

SUDAN

A CHALLENGE FOR US ALL

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**DEALING WITH DARFUR:
CAN THE WORLD ACT ON ITS RESPONSIBILITY TO PROTECT?**

YALE HARPER FOWLER FELLOW LECTURE
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Thank you so much.

I must tell you that, as an attorney and someone who now teaches law. It is truly an honor to be at Yale.

Because, in so many ways, Harper Fowler was the personification of a progressive legal scholar.

Today, I think he's best remembered for his role in the Griswold case.

But, in fact, his entire career—as an attorney, as a member of the Roosevelt administration, as a respected academic - is the story of a lawyer who understood that, at the end of the day, the purpose of the law must never be to sustain the status quo, but to always—always - advance the cause of justice.

Having been around here for the weekend and having had the pleasure of meeting so many students, I know that is the reason why so many of you chose to study law.

I know it is the reason I did.

My specialty became the intersection of high technology and protecting civil liberties as well as challenging government secrecy.

Many friends of mine have used their legal training in other areas.

But regardless of where we ended up, what inspired many of us was that we had seen how activist lawyers helped tear down the walls of racial segregation, put us on the path to gender equality and created the modern environmental movement.

And, in that process, they helped make America a better, fairer, more decent nation.

They believed, as Martin Luther King once observed, that: “the arc of the moral universe is long, but it bends toward justice.”

He said that back in 1967. At the time I don't think any of us realized just how long that arc would be.

Because even though the cause of justice in our own country has moved ahead, throughout the world today there are hundreds of millions of women, men and children who have been left behind.

They are victims of absolute poverty; they are victims of oppression. And sometimes, they are the victims of genocide -- of governments that refuse to accept the responsibility to protect their own people.

For them each day is a desperate struggle to survive in the face of overwhelming violence--and unspeakable horror.

That is the reality of the people of the Darfur region of western Sudan.

Over the last eighteen months, one-third of Darfur's people--over one million in all -- have been driven from their homes by the Janjaweed militia.

The Sudanese government is backing the militia in an effort to thwart a growing rebellion--and destroy a people's will.

This is not a religious clash, and while it has racial overtones, it is not rooted in some bizarre ideology. This is about power.

Two hundred thousand civilians from Darfur have crossed the border and are now struggling as refugees in Chad.

At least one million are trapped in impromptu displaced persons camps inside Sudan--camps that rise out of a thick dust that turns to impassable mud after even a brief rain.

Just last month, some of these camps came under attack by government soldiers and police--who claimed they were simply moving the displaced to better sites, but also cut off access to humanitarian relief.

To call these "camps" is to misuse the term. Instead they are clusters of human suffering in the desert--places where there are few trees, and not enough water.

The “homes” they live in are built from whatever is available—sticks, the odd bit of thatch, plastic bags, and the woven plastic from food aid bags.

And the stories told by the families living in these hovels are chilling and all too familiar: they tell of armed militia attacking at night; of men, women and children beheaded, stabbed or beaten and left for dead; of wells being poisoned by rotting corpses; and homes burned to the ground.

The reports of rape of women and young girls are many, and growing. 70,000 people already dead and dying at the rate of 10,000 a month.

That is the horror of Darfur.

And it’s happening right now -- this moment: as we are sitting here today.

The Center for American Progress has taken this issue on, as we believe that progressive values demand that all of us act on our collective responsibility to protect the vulnerable.

In September, one of our Senior Fellows, Gayle Smith, traveled to Sudan with Senator Jon Corzine of New Jersey. She then urged that he also go to Addis Ababa to meet with the African Union leadership.

After that trip Senator Corzine then became instrumental in demanding that the omnibus bill in Congress include the provision of an additional \$75 million for the AU mission.

Up until that time, the Bush Administration had allocated only \$2.3 million dollars: that’s roughly what we spend in Iraq every 30 minutes.

The Center has launched an interactive Sudan website and we have joined with our colleagues in the religious community to build grassroots support for more robust U.S. action.

Perhaps most exciting, we are sponsoring and helping to develop a new initiative; the Genocide Intervention Fund. It is the brainchild of two students at Swarthmore who want to raise both public consciousness and money to support the African Union mission.

