging by the Libyan Overlord. It is precisely because of such manipulative and bullying tactics on the part of the U.S. and U.K., and the AU’s often-expressed concern with the “misuse of indictments against African leaders,” that the ICC now faces a crisis of legitimacy among its onetime African supporters.

It is a stunning fact that of the 14 indictments and arrest warrants to have been issued by the ICC through mid-2009, all 14 were against black Africans from four countries (the Democratic Republic of Congo, the Central African Republic, Uganda, and the Sudan), and not a single one of these 14 indictments was brought against a client of the great Western powers (such as Rwanda’s President Paul Kagame and Uganda’s President Yoweri Museveni, perhaps the most prolific tandem of killers to rule on the African continent during the current era).[37](#) Yet, this fact is of very little interest to Greenberg, who mentions it only in passing, as when he claims, falsely, that it hasn’t undermined AU support for the ICC, when, aside from high-profile cheerleaders such as Kofi Annan, Richard Goldstone, and Desmond Tutu,[38](#) the ICC is in deep trouble in Africa. But as Greenberg believes the ICC is a force for justice, he fails to see that the ICC is a policy instrument of the white-dominated northern powers, and that these same powers will enforce both the ICC and R2P according to their traditional power- and color-conscious discriminations.

When the Rome Statute was completed in July 1998, Kofi Annan flew to the Eternal City to attend the Conference’s closing ceremony. “Until now, when powerful men committed crimes against humanity, they knew that as long as they remained powerful, no earthly court could judge them,” Annan said. But with the new ICC, all this will change. No longer will “[v]erdicts intended to uphold the rights of the weak and helpless . . . be impugned as ‘victor’s justice’,” he said, “because others have proved more powerful, and so are able to sit in judgment over them.” No longer will courts set up on a *ad hoc* basis, “like the tribunals in The Hague and in Arusha, to deal with crimes committed in specific conflicts or by specific regimes” be similarly impugned, as if the “same crimes, committed by different people, or at different times and places, will go unpunished. Now at last . . . we shall have a permanent court to judge the most serious crimes of concern to the international community as a whole: genocide, crimes against humanity and war crimes.”[39](#)



This Annan statement is of course false. As York University international law expert Michael Mandel has shown, the “Rome Statute included the familiar triumvirate of crimes that are found in the ICTY and ICTR statutes . . . [b]ut, like those statutes, and unlike the Nuremberg Charter, it left ‘the crime of aggression’ out of the picture.”<sup>44</sup> Although a Special Working Group has existed at the ICC since 2002 with the task of amending the Rome Statute to bring aggression under its jurisdiction,<sup>41</sup> an amendment such as this “would have to be ratified by seven eighths of the state parties to take effect,” Mandel adds. “Even then . . . *it would only take effect against state parties who accepted it.* . . . In other words, no jurisdiction over the supreme crime until almost everybody agrees, and then an exemption for any signatory who wants it.”<sup>42</sup> Clearly, this is no way for the world to end the culture of impunity. But then for Annan, those states “with the capacity to act,” which are the same states that prevented Boutros Boutros-Ghali from receiving a second five-year term as Secretary-General, promoted Annan to take his place and then kept Annan in office for two five-year terms, are the commanders and the enforcers, whose unlawful actions we may regret, but must accept at every turn.

While it ensures impunity for those states which have proven the most powerful, the ICC also fulfills what Mandel calls the “American desire for a permanent *ad hoc* court” — a kind of permanent ICTY and ICTR to deal with specific conflicts and specific regimes, “‘a standing tribunal . . . that [can] be activated immediately’ by the Security Council on a case-by-case basis,”<sup>43</sup> exactly as the Council did in adopting Resolution 1593 in March 2005, when, arguing that the Darfur crisis inside the western Sudan “continues to constitute a threat to international peace and security,” the Council referred the case to the Prosecutor at the ICC.<sup>44</sup>

Surely the Al-Bashir case is a harbinger of how the Global South can expect both the ICC and R2P to be implemented: A permanent *ad hoc* R2P to accompany the permanent *ad hoc* ICC. Both of them, “from the nature of things,” will “be reserved for the most powerful States,” and “easily lead to perverting the administration of international justice itself.”<sup>45</sup>

### **Concluding Note**

Power relations shape much of the human world. Moral judgments about which victims deserve our attention, sympathy, indignation, and protection may seem independent of this, but quite often they provide us with stunning confirmations of power and powerlessness.

