

Crimes against Humanity: Overcoming Global Indifference, Gareth Evans

2006 Gandel Oration for B'nai B'rith Anti-Defamation Commission by Gareth Evans, President of International Crisis Group, University of New South Wales, Sydney, 30 April 2006

The Humanitarian Imperative

'Never again' we said after the Holocaust. And after the Cambodian genocide in the 1970s. And then again after the Rwanda genocide in 1994. And then, just a year later, after the Srebrenica massacre in Bosnia. And now we're asking ourselves, in the face of more mass killing and dying in Darfur, whether we really are capable, as an international community, of stopping nation-states murdering their own people. How many more times will we look back wondering, with varying degrees of incomprehension, horror, anger and shame, how we could have let it all happen?

These are the words with which I began a public address in Sydney nearly two years ago. To my shame – and what should be our collective global shame – they are just as applicable now as they were in September 2004. All that has happened in Darfur is that the death toll has risen from some 50,000 then to 200,000 or more now, and those displaced from 1 million to over 2 million: 5,000 or more are dying each month from war-related disease and malnutrition as well as continuing outright violence, international peacekeeping efforts have been manifestly inadequate, political settlement talks have been floundering, humanitarian relief is faltering, and the overall situation is again deteriorating.

It is not only in Darfur that crimes against humanity are being committed as we speak, and where the international response to those crimes or their aftermath has been manifestly inadequate. Elsewhere in Africa the crazed and horrifying reign of Joseph Kony's Lords Revolutionary Army – which has already seen the abduction of some 25,000 children for use as fighters or sex slaves – continues in Northern Uganda: Kony and his top lieutenants were the first to be indicted by the new International Criminal Court, but the warrants for their arrest have been unable to be executed.

In the Congo the transition out of 20 years of a civil war often barbarous beyond belief remains extremely fragile: some 30,000 are still dying each month from war-related disease and malnutrition and continuing pockets of fighting, but the international peacekeepers needed to stabilize the situation through the scheduled mid-year election remain in desperately short supply.

Even in Europe justice for the perpetrators of crimes against humanity remains conspicuously incomplete. Slobodan Milosevic was indeed brought to trial, and no-one can be blamed for his death in custody before it was complete. But Radovan Karadzic and Ratko Mladic, the architect and implementer of ethnic cleansing in Bosnia which culminated in the cold-blooded massacre of 8,000 men in Srebrenica in 1995, remain, incredibly, still at large, sheltered and protected by the Serbian military, and with more than a little support to this day still from the higher reaches of the Belgrade government. It is ten years now since a NATO spokesman was reported as saying off the record that “arresting Karadzic is not worth the blood of one NATO soldier”. European forces have now replaced the NATO operation, but nothing much else seems to have changed.

The Balkans experience should be a corrective like no other to any residual complacency that might exist about crimes against humanity. They come back to haunt us over and over again, not only in deprived and struggling countries in far distant corners of the globe, but in countries we think of as being at the heart of Western culture and civilization, or heirs to its traditions. And they are horrors not only of the distant past but the contemporary present.

Of course no one in the world learned more painfully and horribly about international indifference, or suffered more grievously from inhumane acts - that then had no other name but murder, or deportation or torture - than the Jews of Berlin and Vienna and Warsaw and Prague and all the other cities and towns and villages throughout Europe who experienced the horror of the Nazi Holocaust.

It is to that experience that we owe the recognition, as a matter of international law, of the very concept of ‘crimes against humanity’. Although the expression had been officially used once or twice earlier, including by the governments of France, Great Britain and Russia in their 1915 declaration denouncing the massacre of Armenians in Turkey, it was not until the allies drafted the Charter of the Nuremberg Tribunal in 1945 that it assumed formal shape, with article 6 (c) describing a group of crimes which, unlike the more familiar international law concept of “war crimes”, could be committed by a government against its own people, and not necessarily just during wartime.

