THE REPRESENTATIVE
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS

August 30, 2005

Dear Colleague:

I would like to express again my appreciation for the work that President Ping and his team have done to prepare the draft Outcome Document for next month's High-Level Event. We share a desire and commitment that the Outcome Document set forth measures that we can all support. To that end, we wish to state our principles relating to the section on "responsibility to protect" in the draft document. We believe there exists a widespread consensus in support of these principles which will enable us to reach agreement on an appropriate text.

The international community has a particular interest and role to play in cases involving genocide, ethnic cleansing, crimes against humanity and other large-scale atrocities in which national authorities are unwilling or unable to protect their citizens. The risk in such cases to international peace and security is clear, and the international community must be prepared to use diplomatic, humanitarian, and other peaceful measures to protect civilian populations against such atrocities.

In such cases, the role of the Security Council is critical. In carrying out that responsibility, the Council may, and is fully empowered to, take action under the Charter, including enforcement action, if so required. We reject the argument that the principle of non-intervention precludes the Security Council from taking such action. At the same time, we note that the Charter has never been interpreted as creating a legal obligation for Security Council members to support enforcement action in various cases involving serious breaches of international peace. Accordingly, we believe just as strongly that a determination as to what particular measures to adopt in specific cases cannot be pre-determined in the abstract but should remain a decision within the purview of the Security Council. For its part, the United States *stands ready to take collective action, in a timely and decisive manner, through the Security Council under Chapter VII of the UN Charter and, as appropriate, in co-operation with relevant regional organizations, should peaceful means be inadequate and national authorities be unwilling or unable to protect their populations.*

Our specific views on paragraph 118 are as follows:

Paragraph 118

With respect to the first sentence of paragraph 118, we agree that the host state has a responsibility to protect its populations from such atrocities, and we agree in a more general and moral sense that the international community has a responsibility to act when

the host state allows such atrocities. But the responsibility of the other countries in the international community is not of the same character as the responsibility of the host, and we thus want to avoid formulations that suggest that the other countries are inheriting the same responsibility that the host state has. The text should reflect this view. We also would add "other large-scale atrocities" to avoid legalistic debates about whether a particular situation constitutes, for example, genocide and to clarify that this document does not cover all war crimes, but only those that are of sufficient scale to warrant such international attention. This is in keeping with the approach in the Geneva Conventions themselves, which distinguish between "grave breaches" of the Convention, and other violations.

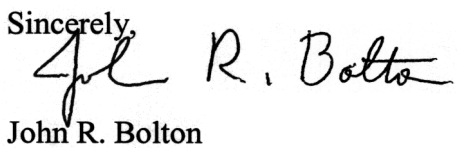
With respect to the second sentence of paragraph 118, the U.S. would delete the reference to "incitement." Such a reference raises a problem for the United States because of our traditional approach under the First Amendment to our Constitution.

With respect to the fifth sentence of paragraph 118, we would make changes to make clear that the obligation/responsibility discussed in the text is not of a legal character and to mirror the changes we have proposed to the first sentence of this paragraph. We do not accept that either the United Nations as a whole, or the Security Council, or individual states, have an obligation to intervene under international law. We also believe that what the United Nations does in a particular situation should depend on the specific circumstances. Accordingly, we should avoid language that focuses on the obligation or responsibility of the international community and instead assert that we are prepared to take action. It also would be desirable to insert a reference to economic means, such as sanctions, which can often make an important contribution in dealing with these issues. We would modify the text accordingly.

With respect to the sixth sentence of paragraph 118, we should not preclude the possibility of action absent authorization by the Security Council. There may be cases that involve humanitarian castrophes but for which there is also a legitimate basis for states to act in self-defense. The text should not foreclose this possibility.

A clear statement on this issue will bolster our common efforts to prevent such atrocities. I look forward to a constructive dialogue with you and other delegations to achieve our mutual goal of a consensus text on this important issue.

Sincerely,



John R. Bolton
Ambassador

Enclosure: U.S. Proposed edits to Paragraph 118: Responsibility to Protect

United States Proposals: Responsibility to Protect

Responsibility to Protect

118. We agree that each individual state is responsible for the protection of its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity and other large-scale atrocities lies first and foremost with each individual State. We also agree that this responsibility to protect entails the prevention of such crimes, including their incitement. We accept this responsibility and agree to act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the efforts of the United Nations to establish an early-warning capability. The international community, through the United Nations, also has moral responsibility the obligation to use appropriate diplomatic, economic, humanitarian and other peaceful means, including under Chapters VI and VIII of the Charter to help protect populations from such atrocities genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we stand ready recognize our shared responsibility to take collective action, in a timely and decisive manner, through the Security Council under Chapter VII of the UN Charter and, as appropriate, in co-operation with relevant regional organizations, should peaceful means be inadequate and national authorities be unwilling or unable to protect their populations.[1] We stress the need to continue consideration of the concept of the responsibility to protect within the sixtieth session of the General Assembly.

[1] We underscore that national authorities have a responsibility to protect their populations and, in cases involving genocide, ethnic cleansing, crimes against humanity and other large-scale atrocities in which national authorities are unwilling or unable to protect their citizens, the international community should be prepared to use diplomatic, humanitarian, and other methods to protect civilian populations, and if such methods appear insufficient the Security Council may out of necessity decide to take action under the Charter, including enforcement action, if so required.