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**Conference on the European Union, Human Rights and the UN Millennium
Development Goals**

Opening Remarks and Panel 1: Promoting Human Rights Today

Panelists

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Featuring:

**H.E. Fernando M. Valenzuela, Head of the Delegation of the European
Commission to the United Nations**

**W. Michael Reisman, Myres S. McDougal Professor of Law, Yale Law
School**

**Piet de Klerk, Deputy Permanent Representative of the Netherlands to
the United Nations**

**Edward Luck, Director, Center for International Organization, SIPA,
Columbia University**

MR. GONZALO DE LAS HERAS: ...and welcome to Banco Santander U.S. headquarters. Let me start by congratulating the Foreign Policy Association for convening a timely conference. With a global economic crisis, the challenges to realizing the UN Millennium Development Goals are acute. In times of economic distress, human rights are not always on the front burner. A few administrations ago, under President Jimmy Carter, human rights were the soul of American foreign policy. And as the Obama administration determines the priority it will assign human rights, it is useful to compare notes with our European allies.

The universality of human rights is perhaps the most unambiguous message of the Universal Declaration of Human Rights. This message was underscored by former United Nations Secretary General Kofi Annan when he said, "Human rights are African rights, they are Asian rights, they are European rights, they are American rights. They belong to no government. They are limited to no continent. They are fundamental to mankind itself."

It is now my great pleasure to turn the floor over to Ambassador Fernando Valenzuela, who is the head of the delegation of the European Commission in the United Nations. Ambassador Valenzuela has held, with great distinction, many senior posts in Spain's diplomatic service over a 30-year career. Before coming to New York, he served as political director of the European Commission's external relations directorate. Please join me in welcoming Ambassador Valenzuela.
[Applause]

AMBASSADOR FERNANDO VALENZUELA: Thank you very much for these very kind words - . Let me start, of course, by thanking the Foreign Policy Association for offering me the opportunity to open this conference. The European Union, Human Rights and the UN Millennium Development Goals. Indeed, these are subjects very dear to the European Union, and very closely interlinked. As we all know, development and human rights are two of the three pillars constituting the foundation of the United Nations.

In the same way, it can be said that human rights are part of the European Union's DNA. You cannot understand the European Union if you don't think of it as an entity that is founded on the basis of the respect of human rights, fundamental freedoms, and the rule of law. But obviously, for the European Union, it is also a fundamental, I would say mandate, because it is in its treaty to cooperate with developing countries, and to try to extend development to other parts of the world. So these two aspects come very easily together.

Concerning human rights, it is so much fundamental for us that it is the only aspect that absolutely has to be complied with by any candidate to become a member of the EU. All the other things, adaptation to the economy of the EU, adapting what we call the key, so all the rules and regulations and laws that we have adopted along the years, are matters that can be negotiated, adapted in time. You can negotiate different times, schedules. But certainly you cannot negotiate about compliance with human rights and fundamental freedoms, and that's what we call the Copenhagen criteria.

As I said, the EU treaty also sets the objectives of its cooperation with developing countries, the sustainable economic and social development, their smooth and gradual integration into the world economy, and the fight against poverty as fundamental aspects of the EU foreign activity. The EU treaty also gives the EU and its member states the obligation to comply with the commitments and objectives approved in the context of the major EU-UN summits and conferences. This includes, of course, the Millennium Development Goals, which are the main focus of the EU development policy. This priority, devoted to MDGs, is the core element

of the European consensus on development which, in 2005, created the overarching policy framework for the development policies of both the EU, as such, and its member states.

The Millennium Development Goals themselves are closely intertwined with the empowerment of human beings, notably, women and children. This is especially true when we look at some of the Millennium Development Goals, particularly, in this case, education and health. In so doing, the Millennium Development Goals make a crucial contribution to progress towards human rights and fundamental freedom. It is also in this context that the EU has made a commitment to collectively devote 0.7 percent of its gross national product to development aid by 2015.

Not only that, but also the EU has adopted some other intermediate targets, and more specifically to reach 0.56 percent of GNP by 2010. I have to say that these were objectives that were established by the EU before enlargement, and although some of the new member states were still and are still countries that are under no obligation to contribute to development aid, on the contrary, that could be recipients of development aid, the EU did not modify this commitment, and still holds to its commitment of devoting 0.7 percent by 2015 and 0.56 by 2010.

Yet today progress towards the MDGs is under threat. Obviously we have a convergence of crisis as probably never before, at least not before for many, many decades. And the financial and the economic crisis, on the one hand, but before that was the energy and food crisis, and the threat of climate change with all that it implies in terms of costs for the economy and also of challenges to what we will have to do in the near future are aspects that somehow put at risk our ability to achieve the Millennium Development Goals. But for that reason, we have to, I think, reinforce our commitment and press ahead with our objectives.

This is something which is actually effective and real life, in practice. From the year 2000 to the year 2005, one hundred and twenty million people – one hundred and twenty million people were lifted out of poverty. But still there are 1.4 billion people living on less than 1.25 dollars a day. So we cannot allow any margins, any leeway. We cannot backtrack in any way. And this is why it is absolutely fundamental that even under the present conditions of crisis, we actually maintain our commitments.

