

## THE QUEST FOR PROTECTION: THE ROLE OF INTERNATIONAL ORGANIZATIONS AND NGOs IN SURVEYING HUMAN RIGHTS COMPLIANCE

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*Every State has the primary duty to protect its own population  
from grave and sustained violations of human rights,  
as well as from the consequences of humanitarian crises,  
whether natural or man-made.  
If States are unable to guarantee such protection,  
the international community must intervene...*

H.H. Pope Benedict XVI,  
Address to the General Assembly of the UN,  
18 April 2008

The *raison d'être*, and the final proof, of any human rights *regime* lies in the effectiveness of the protection of the individual human being – and of every human being. It is for checking this effectiveness that compliance is being monitored – at the local, national, and – with increasing vigour – at the international level.

The international system for the protection and promotion of human rights and fundamental freedoms has therefore been developed as a response to insufficient protection, or the lack of protection, at the national level.

Surveying – or monitoring<sup>1</sup> – is not an end in itself: It is the reports about the effectiveness of protection that intend to identify shortcomings, and help rectify them. In spite of a dense web of national, regional, and global human rights ‘instruments’ and ‘mechanisms’, numerous individuals

<sup>1</sup> Monitoring is the term habitually used in the international human rights system for all procedures relating to the control of the implementation for human rights standards at the national level.

continue to be victims of severe human rights violations at the hand of governments. For specific cases when rectification continues to fail, the international community has been discussing a *droit d'ingérence*, the need to enforce protection. This in turn, has led to the concepts of a duty to protect, or a responsibility to protect.

Long before this discussion, the quest for protection<sup>2</sup> has been a central and ongoing concern in the development of the international human rights system:

The quest for protection – like the responsibility to protect – concentrates on the implementation gap between international standards and national, or local, situations on the ground; it has been conducted, at the international level, in the framework of international organizations, both global and regional. International human rights diplomacy, and politics, have been characterized by an offensive, and therefore at the same time also defensive, character, changing from an East-West conflict during the time of the Cold War to a configuration oriented more along North-South lines today (or, as some would argue, towards a clash of civilizations or even religions).

I will take a practical approach, based on my experience in international human rights diplomacy, and identify briefly some of the key challenges in this regard, arguing for a more co-operative approach to the international human rights debate. In the final analysis, what constitutes our key challenge is to garner the necessary political will to be held accountable, and to hold accountable – and the related need for international leadership. Overall, however, the international human rights system has developed very positively and tended to exceed, over the long run, what could have been realistically expected at the moment; so there is reason for cautious optimism.

<sup>2</sup> I am indebted to a long-standing member of the UN secretariat and former acting UN High Commissioner for Human Rights, Dr Bertrand Ramcharan, who has coined this term in his recent book *The Quest for Protection: A human rights journey at the United Nations*.

## 1. FRAMEWORK FOR THE EVOLUTION OF THE INTERNATIONAL HUMAN RIGHTS SYSTEM: FROM CONFERENCE ROOMS TO THE FIELD

### *Political context*

The political context of the evolution of the international human rights system is characterized by the principles of State sovereignty, State responsibility and, more specifically, State accountability. The system is based on international treaties, based on the 1948 Universal Declaration of Human Rights and the two 1966 Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, on the one hand, and, on the other, on political decisions taken in the framework of international organizations, all of this both at the universal and regional levels.<sup>3</sup>

In parallel, and with increasing intensity, the need was felt to develop monitoring procedures and mechanisms, to be able to follow up on these decisions in a more systematic manner.

Later on, capacity was built also to provide guidance, and assistance, for following up on the results of monitoring – for bringing, in other words, the debate from the global (or regional) level to the effective implementation of international standards at the national (and local) level. Increasingly, international actors strengthened their capacity to support national institutions and civil society.

