



**UNITED NATIONS HIGH COMMISSIONER
FOR HUMAN RIGHTS**



**Address of Louise Arbour, UN High Commissioner
for Human Rights**

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The Rights of Others

Madam Chairperson,
Ladies and Gentlemen,

Yesterday I gave a talk at Chatham House, where I spoke about the responses of governments to terrorist activity and their implications on human rights. I spoke mainly about two of these issues that have led to considerable debate here in the UK and Europe, and elsewhere. The first is the alleged use of secret detention centers and of irregular transfers of persons suspected of terrorist activities, which would allow governments to detain them without any legal process and obtain information from them using interrogation methods that would be impermissible under national or international law. The second and related issue is the use of diplomatic assurances to justify the return and transfer of suspects to countries where they face a risk of torture. I postulated that the main difference between what some have described as the “new normal”, particularly post-9/11, and the “old normal”, has to do both with the magnitude of the perceived threat posed by international terrorism and with the response that some governments appear to be employing to address it, a response tainted by secrecy and a tendency to avoid judicial scrutiny.

In looking at this issue overall, we must never lose sight of the legitimate expectations of the victims of terrorism: to compensation, to justice and to protection from further assault. The roll call of terrorist victims is a heavy one, from New York, to Bali, to Baghdad, to Beslan. No-one who witnessed the destruction and loss of life inflicted in this city last July can be in any doubt as to the nature of the challenge posed by terrorism. Equally, no-one who witnessed the bravery and humanity of the

people of London in the aftermath of the bombings can be in any doubt as to the simply priceless value of that which terrorism seeks to destroy.

This is a vital point to bear in mind.

The seriousness of the challenge posed by the need to combat terrorism must not be underestimated. In fact, its most unique aspect is that it calls for what traditional criminal law is least best equipped to address, that is the prevention of specific criminal activity. Nor should be underestimated the critical obligation of governments to provide for the safety and security of all those who fall under their authority. In other words, they have a responsibility to protect.

States take very seriously their responsibility to protect their citizens from international terrorism, and rightly so. There is no doubt that States are obliged to protect their citizens from terrorist acts. Fundamental human rights are at stake, including the right to life and the right to security. States have the duty to secure these rights by putting in place effective measures to prevent and deter the commission of acts of terrorism.

Perhaps one of the greatest achievements of the World Summit of last September in New York is the acceptance of this responsibility to protect in other circumstances. The seeds for protection were indeed planted in an Outcome Document that recognizes loud and clear the responsibility to protect populations from gross violations of human rights. All 191 Member States of the United Nations, a record number of which, 162, were represented by their Head of State or Government, declared that, "[e]ach individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement ... We accept that responsibility and will act in accordance with it."

This, in itself, is a significant, even revolutionary, commitment, particularly since by their very nature most international crimes are, as a general rule, committed by State officials, with their complicity or through their wilful blindness.

The next commitment made by the Member States at the World Summit is that much more crucial: "The international community, through the United Nations, also has the responsibility to use appropriate ... peaceful means ... to help protect populations from [these crimes]. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, ... should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity."

This can indeed be the seeds of the real revolution, both in law and in practice. To date, the international response to major human rights crises has been mostly selective, ad hoc, improvised, and reactive.

I mention that the seeds have been planted because the question remains as to whether this commitment is mere rhetoric or whether it actually, for the first time, paves the way for concrete and coordinated action to protect threatened populations.

But our current understanding of life and human security is often self-serving. Perhaps one of the greatest setbacks brought about by the reaction to international terrorism has been the reduction of our understanding of the right to life and to security to the immediate fear of criminal killings.

Yet in today's world, it is not terrorism and its arbitrary killings that constitute the greatest threat to the right to life. Nor is it, as serious and heinous as they are, the four international crimes on which the responsibility to protect currently focuses. Extreme poverty, hunger, inequities in health and education, inequitable distribution of resources, and an absence or erosion of justice and of the rule of law generate more insecurity, lead to more instability and endanger more lives. These attacks on the right to life are more invidious and target significantly different populations.