The road ahead is fraught with difficulties. Obviously these times of crisis are not also the best ones to promote and impose the respect for human rights and freedoms and rule of law, but we have to do it. We have to look at this as something which are not alternative objectives, but objectives which are completely conditional one upon another. If we are not able to comply and to achieve one of them, we are not going to be able to achieve the others.

I'm sure that you are going to be discussing all of these issues in depth during the panels today, and for that reason I don't want to take more of your time. I want to leave the floor now for the first panelists, but not without, of course, thanking you

for your attention, and not without wishing our panelists a fruitful discussion with you. Thank you very much. [Applause]

MR. NOEL LATEEF: Well, thank you very much, Ambassador Venezuela, and you have gotten us off to a great start. I'm Noel Lateef, President of the Foreign Policy Association, and I want to thank you all for joining us this afternoon. And I cannot think of a more qualified group of speakers to address the extraordinary challenges that the world is facing and conferring meaning upon human rights and at making progress towards achieving the UN Millennium Development Goals. The failure to make headway in meeting basic human needs for millions of people around the world has significant implications for world peace and stability.

It gives me great pleasure now to invite our first panel up, and I'd like to – I know that Michael Reisman is too modest to say anything about himself, so I'm just going to say a few words about the chair of our panel. Michael is one of the giants of international law. He is the Myres McDougal Professor of International Law at Yale Law School. He has authored over 22 books and more than 270 articles. At great personal sacrifice, Michael was president of the Inter-American Commission on Human Rights of the Organization of American States. I am pleased to turn over the proceedings to Michael Reisman and to his very distinguished panel.
[Applause]

MR. MICHAEL REISMAN: Ladies and gentlemen. Thank you very much, Noel, for that very generous introduction. I would like to briefly introduce our very distinguished speakers. I will be brief because the issues that we face are very large and challenging, and the expertise of the speakers is quite commensurate with that.

Our first speaker will be Ambassador Piet de Klerk, who I think is filling in for your colleague Frank Majoor. The rumors that Ambassador Majoor defected are utterly unfounded. [Laughter] Piet de Klerk is the Deputy Permanent Representative of the Netherlands to the United Nations, and he's been in that post since 2007. Between 2003 and 2007 he served as the Netherlands' Ambassador at Large for Human Rights and undertook a large number of bilateral missions and represented the Netherlands multilateral human rights fora. He has served at the International Atomic Energy Agency and has published widely.

Our second speaker, who is quite familiar to audiences at the Foreign Policy Association, is Professor Ed Luck. He's the Senior Vice President and Director of Studies of the International Peace Institute. In February, 2008 UN Secretary Ban Ki-moon appointed Professor Luck Special Advisor and Assistant Secretary General, in which capacity he primarily focuses on the responsibility to protect a code word that will be of great importance in our discussion today. He's had a very distinguished career, and I won't go through all of the details, other than to note that he played a key role in United Nations reform from 1995 to '97, and from 1984 to 1994 Dr. Luck served as President and CEO of the United Nations Association of the United States. With those introductions, which barely do justice to our speakers, I would like to invite Piet de Klerk to open the discussion.

AMBASSADOR PIET DE KLERK: Thank you very much, Michael, and good afternoon, ladies and gentlemen. It's quite a pleasure to be here and to address you on the important topic of human rights today, as I understand it, in the context of EU cooperation and in the context of the Millennium Development goals. That's quite a task. And I will make a number of remarks, not too long, because I also believe very much in interaction on these important topics.

FEMALE VOICE: Is the mike on?

AMBASSADOR DE KLERK: Is there something with the microphone? I don't know.

MR. REISMAN: We're very lucky that someone finally announced that. We might have proceeded for the whole panel.

AMBASSADOR DE KLERK: Can I be heard in the back? Very good. Shall I repeat what I've said so far? Okay, let me then make a few remarks on the topic of human rights today. I'm one of those who believe that the story of human rights at the United Nations is a great success story. The body of treaties and protocols and institutions that has been built up since the Second World War, in my view, is very impressive. And the beginnings of that were already constructed before the charter. Already in the Atlantic Charter in 1942 this notion of human rights that are more than something purely national were laid down, and that was quite a departure from earlier notions of human rights that were basically basic rights, citizen rights in different countries.

Now that body of treaties and institutions might be impressive, but at the same time I also fully realize that there are hundreds of millions of people in this world whose rights cannot be realized, for quite a number of reasons. So it's a constant task for us, not only for diplomats, but for all of us to help realize, help implement these human rights. The fact that we have treaties at the UN is only the first step in its member states, or states parties that have undertaken to implement these human rights, and it's a constant task to remind governments that they should do that.

Now, fortunately, in these different treaties that we have agreed upon since the Second World War, and there's nearly ten of those major treaties, all of them have, in those treaties, a mechanism for international cooperation and international interaction that expresses this basic notion that implementing human rights is not a purely national affair; this is a task for the international community. So that's one proviso, if you want.

