

**INTERNATIONAL DISASTER ASSISTANCE: POLICY  
OPTIONS**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL  
DEVELOPMENT AND  
FOREIGN ASSISTANCE, ECONOMIC AFFAIRS, AND  
INTERNATIONAL ENVIRONMENTAL PROTECTION

OF THE

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## **INTERNATIONAL DISASTER ASSISTANCE: POLICY OPTIONS**

**TUESDAY, JUNE 17, 2008**

U.S. SENATE, SUBCOMMITTEE ON INTERNATIONAL DEVELOPMENT, AND FOREIGN ASSISTANCE, ECONOMIC AFFAIRS, AND INTERNATIONAL ENVIRONMENTAL PROTECTION, COMMITTEE ON FOREIGN RELATIONS,

*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:41 p.m., in room SD-419, Dirksen Senate Office Building, Hon. Robert Menendez (chairman of the subcommittee) presiding.

Present: Senators Menendez, Feingold, and Hagel.

### **OPENING STATEMENT OF HON. ROBERT MENENDEZ, U.S. SENATOR FROM NEW JERSEY**

Senator MENENDEZ. This hearing will now come to order.

Let me thank you all for coming and I apologize to our witnesses and the audience. There is a vote going on as we speak, and so we thought it better to make sure we have the vote first and then come so we would be uninterrupted, hopefully, for the duration of the hearing. And I know Senator Hagel will be here shortly as he returns from the floor.

We are here today to discuss international disaster assistance and, in particular, policy options when political obstacles prevent the assistance from reaching those in need.

First, I want to say that my thoughts and prayers go out to those who have lost loved ones to the cyclone in Burma, the earthquake in China, and for that fact, here at home in the floods in Iowa. These kinds of disasters, unfortunately, will continue to take place, and therefore, there will always be a need to respond quickly to alleviate human suffering and reduce the loss of life.

I am proud to say that the United States Government is the single largest donor of humanitarian assistance in the world. The U.S. Agency for International Development, through the Office of Foreign Disaster Assistance and the Office of Food for Peace, works with other U.S. Government partners and nongovernmental organizations to provide food, safe drinking water, and shelter materials after hurricanes, earthquakes, floods, and other natural disasters. These quick response teams are staffed by professional experts and work with a purely humanitarian agenda to save lives and ease suffering.

But history has taught us that this purely humanitarian agenda often carries broader foreign policy implications, and while each humanitarian crisis is unique, so are the implications of our

actions. It can bring nations closer and foster a positive U.S. presence. For example, favorable opinions of the United States spiked in Pakistan after our response to their tragic earthquake in 2005. So as we focus on humanitarian assistance, it is important that we recognize the significant weight it carries.

So I say again that humanitarian assistance is much more complex than dropping food and water out of an airplane. It requires standing up and monitoring a distribution network. Such a network requires access and access is controlled by governments. In far too many cases, the government's priority is not the well-being of their people, but instead the well-being of their own narrow political or personal interests. And there are instances, several of which we will discuss today, when assistance is blocked, stalled, or otherwise held up by governments that fear such assistance would somehow jeopardize their control or violate their sovereignty.

A recent example of this is Burma where the military junta's irrational and xenophobic posture still contributes to a deep worsening of an already terrible tragedy. As a result of Cyclone Nargis, the United Nations estimates that between 63,000 and 101,000 people have died. Over 55,000 are still missing. Over 100,000 are displaced, and a total of 2.4 million people are affected.

And in Zimbabwe, recent reports indicate that the Mugabe regime is taking food out of the mouths of school children and instead handing it out to buy boats.

When political leaders such as these neglect their people in a time of grave need, how shall the international community respond? How can the international community respond? What is the role of the United Nations? What is our collective responsibility, and how do we carry out this responsibility?

One framework that has been under discussion for several years is called the "responsibility to protect." This concept, which grew out of the 2005 World Summit Outcome Document focuses on the so-called "right of humanitarian intervention." It asks when, if ever, it is appropriate for states to take coercive action and, in particular, military action against another state for the purpose of protecting people at risk. And I especially look forward to our second panel of expert witnesses to explore this further.

This option becomes especially interesting as Secretary of Defense Robert Gates recently characterized the Burmese junta's response as "criminal neglect." While this characterization does not appear to rise to the responsibility to protect, it is borderline of genocide, war crimes, or crimes against humanity, and it seems to me that it merits an organized, collective, and swift response.

Now, we are not here to get bogged down in semantics, but instead to examine policy frameworks that may help us think about these issues in a more systematic way and help our collective response to be as effective as possible. Our goals for today's hearing are to improve our understanding of these options and I look toward building on our experience around the world so that those in need receive critical assistance in a timely way.

As I await Senator Hagel, let me move on to recognize and introduce the first panel. Our first panel of witnesses, which we welcome to the committee, is Mr. James Warlick. Mr. Warlick is the Principal Deputy Assistant Secretary at the Bureau of Inter-

national Organization Affairs of the Department of State, and also Mr. James Kunder, who is Acting Deputy Administrator at the U.S. Agency for International Development. They both have some extensive experience in this regard.

And in the interest of time, I will turn to them to start their testimonies. When Senator Hagel comes, if it is in between testimonies, we will certainly let him have his statement, and we will move on from there.

So we would ask you to keep your testimonies to about 7 minutes. We will include a full copy in the record, and Mr. Warlick—I think I got that wrong the first time. Sorry—we will start off with you.

**STATEMENT OF JAMES B. WARLICK, PRINCIPAL DEPUTY ASSISTANT SECRETARY, BUREAU OF INTERNATIONAL ORGANIZATION AFFAIRS, DEPARTMENT OF STATE, WASHINGTON, DC**

Mr. WARLICK. Thank you very much, Mr. Chairman. I really do appreciate the opportunity to address the subcommittee.

I also want to thank you and congratulate you for holding this hearing. It is a very difficult and complicated issue. I am not sure that the administration has had an opportunity to really have this kind of a dialogue with the Senate Foreign Relations Committee on issues of some importance, and I hope this is the beginning of a dialogue between the executive and legislative branches in that regard.

I submitted my full testimony for the record, but I would like to make a few comments just to put my testimony in some perspective.

For more than 150 years, those who would aid the victims of disaster, whether natural or manmade, have recognized the importance of neutrality. Only by keeping their efforts separate from the political positions and alliances established by governments could they obtain the consent of sovereign governments. As a result, humanitarian assistance has generally been provided on a non-political basis, dedicated to relieving the suffering of humanity without taking sides in a disagreement or conflict, armed or otherwise. This approach has saved millions of lives. It has also given humanity some of its most decent and altruistic institutions, including the Red Cross movement, and has earned Nobel peace prizes for two United Nations agencies, the World Food Program and the High Commissioner for Refugees.

It is, therefore, important to recognize that in examining the way forward on disaster assistance policy options, we must not interfere with the humanitarian community's ability to offer its assistance wherever needed without political conditionality. By maintaining this principled stance, the assistance community may be able to save countless lives in the future in circumstances where a regime bars representatives of states they consider hostile or suspect.

I would add it is important to undertake a multitiered approach to assistance, and this is important when we come back to discuss policy options, bilateral assistance where the American people, as you said, are extraordinarily generous and well beyond our own borders; the role of nongovernmental organizations, which are in-

creasingly important and vital to the delivery of assistance, and also important actors in the political dimension of this side of the equation; regional organizations. And I hope we'll have an opportunity to discuss further the role, for example, of ASEAN in Burma. And then, of course, the United Nations, for which I am responsible at the Department of State. It is both those operational agencies that deliver the assistance, but also the political side of the United Nations, including the Security Council.

One of the best policy options available to the United States is to turn to the U.N. operational agencies whose goals, structure, and service providers closely parallel our own. The Office of the Coordinator for Humanitarian Assistance focuses precisely on the issue of disaster assistance. I would say in the broadest sense, the multilateral framework for humanitarian efforts is actually set out in the Charter of the United Nations, which reflects the sovereign equality of all Member States. Consistent with this, it is generally accepted that we should look, in the first instance, to the state to address the needs of its people.

When a state is unable to assist its people and unwilling to accept foreign assistance, the international community, through the United Nations, can use diplomatic and other peaceful means to try to persuade the state to allow assistance in. The question, What is our last resort if all else fails? poses the greatest challenge in humanitarian efforts. In that regard, I hope we will be able to come back to, as you mentioned, Burma, Sudan, Zimbabwe, and maybe looking to the future, a crisis in Somalia that we might help to avoid.

This is an issue that has both legal and practical dimensions. On the legal side, for example, there is no question that the international community can act, even without the consent of a host government, when acting pursuant to the decisions of the U.N. Security Council under chapter VII of the U.N. Charter. The predicate for such action is a determination by the U.N. Security Council that the situation presents a threat to international peace and security.

And finally, the language on responsibility to protect that was adopted by heads of state and governments in the World Summit Document, as you mentioned, in September 2005 makes an important contribution in this regard. It is based on the recognition that certain situations that might in one sense be viewed as presenting internal threats, such as war crimes, genocide, crimes against humanity, and ethnic cleansing, do, in fact, present a threat to international peace and security. They are, therefore, proper subjects of concern to the international community as a whole and proper subjects of action by the U.N. Security Council. While the summit document was focused on these four particular categories of atrocities, there is a broader principle, that seemingly internal actions can threaten international peace and security.

Mr. Chairman, thank you very much and I would be happy to take any questions. And thank you, Mr. Hagel.

[The prepared statement of Mr. Warlick follows:]

PREPARED STATEMENT OF JAMES B. WARLICK, PRINCIPAL DEPUTY ASSISTANT SECRETARY, BUREAU OF INTERNATIONAL ORGANIZATION AFFAIRS, DEPARTMENT OF STATE, WASHINGTON, DC

Thank you, Mr. Chairman, Senator Hagel, and members of the subcommittee. I appreciate the opportunity to talk with you today about international disaster assistance and policy options.

Since the earliest days of the modern humanitarian movement, launched by Henri Dunant following the battle of Solferino in 1858, those who would aid the victims of disaster, whether natural or man made, have recognized the importance of neutrality. Only by keeping their efforts separate from the political positions and alliances established by governments could they obtain the consent of sovereign governments. As a result, humanitarian assistance has generally been provided on a nonpolitical basis, dedicated to relieving the suffering of humanity without taking sides in a disagreement or conflict, armed or otherwise. This approach has saved millions of lives. It has also given humanity some of its most decent and altruistic institutions, including the Red Cross Movement, and has earned Nobel peace prizes for two United Nations (U.N.) agencies: The World Food Programme and the High Commissioner for Refugees.

It is therefore important to recognize that, in examining the way forward on disaster assistance policy options, we must not interfere with the humanitarian community's ability to offer its assistance wherever needed without political conditionality. By maintaining this principled stance, the assistance community may be able to save countless lives in the future in circumstances where a regime bars representatives of states they consider hostile or suspect.

Perhaps the best policy option available to the U.S. when our bilateral assistance is shunned is to turn to the U.N. Secretariat and operational agencies, whose goals, structure, and service providers closely parallel our own. Within the Secretariat, the U.N. Emergency Response Coordinator (ERC) and Office for the Coordination of Humanitarian Affairs (OCHA) focus precisely on the issue of disaster assistance. In addition, the ERC advocates strongly for humanitarian action: Former ERC Jan Egeland was among the earliest and most passionate advocates of humanitarian action in Darfur; his successor, John Holmes, spent more than a week in Burma after cyclone Nargis struck, pressing the regime to open up to outside help. He is now actively engaged in efforts to persuade the Government of Zimbabwe to rescind its decision to suspend all nongovernmental organizations (NGOs) activity in that country.

There are also the U.N. operational agencies themselves. Like USAID, they rely on and provide funds to field-based NGO implementing partners whenever possible. Thus, even when a U.S. presence is not welcome in a particular country, a U.N. presence can assure the adherence to humanitarian policies, procedures and goals similar to our own. Often, the U.N. presence also provides an umbrella through which U.S. goods and services can reach those in need.

The ideal, of course, is for a state to welcome direct bilateral assistance as well as the presence of multilateral agencies. Under such circumstances the population will benefit, I would note in particular, from the Office of U.S. Foreign Disaster Assistance (OFDA), our lead U.S. Government (USG) agency for response to disasters. In many instances, including the Bam Earthquake in Iran, and hurricanes in Cuba, OFDA has provided vital, impartial assistance to populations in need in countries that usually exclude our help. It is clearly important that the USG maintain robust civilian organizations with proven track records of impartiality that can link with the broader humanitarian community to meet urgent needs in any part of the world. Our close relations with other bilateral donor agencies, the Red Cross Movement, and the United Nations humanitarian agencies give us numerous policy options and are essential to effective impartial civilian-led interventions.

The art of humanitarian response lies in finding the best combination of responders for a specific crisis. At times, the civilian agencies are supported by their colleagues at the Department of Defense (DOD). DOD's logistical capacity to move materials, coupled with the skills and compassion which our soldiers, sailors, airmen, and marines bring to humanitarian emergencies, are proven and invaluable. For instance, when the tsunami devastated the lives of millions of people in the Indian Ocean states, the U.S. military was a key partner in putting together a rapid and effective response. However, it is important to note that in responding to the tsunami the U.S. military was there by invitation, and that it operated in support of a civilian-led USG and global effort.

As we have seen most recently in Burma, the international willingness to respond may be rejected or impeded even more broadly by local forces. In some cases, regional groupings of states have stepped forward in an effort to broker some arrange-

ment for providing assistance. ECOWAS (Economic Community of West African States) performed such a role in Sierra Leone and Liberia; the AU (African Union) has attempted to help in Darfur and Somalia; and ASEAN (Association of South East Asian Nations) has stepped forward in Burma. Such regional groupings often can carry more weight and exert more influence on a neighboring state than large bilateral donors can, and they can provide an acceptable platform through which the international community can channel assistance.

In the broadest sense, the multilateral framework for humanitarian intervention is set out in the Charter of the United Nations, which reflects the “sovereign equality” of all Member States. Consistent with this, it is generally accepted that we should look in the first instance to the state involved to address the needs of its people. Often, states can do this with little or no outside help, or make voluntary arrangements with other states, international organizations or volunteer groups to assist them.

When a state is unable to assist its people and unwilling to accept foreign assistance, the international community, through the United Nations, can use diplomatic and other peaceful means to try to persuade the state to allow assistance in.

The question—what is our last resort if all else fails—poses the greatest challenge in humanitarian intervention. What if the door is barred to all: The Red Cross Movement, the U.N. operational agencies, the NGOs, the bilateral donors (both civilian and military), and the regional political groupings? Must the world stand by while people suffer and die because they are denied access to assistance that is waiting just over the horizon?

This is an issue that has both legal and practical dimensions. On the legal side, for example, there is no question that the international community can act, even without the consent of the host government, when acting pursuant to decisions of the U.N. Security Council under chapter VII of the U.N. Charter. The predicate for such action is a determination by the U.N. Security Council that the situation presents a threat to international peace and security.

The language on responsibility to protect that was adopted by heads of state and government in the World Summit Document of September 2005 makes an important contribution in this regard. It is based on the recognition that certain situations that might in one sense be viewed as presenting internal threats—war crimes, genocide, crimes against humanity, and ethnic cleansing—do, in fact, present a threat to international peace and security. They are, therefore, proper subjects of concern to the international community as a whole, and proper subjects of action by the U.N. Security Council. While the Summit Document was focused on these four particular categories of atrocities, the broader principle—that seemingly internal actions can threaten international peace and security—is an important one.

But there is a practical dimension as well. Forced intervention for the purpose of delivering humanitarian aid may have unintended consequences, putting more people at risk and cutting back on whatever assistance might already be flowing in. Military intervention may well involve interruption of commercial activity, including the delivery of private aid, and displacement of previously unaffected portions of the population. Hostilities could erupt, putting U.S. forces and local civilians in harm’s way. Even the use of civilian airdrops could draw hostile fire and prompt a government to expel or restrict humanitarian agencies already working on the ground. Thus, while humanitarian intervention without the consent of the host government cannot be ruled out as a policy option of last resort, its risks can be grave and its impact uncertain.

In examining the recent events in Burma, our success has been limited but has improved incrementally. First, the U.S. Embassy immediately requested emergency financial assistance and channeled it to U.N. agencies already operating in the country. Later, when the Government of Burma agreed to allow U.S. military cargo planes to begin delivering humanitarian supplies, Director for Foreign Assistance Fore and Admiral Keating were on the first flight. In these contacts with the Burmese authorities, our message has been clear: We are here to help. However, the regime remained intransigent on two key offers of bilateral assistance: The USAID DART team positioned in Bangkok, and direct delivery of assistance by our military assets in the region.

As the USG pursued efforts to provide bilateral assistance, the U.N. Secretary General also made a direct appeal to Burma’s generals. He first sent the U.N. Emergency Relief Coordinator, Under Secretary Holmes, to advocate for increased access by humanitarian workers, and within a few days, boarded a plane to deliver the message in person. Like us, the U.N. made clear that their sole motive was to assist the Burmese people. In addition, ASEAN Member States undertook diplomatic efforts to organize a regional response. Burmese authorities were more amenable to this approach, which led to a joint U.N.-ASEAN donors conference and a

joint assessment, currently under way, to identify and fill gaps in humanitarian assistance.

Throughout these diplomatic efforts, work was underway in Burma to relieve the suffering. NGOs and U.N. agencies already operational in the field, many with strong financial support from USAID and the Department of State, began to assess humanitarian needs, coordinate responses, and deliver relief. In some cases, the Burmese authorities have allowed them to strengthen their staff and expand their roles.

Has the Burmese response to these efforts been acceptable? No. Have the Burmese people suffered needlessly? Yes. We and our partners therefore continue to work to deliver additional resources and skilled personnel to resolve the substantial needs which remain 6 weeks after the cyclone struck, and to examine humanitarian policy options to determine how more can be done.

By contrast, following the December 2004 Indian Ocean tsunami, host governments welcomed nearly all offers of international assistance. While some incidents of government rejection of aid from a specific donor or efforts to restrict the movements of assistance workers and journalists were reported, there were few given the scale and scope of the disaster, which affected 12 countries, killed a quarter of a million people, and left 10 million homeless.

Even in the Bam Earthquake in Iran, as noted, a hostile government recognized and accepted the neutral and impartial offer of assistance from OFDA and other Western donors. In Somalia, we are confronted not by the actions of a hostile government, but by the challenges of operating in a failed state where corruption, banditry, and piracy hinder the movement of civilians and impede the provision of humanitarian assistance. The crisis there remains primarily one of security.

Darfur, however, is an example where both lack of security on the ground and government interference impede humanitarian operations. The U.S., as you know, has led the effort to rally worldwide condemnation of the genocide there, and to support efforts to position AU and U.N. peacekeepers with the physical capacity and legal authority to protect civilians and project force. Like the earlier Operation Lifeline Sudan in the south, the Darfur efforts are subject to constantly changing conditions and new obstacles created by the Khartoum government. Rebel forces also pose serious challenges and are responsible for some of the numerous attacks on humanitarian workers in clear violation of international law.

As each of these crises has shown, the U.S., in particular, and the global community, in general, have a strong desire and capacity to assist the victims of disaster. We do so in the best of the humanitarian tradition. Our diplomatic efforts, like our policy options, are designed to move the marker ever closer to the goal of aiding the victims of humanitarian disasters. We stand ready to work with any state in furtherance of that goal.

Senator MENENDEZ. Thank you very much, Mr. Warlick.  
Mr. Kunder.

**STATEMENT OF JAMES KUNDER, ACTING DEPUTY ADMINISTRATOR, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, WASHINGTON, DC**

Mr. KUNDER. Thank you. This set of issues is a set that we grapple with regularly, and we very much appreciate the opportunity to share some of our perspectives and get your feedback.

I am joined today by Mr. Ky Luu, the Director of our Office of Foreign Disaster Assistance. I very much appreciate your mentioning them and our Food for Peace Office. They really are a group of dedicated professionals who regularly put their lives on the line to deliver humanitarian assistance. So thank you very much for the compliment.

I will just summarize briefly my statement. What I tried to do was put these questions into some kind of context, pointing out that there are about 355 disasters that USAID has responded to over the last 5 years. So a great bulk of these crises are those that are handled behind the headlines, without a lot of resistance from the host government. Most of them work quite well.

I tried to disaggregate the reasons why governments sometimes resist U.S. or other foreign assistance, and that runs the gamut from chaos within the country to lack of the government's own assessment capacity—they simply do not know they cannot handle the problem—all the way to some good-news stories that are buried in there. For example, one of the things we have been trying to do is build disaster response capability around the world. We have now trained more than 40,000 disaster responders in 26 countries of Latin America and the Caribbean so that now there is some indigenous capacity, and they frankly do not need our assistance as much as they used to 20 or 30 years ago.

