

*THE MISSING PEACE: International Law of Intrastate  
Relations*

**Dr. Michael van Walt van Praag**

Visiting Professor, Institute for Advanced Study at the School of  
Historical Studies

# THE MISSING PEACE: INTERNATIONAL LAW OF INTRASTATE RELATIONS

By Michael van Walt van Praag

*Draft oral presentation, excluding citations. Please do not quote or cite.  
Final paper including citations will be made available at a later time.*

## Introduction

A few years ago, Professor Cherif Bassiouni, a leader in the field of international criminal law, spearheaded a collaborative research project on conflicts and justice worldwide. The team of 41 researchers found that 313 conflicts had taken place between 1945 and 2008, which resulted in between 92 and 101 million people being killed - twice as many as in the First and the Second World War put together. Of course, the figure has gone up since 2008, with the conflicts in Libya, Syria, Mali, and the ongoing ones in Afghanistan, Iraq and elsewhere. And it does not include people who died as a consequence of conflicts, which would bring the total number to between 184 and 202 million.

This number is especially significant considering the enormous effort that has been made to prevent and resolve conflicts, or wars, starting in 1944, including the founding of the United Nations, with all its agencies and the International Court of Justice and the development of a new body of international law. How might our failure to prevent or swiftly resolve these conflicts be explained?

A closer look reveals that the overwhelming majorities of armed conflicts in the past decades have been, and continue to be, *intrastate* as opposed to conflicts *between* States. Most of these conflicts relate to the power to govern a State or a portion of that State, and their underlying causes often involve the violation of human rights, including issues of linguistic, cultural or religious rights of certain groups of the population, the abuse of power by rulers and questions of political representation, land rights and uneven distribution of resources.

One type of intrastate conflict is fought over who wields power in the central government of the State, often pitting an oppositional party or rebel movement against an incumbent determined not to relinquish or share the instruments of power. Another type involves the government of a State on one side and a group within that State, be it a people, an indigenous people, a tribe, a minority or the population of a distinct region within the State (referred to hereinafter collectively as 'population group'), on the other. Such conflicts are identity based and parties fight over the exercise of authority, for example in the political, economic, cultural or religious spheres. They fight over control over territory, environmental issues and security matters and, more broadly over autonomy and -- in some cases-- independence. Both types of conflict often also concern ownership or exploitation of natural resources and may involve powerful transnational corporations not just as stakeholders, but as actual parties to the conflict. It is this second type of conflict --that between a government and a population group--that is the focus of my remarks today, although some of the points I will make may be relevant to both types of intrastate conflict.

I am not telling you anything new of course, when I say that the current international legal system is not sufficiently equipped to address these types of conflicts. We know that, in particular, two important pillars of that system, which are based on the core concept of the sovereignty of territorial States, are detrimental to the prevention and resolution of intrastate conflicts. Namely: 1) the exclusive right of States to participate as actors in the system and 2) the prohibition of interference in the internal affairs of those States.

Much has been done and achieved that makes these principles less uncompromising and therefore opens the way to addressing intrastate conflicts more effectively. The application of aspects of international humanitarian law to non-international armed conflicts and the expansion of human rights law and the growth of instruments for its application are examples. So are the growing body of minority rights standards and the emerging indigenous peoples rights law, which are of direct relevance to the kinds of intrastate conflicts that we are concerned about here. And most recently, the adoption of the statute of the International Criminal Court and of the Responsibility to Protect (RtoP) principle, all serve to expand international law into what was once considered the exclusive jurisdiction of sovereign States.

But we are not done yet. Effective prevention and resolution of intrastate conflicts requires operating from a different paradigm as we further modify and expand international law. A paradigm where not the State and its sovereignty, but the safety and well being of individuals and population groups are central, and where States and their governments are not only viewed but also treated purely as instruments, could serve this central purpose. Operating from this paradigm demands the empowerment of individuals and population groups. It also leads to attention for accountability of non-State actors, including corporate financial actors and transnational corporations that contribute to the causes of violent conflicts or to their prolongation. It is my thoughts on the changes in international law and the nature of access to international mechanisms, including courts, that flow from this paradigm that I want to share with you today.