Jewish organizations throughout the world have remained in the forefront ever since of those deeply conscious of the significance of the concept of crimes against humanity, and determined to fight indifference and complacency about any manifestation of them. The B’nai B’rith Anti-Defamation Commission here in Australia has been very much part of that tradition, and I very much appreciate the opportunity you have given me, in inviting me to deliver this 2006 Gandel Oration, to take stock of how far we have come, and how far we have yet to go in preventing and responding to these crimes.

My argument will be that we have made progress in this respect over the last decade or so, maybe more than most people realize. Conceptually, the principle of ‘the responsibility to protect’ has been embraced; institutionally, the International Criminal Court and a number of other ad hoc tribunals have been established; in practice, better early warning is in place, many UN-led peace efforts have been successful, and the

number of both civil conflicts – the primary context in which crimes against humanity occur - and of episodes of mass killing is dramatically down.

But we certainly still cannot be confident that world will respond quickly, effectively and appropriately to new human rights catastrophes as they arise. Overcoming global indifference means addressing four big recurring problems: the problem of perception (getting the story out and its gravity understood); the problem of responsibility (confronting traditional taboos against international involvement in sovereign countries' internal affairs); the problem of capacity (having available the appropriate institutional machinery and resources); and, as always, the problem of political will (effectively mobilizing that capacity, in the face of competing priorities and preoccupations). It is to each of these problems that I will now turn.

It should be acknowledged at the outset that competing priorities and preoccupations – what will be seen by governments as more immediately involving national interests – are right now at the core of the general problem of indifference. As the Financial Times columnist Philip Stephens put it recently, “Now, on both sides of the Atlantic, the impulse to engage is giving way to an inclination to retreat”. While genocide, ethnic cleansing and crimes against humanity generally – and all the problems of humanitarian intervention to which they gave rise – were at the centre of international policy debate throughout the 1990s, since 9/11 attention has rather comprehensively shifted to a range of other, and in some respects perhaps more glamorous, security problems: terrorism, Islamism, nuclear proliferation, stability in the Middle East post-Iraq and post-Hamas, and, related in turn to most of these, global energy security.

That said, it is simply not acceptable for governments to look away, claiming more pressing engagements, when crimes against humanity are being committed or are manifestly about to be committed. We know – most recently from the global response to the tsunami disaster - that ordinary people throughout the world *are* conscious of their common humanity, and *are* deeply touched by human suffering wherever it occurs, irrespective of race, colour and creed, at least whenever that suffering is brought home to them graphically and immediately, in a way can understand and relate to.

The governments who represent them will always be more inclined to cynicism, to realpolitik, to weighing and balancing, to discounting emotion. The minuet danced by the US and UK and other members of the Security Council as the horrific evidence from Rwanda mounted in 1994 was as stark an example of this as history will ever record. But while caution must always have its place in diplomacy, there is less a place for it when it comes to crimes against humanity than anywhere else. The core of the notion, as Geoffrey Robertson has put it in his brilliant book *Crimes Against Humanity: The Struggle for Global Justice*, is that this is “a class of crime... which is so peculiarly horrific that the very fact that educated, rational and otherwise respected rulers of men were capable of conceiving and committing it must diminish whatever value there is in being human.” And when confronted with such crime there is a human imperative to act.

The Problem of Perception: Getting the Story Out and its Gravity Understood

The first problem to confront in overcoming global indifference is to ensure that policy makers know that there *is* a problem out there. Early warning as such is not – or at least not now – the problem it has often been said to be: governments and intergovernmental organizations devote considerable attention these days to ensuring that they have some advance sense of the pressures building up in potential crisis areas. A useful recent addition to these institutional ranks is the UN Secretary-General's Special Adviser on the Prevention of Genocide. Non-governmental organizations have also played a significant role here: not least, if you'll forgive me a moment's chutzpah, my own International Crisis Group, which has become quite influential with our constant flow of reporting from both actual and potential trouble spots around the world, both in country specific reports and briefings and through our monthly *CrisisWatch* bulletin.