We're planning a major launch early next year, because we believe - as those students do - that even when our government fails to act, citizens can - and should.

But it's not just for organizations like mine to take this crisis on. I think there's also a special role for the legal profession.

As lawyers, I would argue that we have as great a duty to fight for justice for the men, women and children of Darfur today as we did battling segregation in the 1960s.

Even more, as citizens, I believe we are compelled to see to it that our country--and the international community as a whole--does whatever is necessary to prevent genocide... to protect its victims... to punish its perpetrators...and to help rebuild the devastated societies left in its wake.

And I'm convinced that building the firm, legal basis to make that possible is one of the great challenges of your generation.

Because the responsibility for the genocide in Darfur rests not only with the regime that rules Sudan, but also with international law and its failure to guarantee individuals the protection it has long provided to nations.

That fact is central to the crisis in Sudan today.

And, if the world fails to live up to its responsibility to protect the vulnerable, I can guarantee you that what we're seeing in Darfur will not be the exception. In too many corners of this world it will become the rule.

Now, I do not want to suggest that the entire world has abdicated its responsibility to help the people of Darfur.

While the rest of the world did little more than ring its hands, the African Union--under funded as it is -- negotiated a cease-fire and deployed a small contingent of observers to Darfur.



And when on September 9th of this year, Secretary of State Colin Powell conceded that what is being perpetrated against the people of Darfur is, in fact, genocide the U.S. did finally provide the \$2.3 million in assistance to the African Union that I spoke of earlier.

For its part, the UN Security Council, hampered by tensions borne of Iraq and by members driven by their own national imperatives, has threatened the Sudanese government. But it has not imposed sanctions or proposed intervention. Instead it has simply forecast the likelihood of another Council meeting in the event the Sudanese government refuses to stop the killing.

Let me read you something:

“To reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”

Those words may not sound very familiar, but they appear in the preamble of the charter of the United Nations.

The charter is not simply a mission statement: it is international law -- an international treaty with a true claim to universal applicability.

But if you listen very closely you will notice something of a contradiction in what I just read.

Because the Charter, while articulating the rights of the individual, also speaks of the prerogatives of nations.

And it is that tension between human rights and national sovereignty that is central to the debate over the world's responsibility to protect when individual governments are unwilling or unable to safeguard the lives of their own citizens.

Of course, in 1945, that wasn't weighing heavily on the minds of the UN's founders.

Though it was born at a time when the world finally began to comprehend the dimensions of the Holocaust, the founders of the United Nations were far more concerned with creating a mechanism to avert another world war.

Yes, human rights mattered; but keeping nations from clashing and keeping the Soviet Union in the UN mattered more.

This has been reflected in how the UN Charter has been interpreted.

Chapter VII is the section of the UN Charter authorizing the Security Council to determine the existence of any threat to the peace and to decide what actions, if any, should be undertaken to restore peace and security.

And as we have seen in the events of the last fifteen years, member states can make use of Chapter VII to legitimize intervention by the world community in the affairs of a sovereign state.

So this is a critically important piece of international law.

It is also the provision they refused to invoke to sanction President Bush's war against a threat that was neither imminent, nor as it turned out, actual.

But does Chapter VII sanction and legitimize intervention on humanitarian grounds?

Well, if you were to ask UN members in 1945, they might have said no. But a lot's changed since the UN Charter was signed in 1945.

Western colonialism finally gave way to independence.

And the risk of superpowers going to war has receded.

But what has taken the place of the old order is a new danger: conflicts between less powerful, sometimes impoverished nations. And, as we are seeing in Sudan, conflict within them.

And with those conflicts has also come an increased awareness that state failure in far away places, like Afghanistan, can have a dramatic impact not only on international peace and security, but also on the well being of Americans.

But while Chapter VII can now more easily be used to address a broader range of crises than at the time of the UN's founding, Security Council members have demonstrated very limited will to invoke the authority -- or to back it up with the resources necessary to end killing that does not impact narrowly defined security interests.

And, because of this failure, millions of men, women and children have lost their lives.

In Cambodia. In Nigeria. In Ethiopia. In Somalia. In Bosnia and Herzegovina.