In the political sphere, the shift away from unipolarity seems evident. But what will emerge in its place is not clear, and a meaningful discussion of multipolarity would require agreement on the meaning of this contested term and its many ramifications. Poles have primarily been defined by military, economic and strategic power and influence, but an argument can be made that other criteria, such as cultural - and some have suggested moral ones - count as well. Similarly, the polarity discussion has largely focused on States, but as Richard Higgott and others have argued, poles do not need to be States and might well include centers of power or influence of a different kind, such as corporate and financial ones. I will not attempt here to provide an answer or a theory but will limit myself to suggest that multipolarity of any kind is likely to entail uncertainty if not instability.

In relation to States, if unipolarity encouraged the sole super power to act with less regard for international law, it is conceivable that in a multipolar world more States will be tempted to do so unless other poles have an interest and capability to prevent or censure such behavior or international law is strengthened in ways that respond to the new realities that are emerging. Either way, international law, in my opinion, will not lose its importance provided it is able to make itself relevant to the aspirations that are most critical to the people in the world, their safety and wellbeing. In order to make itself relevant in this way, international law needs to shift from a focus of protecting the State, to the extent this no longer serves us, to protecting the people from the unfettered self interest of ruling elites of States, who are often what we really should talk about when we refer to 'States', power, decision-making, and even interstate relations.

At any rate, I believe that we are entering a period in which the importance of the role of international law and its preeminence should not be *allowed* to decline provided it can *retain* and, more importantly, *enhance* its relevance. At a basic level, one of the most important functions of international law is to be in the service of the maintenance of peace among human communities, however we define, structure and label them. In other words, international law exists for an important part to prevent the outbreak of violent conflict and to manage and resolve non-violent conflict. In order to do so effectively, it needs to be equipped to address the conflicts we experience in the world today.

I have chosen to speak about the international law of intrastate relations and, in particular about intrastate conflict prevention and resolution, which is my area of specialization, because I would like to take the opportunity I have been given of addressing a distinguished international gathering such as this one to share my thoughts on this topic in the hope both, of persuading you of the usefulness of the approach I am proposing, or of provoking some discussion and perhaps the generation of new ideas, and of learning from your expertise. Judging from your backgrounds and the topics of your presentations today, I expect to learn a great deal.

It occurred to me when reading and thinking about the meaning of a multipolar world, that it is tempting to think in Machiavellian terms of grand strategic moves of major competing players on the world's chess board - to think, therefore, only of the exercise of power and influence outside of the player's own boundaries and functional spheres. But the conflicts we experience today are relatively local, and therefore risk being overlooked or dismissed in the grander scheme of things. Moreover, these conflicts do not directly affect most of your lives or my life, nor those of most political decision-makers, international officials, top corporate leaders and elites in a large part of the world. Some of us have of course had deeply personal experiences of such conflicts. Even so, our society and environment – certainly here—does not encourage a feeling of connectedness to, let alone co-responsibility for, the tremendous suffering and misery caused by war.

For this reason too, I felt it important to focus my remarks today on this topic. I am hoping that by doing so you will incorporate some of the issues I am addressing in your deliberations today and in your thoughts on solutions for today's emerging multipolar world tomorrow.

### **The Changing Face of the Law**

When it comes to conflicts within States, international law has and continues to undergo change.

International Humanitarian Law, also called the Law of War or the Law of International Armed Conflict, has progressively expanded its field of application. The narrow concept of war was broadened with the 1949 Geneva Convention's common Article 2 and again with the 1977 Additional Protocol I which added wars of national liberation to its application. And the second Additional Protocol explicitly extends the application of essential aspects of humanitarian law to internal disturbances and tensions, going well beyond the provisions of Article 3 common to the four Geneva Conventions.

Human rights law is of course one of the most basic ways in which international law 'involves itself' in the area of relations between the State and its citizens. It therefore represents a narrow exception to the exclusive domestic jurisdiction of States. Since the adoption of the Universal Declaration of Human Rights, this exceptional area has been broadened to include both individual and – to a minimal extent-- collective rights. It has, moreover opened the way for individuals to be recognized as subjects of international law to a very limited degree, as holders of certain rights, and also for equally limited participation in international fora by non-governmental organizations (NGOs) representing some of their interests.

The international community has been very reluctant since the Second World War to recognize group identities and rights as well as to allow access by minorities and peoples to international organizations and mechanisms. Instead, it has opted for improving *individual rights* of persons belonging to minority groups.

The 1992 Declaration on Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities established rudimentary standards for minority protection, based and building on the rights of individuals belonging to minorities provided for in Article 27 of the ICCPR. As the rising number of conflicts in the territory of the former Soviet Union and the former Yugoslavia in the 1990's revealed the critical importance of the management of relations between majority and minority population groups within States, this area of the law and diplomacy received increased attention. The Organization on Security and Cooperation in Europe (OSCE), in particular, worked on improving the standard setting and actively engaged in the prevention and resolution of conflicts involving minorities within States where this would endanger international peace.