Even in Rwanda in 1994 it became abundantly clear in all the retrospective enquiries that there was no shortage of relevant information available to the key players. The problem here tends to be not so much what policy-makers don't know, or can't know: it's what they don't *want* to know, or don't want to act upon. (Far be it from me to draw any parallel with recent events Australia...)

In many complex technical areas, like weapons proliferation, and on issues related to intent, the lack of good intelligence, or the unavailability of nationally-collected intelligence to intergovernmental organizations can be a real problem for policy makers. But large scale crimes against humanity – and by definition crimes against humanity are large scale - tend to be rather harder to conceal.

More important than just getting the basic information out is establishing a perception, in the minds of policy makers and those who influence them – and in this context that includes the general public - of the *seriousness* of what is occurring. In a world where every news bulletin describes trouble somewhere, and the market in human misery is, unhappily, highly competitive, the task for those who want to overcome indifference is not just to get out the information that something bad is happening, but to establish a general recognition that it's so bad, and so wrong, that it cannot be ignored.

Good reporting by good journalists in influential newspapers can be highly important in this respect – Nick Kristof's heartrending stories in the *New York Times* on Darfur and the plight of women in Pakistan spring to mind. But television reporting is even more crucial in getting stark and effective messages to very wide audiences. The unhappy truth of the matter here, however, is that the 'CNN effect', for all its importance, is highly erratic: media crews are not always where they could be or should be, travel budgets are usually tight, and producers are hard to persuade on the merits of stories. While the International Crisis Group has been highly successful in persuading major US network programs like ABC Nightline to run stories on the Darfur, Uganda and the Congo over the last two years, it hasn't been easy.

Perception and the 'G' word. Given the difficulty of generating attention for conscience-shocking human rights violations that might otherwise pass unnoticed in the rush of international events, and to try to create a climate in which governments will feel

an obligation to take strong action, there has been an increasing tendency in recent years to label situations as 'genocide', calling in aid the language of the 1948 Genocide Convention which provides that 'genocide is a crime under international law which they undertake to prevent and punish'. The attractions of this course seemed to be, if anything, enhanced by the strenuous efforts of the US and others in 1994 *not* to label the events in Rwanda genocide, in the apparent belief that to do would immediately create a duty to intervene

While highly understandable, this is an approach which is fraught with risk, as the course of events in Darfur have shown all too clearly. The trouble with the Genocide Convention is that its definitional language is very precise, and susceptible as a result to endless legal argument. It requires that certain defined acts be "committed with *intent to destroy, in whole or in part*, a national, ethnical, racial or religious group", which gives rise to some real difficulties for prosecutors. An obvious threshold one, though this has not been in issue in Darfur, is that the definition of victims is in fact rather narrow: they must be members of an identifiable "national, ethnical, racial or religious group", not one defined by its politics, or culture or educational or economic status. So not even Cambodia counts as a genocide, since the overwhelming majority of the nearly two million people who died under the Khmer Rouge's murderous regime were of exactly the same race, ethnicity, nationality and religion as their persecutors.

The biggest legal difficulty, and the show-stopper in Darfur, is that it is extremely hard in practice to establish, even on a *prima facie* basis, the requisite element of *intent to destroy, in whole or part*, the targeted group. This was exactly the problem which confronted the UN Commission of Inquiry on Darfur when it reported in February 2005: while accusing the Khartoum government of multiple abuses of international humanitarian law, saying in so many words that "massive atrocities were perpetrated on a very large scale and have so far gone unpunished", it was unable to find sufficient evidence that the killing and village-burning and raping that had occurred was actually *genocidal* in its intent. And the result of course was to give a major propaganda victory to the Sudanese leadership, whose behaviour on any view was, and remains, ugly, indefensible and deserving of the strongest international response.