A globally-dominant system of beliefs affirms that the Great White-Northern Powers exist to protect us all, and that the rest of the world never needs to be protected from them. This system of beliefs has been internalized by many actors — nowhere more religiously than in the Western capitals. By Kofi Annan and Ban Ki-moon, by legions of intellectuals, media personnel, and NGO-operatives, and by “humanitarian” warriors and “democracy” promoters. And, most recently, by the growing body of R2P and ICC advocates.

Consider the entry for the 2003 “[Iraq War](#)” at the website of the International Coalition for the Responsibility to Protect.<sup>46</sup> Echoing Gareth Evans, the former Australian Foreign Minister, appeaser of Indonesia’s near-genocidal aggression against East Timor,<sup>47</sup> and author of a book on R2P(!),<sup>48</sup> who maintains that the U.S.-U.K. invasion of Iraq could not be justified on “humanitarian” grounds (though, he adds, it was a “close call”<sup>49</sup>), the Coalition points out that, though “gross human rights violations occurred in Iraq in the 1980s and 1990s, these crimes were not occurring, nor likely to happen, at the time of the 2003 military intervention.” For this reason, the invasion “failed to meet the [guiding R2P] criteria

legitimizing the use of military intervention.”

We find this argument remarkable, both for what it takes into consideration and what it leaves out. Notice that in the judgment of Evans and this Coalition, the relevant question is whether the government of Iraq had been committing “gross human rights violations . . . at the time of the 2003 military intervention.” Left unasked is whether the United States and Britain had been responsible for gross human rights violations during the years they enforced the “sanctions of mass destruction” (1990-2003), whether they were on the verge of committing even more egregious human rights violations by invading Iraq (ca. 2002-early 2003), and whether they did in fact commit gross human rights violations from March 19-20, 2003 on, including a death toll that may top 1 million Iraqis, with millions more driven from their homes.<sup>50</sup> Thus in this global acid test for R2P in the first decade of the 21st Century, these R2P advocates can freely debate the need for the U.S.-U.K. invasion to protect Iraq’s population against the Iraqi regime. But neither these nor any other R2P advocate can even raise the question of the need for a military intervention to protect Iraq’s population against the U.S.-U.K. invaders.

Other moral luminaries offer similarly insightful defenses of the ICC. Thus chief prosecutor Luis Moreno-Ocampo marvels that in 1998, when the ICC’s founding statute was adopted, “[n]o one could have predicted the speed of . . . integration between the international system of peace and security and the new permanent system of international justice.” Surveying the ICC’s record of “investigating those most responsible for the most serious crimes,” he concludes that the ICC has made steady progress at realizing its mission “to put an end to impunity for the perpetrators” of mass-atrocity crimes, and declares that “accountability” is at last a factor in world affairs — “Impunity is no longer an option.”<sup>51</sup> To translate: Impunity is no longer an option for black Africans who lack good standing with the Great White-Northern Powers. But as for the leadership of those states “with the capacity to act”? Evidently, the sky remains the limit.

In the game of international power-projection and “just”-warmaking, we thus regard both R2P and the ICC as brilliant (if transparent) maneuvers, both resonating with virtue and opposition to evil, while blaming the states and actors they target with whatever charges the “international community” can throw at them.<sup>52</sup> What moral agent could object to the “idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe — from mass murder and rape, from starvation — but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states,” in the 2001 formulation of the International Commission on Intervention and State Sovereignty?<sup>53</sup> Similarly, what decent soul could object to the police department’s responsibility to protect the innocent from bad men? The fire department’s responsibility to protect property and lives? And every parent’s responsibility to protect their children from avoidable harm?