The other proviso is that of course human rights remain a very explosive topic, if you want, because there are many states in this world who have some difficulty with the notion that all their citizens or all the people living in that country have rights. There are many autocratic or dictatorial regimes for whom human rights are a threat, and it's a constant struggle also from that perspective to implement, internationally, human rights.

As I said, human rights as we know it, that whole body that was constructed, that started in and directly after the Second World War, and especially true for Europe, where one important body that's relevant, and that also arose out of the ashes of the world war, of that Second World War, is the Council of Europe that has built up an impressive record, not only in terms of treaties and protocols belonging to the treaties, in particular the European Treaty on Human Rights, but also has the European Court of Human Rights that has dealt with scores of cases of violations of human rights. It has built up quite a body of law on how to implement human rights. And I know that this is an event that mainly focuses on the European Union, but I wanted to also mention the Council of Europe as a body that is very important from a human rights perspective.

The other important institution, of course, in a sense also very much the result of the Second World War, is the European Union. And the European Union, especially since the Treaty of Maastricht, and hopefully not too long from now the Treaty of Lisbon, has coordinated more and more its foreign policy, in particular a policy on human rights. And over the years there has organically grown a common strategy and a large common denominator of what these "European" human rights are. And I say in quotation marks because I attach great value, as all of us do, to the fact that human rights are universal. So there are no separate European human rights. There is a separate European human rights policy in trying to implement these universally agreed human rights.

I think there's a very large common ground with other Western countries, in particular the United States. There are also differences. To mention a few, there is this sort of aversion in the U.S. to economic and social rights, even though from the time that President Roosevelt launched his four freedoms, there was freedom from want, so there was this important social, economic dimension also from the beginning in U.S. policy. But over the years the U.S. remained at a certain distance from economic and social rights, and that's quite a difference from European human rights.

The other difference is a bit more tricky to say, but there are certain reflections or reflexes of the U.S. as a superpower that has not always respected human rights elsewhere. And in a sense, if you want, Guantanamo is a consequence of that. That's a second difference that I would like to mention.

And a third difference is that there are a number of peculiarities in U.S. tradition. For example, where it comes to freedom of expression where you have in the U.S. the First Amendment that makes for quite a difference in how matters of freedom of expression are looked at in Europe and how they are looked at in the U.S. And maybe we can go into that later. I just wanted to mention that.

But maybe the last point I want to make is that it would be a grave mistake to identify human rights with the West. I think, as I said before, it's of great importance that these eight or nine treaties that we have agreed upon in UN context, by far most of them have numbers of signatories between 140 and 190. And you can say that they are nearly universally agreed. And I think from a

European perspective, it's our task to engage with a very broad range of countries about implementation of human rights.

And I mentioned EU cooperation before, and I'm glad to note that there is an increasing number of dialogues between European Union, mostly European Union presidency or troika. That's the presidency of the European Union, the future presidency, and the European Commission and the Council. A growing number of dialogues between that troika and other countries. And I've participated in quite a number of them at the time of the Netherlands presidency a few years ago.

And in my view, that's extremely useful, such an engagement, because there is a very fruitful, constructive dialogue possible between the EU and other countries, or sometimes groups of countries, a fruitful dialogue that does not always translate into our daily activities at the UN, where you have mainly a dialogue between blocks or a non-dialogue, often, where it's the EU versus the group of 77, where you have, quite often, polarized positions. I think these dialogues between capitals with a broad range of countries are very fruitful and constructive to bring the implementation of human rights, and again, of universally agreed human rights further.

And in that sense, I'm very optimistic that over the long range this success story of building up an impressive body of human rights can be constructed further and brought further, and the implementation furthered and strengthened. And I'm very glad that the title of today is human rights today, that today we had the elections for the Human Rights Council, and I'm very glad that the United States also decided to engage in this Human Rights Council. It was chosen to be a member of the Human Rights Council for the next couple of years.

And I think that with the U.S. on board in this important UN body – and we can discuss the pluses and minuses of that body and of UN bodies in general – but I think that with the U.S. on board that we will have an interesting new period in strengthening human rights as of today. Thank you.

MR. RIESMAN: Thank you very much. [Applause]

MR. EDWARD LUCK: Well, thank you very much, Michael, and thank you Noel, for having us. It's always enjoyable to be at FPA again. And I think Michael suffered through a panel with me a few years ago, and yet he's come back. I'm not quite sure, maybe his memory has failed him, but we appreciate a chance to be here again.

Ambassador de Klerk is much more organized than I am, and he was commenting to me just as we were coming down here that he was hoping we'd both address the same issue and then we could debate. But I said the problem is if we address the same issue, I doubt that we'd have any real differences, and I'd probably simply echo his sentiments.

So I'm taking a piece of human rights, the responsibility to protect. And I do think it is a piece of the human rights spectrum, and shouldn't be thought of as something that's very different. It is, unfortunately, the most extreme and massive

end of human rights violations, because the responsibility to protect is something that was agreed to by all the heads of state and government in a consensus decision at the 2005 summit. And they pledged that they would protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, the very things that are the epitome of what we're trying to stop in dealing with human rights, so we don't get this kind of massive violence that has wracked one part of the world after another.