Then I tried to get at the question of what are some of the tactics we can use when a government does resist, and I lay out nine different strategies, everything from cross-border operations to using the U.N. agencies, as Jim mentioned, and some areas where I think there is further work that we could all do, like developing the U.N. Guiding Principles on Internal Displacement, which do not yet have the force of international law but could be important tools to intervene in a country where there is internal displacement and the government is not taking care of its own people's needs.

But ultimately, there are an irreducible number of countries where there is a mismatch between the ability of the international community to respond and the resistance of the host government. Burma is the most dramatic recent example. I am prepared to go into any detail you want on how we responded. Essentially we made the decision early on to try to deal with the junta to open up some humanitarian space in Burma. We believe that that strategy has been partially successful to the tune that we have now been able to provide \$38 million of U.S. Government assistance to the people of Burma. We have had more than 170 C-130 loads of relief supplies go in. And now those supplies are being consigned, transferred over to the international organizations or the NGOs. So we believe we have been able to wedge open some humanitarian space, but clearly not enough and clearly there are still people suffering in Burma today.

And let me just close by saying, sir, I was contemplating coming up here today, that 16 years ago, almost exactly this month, I was preparing to make my first trip into Somalia during the crisis back then before the U.S. troops went in. I traveled in with then-Senator Nancy Kassebaum. We were the first two senior U.S. Government officials to travel into Somalia at that point after the fall of the Siad Barre regime. And because of the horrific situation on the ground, I came back an impassioned advocate for sending U.S. troops in, which of course we did about 6 months later in December 1992. That set in motion a series of events that culminated in the events that we all know about, the killing of U.S. troops and so forth.

In the interim, we did solve the humanitarian crisis. The intervention under chapter VII of the U.N. Charter did, in fact, solve the humanitarian crisis. It then, of course, opened another set of issues related to the governance of Somalia, which I think lays on the table the complex calculus that we have to face in a Bosnia, in a Somalia, in a Burma. There is undoubtedly benefit that can

happen when outsiders force their way in and take on the humanitarian challenges.

The more difficult question is what comes next. Do we then take on the reasons why there was a crisis in the first place? And what are the long-term implications for the people who are going to stay there after we leave, and are we benefiting them or hurting them in the long run? So I am more than glad to go into any detail that you would like on those.

But, again, thank you for holding this hearing. We appreciate the chance to testify.

[The prepared statement of Mr. Kunder follows:]

PREPARED STATEMENT OF JAMES KUNDER, ACTING DEPUTY ADMINISTRATOR, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, WASHINGTON, DC

Mr. Chairman and members of the subcommittee, thank you for inviting me to testify today to discuss policy options when political obstacles impede humanitarian assistance following a disaster.

In the vast majority of international disasters, emergency relief from the U.S. Government (USG) arrives rapidly and efficiently to help populations in distress. In the past 5 years alone, USAID has responded to 355 declared disasters in all regions of the world. Most of these natural and manmade disasters never make international headlines and are addressed in a straightforward manner without political interference in the affected country. Our assistance usually is eagerly accepted by thankful foreign governments and by grateful citizens as they struggle to overcome devastation and hardship.

Your hearing today is timely, however. As we speak, a difficult humanitarian response in Burma is underway, with the full collaboration of staff from the U.S. Agency for International Development (USAID), the Department of State, the U.S. Military, international organizations, and nongovernmental organizations (NGOs). Our emergency efforts in Burma have encountered numerous obstacles, as you know. Meanwhile in Zimbabwe, the Zimbabwean Government on June 4 ordered the suspension of all NGO operations in that country. In Sudan, authorities last month slowed humanitarian operations by temporarily closing all airports in Darfur to humanitarian traffic.

Recent events such as these underline the importance of having policy options that can help overcome political obstructions to humanitarian assistance. Led by USAID, the USG is second-to-none in its ability to quickly mobilize resources to respond to disasters throughout the world. In order for the USG to provide humanitarian assistance, the host government of the recipient country must request—or be willing to accept—our assistance. Unfortunately, in countries where populations are in desperate need of humanitarian assistance, this is not always the case.

#### NORMAL FRAMEWORK FOR HUMANITARIAN ASSISTANCE

In order to understand the policy options available to USAID when political obstacles impede humanitarian help, it is important to understand how the USG, through USAID, provides humanitarian assistance. The USG declares an international disaster if an event meets three criteria: The magnitude of the disaster is beyond the capacity of the host country to respond; the host country requests or is willing to accept assistance; and a response is in the interest of the USG. It is recognized as a matter of principle and practice that it is virtually always in the interest of the USG to provide humanitarian assistance where post-disaster suffering is extensive and when lives hang in the balance.

Within USAID, the Bureau for Democracy, Conflict, and Humanitarian Assistance (DCHA) plays the primary role in responding to emergency situations. Within USAID/DCHA, the office of U.S. Foreign Disaster Assistance (OFDA) is designated as the lead USG office responsible for providing humanitarian assistance in response to international disasters. The legislated mandate of OFDA is to save lives, alleviate human suffering, and reduce the social and economic impact of humanitarian emergencies worldwide. In addition, USAID's Office of Food for Peace (FFP) is deeply involved in providing life-saving emergency food aid to international victims of disasters and other emergencies.

USAID provides emergency humanitarian assistance in accordance with fundamental, widely recognized humanitarian principles. Our assistance adheres to the "humanitarian imperative"—the core principle that human suffering should be ad-

dressed wherever it is found. USAID provides humanitarian assistance that is politically neutral, socially impartial, and is based on victims' needs rather than political factors. This is one reason that assistance authorized under the International Disaster Assistance account may be furnished notwithstanding any other provision of law that otherwise might prohibit assistance to a particular country for political or other reasons unrelated to the need to respond to a disaster. USAID disaster response programs strive to live up to the principle of "do no harm" and seek, to the extent possible, to provide protection to beneficiaries and build local capacities. The life-saving assistance rendered by USAID always aims to fulfill our responsibility of accountability—both to the beneficiary community as well as to the American people whose resources and goodwill are entrusted to us.

It is important to understand that USAID's consistent adherence to these fundamental humanitarian principles compels us—and indeed, enables us—to provide disaster relief even in countries that have strained relations with the USG. Our adherence to these humanitarian principles opens doors internationally. For example, USAID during the past 5 years has responded with emergency humanitarian assistance to three natural disasters in Cuba, three emergencies in North Korea, a major earthquake in Iran, a natural catastrophe in Venezuela, six declared emergencies in Zimbabwe, as well as an emergency in Burma prior to last month's cyclone. The strictly humanitarian, nonpolitical nature of USAID's international disaster assistance often is sufficient to overcome tense diplomatic relationships. The people of these countries are grateful for our help in their time of need.

In addition to the above principles, humanitarian efforts by the international community, including USAID, are bolstered by international humanitarian law that imposes on States certain obligations with respect to humanitarian aid. The Fourth Geneva Convention requires an Occupying State to the fullest extent of the means available to it to ensure food and medical supplies for the occupied civilian population. For States Parties to Additional Protocol I, there is the added requirement of providing, to the extent feasible, clothing, bedding, shelter, and other supplies essential to the survival of the civilian population. And the Fourth Convention recognizes the role of the International Committee of the Red Cross (ICRC) in protecting civilians and providing relief, subject to the consent of the Parties to the Conflict.

The U.N. Guiding Principles on Internal Displacement, although lacking the force of international law, are based on IHL and human rights instruments and are widely recognized as a useful framework for addressing the needs of populations displaced by natural or manmade emergencies. The U.N. Guiding Principles on Internal Displacement state that "international humanitarian organizations and other appropriate actors have the right to offer their services" and that "consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance." The U.N. guidelines further state that IDPs should enjoy safe access to food, potable water, shelter, clothing, and essential medical services and sanitation, and that authorities in afflicted countries "shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access . . . ."

Proper adherence to these principles and protocols would go a long way toward eliminating restrictions on humanitarian access imposed by some governments.

#### WHY OBSTACLES OCCUR

Instances occur where a foreign government does not request emergency humanitarian assistance from the USG or where a foreign government accepts USG help grudgingly and with numerous obstructions that undermine our efforts. Based on our many years of experience in hundreds of disaster responses, it appears that these obstacles occur for at least five general reasons.

First, some governments do not request USG disaster assistance because they already possess sufficient capacity to respond. This is partly due to the relatively unheralded success story of USAID's long investment in local disaster preparedness and local disaster mitigation efforts in Latin America, the Caribbean, and South Asia. USAID/OFDA has helped provide training to more than 40,000 disaster specialists in 26 Latin American and Caribbean countries during the past 18 years, helping to build local response capacities. USAID is seeking to replicate that capacity-building strategy in six of the most disaster-prone countries of Asia.

For example, when flooding and landslides hit the second-largest city in Bangladesh last year, the Government of Bangladesh and organizations in that country possessed the capacity to conduct emergency relief operations without a formal appeal for assistance from USAID. Similarly, when tropical cyclone Sidr struck Bangladesh in November 2007 and killed 3,300 persons, the tragic loss of life was dra-

matically lower than the 125,000 death toll when a cyclone of similar strength had hit Bangladesh in 1991. Disaster preparedness and mitigation programs supported by USAID in Bangladesh over the years played an important role in the reduced loss of life. Therefore, a government's decision not to seek USG disaster assistance—or to seek only limited help—can be a welcomed sign of local preparedness and expertise that, in many cases, USAID helped to nurture over many years.

Second, some governments do not request USG humanitarian assistance—or severely limit the assistance they will accept—due to a sense of national pride, a poor understanding of the scale of disaster, or an inflated sense of local emergency response capacities.

Third, some governments coping with a local disaster are wary of USG help because they are slow to understand and trust that USG humanitarian assistance is genuinely grounded in the principles of neutrality and impartiality, as discussed above. The Burmese regime has limited our ability to provide humanitarian assistance in the aftermath of Cyclone Nargis, claiming that our assistance could not be trusted.

Fourth, some countries are slow to request USG assistance because of their own political chaos. Somalia has been such an example for much of the past two decades.

Fifth, in some instances a government does not want USG emergency assistance—or raises constant obstacles to undermine effectiveness of assistance that does arrive—because that government has chosen to trigger or exploit the emergency to marginalize or punish a portion of its own population. The Government of Sudan has a long history of employing this tactic dating back to the 1980s. Zimbabwe has a more recent track record in this regard.

These impediments can slow humanitarian assistance or, in worst-case scenarios, block it altogether. As a result, large numbers of innocent people die unnecessarily or are forced to endure additional suffering because the food, plastic sheeting, blankets, medicines, and other essential relief commodities are stacked up in warehouses or on ships, blocked from timely distribution to populations in dire need.

However, it is important to point out that even in situations with restricted humanitarian access, at least a portion of the desperately needed emergency relief commodities usually manage to reach disaster victims. In the current Burma cyclone emergency response, for example, USAID has been able to overcome constraints imposed by Burmese authorities to provide \$28.3 million of assistance to 13 U.N. and nongovernmental organizations (NGOs) for shelter, food aid, emergency health services, and water, sanitation, and hygiene programs targeted at more than 1 million beneficiaries. We are distressed by the unacceptable delays imposed on us and our humanitarian partners in the field, and the scale of assistance allowed into Burma has not been commensurate with the overwhelming humanitarian need on the ground, but even in Burma our humanitarian efforts are no longer totally blocked.

#### STRATEGIES AND TACTICS TO OVERCOME OBSTRUCTIONS

It is worth examining the toolkit of strategies and tactics that enable USAID to deliver disaster assistance despite obstacles erected by the governments of affected countries.

##### *Ensure Cooperation Between USAID and Department of State*

Constraints on humanitarian access often can be alleviated through discussions at the diplomatic level. International diplomatic pressure, particularly when done in coordination with regional leaders or key partners of the country in question, often is an effective tool for gaining humanitarian access. The Organization of American States (OAS) and the Association of Southeast Asian Nations (ASEAN) and their constituent members are examples of key partners that can be helpful allies in advocating for humanitarian access.

During a disaster response, USAID relief specialists work to keep Department of State (DOS) colleagues fully informed about the scale of needs on the ground, specific USAID relief actions being blocked by local government authorities, specific concessions needed from the host government, and whether local officials are implementing agreements made at higher levels. Coordination between USAID and DOS works best when there is a collective understanding of the core principles underlying humanitarian assistance efforts.

##### *Channel Assistance Through Nongovernmental Agencies and International Organizations*

Emergency relief funded by USAID is overwhelmingly channeled through U.N. humanitarian agencies, international or local NGOs, or other international organizations such as the ICRC. This accentuates the neutral, impartial, independent na-

ture of the USG's humanitarian assistance. Even when host governments choose to limit the access of USAID relief officials to disaster areas, USAID relief can still reach beneficiaries via these institutional partners, many of whom have ongoing programs in affected countries and, therefore, are well-positioned to assess needs and ensure that USAID assistance is well-targeted. To cite one example, USAID regularly channels funding to national Red Cross/Red Crescent societies in stricken countries via the International Federation of the Red Cross/Red Crescent, thereby bypassing obstacles that might impede international agencies.

To be sure, U.N. agencies and NGOs also are vulnerable to obstructions by host-country officials. This has occurred in Burma and regularly occurs in Sudan. The Government of Zimbabwe ordered NGOs to suspend their operations 2 weeks ago. In such situations, a combined advocacy effort by USAID, the DOS, other donor countries, and by top U.N. officials becomes necessary. Currently in Zimbabwe, for instance, USAID is urging the U.N. to take a more active advocacy role on behalf of NGOs struggling to operate there.

#### *Maintain Civilian Lead on Emergency Response*

The Department of Defense (DOD) possesses in some situations unsurpassed logistical airlift capacity that has proven to be extremely supportive in some particularly large or challenging humanitarian interventions. When those situations arise, USAID, as the lead agency for USG humanitarian assistance response, works hard to coordinate the DOD efforts with our own to ensure that we are both addressing the most pressing humanitarian priorities using the right methodologies.

USAID/DCHA has established an Office of Military Affairs to serve as USAID's primary strategic point of contact with DOD. At an operational level, USAID/OFDA provides training on humanitarian principles and methodologies to DOD personnel and maintains ongoing interaction with DOD staff on a range of humanitarian issues. At the height of an emergency response in which military assets might be used, USAID/OFDA humanitarian assistance advisors are deployed to DOD's appropriate combat command headquarters to provide guidance on humanitarian operations in accordance with humanitarian principles and priorities. A new USAID Policy on Civilian-Military Cooperation lays out key principles for cooperation when the post-emergency phase has been completed and long-term reconstruction and development begin.

The U.N. has produced numerous policy documents that can serve as references for humanitarian agencies worldwide, including "Guidelines on the Use of Military and Civil Defense Assets in Disaster Relief" produced in 1994, "Guiding and Operating Principles for the Use of Military and Civil Defense Assets in Support of Humanitarian Operations" produced in 1995, "Guidance on Use of Military Aircraft for U.N. Humanitarian Operations During the Current Conflict in Afghanistan" produced in 2001, and "Guidelines on the Use of Military and Civil Defense Assets in Complex Emergencies" in 2003.

As recent experience in Burma illustrates, some foreign governments are reluctant to permit U.S. military personnel to participate directly on the ground in emergency relief operations. For that reason, a clear distinction between military personnel and USG civilian humanitarian workers can be crucial in gaining permission to access disaster zones.

#### *Use Low-Visibility Tactics*

Our emergency relief efforts typically engender local and international goodwill that results in helpful public diplomacy. While this is welcomed, it is not the USG's main motivation for providing humanitarian assistance. The main purpose is to act rapidly to save lives and alleviate suffering. Because of political or cultural sensitivities in particular countries, USAID sometimes eschews high-profile steps such as deployment of USAID Disaster Assistance Response Teams to disaster zones in favor of less visible steps that work through U.N. humanitarian agencies or NGOs. Because of local sensitivities or dangers, USAID in some disaster responses agrees to suspend some or all of its requirement that all projects and commodities funded by USAID bear the USAID logo. We utilize these tactics so that life-saving aid will not be blocked or otherwise abused by local politics.

#### *Airdrop Humanitarian Commodities*

When U.S. emergency relief encounters obstructions abroad, the American public and journalists frequently ask, "Why not deliver relief supplies via airdrops?" Humanitarian airdrops were temporarily used in Bosnia during the 1990s and for many years in South Sudan.

In truth, airdropping relief commodities into disaster areas is extremely problematic and is attempted only in special circumstances as a last resort. Airdrops are potentially dangerous to people on the ground. Relief supplies dropped from planes

are susceptible to falling into the wrong hands and often fail to reach the weakest and most vulnerable victims in chaotic disaster situations. Airdrops are extremely expensive and inevitably result in damage on impact to a portion of the commodities being delivered. Without proper monitoring and controls, airdropped supplies such as medicines can be misused in dangerous ways. Airdrops have a chance to be of limited effectiveness only when operational air space is safe, the “drop zone” is small and well-defined, and when cooperative local authorities or trained humanitarian workers are present on the ground to organize proper distribution of airdropped supplies. Airdrops into the extensive Irrawaddy Delta of Burma after the cyclone were not considered to be a viable alternative.

*Use Tactic of Cross-Border Relief*

When violent conflict or national authorities claiming “sovereignty” block humanitarian assistance to populations in dire need, USAID and other international humanitarian agencies have resorted at times to cross-border relief efforts that use a neighboring country as a base for relief operations.

Various international agencies used a cross-border strategy to deliver assistance into northern Ethiopia (now Eritrea) from humanitarian bases in Sudan during the 1980s, into Afghanistan from humanitarian staging areas in Pakistan and Tajikistan during the 1980s and 1990s, and into Southern Sudan from a humanitarian base of operations in Kenya during the 1990s.

Cross-border humanitarian operations typically require permission and cooperation from countries hosting humanitarian bases, adequate local infrastructure to facilitate cross-border travel, as well as confidence that humanitarian workers can travel across the border safely.

*Push for Formal Negotiated Access*

Ideally, the existence of IHL and widely recognized humanitarian principles should make negotiations for humanitarian access unnecessary. Unfortunately, it is all too clear that in some emergencies this is not the case.

The international humanitarian community gained access to millions of war-affected persons in desperate need of help in Southern Sudan in 1989 and throughout the 1990s through a negotiated process that came to be known as Operation Lifeline Sudan (OLS). Despite its many imperfections, OLS was a groundbreaking achievement in the history of international emergency relief. At a time of devastating civil war in Southern Sudan, OLS was in essence the world’s first formally negotiated cross-border relief operation. The agreement created designated “corridors of tranquility” and pledged all parties in the conflict to permit safe and unhindered passage and delivery of relief items to populations in need even as military operations continued unabated. Although the Government of Sudan in particular frequently violated its commitments under OLS, the agreement made possible a large and long-term relief operation that saved countless lives during Southern Sudan’s long war.

Over the many years of conflict in Sudan, humanitarian actors have also helped negotiate temporary cease-fires to undertake vaccination campaigns and other humanitarian activities. In fact, experience in Sudan has demonstrated that establishing a dialogue between warring parties on humanitarian issues can gradually help to build the relationships and trust that warring parties need in order to jumpstart the political dialogue and negotiations that can bring the underlying conflict to an end.

*Resort to U.N. Chapter VII Peace Enforcement*

When situations warrant, the USG supports U.N. peace enforcement measures under which the Security Council, acting under chapter VII of the Charter of the United Nations, can authorize the use of force to restore and maintain peace and security, and such measures can include creating safe conditions for humanitarian operations. Countries and areas with respect to which the U.N. Security Council has acted under its chapter VII authority in recent years include Afghanistan, East Timor, Haiti, the Democratic Republic of Congo, Albania, Sierra Leone, and the Ethiopia-Eritrea border. USAID’s monitoring of humanitarian conditions is part of the analysis used by USG policymakers when considering whether to support a U.N. chapter VII resolution.

*Responsibility to Protect*

Mr. Chairman, the subcommittee has posed the question of whether the responsibility to protect concept, endorsed in 2005 at the U.N. World Summit, should be the basis for the Security Council to authorize the use of force in recent humanitarian situations such as the Burma cyclone response. I will defer to the views of the

Department of State on this issue, but USAID offers two points that should be kept in mind:

First, from a strictly humanitarian perspective, it is conceivable that in a situation involving genocide, war crimes, crimes against humanity, or ethnic cleansing, USAID might be prompted to make an internal recommendation that policymakers consider a forceful intervention. The ultimate decision on whether to pursue Security Council action in such a situation would be made at a higher level of the USG, of course, but USAID recognizes that it does have an important responsibility to ensure that facts and analyses about dire humanitarian conditions are squarely on the table when important decisions are made.

Second, as a practical matter, USAID wishes to point out that the international humanitarian community should always take care that disaster victims do not suffer retribution from their national authorities for receiving or accepting our assistance; this concern is consistent with the fundamental humanitarian principle of “do no harm.”

