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# 1. THE POLICY CHALLENGE

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## THE INTERVENTION DILEMMA

1.1 “Humanitarian intervention” has been controversial both when it happens, and when it has failed to happen. Rwanda in 1994 laid bare the full horror of inaction. The United Nations (UN) Secretariat and some permanent members of the Security Council knew that officials connected to the then government were planning genocide; UN forces were present, though not in sufficient number at the outset; and credible strategies were available to prevent, or at least greatly mitigate, the slaughter which followed. But the Security Council refused to take the necessary action. That was a failure of international will – of civic courage – at the highest level. Its consequence was not merely a humanitarian catastrophe for Rwanda: the genocide destabilized the entire Great Lakes region and continues to do so. In the aftermath, many African peoples concluded that, for all the rhetoric about the universality of human rights, some human lives end up mattering a great deal less to the international community than others.

1.2 Kosovo – where intervention *did* take place in 1999 – concentrated attention on all the other sides of the argument. The operation raised major questions about the legitimacy of military intervention in a sovereign state. Was the cause just: were the human rights abuses committed or threatened by the Belgrade authorities sufficiently serious to warrant outside involvement? Did those seeking secession manipulate external intervention to advance their political purposes? Were all peaceful means of resolving the conflict fully explored? Did the intervention receive appropriate authority? How could the bypassing and marginalization of the UN system, by “a coalition of the willing” acting without Security Council approval, possibly be justified? Did the way in which the intervention was carried out in fact worsen the very human rights situation it was trying to rectify? Or – against all this – was it the case that had the North Atlantic Treaty Organization (NATO) not intervened, Kosovo would have been at best the site of an ongoing, bloody and destabilizing civil war, and at worst the occasion for genocidal slaughter like that which occurred in Bosnia four years earlier?

1.3 The Bosnian case – in particular the failure by the United Nations and others to prevent the massacre of thousands of civilians seeking shelter in UN “safe areas” in Srebrenica in 1995 – is another which has had a major impact on the contemporary policy debate about intervention for human protection purposes. It raises the principle that intervention amounts to a promise to people in need: a promise cruelly betrayed. Yet another was the failure and ultimate withdrawal of the UN peace operations in Somalia in 1992–93, when an international intervention to save lives and restore order was destroyed by flawed planning, poor execution, and an excessive dependence on military force.

1.4 These four cases occurred at a time when there were heightened expectations for effective collective action following the end of the Cold War. All four of them – Rwanda, Kosovo, Bosnia and Somalia – have had a profound effect on how the problem of intervention is viewed, analyzed and characterized.

1.5 The basic lines in the contemporary policy debate, one constantly being re-engaged at UN headquarters in New York and in capitals around the world, have been clearly enough drawn. For some, the international community is not intervening enough; for others it is

intervening much too often. For some, the only real issue is in ensuring that coercive interventions are effective; for others, questions about legality, process and the possible misuse of precedent loom much larger. For some, the new interventions herald a new world in which human rights trumps state sovereignty; for others, it ushers in a world in which big powers ride roughshod over the smaller ones, manipulating the rhetoric of humanitarianism and human rights. The controversy has laid bare basic divisions within the international community. In the interest of all those victims who suffer and die when leadership and institutions fail, it is crucial that these divisions be resolved.

1.6 In an address to the 54<sup>th</sup> session of the UN General Assembly in September 1999, Secretary-General Kofi Annan reflected upon “the prospects for human security and intervention in the next century.” He recalled the failures of the Security Council to act in Rwanda and Kosovo, and challenged the member states of the UN to “find common ground in upholding the principles of the Charter, and acting in defence of our common humanity.” The Secretary-General warned that “If the collective conscience of humanity ... cannot find in the United Nations its greatest tribunal, there is a grave danger that it will look elsewhere for peace and for justice.” In his Millennium Report to the General Assembly a year later, he restated the dilemma, and repeated the challenge:

... if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?

1.7 In September 2000, the Government of Canada responded to the Secretary-General’s challenge by announcing the establishment of this independent International Commission on Intervention and State Sovereignty (ICISS). Our mandate was generally to build a broader understanding of the problem of reconciling intervention for human protection purposes and sovereignty; more specifically, it was to try to develop a global political consensus on how to move from polemics – and often paralysis – towards action within the international system, particularly through the United Nations. The membership of the Commission was intended to fairly reflect developed and developing country perspectives, and to ensure that we represented between us a wide range of geographical backgrounds, viewpoints, and experiences – with opinions, at least at the outset, reflecting the main lines of the current international debate. If we could produce consensus among ourselves, there was at least a chance that we might be able to encourage it in the wider international community.

1.8 The Commission met for the first time on 5–6 November 2000, in Ottawa. A year-long strategy for carrying out our mandate was there mapped out, with agreement that our work process should be transparent, inclusive, and global. The Government of Canada supported the establishment of a research directorate, and with assistance from a number of other governments and major foundations, sponsored and organized a series of regional roundtables and national consultations intended to expose the Commission to a wide and diverse range of views, while at the same time helping to inform public opinion about our work and objectives. Particular emphasis was placed on the need to ensure that views of affected populations were heard and taken into account, in addition to the views of governments, intergovernmental and non-governmental organizations (NGOs), and civil society representatives.

1.9 The Commission was strongly committed from the outset to consulting as widely as possible around the world, including in the countries of all five permanent members of the Security Council. Over the course of a year, accordingly, roundtable meetings or consultations were conducted in Beijing, Cairo, Geneva, London, Maputo, New Delhi, New York, Ottawa, Paris, St Petersburg, Santiago and Washington. The discussions at those meetings were invariably rich and rewarding; they are summarized in the supplementary volume accompanying this report. In addition, individual Commissioners and members of the research team attended a large number of conferences and seminars – often by special invitation or in a representative capacity. The Commission has also made a particular effort to consult a broad range of academic thinking and expertise; much of this analysis and advice is embodied in the research papers and bibliography contained in the supplementary volume.

## THE CHANGING INTERNATIONAL ENVIRONMENT

1.10 The issues and preoccupations of the 21<sup>st</sup> century present new and often fundamentally different types of challenges from those that faced the world in 1945, when the United Nations was founded. As new realities and challenges have emerged, so too have new expectations for action and new standards of conduct in national and international affairs. Since, for example, the terrorist attacks of 11 September 2001 on the World Trade Center and Pentagon, it has become evident that the war against terrorism the world must now fight – one with no contested frontiers and a largely invisible enemy – is one like no other war before it.

1.11 Many new international institutions have been created to meet these changed circumstances. In key respects, however, the mandates and capacity of international institutions have not kept pace with international needs or modern expectations. Above all, the issue of international intervention for human protection purposes is a clear and compelling example of concerted action urgently being needed to bring international norms and institutions in line with international needs and expectations.

1.12 The current debate on intervention for human protection purposes is itself both a product and a reflection of how much has changed since the UN was established. The current debate takes place in the context of a broadly expanded range of state, non-state, and institutional actors, and increasingly evident interaction and interdependence among them. It is a debate that reflects new sets of issues and new types of concerns. It is a debate that is being conducted within the framework of new standards of conduct for states and individuals, and in a context of greatly increased expectations for action. And it is a debate that takes place within an institutional framework that since the end of the Cold War has held out the prospect of effective joint international action to address issues of peace, security, human rights and sustainable development on a global scale.

### New Actors

1.13 With new actors – not least new states, with the UN growing from 51 member states in 1945 to 189 today – has come a wide range of new voices, perspectives, interests, experiences and aspirations. Together, these new international actors have added both depth and texture to the increasingly rich tapestry of international society and important institutional credibility and practical expertise to the wider debate.

1.14 Prominent among the range of important new actors are a number of institutional actors and mechanisms, especially in the areas of human rights and human security. They have included, among others, the UN High Commissioner for Human Rights and the

International Criminal Tribunal for the former Yugoslavia, both created in 1993, and its sister tribunals for Rwanda established in 1994 and Sierra Leone in 2001. The International Criminal Court, whose creation was decided in 1998, will begin operation when 60 countries have ratified its Statute. In addition to the new institutions, established ones such as the UN High Commissioner for Refugees, and the ICRC and International Federation of Red Cross and Red Crescent Societies, have been ever more active.

1.15 Nearly as significant has been the emergence, of many new non-state actors in international affairs – including especially a large number of NGOs dealing with global matters; a growing number of media and academic institutions with worldwide reach; and an increasingly diverse array of armed non-state actors ranging from national and international terrorists to traditional rebel movements and various organized criminal groupings. These new non-state actors, good or bad, have forced the debate about intervention for human protection purposes to be conducted in front of a broader public, while at the same time adding new elements to the agenda.