The standards relating to national minorities adopted by the OSCE's Conference on the Human Dimension in 1990 and subsequent sets of recommendations developed under the auspices of the OSCE High Commissioner on National Minorities on language and education rights of national minorities and on their effective participation in public life, have all contributed to an understanding of the importance of recognizing the legitimate needs and interests of distinct population groups within States. The High Commissioner's mandate and his intensive silent diplomacy to prevent the outbreak of violent conflicts involving minorities as well as the involvement of the OSCE in efforts to resolve the conflicts in Chechnya, South Ossetia, Abkhazia, Nagorno Karabakh and Transnistria, are further evidence of the recognition, at least within the OSCE area, of the importance of this issue to the maintenance of peace.

Within the UN framework, attention for the place and rights of minorities in States also increased and very limited access has been provided by the creation of the Forum on Minority Issues and by the appointment of the Independent Expert on Minority Issues.

A similar development has taken place with respect to the law regarding the rights of indigenous peoples and their relations with the States they live in. The adoption by the UN General Assembly, after decades of work in the various human rights bodies of the UN, of the Declaration on the Rights of Indigenous Peoples in 2007 was a milestone in the recognition of the distinct rights and place in international law of indigenous peoples. In contrast with the law relating to minorities, indigenous peoples are recognized as distinct groups that possess rights, and therefore have a certain collective international legal personality.

The creation of the Permanent Forum for Indigenous Issues and the appointment of the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples have both created avenues for limited access of indigenous peoples' organizations and representative bodies to the UN system. Although these mechanisms do in practice serve to draw attention to potential conflicts involving indigenous peoples, neither of them is mandated to engage in conflict prevention or resolution.

A recent development that has pushed the boundaries of international law into the sphere of domestic jurisdiction, is the creation of the International Criminal Court (ICC). The ICC's statute provides it with jurisdiction where genocide, war crimes and crimes against humanity, as well as the crime of aggression are committed. The inclusion of these crimes under international law, especially the first three that are most relevant to the topic of this lecture, is of course not new, given the Genocide Convention and the precedents of the Nuremburg and Tokyo Tribunals and more recently the tribunals on Former Yugoslavia and Rwanda. Nevertheless, the creation, by treaty, of a permanent court with the competence to prosecute and try suspects, including government officials while in office, for crimes committed within their State is groundbreaking –despite the reaffirmation of the principle of non-intervention in the preamble. With respect to war crimes, the Rome Statute makes specific provisions for

protracted intrastate armed conflicts. It is important in this respect that the procedure for seizing the Court is not State focused only, since the prosecutor can investigate crimes *proprio motu* on the basis of information available to her or him, furnished by non-State parties and others.

And the encroachment does not end there. One of the potentially most far reaching developments has been the unanimous adoption of the Responsibility to Protect (RtoP) principle at the 2005 World Summit. Its re-affirmation in subsequent UN Security Council resolutions and, following the release of the Secretary General's report on the matter, by the General Assembly since then has arguably made this a norm that profoundly affects the seemingly unassailable principle of non-intervention in the domestic affairs of sovereign States. It holds the promise to prevent at least the more extreme and massive assaults by a State on the people within its boundaries as well as by non-State actors where the State is incapable or unwilling to protect its people.

The Responsibility to Protect principle, as reflected in the UN World Summit Outcome Document and relevant Security Council and General Assembly resolutions, consists of the following basic principles: (1) that each State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity and therefore must prevent these crimes, a task which the international community should 'encourage and help' States to fulfill; and (2) that the international community has the responsibility to take timely action to protect populations from those crimes, and where necessary even to intervene militarily (under Chapter VII of the Charter) where the authorities of the State in question are 'manifestly failing to protect' them.

This formulation is more limited than that proposed by the International Commission on Intervention and State Sovereignty (ICISS), on which the UN debates and decisions were based, but both affirm the principle that State sovereignty entails responsibility and that prevention is the most important dimension of this responsibility. The conclusions of the ICISS, however, that "where a population is suffering serious harm, as a result of internal war, insurgency, repression or State failure, and the State in question is unwilling or unable to halt or avert it, the principle of nonintervention yields to the international responsibility to protect"<sup>i</sup> was narrowed by the UN member States to apply only to those mass atrocity crimes enumerated in the UN RtoP-related resolutions.