Unfortunately, after agreeing to that, a number of member states – apparently none from the EU – but from different parts of the world had a collective amnesia about what they had just signed onto. And it seemed a year or two later, many of them couldn't quite remember the outcome document, or said, well, it's such a large document, they really had emphasized other pieces, not so much this one, or maybe there was unfinished work and that we had to re-debate the issues that we thought had been settled in 2005.

So when Ban Ki-moon came in as Secretary General, one of the things that he wanted to do was to emphasize delivery and deeds, and not just promises. He really wanted to translate words such as the fine ones in the outcome document into operational policies for the organization. The problem was that many member states were not so enthusiastic about that enterprise, and he asked me to undertake a minor task of first trying to reconceptualize and reshape and redefine the debate so we could move forward in a little more positive way, and also have a more coherent idea of what we were talking about, because many people were talking about quite different things when they talked about, if I can use the acronym, R2P, and there actually seemed to be something of a dialogue of the deaf, people talking past each other on this particular issue.

Second, he asked if I would work on the tools, the operational plans, the institutional remedies that would be necessary to actually move this forward, and begin to sketch out a strategy and a doctrine in that sense. And third, try to make sure that all 192 member states, or at least most of them, were on board in the direction that he wanted to move.

And of course the General Assembly, in its wisdom, decided that I could not have "responsibility to protect" in my title because it was still somewhat controversial, so my title is Special Advisor, period. So it could be for most anything, but it is largely on R2P. Second of all, they wisely decided I should have no compensation, and beyond that, I should have no staff. [Laughter] So other than that, we started off on a very, very strong basis on this, and I actually had a full-time job in addition to this, which I fortunately have been able to retain. But I must say it's such a fascinating area, it's been quite worth it.

And indeed, we first had to work with the bureaucracy, because the UN, as you know, is a very broad organization, does many, many different things. The right hand usually doesn't talk to the left hand, unless by accident, and different people had very different conceptions. If you're in human rights, it looked like one kind of an issue. If you're in humanitarian affairs, it looked like a different one, or in

peacekeeping or political affairs or development or post conflict peace building, it looked different from all these perspectives.

And for many of them, bureaucratically, it looked threatening because this is an issue that has a public constituency. There are NGOs including active ones like the Global Center here in New York, and NGOs in several other parts of the world dealing with R2P issues. It's the sort of thing a lot of Internet chatter, particularly college students and others, about Darfur and other issues, get quite activated about this. So it was something that was potentially threatening because it actually had a political constituency, which is something the UN usually searches for and has a hard time finding. This one actually had one, but the UN needed some plan, some kind of doctrine to respond to that.

So we had a number of meetings around the organization, trying to bring the different parts together, and that took a bit of time. But I think in the end it was actually quite worthwhile because we learned from the different pieces of the UN why they saw it differently, why they saw it as either supportive or particularly, in some cases, distracting from their central mandates. So we were able to come up with a framework, a conceptual framework that everyone in the system could sign off onto, and that then allowed the Secretary General to give his first major speech on this issue, which he did in Berlin back in last July.

And I think it was quite striking. Our original idea was that he should give this in a developing country, but we wanted to do it before the NAM Foreign Ministers' Meeting, and the most likely candidate was Germany. And then, actually, it didn't seem to be such a bad idea, because it wasn't a bad idea to remind people that this is not just an African problem, that it can happen in upper income or middle income states as well as those that were destitute, that this is global phenomenon, and no part of the world is immune from it. So he gave his speech in July, and then we went about the task of trying to put together a larger strategy in what ended up being a report that was released this January, meanwhile trying to work with the member states and trying to understand what their concerns were.

You would think preventing genocide and mass atrocities of one sort or another would be fairly natural. I mean, no state goes out and says, you know, today our plan is to destroy a portion of our population. Some of them do it, but obviously it's not the sort of thing that they want to shout about. So why would it be controversial going forward with this? And we found there are very distinct concerns about sovereignty. There are very real concerns that somehow this really was simply nicer words for the idea of humanitarian intervention, of large states intervening in small states. A lot of citations by many states of Iraq, and rather – remember many, many explanations for the intervention in Iraq. One at one point was for humanitarian reasons, so people thought, well, if this is what it is, we're not very comfortable with it.

A lot of complaints about decision-making. We kept saying it has to go through the charter, through the UN intergovernmental bodies, but a lot of member states are very uncomfortable with the composition of the Security Council, and they didn't

like that five countries had veto on this, and they felt the council was very selective. Now somehow we can't reform the charter or reform the Security Council based on R2P, but it is a continuing issue that we have had to face.