### New Security Issues

1.16 The current debate about intervention for human protection purposes takes place in a context not just of new actors, but also of new sets of issues. The most marked security phenomenon since the end of the Cold War has been the proliferation of armed conflict within states. In most cases these conflicts have centred on demands for greater political rights and other political objectives, demands that were in many cases forcibly suppressed during the Cold War. Gone with the end of the Cold War was the artificial and often very brutal check which Cold War politics imposed on the political development of many states and societies – especially in the developing world and in the former Eastern Bloc. In many states, the result of the end of the Cold War has been a new emphasis on democratization, human rights and good governance. But in too many others, the result has been internal war or civil conflict – more often than not with ugly political and humanitarian repercussions.

1.17 In other cases, conflict has been directed towards the capture of resources and towards plunder. The weakness of state structures and institutions in many countries has heightened the challenges and risks of nation building, and sometimes tempted armed groups to try to seize and themselves exploit valuable assets such as diamonds, timber and other natural resources, not to mention the raw materials of drug production.

1.18 These internal conflicts are made more complex and lethal by modern technology and communications, and in particular by the proliferation of cheap, highly destructive weapons which find their way into the hands, among others, of child soldiers. Many occur in desperately poor societies, or societies where there is a single valuable commodity – like oil or diamonds – which rapidly becomes the fuel which sustains a full-time war economy. In these places, the state's monopoly over the means of violence is lost, and violence becomes a way of life with catastrophic consequences for civilians caught in the crossfire.

1.19 An unhappy trend of contemporary conflict has been the increased vulnerability of civilians, often involving their deliberate targeting. Sometimes the permanent displacement of civilian populations has been a primary objective of the conflict; there has also been increasing concern about the deliberate use of systematic rape to provoke exclusion from a group. Efforts to suppress armed (and sometimes unarmed) dissent have in too many cases led to excessive and disproportionate actions by governments, producing in some cases excessive and unwarranted suffering on the part of civilian populations. In a few cases, regimes have launched campaigns of terror on their own populations, sometimes in the

name of an ideology; sometimes spurred on by racial, religious or ethnic hatred; and sometimes purely for personal gain or plunder. In other cases they have supported or abetted terror campaigns aimed at other countries which have resulted in major destruction and loss of life.

1.20 Intra-state warfare is often viewed, in the prosperous West, simply as a set of discrete and unrelated crises occurring in distant and unimportant regions. In reality, what is happening is a convulsive process of state fragmentation and state formation that is transforming the international order itself. Moreover, the rich world is deeply implicated in the process. Civil conflicts are fuelled by arms and monetary transfers that originate in the developed world, and their destabilizing effects are felt in the developed world in everything from globally interconnected terrorism to refugee flows, the export of drugs, the spread of infectious disease and organized crime.

1.21 These considerations reinforce the Commission's view that human security is indeed indivisible. There is no longer such a thing as a humanitarian catastrophe occurring "in a faraway country of which we know little." On 11 September 2001 global terrorism, with its roots in complex conflicts in distant lands, struck the US homeland: impregnable lines of continental defence proved an illusion even for the world's most powerful state. At the same time, around 40 per cent of the victims of the World Trade Center attacks were non-Americans, from some 80 countries. In an interdependent world, in which security depends on a framework of stable sovereign entities, the existence of fragile states, failing states, states who through weakness or ill-will harbour those dangerous to others, or states that can only maintain internal order by means of gross human rights violations, can constitute a risk to people everywhere.

1.22 All this presents the international community with acute dilemmas. If it stays disengaged, there is the risk of becoming complicit bystanders in massacre, ethnic cleansing, and even genocide. If the international community intervenes, it may or may not be able to mitigate such abuses. But even when it does, intervention sometimes means taking sides in intra-state conflicts. Once it does so, the international community may only be aiding in the further fragmentation of the state system. Interventions in the Balkans did manage to reduce the civilian death toll, but it has yet to produce a stable state order in the region. As both the Kosovo and Bosnian interventions show, even when the goal of international action is, as it should be, protecting ordinary human beings from gross and systematic abuse, it can be difficult to avoid doing rather more harm than good.

1.23 Building a stable order after intervention for human protection purposes remains an equally great challenge. Finding a consensus about intervention is not simply a matter of deciding who should authorize it and when it is legitimate to undertake. It is also a matter of figuring out how to do it so that decent objectives are not tarnished by inappropriate means. As is widely recognized, UN peacekeeping strategies, crafted for an era of war between states and designed to monitor and reinforce ceasefires agreed between belligerents, may no longer be suitable to protect civilians caught in the middle of bloody struggles between states and insurgents. The challenge in this context is to find tactics and strategies of military intervention that fill the current gulf between outdated concepts of peacekeeping and full-scale military operations that may have deleterious impacts on civilians.

1.24 There is a further challenge: crafting responses that are consistent. Thanks to modern media, some humanitarian crises receive a surfeit of attention, while others languish in indifference and neglect. Some crises are exaggerated by media coverage and ill-considered calls for action skew the response of the international community in an inconsistent and

undisciplined manner. Yet perfect consistency is not always possible: the sheer number of crises with serious humanitarian dimensions precludes an effective response in each case. Moreover, there are some cases where international action is precluded by the opposition of a Permanent Five member or other major power. But can the fact that effective international action is not always possible in every instance of major humanitarian catastrophe ever be an excuse for inaction where effective responses are possible?

### New Demands and Expectations

1.25 The current debate about intervention for human protection purposes also takes place in a historical, political and legal context of evolving international standards of conduct for states and individuals, including the development of new and stronger norms and mechanisms for the protection of human rights. Human rights have now become a mainstream part of international law, and respect for human rights a central subject and responsibility of international relations. Some key milestones in this progression have been the Universal Declaration of Human Rights; the four Geneva Conventions and the two Additional Protocols on international humanitarian law in armed conflict; the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; the two 1966 Covenants relating to civil, political, social, economic and cultural rights; and the adoption in 1998 of the statute for the establishment of an International Criminal Court. Even though in some cases imperfectly implemented, these agreements and mechanisms have significantly changed expectations at all levels about what is and what is not acceptable conduct by states and other actors.

1.26 The universal jurisdiction established in the Geneva Conventions and Additional Protocols (as well as the Convention Against Torture) means any state party in which a person accused of the crimes listed in them is found can bring that person to trial. Universal jurisdiction is also available under customary international law, and associated state legislation, for genocide and crimes against humanity. The recent Pinochet case in the UK and the conviction in Belgium for complicity in genocide of Rwandan nuns are an indication that the universal jurisdiction of these instruments is starting to be taken very seriously.

1.27 The change in law and in legal norms has been accompanied by the establishment, as has been noted, of a broad range of new international institutions and non-governmental organizations, concerned to monitor and promote the implementation worldwide of human rights and international humanitarian law – with the result that new expectations for conduct are increasingly accompanied by new expectations for corrective action.

1.28 The concept of human security – including concern for human rights, but broader than that in its scope – has also become an increasingly important element in international law and international relations, increasingly providing a conceptual framework for international action. Although the issue is far from uncontroversial, the concept of security is now increasingly recognized to extend to people as well as to states. It is certainly becoming increasingly clear that the human impact of international actions cannot be regarded as collateral to other actions, but must be a central preoccupation for all concerned. Whether universally popular or not, there is growing recognition worldwide that the protection of human security, including human rights and human dignity, must be one of the fundamental objectives of modern international institutions.

1.29 In considering changing expectations and conduct, nationally and internationally, it is impossible to ignore here the impact of globalization and technology. The revolution in information technology has made global communications instantaneous and provided unprecedented access to information worldwide. The result has been an enormously

heightened awareness of conflicts wherever they may be occurring, combined with immediate and often very compelling visual images of the resultant suffering on television and in other mass media. In September 2001 the world suffered and grieved with Americans. Equally, killing and conflict occurring not only in major capitals but in distant places around the world has been brought right into the homes and living rooms of people all over the world. In a number of cases, popular concern over what has been seen has put political pressure on governments to respond. For many of these governments, it has created a domestic political cost for inaction and indifference.

### New Opportunities for Common Action

1.30 A critically important contextual dimension of the current debate on intervention for human protection purposes is the new opportunity and capacity for common action that have resulted from the end of the Cold War. For perhaps the first time since the UN was established, there is now a genuine prospect of the Security Council fulfilling the role envisioned for it in the UN Charter. Despite some notable setbacks, the capacity for common action by the Security Council was shown during the 1990s to be real, with the authorization by the Council of nearly 40 peacekeeping or peace enforcement operations over the last decade.

1.31 Closely allied to this new awareness of world conditions and new visibility for human suffering has been the impact of globalization in intensifying economic interdependence between states. Globalization has led to closer ties at all levels and a pronounced trend towards multilateral cooperation. In the context of the debate surrounding the issue of intervention for human protection purposes, it is clear that the realities of globalization and growing interdependency have often been important factors in prompting neighbouring states and others to become engaged positively both in promoting prevention, and also in calling for intervention in situations that seem to be spiralling out of control.