This being as it may, and although the UN reaffirmed the principles of State sovereignty and non-intervention in its resolutions, it has at the same time asserted the conditionality of these principles on the State's ability and willingness to protect. And the International Court of Justice, for its part, has since confirmed that States have a positive legal obligation to take all measures reasonably available to them to prevent such crimes, at least in relation to genocide.

Because the RtoP norm rests and builds on existing international law, some scholars have suggested that in substance it provides little that is new. A mandate for the international community to intervene, even militarily, already existed under Chapter VII of the Charter, and they question whether the RtoP principle even affects the law on humanitarian intervention. In my view, the *explicit* articulation of the responsibility of States to protect their own populations as "a defining attribute of sovereignty and statehood"<sup>ii</sup> is *very significant*, and the RtoP principle arguably provides the Security Council the mandate to intervene in internal situations *on humanitarian grounds alone*, rather than having to show that a situation endangers international peace before it can act. This is of considerable consequence. Having said that, of course the RtoP norm is a new and still emerging norm, and its interpretation and exercise is still a subject of considerable debate.

And finally, the current negotiations for the conclusion of the Arms Trade Treaty at the UN headquarters in New York represent yet another step in restricting the actions of sovereign States in the interest of protecting people from abuse by their government authorities.

What we may be witnessing is a shift from the “persistence of the core idea, going all the way back to the Peace of Westphalia in 1648, that sovereignty means, above all else, control of a State’s territory, unfettered by external constraints,”<sup>iii</sup> to the concept of the State as an instrument at the service of its people and its sovereignty as a responsibility to the people, and specifically a responsibility to protect them. But, as I said before, we are not there yet.

The founders of the UN were very preoccupied with preventing States from waging war against each other and took far-reaching steps to restrict their freedom to this end. But, as Gareth Evans points out, “notwithstanding all the genocidal horrors inflicted during the Second World War, they showed no particular interest in the question of what constraints might be imposed on how States dealt with their own populations.”<sup>iv</sup> This may be a little harshly stated given the adoption of the Universal Declaration of Human Rights at that time, but the point is otherwise well taken. And so the incredibly tenacious belief in the principle that “nothing contained in the [UN] Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state,”<sup>v</sup> has prevailed since. Kofi Annan tried to break through the sovereignty-intervention debate by articulating a reconceptualization of sovereignty in terms of “individual sovereignty”<sup>vi</sup> and of the State as an instrument at the service of its people, a notion I am expanding on here because his articulation conspicuously leaves out groups, suggesting an assumption that all that is needed is protection of individuals.

The attention since the adoption of the UN Charter has been on individual rights and the need to protect the individual due to the political sensitivity of the issue of group rights. Yet this is something we cannot afford to continue to skirt, especially in view of the role group identity plays in intrastate conflicts. And let us not forget that the whole concept of genocide and ethnic cleansing, which are key crimes which the RtoP and the ICC were created to address, are based precisely on the recognition of the importance of protecting the group. Indeed, the very concept of ‘genocide’ developed by Raphael Lemkin and which lies at the base of the law of genocide (codified in the Genocide Convention) “captured some of the momentous quality of actions that are aimed not just at destroying individuals but whole national, racial, ethnic, or religious groups –targeting, as Lemkin put it, the essential foundations of their life as such groups.”<sup>vii</sup>

Having said that, the reference in the UN resolutions to the responsibility to protect ‘populations’ of a State, in the plural, and the UN Secretary General’s Special Adviser on the Prevention of Genocide’s characterization of genocide as an extreme form of identity-based conflict, may suggest some acknowledgement of the importance of population groups in addressing the causes of conflicts and therefore also in their prevention and resolution.

Since so many intrastate conflicts, and the atrocities and suffering they bring, take place between States and peoples or minorities or between population groups within States and are, at the core, identity based, we *must integrate* the protection of population groups into the changes taking place in international law. Not just where this manifests as mass atrocity crimes of genocide and ethnic cleansing, but all attacks on population groups –whether cultural, religious, ethnic, linguistic, racial, or other—because of who they are. And by the same token, the responsibility of the State to protect individuals should not be limited to mass atrocity crimes either.

The concepts and principles *underlying* the RtoP must therefore be considered universally applicable and not only tied to the somewhat exceptional situations of ‘mass atrocity crimes’ that warrant intervention under the RtoP adopted by the UN.