So what had started in the conference rooms of international organizations was increasingly reaching its final purpose: improve performance regarding the protection of human rights at the national level.<sup>4</sup>

<sup>3</sup> It is not intended to provide an even rudimentary scientific *apparatus*. Literature is abundant, and all international texts referred to in this contribution can be found on the websites of the relevant international organizations. In addition, the *Introduction* of Profs. Minnerath, Fumagalli Carulli, and Possenti to the XV Plenary Session of the Pontifical Academy of Social Sciences is providing an excellent overview of the basic developments and current challenges.

<sup>4</sup> An overview of the current debate can be found in Benedek *et al.* (eds.), *Global Standards – Local Action: 15 Years Vienna World Conference on Human Rights* (Vienna 2009), summarizing an international expert conference held in Vienna in August 2008.

### *Framework of monitoring*

#### *What is being monitored?*

Monitoring aims, first of all, to examine the compliance of national practice with (national and) international human rights standards, i.e. with international law, treaty and customary law. In doing so, it obviously examines *violations* of human rights: In addition to violations suffered by individual human beings, monitoring also, and often explicitly, looks at the broader picture, i.e. systematic, and systemic, violations and structural shortcomings. Especially in this context, monitoring also has to take into account best practice, i.e. existing experience on how to respond to identified shortcomings.

The purpose of monitoring, therefore, has been continuously expanding, moving from identifying violations, especially when they become systematic and severe, to also providing a basis for reparations for victims; to assist in the prevention of violations; to contribute to the identification of best practice, and of key areas for change and for (international) assistance.

#### *Who does the monitoring?*

It is of course individuals who monitor, but in most cases they act in the name of institutions, be it national institutions, or international organisations and institutions. This includes non-governmental organizations (NGOs). We will revert to this in more detail.

#### *How is the monitoring done?*

Monitoring centres around finding facts. A range of methodologies has been developed in this regard (see below). There are two main processes in doing this:

- *Peer review* – especially in the form of States monitoring other States, by using instruments which have been developed together, such as treaty bodies, or Special Procedures in the UN system, or bilateral commissions or ‘human rights dialogues’.
- *‘bottom up’* – monitoring undertaken by local actors at the local level, as it has become most visible in the work of NGOs but has also increasingly become a key element in the field activities of international organizations.

Obviously, it is the combination of both approaches which is providing the most promising framework for successful monitoring and follow-up activities.

A key feature which needs to be addressed by monitors is the method of communicating their findings: do they want to undertake their work in confidentiality, reporting directly to the authorities concerned, or do they intend to work transparently and openly, and apply public pressure (*'naming and shaming'*).

There is, therefore, a very specific role of the media, who, in turn, often become the subject of human rights violations.

A number of (pre)conditions have emerged for making monitoring effective: In addition to a general framework, i.e. a general understanding in society about human rights and the monitoring of their implementation, there is a clear need for a *methodology* for monitoring, as well as for reporting and for identifying and pursuing the necessary follow-up. Monitoring has to aim for *credibility*, which, in turn, presupposes the independence of the monitors. This, together with a feeling for 'ownership', provides the arguments for the legitimacy of the exercise, both vis-à-vis the political leaders as well as the general public.

Overall, monitoring provides a reality check for political actors and for society. Its purpose is to trigger the necessary *response*: repair violations, ensure effective protection of all rights for all, and prevent future violations. It also contributes to broader objectives, including not only the establishment and maintenance of a system for the effective protection of human rights, but also for ensuring the rule of law and, altogether, for strengthening human security.<sup>5</sup>

## 2. THE INTERNATIONAL QUEST FOR PROTECTION: THE LONG WAY TOWARDS THE RESPONSIBILITY TO PROTECT ('R2P')

This development from standardization through international (legal) instruments to monitoring their implementation and responding to violations has been the result of a broad-based international quest to ensure pro-

<sup>5</sup> Human security is one of the terms used for a broader and more comprehensive security concept, putting the individual – rather than the state – at the centre. Cf. [www.humansecuritynetwork.org](http://www.humansecuritynetwork.org).