#### CONCLUSION

Included as an appendix to this written testimony is a review of USAID disaster responses in several case studies of interest to the subcommittee. USAID would be pleased provide additional information on these or other case studies should the subcommittee request.

In conclusion, Mr. Chairman, the encouraging news is that USAID’s emergency relief in most situations reaches disaster victims rapidly, effectively, and efficiently, often without headline attention. Working with partner agencies, we find a way to overcome most logistical, political, and security impediments. When obstructions to assistance grow particularly severe, USAID has developed a large and varied list of strategies and tactics over the years that have proven useful in getting relief to people in need.

The troubling news is that frustrations remain. Humanitarian access in some emergencies is not as free and unhindered as it needs to be. There can be no doubt that some disaster victims have suffered and died needlessly when life-saving relief supplies were blocked or delayed, despite our best efforts. Please be assured that USAID will continue its tradition of seeking creative, forward-leaning strategies that will enable us to fulfill our disaster response mission of saving lives and reducing human suffering. It is a mission and responsibility we take quite seriously.

#### APPENDIX: SUMMARY OF SELECTED CASE STUDIES

##### ZIMBABWE COMPLEX EMERGENCY

Since 2000, conditions for most Zimbabweans have deteriorated due to the country’s collapsing economy, declining access to basic social services and staple food items, the effects of HIV/AIDS, and increasing political violence. Since the March 29, 2008, Presidential and legislative elections in Zimbabwe, heightened political tension has led to general insecurity and a growing incidence of targeted violence. Forces loyal to the ruling Zimbabwe African National Union—Patriotic Front (ZANU–PF) carry out attacks against perceived supporters and members of the opposition Movement for Democratic Change (MDC) party. The violent instability has created new displacement and humanitarian needs, compounding the complex emergency in the country.

USAID has provided more than \$58.3 million in humanitarian assistance thus far in FY 2008, focusing on agriculture and food security, relief commodities, protection, humanitarian coordination and information management, water, sanitation, and hygiene programs, as well as emergency food assistance.

In addition to attacks on civilians, the post-election violence has resulted in severely restricted humanitarian access and working space. Since the elections, pro-Government of Zimbabwe (GOZ) groups have intimidated and threatened NGOs working in some areas, affecting the provision of emergency assistance and the implementation of regular programs. More recently, NGOs in Zimbabwe have faced increasing GOZ restrictions in the prelude to the second round of Presidential elections scheduled for late June 2008. On June 4, the Minister of Public Service, Labor, and Social Welfare ordered all NGOs working in Zimbabwe to suspend operations until further notice. These restrictions will affect aid programs that benefit more than 4 million Zimbabweans.

In response to increased constraints imposed by the GOZ, U.S. Ambassador James D. McGee and USAID/Zimbabwe have requested that USAID send more staff to the field in marked vehicles to stay in close touch with our U.N. and NGO partners and demonstrate to the GOZ that the USG maintains a presence to the extent we can

do so safely. In conjunction with other donors and NGOs, USAID has pushed the U.N. to take a more active role in advocacy on behalf of the humanitarian community and make a general statement about the lack of humanitarian access in Zimbabwe.

#### SUDAN COMPLEX EMERGENCY

Sudan for decades has been one of the most difficult places in the world to mount emergency relief programs because of the immense scale of humanitarian need, the massive scope of population displacement, the distinct lack of infrastructure in parts of the country, the existence of ongoing conflict in some areas, and the regular cycle of obstructions on humanitarian efforts created by the Government of Sudan (GOS).

For these reasons, the international community pushed for and achieved in 1989 a negotiated agreement, known as Operation Lifeline Sudan (OLS), in which the warring parties agreed to allow humanitarian assistance to reach conflict victims. OLS operated as a consortium of two U.N. agencies—UNICEF and the World Food Program—and some 35 NGOs. Although OLS was susceptible to consistent manipulation by all warring parties, particularly by the GOS, the operation managed to deliver huge amounts of food and nonfood relief commodities throughout the 1990s to populations in dire need, including to some of the most remote areas of Southern Sudan.

Sudan continues to cope with the effects of conflict, displacement, and insecurity countrywide. Some of the same obstructions to assistance experienced in Southern Sudan during the 1980s and 1990s are being repeated in present-day Darfur. Since 2003, the complex emergency in Darfur has affected 4.2 million people, including more than 2.4 million IDPs. Fighting in Darfur among armed opposition factions, the Sudanese Armed Forces, militias, and ethnic groups is ongoing. Since January 2008 alone, fighting has displaced more than 158,000 people within Darfur and to eastern Chad.

The USG is the largest bilateral donor to Sudan and has contributed more than \$3 billion for humanitarian programs in Sudan and eastern Chad since FY 2004. In FY 2008 alone, USAID/OFDA has provided approximately \$37 million to more than 40 implementing partners in Sudan and eastern Chad. USAID coordinates humanitarian activities with the U.S. Department of State as well as the Office of the U.S. Special Envoy to Sudan. Despite current restrictions, USAID continues to encourage the Sudanese Government to allow greater access and freedom of movement within its borders.

Sudan remains a difficult operating environment. Bureaucratic obstacles imposed by the Sudanese Government have impeded aid delivery in Darfur since the beginning of the crisis. These obstacles include extensive and cumbersome documentation of humanitarian activities, mandatory provision of confidential personnel information, multiple levels of required work agreements between various government entities and NGOs, and multiple levels of travel notifications and authorizations. In an important step to address these bureaucratic impediments, the Sudanese Government and the United Nations signed the Joint Communiqué on the Facilitation of Humanitarian Activities in Darfur in March 2007. The Joint Communiqué resulted in some improvements for humanitarian actors initially. However, the Sudanese Government continues to disregard articles of the Joint Communiqué. The Sudanese Government's actions violate both its commitment to respect the independence of humanitarian actors and its promise to respect the provision of assistance and freedom of access to all people in need.

In addition, the Sudanese Government has begun to create new bureaucratic obstacles for humanitarian agencies, including requiring travel permits, denying such permits, mandating that NGOs write technical agreements in Arabic, repeatedly canceling meetings to address issues related to the Joint Communiqué, and requesting additional financial information from NGOs. For the past year, Sudan has blocked the use of processed food aid containing genetically modified organisms. This has restricted the USG from providing WFP with corn-soya blend, which is used mainly to treat malnourished children. The loss of this significant commodity contribution has stretched the already tight resources of WFP. In May 2008, humanitarian operations were further hindered after government officials temporarily closed all airports in Darfur to humanitarian traffic and U.N. flights. Regional road closures also deny humanitarian actors access to affected areas and the ability to deliver emergency assistance.

Sudan continues to be a dangerous operating environment for USAID staff and implementing partners. Three USAID staff have been shot in Sudan since 2005, including the January 1 assassination of two USAID colleagues, John Granville and Abdul Rahman Abbas, in Khartoum. Darfur remains dangerous; since January 1,

assailants have killed 6 humanitarian staff, abducted nearly 100 relief workers, and hijacked 125 NGO and U.N. vehicles in Darfur. In late May, the Sudanese Government committed to increase police escorts for humanitarian convoys to a frequency of every 24 or 48 hours. Although this move was welcomed by humanitarian actors, as of June 5, the Sudanese Government had not yet provided additional escorts, and food aid convoys continue to travel infrequently and unprotected.

The absence of support and cooperation from the Sudanese Government makes humanitarian operations in Sudan more dangerous, more difficult, and more expensive for relief agencies to undertake. Despite increased impediments, USAID remains committed to carrying out the full range of humanitarian, recovery, reconstruction, and development activities that are vital to supporting efforts to consolidate peace throughout Sudan. We are proud of the courage and dedication of our staff and implementing partners to fulfill our humanitarian mandate in circumstances such as these. We look forward to the day when the people of Sudan are not substantially reliant on humanitarian aid for their very survival and we can work together with them to realize their aspirations for development and democracy.

#### BURMA CYCLONE

Cyclone Nargis made landfall in Burma on May 2, 2008. The cyclone caused grave humanitarian conditions for more than 2.4 million people in Burma. It bears pointing out that the humanitarian crisis in Burma did not begin with the cyclone; malnourishment and endemic diseases affected many Burmese people long before the cyclone made landfall. The cyclone has not only compounded these problems, but created new ones, including urgent shelter assistance needs, lack of safe drinking water, and loss of livelihoods.

The Burmese regime lacks the capacity to respond to the scale of the disaster and provide aid for its people. The regime refused life-saving assistance in the critical days and weeks after the cyclone hit—the time period which can be the difference between life and death. In fact, the international community cannot confirm the exact number of deaths from the cyclone due to lack of access. Since May 16, the regime has not changed the official number of dead or missing, which remains at approximately 130,000 individuals. The regime has also hindered humanitarian access to some of the worst-affected areas of the Irrawaddy Delta. These obstructions have contributed to a situation in which only approximately half of the 2.4 million affected individuals have received humanitarian assistance and many of those who have been reached have very limited and basic assistance.

Despite numerous challenges, the USG has provided life-saving assistance to the Burmese people by airlifting relief commodities, including more than \$5 million worth of USAID items, to Rangoon, from where our partners secure the items for transport to the affected areas. The USG, through coordination between DOD and USAID's Disaster Assistance Response Team (DART), has completed more than 150 C-130 sorties of emergency relief commodities from Bangkok, Thailand, to Rangoon, Burma. Prior to May 16, several DOD flights carrying USAID commodities were consigned to the Burmese regime in light of the urgent need to deliver assistance to affected areas immediately following the cyclone. Since that time, all USAID commodities are distributed by U.N. and NGO partners.

In addition to providing relief commodities, USAID is continuing to fund emergency assistance programs. In fact, on June 5, USAID announced an additional \$8.1 million in program funding for the relief effort in Burma. With this money, USAID has funded 13 U.N. and NGO partners working in the affected areas to implement programs in 10 sectors, including emergency health, shelter, food aid, and water, sanitation, and hygiene programs. These programs target more than 1 million beneficiaries throughout affected areas of Burma. USAID is confident the assistance will reach targeted beneficiaries because we provide direct funding only to NGO and U.N. implementing partners that have established relief operations in Burma, accountable monitoring mechanisms in place, knowledge of the operating environment and infrastructure, and memorandums of understanding with government authorities. As of June 12, the USG had provided more than \$37.7 million in humanitarian assistance to Burma, including \$28.3 million from USAID and \$9.5 million from DOD.

At present, ongoing access problems pose the most serious obstacle to relief efforts. The U.N. Office for the Coordination of Humanitarian Affairs (OCHA) and the International Federation of Red Cross and Red Crescent Societies (IFRC) have repeatedly called for a detailed needs analysis in affected areas. A joint U.N.-ASEAN-Burmese assessment finally began June 10 and is expected to conclude June 19. The lack of information collection and sharing about the type and number

of humanitarian needs, a direct result of limited access, hampers the relief operations of humanitarian organizations currently active in affected areas. These organizations have a long history of providing effective and comprehensive emergency assistance under different circumstances. Insufficient knowledge of the amount of assistance provided directly through the government and private sector within Burma, and where and to whom the relief aid has been distributed, further complicates efforts to adequately address assistance gaps.

The most effective way for the U.N., NGOs, and donors to monitor the delivery of relief supplies and coordinate relief programs is to gain unhindered access to affected areas, particularly the delta. Additional obstacles preventing targeted assistance to those who need it most include the constant movement of affected populations and the regime's closing of some unofficial camps for persons displaced by the storm. Reports that the regime has forced some cyclone victims to return to their devastated communities are deeply troubling.

Some progress has been made on the access front. As of June 9, the GOB had issued 179 visas to international U.N. staff, according to OCHA. The U.N. has not reported obstacles to visa procurement for U.N. staff, and as a result, the number of U.N. personnel arriving in Burma each week has remained static since mid-May. Even as the GOB has begun to open up to aid from international sources such as the Association of Southeast Asian Nations (ASEAN) and the U.N., the visa process for international NGO staff continues to move slowly, with some applications pending for up to 3 weeks. The GOB still has not communicated clear criteria for obtaining visas. NGOs also continue to report that GOB officials are prohibiting most international aid workers who enter the country from traveling beyond Rangoon to the affected areas. The process for obtaining a permit to travel to cyclone-affected areas takes at least 48 hours, often much longer.

The USG continues to urge the Burmese regime to provide visas for international disaster experts and to allow those experts to access cyclone-affected areas. As you know, USAID deployed a Disaster Assistance Response Team to the area to assess the damage and coordinate the response, but the full team has not officially been given access. Nonetheless, USAID has been able to send in five technical specialists in shelter, logistics, water and sanitation, donor coordination, and a liaison with U.N., NGOs, and international organizations. These specialists are working with the U.N. and our NGO partners to oversee the USAID contribution to the Cyclone Nargis relief effort. The DART remains in Thailand working with DOD to coordinate USG assistance and participate in the U.N. Cluster system, which provides structure and lead organizations for each humanitarian sector. Without our full team on the ground in Burma, however, we have to work hard to identify gaps in assistance through third parties and rely on our years of expertise to make sense of what we are hearing. It is difficult to adequately assess needs and coordinate efforts with our international counterparts and local officials.

Looking ahead, USAID intends to coordinate our assistance with the international humanitarian community and work with trusted NGOs with established relief operations in the affected areas. Despite the best efforts of the international community, however, the people of Burma urgently require additional humanitarian assistance. USAID stands prepared to provide our disaster expertise through deployment of our disaster specialists. This expertise, along with the humanitarian assistance so ably provided by our partners, can save more lives and alleviate the immense suffering of the Burmese people. To this end, USAID is working diligently to surmount the challenges posed by the GOB's unwillingness to permit our staff to enter the country. We look forward to the day when political considerations no longer affect or prevent the provision of humanitarian, life-saving assistance in Burma and elsewhere.

#### IRAN EARTHQUAKE

On December 26, 2003, a magnitude 6.6 earthquake struck southeastern Iran near the city of Bam. The quake killed more than 26,000 people, injured 30,000 others, left 100,000 people homeless, and damaged and destroyed buildings and infrastructure. The Government of Iran (GOI) and IFRC affiliates possessed large disaster-response capacity. However, the magnitude of the event, aggravated by its occurrence near an urban area with extremely low earthquake resistance, overwhelmed local disaster response capacities.

Following the earthquake, the USG offered humanitarian assistance to the GOI, and Iranian President Mohammad Khatami accepted. USAID deployed a Disaster Assistance Response Team (DART) comprising 7 individuals from USAID; 11 people from Fairfax County's Urban Search and Rescue Task Force; and a 63-person USG international medical and surgical response team. The DART arrived in Iran on December 30 and conducted needs and structural assessments and coordinated assist-

ance with the GOI, U.N. agencies, and NGOs. In total, the USG provided the people of Iran with five airlifts of relief commodities and other humanitarian assistance worth more than \$10.4 million.

The successful provision of U.S. humanitarian assistance to Iran resulted from the combination of a number of factors, both political and opportunistic. The offer and acceptance of U.S. assistance occurred through the involvement of the U.S. and Iranian Ambassadors at the United Nations in New York, which recognized the need for humanitarian assistance transcended antagonism between the two countries. The emphasis on the humanitarian nature of the mission allayed fears that the interaction would be seen as politically motivated. In the field, the U.S. team avoided any activities or statements that might be misconstrued as political and instead only addressed technical aspects of the work.

The ability of USAID/DART staff to travel locally on Iranian Revolutionary Guard aircraft and be hosted by Iranian authorities greatly eased the burdens on the DART.

In short, USAID regards the humanitarian response to the Iran earthquake, which utilized all avenues of U.S. diplomacy to ensure that lives were saved and suffering was reduced, as an overall success.

Mr. Chairman, this concludes my statement before you today. I welcome your questions.

Senator MENENDEZ. Thank you, both.

Senator Hagel, the distinguished ranking member of the committee, do you have any comments you want to make?

Senator HAGEL. Mr. Chairman, thank you. I too welcome our witnesses and appreciate you holding the hearing. I will withhold any further comments until my opportunity presents itself to question. I do have a statement that I would ask to be included in the record.

Senator MENENDEZ. Without objection.

Senator HAGEL. Thank you.

[The prepared statement of Senator Hagel follows:]

PREPARED STATEMENT OF HON. CHUCK HAGEL, U.S. SENATOR FROM NEBRASKA

Mr. Chairman, I want to thank you for holding this hearing today and welcome our distinguished witnesses.

This hearing is an effort to explore the long-term consequences of international disaster assistance decisions and their impact on the sovereignty of nations.

Recent discussions on these issues have revolved around the concept of the “responsibility to protect” . . . a doctrine that suggests if a host government fails to adequately protect its people, the international community has a responsibility to assist with the welfare of that country’s people.

The situation in Burma is a terrible travesty. With tens of thousands of people in Burma dead, up to 100,000 missing, and millions displaced, the refusal of the Burmese Government to accept foreign aid is shameful and a derogation of its responsibilities to protect its citizens. These events have brought into sharp relief this debate of sovereignty, intervention, and the welfare of victims. Many diplomats have called on the international community to invoke the “responsibility to protect” doctrine to use force to compel the military junta there to accept aid for the hundreds of thousands of people in need.

This however, is not a new debate. Since the modern nation-state system first emerged in the 17th century, these issues have often been at the center of international foreign policy. We only need to consider the events that have unfolded since 2003 in Iraq to understand that the decision to intervene militarily in a country carries broad, far-reaching and unforeseen consequences.

As the United States and the world community grapple with 21st century challenges, we must use all tools at our disposal. Humanitarian disasters, pandemic health crises and other challenges of a regional or global magnitude will require that the United States help build a consensus of common interests working toward common objectives.

Today’s hearing will continue consideration of these fundamental issues.

Senator MENENDEZ. Thank you, Senator Hagel.

Let us do 7-minute rounds, and we will go from there.

Thank you both for your testimony.

This is a difficult topic and clearly I tried to frame it in the opening statement that, in fact, we understand it is a difficult topic, but it is one that I think we are destined to relive several times, unfortunately, moving in the future.

And I appreciate, Mr. Warlick, the way you addressed it, but maybe because it is a difficult topic, somewhat gingerly addressed along the way. So let me try to pursue some—this is for the purpose truly of having a dialogue in which we move the ball forward. We are not going to have all the solutions today. But the purpose of the hearing is to put our arms around this and try to figure out where we are headed.

You know, I heard what you said, but let me ask you. What is the State Department's view, for example, on the responsibility to protect? How far do we think that goes? What do we tell the U.N. from our perspective as to how far it should go? What are the confines? We know the three categories that I mentioned are there, but some of these incidents that we talked about most recently in these tragedies do not necessarily rise to those, although the intentionality of their governments' actions—some might argue—could lead to the description of crimes against individuals, if it is intentionally done and lives could have been saved. Give me a sense of what's your debate that is going on. What do you all say?

Mr. WARLICK. The responsibility to protect is an important emerging concept in the international community and one that we welcome. We accept it as a guiding principle.

You have to recognize how this emerged. It came from a set of recommendations initially that were put forward to the Secretary General of the United Nations, then Kofi Annan, by an Eminent Person's Panel, and then came before a group of 191 nations at that point in the World Summit Document in 2005. This is truly emerging and will be tested over time.

I think it provides a framework for action but does not create in and of itself a legal obligation for the international community to act at all times and in all places. Those will have to be considered on an individual basis.

I would like to just frame this a little bit more for you because I think the concept itself—there has really not been much said or written about it. Perhaps some of your private sector witnesses can go even further.

I think what it highlights for the international community is really threefold.

First, it underscores that in the first instance it is the responsibility of each individual state to protect its population from these atrocities and, in particular, the atrocities that were actually named in the World Summit Outcome Document.

Second, the international community, through the United Nations, should be ready to use appropriate diplomatic, humanitarian, and other peaceful means to help protect affected populations from these atrocities. I think the fact that there is such a responsibility to protect does put a responsibility on the United Nations, as well as individual states in working through the United Nations in that regard.

And finally, this is one of the most difficult parts of responsibility to protect. The international community must stand ready to take

collective action through the U.N. Security Council acting under chapter VII of the U.N. Charter. And that is what I think we will need to work through as we confront problems in the future.

We have worked successfully through the United Nations Security Council under chapter VI, which provides for the pacific settlement of disputes. And as I just noted, working through the international community on a cooperative basis is the preferred route, but there may be times when we will need to turn to chapter VII of the United Nations Charter and we will need to stand ready to compel states through the collective action of the international community through the Security Council.

Senator MENENDEZ. Clearly, there can be the recognition that a state is responsible for its citizens and there can be all of the diplomatic efforts, and those two can fail. The state may not choose to recognize or may not act upon its responsibility and all of those efforts fail. And then the question is when people are still dying, and at what point is there some collective responsibility that is acted upon?