## Prevention

There is consensus that prevention is of fundamental importance. What this necessarily entails is addressing the root causes of conflicts before they turn violent or even before they manifest at all if possible - not waiting until the storm of mass atrocities has gathered. What prevention also entails, is addressing the causes of conflict in peace processes, in the content of peace agreements and in the implementation of those agreements. And I wish here once again to draw attention, albeit briefly, to the importance of granting access for population groups to international conflict prevention and resolution mechanisms and, more broadly, to decision-making at the international level. So let me say a couple of things in this regard.

Mediated intrastate peace efforts are increasingly focusing on **autonomy** and power sharing arrangements as a preferred solution to intrastate conflicts. With respect to the type of intrastate conflicts that I am focusing on today, autonomy arrangements hold the promise to satisfy both the State and the population group or groups' needs and to address the causes of conflicts without the necessity to break up the State. These arrangements can be tailor fitted and be limited or broad, transitional solutions or permanent solutions, albeit flexible.

I personally believe that well crafted autonomy arrangements that satisfy the most important needs of all parties have the potential to be excellent solutions to many intrastate conflicts. However, current practice shows that 1) the majority of intrastate peace agreements containing autonomy arrangements are not, or not well, implemented, and 2) even when they are, the autonomy arrangement's fragility surfaces when the central or the autonomous authorities assert power beyond the delicate balance inherent in such asymmetric structures. Both scenarios lead to renewed tensions and, sometimes, armed conflict.

Some of the reasons for non-implementation of peace agreements have to do with post-armed conflict institutional fragility. Of particular relevance to our topic, however, is the lack of political will to implement by relevant players on both sides, sometimes occasioned by changes of government or leadership, but also because of vested interests in the continuation of the conflict or some part of it. Non-State armed groups may want to retain the capacity to defend themselves militarily against challenges to their authority, while governments and their leaders may be reluctant to devolve power as part of an agreement.

One ingredient in the strategy for intrastate conflict prevention and for better implementation of intrastate peace agreements is making use of select UN and other fora and of international courts and tribunals to help peacefully resolve intrastate disputes.

There is today no ready way for non-State parties and States to bring a dispute between them before an international court or tribunal (let alone disputes between non-State parties). Considering the bad record of intrastate peace agreement implementation, international and regional courts could contribute to conflict prevention in a major way if their jurisdiction extended to intrastate disputes, including those relating to the interpretation and implementation of peace agreements and autonomy arrangements.

I headed an initiative by Kreddha a number of years ago to address this issue. We turned in particular to the Permanent Court of Arbitration (PCA) in the Hague to propose that it accept jurisdiction for disputes between States and non-State parties regarding the implementation of peace agreements concluded by them. As a result, today, parties to an intrastate peace agreement can include a clause in their agreement that enables each of them to refer disputes arising out of the implementation or non-implementation to the PCA. The first such case was successfully brought before the PCA by the non-state party to the 2004 North-South Sudan Comprehensive Peace Agreement with respect to the border



demarcation in the Abyei region. This has created a useful precedent and is thus a step in the right direction, but one that needs to be institutionalized and broadened to the International Court of Justice and regional courts. Jurisdiction should, moreover, extend to cases where corporations are parties to conflicts or potential conflicts, as is increasingly the case.

This is but one example. For conflict prevention to succeed parties to potential conflicts must have avenues for dialogue, possibly facilitated, and mechanisms for resolving disputes among them. They should be encouraged to meet and dialogue and co-decide issues of mutual importance in international fora, as well as to resolve their disputes using international mechanisms, where national ones do not provide conducive means to do this. The exclusion of population groups and autonomous sub-state entities from such effective participation is a shortcoming of the international legal system.

### **Paradigm Shift**

We can suggest more arguments, but what we really need to do is make a paradigm shift –or perhaps more accurately we need to complete the paradigm shift that we are in the process of undergoing—to a place where the State and its sovereignty –with all the rights and privileges and protections that entails—are no longer central. Instead, the safety and wellbeing of individuals and population groups are central, and States and their governments are not only viewed but also treated purely as instruments to serve this purpose. The corollary of such a transformation must be that the safety and wellbeing of individuals and population groups must not be pursued in any way to the detriment of the safety and wellbeing of other individuals and groups within or outside the State.