And, only 10 years ago, in Rwanda: perhaps the most stunning failure of the world community in a generation.

All this and more despite the fact that some 45 years ago the member states of the UN specifically approved a Convention on the Prevention and Punishment of the Crime of Genocide.

It is hard to read that document and to conclude anything other than what is occurring in Darfur is genocide.

The convention clearly defines genocide as any one of a series of actions committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group.

That includes killing; injuring or causing mental harm; deliberately inflicting conditions calculated to physically destroy a group in whole or in part; imposing measures intended to prevent births within a group; and forcibly transferring children to another group.

Most importantly, the convention obliges all signatory governments to prevent genocide -- and to punish those responsible.

Admirable sentiment, but even here, national interests have too often trumped human rights in the effort to secure meaningful action to stop genocide or curb other mass abuses of human rights

For example, some UN members with poor human rights records, like China, are fearful that strong action by the world body in Sudan will set a precedent for other human rights interventions in the internal affairs of states.

Other governments, like our own, have been reluctant to consider commitment of the considerable resources, including troops, necessary to end the killings.

Too often it's been this kind of political skittishness--rather than legal uncertainties--that has undercut UN action against genocide. It is the reason why no person--not one -- has ever been prosecuted for genocide in the deaths of 1.7 million Cambodians in the 1970s.

With a record like that, is it any wonder that the convention is failing to deter the Sudanese government from committing genocide in Darfur today?

The bottom line is that the world's ability to stop genocide is determined by its willingness to intervene militarily to protect civilians.

But law also has a role -- because the development of norms that encourage or even obligate members of the international community to step in to save lives -- to make full use of that Chapter VII authority -- makes it easier for right-minded states to act, and also creates pressure and expectations for action.

And in the development of norms, public opinion, politics and our evolving concept of morality can sometimes be as important as the opinions of jurists and other traditional bases of customary international law.

Today, we live in an era shaped by the Internet and other technologies--which haven't only helped globalize the world's economies, but also our sense of outrage.

That, in turn, is helping to create a new paradigm: an appreciation of the world's responsibility to save lives in the face of massive killings, and, with it a new commitment to establishing the ability to intervene under a narrowly defined set of circumstances.

Though belated and inadequately planned the UN's response in both Sierra Leone and East Timor—the deployment of troops within days or weeks -- was a far cry from the indifference shown to Rwanda.

Application of that commitment can be seen in the NATO intervention, though also tragically belated, in Bosnia, and subsequent NATO action in Kosovo.

To be sure, one can question why the international community did not act sooner and whether the strategies adopted were the most effective to safeguard human lives. But in both cases governments made clear that they were not going to walk away -- and that represents progress.

What made these interventions possible was not primarily law as it was written -- in fact, there was fierce debate about the legality of NATO action in Kosovo. Rather, they were made possible based largely on our fundamental sense of morality, which gave those interventions legitimacy.

The question is how do we further develop this normative law; how do we continue to move the responsibility to protect into the mainstream of international law?

Reflecting on the lessons of the Holocaust, Richard Goldstone, the chief prosecutor of the International Criminal Tribunals for Rwanda and the former Yugoslavia said:

“The hope of ‘never again’ became the reality of again and again.”

He is right.

And as Richard Goldstone, Kofi Annan and others have drawn attention to the world's failure to accept its responsibility to protect; they have also helped catalyze the idea of humanitarian intervention as never before.

As many of you may have read, just last week a special commission formed by Kofi Annan -- the High Level Panel on Threats, Challenges and Change -- released its report on the need to reform the United Nations.

Much of the media coverage focused on its proposal to expand the Security Council. Just as important, however, was its emphasis on the need for the UN and its members to accept their responsibility to protect civilians at risk of grave violations of international humanitarian law.

To a great extent, what's been proposed is built on the truly groundbreaking efforts of the International Commission on Intervention and State Sovereignty, established in 2000 by the Government of Canada in response to a challenge by the UN Secretary General. And chaired by Gareth Evans, the former Foreign Minister and Attorney General of Australia and Mohamed Sahnoun, an Algerian diplomat with long experience in the UN.