Mr. WARLICK. Right. Unfortunately, Mr. Chairman, that puts us smack up against another aspect of the U.N. Charter, and that is respect for national sovereignty. We look at this as a very practical matter on a daily basis in the Security Council. There are many actions that we would like to take collectively and that we would like to move forward within the Security Council, but not all 15 members of the Security Council are agreed to move forward. And I think that we made extraordinary progress in a number of areas in that regard, but there is not one view on when collective action through chapter VII is necessary.

Senator MENENDEZ. Let me ask you in the case of Burma. Regional actors—you mentioned ASEAN. What is our view about when we, for some reason, cannot get entrance to provide humanitarian assistance because of some bilateral conflict or impediment? What is our view about using others who may be regional actors who have the ability to do so because they do not have the same impediments?

Mr. WARLICK. Let me cover the political side of that question. I think that is a very good example of where the international community has used a multitiered approach. We are making currently a concerted effort to deliver bilateral assistance. There are NGOs that are working through Thailand and in other ways to provide assistance to the people of Burma.

We have a new mechanism that includes the United Nations cooperating with ASEAN to ensure that aid gets to the most number of people. Now, I will leave it to Jim to comment on how effective that has been, but I think that when we are looking at how to deliver assistance, as a political issue, we ought to be looking at this kind of multitiered approach and I think increasingly looking at regional organizations such as ASEAN.

Senator MENENDEZ. Jim, has it worked in this particular case?

Mr. KUNDER. Pardon me, sir?

Senator MENENDEZ. Is the use of ASEAN a good example of something that has worked?

Mr. KUNDER. I think there are much better examples where we have used—for example, in Sudan, as difficult as that situation has

been, over the years, I think U.S. assistance has saved millions of lives in the context of what was negotiated in the 1990s, so-called Operation Lifeline Sudan, which was negotiated through the U.N. agencies with the other bilateral donors. And it is something between just standing off and doing nothing and sending military forces into Sudan. It certainly infringed, to some degree, on Sudanese sovereignty. It has not been without its warts, but it has been a kind of collective response that drew both the rebels in the south and the Sudanese Government into an arrangement that allowed us to deliver assistance. In Burma, we have been willing to work through ASEAN or any of the other bilaterals, the Indians, the Thais, working in the area.

So we are willing to try anything, but that is what I tried to point out in my testimony. I think there are some of these intermediate structures that try to bridge the gap between forcing your way in under chapter VII and just standing off and watching people die.

Senator MENENDEZ. Senator Hagel.

Senator HAGEL. Mr. Chairman, thank you.

Mr. Kunder, you noted toward the end of your testimony that, as you said, what comes next, consequences that you would be happy to go into some detail to discuss those specifics. Let me take my time for questioning, at least in this round, to ask you to define that and go a little deeper into that detail because I think you have framed and centralized the real issue here as to how far you do go and where do you reach a point of diminishing returns and what are consequences and what are long-term effects.

Mr. KUNDER. Specifically with regard to Somalia, sir?

Senator HAGEL. Well, no; not specific to Somalia. In this same frame of reference that you offered it in your testimony, I think the larger context of what we are talking about, what the hearing is about.

Mr. KUNDER. Yes, sir.

Senator HAGEL. Thank you. If you care to use Somalia as an example, that is fine. Thank you.

Mr. KUNDER. Yes, sir.

In general, we are able—as I mentioned, 355 disaster responses, every one of them declared by a United States Ambassador over the last 5 years. And in most of those we send in a shipment of relief supplies from the Office of Foreign Disaster Assistance. They were gratefully received.

Then you get into the gradations where people are hesitant to accept U.S. assistance and we turn to our State Department colleagues, the ambassador on the ground, to negotiate something.

And then you move up the scale to those where they do not want U.S. assistance, branded American flags or hand-clasp symbols on the bags of grain. So we are willing to work through UNICEF, the World Food Program, CARE, Save the Children, World Vision, intermediate organizations, including something like ASEAN.

And then you move your way up to looking at cross-border operations or the kind of thing I mentioned in Sudan, Operation Lifeline Sudan, a diplomatic agreement that has to be negotiated with the host government in order to get relief supplies in, and then finally up to things that potentially violate sovereignty. They are

not particularly effective, like air drops which we used in Bosnia. We have analyzed the air drops in Bosnia into Srebrenica and the various enclaves very carefully. A lot of them fell into the Serb lines. A couple of them killed people coming down. It is a notoriously ineffective, cost ineffective way to do it.

And then all the way up to something like Somalia. I mean, we made the calculus at USAID in those days that the situation was so horrible there was no effective government with which to negotiate in Somalia. We had the capability to respond, and so we recommended to our State Department colleagues at that time support of a chapter VII intervention.

Now, when I say what happens next, having literally been on the ground at that time, within weeks of U.S. troops securing Somalia, we were able to set up the humanitarian supply lines and essentially return death rates to normal in Somalia. So I do not think there is any question at that point that you can solve the immediate humanitarian crisis.

But if you then contemplate what happens next, if you simply pull out, the chances are excellent that whatever caused the problem initially will simply take over, whether it is political instability or warlordism, a government that does not care about its people. So I think you are tempted then to take on the transitional issues that come next, which is what we were tempted to do in Somalia, to address the underlying chaos that caused the famine in the first place. And I am just saying once you get into that stage, then you run into the full series of political, security, and diplomatic questions that you run into in those kind of circumstances. How long are we going to stay? Are we going to rebuild the government? Are we going to do nation-building and all the rest of them? And those, I do not have to tell the committee, are a very complex, long-term series of solutions.

So that's how I see the progression between a simple humanitarian operation and to a long-term political intervention that tries to address the underlying causes of the crisis in the first place. Burma is a clear-cut example of that. I mean, there were no physical or logistical impediments to us meeting the problem. It was the government. So if we forced ourselves into Rangoon airport, then what comes next? We could have clearly set up convoys. We could have set up distribution systems. We could have solved that immediate problem.

Then we would have driven past Aung San Sui Kyi's house. Do we then do something about that, or do we just pull up at the end of it and leave?

And you certainly raise the question in those kind of situations whether you are setting up the recipients of aid for some kind of retribution by their government afterward. I mean, it is a very complex calculus, as the chairman said earlier.

Senator HAGEL. Thank you.

Mr. Warlick, would you like to add anything to this discussion?

Mr. WARLICK. I would like to come back to Somalia because this is a very interesting case historically and prospectively. Here we have a real challenge for the international community ahead of us. It is not a humanitarian disaster today, but it could be in the future. The transitional federal government is weak by anyone's

standards and struggling to gain breathing space in a country that has been chaotic. The United States Government is not represented in Somalia today with an embassy presence. Only a few nongovernmental organizations are operating there. There is a U.N. mission, but it cannot operate on Somali soil.

What tools do we have available for us? And we are working this through right now. I would say from the United Nations' perspective, in order to avoid what could be a humanitarian disaster in the future, we are looking at a number of options.

One, for example, the Security Council was just able to pass a resolution on piracy in the waters off of Somalia. It allows foreign ships to enter Somalia's territorial waters to protect shipping lanes. That provides the ability of the World Food Program to provide humanitarian assistance, but also normal commerce.

We are looking at peacekeeping operations. There has not yet been a determination either in the U.S. Government or in the Security Council to deploy a peacekeeping operation through the United Nations in Somalia. We are studying what options are available and are working with the United Nations today. We believe that that kind of presence will be necessary in order to provide the stability that could guard against a humanitarian disaster in the future.

I mention these because the situation in Somalia is particularly complex and we need to come at it from a number of different respects. And there is not going to be one silver bullet in this regard that is going to work. Also, success is going to come incrementally. This resolution on piracy is not going to solve the difficulties that the transitional federal government faces, but it will be one element of the actions taken by the international community bring about some measure of stability. And I think we are going to have to look at humanitarian situations in the future in that regard and come at them from a number of different perspectives.

Senator HAGEL. Thank you, Mr. Chairman.

Senator MENENDEZ. Thank you, Senator Hagel.

Senator Feingold.

Senator FEINGOLD. Thanks, Mr. Chairman, for holding this important hearing.

And I would like to turn, for a few minutes, to sub-Saharan African questions. The Horn of Africa. We are already getting into that a bit where instability looms large and relief is, unfortunately, too little and in many cases too late. As you both know, the Ogaden—also known as the Somali region of Ethiopia—has been a low intensity battleground between the Ethiopian Government and insurgents for more than a year now. As a result of the conflict, food prices have shot up and livestock trade has all but collapsed, bringing an already embattled population to the brink of famine.

Given the situation in the Ogaden, Mr. Kunder, I would like to ask you to address allegations that have surfaced recently regarding the Ethiopian Government's manipulation of food distribution in the Ogaden. First, can you confirm these allegations and, second, what needs to happen to improve the situation?

Mr. KUNDER. Just to correct one thing, if I could, Mr. Feingold. We technically do have a disaster in Somalia right now. We are, in fact, providing about \$30 million worth of assistance to Somalia.

We are providing humanitarian assistance in the Ogaden as well. It is clearly a chaotic situation. Clearly, there are military operations taking place in there right now, and a number of the NGOs have pointed out to us the difficulty of working in an environment where there are ongoing military operations. I will have to defer to Jim on this. I do not know that our Government has confirmed what you alleged, you know, interference by the Ethiopian military forces. But clearly, it is a chaotic situation. Clearly, it is very difficult to provide humanitarian assistance there, and we are trying to support the NGOs who are on the ground.

Senator FEINGOLD. Do you want to talk about that for a minute, Mr. Warlick?

Mr. WARLICK. I can speak to the issue between Ethiopia and Eritrea, which is one of concern to the—

Senator FEINGOLD. Well, I have asked about the Ethiopian Government's manipulation of food distribution in the Ogaden. That is what I asked you to respond to.

Mr. WARLICK. I am not in a position to respond to that question.

Senator FEINGOLD. All right. Well, I think you would agree, Mr. Kunder, that the humanitarian situation in the Ogaden continues to be extremely severe.

Mr. KUNDER. Yes, sir.

Senator FEINGOLD. Is the U.S. Government satisfied that the Government of Ethiopia is doing what needs to be done to ensure that assistance is provided to civilian populations instead of being used as a tool to further a political agenda?

Mr. KUNDER. We continue directly and through our diplomatic team in Adis Ababa to try to continue to pressure the Ethiopian Government to cooperate in the humanitarian operations. I would like to see it even better than it is now.

Senator FEINGOLD. When a government fails to provide for its people, as is the case in the Ogaden, what bilateral and multilateral tools do we have at our disposal to address this problem—both short term and long term?

Mr. KUNDER. I tried to list in my testimony nine different approaches. Certainly we are doing the basic ones in the Ogaden. We are diplomatically discussing the situation with the Ethiopian Government. We are using the NGOs that are on the ground. We have had some particular issues lately that have been reported in the media where the Ethiopian Government is suggesting placing some additional taxes on NGOs operating throughout Ethiopia. We have assiduously over the years resisted the notion that U.S. taxpayer dollars should be taxed when they're trying to save people's lives. So our Ambassador on the ground is working with the Ethiopian Government to see if we cannot eliminate that counter-productive proposal.

We are willing to support the U.N. agencies on the ground, and we are trying to decentralize the distribution system so that we can get more supplies out to those who are in desperate need.

But I do not want to pretend to put a smiley face on the thing, Senator Feingold. It is really one of the more difficult. As you probably know, I mean, the Ogaden is an extraordinarily inaccessible region. It has been the source of ethnic conflict for decades. We are

providing substantial humanitarian relief, but it is tough going and we need to do a better job there.

Senator FEINGOLD. Across the border from Ethiopia, in neighboring Somalia, the situation is even worse, as has been alluded to. Decades of conflict have left the country with a barely functioning central government and brought much of the population close to the brink of famine. These problems are compounded by the fact that Somalia continues to be a permissive environment and safe haven for both Somali and foreign terrorists.

Mr. Kunder and Mr. Warlick, how do these serious national security concerns factor into our decisionmaking when it comes to providing both bilateral and multilateral disaster assistance, and how is the current disaster assistance framework set up to handle these critical issues in some kind of tandem?

Mr. KUNDER. I mentioned earlier, sir, that we have tried a number of different frameworks. I mentioned the Operation Lifeline Sudan also in the Horn where we have done a multisided negotiation with the Government of Sudan and with the former rebels in order to try to get relief supplies in. So there are a number of these kinds of intermediate steps. We have tried so-called corridors of tranquility, days of tranquility for immunization activities. There are a number of pretty well-honed international techniques to try to operate in war zones like we found in the Horn of Africa, certainly cross-border operations from Kenya into Southern Sudan and into Somalia.

I think of this set of issues, probably the single most difficult is the one that we encounter in Somalia where you do not have an effective government with which to negotiate these kinds of arrangements. I mentioned, I think right before you came in, that in 1992 I had Mr. Ky Luu's job at that time as Director of the Office of Foreign Disaster Assistance, and we strongly advocated a military intervention in Somalia at that time. But when you do not have a functioning government, it makes it particularly complex.

There are a number of courageous U.N. agencies, as Jim said, and NGOs that are working on the ground in Somalia. We have supported them to the tune of \$30 million. We have saved some lives, but that is probably the single most complex situation we face right now because of the lack of a government.

Senator FEINGOLD. Mr. Warlick.

Mr. WARLICK. Failed states, there is no question, are a threat not only to the people of that country in terms of being able to deliver humanitarian assistance, but also a threat to international peace and security and, by that definition, an issue that could be taken up in the Security Council.

In the case of Somalia, that is precisely the case. It is an issue with which the Security Council is seized. It is one that we will be coming back to and working on diligently not just with Member States of the Security Council, but also with the U.N. Secretariat and operational agencies. For the operational agencies, it is the delivery of humanitarian assistance. But on the political side, through the Secretary General and his staff, ensuring that there are conditions to provide for an international presence, including the possibility of an international peacekeeping presence, which we

believe could address some of those issues of stability and potentially prosperity.

Senator FEINGOLD. Thank you both. Thank you, Mr. Chairman.

Senator MENENDEZ. Thank you, Senator Feingold.

Let me go through another round here if members have other questions. I know I have a couple that I want to pursue.

Mr. Warlick, you said, and rightly so, that the predicate for a chapter VII action is a determination by the U.N. that the situation presents a threat to international peace and security. But it is possible to envision a humanitarian catastrophe in which not necessarily the international peace or security are challenged. You could have a regime that is in full control of a country for which there is no spillover of, let's say, refugees into a neighboring country. And so, therefore, international peace and security, at least as I think those are defined, would certainly not even be subject to a debate of a chapter VII action. How do we envision dealing with those sets of circumstances?

Mr. WARLICK. This is an issue for discussion within the Security Council. It is very difficult to make a case in this modern world that the decisions of a sovereign government do not have an impact outside that country's borders. We can make a case, and we have in the case of Burma, that the actions of a military regime within its borders has an effect on international peace and security in the region.

The trick is, though—and it is difficult. Within the Security Council, we do need to persuade other members of the Council that in fact this is a legitimate subject for the Security Council to take up. In the case of Burma, it was a difficult discussion, but in fact, Burma is on the formal agenda.

In the case of Zimbabwe, we are today making that case that what is happening within the borders of Zimbabwe today does pose a threat to the region. In fact, the Secretary of State will be in New York this Thursday and will be hosting, together with the Foreign Minister of Burkina Faso, a roundtable that includes members of the Security Council and African states, as well as regional organizations, specifically on the issue of Zimbabwe to send the message that the actions taken by the government and, in particular, President Mugabe have an effect well beyond the formal borders of that state.

Senator MENENDEZ. Well, let me ask you, since you are talking about Zimbabwe. I do have a specific question in that respect. Recently the U.S. Ambassador in Zimbabwe said that authorities confiscated a truck loaded with 20 tons of American food assistance for school children and ordered that the food be handed out to supporters of President Mugabe at a political rally. Is that the facts as we know them?

Mr. WARLICK. I defer to Jim on this.

Mr. KUNDER. To the best of my knowledge, that event occurred, yes, sir.

Senator MENENDEZ. Is that part of what we are addressing, not the specific incident, but the broader access to food and supplies to people in Zimbabwe as part of what you describe as being pursued at the U.N.?

Mr. WARLICK. We will be addressing in that roundtable a number of issues beginning with the call for free and fair elections in Zimbabwe for the runoff on June 27. But the larger issue is one of good governance which does, in fact, have an impact on our ability to provide humanitarian assistance.

Senator MENENDEZ. Mr. Kunder, is there any doubt that people died in Burma because of the government's delay?

Mr. KUNDER. I think there is very little—we have grappled with our best models on how many people might have died, but I think the way you asked the question, sir, there is very little doubt that some people died whose lives could have been saved because of the Government of Burma's actions.

Senator MENENDEZ. And quantifying that is our challenge?

Mr. KUNDER. Well, there are, as you said, over 2 million affected people.

Senator MENENDEZ. There are people who died simply because of the disaster in and of itself, but the government's delay is what I'm trying to—

Mr. KUNDER. Yes, sir. That is what I am trying to say. We have analytical models to try to look at this kind of thing, and it is very difficult because for the very reason that we have not had the full access to all parts of the Irrawaddy Delta. But I think I would feel comfortable in saying that the number would have run into the thousands.

Senator MENENDEZ. Of people who died because of the government's lack of—

Mr. KUNDER. Well, I mean, people were in fragile conditions—we don't know that precisely because we were not able to get on the ground. But in normal circumstances, people who have been through the kind of trauma that occurred when there is that kind of cyclone and then exposed to the elements and unsafe drinking water, you would expect that a certain percentage of the population, especially children, would die under those circumstances. And I would expect that number—I cannot give you a hard number, but I would guess that number would be in the thousands.

Senator MENENDEZ. I appreciate that. My goal here is to try to simply suggest that as we think about this, when does a certain number reach a threshold? For me, every life is sacred. But at the end of the day, is it 100? Is it 1,000? Is it 5,000? Is it 10,000? Where is the threshold in which we say, not only the United States but the world says, well, now this government is acting in a way that far supersedes what—for which action dictates? It is like when we say, never again, and then we sit back and see people slaughtered. So I am just wondering where are our lines here of determination as to what will invoke.

One last question: I understand that the Burmese Government briefed you and humanitarian organizations on guidelines to follow to provide assistance. Can you characterize those briefings and what guidelines did the Burmese Government lay out in order for the assistance to be delivered?

Mr. KUNDER. Those guidelines had to do with international staff being restricted initially at least to the greater Rangoon area, use of Burmese Government agents to actually hand out supplies and so forth.

And by the way, sir, that is one of the questions in the larger philosophical question you asked. It is one of the questions we always grapple with. If the question is getting necessary lifesaving supplies into the hands of the people, what degree of cooperation are you willing to accept with a regime that you would not otherwise want to be dealing with?

The question came up very early on in terms of who would be the consignee of the relief supplies. When we are entrusted with taxpayers' dollars, we make somebody sign for whatever plastic sheeting or other supplies we deliver, and initially our preference would always be to turn it over to a reputable international organization or NGO. And the first flights that went in were consigned to the Burmese Government with the expectation that once we got the dialogue going, we would be able to wedge open humanitarian space. And that is why I reported that today 100 percent of what USAID is sending in is being consigned to well known international NGOs or U.N. agencies. But those were the nature of the guidelines early on, and we made the conscious decision to accept those guidelines early on with the hope that we would then wedge open humanitarian space and do it right. And as I reported, we have been partially successful in that.

Senator MENENDEZ. Thank you both for the testimony. We broke a little ice here. We will continue to pursue this in the future. We appreciate your testimony before the committee. There may be questions submitted in writing to you by other members, and we would appreciate your prompt response to those.

And as we thank you, let me ask the second panel to join us. We have a distinguished second panel of witnesses joining us today: Dr. Edward Luck, who is the Special Adviser to the Secretary General at the United Nations; Mr. Mark Schneider, who is the senior vice president at the International Crisis Group; and last, Dr. Stewart Patrick, the senior fellow and director of the Program on International Institutions and Global Governance at the Council on Foreign Relations.

We welcome you all. We ask, in the interest of being able to pursue a dialogue, that you keep your testimonies to 7 minutes. Your entire written testimony will be included for the record, and let me start off with Dr. Luck and move down the panel.

Dr. Luck.

**STATEMENT OF DR. EDWARD C. LUCK, SPECIAL ADVISER TO THE SECRETARY GENERAL, UNITED NATIONS, NEW YORK, NY**

Dr. LUCK. Thank you, Mr. Chairman, for the opportunity to brief this distinguished subcommittee on the concepts, principles, norms, and practices that have guided the response of the United Nations to the immense human tragedy that has unfolded since Cyclone Nargis struck Myanmar on the 2nd and 3rd of May.