## THE IMPLICATIONS FOR STATE SOVEREIGNTY

1.32 In a dangerous world marked by overwhelming inequalities of power and resources, sovereignty is for many states their best – and sometimes seemingly their only – line of defence. But sovereignty is more than just a functional principle of international relations. For many states and peoples, it is also a recognition of their equal worth and dignity, a protection of their unique identities and their national freedom, and an affirmation of their right to shape and determine their own destiny. In recognition of this, the principle that all states are equally sovereign under international law was established as a cornerstone of the UN Charter (Article 2.1).

1.33 However, for all the reasons mentioned already, the conditions under which sovereignty is exercised – and intervention is practised – have changed dramatically since 1945. Many new states have emerged and are still in the process of consolidating their identity. Evolving international law has set many constraints on what states can do, and not only in the realm of human rights. The emerging concept of human security has created additional demands and expectations in relation to the way states treat their own people. And many new actors are playing international roles previously more or less the exclusive preserve of states.

1.34 All that said, sovereignty does still matter. It is strongly arguable that effective and legitimate states remain the best way to ensure that the benefits of the internationalization of trade, investment, technology and communication will be equitably shared. Those states which can call upon strong regional alliances, internal peace, and a strong and independent civil society, seem clearly best placed to benefit from globalization. They will also be likely

to be those most respectful of human rights. And in security terms, a cohesive and peaceful international system is far more likely to be achieved through the cooperation of effective states, confident of their place in the world, than in an environment of fragile, collapsed, fragmenting or generally chaotic state entities.

1.35 The defence of state sovereignty, by even its strongest supporters, does not include any claim of the unlimited power of a state to do what it wants to its own people. The Commission heard no such claim at any stage during our worldwide consultations. It is acknowledged that sovereignty implies a dual responsibility: externally – to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state. In international human rights covenants, in UN practice, and in state practice itself, sovereignty is now understood as embracing this dual responsibility. Sovereignty as responsibility has become the minimum content of good international citizenship.

1.36 This modern understanding of the meaning of sovereignty is of central importance in the Commission's approach to the question of intervention for human protection purposes, and in particular in the development of our core theme, "the responsibility to protect," which is introduced and explained in the next chapter.

## THE MEANING OF INTERVENTION

### Scope of the Concept

1.37 Part of the controversy over "intervention" derives from the potential width of activities this term can cover, up to and including military intervention. Some would regard any application of pressure to a state as being intervention, and would include in this conditional support programmes by major international financial institutions whose recipients often feel they have no choice but to accept. Some others would regard almost any non-consensual interference in the internal affairs of another state as being intervention – including the delivery of emergency relief assistance to a section of a country's population in need. Others again would regard any kind of outright coercive actions – not just military action but actual or threatened political and economic sanctions, blockades, diplomatic and military threats, and international criminal prosecutions – as all being included in the term. Yet others would confine its use to military force.

1.38 The kind of intervention with which we are concerned in this report is action taken against a state or its leaders, without its or their consent, for purposes which are claimed to be humanitarian or protective. By far the most controversial form of such intervention is military, and a great part of our report necessarily focuses on that. But we are also very much concerned with alternatives to military action, including all forms of preventive measures, and coercive intervention measures – sanctions and criminal prosecutions – falling short of military intervention. Such coercive measures are discussed in this report in two contexts: their threatened use as a preventive measure, designed to avoid the need for military intervention arising (Chapter 3); and their actual use as a reactive measure, but as an alternative to military force (Chapter 4).

### “Humanitarian” Intervention?

1.39 The Commission recognizes the long history, and continuing wide and popular usage, of the phrase “humanitarian intervention,” and also its descriptive usefulness in clearly focusing attention on one particular category of interventions – namely, those undertaken for the stated purpose of protecting or assisting people at risk. But we have made a deliberate decision not to adopt this terminology, preferring to refer either to “intervention,” or as appropriate “military intervention,” for human protection purposes.

1.40 We have responded in this respect to the very strong opposition expressed by humanitarian agencies, humanitarian organizations and humanitarian workers towards any militarization of the word “humanitarian”: whatever the motives of those engaging in the intervention, it is anathema for the humanitarian relief and assistance sector to have this word appropriated to describe any kind of military action. The Commission has also been responsive to the suggestion in some political quarters that use in this context of an inherently approving word like “humanitarian” tends to prejudge the very question in issue – that is, whether the intervention is in fact defensible.

1.41 We have taken the view from the outset that there is some virtue in anything which may encourage people to look again, with fresh eyes, at the real issues involved in the sovereignty–intervention debate. Beyond the question of “humanitarian intervention” terminology, there is a rather larger language change, and associated reconceptualization of the issues, which the Commission has also felt it helpful to embrace. It is to this – the concept of “the responsibility to protect” – that we turn in the next chapter.



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## 2. A NEW APPROACH: “THE RESPONSIBILITY TO PROTECT”

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2.1 Millions of human beings remain at the mercy of civil wars, insurgencies, state repression and state collapse. This is a stark and undeniable reality, and it is at the heart of all the issues with which this Commission has been wrestling. What is at stake here is not making the world safe for big powers, or trampling over the sovereign rights of small ones, but delivering practical protection for ordinary people, at risk of their lives, because their states are unwilling or unable to protect them.

2.2 But all this is easier said than done. There have been as many failures as successes, perhaps more, in the international protective record in recent years. There are continuing fears about a “right to intervene” being formally acknowledged. If intervention for human protection purposes is to be accepted, including the possibility of military action, it remains imperative that the international community develop consistent, credible and enforceable standards to guide state and intergovernmental practice. The experience and aftermath of Somalia, Rwanda, Srebrenica and Kosovo, as well as interventions and non-interventions in a number of other places, have provided a clear indication that the tools, devices and thinking of international relations need now to be comprehensively reassessed, in order to meet the foreseeable needs of the 21<sup>st</sup> century.

2.3 Any new approach to intervention on human protection grounds needs to meet at least four basic objectives:

- ❑ to establish clearer rules, procedures and criteria for determining whether, when and how to intervene;
- ❑ to establish the legitimacy of military intervention when necessary and after all other approaches have failed;
- ❑ to ensure that military intervention, when it occurs, is carried out only for the purposes proposed, is effective, and is undertaken with proper concern to minimize the human costs and institutional damage that will result; and
- ❑ to help eliminate, where possible, the causes of conflict while enhancing the prospects for durable and sustainable peace.

2.4 In the later chapters of this report we spell out in detail how these objectives might be met. But there is a significant preliminary issue which must first be addressed. It is important that language – and the concepts which lie behind particular choices of words – do not become a barrier to dealing with the real issues involved. Just as the Commission found that the expression “humanitarian intervention” did not help to carry the debate forward, so too do we believe that the language of past debates arguing for or against a “right to intervene” by one state on the territory of another state is outdated and unhelpful. We prefer to talk not of a “right to intervene” but of a “responsibility to protect.”

2.5 Changing the language of the debate, while it can remove a barrier to effective action, does not, of course, change the substantive issues which have to be addressed. There still remain to be argued all the moral, legal, political and operational questions – about need, authority, will and capacity respectively – which have themselves been so difficult and divisive. But if people are prepared to look at all these issues from the new perspective that we propose, it may just make finding agreed answers that much easier.

2.6 In the remainder of this chapter we seek to make a principled, as well as a practical and political, case for conceptualizing the intervention issue in terms of a responsibility to protect. The building blocks of the argument are first, the principles inherent in the concept of sovereignty; and secondly, the impact of emerging principles of human rights and human security, and changing state and intergovernmental practice.

## THE MEANING OF SOVEREIGNTY

### The Norm of Non-Intervention

2.7 Sovereignty has come to signify, in the Westphalian concept, the legal identity of a state in international law. It is a concept which provides order, stability and predictability in international relations since sovereign states are regarded as equal, regardless of comparative size or wealth. The principle of sovereign equality of states is enshrined in Article 2.1 of the UN Charter. Internally, sovereignty signifies the capacity to make authoritative decisions with regard to the people and resources within the territory of the state. Generally, however, the authority of the state is not regarded as absolute, but constrained and regulated internally by constitutional power sharing arrangements.

2.8 A condition of any one state's sovereignty is a corresponding obligation to respect every other state's sovereignty: the norm of non-intervention is enshrined in Article 2.7 of the UN Charter. A sovereign state is empowered in international law to exercise exclusive and total jurisdiction within its territorial borders. Other states have the corresponding duty not to intervene in the internal affairs of a sovereign state. If that duty is violated, the victim state has the further right to defend its territorial integrity and political independence. In the era of decolonization, the sovereign equality of states and the correlative norm of non-intervention received its most emphatic affirmation from the newly independent states.

2.9 At the same time, while intervention for human protection purposes was extremely rare, during the Cold War years state practice reflected the unwillingness of many countries to give up the use of intervention for political or other purposes as an instrument of policy. Leaders on both sides of the ideological divide intervened in support of friendly leaders against local populations, while also supporting rebel movements and other opposition causes in states to which they were ideologically opposed. None were prepared to rule out *a priori* the use of force in another country in order to rescue nationals who were trapped and threatened there.