The commission sought to reconcile the international community's responsibility to act in the face of massive violations of humanitarian norms while respecting the sovereign rights of states.

Rather than make their focus the rights or prerogatives of outsiders to come in, Commission members reformulated the issue in terms of the responsibility of sovereignty and the rights of the governed.

They argued that, in addition to providing states with the right not to be subject to interference, state sovereignty also implies responsibilities: chief among them the responsibility of a state to safeguard the lives of its citizens.

They derived these responsibilities from the human rights provisions of the UN Charter itself, the responsibility of the Security Council to maintain international peace and security, as well as from the body of human rights instruments established since World War II, the most fundamental provisions of which have been accepted as customary international law.

And what if the state can't or won't prevent mass killings of its people? Then, they argued, the rest of the world -- the so-called international community -- has a responsibility to act.

For members of the Commission, the question of authority for an intervention was critically important, as it relates to the key question of legitimacy. Once you believe an intervention may be appropriate, how should it be sanctioned?

There's no question that Security Council authorization for intervention provides the greatest legitimacy. Moreover, some might read the recent UN panel's report as urging against interventions without Security Council approval. But, in fact, there are other ways that interventions can achieve a relatively high degree of legitimacy if the Security Council is prepared to accept the action and there are other factors that demonstrate strong international support.

In Liberia, for example, an intervention was organized and led by ECOWAS: the Economic Community of West African States, and approved by the Security Council after the fact, and its legality was not questioned. In Kosovo, NATO governments all supported the intervention; it was authorized by a vote of the North Atlantic Council; and while the Security Council clearly did not endorse the action, it also did not oppose it -- and, perhaps more importantly, members did not force a confrontation in the Council.

The Commission also argued that we can enhance the legitimacy on interventions designed to end or forestall mass killings -- either through Security Council approval or other means -- by acting pursuant to a set of so-called "precautionary" principles that should characterize these interventions.

The primary purpose of the intervention must be to halt or avert human suffering.

Military intervention must be a last resort -- there must be reasonable grounds to conclude that lesser interventions would fail --- the use of force must be the minimum necessary to secure the objective --and there should be reasonable prospects for success.

As I have suggested, the Commission focused on the question of authority and on precautionary principles to establish international legitimacy for intervention to save lives.

To those wary that this new doctrine could be an excuse for powerful countries to justify any and all military interventions, the Commission could reply that interventions would only be legitimate if they met these common sense tests.

For this reason, I must digress for just a moment to emphasize how U.S. conduct in Iraq has probably set back the effort to establish the norm of a responsibility to protect.

As you'll remember, President Bush and others in the Administration have at times justified the war in Iraq in humanitarian terms -- especially as the case for the intervention to eliminate Iraq's WMD has fallen apart.

Whatever your view on the wisdom of the war, it is clear that the invasion met neither the "right authority" nor the "precautionary" principles of the Commission's report.

To cite just one key example, not even Secretary Powell in his 2003 UN speech tried to argue that the primary purpose of the intervention was to halt or avert human suffering.

The problem, of course, is that by using post hoc the language of human rights and humanitarian rescue in justifying an intervention that fails the Commission's tests, the Bush administration vindicates the view of those who resist the new norm out of fear that it would provide a handy excuse for powerful governments to overthrow regimes they disapprove of.

For this reason, justifying the Iraq war on humanitarian terms is likely to undermine the effort to build a sound, normative basis for future interventions to save lives.

Rather than simply complaining about Iraq, however, I think we have to ask what more can we do to promote this new norm to encourage governments to act to stop mass killings.

To his credit, Kofi Annan has strongly promoted efforts to examine the capacity and the will of the world's governments to respond to humanitarian crises.

This has been pursued through establishment of a blue ribbon panel on peacekeeping in 2000, through debate on this issue at the General Assembly, in particular in 1999 and 2000, and through last week's report of the High Level Panel on Threats, Challenges and Change.

Member states have also engaged the debate, and as I indicated, the more forceful -- albeit belated -- responses to crises in the Balkans, West Africa and East Timor do reflect some progress.

In this regard, the UN and its member states have at least begun to implement peacekeeping reforms -- including those that address the UN's capacity to respond to crises.