A lot of countries felt that it was primarily military in nature, and was going to be an excuse for military action, so we had to show them that the UN has a broad, broad spectrum of ways of going about this, only one sliver of which is through the military, that by the time you have to use the military, you probably have the bodies piled so high that you have failed both in terms of policy and certainly had failed morally. We felt it was simply not a choice to say there's some kind of a binary system here where either you do nothing and sit by or you send in the Marines. That simply was not satisfactory. We had to think of more nuanced ways of going about this, and first and foremost we had to think about preventing these kinds of atrocities, not simply reacting after the fact.

So we went through very carefully the outcome document of 2005. There are two paragraphs on the subject, very complicated paragraphs. I see Emyr Jones Parry, one of the people who gave us this complication in 2005. It was a nice compromise wording, but not always, frankly, the most obvious. In one case that we found particularly interesting, the outcome document in 2005 was different than the way the General Assembly then adopted it only days later, because when it went through that obscure part of the UN that actually tries to translate the things that diplomats have produced, they realized a critical statement had a verb tense that no one had ever heard of and didn't actually make sense.

And this is one of the most important ones, about when do you trigger a response. And the way they translated it, that when the authorities are manifestly failing to protect their populations. So this means if they are manifestly failing, it doesn't mean they have failed. One can move in early. So we always cite the General Assembly version of the document because it gives a verb tense that allows earlier action rather than the way it was agreed by the diplomats themselves.

So we went through the document word by word, phrase by phrase, and basically tried to deconstruct it and figure out exactly what were they trying to say and how could we say it in a simpler way. And we said basically there were three pillars to this. The first and foremost is state responsibility. The international community cannot substitute for the state. The state has to be responsible.

And we want to find examples where states are doing things, in fact, to make it less likely that these things will occur. It's often said that the most likely predictor of genocide is past genocide. I'm not sure that's always true, but there are these cycles of violence. We want to see what happens in Rwanda and the Balkans and Cambodia and other places that have gone through this kind of trauma. What are they doing to make it less likely to happen again?

The second pillar is that of international assistance. Something that was rather new in the outcome document, and very positive, but spread in different phrases throughout the document is the idea of assisting and supporting and helping states

to meet these responsibilities. So we talk a lot about neighbors helping neighbors, and we talk about sub-regional and regional organizations. We talk about the possibility of targeted assistance, that we should look at those things within societies that might make this kind of trauma less likely, and assisting them.

And above and beyond that, we said there may be actually military aspects of assistance. That, in fact, you look at a case, for example, like Sierra Leone. It was not the government that was busy chopping off limbs, it was the RUF. So in our view, armed groups should have to live up to the same standards, and if a government cannot control its territory because of armed groups, then, in fact, military assistance to that government can serve R2P purposes.

We also looked at the former Yugoslav Republic of Macedonia, which looked around at one point and saw the rest of its neighborhood in flames and said we need an international force here in a preventive mode so that we will not go that same kind of direction. So the preventive use of force or even Chapter 7 coercive measures that are designed to help the state vis-à-vis rebels' groups, may in fact be part of our assistance pillar.

And then finally comes the response pillar, the part that is the most controversial. And again, people thought of it as military, military, military, and we said yes, there is an important role, in some cases, for the military, and at some points that should be used early rather than very, very late in the game. There may be extreme circumstances where a very discrete and targeted use of military force earlier is helpful, but we think that's going to be rather rare, that in fact in the large, large majority of cases, other kinds of measures, Under Chapter 6, in particular, diplomacy.

For example in Côte d'Ivoire, which many people had at the top of their list as a country most likely to have another genocide, when Juan Méndez was Special Advisor to the Secretary General for the Prevention of Genocide, he heard reports of incitement going on in Côte d'Ivoire. He visited, he talked to the leadership, said, look, this is not right, this could lead to very bad things, and remember, there is the ICC, and impunity is not what it used to be, and you should pay attention.

More recently in Kenya, both Kofi Annan and the Secretary General, when he visited, emphasized both to the opposition and to the president that they seemed to be doing or encouraging incitement of violence based on ethnicity and tribal origin, and if it wasn't ethnic cleansing, something close to ethnic cleansing was happening, and they should stop. And in each case it did stop, the incitement stopped. It's something you can see, something you can hear, something you can do something about.

It doesn't require any action by the Security Council, it doesn't require any military force, it just requires getting the message at the right time to the right people to cease and desist, and it can work. So there's a lot of things under diplomacy, there's lots of things under Chapter 8 in terms of working with regional and sub-

regional organizations. The UN almost always works in partnership these days, very rarely by itself, and we want to look at those kinds of things.

So this has been a very broad kind of spectrum approach, and I think the member states are more comfortable with it. But we very often hear from them, gee, we like the report, but we're still a little bit uncomfortable with the concept. We're working forward on this. We hope we can have a debate in the General Assembly. Having a little problem getting a date for it, but we hope by the end of June or early July.

And we're actually going to try to get a rather modest resolution, but one by consensus, that will put us back on track on this issue. And a year ago people thought it was ridiculous to talk about consensus. Now it wouldn't be a perfect consensus, but we might be able to get something. It's largely procedural, it's largely to keep the debate going, but something that actually will put the Assembly on record in favor of moving this forward at this point in time.