2.10 The established and universally acknowledged right to self-defence, embodied in Article 51 of the UN Charter, was sometimes extended to include the right to launch punitive raids into neighbouring countries that had shown themselves unwilling or unable to stop their territory from being used as a launching pad for cross-border armed raids or terrorist attacks. But all that said, the many examples of intervention in actual state practice throughout the 20th century did not lead to an abandonment of the norm of non-intervention.

## The Organizing Principle of the UN System

2.11 Membership of the United Nations was the final symbol of independent sovereign statehood and thus the seal of acceptance into the community of nations. The UN also became the principal international forum for collaborative action in the shared pursuit of the three goals of state building, nation building and economic development. The UN was therefore the main arena for the jealous protection, not the casual abrogation, of state sovereignty.

2.12 The UN is an organization dedicated to the maintenance of international peace and security on the basis of protecting the territorial integrity, political independence and national sovereignty of its member states. But the overwhelming majority of today's armed conflicts are internal, not inter-state. Moreover, the proportion of civilians killed in them increased from about one in ten at the start of the 20<sup>th</sup> century to around nine in ten by its close. This has presented the organization with a major difficulty: how to reconcile its foundational principles of member states' sovereignty and the accompanying primary mandate to maintain international peace and security ("to save succeeding generations from the scourge of war") – with the equally compelling mission to promote the interests and welfare of people within those states ("We the peoples of the United Nations").

2.13 The Secretary-General has discussed the dilemma in the conceptual language of two notions of sovereignty, one vesting in the state, the second in the people and in individuals. His approach reflects the ever-increasing commitment around the world to democratic government (of, by and for the people) and greater popular freedoms. The second notion of sovereignty to which he refers should not be seen as any kind of challenge to the traditional notion of state sovereignty. Rather it is a way of saying that the more traditional notion of state sovereignty should be able comfortably to embrace the goal of greater self-empowerment and freedom for people, both individually and collectively.

### Sovereignty as Responsibility

2.14 The Charter of the UN is itself an example of an international obligation voluntarily accepted by member states. On the one hand, in granting membership of the UN, the international community welcomes the signatory state as a responsible member of the community of nations. On the other hand, the state itself, in signing the Charter, accepts the responsibilities of membership flowing from that signature. There is no transfer or dilution of state sovereignty. But there is a necessary re-characterization involved: from *sovereignty as control* to *sovereignty as responsibility* in both internal functions and external duties.

2.15 Thinking of sovereignty as responsibility, in a way that is being increasingly recognized in state practice, has a threefold significance. First, it implies that the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare. Secondly, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the UN. And thirdly, it means that the agents of state are responsible for their actions; that is to say, they are accountable for their acts of commission and omission. The case for thinking of sovereignty in these terms is strengthened by the ever-increasing impact of international human rights norms, and the increasing impact in international discourse of the concept of human security.

## HUMAN RIGHTS, HUMAN SECURITY AND EMERGING PRACTICE

### Human Rights

2.16 The adoption of new standards of conduct for states in the protection and advancement of international human rights has been one of the great achievements of the post-World War II era. Article 1.3 of its founding 1945 Charter committed the UN to “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.” The Universal Declaration of Human Rights (1948) embodies the moral code, political consensus and legal synthesis of human rights. The simplicity of the Declaration’s language belies the passion of conviction underpinning it. Its elegance has been the font of inspiration down the decades; its provisions comprise the vocabulary of complaint. The two Covenants of 1966, on civil–political and social–economic–cultural rights, affirm and proclaim the human rights norm as a fundamental principle of international relations and add force and specificity to the Universal Declaration.

2.17 Together the Universal Declaration and the two Covenants mapped out the international human rights agenda, established the benchmark for state conduct, inspired provisions in many national laws and international conventions, and led to the creation of long-term national infrastructures for the protection and promotion of human rights. They are important milestones in the transition from a culture of violence to a more enlightened culture of peace.

2.18 What has been gradually emerging is a parallel transition from a culture of sovereign impunity to a culture of national and international accountability. International organizations, civil society activists and NGOs use the international human rights norms and instruments as the concrete point of reference against which to judge state conduct. Between them, the UN and NGOs have achieved many successes. National laws and international instruments have been improved, a number of political prisoners have been freed and some victims of abuse have been compensated. The most recent advances in international human rights have been in the further development of international humanitarian law, for example in the Ottawa Convention on landmines which subordinated military calculations to humanitarian concerns about a weapon that cannot distinguish a soldier from a child, and in the Rome Statute establishing the International Criminal Court.

2.19 Just as the substance of human rights law is coming increasingly closer to realizing the notion of universal justice – justice without borders – so too is the process. Not only have new international criminal tribunals been specially created to deal with crimes against humanity committed in the Balkans, Rwanda and Sierra Leone; and not only is an International Criminal Court about to be established to try such crimes wherever and whenever committed in the future; but, as already noted in Chapter 1, the universal jurisdiction which now exists under a number of treaties, like the Geneva Conventions, and which enables any state party to try anyone accused of the crimes in question, is now beginning to be seriously applied.

2.20 The significance of these developments in establishing new standards of behaviour, and new means of enforcing those standards, is unquestionable. But the key to the effective observance of human rights remains, as it always has been, national law and practice: the frontline defence of the rule of law is best conducted by the judicial systems of sovereign states, which should be independent, professional and properly resourced. It is only when national systems of justice either cannot or will not act to judge crimes against humanity that universal jurisdiction and other international options should come into play.

## Human Security

2.21 The meaning and scope of security have become much broader since the UN Charter was signed in 1945. Human security means the security of people – their physical safety, their economic and social well-being, respect for their dignity and worth as human beings, and the protection of their human rights and fundamental freedoms. The growing recognition worldwide that concepts of security must include people as well as states has marked an important shift in international thinking during the past decade. Secretary-General Kofi Annan himself put the issue of human security at the centre of the current debate, when in his statement to the 54<sup>th</sup> session of the General Assembly he made clear his intention to “address the prospects for human security and intervention in the next century.”

2.22 This Commission certainly accepts that issues of sovereignty and intervention are not just matters affecting the rights or prerogatives of states, but that they deeply affect and involve individual human beings in fundamental ways. One of the virtues of expressing the key issue in this debate as “the responsibility to protect” is that it focuses attention where it should be most concentrated, on the human needs of those seeking protection or assistance. The emphasis in the security debate shifts, with this focus, from territorial security, and security through armaments, to security through human development with access to food and employment, and to environmental security. The fundamental components of human security – the security of *people* against threats to life, health, livelihood, personal safety and human dignity – can be put at risk by external aggression, but also by factors within a country, including “security” forces. Being wedded still to too narrow a concept of “national security” may be one reason why many governments spend more to protect their citizens against undefined external military attack than to guard them against the omnipresent enemies of good health and other real threats to human security on a daily basis.

2.23 The traditional, narrow perception of security leaves out the most elementary and legitimate concerns of ordinary people regarding security in their daily lives. It also diverts enormous amounts of national wealth and human resources into armaments and armed forces, while countries fail to protect their citizens from chronic insecurities of hunger, disease, inadequate shelter, crime, unemployment, social conflict and environmental hazard. When rape is used as an instrument of war and ethnic cleansing, when thousands are killed by floods resulting from a ravaged countryside and when citizens are killed by their own security forces, then it is just insufficient to think of security in terms of national or territorial security alone. The concept of human security can and does embrace such diverse circumstances.

## Emerging Practice

2.24 The debate on military intervention for human protection purposes was ignited in the international community essentially because of the critical gap between, on the one hand, the needs and distress being felt, and seen to be felt, in the real world, and on the other hand the codified instruments and modalities for managing world order. There has been a parallel gap, no less critical, between the codified best practice of international behaviour as articulated in the UN Charter and actual state practice as it has evolved in the 56 years since the Charter was signed. While there is not yet a sufficiently strong basis to claim the emergence of a new principle of customary international law, growing state and regional organization practice as well as Security Council precedent suggest an emerging guiding principle – which in the Commission’s view could properly be termed “the responsibility to protect.”

2.25 The emerging principle in question is that intervention for human protection purposes, including military intervention in extreme cases, is supportable when major harm to civilians is occurring or imminently apprehended, and the state in question is unable or unwilling to end the harm, or is itself the perpetrator. The Security Council itself has been increasingly prepared in recent years to act on this basis, most obviously in Somalia, defining what was essentially an internal situation as constituting a threat to international peace and security such as to justify enforcement action under Chapter VII of the UN Charter. This is also the basis on which the interventions by the Economic Community of West African States (ECOWAS) in Liberia and Sierra Leone were essentially justified by the interveners, as was the intervention mounted without Security Council authorization by NATO allies in Kosovo.