tection. This quest was pursued both at the regional and the universal level, starting against the experience of the horrors of the Holocaust and the two World Wars. Some of the most salient features of this development shall be briefly summarized.<sup>6</sup>

In the framework of the *Council of Europe*, created in 1949, the 1952 European Convention for Human Rights established the possibility to bring individual complaints directly to a supranational body, the European Commission and (subsequently also) the European Court for Human Rights in Strasbourg. Additional treaties established other, more specialised bodies to examine state compliance, such as the Committee for the Prevention of Torture. Finally, a Commissioner for Human Rights was created to deal with systematic, or structural, human rights questions and problems.

Within the *Organization for Security and Cooperation in Europe*, a political approach was chosen, after *détente* had led in 1975 to the adoption of the Helsinki Final Act. After the collapse of the communist block, the Conference for Security and Cooperation, as it was then called, turned into a more institutionalized organization basing its work for the monitoring and promotion of human rights on regular implementation control at meetings of the representatives of its (now) 56 member States, together with international and non-governmental organizations; at the same time, it promoted increasingly practical approaches, conducted by a number of field missions in (post-) conflict situations, and by specific Institutions: the Office for Democratic Institutions and Human Rights, the High Commissioner on National Minorities (both created in 1990-1992), and the Representative for the Freedom of the Media (1998). In addition, the Chairman-in-Office, i.e. the Foreign Minister of the country elected to chair the organization for a year, is endowed with wide-ranging responsibilities, including on the protection of human rights.

At the global level, it was the *United Nations (UN)* which provided the framework for the development of monitoring mechanisms: After the two Covenants had established Committees (*treaty bodies*) to examine state reports about compliance, and after other, subsequent treaties, had expand-

<sup>6</sup> I will not be able to include a description of the regime administered by one of the oldest international organizations, the International Labour Organization ILO, through the thorough examination of the implementation of its more than 100 treaties on specific aspects of social affairs.

ed and developed this system further;<sup>7</sup> states were also seeking a framework to deal with petitions which were increasingly sent by individuals to the UN secretariat: In 1975, a specific and confidential procedure was created for this purpose, in the framework of the Commission on Human Rights (the *1503-procedure*).

This Commission, which was conceived as the main intergovernmental and specialized UN body to deal with all human rights issues, subsequently also created a number of other procedures to respond to specific occurrences of human rights violations, which became known as the *Special Procedures*. The major stages in this development can be summarized as follows:

- 1975: creation of the first *ad hoc* Working Group on allegations of gross human rights violations in Chile following the coup d'état there. Other working groups followed, on Apartheid in South Africa and on the Territories occupied by Israel in the 1967 war.
- 1980: A Working Group on Disappearances was created in the aftermath of further developments in Latin American countries, in particular in Argentina, El Salvador and Guatemala.
- 1982/85: The first 'thematic' Special Rapporteurs were created, on arbitrary executions, and on torture.
- Country-specific rapporteurs were added when it was felt that governments did not respond adequately to the expression of international concern regarding severe violations of human rights.

This system is now well established; at the same time, however, it has come increasingly under threat from governments who argue that it is being applied selectively, or that it is being 'politicized' – arguments used primarily by governments whose domestic human rights situations give rise to concern.

From 1989, with the end of the cold war, a new optimism on overcoming ideological confrontations over human rights led to the convening of a *World Conference on Human Rights*. This Conference, which took place in 1993 in Vienna, was widely seen as providing a paradigmatic change. But did it?