The other consequence of such a shift is that the voices of the individuals and population groups must be given a meaningful place in decision-making at the international level. For if States have the exclusive power to decide, as they have had, most worthy initiatives that would spring from attempts to operate from the new paradigm would be stifled or watered down in efforts to retain the power of States befitting the traditional conception, and therefore effectively prevent the operationalization of the new paradigm. By the same logic, in the international judicial field the change must also be acted upon, and access provided to non-State parties, carefully, in ways that will help prevent and resolve intrastate conflicts.

I have not tackled the question of the place and role of transnational corporations in intrastate conflicts and intrastate relations, not for lack of importance. Indeed their importance is only accentuated by the realization that some of these non-State actors constitute actual poles, in other words important centers of power or influence, in the emerging multipolar world. Their lack of accountability under international law for their roles in conflicts should be of concern to us all. But it is a major topic to which I cannot do justice in this lecture and which I will leave for another occasion. But here too, the non-interference principle and the exclusive rights of States –also with respect to corporations— is an impediment.

As we have seen, the law has undergone considerable change since the Charter's adoption. But we also note that *as a matter of practice* the international community has intervened where the political will existed to do so. But often not before unacceptably large numbers of people had to suffer and die. Powerful States also intervene on their own or with allies, regardless of the rules of international law, in order to protect their own interests if they can get away with it. So the prohibition of intervention in a State's domestic affairs is not as starkly black and white in practice as its predominance in law suggests, and this results in ambiguities. My point here is that we need a clear and coherent body of international law that has population groups and individuals, and their relationship to the State in which they live at the heart of the system. Not States, State interests, and State sovereignty alone. The State structure and

international system should facilitate peaceful relations among all population groups within States and across boundaries, not only among those that hold power. And democracy – though of critical importance—is not sufficient.

Anne-Marie Slaughter and William Burke-White also argue for a change in the international legal system, but do so on the basis of different but equally important arguments:

[t]he process of globalization and the emergence of new transnational threats have fundamentally changed the nature of governance and the necessary purposes of international law in the past few years. From cross-border pollution to terrorist training camps, from refugee flows to weapons proliferation, international problems have domestic roots that an interstate legal system is often powerless to address. To offer an effective response to these new challenges, the international legal system must be able to influence the domestic policies of states and harness national institutions in pursuit of global objectives.<sup>viii</sup>

Now then, in conclusion: we noted how the creators of the UN Charter and the Universal Declaration of Human Rights reframed and re-conceptualized international law with the overriding purpose to end wars among States, precipitating the development of a whole new body of law leading up to what we have today. So too, we must take what we have, preserve the achievements to date, and reframe and re-conceptualize it, this time from the standpoint of the new paradigm in which individuals and population groups are central, so as to effectively respond to today's challenges, including that of intrastate conflicts, the 'scourge of war' the founders of the UN did not address.

From this reconceptualization there can emerge the body of law I call international law of intrastate relations, consisting of all that already exists in international law that relates to this subject matter (some of which I have highlighted today) as well as new law, to be created with the participation of non-State actors. I visualize a whole new field of international law, of specialization, of law school courses and text books. A field that will advance and expand once the new paradigm has caught on.

What I am proposing is not that far fetched, considering the developments I sketched earlier and the considerable shifts that are taking place as we speak. Holders of State power will resist it and its consequences for some time, but let us not forget that international law is not only theirs to make: it is the result of the interplay of State treaty making and State practice, of decisions of international courts and, to a lesser degree, national courts and of scholarship: *opinio juris*. And we have our role to play in all these fields.

Surely, we do not need to wait for a new catalyst in the form of yet greater mass atrocities to address the underlying problems. The death and suffering intrastate conflicts throughout the world continues to inflict is sufficient incentive. Thank you.

- i. International Commission on Intervention and State Sovereignty, *The Responsibility to Protect, Report of the International Commission on Intervention and State Sovereignty* (International Development Research Centre, Ottawa Dec. 2001), p. xi.
- ii. "The protection of populations is a defining attribute of sovereignty and statehood in the twenty-first century." Ban Ki-moon, "Implementing the Responsibility to Protect," Report of the Secretary General A/63/677 (2009), para. 14.
- iii. G. Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*. (Washington, D.C.: Brookings Institution Press, 2008), p. 21
- iv. *Idem*
- v. UN Charter Article 2(7).
- vi. Kofi Annan, 'Two Concepts of Sovereignty,' *The Economist* 352 (September 18, 1999) pp. 49-50.
- vii. Evans, *supra* at 20.
- viii. Slaughter and Burke-White, 'The Future of International Law is Domestic (or, the European Way of Law),' 47Harv Intl LJ2, (2006) p. 328.