2.26 The notion that there is an emerging guiding principle in favour of military intervention for human protection purposes is also supported by a wide variety of legal sources – including sources that exist independently of any duties, responsibilities or authority that may be derived from Chapter VII of the UN Charter. These legal foundations include fundamental natural law principles; the human rights provisions of the UN Charter; the Universal Declaration of Human Rights together with the Genocide Convention; the Geneva Conventions and Additional Protocols on international humanitarian law; the statute of the International Criminal Court; and a number of other international human rights and human protection agreements and covenants. Some of the ramifications and consequences of these developments will be addressed again in Chapter 6 of this report as part of the examination of the question of authority.

2.27 Based on our reading of state practice, Security Council precedent, established norms, emerging guiding principles, and evolving customary international law, the Commission believes that the Charter's strong bias against military intervention is not to be regarded as absolute when decisive action is required on human protection grounds. The degree of legitimacy accorded to intervention will usually turn on the answers to such questions as the purpose, the means, the exhaustion of other avenues of redress against grievances, the proportionality of the riposte to the initiating provocation, and the agency of authorization. These are all questions that will recur: for present purposes the point is simply that there is a large and accumulating body of law and practice which supports the notion that, whatever form the exercise of that responsibility may properly take, members of the broad community of states do have a responsibility to protect both their own citizens and those of other states as well.

## SHIFTING THE TERMS OF THE DEBATE

2.28 The traditional language of the sovereignty–intervention debate – in terms of “the right of humanitarian intervention” or the “right to intervene” – is unhelpful in at least three key respects. First, it necessarily focuses attention on the claims, rights and prerogatives of the potentially intervening states much more so than on the urgent needs of the potential beneficiaries of the action. Secondly, by focusing narrowly on the act of intervention, the traditional language does not adequately take into account the need for either prior reventive effort or subsequent follow-up assistance, both of which have been too often neglected in practice. And thirdly, although this point should not be overstated, the familiar language does effectively operate to trump sovereignty with intervention at the outset of the debate: it loads the dice in favour of intervention before the argument has even begun, by tending to label and delegitimize dissent as anti-humanitarian.

2.29 The Commission is of the view that the debate about intervention for human protection purposes should focus not on “the right to intervene” but on “the responsibility to protect.” The proposed change in terminology is also a change in perspective, reversing the perceptions inherent in the traditional language, and adding some additional ones:

- ❑ First, the responsibility to protect implies an evaluation of the issues from the point of view of those seeking or needing support, rather than those who may be considering intervention. Our preferred terminology refocuses the international searchlight back where it should always be: on the duty to protect communities from mass killing, women from systematic rape and children from starvation.
- ❑ Secondly, the responsibility to protect acknowledges that the primary responsibility in this regard rests with the state concerned, and that it is only if the state is unable or unwilling to fulfill this responsibility, or is itself the perpetrator, that it becomes the responsibility of the international community to act in its place. In many cases, the state will seek to acquit its responsibility in full and active partnership with representatives of the international community. Thus the “responsibility to protect” is more of a linking concept that bridges the divide between intervention and sovereignty; the language of the “right or duty to intervene” is intrinsically more confrontational.
- ❑ Thirdly, the responsibility to protect means not just the “responsibility to react,” but the “responsibility to prevent” and the “responsibility to rebuild” as well. It directs our attention to the costs and results of action versus no action, and provides conceptual, normative and operational linkages between assistance, intervention and reconstruction.

2.30 The Commission believes that responsibility to protect resides first and foremost with the state whose people are directly affected. This fact reflects not only international law and the modern state system, but also the practical realities of who is best placed to make a positive difference. The domestic authority is best placed to take action to prevent problems from turning into potential conflicts. When problems arise the domestic authority is also best placed to understand them and to deal with them. When solutions are needed, it is the citizens of a particular state who have the greatest interest and the largest stake in the success of those solutions, in ensuring that the domestic authorities are fully accountable for their actions or inactions in addressing these problems, and in helping to ensure that past problems are not allowed to recur.

2.31 While the state whose people are directly affected has the default responsibility to protect, a residual responsibility also lies with the broader community of states. This fallback responsibility is activated when a particular state is clearly either unwilling or unable to fulfill its responsibility to protect or is itself the actual perpetrator of crimes or atrocities; or where people living outside a particular state are directly threatened by actions taking place there. This responsibility also requires that in some circumstances action must be taken by the broader community of states to support populations that are in jeopardy or under serious threat.

2.32 The substance of the responsibility to protect is the provision of life-supporting protection and assistance to populations at risk. This responsibility has three integral and essential components: not just the responsibility to *react* to an actual or apprehended human catastrophe, but the responsibility to *prevent* it, and the responsibility to *rebuild* after the event. Each of these will be dealt with in detail in chapters of this report. But it is

important to emphasize from the start that action in support of the responsibility to protect necessarily involves and calls for a broad range and wide variety of assistance actions and responses. These actions may include both long and short-term measures to help prevent human security-threatening situations from occurring, intensifying, spreading, or persisting; and rebuilding support to help prevent them from recurring; as well as, at least in extreme cases, military intervention to protect at-risk civilians from harm.

2.33 Changing the terms of the debate from “right to intervene” to “responsibility to protect” helps to shift the focus of discussion where it belongs – on the requirements of those who need or seek assistance. But while this is an important and necessary step, it does not by itself, as we have already acknowledged, resolve the difficult questions relating to the circumstances in which the responsibility to protect should be exercised – questions of legitimacy, authority, operational effectiveness and political will. These issues are fully addressed in subsequent chapters. While the Commission does not purport to try to resolve all of these difficult issues now and forever, our approach will hopefully generate innovative thinking on ways of achieving and sustaining effective and appropriate action.

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## 3. THE RESPONSIBILITY TO PREVENT

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### A COMMITMENT TO PREVENTION

3.1 This Commission strongly believes that the responsibility to protect implies an accompanying responsibility to prevent. And we think that it is more than high time for the international community to be doing more to close the gap between rhetorical support for prevention and tangible commitment. The need to do much better on prevention, and to exhaust prevention options before rushing to embrace intervention, were constantly recurring themes in our worldwide consultations, and ones which we wholeheartedly endorse.

3.2 Prevention of deadly conflict and other forms of man-made catastrophe is, as with all other aspects of the responsibility to protect, first and foremost the responsibility of sovereign states, and the communities and institutions within them. A firm national commitment to ensuring fair treatment and fair opportunities for all citizens provides a solid basis for conflict prevention. Efforts to ensure accountability and good governance, protect human rights, promote social and economic development and ensure a fair distribution of resources point toward the necessary means.

3.3 But conflict prevention is not merely a national or local affair. The failure of prevention can have wide international consequences and costs. Moreover, for prevention to succeed, strong support from the international community is often needed, and in many cases may be indispensable. Such support may take many forms. It may come in the form of development assistance and other efforts to help address the root cause of potential conflict; or efforts to provide support for local initiatives to advance good governance, human rights, or the rule of law; or good offices missions, mediation efforts and other efforts to promote dialogue or reconciliation. In some cases international support for prevention efforts may take the form of inducements; in others, it may involve a willingness to apply tough and perhaps even punitive measures.

3.4 By showing a commitment to helping local efforts to address both the root causes of problems and their more immediate triggers, broader international efforts gain added credibility – domestically, regionally, and globally. This credibility is especially important when international action must go beyond prevention to reaction, and especially when that reaction necessarily involves coercive measures, and ultimately the use of armed force. The basic point of preventive efforts is of course to reduce, and hopefully eliminate, the need for intervention altogether. But even where they have not succeeded in preventing conflict or catastrophe, they are a necessary precondition for responding effectively to it.

3.5 The UN General Assembly and Security Council in 2000 adopted resolutions recognizing the vital role of all parts of the United Nations system in conflict prevention, and pledging to enhance their effectiveness. The *Report of the Panel on United Nations Peace Operations* made much of the need to avoid such operations by more effective prevention. The important report of the Secretary-General on *Prevention of Armed Conflict* in 2001 was another articulate call for renewed focus on cooperation for prevention, with many far-reaching recommendations, especially in addressing deep-rooted structural problems, which this Commission wholly endorses.

3.6 In response to these and other calls over the years, a promising array of international, regional, and non-governmental mechanisms for conflict prevention focused particularly on intra-state conflict was established or expanded in the 1990s. The Organization of African Unity (OAU), for instance, established in 1993 a Mechanism for Conflict Prevention, Management, and Settlement, with support from external donors. The Organization for Security and Cooperation in Europe (OSCE) has developed a number of innovative internal mechanisms and practices toward preventing conflict in Europe. Also important has been the increasingly significant role played by NGOs, particularly in the context of early warning efforts and helping to galvanize domestic and foreign public opinion in support of prevention measures.