Yes, it led to the establishment of a new function within the UN, the *High Commissioner for Human Rights* which has become, since its creation,

<sup>7</sup> There are now eight treaty bodies, conducting a broader range of activities beyond the periodic examination of reports from State parties, including direct communications, urgent requests for reports, as well as country visits and the competence, in some cases, to receive individual complaints.

a major global player, currently employing around 1000 people across 50 states, so very directly illustrating the trend I have called 'from the conference rooms to the field'. On the other hand, however, much energy was employed to defend the universality of human rights which had come under attack, in the 2-year preparatory process for the Conference, in particular from Asian countries who invoked regional, national, religious, historic or other *particularities* as excuses which would have to be taken into account when addressing human rights situations.<sup>8</sup> These arguments have not fully disappeared.

Overall, it took until 2006 to fully respond to the key aspirations which had led to the Vienna Conference, especially with the creation of a new UN Human Rights Council and the Universal Periodic Review of national human rights situations in all countries (see also below, ch. 7).

### 3 – THE PRACTICE OF MONITORING: FINDING FACTS AND EARLY WARNING

This body of international 'mechanisms' dealing with human rights questions has been growing ever since: Today, there are eight treaty bodies and 38 Special Procedures in the UN system, not to speak of the specific roles of the UN Secretary-General, especially his good-offices function, and those of the High Commissioner for Human Rights, nor of that of special ad hoc missions, field missions, and, of course, UN peace-keeping missions. In the broader context, most other activities of the UN system have human rights connotations too, be it in relation to development, health concerns, or the situation of women and children, or humanitarian assistance. They all have to monitor concrete situations, as well as the impact of their activities on them.

These mechanisms have developed, in turn, a broad range of working methods to fulfill their respective mandates. As far as the Special Procedures of the UN are concerned, these are summarized in a Manual of Operations of the Special Procedures of the Human Rights Council, a 32-page

<sup>8</sup> This issue was among the most contentious throughout the whole preparatory process, especially pursued by some Asian governments, and took until the very end of the Conference to be resolved through the following formulation: *'While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic, and cultural systems, to promote and protect all human rights and fundamental freedoms'*.

document detailing issues such as communications and urgent appeals, country visits, relations with non-state actors, reporting and public statements, and following up to their work, in particular their recommendations. A few figures shall suffice to illustrate the scope of these activities:

In 2008, these procedures had close to 1000 communications with governments of more than 100 countries, conducted over 50 fact-finding missions to over 40 countries, issued 135 reports to the Human Rights Council and 19 to the General Assembly of the UN, and made 177 public statements, especially regarding situations of grave human rights violations of cases of continued non-response from governments concerned.

In regional organizations, similar developments have been taking place. As one example, OSCE election observation can be highlighted, as it is providing a comprehensive, independent, long-term, and professional monitoring of specific events, elections, in which a number of human rights are being tested to a high degree. This monitoring combines all stages of sophisticated fact-finding and public reporting, as well as relating this to assistance activities.

Some key aspects of the work of Special Procedures have been summarized in a recent report by the High Commissioner for Human Rights to the Human Rights Council (relating, more specifically, to genocide, but containing also more general points on the work of Special Procedures):<sup>9</sup>

Special Procedures mandate holders have a number of characteristics (...) In particular, in view of Special Procedures' independence, field activities and access to Governments and civil society, they are a useful instrument to collate and impartially analyse in-depth information on serious, massive and systematic violations of human rights. Mandate holders can also provide an independent and holistic assessment of the situation and present recommendations on the steps to be taken by the concerned Governments and the international community at large to defuse tensions at an early stage. Special Procedures mandate holders are also able, through the communications regularly sent to Governments, to draw attention to emerging problems, including patterns of human rights violations such as extra-judicial executions, torture, mass arbitrary arrests and detention or disappearances and sexual violence, as well as serious

<sup>9</sup> A/HRC/10/25 pp. 17 sq.

violations of economic, social and cultural rights, which could forewarn of a potentially genocidal situation. Through reporting to the Human Rights Council and General Assembly, they also endeavour to contribute to a better understanding of and early warning on complex situations, for example involving systemic anathematization, exclusion and discrimination that might lead to crimes against humanity, genocide and other mass atrocities. (...)