At the outset, let me express the standard caveat of an international civil servant briefing a Member State Parliament. In accordance with past practice, my attendance today before the subcommittee is on a purely informal basis, and nothing in my oral remarks or written briefing statement should be understood to be a waiver, express or implied, of the privileges and immunities of

the United Nations or its subsidiary organs under the 1946 Convention on the Privileges and Immunities of the United Nations.

That said, today I will address three issues that have generated widespread public interest and media commentary, along with no little confusion and misunderstanding: One, the evolving notion of the responsibility to protect and why it does not appear to apply to this particular situation; two, other principles, practices, and norms that do seem to be highly relevant to this case; and three, why the U.N. was able to respond vigorously and decisively to these events without explicit action by the Security Council. In the interest of time, I will abbreviate my oral statement, particularly on the second point.

As adopted unanimously by the 2005 World Summit and by subsequent resolutions of the General Assembly and the Security Council, the responsibility to protect, R2P, rests on three pillars: First, an affirmation of the primary and continuing legal obligations of states to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity and from their incitement; second, a commitment by the international community to assist states in meeting these obligations; and third, an acceptance by Member States of their responsibility to respond in a timely and decisive manner, in accordance with the U.N. Charter, to help protect populations from the four listed crimes and violations. "Populations" includes all persons on a state's territory.

The emphasis, therefore, is on state responsibility, to be bolstered by international assistance. The concept of R2P, moreover, is not intended to detract in any way from the much broader range of obligations under existing international humanitarian and human rights law, refugee law, and international criminal law.

As defined by the summit—and the U.N. must be guided by the collective decisions of its Member States, not by the pronouncements of independent commissions or commentators or the views of individual Member States—R2P does not encompass other dire threats to populations, such as climate change, HIV/AIDS, or the effects of natural disasters. These need to be and are being addressed in other ways.

To be conceptually coherent, operationally sound, and politically sustainable, the scope of R2P should remain narrow and closely tied to the four listed crimes and violations unless and until the Member States decide otherwise. To help prevent such mass atrocities would be a cardinal achievement in the evolution of human rights. We should take care not to undermine the historic but fragile international consensus behind the responsibility to protect by succumbing to the temptation to stretch it beyond what was intended by the heads of state and government assembled at the U.N. almost 3 years ago.

While the scope of R2P should remain narrow, the range of tools for implementing it, whether by the U.N., its regional, subregional, and civil society partners, or Member States, runs deep. Its programmatic dimensions include: One, capacity-building and rebuilding; two, early warning and assessment; three, timely and decisive response; and four, collaboration with regional and subregional arrangements. The stress is on prevention and building the capac-

ity of states to resist turning to the path of genocide, war crimes, ethnic cleansing, and crimes against humanity.

R2P's conceptual foundation is "sovereignty as responsibility," not humanitarian intervention. This is a far broader, richer, and more pragmatic notion than coercive humanitarian intervention. R2P seeks to help states to succeed, not just to react when they fail. It makes no sense, either morally or politically, to limit one's policy options to standing by or sending the Marines. The first is unacceptable and the second unlikely.

As the summit's Outcome Document acknowledged, there may be times when the only way to protect hundreds of thousands of people at risk is through enforcement measures, whether economic, military, or political, under chapter VII of the U.N. Charter. In such cases, R2P does not alter, indeed it reinforces, the legal obligation of Member States not to use force except in conformity with the charter. Absent agreement on the use of coercive measures, there are a range of noncoercive instruments available to the U.N. under chapters VI and VIII of the charter to advance prevention and protection goals, as stressed in the summit's Outcome Document.

In my view, a government's unwillingness to facilitate the delivery of international humanitarian assistance to its people in the aftermath of a major natural calamity may be reprehensible, morally repugnant, and contrary to a number of well-established international principles, standards, and norms. How to respond to such a situation deserves further discussion.

However, a state's recalcitrance is unlikely to constitute one of the four crimes and violations agreed at the 2005 summit to fall under the responsibility to protect umbrella. There has been some speculation in the press about whether such action or inaction could be considered to be a crime against humanity. That would require, however, crimes such as murder or extermination committed as part of "a widespread or systematic attack" against the civilian population.

The international community, it should be underscored, need not invoke R2P to justify a vigorous response to such a large-scale loss of life due to a state's indifference or incapacity. There are other sets of relevant principles, practices, and norms, including those concerning humanitarian assistance, internally displaced persons, and human rights. While I address these at some length in my written statement, I will delete the details now in the interest of time.

Now, in terms of the U.N. response, some commentators have suggested that the U.N. is powerless when facing such obstruction unless the Security Council, including its veto-bearing five permanent members, can agree on forceful action. The response to Cyclone Nargis, however, suggests otherwise. The world body responded rapidly to the crisis on several levels and in several ways. Secretary General Ban Ki-moon employed his bully pulpit, his good offices, and, finally, his personal diplomacy to help persuade the authorities in Myanmar to take a more open approach to international efforts to aid the cyclone victims.

Sir John Holmes, the U.N.'s Emergency Relief Coordinator, was on the ground in the region early and for an extended period,

pressing the authorities to change their attitudes, helping to organize the international aid effort at both the field and headquarters levels, and keeping the world informed and the regime under global public scrutiny.

A range of U.N. agencies and their national and civil society partners marshalled and delivered aid and technical assistance to the extent that the Myanmar authorities would permit. While much, much more needs to be done and the pressure needs to be sustained, it is estimated that 1.3 million victims have now been reached by the international aid effort and the Red Cross/Red Crescent movement, in addition to those reached by national efforts. Notably, some reports suggest that U.N. assistance has been more readily accepted than that from most other sources, perhaps because of the world body's political impartiality and reputation for technical expertise in disaster relief. As the Secretary General stressed on the 12th of May, "This is not about politics. It is about saving people's lives. There is absolutely no time to lose."

The United Nations was able, in addition, to partner with ASEAN in organizing the pledging conference in Yangon on 25 May for international cyclone relief and with the government and ASEAN to conduct a major new assessment. The latter, which is underway as I speak, matters given the lack of reliable statistics to guide the relief effort.

Despite all of these efforts, this remains a tragic situation in which the enormous human costs of a natural calamity have been compounded by human error and intense political suspicion. As Secretary General Ban Ki-moon commented in Yangon on 25 May, "We have a chance for a new beginning today. I ask all of us to keep our eye firmly on the immediate objectives—saving lives—guided by the principles of neutrality, impartiality and our common humanity."

Some day, historians and policy analysts will ask whether armed intervention would have been a better course. My guess is that they will note that the application of coercive measures by definition is not impartial, that turning a humanitarian disaster into a military confrontation does nothing to save lives, and that, despite some tough talk, none of the military powers was prepared this time to use its forces for such a mission in any case. As an academic, I must say it was only an academic discussion. In the end, however, they may well acknowledge that, in its quiet ways, the U.N. did indeed make a positive difference in Myanmar, as it has in so many other places over so many years.

Thank you.

[The prepared statement of Dr. Luck follows:]

PREPARED STATEMENT OF DR. EDWARD LUCK, SPECIAL ADVISER TO THE U.N.  
SECRETARY GENERAL, UNITED NATIONS, NEW YORK, NY

Thank you, Mr. Chairman, for the opportunity to brief this distinguished subcommittee on the concepts, principles, norms, and practices that have guided the response of the United Nations to the immense human tragedy that has unfolded since Cyclone Nargis struck Myanmar on the 2nd and 3rd of May. At the outset, let me express the standard caveat of an international civil servant briefing a Member State Parliament. In accordance with past practice, my attendance today before the subcommittee is on a purely informal basis, and nothing in my oral remarks and written briefing statement should be understood to be a waiver, express or implied, of the privileges and immunities of the United Nations or its subsidiary or-

gans under the 1946 Convention on the Privileges and Immunities of the United Nations.

Today I will address three issues that have generated widespread public interest and media commentary along with no little confusion and misunderstanding: One, the evolving notion of the responsibility to protect and why it does not appear to apply to this particular situation; two, other principles, practices, and norms that do seem to be highly relevant to this case; and three, why the U.N. was able to respond vigorously and decisively to these events without explicit action by the Security Council.

#### RESPONSIBILITY TO PROTECT

As adopted unanimously by the 2005 World Summit and by subsequent resolutions of the General Assembly and the Security Council, the responsibility to protect (R2P) rests on three pillars:

- First, an affirmation of the primary and continuing legal obligations of states to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, and from their incitement;
- Second, a commitment by the international community to assist states in meeting these obligations; and
- Third, an acceptance by Member States of their responsibility to respond in a timely and decisive manner, in accordance with the U.N. Charter, to help protect populations from the four listed crimes and violations. “Populations” includes all persons on a state’s territory.

The emphasis, therefore, is on state responsibility, to be bolstered by international assistance. The concept of R2P, moreover, is not intended to detract in any way from the much broader range of obligations existing under existing international humanitarian and human rights law, refugee law, and international criminal law.

As defined by the summit—and the U.N. must be guided by the collective decisions of its Member States, not by the pronouncements of independent commissions or commentators or the views of individual Member States—R2P does not encompass other dire threats to populations, such as climate change, HIV/AIDs, or the effects of natural disasters. These need to be, and are being, addressed in other ways. To be conceptually coherent, operationally sound, and politically sustainable, the scope of R2P should remain narrow and closely tied to the four listed crimes and violations unless and until the Member States decide otherwise. To help prevent such mass atrocities would be a cardinal achievement in the evolution of human rights. We should take care not to undermine the historic but fragile international consensus behind the responsibility to protect by succumbing to the temptation to stretch it beyond what was intended by the heads of state and government assembled at the U.N. almost 3 years ago.

While the scope of R2P should remain narrow, the range of tools for implementing it—whether by the U.N., its regional, subregional, and civil society partners, or Member States—runs deep. Its programmatic dimensions include (1) capacity-building and rebuilding, (2) early warning and assessment, (3) timely and decisive response, and (4) collaboration with regional and subregional arrangements. The stress is on prevention and building the capacity of states to resist turning to the path of genocide, war crimes, ethnic cleansing, and crimes against humanity.

R2P’s conceptual foundation is “sovereignty as responsibility,” a far broader, richer, and more pragmatic notion than coercive humanitarian intervention. R2P seeks to help states succeed, not just to react when they fail. It makes no sense, either morally or politically, to limit one’s policy options to standing by or sending the Marines. The first is unacceptable and the second unlikely. As the Summit’s Outcome Document acknowledged, there may be times when the only way to protect hundreds of thousands of people at risk is through enforcement measures—whether economic, military, or political—under chapter VII of the U.N. Charter. In such cases, R2P does not alter, indeed it reinforces, the legal obligation of Member States not to use force except in conformity with the charter. Absent agreement on the use of coercive measures, there are a range of noncoercive instruments available to the U.N. under chapters VI and VIII of the charter to advance prevention and protection goals, as stressed in the Summit’s Outcome Document.

In my view, a government’s unwillingness to facilitate the delivery of international humanitarian assistance to its people in the aftermath of a major natural calamity may be reprehensible, morally repugnant, and contrary to a number of well-established international principles, standards, and norms. How to respond to such a situation deserves further discussion. However, a state’s recalcitrance is unlikely to constitute one of the four crimes and violations agreed at the 2005 summit to fall under the responsibility to protect umbrella. There has been some speculation

in the press about whether such action or inaction could be considered to be a crime against humanity. That would require, however, crimes such as murder or extermination committed as part of “a widespread or systematic attack” against the civilian population.<sup>1</sup>

#### OTHER PRINCIPLES, PRACTICES, AND NORMS

The international community, it should be underscored, need not invoke R2P to justify a vigorous response to such a large-scale loss of life due to a state’s indifference or incapacity. There are other sets of relevant principles, practices, and norms, including those concerning humanitarian assistance, internally displaced persons, and human rights. The Guiding Principles for humanitarian assistance were laid out in an annex to a 1991 General Assembly resolution (46/182). Under them, the sovereignty, territorial integrity, and national unity of states are to be fully respected and assistance is to be provided with the consent of the affected country. The importance of international cooperation to address emergency situations, however, is stressed and affected states are “to facilitate the work of these organizations in implementing humanitarian assistance, in particular the supply of food, medicines, shelter and health care, for which access to victims is essential.”

More recently, the 2005 summit called for “upholding and respecting the humanitarian principles of humanity, neutrality, impartiality, and independence and ensuring that humanitarian actors have safe and unhindered access to populations in need in conformity with the relevant provisions of international law and national laws.”<sup>2</sup> In December 2006, the General Assembly called upon states “to cooperate fully with the United Nations and other humanitarian agencies and organizations and to ensure the safe and unhindered access of humanitarian personnel as well as delivery of supplies and equipment in order to allow them to perform efficiently their task of assisting the affected civilian population” (A/RES/61/134). And most recently, a December 2007 Assembly resolution reaffirmed the 1991 Guiding Principles for humanitarian assistance, emphasizing the responsibility of the state in facilitating “the work of humanitarian organizations in mitigating the consequences of natural disasters” (A/RES/62/93). While resolutions of the Summit and Assembly do not constitute binding international norms, they do reflect generally accepted standards and expectations.

According to the U.N.’s Office for the Coordination of Humanitarian Affairs (OCHA), an estimated 2.4 million people have been affected by Cyclone Nargis and many of them have been uprooted from their homes and villages.<sup>3</sup> The Guiding Principles on Internal Displacement, first articulated in 1998, are thus particularly relevant. Principle 24(2) stipulates that “humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military purposes.” Under Principle 25, international humanitarian organizations “have the right to offer their services in support of the internally displaced” and “consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.” Moreover, “all authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.” These principles have been reaffirmed in a number of General Assembly resolutions and in December 2007 the Assembly called upon governments to further improve access to internally displaced persons (A/RES/62/153).

Ultimately, it is the fundamental human rights of the disaster victims that are at stake. These derive from a number of instruments, including the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. As U.N. High Commissioner for Human Rights, Louise Arbour, put it, referring to international aid following such devastating natural disasters, “it is the right of victims to expect such assistance and it is the duty of governments and the international community to do everything in their power to facilitate it. In the case of Myanmar, the obstruction of the deployment of such assistance illustrates the invidious effects of longstanding international tolerance for human rights violations that made such obstruction possible.”<sup>4</sup>

<sup>1</sup> See, for example, article 7 of the Rome Statute of the International Criminal Court.

<sup>2</sup> Paragraph 169, of the Outcome Document, U.N. Doc. A/RES/60/1.

<sup>3</sup> The estimate of affected comes from OCHA Situation Report No. 29, 9 June 2008.

<sup>4</sup> Address to the 8th Session of the Human Rights Council, 2 June 2008.

## THE U.N. RESPONSE

Some commentators have suggested that the U.N. is powerless when facing such obstruction unless the Security Council, including its veto-bearing five permanent members, can agree on forceful action. The response to Cyclone Nargis, however, suggests otherwise. The world body responded rapidly to the crisis on several levels and in several ways. Secretary General Ban Ki-moon employed his bully pulpit, his good offices, and, finally, his personal diplomacy to help persuade the authorities in Myanmar to take a more open approach to international efforts to aid the cyclone victims. Sir John Holmes, the U.N.'s Emergency Relief Coordinator, was on the ground in the region early and for an extended period, pressing the authorities to change their attitudes, helping to organize the international aid effort at both the field and headquarters levels, and keeping the world informed and the regime under global public scrutiny. A range of U.N. agencies and their national and civil society partners marshalled and delivered aid and technical assistance to the extent that the Myanmar authorities would permit. While much, much more needs to be done and the pressure needs to be sustained, it is estimated that 1.3 million victims have now been reached by the international aid effort and the Red Cross/Red Crescent movement, in addition to those reached by national efforts. Notably, some reports suggest that U.N. assistance has been more readily accepted than that from most other sources, perhaps because of the world body's political impartiality and reputation for technical expertise in disaster relief. As the Secretary General stressed on 12 May, "this is not about politics. It is about saving people's lives. There is absolutely no time to lose."<sup>5</sup> The United Nations was able, in addition, to partner with ASEAN in organizing the pledging conference in Yangon on 25 May for international cyclone relief and with the government and ASEAN to conduct a major new assessment. The latter, which is underway as I speak, matters given the lack of reliable statistics to guide the relief effort.

Despite all these efforts, this remains a tragic situation in which the enormous human costs of a natural calamity have been compounded by human error and intense political suspicion. As Secretary General Ban Ki-moon commented in Yangon on 25 May, "we have a chance for a new beginning, today. I ask all of us to keep our eye firmly on the immediate objective—saving lives—guided by the principles of neutrality, impartiality, and our common humanity."<sup>6</sup> Some day, historians and policy analysts will ask whether armed intervention would have been a better course. My guess is that they will note that the application of coercive measures by definition is not impartial, that turning a humanitarian disaster into a military confrontation does nothing to save lives, and, that, despite some tough talk, none of the military powers was prepared this time to use its forces for such a mission in any case. In the end, however, they may well acknowledge that, in its quiet ways, the U.N. did indeed make a positive difference in Myanmar, as it has in so many other places over so many years.

Senator MENENDEZ. Mr. Schneider.

**STATEMENT OF MARK L. SCHNEIDER, SENIOR VICE PRESIDENT, INTERNATIONAL CRISIS GROUP, WASHINGTON, DC**

Mr. SCHNEIDER. Thank you very much, Mr. Chairman, Senator Menendez, Senator Hagel, for the opportunity to appear today before the subcommittee on this issue.

It is clearly an extremely important issue at this time. From the testimony you have heard from the previous panel and I think that you will hear from us, this is clearly an issue on which the international community is still grappling with how to impact effectively to save people's lives.

Cyclone Nargis has raised the question of the policy options available to the international community when governments—either as the result of acts of commission or omission—pose the risk of large-scale loss of human life to their own people. Darfur and most recently Zimbabwe raise the same complex questions of

<sup>5</sup> United Nations, Secretary General's Opening Remarks at His Press Conference on Myanmar, 12 May 2008.

<sup>6</sup> U.N. Doc. SG/SM/11597, 27 May 2008.

what recourse exists when a government's actions, its failure to act, or its inability to act, produce massive humanitarian crises.

What is the responsibility of the international community when the magnitude of the loss of life appears likely to reach or crosses the line of mass atrocities, genocide, war crimes, ethnic cleansing, or crimes against humanity?

Just simply let me note that in Professor Luck's comments—I do want to raise an issue about the question of the definition of crimes against humanity in this particular instance.

The International Crisis Group came into being in the aftermath of Rwanda and Srebrenica more than a decade ago. We bring analysis of conflict situations, hopefully, to the desks of decisionmakers in an effort to help find policy options to prevent massive loss of human life or to bring deadly violence to an end.

The President of the International Crisis Group, Gareth Evans, really championed the concept of responsibility to protect when he was cochair of the Canadian-sponsored International Commission on Intervention and State Sovereignty.

The purpose really was to find a middle ground in the debate during the 1990s between those who essentially argued for an almost open-ended right to intervene in the case of catastrophic human rights disasters and those who argued at the other extreme that state sovereignty meant that there could be no such intervention without the consent of the state involved. We would argue that in the past 50 years, the international community has come to recognize that a Rwanda, Darfur, Cambodia, or Sarajevo cannot be veiled from international responsibility by the curtain of national sovereignty.

And as somebody who has served in the first Bureau of Human Rights in the State Department, now I guess almost 30 years ago, one has to be optimistic that we have come far enough that the General Assembly unanimously adopted the concept of a collective responsibility to protect individuals against mass atrocities. That simply was not thinkable 30 years ago.

In response to the committee's questions, yes; the responsibility to protect is a fundamental element of a multilateral framework to prevent and respond to mass atrocities, and as stated by my colleague, one begins with the assumption that it's the state's responsibility first to protect, and it is the responsibility of the international community to assist that state in developing the capacity to protect. But the breakthrough in paragraph 139 was to say that there is a collective responsibility when states fail, through incapacity or intent, working through the United Nations, to react, when conditions reach the point of those specific mass atrocities: Genocide, war crimes, ethnic cleansing, and crimes against humanity.

And then the question is, How do we react? And it is not just military action. It is the full range of diplomatic tools of special rapporteurs, commissions of inquiry, arms embargoes, targeted sanctions, economic and financial sanctions, even preventive deployment of military force.

Now, the question seems to me—one really does have to focus—is that this is not between military force or no action at all. There is a range of other actions that can be taken. And to some degree,

when one looks at Burma and Zimbabwe and Darfur, it is specifically about all of the range of actions that could be taken when a government, in fact, fails to act in a way to protect human life.

Let us take Burma and Myanmar. The starting point, obviously, is to protect people from the impact of natural disasters and the humanitarian obligation, as an international community, is to do everything possible that we can. However, the R2P principle does not apply to every natural disaster. It applies solely when there is an indication that governments are, in fact, committing crimes against humanity. And the definition there is important. If one looks at the Rome statute, the definition of crimes against humanity involves not merely the widespread or systematic attack directed against any civilian population with knowledge of the attack, but it includes other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.