The final unhappy irony about calling Darfur a genocide, as the U.S. Congress and Bush administration have now repeatedly done, is that this has not translated in any way into an enhanced effort to 'prevent and punish' the crimes being committed. It is hard to judge which is morally worse: not using the 'g' word because you don't want to act (as with the Clinton administration on Rwanda in 1994), or (as now) using the 'g' word but still not acting.

My own view, which I know is shared by many who work in this field, is that whatever the temptation to gain extra profile for a cause by using the 'g' word, in the great majority of cases we would be far better off resisting that temptation and not using it at all. Over and over again we find the lawyers' issue of 'genocide or not genocide' becoming the issue, when the *real* issue is the need to act to protect people when *atrocious* crimes of any kind are being committed, or about to be committed, and to hold the perpetrators to effective

account. I don't share the view of some that the term 'genocide' should be confined only to the Holocaust – there are some cases, like Rwanda, where the scale of the crimes are so great, and the legal issues so much beyond argument, that no possible harm, and maybe some good, can come from applying the label. But overall the risks outrun the rewards.

I have long been attracted by the proposal of David Scheffer, former US ambassador at large for war crimes issues in the Clinton administration, that in order to avoid these unedifying and often (as in Darfur) counterproductive semantic arguments, which constantly distract attention from the need for effective action, we should all just use the generic expression "*atrocities crimes*" and leave it to the prosecutors and judges in the international courts, or courts exercising international jurisdiction, to work out which one of the various well-established branches of international humanitarian law has been breached in any particular case – i.e. whether what is involved is a 'war crime' (which basically means a serious breach of the Geneva Conventions governing wartime behaviour in relation to both enemy forces and civilians); a 'crime of aggression' (or 'crime against peace', something now basically covered by the UN Charter, which expressly prohibits waging any war that is not either legitimate self-defence or authorized by the Security Council); a 'crime of genocide' (as originally established by the Genocide Convention); or a 'crime against humanity' (a more general class of atrocity crimes, originally established by the Nuremberg Charter and now spelt out, along with the other categories of crime, in the Rome Statute of the International Criminal Court).

It may be, on reflection, that rather than trying to introduce a new term – 'atrocities crimes' - into this already crowded and confusing field, a better course would be to simply encourage general use of the familiar label 'crimes against humanity'. That expression may not be broad enough to cover (in the way a new label of 'atrocities crimes' would) war crimes and crimes of aggression, but it is certainly broad enough to include everything else we are concerned about - including genocide, which is best understood not as a wholly separate category of crime but simply as a subset, or one specific kind, of crime against humanity. The definition of 'crimes against humanity' in the Rome Statute includes, after all, murder, extermination, enslavement, deportation, imprisonment, torture, rape and other grave sexual violence, persecution, enforced disappearance, apartheid and 'other inhumane acts of a similar character' – provided in each case that the acts in question are "committed as part of a widespread or systematic attack directed against any civilian population". And that should be wide enough for anybody.

The Problem of Responsibility: Overcoming the Sovereignty Obstacle

Getting the story out and having its seriousness understood is only the first step in overcoming indifference about crimes against humanity. The second step is to overcome the traditional view of states that, to put it bluntly, sovereignty is a license to kill. Undermining that view of the world has been a long, slow process, but in recent years some very dramatic progress has been made, and as an exercise both in intellectual history and real-world policy making this is a story well worth telling.

In understanding how far we have come the best place to begin is the UN Charter of 1945. The UN founders were overwhelmingly preoccupied with the problem of states waging war against each other, and took unprecedented steps to limit their freedom of action in that respect. But on the question of what constraints might be imposed on how states dealt with their own subjects, the Charter language was very traditional indeed, with Article 2(7) providing: “Nothing should authorise intervention in matters essentially within the domestic jurisdiction of any State”.