Allow me today to firstly, and briefly, address the issue of how States respond to the threat of terrorism and how, in their legitimate attempt to protect the right to life, they need to also ensure that they do not infringe on other rights which form part of it and give substance to it. Secondly, and mainly, I will discuss the embracing by the United Nations Members States of the responsibility to protect populations from genocide, crimes against humanity, war crimes and ethnic cleansing and will argue that while this development is to be celebrated, it must also be understood, and developed, in its potential for enhancing the protection of all human rights. Our understanding of the responsibility to protect must go beyond protection from the most serious international crimes. Our commitment to protecting human life will indeed continue to fall short until we develop a fuller appreciation, one which requires us to acknowledge, and act on, a more holistic understanding of the right to life and the indivisibility of that right from all human rights.¹

Counter-terrorism and human rights

The various terrorism-related resolutions adopted by Security Council signal that States are under an international legal obligation to take strong action against terrorism. However, as stressed in Security Council resolution 1456 (2003), they must do this in conformity with their obligations under international law, including human rights law.

Human rights law circumscribes state responses to terrorism more directly than it prohibits the conduct of terrorists. Human rights law addresses States, while domestic (and, in certain circumstances, international) criminal law addresses

¹ Some of these issues have also been explored in previous statements, available on OHCHR's website at www.ohchr.org.

terrorists. As a result, arguments based on human rights may suffer from a rhetorical disadvantage as they appear to unduly impose on States one-sided constraints. They may appear to disadvantage States in their legitimate efforts to prevent and suppress terrorist crimes. In short, human rights law is easily portrayed as offering to trade the security of all for the liberty of a few.

However, even though it may be painted as an obstacle to efficient law enforcement, support for human rights and the rule of law actually works to improve human security. A response to insecurity based on human rights is both more balanced and rational, and presents the singular advantage of dismantling, rather than perpetrating, the root causes of insecurity. The United Nations Secretary-General, Kofi Annan, in his report 'In Larger Freedom', said:

It would be a mistake to treat human rights as though there were a trade-off to be made between human rights and such goals as security or development. ... Strategies based on the protection of human rights are vital for both our moral standing and the practical effectiveness of our actions.

The centrality of human rights lies at the heart of the reform undertaken by the United Nations, as reflected in the Outcome Document adopted at the World Summit last September. Human rights is not a luxury that can be enjoyed after development and security are fully secured. Rather, it is a precondition to both, an antidote to irrational reactions triggered by fear that perpetuate both underdevelopment and insecurity.

Human rights provide a framework for resolving disputes, even those engaging our most fundamental values and beliefs, that relies on rationality, impartiality and reason, rather than force, intransigence and intolerance. As the preamble of the Universal Declaration makes clear, only human rights protected by the rule of law prevent individuals from being 'compelled to have recourse, as a last resort, to rebellion against tyranny and oppression'.

Contrary to a superficial understanding of human rights as individual self-interested pursuits, human rights are fundamentally a recognition of the rights of others. This is particularly so when fundamental rights and freedoms are advanced by unpopular and vulnerable minorities to counteract the so-called tyranny of the majority.

Ironically, when we are asked to decide how much of our liberty we are willing to surrender to increase our security, we hear, in reality, how much of the liberty of others we are willing to sacrifice for our own security. How many of my compatriots am I willing to allow to be transferred to countries where they will likely be tortured in order for me to feel secure? How many foreigners am I willing to allow to be detained indefinitely without charges if that is what it takes for me to feel secure? Obviously, we never hear the question to be: am I willing to subject myself to arbitrary detention or to the risk of torture so that my neighbour feels safer?