But what if those states with the greatest capacity to carry out large-scale, cross-border aggressions, and before whom the populations of entire foreign countries are vulnerable to harm, are relieved of their UN Charter liabilities under the R2P and ICC innovations? What if those very states are granted the right to enforce R2P, and to do it at their discretion, even while they are engaging in massive UN Charter violations? This is the great achievement of R2P — that it sanctions the most powerful states to invoke R2P as a cover for their imperial endeavors, while imbuing their deadly actions with a moral aura.

Undermining the UN Charter’s order, supplanting it with “illegal but legitimate” wars, and

channeling activism and dissent away from the growing list of victims of the U.S.-led NATO bloc of states, towards the targeted and demonized countries such as the Sudan, is part of the work of *imperialism promotion*. Kofi Annan has repeatedly said that the International Criminal Court brings “universal justice” and protects victimized civilians everywhere. But as we have shown, the ICC does not protect the victims of wars and “sanctions of mass destruction” by those states “with the capacity to act.” Indeed, Annan spent the last two decades helping to undermine the world order outlined by the UN Charter, in such a way that the Charter’s understanding of threats to international peace and security has been redefined away from wars of aggression (the “scourge of war”) towards the Rome Statute’s and R2P’s notions of “genocide, war crimes, ethnic cleansing and crimes against humanity.” This is why Annan and his work were loved by the U.S. establishment, and by Ian Williams and David Greenberg. The only things to suffer from Annan’s successes have been global peace and security.

## Endnotes

[1](#) See John Feffer, [World Beat](#), “R2P and the AU,” *Foreign Policy in Focus* (Vol. 4, No. 32), August 11, 2009; Ian Williams, [“Ban Ki-moon and R2P,”](#) *Foreign Policy in Focus*, August 3, 2009; and David Greenberg, [“African Union Declaration Against the ICC Not What It Seems,”](#) *Foreign Policy in Focus*, August 6, 2009.

[2](#) See Chapter I, [“Purposes and Principles,”](#) [Charter of the United Nations](#), 1945, from which all of the principles that we cite are drawn. In the immortal words of the [Preamble](#): “We the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind. . . .”

[3](#) The phrase “supreme international crime” derives from the [Final Judgment of the International Military Tribunal for the Trial of German Major War Criminals](#) (September 30, 1946), specifically [“The Common Plan or Conspiracy and Aggressive War,”](#) wherein we read: “The charges in the Indictment that the defendants planned and waged aggressive wars are charges of the utmost gravity. War is essentially an evil thing. Its consequences are not confined to the belligerent states alone, but affect the whole world. To initiate a war of aggression, therefore, is not only an international crime; it is the *supreme international crime* differing only from other war crimes in that it contains within itself the accumulated evil of the whole” (emphasis added).

[4](#) See, e.g., Richard Goldstone *et al.*, [The Kosovo Report: Conflict, International Response, Lessons Learned](#), Independent International Commission on Kosovo (New York: Oxford University Press, 2001). To quote its reckless “Conclusions”: “While the sovereignty of states is an essential element of human rights protection itself, sovereignty is frequently abused as a cover and justification both for abuse and for non-compliance with international norms. What is urgently needed is a code of citizenship for nations, which both protects states against unwarranted interference from outside powers, and guarantees their inhabitants remedies when their human rights are systematically abused. This ultimately implies changing the ‘default setting’ of the UN Charter, revising the so-called inviolability of sovereign states so that sovereignty becomes conditional on observance of certain minimal but universal and clear standards of behavior.” To the contrary, we regard R2P-like prescriptions such as these as little more than gifts to the imperial states. In the Commission’s unmistakable judgment, the NATO states that militarily intervened in Yugoslavia, and the Yugoslavia in which NATO intervened, were not sovereign equals — and the rhetoric of human rights aside, the real determinant of this *sovereign inequality* was the

one that flowed from NATO's bombs.