But there is still a very long way to go

The Secretary General has established a new Special Advisor on Genocide who can have direct access to the Security Council and make it more difficult for Council members to walk away from crises.

We have even seen the Bush Administration begin to step up to the plate with the creation of a new State Department office to manage U.S. policy on reconstruction and stabilization.

Yes, there's been some progress, but so much more needs to happen.

If we agree on the importance of this principle of the responsibility to protect -- if we believe that it must be accepted and made a central tenet of international law -- how should we make it happen?

We know, for example, that the more this principle resembles a norm, the easier it will be for proponents of human rights to convince the Security Council and UN member governments to act when the next mass killing is threatened or actually occurs.

Moreover, if the norm is widely accepted, Security Council inaction would probably be less of a bar to action by states that may be willing to act to save lives.

Let me emphasize that this is not simply theory: at this moment, Security Council consensus on intervention in Sudan is not at all likely, but such intervention is probably necessary.

If the principle of the responsibility to protect were now widely accepted, governments like China would be harder pressed to oppose a Security Council consensus to act -- and even if they did, their opposition might not undermine the legitimacy of an intervention.

So, what is the best strategy to build support for this principle? I would argue that we need to press acceptance of the responsibility to protect in the Security Council, the General Assembly and elsewhere-- perhaps even in a new Convention.

To be sure, some will caution that launching this effort, and failing, would undermine the norm creation process.

However, there is another argument--and I think it is the more powerful one. It is that if you believe in a principle, you ought to push for it as hard as possible and in as many forums as you can.

That is how a true consensus is created and, when it comes to determining when it's legitimate for the international community to intervene in the affairs of a state, we need to build the most durable consensus we can.

So how do we achieve that global consensus for the responsibility to protect?

How do we forge a consensus that will not only assure effective responses to humanitarian crises, but make it difficult for the governments of the world to ever again shrug their shoulders and walk away?

I think it begins with leadership; American leadership.

First, working with the permanent members of the Security Council -- Britain, France, Russia and China-- our country needs to build support for--and win -- a Security Council resolution that clearly recognizes each nation's responsibility to not only protect, but also to prevent genocide against its own citizens and -- when they fail to do so -- affirms the responsibility of other governments to take action.

A resolution along the lines of what I'm describing would make Security Council authorization of intervention more likely in the future.

And, as I've said, even if authorization for a specific intervention was not forthcoming, the existence of this prior endorsement would increase the legitimacy of an intervention that did not have Security Council backing.

Second, we need a General Assembly resolution that would do the same.

Canada has suggested a resolution that would re-define sovereign responsibilities along the lines proposed by the International Commission on Intervention and State Sovereignty—addressing the responsibilities of sovereign states, and not only their rights.

Canada's proposals are sensible and President Bush should get behind them.

Third, it is time to consider a new convention to complement the contribution made by the Genocide Convention, but which focuses more broadly on mass killings and other mass abuses against civilians, and envisions comprehensive action beyond -- and well before -- prosecution after the fact.

Fourth, we need to recognize that, in practice, it is regional organizations that will have the greatest capacity and inclination, over time, to implement collective interventions to save lives.

In Africa, where so many of the recent atrocities have taken place, this means the African Union, which has already proven that it is able to respond more rapidly and effectively than the UN ever could.

Instead of promoting redundancy, we should work to see that the UN takes greater advantage of the capacity of regional bodies like the AU. Though in principle, I'm not a fan of outsourcing, in this case it makes sense.

But we must do more than simply delegate responsibility to regional actors, particularly in Africa—which has seen more than its share of these crises and bears the lion's share of the world's poverty.

We have to provide those regional organizations with political support and with the training, equipment, logistical capacity and sustainable financing they need to get the job done.

During the Clinton Administration, we launched something called the African Crisis Response Initiative to train African troops for peacekeeping. Though they've renamed it, the Bush Administration has maintained the initiative, and thousands of African peacekeepers have been trained.

These troops need training not only in traditional peacekeeping, but also in the peace enforcement that is required more often than not. We need to ensure that they are interoperable. We should have stand-by packages ready—to provide lift, equipment, intelligence and communications support. Finally, I believe the UN should create a fund—sustained through assessed contributions—that can be accessed on an urgent basis.