Now let me just say a word about the EU. The EU has been enormously supportive and helpful on this, I must say; very, very consistent. First of all, we see several roles for the EU. One is on the second pillar that I mentioned, targeted assistance of one sort or another. Late last year when the Irish minister was giving his annual statement on development, he focused it on R2P, sort of retrospectively saying, well, we did this, that, and the other thing, and they must help in that regard. But that's the sort of thing we like to hear, and that's the sort of thing we want the developing world to hear.

Second of all, there's been a lot of discussion in the EU about rapid response. Rapid response does not have to be military. It may be civilian or it may be some combination of the two. But rapid response is extremely important in these kinds of situations, and I think the EU is thinking very creatively about that, and we very much appreciate it. Third, we are looking to the EU for political support, and I think we're getting that political support.

But we've tried very, very hard, and I think correctly, to stress that this is not a northern issue being pushed on the south. In many ways it's a southern issue that rather late in the day the north became aware of. The African Union, and before that ECOWAS were well ahead on this issue before the UN got involved, and even before this famous ISIS panel that Gareth Evans and Mohamed Sahnoun, head of the Canadian backed one, had their report in 2001. In the year 2000, the AU states had already negotiated their constitutive act, which has a clause which looks very, very much like R2P Clause 4H in that document. So we asked the EU members to be rather quiet, and a lot of bilateral interventions with various states, and they've been doing that in a very helpful way, and we're very appreciative of that.

Finally, Ambassador Valenzuela mentioned that this is a very difficult time because of the recession and worse that we seem to be facing economically, and that perhaps for human rights this was going to be a fairly trying time. I think there's a lot to what he says, but in a way, it seems to me, this is the time we really have to

redouble our efforts on human rights generally, and on R2P issues in particular, because this is the kind of time where the competition over resources could pit group against group.

It's the kind of time where governments that are failing to provide the kinds of resources, the kinds of welfare, the kind of prosperity that their citizens want can easily point to particular group and blame those groups, and we've seen that history in the past. Very often there's some kind of an economic competition which has something to do with the human rights problems, which has something to do with pointing to certain minorities and others as the problem. So we think it's a time that we should look at these kinds of targeted measures in an economic and political and social sense within societies because they don't have to be enormously expensive. It can be a rather small part of a development budget, but they can be a very significant part.

The Ambassador to Rwanda often complains that after their horrific genocide in 1994, they couldn't get the kind of modest support that they needed to put the things in place in their society because the donors had very template defined ways of going about development, and these kinds of issues just didn't fit their sense of going about this. I'm going to Kigali this weekend, and we're trying to find out more about their experience there. But we do hope and assume that our friends in the EU would begin to think about this, and in fact continue to think about this in very creative ways.

Because one of the things we know about this area, one, it's terribly, terribly important, but two, we don't have the answers. We're just beginning to understand how these things work, and the more we can dialogue with the member states, the more we can dialogue with independent groups in civil society, the more likely we are to come up with some answers that actually might have some staying power and make some difference. So thank you for your patience, and I think our two topics actually do connect, so thank you. [Applause]

MR. RIESMAN: We've heard two views, one from a perspective of Europe and looking out from Europe toward the world, and the other from the perspective of the United Nations on human rights. Both of them seem to be moderately optimistic. I must confess I don't share that optimism. I do share the passion for human rights and the convictions of the other speakers, but I think the record is not encouraging, that even at the level of the universality of human rights, the prescriptive or law making level, we still face major challenges.

It's very easy, and was very easy for the General Assembly, in the period between 1945 and 1950, when it was dominated by the United States and largely Western states, to pass the Universal Declaration of Human Rights, and to call it universal, and the rights were certainly universal in the sense that they could be applied to any man, woman, or child without reference to their religion, their membership in a real or fictitious blood community. They were truly universal. But were they universally accepted? Are they universally accepted now? Are they universally accepted in the Middle East? Is there universal acceptance of the notion that

women are equal and are entitled to all of the indulgences that men are entitled to? Is there universal agreement on the freedom of religion?

I think we have certainly appropriated the word universal, but I'm not sure that the battle for actually installing a universally accepted conception of human dignity has yet been won. Nor am I certain, and am I so optimistic with respect to the implementation of human rights.

Piet spoke about the Human Rights Council and the fact that the United States has rejoined it. We all know the sad story of the Human Rights Commission, and why it had to be changed, because it was almost an embarrassment from the perspective of anyone concerned with human rights. But the Human Rights Council, until now, has not performed much better.

The fact of the matter is that the great instruments of human rights that Piet referred to and that I think were the predicate of Ed's discussion were installed by the United Nations and could not have become part of the architecture of international politics without the United Nations. But can the United Nations, a body made up of governments, all of which, to some degree or other are very jealous of their sovereign powers, can it be counted upon to enforce human rights in particular cases? Can it be counted upon to prevent? Can it be counted on to stop ongoing human rights violations? I think the record to date is not particularly encouraging.