[5 "Statement by Professor Noam Chomsky . . . on the Responsibility to Protect,"](#) UN General Assembly, July 23, 2009, pp. 4-5. Also see the prepared remarks by UN General Assembly President [Miguel d'Escoto Brockmann](#), and by Belgium's [Jean Bricmont](#).

[6](#) Perhaps the earliest high-profile use of the phrase "responsibility to protect" as a rallying cry for foreign intervention in the domestic affairs of states was by Canada's then-Foreign Minister Lloyd Axworthy, in an address before the Security Council on "The situation in Africa" ([S/PV.4049](#), September 29, 1999). "I think that it is also very clear that the Security Council has a responsibility to protect the security of individual Africans," Axworthy said. "The bitter experience of the individual Africans who have suffered most — victims of genocide in Rwanda, widespread starvation in Somalia, pervasive terror in Sierra Leone, a generation-long slaughter in Angola, slave-trading in the Sudan and a senseless war in Ethiopia and Eritrea — should demand effective intervention by the Council. Such is the responsibility of this body and no other. This humanitarian imperative has been applied, but elsewhere — in Kosovo and in East Timor but not in Africa — raising legitimate concern about how evenly these initiatives are put into practice. The Council needs to establish common criteria to trigger humanitarian intervention, apply them consistently in consultations with regional partners and overcome the reluctance of some to commit their people and resources to help the victims of war in far-off lands" (p. 16, col.1-2). The Chrétien government of Canada established the International Commission on Intervention and State Sovereignty in September 2000 to "foster global political consensus" on "how to respond in the face of massive violations of human rights and humanitarian law . . . particularly through the United Nations." (See Gareth Evans and Mohamed Sahnoun et al., [The Responsibility to Protect](#), Report of the International Commission on Intervention and State Sovereignty, Ottawa: International Development Research Centre, 2001, "Mandate," p. 81.) However, it is clear that, since the R2P concept first began to receive this major push for acceptance, early this decade, the concept has been applied to the Darfur case in the western Sudan far more often than it has been applied to any other case. Thus, for example, at the UN News Center, where the electronic archives date from January 1, 2001 on, the records through July 31, 2009 show that the phrase "responsibility to protect" has been used in 23 different articles in relation to the Darfur population, but in only 3 articles in relation to Iraq's population — and never once in the context of a responsibility to protect Iraq's population from the harm inflicted upon them by the U.S. invader-occupier.

[7](#) In the standard narrative of the Rwandan "genocide," it is alleged that the Western powers failed to respond to the mass killings of 1994 in a timely and decisive manner, but this is false. Western powers played a vital role both before, during, and after those killings, but their role actually made the killings likely, expedited them while in process, failed to protect any of the victims, and followed up with support for the main killers, who were allies of the United States, Britain, and Belgium, rule Rwanda to this very day, and, in the capitals of the West, are regarded as great emancipators and statesmen. For more on the Rwanda case, see Edward S. Herman and David Peterson, *The Politics of Genocide* (Monthly Review Press, forthcoming). Also see Robin Philpot, [Rwanda 1994: Colonialism Dies Hard](#) (E-Text posted to the Taylor Report Website, 2004).

[8](#) Kofi Annan, [Secretary-General Presents His Annual Report to the General Assembly \(SG/SM/7136\)](#), September 20, 1999.

[9](#) For more on role of the former Yugoslavia in the development of the U.S. and UN

propaganda about “humanitarian” intervention which later became R2P, see Edward S. Herman and David Peterson, [“The Dismantling of Yugoslavia,”](#) *Monthly Review*, October, 2007.

[10](#) Tony Blair, [“A New Generation Draws the Line,”](#) *Newsweek*, April 19, 1999.