While massive violations of civil and political rights have more often been associated with early warning signs of possible escalation to mass atrocities, crimes against humanity and even genocide, it is important to acknowledge that patterns of gross violations of economic, social and cultural rights can also provide early warning about situations that can potentially lead to genocide. (...)

Special Procedures mandate holders have noted that, subsequent to the shortcomings in earlier attempts to prevent genocide, the appointment of the Special Advisor on the prevention of genocide in 2004, the convening of the 2005 World Summit and the emergence of the 'Responsibility to Protect' doctrine, rightly put emphasis on strategies to take prompt action on early warning signs.

#### 4. THE SPECIFIC ROLE OF NGOs: MONITORING AND ADVOCACY

Also with regard to the work of NGOs, monitoring activities have evolved and become increasingly professional and comprehensive. NGOs are, of course, as varied in their work as are international organizations, ranging from big international advocacy groups such as Amnesty International or Human Rights Watch to a myriad of local and 'grass-roots' organizations with a very broad range of objectives. Their work, in addition to monitoring activities, spans the whole spectrum of awareness-raising, advocacy and 'lobbying', as well as service activities, including support to victims of violations, and helping to implement national or international goals for the protection of human rights.

While the roots of non-governmental organizations go back to anti-slavery organizations of the 18th century, they have received a major boost through the development of the international multilateral frameworks described above. They have been promoted through international documents, such as the Helsinki Final Act, which develops a 'right of the individual to know and act upon rights and duties'; this has led, subsequently,

to the foundation of a number of 'Helsinki-groups' in communist countries reminding governments of their promises made in the Helsinki process, and monitoring and reporting to CSCE, and OSCE, conferences.

The role of NGOs received specific recognition in 1977 when Amnesty International was awarded the Nobel Prize for Peace. A further recognition came, in the UN context, through the adoption of the Human Rights Defenders Declaration, the so-called *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, in 1998.

As varied as they are, NGOs have become, in many instances, an indispensable link and interface between global and local concerns. They are also partners in the framework of the activities of international organizations, including preparing governmental decision-making – many international initiatives, including in the field of international law, have at their root the expertise, and the lobbying, of NGOs.

##### 5. OTHER ACTORS: NATIONAL COMMISSIONS AND INTERNATIONAL COURTS

The protection of human rights has increasingly been pursued on parallel tracks by judicial as well as non-judicial means. In the non-judicial field, an increasingly important role is being played by National Human Rights Commissions and Institutions – an instrument which has also 'taken off' after the Vienna Conference, and which is now established in over 100 countries, increasingly following the criteria laid down in the 'Paris Principles': This document adopted in 1993 set out the basic criteria for determining what constitutes a national institution for the promotion and protection of human rights and whether such institutions are effective, independent and pluralistic. These national human rights commissions or institutions exist in different forms and can have different competencies but they can only be effective if they are independent of government control and pluralistic in their membership, representing all parts of society. There is no doubt that these institutions, if independent and effective, are crucial actors in promoting and protecting human rights, ensuring good governance and respect for the rule of law as well as in addressing accountability issues and contributing to the fight against impunity.

Complementing national judicial process, recent years have seen the creation of international courts addressing criminal responsibility in specific contexts, such as the tribunals on former Yugoslavia or Rwanda, and

globally, the International Criminal Court. In the present context, the development and work of these courts cannot be elaborated – suffice it to say that overall, they certainly constitute a major contribution to the necessary sense of responsibility and accountability vis-à-vis the international community. They have also triggered a growing discussion of the desirability of a world human rights court, which could be modeled along the lines of the International Criminal Court.

#### 6. THE RESPONSIBILITY TO PROTECT: CONCEPT AND OPERATIONALIZATION

So overall, a broad and specific, if not always very systematic, international system has emerged, but human rights violations continue, and so does, in too many instances still, the impunity of perpetrators, and of governments.