Had we had an assistance mechanism up and running, the African Union would right now have the trucks and radios they need in Darfur—and they could have avoided the delays they now face in deploying new observers.

Fifth and finally, in September, UN members will hold a summit level meeting in New York to consider a number of key issues facing the governments of the world, including the findings of the UN's High Level Panel on Threats, Challenges and Change. This will provide an ideal opportunity for member states that are sympathetic to the principle of the responsibility to protect to move to validate and implement these objectives.

How would these reforms have helped the men, women and children suffering in Darfur? It would have helped them in three critical ways.

One, the prospect of armed intervention to prevent genocide—sanctioned by the UN -- might have discouraged the Khartoum government from pursuing its policy to begin with.

Two, acceptance of the responsibility to protect as a new norm in international affairs would have hastened consideration of intervention authorized by the UN Security Council and regional bodies.

Three, a financing mechanism through the UN would have enabled the African Union to take swift and far more comprehensive action than it has thus far.

This is what we can do. This is what we must do.

But what we should never do is what the US did early last fall when Secretary of State Colin Powell testified before Congress that Sudan's government was guilty of genocide in Darfur... and then did essentially nothing to stop it.

What we need to do nationally—and globally—is to create the expectation that when we see genocide occurring we will intervene.

Yes: The law confers rights, but it also assigns responsibilities.

In the past, conventional wisdom had it that our nation and others were obligated to intervene only when and where our strategic interests, narrowly defined, were at stake.

In Haiti, in the Balkans, in East Timor, and elsewhere, we in the Clinton Administration took tentative steps to respond to humanitarian principles. But our efforts, in those and other places, particularly Rwanda, fell short.

For the Bush Administration, humanitarianism has often seemed more of a pretext than a key objective in interventions, and has meant choosing to intervene in Iraq—but not Sudan.

We know there's no guarantee that even the most well-intentioned intervention will work.

And no one needs to remind us that the risks are high. We saw that in Somalia, where 18 U.S. Marines were killed and their bodies were dragged through the streets.

We also know that other obstacles can make effective and timely action extremely difficult.

In April and May 1994, for example, as the genocide unfolded in Rwanda, Cabinet-level national security officials were focused on crises in Haiti and the Balkans.

The magnitude of the killings was not immediately apparent; and the logistical and political challenges in mounting a rescue operation in the wake of the Somalia failure were overwhelming.

Today, the strain imposed on our military by large-scale deployments in Afghanistan and Iraq narrows the options available for any President considering U.S. support for an operation in Sudan.

But by not intervening in Rwanda, our country and the entire world stood by while close to one million people were slaughtered.

Our national security might not have been jeopardized by those deaths.

But our humanity was.

Listen to the words of one Rwandan man, Anastase Ndagijimana.

Not very long ago he took a visitor to his country to the wreckage of a school compound—the site of a mass grave where 15 members of his family were buried.

He bowed his head in front of the grave and told his visitor: “I can understand why no one came to help. We are very far away in Rwanda.”

Sudan is also very far away. And as the crisis in Darfur escalates, the world must make a choice.

We can choose to stand by and issue empty threats as the government willfully refuses to bring the violence to an end; or we can act to save lives in Sudan today while also strengthening a precedent that may save more lives in the future.

As someone who teaches law I have the chance meet with hundreds of bright students every week.

Many hope for careers in business. Some in public service. For many of them, international law is about copyrights and tariffs and trade agreements. And it is all that—but it is also about so much more.

It can be about justice

It can be about peace.

It can be about seeing to it that never again is there a slaughter of innocents like the one occurring today in Darfur.

My challenge to you is that if you haven't thought of making that cause into your career that you take a hard look at it...and consider how you can use this gift you have -- the incredible education you're gaining at Yale -- to create that new norm.

If America hears the voices of the people of Darfur... and if you commit yourselves to put the law to work on their behalf ... perhaps some day, years from now, you'll be able to look your kids in the eye and tell them that when your generation saw unspeakable suffering you were among those who stood up to stop it.

And you'll know that, because of you, the arc of the moral universe still bends toward justice.

Thank you.