[11](#) Goldstone et al., [The Kosovo Report](#), “Executive Summary.” In its assessment of NATO’s 1999 bombing war against the Federal Republic of Yugoslavia, this group coined the notorious phrase “illegal but legitimate” to characterize NATO’s aggression. The exact passage reads: “The Commission concludes that the NATO military intervention was illegal but legitimate. It was illegal because it did not receive prior approval from the United Nations Security Council. However, the Commission considers that the intervention was justified because all diplomatic avenues had been exhausted and because the intervention had the effect of liberating the majority population of Kosovo from a long period of oppression under Serbian rule.”

[12](#) In his memoirs of the five years he spent as Secretary-General, Boutros Boutros-Ghali recounts a conversation with U.S. Secretary of State Madeleine Albright, who told him, after his rejection by the United States: “You symbolize the United Nations, and the American Congress is hostile to the United Nations. You are also blamed for trying to control American military power. You used the ‘dual key’ to oppose NATO air strikes against the Serbs. Your stance was very badly perceived by military circles in Washington.” *Unvanquished: A U.S. - U.N. Saga* (New York: Random House, 1999), pp. 332-333.

[13](#) Kofi Annan, [“Statement by Kofi Annan,”](#) NATO Headquarters, Brussels, January 28, 1999.

[14](#) Wesley K. Clark, [Winning Modern Wars: Iraq, Terrorism and the American Empire](#) (New York: PublicAffairs, 2003), p. 130.

[15](#) Irene Khan, Foreword, [Amnesty International Report 2005: The State of the World’s Human Rights](#), May, 2005.

[16](#) Beau Grosscup, *Strategic Terror: The Politics and Ethics of Aerial Bombardment* (London: Zed Books, 2006), p. 114.

[17](#) Letter from Secretary of Defense Robert M. Gates to Senator Patrick Leahy, September 12, 2008, as quoted in the May 2009 report, [Banning Cluster Munitions: Government Policy and Practice](#) (Mines Action Canada et al.), pp. 251.

[18](#) Grosscup, *Strategic Terror*, p. 180.

[19](#) Kofi Annan, [Transcript of Press Conference by Secretary-General Kofi Annan at United Nations Headquarters](#) (SG/SM/10809), December 19, 2006.

[20](#) See [“Excerpts: Annan Interview,”](#) BBC News Online, September 16, 2004.

[21](#) Annan, [“Statement by Kofi Annan,”](#) NATO, January 28, 1999.

[22](#) See David Peterson, [“How Kofi Annan ‘Won’ His Job,”](#) ZNet, March 21, 2005. Also Warren Hoge, [“Secret Meeting, Clear Mission: ‘Rescue’ U.N.,”](#) *New York Times*, January 3, 2005.

[23](#) [“Ban Ki-moon and US President Stress Joint Partnership during Talks,”](#) UN News Center, January 16, 2007.

[24](#) See, e.g., Piero Gleijeses, [Conflicting Missions: Havana, Washington, and Africa, 1959-1976](#) (Chapel Hill, NC: University of North Carolina Press, 2002). Also see the webpage devoted to these topics at the National Security Archives, [“Secret Cuban Documents on History of Africa Involvement,”](#) Electronic Briefing Book No. 67, April 1, 2002.

[25](#) See, e.g., Ban Ki-moon, [Secretary-General Defends, Clarifies “Responsibility to Protect” at Berlin Event on “Responsible Sovereignty: International Cooperation for a Changed World”](#) (SG/SM/11701), July 15, 2008; also see [Implementing the Responsibility to Protect](#), Report of the Secretary General ([A/63/677](#)), January 12, 2009, para. 13, 14, 16, and 67. Finally, see Edward C. Luck, “The Responsible Sovereign and the Responsibility to Protect,” in Joachim W. Müller and Karl P. Sauvant, Eds., *Annual Review of United Nations Affairs* (New York: Oxford University Press, 2008). Note that Luck serves as the Special Adviser to the Secretary-General on the Responsibility to Protect.