It is in this perspective that one can see the presentation of the concept of a responsibility to protect by the then UN Secretary General, Kofi Annan. In addressing the General Assembly in 2005, presenting his report *In Larger Freedom*, he said the following:

In the third part of the report, entitled ‘Freedom to Live in Dignity’, I urge all states to agree to strengthen the rule of law, human rights and democracy in concrete ways.

In particular, I ask them to embrace the principle of the ‘Responsibility to Protect’, as a basis for collective action against genocide, ethnic cleansing and crimes against humanity – recognizing that this responsibility lies first and foremost with each individual state, *but also that, if national authorities are unable or unwilling to protect their citizens, the responsibility then shifts to the international community; and that, in the last resort, the United Nations Security Council may take enforcement action according to the Charter.*<sup>10</sup>

This proposal was adopted at the Millennium Summit of Heads of State and Government in 2005.

That a Secretary-General of the UN was able to say, write and propose such action is indicator for a lengthy discussion, building on the concept of a *droit d'ingérence* and the work of an international expert commission.<sup>11</sup>

<sup>10</sup> (Emphasis added).

<sup>11</sup> This is being discussed in other papers for this session in more detail.

One of the co-chairs of that commission, the former Australian foreign Minister Gareth Evans recently has been mentioning, in a number of speeches, three main challenges to the advancement of this norm: conceptual, institutional, and political.

1. *Conceptual misunderstandings* – it must be made clear that: a. the term is not another name for humanitarian and military intervention; b. R2P does not necessarily mean the use of coercive military force, even in extreme cases; c. no country however big or powerful is immune from collective pressure; d. R2P does not cover all human security issues such as HIV/AIDS, climate change or cluster bombs, but is restricted to genocide, ethnic cleansing, crimes against humanity and war crimes; e. the invasion of Iraq must be set as a classic example of how not to apply the R2P norm.
2. *Institutional preparedness* – Assuming there is an understanding of the need to act, there is a necessity to ensure that there will be physical capacity to do so within international institutions, governments, and regional organizations – whether preventively or reactively, and whether through political, diplomatic and economic or legal, policing and military measures.
3. *Political preparedness* – There is a need to generate political will and to have in place the mechanisms and strategies to ensure effective political responses as R2P situations arise.

Mr. Evans also remarked on the crucial role of NGOs in addressing these challenges, specifically in clarifying the concept in order to avoid misunderstandings and to move forward on related discussions regarding the development of criteria for military intervention.<sup>12</sup>

Another member of the Commission, Ramesh Thakur, writing in March 2009, comments on the activities of the new Secretary-General, Ban Ki-Moon: Former U.N. Secretary General Kofi Annan described R2P as one of his most precious achievements. Ban has not been shy of adopting R2P as his own cause, confident enough of his own worth not to worry that he will merely be advancing his predecessor's legacy. (...) Interestingly, Ban was the only candidate to refer to R2P during the yearlong campaign to seek Annan's office. After Ban took office, his task was complicated as many countries saw him as Washington's

<sup>12</sup> Cf. International Crisis Group, *The Responsibility to Protect (R2P): A Primer*.

choice. The problem was compounded by choosing American Ed Luck as his special adviser, one with little professional background on the subject. (...)

Drawing on Luck's wide-ranging consultations and reflections, on Jan. 12 (2009) Ban published his report on 'Implementing the responsibility to protect'. It rightly takes as a key point of departure not our original 2001 report, but the relevant clauses from the 2005 outcome document. It clarifies and elaborates that 'force as the last resort' does not mean we have to go through a sequential or graduated set of responses before responding robustly to an urgent crisis. (...)

The new report is effective and clever in repackaging R2P in the language of three pillars:

- The state's own responsibility to protect all peoples on its territory;
- international assistance to help build a state's capacity to deliver on its responsibility; and
- the international responsibility to protect.