Now, at the very least, one has to get to the question of what is the difference if a government sends its military to destroy villages resulting in the killing of thousands of people and then sends its military to deny relief to those same villages and, as a result, the same number of people die. If one were able to say that had occurred, it seems to me that one comes very close to the definition of crimes against humanity.

Now, 2 weeks after Nargis occurred, there was an estimate that two-thirds of the victims had not yet received aid. Surely, had all Western ships in the area been allowed to bring relief to bear, some of those victims would have received water and food and lifesaving help. You just heard that 1.3 million victims have received assistance, and that is obviously positive. But the estimates still are that approximately a million have not. So the question is, What more needs to be done? What more can be done, and what would have been the definition and the reaction by the Security Council if today we were looking at a situation where 2.4 million had not received assistance? And you heard from Jim Kunder that probably thousands have died in the process. It seems to me that that is a question that the Security Council should be examining when the situation arises.

Now, the question is, Then what? If you do reach the decision that there have been mass atrocities, does that automatically mean the application of military force? Here we would argue no. There are criteria that you have to take into account, and unfortunately, those criteria were not included in the adoption of paragraphs 138 and 139 in the summit document. But at least we believe that one should think whether this is the last resort. Is the intention of the action specifically designed to halt the atrocity? Is it proportional? Is it just the minimum necessary in order to achieve that end? And are there reasonable prospects that the intervention will either prevent the crime or bring the atrocities to a halt? There are no easy answers, but at the very least, that is a process that should be examined.

Professor Luck indicated that he doubted very much that in this case there would have been that kind of response. But that is the kind of examination that is needed. One definitely, I think, can say that the existence of the responsibility to protect doctrine did have

an impact in this situation perhaps of opening up some of that humanitarian space, whether it was the declaration of the French Foreign Minister or whether it was the more quiet comments by other Foreign Ministers, that the issue of whether or not crimes against humanity had been committed by denying relief—that that subject was under discussion. And it probably helped the arguments of ASEAN and China and India as they privately communicated with the Government in Burma.

Zimbabwe. You asked the question of whether the hijacking of food relief reached the point where responsibility to protect would be brought into play. It seems to me again one has to say the potential is there clearly if, over time, there is a massive denial of food such that there are thousands of people who die in that process. And at the very least, a variety of tools, diplomatic and otherwise, should be brought to bear.

Darfur is a much easier question. The United Nations already has said that responsibility to protect is one of the reasons for the use of chapter VII in bringing about a variety of actions. The United Nations has adopted a no-fly zone. It is argued that the Janjaweed must be disarmed, that the U.N. will deploy a 26,000-strong U.N. force, whether or not the Government of Sudan approves of which country is sending those troops. That unfortunately has not happened.

Senator MENENDEZ. If you could wrap up for me—

Mr. SCHNEIDER. Sure.

The issue really becomes one of a question of not the failure of the existence of R2P, but the failure of will of the members of the Security Council to enforce those actions.

I will stop there.

[The prepared statement of Mr. Schneider follows:]

PREPARED STATEMENT OF MARK L. SCHNEIDER, SENIOR VICE PRESIDENT, INTERNATIONAL CRISIS GROUP ON INTERNATIONAL DISASTER ASSISTANCE: POLICY OPTIONS, WASHINGTON, DC

I want to thank the chairman, Senator Robert Menendez, and the ranking member, Senator Chuck Hagel, for the opportunity to testify before the subcommittee this afternoon on “International Assistance: Policy Options.”

The current humanitarian crisis in Burma following the devastation of Cyclone Nargis has raised again the question of the policy options available to the international community when governments pose the risk of large-scale loss of human life to their own people. As the committee has noted, Darfur, and most recently Zimbabwe, raise the same complex questions of what recourse exists when a government’s actions, its failure to act, or its inability to act, produce massive humanitarian crises.

What is the responsibility of the international community and the nation-states that comprise that community when the magnitude of loss of life appears likely to reach or crosses the line of mass atrocities—whether genocide, war crimes, ethnic cleansing or crimes against humanity?

Let me begin by noting that the International Crisis Group came into being in the aftermath of Rwanda and Srebrenica more than a decade ago. The intent of our founders was to bring field-based analysis of conflict situations to the desks of decisionmakers in an effort to help them find policy options to prevent massive loss of human life or to bring deadly violence to an end. We now operate in some 60 countries with permanent offices or ongoing presence in 29 countries. We also have advocacy offices in New York, London, Moscow, and Beijing as well as the Washington office I direct. Our methodology has been clear, nearly from the start:

—First, our analysts in the countries identify the drivers of conflict.

—Second, based on that analysis, together with our senior staff, Crisis Group defines policy recommendations on how to prevent those factors from erupting into

deadly violence, how to end it or how to work in a post conflict environment to prevent its recurrence.

—The third leg of our conflict prevention stool involves advocacy by our board and senior staff in the countries themselves, and around the globe.

Our board is abnormally large, abnormally impressive, and hopefully, abnormally influential. Today it is cochaired by Lord Patten of Barnes, former European Commissioner for External Relations, and Career Ambassador Thomas Pickering, former Under Secretary for political affairs. Of the Americans, we have one former Republican Senator, one former Democratic Senator as a founder and a chairman emeritus and a former Cabinet member from each party. We also have a half dozen former heads of state, more than a dozen former Ministers of Defense and Foreign Relations, former international officials, including as of July 1, former Secretary General Kofi Anan, and business and civil society leaders.

Crisis Group is led by our president, Gareth Evans, former Australian Foreign Minister, and also previously cochairman of the Canadian-sponsored International Commission on Intervention and State Sovereignty and a member of the Secretary General's High-Level Panel on Threats, Challenges and Change in 2005.

Gareth Evans championed the concept of a "Responsibility to Protect" (R2P) specifically to enable common ground to be found—and this was a very divisive debate right through the 1990s—between those who argued for an almost open-ended "right to intervene" in the case of catastrophic human rights disasters, and those who argued at the other extreme that state sovereignty meant that there could be no such intervention without the consent of the state involved. In the past 50 years, the international community has come to recognize that a Rwanda, Darfur, Cambodia, or Sarajevo cannot be veiled from international responsibility by a curtain of national sovereignty. From the Genocide Convention, the Universal Declaration of Human Rights, the International Covenants, the International Treaties against the use of Torture and Disappearance to the establishment of the International Criminal Court—it is clear that there are limitations on state sovereignty today that did not exist before the Holocaust and post-Second World War belief that "Never again" must become more than rhetoric.

As someone who served in the first Bureau of Human Rights in the State Department, I still harbor enormous optimism about how far we have come in overcoming those who assert the absolute nature of national sovereignty. We could never have imagined then that a doctrine incorporating a collective "responsibility to protect" individuals against mass atrocities would be unanimously adopted by the United Nations General Assembly.

In specific response to the committee's question: Yes; the Responsibility to Protect is a fundamental element of a multilateral framework to prevent and respond to mass atrocities.

The doctrine begins with the recognition that states bear primary responsibility for protection of their populations against mass atrocity crimes—genocide, war crimes, ethnic cleansing and crimes against humanity—and the international community's normal role is to cooperate, support, and help states acquire the capacity to protect their populations.

The World Summit Outcome Document, September 2005. Heads of state and government attending the 60th Session of the U.N. General Assembly agreed as follows:

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

The concept begins with prevention, focusing on root causes as well as the potential triggers of a crisis and with the development of an "early warning" capacity on the part of the United Nations to be able to recognize conditions approaching R2P situations. We still would argue that much more needs to be done to enable the U.N. and regional organizations to fulfill that early warning capability.

The concept then accepts in paragraph 139 a collective responsibility where states fail, through intent or incapacity, working through the United Nations, to react, when conditions reach the point of "genocide, war crimes, ethnic cleansing and crimes against humanity." The concept calls first to use the whole array of peaceful tools—diplomacy, humanitarian assistance, special rapporteurs, commissions of inquiry, arms embargos, targeted sanctions on the responsible government officials,

economic and financial sanctions, even preventive deployment of military forces—for instance EUFOR on the Chadian border.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with chapters VI and VIII of the charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the charter, including chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

In fact, the Responsibility to Protect encompasses three finite components: The responsibility to prevent, the responsibility to react, and the responsibility to rebuild, particularly the latter if the military force has occurred. ICISS and Secretary General Kofi Annan, in his report to the 2005 summit, entitled “In Larger Freedom: Toward Development, Security and Human Rights for All,” embraced that multifaceted nature of the Responsibility to Protect.

A month before the Millennium Plus 5 summit, I had the occasion to address the Global Partnership for the Prevention of Armed Conflict at the United Nations, which brought together civil society from around the world in support of the R2P concept. We were there in part to urge its adoption by the summit. It was civil society from north and south that was demanding a collective response when states engaged in, or failed to stop mass atrocities, but also that prevention had to be at its core.

Secretary Ban Ki-moon, in naming my distinguished fellow panelist, Professor Edward Luck, his special advisor on R2P, emphasized the importance of making it “operational” and in that context, hopefully, this hearing will advance that effort.

Crisis Group also is helping that process as one of the founders of the “Global Centre for the Responsibility to Protect” which was launched in February with a strong statement of support by Secretary General Ban. He urged the Centre, based at the Ralph Bunche Institute at CUNY, to help the international community “take the principle of the responsibility to protect from concept to actuality, from word to deed.” That is still the challenge.

As we engage in this discussion, I think it is useful to recall what the Responsibility to Protect is not.

- It is focused squarely on mass atrocity crimes like genocide and crimes against humanity, and not human security problems more generally like HIV/AIDS or the impact of climate change or natural disasters (where these don’t also involve the commission of mass atrocity crimes).
- It is not the same as “humanitarian intervention” when that term is understood, as it almost invariably now is, as meaning solely the coercive use of military force against the wishes of the involved nation-state to preserve human life: It is a broader concept, focused heavily on prevention, and assistance and persuasion, with coercive measures, including military force, only appropriate as a last resort.
- It does not justify the automatic and unconditional use of military force even when violation reaches the levels of mass atrocities: There are other prudential criteria to be satisfied, including whether coercive intervention would on balance do more harm than good.

How then does the Responsibility to Protect help us in considering the cases of Burma, Darfur, and Zimbabwe?

For Burma/Myanmar, the starting point has to be that R2P is not itself about protecting people from the impact of natural disasters. Of course they should be protected—and our humanitarian obligation as an international community is to do everything we possibly can to ensure that they are—but the R2P principle, as agreed

in 2005, and with all that it implies about the possible coercive use of military force if all else fails, only cuts in when mass atrocity crimes are involved.

The real question here is whether it can be argued that crimes against humanity were involved in the recklessly indifferent response of the generals.

The official figures in May were of some 60–100,000 dead and 2.4 million affected. It was unconscionable that the Burmese generals prevented international aid and international aid workers for several weeks from reaching the victims. Amnesty International has estimated that 2 weeks after the cyclone, two-thirds of the victims had not yet received aid. Surely had all Western ships in the area been allowed to bring relief to bear—some of them would have received water and food and life-saving help.

On Friday, the U.N.'s Office of Coordination of Humanitarian Assistance (OCHA) issued its 31st Situation Report noting that still more than 1 million of the 2.4 million victims of the cyclone have yet to receive aid. It cited a month-old government estimate of 77,738 killed and 55,917 missing. It also noted that some 250 international aid workers from ASEAN, the U.N. and supporting countries are making a new assessment of need.

This weekend, I noted that USAID and Agricultural officials have been able to go on the ground to assess the cyclone-affected areas, that USAID has been able to coordinate 35 DOD C-130 flights with relief aid. The U.N., ASEAN, and other relief teams currently are engaged in assessment and coordination. However, let us be clear. Not enough was done immediately and people died needlessly as a result. And not enough is being done today to reach all of the victims with all of the resources available from the outside community—without obstacles, without visa restrictions, without considering whose flag is on whose ships or whose planes.

So does this constitute a crime against humanity of a kind that would trigger the R2P principle?

On the face of it, whether the government sends its armed forces to murder large numbers of its citizens or whether it denies them food or medicine and they die of hunger or disease is different only in kind.

The definition of crimes against humanity, most recently incorporated by the international community in the Rome statute states, covers along with widespread or systematic murder, torture, persecution and the like, “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.” Starving villages by denying food relief on a continuing basis until the residents died when such relief was available seems, on any view, to get very close to what is punishable here, although there is obviously room for lawyers to argue about whether “intentionally” means cold-blooded, deliberate willingness to cause death or reckless, negligent, indifference as to whether people died or not.

Even if one gets past this hurdle, there is still an issue, in any application of the R2P principle, as to whether the coercive use of military force is appropriate.

The relevant criteria (which have been part of all the public discussion of R2P but unfortunately were not included in the 2005 World Summit resolution—partly because of U.S. administration objections) include not only “the just cause threshold,” that is the finding of “serious and irreparable harm”; right intention, such that the primary purpose of the intervention is to halt or prevent the harm; last resort, that nonmilitary means have been tried and failed, or can be judged unlikely to succeed; proportional means that the “scale, duration, and intensity” of the planned military intervention is the minimum necessary to protect the population; and—very importantly—reasonable prospects that the intervention will prevent the crime or bring the atrocities to a halt and that the consequences of the intervention will not themselves be worse than if there had been no intervention. In the Burma/Myanmar context many voices were heard from aid agencies and others arguing that as a practical matter military intervention would not work, or make matters on the ground even worse for the affected population.

There are no easy answers to any of these questions, and it is clear that there was no consensus about how to answer them in the Security Council, which is under international law the proper forum to debate and resolve any issue involving the use of military force other than in self-defense.

But one can certainly argue that the existence of the R2P norm—as endorsed by the U.N. General Assembly at the 2005 World Summit, and endorsed subsequently by the Security Council in resolutions—on protection of civilians in armed conflict UNSCR 1674 and again in UNSCR 1706 in authorizing U.N. peacekeepers to Darfur—may well have been a factor in the decisionmaking of the Burmese generals to remove some of the obstacles to relief. The French Foreign Minister’s call for urgent military action based on that concept undoubtedly did not go unnoticed in Burma even if, at the time, it brought him much criticism. When in subsequent

days the argument was expressed by the U.K. and others a little more carefully, making clear that crimes against humanity had to be involved, not just an inadequate disaster response, if the R2P principle was to apply, and that there was at least a prima facie case to be made that crimes against humanity were being committed, there is reason to believe that the possibility of being held to account by international criminal law concentrated the minds of the generals.

Overall the diplomatic pressure did have some effect, and the R2P argument was part of it. Burma's Asian neighbours—the ASEAN countries, China and India—were reluctant to go down this path, but clearly made important representations of their own. There is quite a distance to go in winning international consensus on how the R2P principle should apply in a variety of situations, and few will be more difficult—or raise more arguments on both sides—than the Burma case. But the effort to build that consensus, and further refine and develop the R2P doctrine so that it does become an effective blueprint for action, should continue.

The committee also raised the question of the applicability of the “Responsibility to Protect” in other situations:

*Zimbabwe:* If the hijacking of food relief aid continues as well as the widespread denial of food assistance to the political opposition in Zimbabwe continues, then we may well have to ask the question as to whether we are approaching a similar R2P situation in Zimbabwe in which crimes against humanity, not just lesser human rights violations, are involved, with all that implies. At the very least, reenergized diplomatic efforts are urgently called for—both with respect to the humanitarian crisis and with respect to the political crisis. WFP has said some 4 million people are in need of food aid.

*Darfur:* The case of Darfur is much more clearly a matter of R2P and the United Nations Security Council has considered the matter not once but multiple times with the adoption under Chapter VII of Resolution 1706, authorizing the U.N. Mission in Sudan to “use ‘All Necessary Means’ to Protect United Nations personnel, Civilians under threat of physical violence” and specifically citing R2P in that context. If there is any indication of the need to make R2P operational it is Darfur. Resolution after resolution, the United Nations members have failed to follow through on their commitments—whether to impose a no-fly zone, to act when the Government of Sudan failed to disarm the Janjaweed, to take over by last December from the African Union full operational control of the peacekeeping force, to establish unity of command and lastly to fully deploy the 26,000-strong U.N. force with the troops needed, whether or not the Government of Sudan approves.

This was not a failure of the doctrine of R2P but the failure of will of the members of the U.N. to enforce the authority of the Security Council, and to use instruments of international pressure that will really work. That remains a challenge even as we speak. It is not a matter here of assuming that the only remedy is the coercive use of military force: There are strong reasons for believing that this, even if it could be mobilized, would be counterproductive, and many of those engaged in humanitarian relief have argued that the negative collateral costs are too high in terms of halting relief aid and putting humanitarian workers—foreign and domestic—at risk. What is disturbing is that the willingness to use the full range of other instruments and to maintain unceasing pressure to achieve an end to the crisis has been lacking. Making R2P fully operational remains an ongoing challenge.

The committee also has asked that we look beyond R2P to whether other policy instruments which might be implemented and whether regional organizations have a role to play. Clearly there are roles of regional organizations and the work of ASEAN in inducing Burma to move as far as it has is one example. In the Western Hemisphere, the Pan American Health Organization has a long history of cooperation on humanitarian issues and with the OAS might well be a source for movement toward regional agreements on mandatory access for humanitarian relief. Multilateral organizations like the OAS or the U.N. are more likely to be accepted by nation-states than countries whose motives might be suspect. The principles begin with the notion that it is people who are sovereign, not governments. While a state has primary responsibility, the International Committee of the Red Cross and others have suggested that when a state refuses or is unable, an international treaty would require that humanitarian assistance be allowed in accord with certain principles:

- That humanitarian assistance be provided without discrimination;
- That it be provided through an intergovernmental organization or a qualified organization unaligned with any government and qualified by OCHA;
- That priority in assistance go to those most urgent cases of distress;
- That it not be used to advance any political or religious view;
- That where possible it respect local culture, customs, and norms.

In the 21st century, surely we are at a stage where norms should protect human life and people rather than the absolutist definitions of state sovereignty coming out of the 17th century.

Senator MENENDEZ. Thank you.  
Dr. Patrick.

**STATEMENT OF DR. STEWART PATRICK, SENIOR FELLOW AND  
DIRECTOR OF THE PROGRAM ON INTERNATIONAL INSTITU-  
TIONS AND GLOBAL GOVERNANCE, COUNCIL ON FOREIGN  
RELATIONS, WASHINGTON, DC**

Dr. PATRICK. Thank you very much, Mr. Chairman Menendez. It is an honor to testify before this subcommittee on policy options for the United States in the wake of natural disasters when regimes create impediments to the delivery of lifesaving assistance.

The issue before us is really part of a longer or wider debate about the limits of state sovereignty when regimes fail to meet their fundamental obligations to their citizens and appropriate responses of outsiders, including the United States, during those circumstances. And as we have said, this is very timely not only in view of Cyclone Nargis but also in the decision of the Government of Zimbabwe to shut down the operations of NGOs that are feeding up to 4 million people in that country.

Although I agree with my fellow panelists, there are no easy answers to the questions you have posed, these hearings I think have already begun to shed some light on the principles and considerations that should inform U.S. policy on the range of actions that are available and some of the tradeoffs and dilemmas inherent in these choices.

Our goal in my view should be to expand the U.S. foreign policy tool kit so that we are not simply left with the extremes in the sense of standing idly by as civilians die and launching a full-scale invasion of the offending state.

In my view, recent natural disasters underscore both the impressive scope of global humanitarian action and its vulnerability to political obstructionism, and several points in my view have emerged from these experiences.

First is that the United Nations possesses a robust multilateral framework and an unmatched comparative advantage in launching international responses to natural disasters. At the same time, the Emergency Response Coordinator, who leads the U.N. response, generally requires some level of consent from the host government, however incomplete or grudging, and when this is absent, as John Holmes discovered in Burma, you have a real impediment to delivery of assistance.

The second observation is that most countries in the developing world, even with repressive governments like Burma, possess some humanitarian presence that the U.N. and other actors, including the U.S. Government, can leverage during times of crisis, but that in and of itself is not enough.

The third point that we have learned is that effective humanitarian response is not simply about delivering supplies to the host government or to local service providers. It is also about access, access for U.N. aid workers, donor governments, and NGOs who are the only ones that normally possess the technical and manage-

rial expertise necessary to conduct timely needs assessments, to organize the distribution of supplies, and to adapt to new phases of the crisis.

The fourth point that we have learned is that authoritarian, corrupt, and criminally negligent regimes exacerbate humanitarian catastrophes, transforming natural disasters into manmade ones. Closed societies like Burma, Zimbabwe, and North Korea are both more susceptible to disaster and worse at responding to them.