[26](#) See Noam Chomsky, [“Kosovo, R2P, East Timor, and Ian Williams,”](#) *Foreign Policy in Focus*, August 17, 2009. As Chomsky counters: “Considerably more remarkable even than [Williams’] apologetics for NATO is what Williams says about the crimes in East Timor at the very same time, far worse than anything reported in Kosovo prior to the NATO bombing, and with a background far more grotesque than anything claimed in the Balkans. [Williams] writes that ‘Chomsky quite rightly raised the question of why there was no intervention in East Timor’. It would have been outlandish to raise that question, and I did not do so. Since Williams favors Holocaust analogies, it would be like raising the question why the Nazis did not intervene to stop the slaughter of Jews by local forces in the regions they occupied.”

[27](#) See [“Memorandum Submitted by Professor Ian Brownlie,”](#) Select Committee on Foreign Affairs, Appendix II, British House of Commons, May 20, 2000, para. 129(j).

[28](#) Ian Williams, [“Lord David Owen: The ‘Dr. Death’ of Balkan Diplomacy,”](#) *Washington Report on Middle Eastern Affairs*, September-October, 1993.

[29](#) John R. Schindler, [Unholy Terror: Bosnia, Al-Qa’ida, and the Rise of Global Jihad](#) (St. Paul, MN: Zenith Press, 2007).

[30](#) See, e.g., Bogdan Denitch and Ian Williams, [“The Case Against Inaction,”](#) *The Nation*, April 26, 1999; Ian Williams, [“Give War a Chance,”](#) *Salon*, May 14, 1999; and Ian Williams, [“You Can’t Negotiate with a War Criminal,”](#) *Salon*, May 27, 1999.

[31](#) For the so-called “Netherlands Invasion Act,” see the [American Service Members’ Protection Act of 2002](#), esp. Section 2008, “Authority to Free Members of the Armed Forces of the United States and Certain Other Persons Detained or Imprisoned by or on Behalf of the International Criminal Court.” For Article 98(2), see the Rome Statute, Part 9, [“International Cooperation and Judicial Assistance.”](#) The ICC is barred from requesting the extradition of any U.S. national from any state that has entered into an Article 98(2) agreement with the United States, if this state has agreed with the United States not to honor such requests. These are among the many tools by which the United States maintains its impunity from the reach of international law.

[32](#) See [The Constitutive Act of the African Union](#), Organization of African Unity, Lome, Togo,

July 11, 2000, especially [Article 3](#) (Objectives) and [Article 4](#) (Principles).

[33](#) See Luis Moreno-Ocampo, [Prosecutor's Statement on the Prosecutor's Application for a Warrant of Arrest under Article 58 Against Omar Hassan Ahmad Al Bashir](#), International Criminal Court, The Hague, July 14, 2008. Also see the accompanying [Press Release](#), July 14, 2008.

[34](#) [Communiqué of the 142nd Meeting of the Peace and Security Council \(PSC/MIN/Comm\(CXLII\)\)](#), Addis Ababa, Ethiopia, July 21, 2008, para. 3, para. 11(a).

[35](#) See Judge Akua Kuenyehia, et al., [In the Case of the Prosecutor v. Omar Hassan Ahmad Al-Bashir](#), (ICC-02/05-01/09). Also see the accompanying Press Release, ["ICC issues a warrant of arrest for Omar Al-Bashir, President of Sudan"](#) (ICC-CPI-20090304-PR394), March 4, 2009.

[36](#) See the [Decision on the Meeting of African States Parties to the Rome Statute of the International Criminal Court \(Assembly/AU/Dec.245\(XIII\)\)](#), Assembly of the African Union in Sirte, Libya, Thirteenth Ordinary Session, July 3, 2009, pp. 1-3, para. 3, para. 9-10. For the relevant articles of the Rome Statute, see Article 13 and Article 16, Part 2, ["Jurisdiction, Admissibility, and Applicable Law"](#); and Article 98, Part 9, ["International Cooperation and Judicial Assistance."](#)

[37](#) See ["Situations and Cases,"](#) the webpage the ICC devotes to its 14 indictees (as of mid-August, 2009).