3.7 But UN and other resources devoted to prevention in all its forms remain dwarfed by the resources devoted by intergovernmental organizations, and the states themselves, to preparation for war, to warfighting, to coercive intervention, to humanitarian assistance to the victims of conflict and catastrophe, to post-intervention reconstruction, and to peace-keeping. Very often, those with the means to act prefer to play the odds, sometimes betting that the situation will somehow resolve itself, or that it will simmer without reaching a boil, or that the resulting conflict will prove less dire than predicted, or that conflict if it does break out can be quickly contained. The result, according to the Carnegie Commission on Preventing Deadly Conflict, was that the international community spent approximately \$200 billion on conflict management in seven major interventions in the 1990s (Bosnia and Herzegovina, Somalia, Rwanda, Haiti, the Persian Gulf, Cambodia and El Salvador), but could have saved \$130 billion through a more effective preventive approach.

3.8 There remains a gap between rhetoric and financial and political support for prevention. Not the least of the problems here has been with development assistance. While the international community has become increasingly sophisticated in using development assistance to promote conflict prevention, there has in recent years been a marked decline in the overall level of that assistance worldwide. Debts accumulated during the Cold War continue to place a tremendous repayment burden on many hard-pressed developing country economies, making scarce resources even scarcer, exacerbating income gaps within societies, and depriving many countries of the capacity to apply their own resources to conflict prevention. The trade policies applied by many richer industrialized countries, unfairly disadvantaging or restricting access to markets, together with the terms of trade being experienced by many developing countries, have not made any easier the reduction of that debt burden, or the capacity to meet the social and economic development needs of their populations.

3.9 For the effective prevention of conflict, and the related sources of human misery with which this report is concerned, three essential conditions have to be met. First, there has to be knowledge of the fragility of the situation and the risks associated with it – so called “early warning.” Second, there has to be understanding of the policy measures available that are capable of making a difference – the so-called “preventive toolbox.” And third, there has to be, as always, the willingness to apply those measures – the issue of “political will.” We shall say a little about the first two of these conditions in this chapter, and about the third in Chapter 8. An extensive analysis of the modalities of conflict prevention is not the focus of this Commission: this ground has already been amply covered by many others. But in the context of the responsibility to protect, improving conflict prevention at every level – conceptually, strategically and operationally – is urgent and essential. Encouraging more serious and sustained efforts to address the root cause of the problems that put populations at risk, as well as more effective use of direct prevention measures, is a key objective of the Commission’s efforts.

## EARLY WARNING AND ANALYSIS

3.10 It is possible to exaggerate the extent to which lack of early warning is a serious problem in government and intergovernmental organization these days. More often than not what is lacking is not the basic data, but its analysis and translation into policy prescription, and the will to do something about it. Far too often – and the recent reports on the UN response to Rwanda in 1994 confirm this – lack of early warning is an excuse rather than an explanation, and the problem is not lack of warning but of timely response.

3.11 All that said, there is a need for more official resources to be devoted to early warning and analysis. Preventive action is founded upon and proceeds from accurate prediction, but too often preventive analysis, to the extent that it happens at all, fails to take key factors into account, misses key warning signs (and hence misses opportunities for early action), or misreads the problem (thereby resulting in application of the wrong tools). A number of distinct problems weaken analytic capacities to predict violent conflict: the multiplicity of variables associated with root causes of conflict and the complexities of their interactions; the associated absence of reliable models for predicting conflict; and simply the perennial problem of securing accurate information on which to base analyses and action.

3.12 To date, early warning about deadly conflict has been essentially ad hoc and unstructured. A wide range of players has been involved, including embassies and intelligence agencies, UN peacekeeping forces, relief and development NGOs, national and international human rights groups, the International Committee of the Red Cross (ICRC), faith groups, academics, and the media. Quality is variable, and coordination among groups has been rudimentary or non-existent. UN specialized agencies and development NGOs have the advantage of a grass-roots presence in countries, but often lack the expertise, and human resources, and especially the mandate to provide accurate and reliable early-warning information.

3.13 Dissatisfaction with this situation has prompted the rise of a new type of NGO, one dedicated exclusively to conflict early warning. Organizations such as International Crisis Group (ICG) monitor and report on areas of the world where conflict appears to be emerging, and they are aggressive in alerting governments and the media if they believe preventive action is urgently required. Their work is complemented by the monitoring and reporting capacity of international and national human rights organizations such as Amnesty International (AI), Human Rights Watch (HRW) and the Fédération internationale des ligues des droits de l'homme (FIDH). These organizations, which previously devoted most of their energies to reporting on human rights violations against individuals and groups, have made a conscious effort to expand their work to include early warning about conflicts that could result in massive violations of human rights or even genocide. The impressive growth of such indigenous human rights centres in the post-Cold War period gives this set of actors an increasingly powerful network of information and partnerships. Still, it is taking time for these organizations to learn how better to coordinate among themselves, mobilize constituents globally, work with the media, and move governments.

3.14 UN headquarters is often identified as the logical place to centralize early warning. Efforts have been made for over two decades to improve the world organization's information-gathering and analytical capacities. One of the principal strengths is the special mandate provided to the Secretary-General under Article 99 of the UN Charter to "bring to the attention of the Security Council any matter that in his opinion may threaten the maintenance of international peace and security." The Secretariat possesses, in other words, a formidable capacity to alert the world of impending conflicts, either loudly or discreetly. But efforts to improve the

organization's early-warning capacity have so far fallen short, and essential intelligence-gathering and analytical capacity will for the foreseeable future largely continue to depend on non-UN sources.

3.15 The *Report of the Panel on United Nations Peace Operations* is one of many that calls for that clearinghouse role to be played by the UN, noting "the need to have more effective collection and assessment at UN headquarters, including an enhanced conflict early-warning system that can detect and recognize the threat or risk of conflict or genocide." That report also makes very detailed proposals for building an early-warning capacity within the UN Secretariat. The Commission fully supports these proposals.

3.16 Efforts to build a better early-warning system by harnessing pre-existing governmental capacity is an idea worth pursuing, but realism is in order about the extent to which states will be willing to divulge information which may compromise their own intelligence network, as well as the degree to which any such information can be relied upon. In order to enhance the capacity of the Secretary-General to provide more timely and accurate information to the Security Council about conflict prone areas, a special unit should be established that can receive and analyze sensitive information from member states and others, and that would report directly to the Secretary-General. The unit should be staffed by a small number of specialized personnel trained in conflict prevention.

3.17 Greater involvement by regional actors with intimate local knowledge is also crucial. Although emerging conflicts tend to share a number of characteristics, each is also unique in some ways. Regional actors are usually better placed to understand local dynamics, although they also have shortcomings – not least of which is that they are often not disinterested in the outcomes of deadly conflicts. The Commission recommends that increased resources be made available to support regional and sub-regional conflict prevention initiatives, as well as capacity building aimed at improving the effectiveness of regional and sub-regional organizations in peacekeeping, peace enforcement and intervention operations.

## ROOT CAUSE PREVENTION EFFORTS

3.18 The Security Council itself – the body charged with the primary responsibility for the maintenance of international peace and security – has stressed the importance of responding to the root causes of conflict and the need to pursue long-term effective preventive strategies. This concern is grounded firmly in the UN Charter, Article 55 of which explicitly recognizes that solutions to international economic, social, health and related problems; international, cultural and educational cooperation; and universal respect for human rights are all essential for "the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations." The Charter thus provides the foundation for a comprehensive and long-term approach to conflict prevention based on an expanded concept of peace and security.

3.19 Though there is no universal agreement over the precise causes of deadly conflict, it is common to differentiate between underlying or "root" and precipitating or "direct" causes of armed conflict. There is a growing and widespread recognition that armed conflicts cannot be understood without reference to such "root" causes as poverty, political repression, and uneven distribution of resources. "Every step taken towards reducing poverty and achieving broad-based economic growth," the Secretary-General has stated in his recent report, "is a step toward conflict prevention." Preventive strategies must therefore work "to

promote human rights, to protect minority rights and to institute political arrangements in which all groups are represented.” Ignoring these underlying factors amounts to addressing the symptoms rather the causes of deadly conflict.

3.20 Conflict prevention measures, like other forms of assistance, are always best implemented when based on detailed knowledge and understanding, and maximum possible cooperation between helpers and those helped. In analyzing the causes of conflict and applying preventive measures it is important that developed countries be aware of the cultural barriers that may inhibit the interpretation of information coming from other countries and regions, and that they overcome any reluctance to examine closely their own policies for evidence of their potential negative impact on developing countries.

3.21 Root cause prevention has many dimensions. It may mean addressing *political* needs and deficiencies, and this might involve democratic institution and capacity building; constitutional power sharing, power-alternating and redistribution arrangements; confidence building measures between different communities or groups; support for press freedom and the rule of law; the promotion of civil society; and other types of similar initiatives that broadly fit within the human security framework.

3.22 Root cause prevention may also mean tackling *economic* deprivation and the lack of economic opportunities. This might involve development assistance and cooperation to address inequities in the distribution of resources or opportunities; promotion of economic growth and opportunity; better terms of trade and permitting greater access to external markets for developing economies; encouraging necessary economic and structural reform; and technical assistance for strengthening regulatory instruments and institutions.