Given these political impediments, it has been natural to ask as Foreign Minister of France Bernard Kouchner did about whether or not the international community should be prepared to invoke the responsibility to protect. As my colleagues have noted, the R2P norm recognizes, in effect, that sovereignty is contingent upon the fulfillment of certain fundamental obligations. The notion of expanding R2P to natural disasters implies that callous state indifference to the plight of disaster victims may rise to the level of a crime against humanity.

Now others, including Ed Luck, in discussing this earlier suggest that such expansion would be unwise. They point out that it would undermine the fragile global consensus on applying the concept to mass atrocity crimes, that the threshold level of obstruction necessary to trigger the doctrine remains unclear, that invoking R2P in disaster situations would close off entirely what limited access to humanitarian actors actually exists, and that the doctrine implies a willingness also to use military force that could both exacerbate the humanitarian catastrophe and be tough to sustain domestically in the United States and other intervening countries.

In my view, these objections are not easily dismissed. My own belief is that the norm of R2P should be invoked following natural disasters only in exceptional circumstances subject to three conditions. The conduct of the offending state must be conscious and egregious, threatening imminent massive loss of life. Second, there must be prospects for consensus within the Security Council on the norm's application. And third, importantly, the invocation of the doctrine must promise to increase, as opposed to constrict, humanitarian space by saving more human lives than it jeopardizes.

There is ample scope, as has been discussed, for lawyers or even my two copanelists to debate the boundaries of the responsibility to protect doctrine. These debates, however, should not distract us from considering practical steps that we can begin to take today to improve humanitarian access in the aftermath of natural disasters that fall well short of full-fledged military invasion. In my written testimony, I introduced seven principles that should guide U.S. policy, and I will simply telegraph them here.

The first point is that the U.S. should support the negotiation of a new multilateral agreement clarifying state responsibilities to provide humanitarian access while also encouraging governments to adopt standing protocols with respect to the receipt of emergency aid.

Second, to avoid being caught flat-footed when disaster strikes, the United States should create a more robust contingency planning framework. Such over-the-horizon planning has been moribund since the second year of the Bush administration.

Third, when natural disaster strikes, the overriding criteria for U.S. policy should be whether the proposed action promises to expand or shrink humanitarian space. And it is important to put other considerations, even those that we have espoused such as regime change, on the back burner unless there is no other means to gain access.

Fourth, the United States should seek to give international intervention, and any intervention that it contemplates, a humanitarian face, a multilateral imprimatur, and a regional dimension. Placing the U.S. military out in front, and acting on a unilateral, or bilateral ad hoc basis can be counterproductive to the goal of saving lives.

Fifth, when U.S. relations with the affected country are particularly poor, the United States should empower others and particularly the relevant regional organizations. A priority for U.S. policy must be to bolster the uncertain will and often limited capacity of regional bodies like the African Union, the Organization of American States, and ASEAN to prepare, coordinate, and deliver humanitarian assistance in their neighborhoods.

Sixth, military force is not the only, nor necessarily the most, desirable way to change incentives of bad actors. The United States needs to open up and work on its foreign policy tool box so that it can hone a wider array of policy instruments beyond showing up off the country's coast with some ships loaded with troops and supplies. It needs to invest more time and resources in crisis diplomacy at the U.N., in regional organizations, and with critical countries that have leverage over the recalcitrant regime. And it needs to explore a wider range of incentives, including those that are both positive and negative.

And then finally—and this is my last comment—when considering armed force to ensure humanitarian access, the United States must be realistic about the likely magnitude of any military resistance, for instance, from a country like Burma that has 500,000 people in uniform. It must also treat the use of force as a last resort, resist the temptation to do this alone, and be prepared to own the aftermath, as has been discussed by the previous panel, of any armed intervention which will imply not only the responsibility to protect, but the responsibility to rebuild.

Thank you for this opportunity.

[The prepared statement of Dr. Patrick follows:]

PREPARED STATEMENT OF DR. STEWART PATRICK, SENIOR FELLOW AND DIRECTOR,  
PROGRAM ON INTERNATIONAL INSTITUTIONS AND GLOBAL GOVERNANCE, COUNCIL  
ON FOREIGN RELATIONS, WASHINGTON, DC

Chairman Menendez, Senator Hagel, and members of the committee, it is an honor for me to testify on policy options for the international community in the wake of natural disasters, particularly when recalcitrant regimes prevent the delivery of life-saving assistance. This hearing is a timely one, given the abysmal performance of the Burmese junta following Cyclone Nargis and the recent decision by the Government of Zimbabwe to shut down the operations of international NGOs that provide food aid to an estimated 4 million people in that country. Today's discussion is part of a broader debate about the limits of state sovereignty and the responses available to outside actors when governments fail to meet fundamental obligations to their citizens. I commend the committee for its willingness to grapple with these tough questions, for which there are no easy answers.

If hard and fast rules are elusive, this hearing may nevertheless shed light on certain principles and considerations that should inform U.S. policy, the range of ac-

tions available to the United States and its partners, and the dilemmas and trade-offs inherent in each. Our goal should be to expand America's foreign policy toolkit, so that we are left with a wider array of choices than the extremes of standing idly by as innocent civilians die or launching a full-scale invasion of the offending state.

My testimony is divided into three parts. I begin by reviewing the multilateral framework for humanitarian action following natural disasters. I underline the importance of ensuring humanitarian access and the obstacles that dictatorial regimes can place in the way of an effective response. I then ask whether the "Responsibility to Protect" (R2P) doctrine should be extended to natural disasters in which the ruling regime impedes international assistance. I submit that the doctrine should be applied only in exceptional circumstances: When egregious state misconduct threatens massive loss of life; when there is broad international consensus on the norm's application; and when its invocation promises to increase "humanitarian space," by advancing the goal of saving human lives.

I close by offering some practical recommendations for strategies to reduce political obstacles to humanitarian action following natural disasters. Guidelines and priorities for U.S. policy include: (a) Sponsoring a new multilateral agreement clarifying U.N. Member State responsibilities; (b) improving U.S. contingency planning to avoid getting caught flat-footed; (c) focusing U.S. efforts on the expansion of "humanitarian space;" (d) empowering regional organizations to take the lead; (e) opening the U.S. diplomatic "toolbox" to expand points of leverage; and (f) developing a realistic U.S. doctrine for the use of military force, as part of a multilateral effort, when all other avenues fail.

#### THE CHALLENGE OF HUMANITARIAN ACCESS

Recent natural disasters, from the Indian Ocean tsunami to Cyclone Nargis, have underscored both the impressive scope of global humanitarian action and its vulnerability to political obstruction. Several points stand out from recent experience.

First, the United Nations possesses a robust multilateral framework and unmatched comparative advantages in launching prompt international responses to natural disasters.<sup>1</sup> U.N. disaster response efforts are undertaken under the leadership of the U.N. Emergency Relief Coordinator (ERC), who heads the Office the Coordinator of Humanitarian Affairs (OCHA). The ERC presides over the U.N.'s Inter-agency Standing Committee (IASC) for humanitarian affairs, composed of relevant U.N. system programs and agencies and representatives of the main private voluntary aid organizations.<sup>2</sup> Beyond directing responses from U.N. headquarters, OCHA generally coordinates emergency responses within the affected country, in partnership with U.N. agencies, bilateral donor aid agencies, and nongovernmental organization (NGO) partners.

As legal matter, the ERC has sweeping authorities to declare a humanitarian emergency and to lead a global effort to respond to it, without any formal decision by the Security Council or the explicit consent of the government of the affected state. As a practical matter, some basic level of consent from the host government (however incomplete and grudging) is generally required for the U.N. to organize and deliver humanitarian assistance. Where it is lacking, as Jan Egeland found in Darfur and his successor John Holmes discovered in Burma, the United Nations may be blocked from conducting relief operations.

Second, most countries in the developing world possess some local humanitarian presence that can be leveraged following natural catastrophes. This is true even in repressive states. Burma is a case in point. At the time that Cyclone Nargis struck, some 2,600 Burmese were working for U.S.-based NGOs in the Irrawaddy Delta. So although outside agencies could not get supplies and people into Burma, they could in some cases transfer money to national staff to buy local resources. Thus Save the Children delivered 145 tons of relief supplies in the first 48 hours, and international NGOs reached 265,000 people in the first week. I hasten to add that this was only a small fraction of the affected population. But it underlines that even in the most

<sup>1</sup> Following the Indian Ocean tsunami, the Bush administration initially announced the formation of a "core group" of major countries to organize the international response, but quickly abandoned this ill-conceived effort following objections from the international community.

<sup>2</sup> Full members of the IASC include OCHA, FAO, UNDP, UNFPA, UNHCR, UNICEF, WFP, and WHO. Standing invitees include IOM, the World Bank, the Office of the High Commissioner for Human Rights, the Secretary General's Special Representative on the Human Rights of Internally Displaced Peoples, the International Committee of the Red Cross, the International Committee of Red Cross and Red Crescent Societies, the International Organization for Migration (IOM), the American Council for Voluntary International Action (InterAction), and the International Council of Voluntary Agencies (ICVA).

repressive states a local platform often exists upon which an international humanitarian response can build.

Third, effective humanitarian response is not simply about delivering supplies. It is also about access—specifically, about access for international aid workers from U.N. agencies, donor governments, and nongovernmental organizations who are adept at working with local partners and capable of conducting needs assessments, determining where aid should be distributed, organizing the distribution of these supplies, and adapting to new phases of the crisis as it evolves, including ultimately restoring livelihoods. Few governments and societies in the developing world have the standing capacity to respond to large-scale natural disasters without the help of the international humanitarian system. Outsiders bring indispensable financial resources, logistical capabilities, managerial expertise, and technical skills that rarely exist locally.

Fourth, authoritarian, corrupt, and criminally negligent regimes can exacerbate humanitarian catastrophes, transforming “natural” disasters into manmade ones. In the case of Burma, decades of unaccountable and unresponsive governance left the inhabitants of the Irrawaddy Delta particularly vulnerable to a devastating cyclone. The Burmese junta then compounded human suffering through a litany of egregious actions designed to limit humanitarian access while preserving their iron grip on the country. This included denying the entry of international search and rescue teams; refusing to issue visas for foreign aid workers; restricting airborne delivery of foreign assistance; sealing the disaster zone to non-Burmese; and diverting aid to reward regime cronies. Three weeks after the cyclone, the trickle of emergency assistance had reached only a small fraction of the estimated 2 million affected people. The Burma experience, like that of North Korea and Zimbabwe, underscores that closed societies are both more susceptible to “natural” disasters and demonstrably worse at responding to them than are open societies.<sup>3</sup> (Contrast Burma with neighboring Bangladesh, an equally poor but democratic country, which possesses a sophisticated preparedness and evacuation infrastructure; or with Indonesia, a new democracy that facilitated the construction of a massive international aid pipeline within 2 days of the Indian Ocean tsunami.)

#### THE “RESPONSIBILITY TO PROTECT” AND ITS RELEVANCE TO NATURAL DISASTERS

Given the political impediments that sovereign governments have placed on the delivery of emergency assistance, it is reasonable to ask whether the international community has any recourse to insist upon, or even enforce, the unencumbered flow of relief in the aftermath of natural disasters. Following Cyclone Nargis, a number of observers have argued that the new U.N. norm of a “Responsibility to Protect” provides sufficient legal and moral basis for overriding national sovereignty in such circumstances. While this argument has merit in extreme cases, it remains highly controversial globally and provides no silver bullet for improving humanitarian access following natural disasters.

The United Nations’ General Assembly endorsed the concept of a “Responsibility to Protect” in September 2005, as part of the Outcome Document of the U.N. High Level Summit. The concept recognizes that sovereignty is, in effect, contingent, dependent on the state’s fulfillment of fundamental obligations. Specifically, when a government makes war on its citizens—or fails to prevent atrocities from being committed against them—the “responsibility to protect” transfers to the international community. To enforce this new norm, the Outcome Document envisions a set of graduated responses, beginning with “diplomatic, humanitarian, and other peaceful means” under chapters VI and VIII, but including the potential use of armed force under chapter VII of the U.N. Charter.<sup>4</sup>

The underlying motivation behind the “Responsibility to Protect” concept was to help prevent new Rwandas, Srebrenicas, and Kosovos—instances in which murderous regimes or their proxies slaughtered thousands of unarmed civilians. To date, the international community has found it easier to enunciate this new norm than to enforce it. As the ongoing violence in Darfur illustrates, it is one thing to declare a responsibility to protect; it is quite another to marshal the political will

<sup>3</sup>Beyond fearing a loss of control to—and being shown up by—international actors, dictatorial regimes are aware that massive humanitarian responses can have profound political consequences. In Indonesia, for example, the influx of post-tsunami aid and humanitarian actors helped to create a political opening to advance the peace process in Aceh.

<sup>4</sup>The official U.S. position, as outlined by U.N. Representative John R. Bolton in a letter of August 30, 2005, is that the international obligation to take collective action under chapter VII is an ethical rather than legal one, and, moreover, any such action will remain the purview of the U.N. Security Council, where the United States and other Permanent Members wield a veto. [http://www.responsibilitytoprotect.org/index.php/government\\_\\_statements/](http://www.responsibilitytoprotect.org/index.php/government__statements/).

and the practical capacity required to implement it. Nevertheless, the new “doctrine” represents a profound normative evolution within the context of the United Nations, an organization founded in 1945 on the bedrock principles of state sovereignty and nonintervention.

Whether the Responsibility to Protect extends to disasters that are “natural” in origin but exacerbated by state incapacity or malevolence is a subject of vigorous debate. The International Commission on Intervention and State Sovereignty (ICISS), which first developed the concept, envisioned that it would apply not only to mass atrocities but also when states are unable or unwilling to provide relief in humanitarian emergencies.<sup>5</sup> The 2005 Outcome Document took a narrower approach, however, restricting the norm’s application to four specific situations: “Genocide, war crimes, ethnic cleansing, and crimes against humanity.”<sup>6</sup>

Although this would appear to exclude natural disasters from the doctrine’s purview, things are less clear-cut if the regime’s conduct can be said to constitute a “crime against humanity.” In May 2008, French Foreign Minister, Bernard Kouchner, ignited a diplomatic firestorm by invoking the doctrine in the case of Burma, arguing that the junta’s failure to provide access to outside relief agencies would condemn tens of thousands of Burmese to death from exposure, hunger, and disease.<sup>7</sup> Other prominent European diplomats, as well as independent commentators, have adopted a similar line of argument.<sup>8</sup>

This reasoning has met with equally fierce resistance. Critics raise several weighty objections: First, the effort to expand the doctrine to natural disasters could undermine the painstakingly negotiated (but already fragile) consensus on the concept’s application to situations of mass atrocity crimes, particularly among developing countries with a neuralgic fear of outside intervention. Second, determining the precise threshold at which a state’s obstruction of humanitarian access becomes a “crime against humanity” remains elusive. Third, the invocation of the doctrine could lead a recalcitrant regime to close off entirely what humanitarian access (however imperfect) currently exists. Finally, the doctrine implies, at least in principle, a willingness to consider the use of military force to ensure the delivery of aid,<sup>9</sup> raising both the specter of armed resistance and the likelihood of casualties among the intervening force. Such military action could exacerbate rather than ameliorate the humanitarian catastrophe, and it could be tough to sustain domestically.

These concerns are not easily dismissed. They suggest that prior to extending the doctrine to any natural disaster, the United States and other would-be interveners must be able to answer three questions in the affirmative.

- First, does the doctrine apply in the current case?
- Second, are there decent prospects for securing consensus, or at least acquiescence, within the Security Council?
- Third, is the invocation of the doctrine, and its practical implementation, likely to make any tangible difference on the ground, or instead worsen the humanitarian situation?

Answering these questions will require a judicious assessment of nature of the crisis, the spectrum of possible international responses—including, but by no means limited to, military force—and the likely consequences of any course of action for the flow of life-saving assistance.

#### PRACTICAL STEPS TO IMPROVE HUMANITARIAN ACCESS FOLLOWING NATURAL DISASTERS

There is ample scope for lawyers to debate the boundaries of the Responsibility to Protect, including the threshold at which the doctrine kicks in. These debates should not however distract us from considering practical approaches to improving humanitarian access in the aftermath of natural disasters that fall well short of full-fledged military invasion.

A few sensible goals and principles should guide U.S. policy. The United States should seek to:

- (1) Clarify state obligations to provide humanitarian access. A recurrent limitation of today’s global humanitarian system is the absence of standing protocols governing

<sup>5</sup>International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* <http://www.iciss.ca/pdf/Commission-Report.pdf>.

<sup>6</sup>United Nations General Assembly, *World Outcome Summit Document*, September 15, 2005, <http://www.who.int/hiv/universalaccess2010/worldsummit.pdf>.

<sup>7</sup>“U.N. Action Argued over Burma Cyclone,” Reuters, May 8, 2008. “International Pressure on Myanmar Junta Is Building,” *New York Times*, May 18, 2008.

<sup>8</sup>Gareth Evans, “Facing Up To Our Responsibilities,” *The Guardian*, May 12, 2008. Ivo Daalder and Paul Stares, “The United Nations Can Save Burma,” *Boston Globe*, May 13, 2008; Stewart Patrick, “Open the Door To Aid,” *Baltimore Sun*, May 15, 2008.

<sup>9</sup>Robert D. Kaplan, “Aid at the Point of a Gun,” *New York Times*, May 14, 2008.

access that could avoid delays, uncertainties, and obstructionism in the aftermath of natural disasters. Many developing, particularly African, countries have resisted negotiating any new multilateral agreements, on noninterventionist grounds. The United States should work behind the scenes to encourage such governments to adopt standing protocols for humanitarian aid. The longer term goal should be to establish an international treaty regime (or at a minimum regional frameworks) enumerating state responsibilities regarding humanitarian access.

(2) Plan ahead. To avoid being caught flat-footed when disaster strikes, the United States needs a more robust framework for contingency planning. This would help U.S. officials better anticipate where such emergencies may arise; what political obstacles may emerge in particular countries; what range of policy options is likely to be available; what assets and pressure points the United States has at its disposal; and what regional bodies and foreign power wielders might have leverage over difficult regimes. Outside of the U.S. military, the U.S. Government currently devotes few resources and little time to such “over the horizon” planning. A first step should be to revive the Contingency Planning Policy Coordination Committee (PCC) within the National Security Council, which met regularly from 2001–2002 but was abandoned in the run up to the invasion of Iraq.

(3) Keep the focus on “humanitarian space.” When a major natural disaster strikes, the overriding consideration for U.S. policymaking should be whether the proposed suite of actions promises to expand or shrink the opportunity to save human lives. Other policy goals, including as regime change, should be placed on the back burner unless there is no other prospect of gaining humanitarian access.

(4) Give any intervention a humanitarian face, a multilateral imprimatur, and a regional dimension. All things being equal, an authoritarian regime will be more likely to support (or at least acquiesce to) requests for humanitarian access if the effort appears to be more humanitarian than military in nature; if the insistence on access is endorsed by the U.N. Security Council; and if the relevant regional and subregional organizations play a prominent role in designing, coordinating, and implementing assistance. In the case of Burma, the United States hoped to use naval assets to deliver relief directly (as in the aftermath of the Indian Ocean tsunami). Unfortunately, what the United States viewed as a promising platform for emergency relief appeared to the paranoid junta as a potential instrument of regime change.

(5) Empower others to lead, particularly through regional organizations. Where the United States has unfriendly relations with the relevant state, efforts to assert U.S. leadership can be counterproductive. In such circumstances, there is a strong case for adopting a low profile, while encouraging relevant regional and subregional organizations to help the U.N. organize and deliver humanitarian aid. Unfortunately, outside NATO and the European Union, few regional bodies are currently prepared to discharge this responsibility.<sup>10</sup> Thus a priority for U.S. action should be to help bolster both the will and capacity of organizations like ASEAN, the AU and the OAS to coordinate and deliver humanitarian assistance in their neighborhoods, including through joint training and exercises, stockpiling of supplies, development of emergency logistical infrastructure and interoperable communications, and joint standby arrangements to deploy previously earmarked civil and military assets.

(6) Open the diplomatic toolbox. Military force is not the only, much less the most desirable, way to change the incentives of bad actors. The United States needs to hone a wider array of policy instruments to persuade recalcitrant countries to expand humanitarian access following natural disasters, beyond showing up off the country’s coast with warships loaded with troops and supplies. Comprehensive strategies of “coerced consent” should include:

a. Enhanced diplomatic pressure, particularly within the Security Council, U.N. General Assembly and relevant regional organizations. Past experience may suggest creative ways to leverage multilateral bodies. When violence erupted in East Timor following the referendum of 1999, the Security Council placed great pressure on Jakarta to “invite” a U.N. peacekeeping operation in what remained then a province of Indonesia, including by flying to Dili to hold Council meetings. In the more recent case of Burma, the proposal by France to pursue a Council resolution under the R2P doctrine may have had some instrumental value, in encouraging the Burmese regime to accept an alternative, ASEAN-led humanitarian initiative.