[38](#) See, e.g., Desmond Tutu, ["Will Africa Let Sudan Off the Hook?"](#) *New York Times*, March 3, 2009; Richard Goldstone, ["Stretching the Reach of the Law,"](#) *New York Times*, June 1, 2009; and Kofi Annan, ["Africa and the International Court,"](#) *New York Times*, June 30, 2009.

[39](#) Kofi Annan, ["Statement by the United Nations Secretary-General Kofi Annan,"](#) July 18, 1998.

[40](#) Michael Mandel, *How America Gets Away With Murder: Illegal Wars, Collateral Damage, and Crimes Against Humanity* (Ann Arbor, MI: Pluto Press, 2004), pp. 207-219; here p. 207. Article 5.1 of the [Rome Statute of the International Criminal Court](#), (A/CONF.183/9\*) (adopted July 17, 1998; it entered into force on July 1, 2002) lists the "crime of aggression" among the four "most serious crimes of concern to the international community as a whole" for which the ICC is to exercise jurisdiction, Article 5.2 adds: "The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations." (See Part 2, ["Jurisdiction, Admissibility, and Applicable Law."](#))

[41](#) See the [Special Working Group on the Crime of Aggression](#); also see the [Seventh Session of the Assembly of States Parties](#), February 9-13, 2009; and [Discussion Paper on the Crime of Aggression Proposed by the Chairman \(ICC-ASP/7/SWGCA/INF.1\)](#), February 9-13, 2009, and the accompanying [Press Release](#). Current plans are to base the ICC's definition of aggression on the UN General Assembly's definition of December 14, 1974 (A/RES/3314 — see the Annex). In brief, while excluding acts of terrorism carried out by non-state actors, the proposed definition of aggression would include "invasion, attacking another State, or

the military occupation of another State, however temporary,” as well as “bombardments against another State, carrying out blockades, allowing another State to perpetrate acts of aggression against a third State, or sending armed bands to carry out grave acts against other States.” (See [Press Conference on Special Working Group on Crime of Aggression](#), UN Department of Public Information, February 13, 2009.) However, we strongly suspect that this Working Group’s mission will remain unfulfilled. Or, even if it were somehow to succeed, the new prohibition would be implemented in as selective and discriminatory a fashion as are the rest of the Rome Statute’s laws today.

[42](#) Mandel, *How America Gets Away With Murder*, pp. 207-208.

[43](#) *Ibid*, pp. 208-209.

[44](#) See UN Security Council Resolution 1593 ([S/RES/1593](#)), March 31, 2005.

[45](#) See [The Corfu Channel Case Judgment](#), International Court of Justice, April 9, 1949, pp. 32-36; here p. 35. Also see [“Statement by Professor Noam Chomsky . . . on the Responsibility to Protect,”](#) p. 2. Once again, similar concerns were expressed by [Miguel d’Escoto Brockmann](#), and by [Jean Bricmont](#).

[46](#) See the webpage devoted to the [“Middle East,”](#) International Coalition for the Responsibility to Protect, where the entry on the [“Iraq War”](#) appears.