One big agreed exception to the non-intervention principle was the Genocide Convention of 1948. But it was almost as if, with the signing of this convention, the task was seen as complete: nothing was ever done to implement it. This state of mind was reinforced by the large increase in UN membership during decolonisation era – states all newly proud of their identity, conscious in many cases of their fragility, and who saw the non-intervention norm as one of their few defences against threats and pressures from more powerful international actors seeking to promote their own economic and political interests.

With the arrival of the 1990s, and the end of the Cold War, the quintessential problem became that of civil war and internal violence perpetrated on a massive scale. With the break-up of various Cold War state structures, most obviously in Yugoslavia, and the removal of some superpower constraints, conscience-shocking situations repeatedly arose, but old habits of non-intervention died very hard. Even when situations cried out for some kind of response, and the international community did react through the UN, it was too often erratically, incompletely or counter-productively, as in Somalia in 1993, Rwanda in 1994 and Srebrenica, in 1995. Then came Kosovo in 1999, when the international community did in fact intervene as it probably should have, but did so without the authority of the Security Council in the face of a threatened veto by Russia.

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

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

The task of meeting this challenge fell, in the event, to the Canadian government-sponsored International Commission on Intervention and State Sovereignty (ICISS), which I had the privilege of co-chairing with the Algerian diplomat Mohamed Sahnoun, and which presented its report, entitled *The Responsibility to Protect*, at the end of 2001.

The Commission made four main contributions to the international policy debate which, it seems fair to say, have been resonating ever since.

The first, and perhaps ultimately the politically most useful, was to invent a new way of talking about humanitarian intervention. We sought to turn the whole weary debate about the 'right to intervene' on its head, and to re-characterise it not as an argument about any 'right' at all, but rather about a 'responsibility' – one to protect people at grave risk – with the relevant perspective being not that of the prospective interveners but, more appropriately, those needing support. The Commission's hope - and so far, broadly, our experience - was that with new language entrenched opponents would find new ground on which to more constructively engage, just as proved to be the case between developers and environmentalists after the Brundtland Commission introduced the concept of 'sustainable development'.

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

The third contribution of the Commission was to make it clear that the 'responsibility to protect' was about much more than intervention, and in particular military intervention.

It extends to a whole continuum of obligations: the responsibility to *prevent* these situations arising; the responsibility to *react* to them when they did; and the responsibility to *rebuild*, particularly after a military intervention – of which the most important is the responsibility to prevent.

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

It is one thing to develop a concept like the responsibility to protect, but quite another to get any policy maker to take any notice of it. Departmental bookshelves are full of barely

opened reports by blue ribbon commissions and panels. The most interesting thing about the *Responsibility to Protect* report is the way its central theme has continued to gain traction internationally, even though it was almost suffocated at birth by being published in December 2001, in the immediate aftermath of 9/11, and by the massive international preoccupation with terrorism, rather than internal human rights catastrophes, which then began.

The concept was first seriously embraced in the doctrine of the newly emerging African Union, and over the next two to three years it won quite a constituency among academic commentators and international lawyers, important with international law being the rather odd beast that it is – capable of evolving through practice and commentary as well as through formal treaty instruments.

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

...we are prepared to take collective action, in a timely and decisive manner, through the Security Council... should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

That this endorsement happened was anything but inevitable. Not much else of any significance was agreed by the Summit, despite all the preparatory buildup and high expectations. A fierce rearguard action was fought almost to the last by a small group of developing countries, joined by Russia, who basically refused to concede any kind of limitation on the full and untrammelled exercise of state sovereignty, however irresponsible that exercise might be. What carried the day in the end was not so much consistent support from the EU and U.S. – which after the invasion of Iraq was not particularly helpful in meeting these familiar sovereignty concerns. Rather it was persistent advocacy by sub-Saharan African countries, led by South Africa; a clear - and historically quite significant - embrace of limited-sovereignty principles by the key Latin American countries; and above all some very effective last minute personal diplomacy with major wavering-country leaders by Canadian Prime Minister Paul Martin, demonstrating the clout that middle power countries can have when they try.