<sup>10</sup> ASEAN in 2005 approved a framework for Disaster Management and Emergency Response and has recently begun joint disaster response training exercises. The Organization of American States (OAS) in 2007 established an Inter-American Network for Disaster Management. The African Union is beginning to develop an implementation plan for a disaster risk reduction strategy approved in 2004. All of these initiatives remain in their infancy, however.

b. Targeted incentives to change the regime's behavior, including through positive inducements (e.g., hints of aid or trade concessions, debt relief, removal of sanctions) and punitive steps (e.g., trade restrictions, financial freezes, travel bans, and threats of indictment against senior officials.) Given that repressive regimes like Burma and Zimbabwe tend to be heavily sanctioned already, positive inducements may well be more promising avenues to secure behavioral change.

c. Cultivation of regional players with leverage. Even isolated dictatorships like Burma, North Korea, or Zimbabwe have close ties with one or more large regional players (e.g., China and South Africa). While these traditional protectors may resist interventionist strategies that threaten the stability or nature of friendly client regimes, they may be enlisted quietly to ease restrictions on humanitarian assistance, in return for particular incentives or to burnish their image as responsible global stakeholders.

d. Military steps short of war. Options include declaring a "no-fly zone" over the disaster area, as well as engaging in preventive deployments in nearby countries.

(7) When considering military action to ensure humanitarian access following natural disasters, the United States should adopt the following guidelines:

a. Be realistic. To put the matter bluntly, there is a world of difference between intervening militarily in a small country with weak state capacity, such as in Rwanda, Burundi, or East Timor, and attempting to do so in a massive country like Sudan or one with a large military like Burma (with 500,000 soldiers under arms). Given the requirements and implications of forcible intervention against such countries, policymakers may need to accept inconsistencies in their responses to the obstruction of humanitarian aid.

b. Treat the use of force as a last resort. The trigger for armed intervention must be set high, limited to the most egregious cases, when peaceful alternatives have been exhausted and the death of massive numbers of people is imminent. It should be undertaken only after sober calculation of the likely lives saved versus lost in any invasion, as well as the perceived stakes for the United States and the implications for a variety of U.S. interests.<sup>11</sup> Any such action should be consistent with "precautionary" principles outlined by the ICISS. That is, military action should be undertaken only if "diplomatic, humanitarian, and other peaceful means" have been exhausted; if it is directed to saving lives; if it is proportional to the severity of the crisis; and if it has reasonable prospects of success.

c. Don't go it alone. Particularly when armed force is required, prudence dictates acting with partners to maximize perceived legitimacy and share military burdens. When a storm is brewing, the U.N. Security Council should be the first port of call. The major challenge will arise (as it did in the case of Burma) when the Council is unable to agree on a resolution insisting on humanitarian access and when the relevant regional organization fails for a protracted period to step up to the plate, whether out of weak capacity or fear of alienating one of its Member States. In such circumstances the United States should hold out the possibility of acting through an ad hoc coalition of interested states.

d. Be prepared to own the aftermath of any armed intervention. Experiences of the last 20 years suggest that "impartial" intervention is a delusion. Armed intervention for human protection purposes invariably involves not only delivering life-saving aid but also taking sides. It is also likely to unleash unpredictable consequences (which may include regime change) and may require a significant, long-term international presence. The "responsibility to protect" involves not only a responsibility to respond, but also a "responsibility to rebuild" once the shooting stops.

e. Be honest. Finally, domestic U.S. support for any military action can be sustained only if the President is honest with Congress and the American people from the outset, explaining the mission clearly, speaking frankly about the costs and risks, and preparing the country for potential sacrifices. From Somalia to Iraq, such candor has often been conspicuously absent.

Senator MENENDEZ. Thank you all for your testimony.

<sup>11</sup> Stewart Patrick, Policy Planning Staff, U.S. Department of State, "The Role of the U.S. Government in Humanitarian Intervention," Remarks to the 43rd Annual International Affairs Symposium, "The Suffering of Strangers: Global Humanitarian Intervention in a Turbulent World," Lewis and Clark College, Portland, Oregon, April 5, 2004.

Dr. Luck, is it the U.N.'s view that the Burmese regime exercised its responsibility as a sovereign?

Dr. LUCK. Well, I do not know whether the U.N. has a view *per se*. I can give you my view on it, which I think is widely shared within the organization, which is, obviously, this is a case where international pressure, international encouragement was required to get the government to begin to carry out its responsibilities as a sovereign state.

And I think it is very important to remember that under responsibility to protect principles that the emphasis is on the state carrying out its sovereign responsibilities, and that if states do that, they do not have to worry about intervention of the coercive sort from the outside, that, in fact, responsibility to protect is an ally of sovereignty, not its adversary. This should be a natural thing for a government to do. One of the principal reasons that states were formed to begin with was to protect people, and that is certainly a sovereign responsibility.

Senator MENENDEZ. But it is clear that people died unnecessarily in Burma as a result of the sovereign state not acting in a way that would have mitigated the loss of lives. Is that generally accepted?

Dr. LUCK. I think everyone believes that is true, yes. Only over time will we find out what the magnitude has been.

Senator MENENDEZ. And so then the question becomes at what point is the loss of life acceptable before the world acts. I certainly heard what you had to say, as well as your written testimony. Is it your view that the Rome statute that Mr. Schneider referred to that talked beyond systematic murder or persecution, that other inhumane acts of a similar character causing great suffering, serious injury to body or to mental or physical health—is that envisioned in the purview of responsibility to protect?

Dr. LUCK. Well, obviously, lawyers debate this in different ways. The advice I have gotten has been largely that this does not qualify as a crime against humanity. As I suggest in my testimony, it is unlikely that a nonresponse or an inadequate response by a government to this sort of situation would qualify, but it does not mean that it never could. I just think it is rather unlikely. It is a fairly high standard.

Senator MENENDEZ. There is a difference, however, between an inept government or a government who does not know its limitations. Clearly, I do not think anyone would think this and—I think that any reasonable policymaker would not think that that is within the scope of the concern.

So the question is, When a government and/or a regime is willing to accept a higher death count in the pursuit of their control over the people of that country and is unwilling for a period of time in which significant loss of life or injury is taking place, at what point does that invoke the responsibility?

I understand your answer that lawyers are saying it does not. So, that means that if we have a competent government, competent in terms of understanding its limitations, competent to the extent that it has a threshold level of the ability to provide assistance, but this tragedy is above their ability, and their unwillingness to accept the response of help from others ends up in significant loss of life

at the end of the day, is that something that at this point in time we are willing to accept?

Dr. LUCK. That is a very good question. A couple of points on this.

Senator MENENDEZ. I am looking for a very good answer.

Dr. LUCK. I will try.

One part is the question of intent. Was there intent on the part of the regime, or is this just part of their pattern of perhaps paranoia of the outside world, having a very strict sense of being almost autarchic in the sense of sovereignty. There are very few regimes in this world that are like that. But in those particular cases, there is a pattern that develops over time which from the outside may look like a callous indifference to the welfare of their people.

I think Louise Arbour, the High Commissioner for Human Rights, made a rather pointed comment about this, which I have in my written testimony, suggesting that it has been the international tolerance of the human rights violations in that country over time that has set the stage for this. And I think that connection is an important one.

But in terms of a trigger or a threshold, that is not the way that we approach the responsibility to protect. We think that this is a continuum, that even states that are doing fairly well could turn to genocide or other things. This is certainly possible and has happened in the past. It is not only in the developing world. It could happen in the developed world. And this should be a continuing watch and a continuing effort by the international community to work with states to understand what sort of capacities you need internally so you do not take this kind of path over time, that makes it less likely, that makes it more difficult, that allows international attention, an active civil society and judiciary, and all the other pieces that you need so you do not turn this way.

So we do not think that R2P is something that is triggered at a particular point. It is something that you should be paying attention to all the time, so we do not say, aha, all of a sudden, there is X number of people dying. Therefore, we should invoke this. This is something that is very much preventive. It is very much about capacity-building. It is very much an ongoing dialogue between the international community and states and very much their civil societies. So we do not intend to say what is the threshold body count—

Senator MENENDEZ. I appreciate the fact that we want every state to be responsive to its citizens and therefore whether it has the capacity to meet the challenge on its own or whether it is willing to open up its doors to others in the world who want to help them with that capacity and do it from a strictly humanitarian point of view, that is great. And if that was the reality worldwide, then we would not have some of the challenges we have.

It seems to me that we are going to be, unfortunately, revisiting this set of circumstances time and time again. And the question becomes what are the parameters of this.

Could it not be argued—and I will open up this to the rest of the panel as well who might have any commentary—that a robust interpretation of the responsibility to protect actually acts in a protective manner and that in fact it would give states, and particu-

larly states that are not responsive necessarily to their citizenry, cause for concern to not pursue their sovereign responsibility as envisioned under the principle, and that in some respects, it might even be viewed as prophylactic in that sense, that it would say I better think about this before I close the door to outside help?

Dr. LUCK. Yes, if I could just comment, and then I am sure the others will as well.

We hope that responsibility to protect has some deterrence effect; that it discourages countries and leadership going this direction. I think Mark Schneider suggested something about this in terms of the comments that Kouchner and others had made, what some would see as saber rattling. It may not have been intended as such. Actually Kouchner had a column in *Le Monde* where he said that responsibility to protect does not fit the conditions there. He actually clarified his position over time.

But the very fact that there is noise about such things may have helped open the door a little bit, where you have sort of a good cop and bad cop situation while the Secretary General is there making a case with the leadership. I do not know what the Secretary General said to them. It was conceivable that he said, look, if you do not want to deal with me, there are some others who might want to deal with this in different ways. So let us work this through peacefully and cooperatively.

Also, I think the very creation of the International Criminal Court and the idea that leaders can be held accountable for their actions, that there is no impunity, is a piece of this. The relationship between the responsibility to protect and the International Criminal Court or other tribunals is a very important one, because leaders have to realize that over time they could be held legally accountable if they do not act in the way that they ought to.

Mr. SCHNEIDER. I do not think there is any question that in this instance the discussion 5 years ago would not have incorporated the responsibility to protect as a factor in decisionmaking. Today it does. And as a result of the adoption of the responsibility to protect by the General Assembly, it clearly was brought to bear when China and India urged the Burmese general to permit humanitarian agencies to provide relief. And it probably encouraged China particularly, to make that request to the Government of Burma.

Now, the one point to emphasize again—if you do find that the responsibility to protect applies because there is a violation that reaches or crosses the line of a crime against humanity—the response is not automatically military. Even in this instance, one would argue that a range of responses exist that incorporate targeted sanctions, economic pressures, and diplomatic actions. So, again, one should not think that there is only an issue of does the responsibility to protect apply and then is the only option military? That is not the case.

Dr. PATRICK. Yes; just to pick up on that, if I may, sir. I think it is very important, as Mark pointed out, that R2P envisions a graduated set of responses. As noted, many of us make the mistake of treating it really as synonymous with armed humanitarian intervention. So I think that is an important point to make.

Your question seemed to be getting at this notion of whether or not we should envision a gradually expanded definition in a sense

of R2P. So it is sort of the opposite of defining deviancy downward—the idea that gradually you could use it as a lever to cover an expanded number or expanded range of human rights considerations that would fall perhaps short of the four ones that all agree it kicks with, the four crimes.

I think we probably should focus mostly on those four crimes against humanity at this stage for a couple of reasons. One, there is this question of the fragility of the consensus that was engineered during the production of the summit document. People were quite surprised actually since it was quite a normative evolution in international relations that a lot of African countries were willing to sign up to this potentially interventionist document. So I think once one really tries to apply it to all manner of bad human rights behavior by all sorts of miscreants around the world, we may find that consensus evaporating. There is also the question of credibility of enforcing it.

I do think that one thing we should try to move forward is the idea of developing some standard operating procedures with respect to the R2P norm, including perhaps a gentlemen's agreement on the Security Council with respect to using the veto and perhaps keeping that veto in abeyance or requiring a double veto at the Security Council level to try to encourage some conformity with this norm.

Senator MENENDEZ. Well, I appreciate that. I just wonder at what point do we consider loss of life that is not per se genocidal, that is not some of those other categories, but can be very significant loss of life with an intentional purpose. The intention may not have even been per se to have those people die, but it is to enforce a state policy that ultimately creates the result of having many people die in pursuit of that state policy. That, I think, is a subject to explore because at some point, it can rise as significantly as the intention to create a genocidal act. And that is what I am personally grappling with as we talk about this issue.

I will say that the inability of the U.N. to pursue a course of action that halts the continuing genocidal strife in the Sudan, for example, gives many of us cause about believing that the United Nations can be a successful vehicle in this respect. And what is our responsibility?

We have a lot of people who make speeches about “never again.” That is a beautiful speech, but it is very hollow when we sit by and see many, many people die and we know what it is and we do not act in a manner that pursues stopping the incredible loss of life. I think that is one of my core concerns, as we think about this in a whole different context. How do we deal with that?

I want to ask one last question particularly to Dr. Patrick, but anyone else who has any ideas on this. I am always intrigued about broadening the arsenal of peaceful diplomacy and initiatives of how we can broaden our arsenal to try to pursue some of our goals. And you mentioned it briefly. Could you touch upon how you think we should go about that and what would be some valued options for us to consider that maybe we are not doing now? And if anyone else has views on this, I am happy to listen to it as well.

Dr. PATRICK. Sure. No, I would be happy to. Thank you, Senator.

There are several steps that one could take. One of them is to try to—I should preface this by saying that in many cases, I think we have missed opportunities for what might be referred to as “coerced consent” where, through a number of different instruments of pressure, we could actually get at least enough conformity with our desires to avoid a larger confrontation.

In the past, I think the United States has occasionally used the Security Council, as well as the General Assembly and other regional organizations, to decent effect. An example of this was in 1999 following the referendum in East Timor which led to the violence. The Security Council actually traveled to Dili and placed enormous pressure on the government in Jakarta to actually permit access and also to invite U.N. peacekeeping operations. It is one example of which the U.N. Security Council occasionally actually has been a reasonably strong instrument. So a first step is to increase the robustness of our ability to engage at the level of the Security Council and within regional organizations.

Beyond that, I think that there may be avenues to target incentives on recalcitrant regimes which we may need to get a little bit smarter at employing. These include both positive inducements, for instance hints of trade or aid concessions, the removal of certain sanctions, and obviously punitive steps. Now, one of the difficulties there is that many of the regimes we’re talking about are really the “worst of the worst,” as Freedom House calls them, and are already subject to heavy U.S. sanctions. So we may have little leeway in terms of additional sanctions that are negative in character, but there may occasionally be some positive inducements that we can offer; symbolic positive inducements to secure behavioral change.

I think we also can do a better job at cultivating regional players that have leverage over particular actors. I think there probably has been a lot of quiet diplomacy with the Chinese over Burma, for instance, and while I am not privy to those conversations it is conceivable that these paid off in the junta’s eventual outreach to ASEAN. ASEAN’s response has been a little bit disappointing, in terms of how slow it was to actually step up to the plate, but as has been pointed out in the previous panel, it is certainly better than nothing.

So those are just some ideas of the tool kit.

Mr. SCHNEIDER. If I could, Mr. Chairman. Three areas.

One, as you know, the U.N. adopted the guiding principles on humanitarian assistance in the past, but there is no enforcement mechanism and there is no requirement that when a state fails to meet its obligations, anything happens.

It seems to me that when you go back and you look at some of the obligations to deal with refugees that have been agreed to internationally, agreements that do involve some limits on national sovereignty, the U.S. Government should think about how it might move forward in trying to get an international covenant that would state that when there is a humanitarian disaster of the nature of Nargis, for example, that countries ahead of time will agree to accept, under a United Nations flag, or under a nonthreatening bilateral neighborhood flag, ASEAN for example, international relief. And it seems to me that at least should be pursued.

The only other thing that I would say is as in this hemisphere, even given the difficulties with Cuba, or 20 years ago, let us say, with Nicaragua, when natural disasters occur, there has never been an impediment to U.S. relief efforts. And the question is whether or not there are some agreements, which exist in the hemisphere, particularly using PAHO and the OAS together, that might be used in other regions.

Dr. LUCK. Another rather searching question. Let me just tick off a few things here.

Though we should not spend all of our time on capacity-building and prevention, it should be noted that the involvement of the U.N., regional agencies, and bilateral assistance in development efforts and good governance efforts within countries really is an intrusion on sovereignty in a big way, and yet countries accept that. So I do not see any reason why responsibility to protect principles should not be part of those development and capacity-building efforts in those countries, and I think it can make a big difference over time.

Second of all, I do not think that we should underestimate the importance of the Secretary General's good offices. It is very quiet diplomacy, but can make a big difference. And here, how he helped solve this in Myanmar, he really was the one who helped push the gate open a little bit farther.

One thing that is often ignored in the charter is article 34, which is under chapter VI, a noncoercive pacific measure, in which the Security Council can investigate a wide range of situations. They do not have to pose an immediate threat to international peace and security, as the Council can investigate to see whether some day they might pose a threat to international peace and security.

So the Security Council now is going out on these missions fairly often—they have just gotten back from Sudan—where they actually visit crisis zones. Having the members go and show their interest in some of these situations early on might actually be quite helpful.

Also, I personally—I know this is not normally U.N. doctrine, but I do not really accept that the use of force should always be the last resort. I think that is contrary to the charter. Article 42 makes it quite clear—and it was debated in San Francisco—that if the Council decides that noncoercive measures would be inadequate, that then the Council in fact can act. And it may be preventive deployments or the show of force that could be done in a noncoercive way but to get the message across to people. There could also be mixed deployments, some sort of mix of more peacekeeping-like military, police, civilians, a mix which is not pure enforcement but perhaps puts added pressure on those using violence against civilians—you mentioned Somalia, for example. There may be places where you do not have a strong government and where you need some kind of order, and some kind of international mixed effort could help this.

I do not think we should forget targeted sanctions. People often suggest that sanctions never work, but sometimes, when targeted against a particular leadership in particular cases, they can make a difference.

And certainly we need to look at all the possibilities of building regional and subregional organizations. One thinks of AU,

ECOWAS, and others. IGAD is rather weak in the Horn. But looking at those organizations that have tried to make a difference in several places in Africa, they are much more willing to take the risks and go early. They do not always have the capacity, but they are willing to do it when the rest of the international community moans and complains but does not want to put any forces on the ground. So if we can help build that capacity, that could be very important.

Finally, if I could say a word about Darfur and the responsibility to protect. I think it is worth remembering that the massive violence in Darfur started 2½–3 years before the U.N. accepted responsibility to protect as a doctrine. So I do not think it is really a fair test case of R2P to, after the fact, hope that it is going to make all the difference there. And as inadequate, frustrating, and agonizing as the international response has been in Darfur, if you compare that to Rwanda in 1994, when members of the Security Council were trying to deny that anything was going on, at least I think we are making historically some progress. It does not help necessarily the people on the ground day by day, but I think there is an evolution of values now where it is very hard to cast a veto in the Security Council to prevent action in an unfolding genocide.

We should look as well at the one situation where the responsibility to protect has been applied and no one seems to recognize it—it was in Kenya. And we do not talk about Kenya because the pieces have been put back together. But the Secretary General very consciously, when he went to Adis Ababa to speak to the summit of the African Union, when he went to Nairobi to speak both to the government and to the opposition, he invoked in every case the responsibility to protect principle and told them they had to live up to it. And everyone accepted it. When he went back to the Security Council, he used the same language and they accepted it.

And Kofi Annan has described his whole mediation effort, which was so successful in Kenya, as the first effort to apply the responsibility to protect. And there it was largely preventive, and yet there were some bad things beginning to happen and perhaps it prevented things from getting much worse.

So we think there are possibilities where it can apply and it can make a difference.

Thank you.

Senator MENENDEZ. Well, I appreciate all of your testimony. This panel was definitely very helpful in exploring some of these critical issues. I appreciate, Dr. Luck, your rattling off a series of possibilities, along with your other two panelists.

I will just say about the Sudan, I recognize fully that the atrocities there preceded the responsibility to protect. Having said that, however, there is still much suffering going on, and there is still an incredible lack of action taking place. To be sitting in the camps either facing the Janjaweed or others and to listen to the counsels of patience and delay certainly is not something that I would want to be in the midst of if I was one of those people sitting in those camps. But I appreciate the context of your comments.

So we thank you all for testifying. It has been very helpful.

The record is going to remain open for 2 days so that committee members may submit additional questions to the witnesses, and I ask the witnesses to respond expeditiously to these questions.

And since there is no one here for any other comments, the hearing is adjourned.

[Whereupon, at 4:29 p.m., the hearing was adjourned.]