[47](#) Perhaps no single individual has done more to raise the profile of R2P and to place it on the UN’s agenda than the Australian Gareth Evans. “The core theme is not intervention but protection,” he said in his prepared remarks before the UN General Assembly on July 23: “look at each issue as it arises from the perspective of the victims, the men being killed, the women being raped or about to be raped, the children dying or about to die of starvation; and look at the responsibility in question as being above all a responsibility to prevent” ([Statement By The Hon. Gareth Evans](#), July 23, 2009, p. 3). But before Evans co-chaired the International Commission on Intervention and State Sovereignty (2000-2001), and before he became President of the International Crisis Group (2000), Evans was a professor of law in Australia, a member of the Australian Parliament, and Australia’s Foreign Minister (1988-1996). It was while performing this latter role that Evans was instrumental to the completion of the 1989 Timor Gap Oil Treaty with Indonesia, a treaty that granted Australian firms the right to explore and drill in the oil-rich “Indonesian province of East Timor,” and thus placed Australia in that rare camp of states to have recognized Indonesia’s 1975 illegal conquest of East Timor territory by force. In a review of John Pilger’s documentary [Death of a Nation: The Timor Conspiracy](#) (1994), a documentary “that tells us much about the selectivity and aims of great power,” in Pilger’s words, and “how the modern world is ordered,” the *Sydney Morning Herald* noted that its “most visually shocking moment is not Max Stahl’s footage of a young man dying in the Dili cemetery in November 1991, but Foreign Minister Gareth Evans’s 1989 propaganda video in which he and his Indonesian counterpart, Ali Alatas, in a jet above Timor, toast the successful redistribution of East Timor’s resource wealth with the signing of the Timor Gap Oil Treaty.” (Margot Date and David Langsam, [“Genocide on Our Doorstep,”](#) March 10, 1994. For the Evans clip described here, see approximately the 1:04:13 mark. For a photo of Evans and Alatas toasting the Timor Gap Treaty, see [here](#).)





As Pilger explains: “As a result of the Indonesian invasion and occupation, some 200,000 people died [in East Timor]. That’s a-third of the population, or proportionately more than were killed in Cambodia under Pol Pot. . . . Perhaps ‘genocide’ is too often used these days, but by any standards, that’s what happened here. And it happened mostly beyond the reach of the TV camera and the satellite dish, and with the connivance and complicity of Western governments — the same governments that were prepared to go to war against Saddam Hussein, but were not prepared under almost parallel circumstances to stop a rapacious invader that had broken every provision in the United Nations Charter, and that had defied no less than 10 United Nations sanctions resolutions calling on it to withdraw from East Timor. . . . [T]he governments of Britain, the United States, Australia, and others supplied the means by which the regime in Jakarta has bled East Timor.” (For more on Gareth Evans’ role while serving as Australia’s Foreign Minister, see Noam Chomsky, [Powers and Prospects: Reflections on Human Nature and the Social Order](#) (Boston: South End Press, 1996), Ch. 8, “East Timor and World Order,” pp. 204-221, esp. 215-217.)

[48](#) See Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, D.C.: Brookings Institution Press, 2008).

[49](#) See Gareth Evans, [“Humanity Did Not Justify This War,”](#) *Financial Times*, May 15, 2003. “The concern is not just that military action may be taken too often for insufficient reasons,” Evans warned. “It is that it will be taken too rarely for the right ones.”

[50](#) On the Iraqi death toll and refugee crisis, see e.g., the website, [“Iraq: The Human Cost,”](#) MIT Center for International Studies, esp. the material archived under [“Mortality Surveys/Analysis”](#) and [“Displacement, Refugees.”](#)

[51](#) Luis Moreno-Ocampo, [“Impunity No More,”](#) *New York Times*, July 2, 2009.

[52](#) In his book, Gareth Evans writes that as of mid-2008, the “clearest prima facie candidates . . . for inclusion in . . . [an R2P] watch list . . . [were] Burma/Myanmar, Burundi, China, Congo, Iraq, Kenya, Sri Lanka, Somalia, Sudan, Uzbekistan, and Zimbabwe.” (*The Responsibility to Protect*, p. 76.) Unfortunately, unpacking the premises and assumptions that link these 11 R2P candidates exceeds what we can undertake here. We note, however, that Timor-Leste (i.e., the former East Timor) turns up in Evans’ tract only in relation to events in 1999 and thereafter. But East Timor never turns up in relation to Indonesia’s 1975

invasion and near-genocidal, quarter-century slaughter, or in relation to the military and political support that it received from the Western powers — Gareth Evans' Australia included. (Also see n. 47, above.)

[53](#) See Gareth Evans and Mohamed Sahnoun et al., [The Responsibility to Protect](#), Report of the International Commission on Intervention and State Sovereignty (Ottawa: International Development Research Centre, 2001), p. VIII.

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