The traditional paradigm that it is better to let ten guilty persons go free than to punish one innocent has been put into question in the fight against terrorism. It is

useful to compare the “ten to one” metaphor and the following observation in a recent case here in the United Kingdom, since reversed by the House of Lords² :

But unless one is willing to adopt a purist approach, saying that it is better that this country should be destroyed, together with the ideals it stands for, than that a single terrorist should be detained without due process, it seems to me inevitable that the judiciary must be willing ... to put an appropriate degree of trust in the willingness and capacity of Ministers and Parliament, who are publicly accountable for their decisions, to satisfy themselves about the integrity and professionalism of the security service. [my emphasis]

In my respectful view, this carries the fundamental misconception that a human rights approach, purist or otherwise, is adverse to security concerns. Human rights do not impede the protection of national security; they are, at least in democratic societies, at the heart of national identity. Consequently, in my view, a country is as much at risk, and so are the ideals it stands for, by the collapse of its human rights norms, and of the rule of law that stands as their guardian, than it is by the threat of terrorist action. The most profound insecurity does not emanate from foreign threats, but from internal temptations to let erode the foundations upon which national identity is built. This fear may not be as immediate and palpable as that triggered by a bomb, but it is perhaps deeper. To fight insecurity within the framework of human rights is to fight with our strongest weapon, our deepest values; it is the protection of human security in the most profound sense.

As eloquently put by President Aharon Barak of the Israeli Supreme Court:

This is the fate of democracy, as not all means are acceptable to it, and not all methods employed by its enemies are open to it. Sometimes, a democracy must fight with one hand tied behind its back. Nonetheless, it has the upper hand. Preserving the rule of law and recognition of individual liberties constitute an important component of its understanding of security. At the end of the day, they strengthen its spirit and this strength allows it to overcome its difficulties.”³ [my emphasis]

As has been argued in a paper prepared in the context of a broad research on Security, Terrorism and the UK which is published by Chatham House, “...social fears today have little to do with the actuality, or even possibility, of the presumed threats that confront us. Rather, they are often a reflection of social isolation, political cynicism and mistrust. Hence any purported solution must be conscious of the need to build up social bonds, rather than undermining them.”⁴

² By Lord Justice Brooke in *A, X and Y & Others v. Secretary of State for the Home Department*, [2003] 1 All E.R. 816 (C.A.), since reversed by the House of Lords, *A and Others v. Secretary of State for the Home Department*, [2004] UKHL 56 (2004).

³ Quoted in *An Application under s. 83.28 of the Criminal Code*, 2004 SCC 42, para. 7: H.C. 5100/94, Public Committee Against Torture in Israel v. Israel, 53(4) P.D. 817, at p. 845, cited in A. Barak, "Foreword: A Judge on Judging: The Role of a Supreme Court in a Democracy" (2002), 116 Harv. L. Rev. 16, at p. 148

⁴ Bill Durodié, "Terrorism and Community Resilience- A UK Perspective"

An effective counterterrorism strategy will address political frustration and social conditions that often translate into despair, exclusion, intolerance and extremism of all sorts. It will address extreme poverty and ethnic and racial hatred, promote healthy civil societies and an independent press. It will avoid abusive methods to fight terrorism that generate new, more angry, sympathizers who will embrace a perceived ideal represented by terrorist action, and apologists for their despicable methods.

A holistic understanding of the rights to life and security will ensure that any attempt at protection will not create more insecurity and more fear. It will promote social inclusion and encourage a serious dialogue in promotion of the values we stand for, and with respect for the beliefs of those who differ. This means that a strategy to protect life and security will prevent criminalizing the legitimate exercise of rights and freedoms and will avoid discrimination, including in the techniques used to screen terrorist suspects. It will ensure fair trials and maintain the role of national courts in supervising national counter-terrorism measures. It will provide for the full protection of vulnerable groups, including human rights defenders, non-citizens and journalists. It will understand that torture and ill-treatment and abusive deprivation of liberty are antithetical to any attempt to secure the right to life and to security, for central to those is the notion of human dignity.

Responsibility to protect

While States have strongly asserted their responsibility to protect populations from international terrorism, and have acted on it, their commitment to the protection against other types of violations of the right to life has been at best limited and at worst, selective.

One cannot ignore that even in the presence of blatant violations of human rights, there has often been no intervention to protect threatened populations. Such omissions render even more timely the recognition at the World Summit by all Member States of the responsibility to protect all populations, everywhere.