If the metaphor helps to garner more widespread support, all praise to Ban and his team. (...)

More seriously, the report goes over the top in elaborating on the metaphor by insisting that the 'edifice' of R2P will tilt, totter and collapse unless all three pillars are of equal height and strength. This is simply not true. The most important element—the weightiest pillar – has to be the state's own responsibility. And the most critical is the international community's response to fresh outbreaks of mass atrocity crimes. (...)

On these key issues, we are no further ahead today: We seem to be recreating the 2005 consensus instead of *operationalizing* and implementing the agreed collective responsibility. The use of force by the United Nations against a state's consent will always be controversial and contested. That is no reason to hand over control of the pace, direction and substance of the agenda of our shared, solemn responsibility to the R2P skeptics.<sup>13</sup>

In this context of further operationalizing the concept, it is also noteworthy how a leading NGO representative – L. Leicht, head of EU advocacy at Human Rights Watch – outlined suggestions on the respective role for the

<sup>13</sup> Ramesh Thakur, *Ban a champion of U.N.'s role to protect*, in: *The Daily Yuimiori*, 10 March 2009.

EU. Focusing on early warning, early preparedness, conflict management and post-conflict rebuilding, she provides a number of recommendations:

- Identifying early-warning indicators which can then be used publicly by EU Special Envoys in statements and reports for increased transparency and better communication with Brussels on preventive warnings;
- Strengthening the capacity and building expertise and knowledge within the EU on sanctions, incentives, and punitive measures;
- Better and more systematic enforcement of human rights clauses in cooperation agreement between EU and various countries and/or regional organizations;
- Increased information-sharing with the International Criminal Court since the EU has a Memorandum with the ICC.<sup>14</sup>

#### 7. ACHIEVEMENTS AND CHALLENGES: INTERNATIONAL SYSTEM AND NATIONAL POLITICAL WILL

It is because of this debate that finally, human rights have been designated one of three pillars of the UN – together with peace and security, as well as development – proposed by Kofi Annan and adopted by the Millennium Summit. This has led to the creation of a Human Rights Council in 2006 which – together with the Security Council, existing UN bodies, and the new Peacebuilding Commission – is to assume specific responsibility for promoting universal respect for the protection of all human rights and fundamental freedoms, to address situations of violations of human rights, and for the effective mainstreaming of human rights within the UN system. In addition, with the new peer review mechanism, the *Universal Periodic Review*, all UN member states are now being monitored, and examined, within a four-year-cycle in a procedure which includes written material not only from the state under review, but also from treaty bodies, Special Procedures, international organizations, and NGOs, as well as a public dialogue with a delegation from the country concerned which is also webcast globally. This mechanism has the potential of creating a new, and comprehensive, framework for government accountability.

<sup>14</sup> Dialogue on the Responsibility to Protect: European perspectives – Conference Report: Discussion Draft, cited on [www.responsibilitytoprotect.org](http://www.responsibilitytoprotect.org)

### *Key achievement*

As stated at the beginning, the international community was not only quite successful in the establishment of a comprehensive international system for the protection and promotion of human rights; furthermore, results in most cases proved, at least in the longer run, to exceed what realistically could have been expected at the time.

Today, the system makes it increasingly difficult for perpetrators of massive human rights violations to remain undetected, or to hide, or to escape, in the longer run, international accountability.

The 'tools', in other words, are there – what counts is the use made of them.

But there are dangers, too: dangers of a system overload – there are already serious coordination challenges among the different actors; of insufficient follow-on and follow-through on their work and recommendations through practical activities on the ground; and potentially even of a backlash from governments who feel over-exposed, or simply over-stretched, or just overburdened.