3.23 Root cause prevention may also mean strengthening *legal* protections and institutions. This might involve supporting efforts to strengthen the rule of law; protecting the integrity and independence of the judiciary; promoting honesty and accountability in law enforcement; enhancing protections for vulnerable groups, especially minorities; and providing support to local institutions and organizations working to advance human rights.

3.24 Root cause prevention may also mean embarking upon needed sectoral reforms to the *military* and other state security services. This might involve enhanced education and training for military forces; reintegration of ex-combatants; strengthening civilian control mechanisms, including budget control; encouraging efforts to ensure that security services are accountable for their actions and operate within the law; and promoting adherence to arms control and disarmament and non-proliferation regimes, including control over the transfer of light weapons and small arms, and the prohibition of landmines.

## DIRECT PREVENTION EFFORTS

3.25 The direct prevention “toolbox” has essentially the same compartments – political/diplomatic, economic, legal and military – as the one for root cause prevention, but different instruments, reflecting the shorter time available in which to make a difference. These instruments in each case may take the form of straightforward assistance, positive inducements or, in more difficult cases, the negative form of threatened “punishments.” But the essential and common attribute of all these actions and measures is that they aim – even where the cooperation of the state concerned is reluctant – to make it absolutely unnecessary to employ directly coercive measures against the state concerned.

3.26 *Political and diplomatic* direct prevention measures may include the direct involvement of the UN Secretary-General, as well as fact-finding missions, friends groups, eminent persons commissions, dialogue and mediation through good offices, international appeals, and non-official “second track” dialogue and problem-solving workshops. At the negative end of the scale, political and diplomatic direct prevention might encompass the threat or application of political sanctions, diplomatic isolation, suspension of organization membership, travel and asset restrictions on targeted persons, “naming and shaming,” and other such actions.

3.27 *Economic* direct prevention measures may again include positive as well as negative inducements. Positive inducements might include promises of new funding or investment, or the promise of more favourable trade terms. A distinction must be drawn between regular developmental and humanitarian assistance programmes, on the one hand, and those implemented as a preventive or peace building response to problems that could lead to the outbreak or recurrence of violent conflict, on the other: special care is required to ensure that such assistance helps to prevent or alleviate conflict issues, and does not exacerbate them. Economic direct prevention efforts may also be of a more coercive nature, including threats of trade and financial sanctions; withdrawal of investment; threats to withdraw IMF or World Bank support; and the curtailment of aid and other assistance.

3.28 A spectrum of direct prevention measures of a more *legal* nature can also be employed. On the one hand, these measures might include offers of mediation, or arbitration, or perhaps adjudication – though in cases of domestic dispute these options may not be readily available or acceptable to all parties. The deployment of monitors to observe compliance with human rights standards, and help reassure communities or groups feeling themselves at risk, is another measure that might usefully be considered.

3.29 The threat to seek or apply international legal sanctions has in recent years become a major new weapon in the international preventive armoury. In the first place, the establishment of specialist tribunals to deal with war crimes committed in specific conflicts – for the former Yugoslavia, Rwanda and most recently Sierra Leone – will concentrate the minds of potential perpetrators of crimes against humanity on the risks they run of international retribution.

3.30 Secondly, the establishment of the International Criminal Court – when 60 states have ratified the 1998 Statute – will mean there is new jurisdiction over a wide range of established crimes against humanity and war crimes, some of which are described in greater detail in the Statute than in existing instruments, such as the categories of sexual violence constituting crimes against humanity, and some of which are new, such as the prohibition on the enlistment of child soldiers. The establishment of the International Criminal Court is also to be welcomed as a measure to avoid the accusations of double standards, or “victor’s justice,” which are periodically aimed at the specialist tribunals just referred to.

3.31 Apart from these international courts, present or planned, the Geneva Conventions and Additional Protocols (as well as the Convention Against Torture) establish universal jurisdiction over crimes listed in them. This means that any state party can bring to trial any person accused of such crimes. Universal jurisdiction is in any case held to exist under customary international law for genocide and crimes against humanity, and a number of countries have enacted legislation to give their courts jurisdiction in such cases. While these provisions have in the past usually been more honoured in the breach than in the observance, the prosecution and conviction in 2001 in a Belgian court of Rwandan nuns charged with complicity in the Rwandan genocide are an indication that the universal

jurisdiction of these instruments is starting to be taken very seriously. Another important legal development occurred with the British House of Lords decision in 1998–99 in the General Pinochet extradition case, which went a long way to void the sovereign immunity of government leaders for crimes against humanity committed while they were in office.

3.32 The scope for direct prevention measures of a *military* nature are more limited, but nonetheless important to mention. This might include stand-off reconnaissance, or in particular a consensual preventive deployment of which the UN Preventive Deployment Force (UNPREDEP) in Macedonia is the clearest example to date, and a successful one. In extreme cases, direct prevention might involve the threat to use force.

3.33 The move in each case from incentives for prevention to more intrusive and coercive preventive measures, such as threats of economic sanctions or military measures, is a significant one and should never be undertaken lightly. Such actions may result in the application of very high levels of political and economic – and in extreme cases military – pressure, and to that extent will require a relatively high level of political commitment on the part of the external actors. The use of threats and other coercive measures is also much more likely to engender greater political resistance from the targeted state than would prevention based on positive inducements. Nonetheless, tough threatened direct prevention efforts can be important in eliminating the need to actually resort to coercive measures, including the use of force.

3.34 One of the increasingly evident problems with the whole strategy of prevention is that some states are becoming reluctant to accept any internationally endorsed preventive measures at all – even of the softest and most supportive kind. Their fear is that any “internationalization” of the problem will result in further external “interference” and start down a slippery slope to intervention. There are two answers to this fear. The first is for international policy makers to be sensitive to it: to recognize that many preventive measures are inherently coercive and intrusive in character, to acknowledge that frankly, and to make a very clear distinction between carrots and sticks, taking care always in the first instance to fashion measures that will be non-intrusive and sensitive to national prerogatives. But the second answer is one for the states themselves: those who wish to resist external efforts to help may well, in so doing, increase the risk of inducing increased external involvement, the application of more coercive measures, and in extreme cases, external military intervention. Intervention should only be considered when prevention fails – and the best way of avoiding intervention is to ensure that it doesn’t fail.

3.35 Another difficulty that can arise with internationally endorsed and externally applied preventive measures is that political leaders facing internal rebellion or secessionist violence will often be concerned about giving additional momentum or “legitimacy” to those causing their problems. Those concerns should be understood and appreciated, and a careful evaluation always made of the risks of well-intentioned efforts in fact making the situation worse. It is also critical in this regard that those wanting to help from outside completely recognize and respect the sovereignty and territorial integrity of the countries concerned, and confine their efforts to finding solutions within those parameters. We make this point again in Chapter 5, in discussing the follow-up to military intervention, that the objective overall is not to change constitutional arrangements or undermine sovereignty, but to protect them.

3.36 Effective conflict prevention depends on disparate actors working together strategically. States, the UN and its specialized agencies, the international financial institutions, regional organizations, NGOs, religious groups, the business community, the media,

and scientific, professional and educational communities all have a role to play. The capacity to conduct preventive diplomacy ultimately relies on the international ability to coordinate multilateral initiatives, and identify logical divisions of labour. The mention of “coordination” normally makes eyes glaze, but the issue is one of perennial concern. The number of coordinating committees and meetings is large, but they do not necessarily improve coordination. It is obvious that states and non-state organizations often have varying interests and agendas; and in zones of potentially catastrophic conflict where external actors have significant interests (and usually more than a few rivalries), coordination of preventive actions can be especially difficult. This provides easy ammunition for indigenous actors to exploit divisions among external players. When this reality is combined with the need to coordinate and create divisions of labour across agencies and to be flexible in sequencing preventive measures over time, the prospects for strategic coherence are formidable.

3.37 It is important to have an operational strategy, of the kind that has been proposed by the Carnegie Commission among others, for direct prevention efforts. It is desirable to have a lead player to manage multi-actor prevention, and to avoid the prospect of prevention by committee and all the strategic incoherence that implies. It is important to be able to integrate quick-impact development projects into diplomatic initiatives. It would be highly desirable to have available a pool of unrestricted development funds for use by a third party at very short notice – a capacity that does not presently exist within the UN, and has long been a major constraint on the ability of mediators to “sweeten the pot” for parties to a dispute and to engage in even rudimentary confidence building measures.

3.38 The media have a particularly important role in conflict prevention, in particular in alerting policy makers – and the public opinion that influences them – to the catastrophic consequences that so often flow from no action being taken. More immediate and more graphic stories will always tend to take precedence, but there is much more that can and should be done to identify emerging issues, explain the human risks associated with them, and prod decision makers into appropriate action.