A further important conceptual development has occurred since last September's Summit: the Security Council has just adopted, on 28 April, after months of internal debate, a thematic resolution on the Protection of Civilians in Armed Conflict which contains, in an operative paragraph, an express reaffirmation of the World Summit conclusions relating to the responsibility to protect. The significance of this is that a

General Assembly resolution may be helpful in identifying relevant principles, but the Security Council is the institution that matters most when it comes to executive action. The toehold has been carved.

On any view, the evolution in just five years of the 'responsibility to protect' concept from a gleam in a commission's eye to what now might be described as a broadly accepted international norm is an extremely encouraging story. But it's still not the whole story. The recognition of the responsibility to protect as a principle is one thing, its practical implementation quite another. What remain to be overcome, above all else are problems of capacity and will, and it's to these that I now turn.

The Problem of Capacity: Having Workable Institutions and the Resources to Support Them

The best of all ways of dealing with crimes against humanity is of course to prevent them from happening in the first place. There are many forms of 'soft power' which can advance that cause, all of which require effective institutional delivery mechanisms and resources: development and technical assistance strategies, for example, designed to improve the quality of governance, to build more confident inter-ethnic and communal relations, and reduce the potential for economic grievance becoming explosive.

Without wishing to downplay the utility of these soft power strategies, when it comes to crimes against humanity it is probably 'hard power' responses that have the greatest impact: the availability of effective legal institutions, creating the fear before the event, and the certainty after the event, that crimes will be prosecuted and punished; and the availability in extreme cases of military force to halt or avert large-scale catastrophe occurring.

Courts. When it comes to reducing legal impunity, a remarkable amount has been achieved in recent years. Domestic courts around the world (including the one across the road from me in Brussels, most famously in its conviction of the Rwandan nuns who set fire to a building full of Tutsis sheltering in their convent) have become more ready to claim and exercise 'universal jurisdiction' in relation to crimes against humanity: the international law principle here being that some offences are so serious that any court anywhere is inherently empowered to try and punish them, irrespective of their place of commission, or the citizenship of offender or victims.

More specifically, and more practically given the complex and controversial nature of the prosecutions involved, a series of ad hoc tribunals have now been established, or are in the process of being established, to try offenders: fully international courts in The Hague for crimes committed during the Balkan wars, and in Arusha for those involved in the Rwanda genocide; and hybrid international-local ones in Sierra Leone, Timor-Leste, Bosnia, Burundi, Cambodia and Lebanon.

Most importantly of all, the International Criminal Court was finally established by the Rome Statute in 1998, and is now operative in The Hague - notwithstanding fierce,

prolonged and indefensible opposition from the U.S throughout its gestation and birth, to which I am glad to say that Australia for once did not succumb. Although its jurisdiction only extends to crimes committed after its statute came into force in 2002, and it will have to learn fast how to circumvent the many personnel, procedural, budgetary and other problems that have afflicted its ad hoc predecessors, the ICC remains the great hope of all those of us who have been arguing for years for a genuinely workable and effective system of global justice.

The biggest single problem still confronting all the international courts, as I indicated at the outset of this talk, is the difficulty of apprehending indictees like Kony, Karadzic and Mladic when there is no cooperation from the countries in which they are sheltering, and sometimes even when there is. There is presently no international sheriff's or marshal's office, or police force, or standing military force available to do the job, and it may never prove possible to create them, although the possibility certainly needs to continue to be seriously explored; and sometimes the task of apprehension it proves, as we have seen, to be beyond the combined resources of even a NATO force.

Military Coercion. Beyond the international court system, the whole international security system – starting with the Security Council - has a major sharp-end role to play in deterring and responding to crimes against humanity. The logic of the embrace by the international community of the responsibility to protect principle is that if conscience-shocking catastrophe cannot be averted any other way, there will be coercive intervention. There are many judgements to be made in any given case about whether such interventions should occur, and many criteria to be satisfied. But what ought not to be in doubt is the physical capability of the world to supply from its combined resources the necessary troops and logistic support to make these interventions happen when they have to happen.