The significance of this development lies in the important reassertion, at the highest level, of the primary responsibility of national authorities for preventing international crimes, as well as the duty of the international community to take action to protect populations where national authorities fail, whether deliberately or by neglect. In essence, the concept of the responsibility to protect articulates a basis for intervention in the face of our continued tolerance for violations of the right to life and reminds national governments of their duty to prevent violations before they occur.

Not only is it the first explicit acceptance by all Member States of the concept of the responsibility to protect, but this responsibility, which includes an obligation to prevent, goes beyond the crime of genocide.

The Convention on the Prevention and Punishment of the Crime of Genocide, which entered into force in 1951, already creates for State Parties an obligation to “prevent and to punish” the crime of genocide. This “extra obligation” for genocide has sometimes created unjustified hesitation on the part of States to call serious violations “genocide” for fear of triggering the obligation to intervene to protect the targeted populations. This politics of avoidance is well documented in the unconceivable failure of the world to come to the rescue of Rwandans slaughtered in 1994. Now, this uncomfortable obligation has been extended by all Member States to other comparatively serious international crimes.

Clearly, the prevention of gross violations of human rights should not be dependent upon their characterization as genocide, which often can only be determined after a sophisticated and time-consuming factual and legal analysis. In short, the debates as to the exact legal characterization of gross human rights violations should not impede the triggering of the responsibility to protect – which, I reiterate, includes the responsibility to prevent. Thus, for instance, whether or not there is technically a genocide in Darfur becomes suddenly less relevant, at least as far as our collective responsibility to protect the population is concerned. That is at least one less ambiguity.

Regardless of a possible right of unilateral intervention for the protection of threatened populations, what is clear is that most would prefer to see decisions on interventions taken collectively through the United Nations. If any ambiguity remained as to the powers, and indeed responsibility, of the Security Council to intervene in domestic affairs to protect a population from serious violations of human rights and humanitarian law which amount to international crimes, it has been significantly diminished, perhaps extinguished, by the clear commitment States recently made at the World Summit. Of course, the reality remains: when the Security Council is paralysed by the threat or use of the veto or is otherwise unable or unwilling to act, the responsibility to protect, at least so far as the use of force is concerned, will remain a rhetorical if not in fact a cynical commitment.

To this effect, it is important to mention that in cases where the Security Council is unable or unwilling to exercise its primary responsibility for the maintenance of peace and security, the secondary role of the General Assembly in this regard should be considered with special attention before legitimizing unilateral interventions. The reaffirmation in the Outcome Document (para. 80) of the role of the General Assembly relating to the maintenance of international peace and security is significant in this regard⁵.

⁵ For HC’s information: Uniting for Peace Resolution (1950) adopted by GA. It is possible to seek support for military action from the General Assembly meeting in an Emergency Special Session under the established “Uniting for Peace” procedures. These were developed in 1950 specifically to address the situation where the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security. Since speed will often be of the essence, it is provided that an Emergency Special Session must not only be convened within 24 hours of the request being made, but must also, under Rule of Procedure 65 of the General Assembly, “convene in plenary session only and proceed directly to

Now, if we are to build on the window of opportunity afforded by the commitment to the responsibility to protect, we need to examine the risks inherent in a narrow interpretation of that concept and the shortcomings of our current approach.

I would argue that focusing solely on the prevention of four international crimes – as serious and heinous as they are – reflects a deeply-rooted but in my view irrational distinction between the role of the State as the equal guarantor of the two fundamental freedoms articulated by Roosevelt as freedom from fear and freedom from want. It expresses also the privileged position of the international community as the protector – through a robust Security Council – of civil and political rights as against a more timid, consensual and weaker system of protection for economic and social rights.

Each year, about 530,000 women die in pregnancy or in childbirth, and more than 10 million children die before their fifth birthday. The UN Development Programme suggests that this alarming trend is 'fast approaching the point that merits declaration of an international health emergency'.

More than one billion people lack access to safe water and 2.6 billion lack access to improved sanitation. These factors contribute to the spread of diseases which kill an estimated 3,900 children every day.

consider the item proposed for consideration in the request for the holding of the session, without previous reference to the General Committee or to any other Committee." Either seven members of the Security Council or a majority of the members of the General Assembly can invoke the Uniting for Peace Resolution.