I would suggest, particularly to the younger people in the audience, that in the 21st century, the implementation of the human rights which have been prescribed by the United Nations will turn increasingly to the activities of civil society, who will invoke, who will insist upon compliance, operating through the democratic governments, where they exist. I think it would be a mistake for us to identify the implementation of human rights with the United Nations. The fit there, in my view, is not very good.

We have reserved some time for questions from the audience, and would like to invite them at this moment. Yes, in the back, please.

MALE VOICE: - - a reporter at the UN for Inner City Press. I wanted to ask both the panelists about a current human rights situation much discussed at the UN, which is the situation in Sri Lanka, where over the last - - the government has been trying to root out the Tamil Tigers, and killed some hundreds of civilians. I want to know from Mr. Luck how you think that the R2P concept applies to that, and what the UN should be doing, if you think the Secretary General should visit there, should travel - - . And I wanted to ask Ambassador de Klerk what the EU is doing about the situation in Sri Lanka, and whether it intends to use this tariff situation in Sri Lanka around textiles called - - , for supposedly human rights conditions. What is the EU and its human rights mechanisms doing about this current crisis?

MR. LUCK: Thanks. Good questions, as always. And if I could respond a little bit to Michael's comments as well, which I think were important comments. One, to

Michael, I mean, I think one has to be a little bit optimistic in this business, whether the business is international law or an international organization in human rights or whatever, and I think one has to take a historic perspective. These things don't happen in linear fashion. They do not happen in universal, grand gestures. They happen over decades. They happen in capitals, they happen in villages, they happen in the way people view values, the way governments make choices.

And I would never suggest that the UN, in an operational sense, would be first and foremost in these areas, but I do think it is first and foremost in building the norms and codifying the norms. And I think that's extremely important over time. I happen to be, as a – I hate to say political scientist, but I guess that's what I'm accused of being sometimes – a constructivist, and I do believe that values are enormously important. The national interest has very little meaning other than what political figures interpret them to be, and in some societies, why people choose those political leaders rather than others.

And I do think, if you look over time, human rights have changed and have improved, and I think the very fact that people are trying is very important. And I think we have to not take snapshots of how things look today, but rather recognize these are rather dynamic processes, and were they better ten years ago or 20 years ago. And certainly in R2P kinds of issues, ten, 20 years ago there wouldn't have been nearly the outcry or nearly the efforts to try to do things like Darfur. If you compare Rwanda, there was an effort to deny what was happening. Within the Secretariat itself the effort was to block the information coming to the top, and not to encourage it. Many Security Council members discouraged those smaller members of the Council who wanted to do something about it because it was inconvenient for them, unfortunately including my own country, the United States.

And on enforcing human rights, I think, you know, it's maybe not the best term, enforcement. I think human rights, in some ways, are going to have to be sort of self-enforcing over time. You're not going to have a huge enforcement regime under Chapter 7 that's going to go in and change these things because, again, I think the UN's role really is very much the normative role, and it's a unique role, because it's the only place where everyone gets together. And that, I think, is extremely important to all of this.

On the question of Sri Lanka, one, let me make clear that my job description does not include investigating and commenting on individual circumstances. With my vast staff and whatever, I have no independent information on what's going on in Sri Lanka, quite frankly. But let me say a couple comments on it. One, I think many people see Sri Lanka as an R2P situation at this point.

For example, recently the Indian foreign minister commented – I think it was about two weeks ago – that the government of Sri Lanka has a responsibility to protect those civilians caught in the crossfire there. And as you know, India was not the first to get on board in 2005. It was actually the last to get on board among the member states, so I think it's quite significant that the Indian foreign minister used the responsibility to protect language. I asked Indian diplomats about this, and

they said yes, it was quite purposeful. They felt it was an appropriate circumstance for that.

I would go a step farther. They also made comment about LTTE in their statement. As I suggested before, even though armed groups obviously were not party to the outcome document, or to international conventions, we think they should be held to the same standards, so both the LTTE and the government should, in fact, be doing all they can to protect the people there.

You asked whether the Secretary General should travel there. I don't do his travel itinerary. I don't frankly see the point. As you know, John Holmes has been there, the emergency relief coordinator and head of OCHA. The Chef de Cabinet, Vijay Nambiar, was there recently. There have been a lot of high level UN personalities who have gone there and tried to make the case, and I think the parties probably understand what the international community is thinking in this regard. But I think we have to try to hold both sides accountable in that regard.

If I could cite another case which was not an R2P case, and I argued at the time that it was not, made myself unpopular at least with one member state, the case of the Cyclone Nargis and Myanmar. You know, we did not see it as an R2P situation, but it was a situation where the Secretary General did go, and I think he did help to nudge the door open a bit there. And I think he felt particularly, as the first Asian Secretary General in 35 years, that he could particularly contribute to the dialogue there, and I think that was a very appropriate use.

As I said, in the case of Kenya, which was the only case that the UN has officially applied R2P as its overarching strategy, the Secretary General did go there. He went first to Addis Ababa and talked about R2P to a summit of the AU and then went into Nairobi and talked to both sides about this. And then when he came back he talked to the Security Council about the R2P issues in Kenya.