But unhappily that is all too often exactly what *is* in doubt. The problems here are all very familiar ones. Those countries with apparently massive capacity – in terms of both personnel numbers and equipment - are often preoccupied with battles and deployments elsewhere, or have the wrong kind of troop configurations and equipment to do the fast and flexible jobs most often required. Throughout the developed world, and Europe in particular, in country after country, the number of troops operationally deployable at any given time is a tiny percentage of the men and women in uniform, although this is gradually beginning to change. In the developing world, there may be no apparent shortage of boots able to go on the ground – but there will be issues of training, command, control and communications capability, transportability and general logistic support. And for any proposed multinational deployment there will be issues of planning, mission control, and field command – who is responsible for what, and interoperability

The present situation in Darfur is a classic demonstration of the problem of military implementation of the international responsibility to protect. For a start, as with Indonesia and East Timor, we seem fated to depend on Sudan's consent to any external military presence. There are all sorts of problems standing in the way of a full-frontal coercive

intervention, not only the huge resources that would be required and the difficulty in finding them, but the way in which this will inevitably be misinterpreted – because it could only happen with major support from the U.S. and EU - as another chapter in the West's war on Islam.

At present, under the current African Union Mission in Sudan (AMIS), which is accepted by Khartoum, there are only some 7000 inadequately mandated and insufficiently mobile and otherwise militarily capable personnel on the ground. In principle agreement has been reached on the UN taking over the operation towards the end of the year, but this is increasingly being talked about, including within an increasingly nervous UN Secretariat, as being contingent on a peace agreement being reached – and that is presently not in sight.

In the International Crisis Group's judgement, at least 12,000 fully mandated troops – desirably many more, but this number at a minimum – are needed on the ground, and supported from the air, right *now* to protect villages against further attack or destruction, protect the displaced against forced repatriation and intimidation, protect women from systematic rape outside the camps, provide security for humanitarian operations, and neutralise the government supported militias who continue to prey on civilians. But the extra 5,000 troops that are needed to supplement the present inadequate African Union force, are presently nowhere to be seen.

No individual African country has that number available, and none are being volunteered by the European countries, or NATO countries, or other developed countries like Australia which could, on the face of it, make a difference. They are presently very comfortable sheltering behind the African Union's unwillingness to accept outsiders, particularly non-Islamic northerners, into the fray, but the truth of the matter is that they are neither able nor willing to provide the necessary resources. What they are best configured to supply, and most comfortable negotiating, as Kofi Annan has been heard to ruefully say, is some quick in-and-out heavy lift or other logistical support, a handshake and a photo opportunity.

A great deal continues to be said about the weakness of the UN and other international institutions, and a great deal of this is perfectly accurate. But for all its shortcomings, and appearances to the contrary, the international security system has delivered some remarkable results over the last decade or so, as well documented in the recently published *Human Security Report*, the report of the High Level Panel, presentations by the head of the UN Department of Peacekeeping Operations and elsewhere.

We have seen a dramatic decline in the number of genocides and other mass killings, by some 80 per cent between 1989 and 2001, notwithstanding Rwanda and Bosnia; a parallel dramatic decline in the number of conflicts and battle deaths (with the world at a hundred-year low in terms of those being killed); and an equally dramatic increase in the number of civil wars resolved by negotiation (with more in fact resolved this way in the last 15 years than in the previous two centuries, and with two old conflicts going out of business for every new one starting up). And the best explanation for all this is simply

the huge increase in the level of international preventive diplomacy, diplomatic peacemaking, peacekeeping and peacebuilding operations, for the most part authorised by and mounted by the United Nations, that has occurred since the end of the Cold War.

At the end of the day any commentary on the weakness of international institutions should be, as often as not, a commentary on the lack of commitment by their member governments to improving them. Buckpassing is a familiar phenomenon in most walks of life but it reaches epidemic proportions when it comes to the UN.