Once the Resolution is invoked, the General Assembly could recommend collective measures to "maintain or restore international peace and security." Thus, even in the face of insoluble disagreement in the Security Council, the General Assembly could arguably act to protect populations from genocide, crimes against humanity and war crimes. Using this procedure, the GA recommended the establishment of peacekeeping forces in the Middle East, the legality of which procedure was upheld by the ICJ in the Certain Expenses case. The International Commission Report on Intervention and Sovereignty, at para. 6.29-30, has raised it as a possible option in case of SC's paralysis:

"One possible alternative, for which we found significant support in a number of our consultations, would be to seek support for military action from the General Assembly meeting in an Emergency Special Session under the established "Uniting for Peace" procedures.... Although the General Assembly lacks the power to direct that action be taken, a decision by the General Assembly in favour of action, if supported by an overwhelming majority of member states, would provide a high degree of legitimacy for an intervention which subsequently took place, and encourage the Security Council to rethink its position. The practical difficulty in all of this is to contemplate the unlikelihood, in any but very exceptional case, of a two-thirds majority, as required under the Uniting for Peace procedure, being able to be put together in a political environment in which there has been either no majority on the Security Council, or a veto imposed or threatened by one or more permanent members – although Kosovo and Rwanda might just conceivably have been such cases. The Commission believes, nonetheless, that the mere possibility that this action might be taken will be an important additional form of leverage on the Security Council to encourage it to act decisively and appropriately."

Worldwide, AIDS killed more than 3 million people last year alone. 25 million people are currently living with HIV in sub-Saharan Africa – and only 4% have access to the medicines they need in order to survive.

The vast majority of these deaths occurs in developing countries and – crucially – most are avoidable.

As long as the mobilization of a humanitarian response to the plight of so many remains a matter of charitable pre-disposition or a response to unbearable embarrassment, human rights law will have fallen far short of its intended mark. The Universal Declaration of Human rights makes no such distinction. We cannot conveniently shift from legal to mere moral responsibility when confronted with acts or omissions which equally imperil the lives of those who must rely on the State for their protection.

At the World Summit, the Member States “stress[ed] the need for the General Assembly to continue consideration of the responsibility to protect populations ... and its implications”. It is crucial that a full understanding of prevention be fleshed out so as to include the protection of populations from violations of all of their human rights, from the right to eat to the right to be free from torture.

According to the most recent Human Development Report, the world's 500 richest individuals have a combined income greater than that of the poorest 416 million. A staggering 1.1 billion people live on less than \$1 per day. Those affected are among the most vulnerable to deterioration in their living conditions through poor nutrition; exclusion from education, housing and justice; lack of adequate health care; and restrictions on their privacy and personal security.

At the Summit, Member States also restated their recognition of the inextricable link between social and economic development, security and human rights. This link was understood by the founders of the modern human rights movement and the drafters of the Universal Declaration of Human Rights. The Declaration, and later the international human rights treaty framework that it inspired, reflected an integrated vision of the human being as embodying all the interests and entitlements necessary for a life with dignity – a life allowing the individual security, including freedom from want.

While the founders of international human rights law drafted the Universal Declaration with continual advancement of all rights in mind, we have, in practice, lost sight of this imperative. Even after the reaffirmation of the interdependence of all human rights, many of our strategies are still based on an unhelpful categorization of rights – between civil and political on the one hand and economic, social and cultural rights on the other.

This categorization of rights has worked against implementation for too long. It has enabled the privileging of some rights over others, sometimes for reasons mostly of

political expediency. It has focused attention on violations of single rights without sufficient analysis of the surrounding conditions leading to violations – fostering, for example, an understanding of the right to life in its civil and political context, without much attention to economic and social dimensions. It has delayed or negated implementation of economic, social and cultural rights, reducing them to something viewed as second class – vague and voluntary goals requiring massive investments, rather than minimum standards for a life in dignity. And it has also fostered the invidious perception that economic, social and cultural rights are luxury goods, to be claimed and enjoyed only by societies that can "afford" them.