So I do think there's a role. And again, in both cases, it was not because the Security Council asked him to. He did it because he thought it was a wise thing to do, and the member states did not object, and found that to be useful. But I think you can overuse his good offices. And as you know, he is getting a lot of frequent flyer miles as it is, as someone who's peripatetic in terms of his travel.

MR. REISMAN: Piet.

AMBASSADOR DE KLERK: Thank you very much. I would like to echo very much the remarks that Ed Luck made on Sri Lanka. Both EU countries individually and collectively have pressed for a pause in the fighting in Sri Lanka. There's a war going on between the government and the LTTE, and there's no sympathy whatsoever for the LTTE, but still we press on the government of Sri Lanka to follow international humanitarian law. And the overall goal is to minimize human suffering.

I think, though, that one should make a distinction between human rights and implementing human rights and this sort of crisis situation. In principle there is a

link in the number of EU agreements between preferential trade positions and human rights behavior, but I don't think it is really applicable to this sort of situation, both in terms of the time frame and in terms of this sort of situation that is – there's a lot to be said about the human rights situation in Sri Lanka, but this particular situation is not the prime example of applying the yardstick for how well human rights are implemented in Sri Lanka.

With regard to what Michael said, I think it's very important what you said. I would like to reemphasize this more optimistic outlook that I gave in the beginning. I do not agree that the story of the Commission on Human Rights is a sad story. I don't think it's a sad story because at one point or other there was a Libyan chair. I don't think it's a sad story because at some point or other there were resolutions adopted that the Netherlands, in the first place, disagreed very strongly with against Israel. I think on the whole the body of work that was constructed by the Commission on Human Rights is very impressive, as I said in the beginning.

And I would like to continue that discussion, but you raised a number of important points, that there are challenges. And what Ed said earlier, that implementation of social, economic rights, especially in times of crisis, is doubly important. And most of the treaties that have been agreed upon in a UN context are relatively vague on how precisely these...how people are entitled to these rights, and there's a lot of national leeway for implementing these rights. But that they will be under stress in times of crisis is clear, and that requires a double effort. Thank you.

MALE VOICE: ...problems they face. What do you think the possibilities are that African countries might sue countries, including EU countries, and perhaps the United States, to get more funding to be able to climate - - , particularly in terms of adaptation and mitigation, and do so on the grounds of human rights?

AMBASSADOR DE KLERK: Sometimes I think it's a blessing that I am not a lawyer. [Laughter] And I don't think how that suing would work. Clearly we have a common responsibility, common but differentiated, as we say in the climate change lingo, to avert climate change, at least to the extent that we can. And it's also clear to me that there are links between the climate change broad issue and human rights, and that you have climate refugees, and that people's living are being influenced by changes in global or regional or local climates. But I don't see how such suing would work as you have presented it.

MR. LUCK: Can I just make a small comment? It wasn't quite your question, but there are those among the R2P advocates who would like it to apply to things like climate change and HIV-AIDS and many other things, and we resist that very, very strongly. Sometimes your best friends can be your worst enemies politically. And in this case, the heads of state and government agreed only to four crimes and violations: genocide, war crimes, ethnic cleansing and crimes against humanity.

And I know if we were to move an inch beyond that we would lose a lot of member states very quickly. So we keep saying that our approach is narrow, but deep. It's narrow in terms of the number of cases that we're looking at, but very deep in

terms of the number of ways that one might go about trying to make a difference. As you know, there's a hallowed tradition around the UN to take very simple, straightforward ideas and make them into absolute mush as they try to apply it to everything, and we're trying our best to resist that temptation.

MR. REISMAN: One last question. Yes, please.

FEMALE VOICE: Hi, my name is - - and I'm with Central - - University, and I have a question specifically for Ambassador de Klerk. I'd like to return to this idea of responsibility to protect, and more specifically the question of minorities - - member states. As I'm sure you know, the issue of Romas in Hungary has been an ongoing issue for decades. And I'd like to know whether or not it's the position of the EU that currently the Hungarian government is doing enough to protect the Romas, and if not, what kind of specific measures do you have to sort of put more pressure on the Hungarian government in order to better protect Romas in Hungary?

AMBASSADOR DE KLERK: First of all, when we speak about a common European human rights policy as part of the common EU foreign policy, we mean external policy. So that common EU human rights policy has no direct bearing on implementation of human rights in Hungary. The body that has done much, has focused on these sort of minority problems is the Council of Europe, and there are specific treaties on the protection of minorities agreed in that context.

I know that there has been quite a lot of attention to protection of Romas and violations of human rights, but I can't speak to the details of that. Clearly protection of minorities belongs to the heart of human rights issues, even though it's couched in somewhat different ways in terms of minorities instead of individual human rights. But again, I can't speak, nor am I, as a Dutch diplomat, would it make much sense to speak out here on human rights in Hungary. Thank you.

MR. REISMAN: I'm sure there are many other questions that have to be asked, but we have a responsibility to protect the time allotted to the next panel. [Laughter] I thank the speakers very much for their provocative statements, and thank you for the questions. [Applause]