Australia, unhappily, has just been exposed as being as bad as anyone else in the world in this respect: with the Prime Minister telling the AWB inquiry last week that it was not Australia but the UN who should have policed the Security Council resolution requiring governments to prevent kickbacks of Oil-for-Food funds to Iraq – and not only that but our own domestic legislation implementing that prohibition as well! When a country defaults on its legal and moral obligations on the scale in issue here in order to protect its wheat trade, it is difficult to criticize China for its foot-dragging over sanctions against Sudan to protect its oil interests.

The Problem of Political Will: Taking Effective Action

This brings us squarely to the last of the problems which have to be overcome if we are to effectively deal with crimes against humanity – the endemic problem of mobilizing political will to act in the particular case. All the other ingredients can be there – the knowledge of what's happening or about to happen, the acknowledgement of general responsibility, even the capacity and resources to act. But still there can be, and often is, a reluctance by governments – and the intergovernmental organizations in which they sit - to jump the final hurdle.

My short point is that we shouldn't despair about this. The problem of finding the necessary political will to do anything hard, or expensive, or politically sensitive, is just a given in public affairs, domestically or internationally. The evident absence of such will should not be a matter for lamentation, but mobilization. For every Indian Ocean tsunami that generates a massively sympathetic international human response, and an outpouring of material support, there is a Pakistani earthquake, just about as horrendous in its human consequences, that does not. We have to live with these vagaries in the human psyche, and our various body politics, and work on ways of overcoming them. Political will is not hiding in a cupboard or under a stone somewhere waiting to be discovered: it has to be painstakingly built.

All politics is in a sense local, and the key to mobilizing international support is to mobilize domestic support, or at least neutralize domestic opposition. And I've always believed, inside and outside government, that the key to mobilizing that support, through the media and from decision makers themselves, is to have not just good organization and good lobbying techniques and good contacts, but above all good *arguments*, intelligently and energetically advanced: they may not be a sufficient condition but are always a necessary one for taking difficult political action.

Those arguments may be *party interest* arguments designed to consolidate a government's vocal domestic base (always an important element in the Bush Administration's interest in Sudan, such as it has been); *national interest* arguments (much easier to make now in relation to 'quarrels in far away countries between people of whom we know nothing', in Chamberlain's terms, because of what we do know now about the capacity of failed states, in this globalised world, to be a source of havoc for others); *financial* arguments (in terms of a million dollars worth of preventive action now saving a billion dollars worth of military intervention later); or even *moral* arguments (given that however base politicians' real motives may be, they always like to be seen as acting from higher ones) .

When it comes to mobilizing political will internationally – in intergovernmental organizations like the UN, EU, African Union and NATO - additional players come into the picture: the UN Secretary General himself (with his own capacity under Article 99 of the Charter to bring to the attention of the Security Council any matter which in his opinion may threaten international peace and security), international NGOs such as my own and, as always, CNN's cameras.

But while international political will is more than just the sum of its national parts, my own judgement, for what it's worth, is that the national parts are still crucial. And that doesn't just mean the Security Council Permanent Five and the other really major players. It means the middle powers, and indeed any government at all which is seen as consistently principled and having a mind of its own, and that has ideas, and creativity and the energy and stamina with which to pursue them. I mentioned earlier as a model of its kind the particular role played recently by Canada, and personally by its former Prime Minister Paul Martin, on the responsibility to protect issue.

Australia has played such a role from time to time in the past - in international conflict, human rights and humanitarian issues as well as many others - and it remains my fervent wish that we play such a role again, consistently, credibly and constructively, on the international stage. I'm constantly proud, as I meet policy makers around the world, of the reputation for competence, professionalism and commitment that individual Australians abroad, working in difficult and sensitive areas, continue to have.

We are a country that has a tremendous amount to give. And nowhere more so than in ensuring that when the world says 'never again' next time, it really means it.