Yet discriminatory exclusion and inequitable distribution of wealth rest on the same prejudices and stereotypes that tolerate neglect, ill-treatment, marginalization and even violence against certain groups. They are based on deeply rooted beliefs – explicit or not – that some are more deserving than others – more deserving of respect, rewards and protection.

The intensity of these discriminatory assumptions varies and the difference in intensity – from mild indifference to outright hatred – expresses itself in practices ranging from tolerance of police brutality and of social neglect to active participation in torture and the promotion of national and international policies known to imperil the lives of millions.

I believe that we must now move beyond convenient categories of rights towards an understanding of human rights that focuses on people and their capacity to claim the totality of their rights. A broad-based culture of rights requires the development of integrated strategies, beginning with a re-conceptualization of human rights beyond the current entrenched categories.

The responsibility to protect, if it is to be meaningful at all, requires us to move beyond these artificial divides. For a marked characteristic of virtually all communities living in extreme poverty is that they do not have access, on equal terms, to the institutions and services of government that give effect to human rights. This inequality of access, in particular to justice, is often linked to discrimination on other grounds. Although commonly seen as an issue of economic and social rights, the experience of the poor is as likely to be marked by repression as by economic deprivation, and indeed the two are interlinked. Too often, severe inequalities in access to economic, social and cultural rights also create the conditions for other serious human rights violations.

We must examine the strengthening of State accountability with respect to all rights. Unfortunately, the categorization of rights has for too long delayed State accountability in relation to economic, social and cultural rights. There is growing acceptance of the justiciability of economic, social and cultural rights in many countries. Accountability must be further strengthened so that States' responsibility to protect all rights can be enforced at the national level.

Ladies and Gentlemen,

A few months ago, United Nations Member States re-affirmed human rights, security and development as the three pillars of the international order. They accepted a collective responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. And they recommitted to the Millennium Development Goals as a means of fighting poverty.

The challenge is now to put political declarations of state responsibility to protect against violence and socio-economic inequality into practice. While national governments have primary responsibility for putting these commitments into practice, the United Nations system has a crucial role to play.

I have already mentioned the responsibility and potential role of the General Assembly, both in fleshing out the scope and implications of the responsibility to protect – including an expansive notion of the responsibility to prevent – and in exercising its secondary responsibility for the maintenance of peace and security when the Security Council is unable or unwilling to assume its responsibility to protect.

The new Human Rights Council will have a responsibility for "promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind". The Council will be empowered to address situations of violations of human rights, including gross and systematic violations, and to promote the mainstreaming of human rights throughout the UN system.

We could be only days away from the creation of the new Council, replacing the Commission on Human Rights with a stronger, more credible, more effective and more highly placed intergovernmental human rights institution, one that should act as an instrument of early warning and monitoring the violations of the full range of human rights.

The new UN Peacebuilding Commission, established just two months ago, also should play an important role as it takes up its functions to ensure a coherent and integrated approach to post-conflict peacebuilding and reconciliation. In addressing the needs of countries emerging from conflict, the Commission should ensure that the responsibility to protect is integral to all efforts aimed at recovery, reintegration, reconstruction and sustainable development.

Member States also have expressed their unequivocal support for a closer relationship between the High Commissioner for Human Rights and the Security Council: a concrete recognition of the linkage between human rights and peace and security.

Conclusion

In our relentless quest for security and for comfort, we must not lose sight of the centrality of human dignity and of the broad range of rights that give meaning to it.

The fight against terrorism, and the protection against other egregious violations of human rights, will not succeed by the implementation of increasingly repressive measures. The legitimate attention we pay to the more obvious excesses may at times impair our sense of alertness to more subtle, invidious violations of fundamental human rights. There is no need to argue that economic, social and cultural deprivations may be the root causes of terrorism. It is in my view sufficient to state that our collective welfare and security rest upon our willingness to acknowledge the equal entitlement of others. And to act accordingly.

Thank you.