### *Key challenge*

In political terms, we hear, again, arguments of non-interference in internal affairs (China, Cuba, Egypt, Algeria, South Africa), coupled with continuing complaints about 'double-standards' (a number of countries with lower national incomes when confronted with serious human rights violations try to argue back with violations also occurring somewhere else without always being exposed), or tit-for-tat counter-allegations. It seems that human rights diplomacy continues to be seen widely as being of an intrinsically confrontational nature, so that governments would prefer to conclude that it is better to employ aggressive rather than defensive approaches.

The key challenge, in my view, lies in *ensuring the necessary political will* – and correlating international leadership – to confront not each other but human rights violations as such, and to identify not only the problems, but also the solutions.

Political will is therefore needed in two key regards:

*To be held accountable*, at the national and international level:

too many governments not only still use the defensive arguments cited above, but also take national and international criticism as a threat to – their – security, and, as a consequence, resort to harass-

ing the critics, following the principle ‘shoot the messenger’. But even a number of ‘mature democracies’ who routinely criticize the situation in other countries find it sometimes quite difficult to discuss their own problems in a multilateral international setting.

*To hold accountable*, i.e. to hold each other accountable:

the concern for concrete human rights situations has become a legitimate subject influencing official relations – but all too often, it continues to suffer from being only one element among – often conflicting – foreign policy objectives. However, the protection of human rights has rightly, and repeatedly, been identified as a key factor for national and international security and stability – *cf.*, e.g., *In larger Freedom*,<sup>15</sup> or the overall concept pursued in the framework of the OSCE. To hold each other accountable means nothing more – and nothing less – than to respect and implement one’s promises made in international instruments to each other – this principle has been elaborated and illustrated, e.g., in the 2006 OSCE/ODIHR report *Common Responsibility*, which details achievements and failures of implementing human rights commitments and calls upon the 56 OSCE states to ‘redevelop a common responsibility not only towards each other, but, even more importantly, towards their citizens as primary beneficiaries’ of their collective values.<sup>16</sup>

In order to achieve this fundamental objective, it is necessary to use all the instruments at the disposal of governments, creatively and systematically, those in international organizations such as the UN as well as those available in bilateral relations, and, most importantly, to connect these two strands for action.

There is a need for leadership to assure a positive response to these two challenges, challenges which are in fact the two sides of one. Thematically, leaders must be prepared to maintain a clear human rights focus; structurally, they must be ready to engage systematically and forcefully. ‘Naming and shaming’ could then remain the exception when all other means of engagement fail; willingly learning from each other should become the norm.

The current international economic and social crisis can be seen as providing a positive impulse in this regard: Responses which have been devel-

<sup>15</sup> *Op. cit.*

<sup>16</sup> *Common Responsibility – Commitments and Implementation*, report submitted to the OSCE Ministerial Council in response to MC Decision No. 17/05 on Strengthening the Effectiveness of the OSCE, at [www.osce.org/odihr/item\\_11\\_22321.html](http://www.osce.org/odihr/item_11_22321.html), p.v.

oped so far indicate already a readiness to adapt the international system – *cf.* the stronger role given to the G-20 as well as first steps in adapting the international financial architecture (IMF, also World Bank). They also highlight the need, and readiness, to strengthen the thematic interconnectedness – a good example in this regard is the growing work of the UN Security Council regarding humanitarian and human rights catastrophes. And they illustrate the need to strengthen ‘new coalitions’ – new groupings not only of so-called ‘like-minded countries’, but also of wider groups comprising non-governmental organizations. So far, however, they have not assumed a specific rights-based approach.

Overall, we have come a long way indeed – but we must keep going forward: Not only is there no reason for complacency, to the contrary, those who want to weaken the protection of human rights are ‘learning’, too. Coalitions have to be maintained, partnerships strengthened. This is clearly a role for governments and for NGOs, and, most certainly, also for the Holy See.

*Not only human rights are universal, but so is the human person.*<sup>17</sup> We must heed the Pope’s call.

<sup>17</sup> Address to the UN General Assembly 2008.