3.39 Conflict prevention must be integrated into policies, planning and programmes at the national, regional and international levels. Member states should be asked to give the Secretary-General regular reports and updates on capacities, capabilities and current practices designed to prevent conflict – at the national level and as part of a contribution to global conflict prevention efforts. Regional and sub-regional organizations should also contribute their experiences and plans to this global effort – making the UN the repository of best practice tools and strategies. The effective prevention of conflict requires, in particular, that development, foreign policy, finance and defence ministry dimensions of conflict prevention efforts be drawn together. Both donors and recipients should begin to structure their approach to conflict prevention in a way that ensures coherence, continuity of effort and real impact.

3.40 The Commission strongly believes that it is critical that more resources, more energy, more competence and more commitment be put into prevention. Time and time again attention has been drawn to the need for stronger and more effective prevention efforts – most recently by the Secretary-General in his well received and much debated recent report to the General Assembly and Security Council – yet the tangible commitment to prevention remains weak. Moving from talk to action means greater willingness on the part of local and national communities to take the kinds of steps that are required if conflict is to be avoided, together with a greater willingness by external actors to ensure that their actions do not serve to make a particular situation worse. It means more active efforts at the sub-regional and regional levels for conflict prevention, and much greater support for these efforts at all

levels. It means a serious focus within the UN system on ensuring that information is transformed into concrete and practical analysis. It means a broader determination overall to ensure that early warning translates into early action.

3.41 Good conflict prevention behaviour by states that are still fragile and emerging from conflict, or in conflict-prone areas, must be encouraged, supported and rewarded by the international community in practical ways. The World Bank and IMF should work together with the UN and regional or sub-regional organizations to ensure that full support is given to these states that have made concerted efforts to deal with governance, reconciliation and long-term rehabilitation and reconstruction issues. Specific, tailored support should be offered, on an urgent basis, by the international community to consolidate these efforts. Using the UN as a focal point, an integrated Task Force could be established which would draw together UN, Bretton Woods and appropriate regional, sub-regional and national institutions to develop specific strategies to provide for the rapid recognition of such efforts, and to design tailored assistance packages which go well beyond traditional aid to deal with longer term sustainability issues such as trade and investment and institution building.

3.42 Underlying all the specifics, what is necessary is for the international community to change its basic mindset from a “culture of reaction” to that of a “culture of prevention.” To create such a culture will mean, as the Secretary-General reminds us, “setting standards for accountability of member states and contributing to the establishing of prevention practices at the local, national, regional and global levels.” It is a task long overdue.

3.43 Without a genuine commitment to conflict prevention at all levels – without new energy and momentum being devoted to the task – the world will continue to witness the needless slaughter of our fellow human beings, and the reckless waste of precious resources on conflict rather than social and economic development. The time has come for all of us to take practical responsibility to prevent the needless loss of human life, and to be ready to act in the cause of prevention and not just in the aftermath of disaster.



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## 4. THE RESPONSIBILITY TO REACT

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4.1 The “responsibility to protect” implies above all else a responsibility to react to situations of compelling need for human protection. When preventive measures fail to resolve or contain the situation and when a state is unable or unwilling to redress the situation, then interventionary measures by other members of the broader community of states may be required. These coercive measures may include political, economic or judicial measures, and in extreme cases – but only extreme cases – they may also include military action. As a matter of first principles, in the case of reaction just as with prevention, less intrusive and coercive measures should always be considered before more coercive and intrusive ones are applied.

4.2 Tough threshold conditions should be satisfied before military intervention is contemplated. For political, economic and judicial measures the barrier can be set lower, but for military intervention it must be high: for military action ever to be defensible the circumstances must be grave indeed. But the threshold or “trigger” conditions are not the end of the matter. There are a series of additional precautionary principles which must be satisfied, to ensure that the intervention remains both defensible in principle and workable and acceptable in practice.

### MEASURES SHORT OF MILITARY ACTION

4.3 The failure of either root cause or direct prevention measures to stave off or contain a humanitarian crisis or conflict does not mean that military action is necessarily required. Wherever possible, coercive measures short of military intervention ought first to be examined, including in particular various types of political, economic and military sanctions.

4.4 Sanctions inhibit the capacity of states to interact with the outside world, while not physically preventing the state from carrying out actions within its borders. Such measures still aim to persuade the authorities concerned to take or not take particular action or actions. Military intervention, on the other hand, directly interferes with the capacity of a domestic authority to operate on its own territory. It effectively displaces the domestic authority and aims (at least in the short-term) to address directly the particular problem or threat that has arisen. For these reasons, and because of the inherent risks that accompany any use of deadly force, the prospect of coercive military action has always raised broader and more intense concerns than has the imposition of political, diplomatic or economic sanctions.

4.5 Although the use of coercive measures short of military force is generally preferable to the use of force, these non-military measures can be blunt and often indiscriminate weapons and must be used with extreme care to avoid doing more harm than good – especially to civilian populations. Blanket economic sanctions in particular have been increasingly discredited in recent years as many have noted that the hardships exacted upon the civilian population by such sanctions tend to be greatly disproportionate to the likely impact of the sanctions on the behaviour of the principal players. Such sanctions also tend quickly to develop holes and deteriorate further over time, not least when they are poorly monitored, as has been almost universally the case. Sanctions that target leadership groups and security organizations responsible for gross human rights violations have emerged as an

increasingly important alternative to general sanctions in recent years, and efforts to make such sanctions more effective have drawn increasing attention. A standard exemption for food and medical supplies is now generally recognized by the Security Council and under international law, though the issue of the provision of medical supplies to combatants may sometimes still generate debate.

4.6 Efforts to target sanctions more effectively so as to decrease the impact on innocent civilians and increase the impact on decision makers have been focused in three different areas, military, economic and political/diplomatic. In all three areas, effective monitoring is crucial if the measures are to have any prospect of being effective.

4.7 In the military area:

- ❑ Arms embargoes are an important tool of the Security Council and the international community when conflict arises or is threatened. Such embargoes generally include the sale of military equipment as well as spare parts.
- ❑ Ending military cooperation and training programmes is another common, if less strenuous, measure used or threatened by states to bring about compliance with international norms, though results can vary.

4.8 In the economic area:

- ❑ Financial sanctions may target the foreign assets of a country, or a rebel movement or terrorist organization, or the foreign assets of particular leaders. Where individuals are targeted, these efforts have increasingly been expanded also to include members of that individual's immediate family.
- ❑ Restrictions on income generating activities such as oil, diamonds and logging and drugs, have more and more come to be regarded as one of the most important types of targeted sanctions, because such activities are generally easier to get at than the funds that they generate, and because the profits from such activities are often not just a means to start or sustain a conflict but in many cases the principal motivation for the conflict.
- ❑ Restrictions on access to petroleum products can be an important way of restricting military operations, though such restrictions may also have a broad and possibly devastating impact on civilians and the local economy.
- ❑ Aviation bans have been used in a number of cases and generally prohibit international air traffic to or from a particular destination.

4.9 In the political and diplomatic area:

- ❑ Restrictions on diplomatic representation, including expulsion of staff, while often viewed in the past as primarily of symbolic significance and largely related to the battle for public opinion, have also increasingly come to be seen as a relevant and useful measure in efforts to limit illicit transactions – whether for the sale of illicit commodities such as illegally mined diamonds or drugs or for the purchase of arms and other military related materiel, or with respect to the movement of funds.
- ❑ Restrictions on travel, not least to major international shopping destinations, have proved to have some utility when against specific leaders or individuals and their families.

- ❑ Suspension of membership or expulsion from international or regional bodies, and the loss this may entail not only of national prestige, but also of technical cooperation or financial assistance countries may receive from such bodies, is another increasingly used tool.
- ❑ Refusal to admit a country to membership of a body is a corollary of the foregoing which has sometimes been employed to good effect.

## THE DECISION TO INTERVENE

### Extreme Cases Only

4.10 In extreme and exceptional cases, the responsibility to react may involve the need to resort to military action. But what is an extreme case? Where should we draw the line in determining when military intervention is, *prima facie*, defensible?

4.11 The starting point, here as elsewhere, should be the principle of non-intervention. This is the norm from which any departure has to be justified. All members of the United Nations have an interest in maintaining an order of sovereign, self-reliant, responsible, yet interdependent states. In most situations, this interest is best served if all states, large and small, abstain from intervening or interfering in the domestic affairs of other states. Most internal political or civil disagreements, even conflicts, within states do not require coercive intervention by external powers. The non-interference rule not only protects states and governments: it also protects peoples and cultures, enabling societies to maintain the religious, ethnic, and civilizational differences that they cherish.

4.12 The norm of non-intervention is the equivalent in international affairs of the Hippocratic principle – first do no harm. Intervention in the domestic affairs of states is often harmful. It can destabilize the order of states, while fanning ethnic or civil strife. When internal forces seeking to oppose a state believe that they can generate outside support by mounting campaigns of violence, the internal order of all states is potentially compromised. The rule against intervention in internal affairs encourages states to solve their own internal problems and prevent these from spilling over into a threat to international peace and security.

4.13 Yet there are exceptional circumstances in which the very interest that all states have in maintaining a stable international order requires them to react when all order within a state has broken down or when civil conflict and repression are so violent that civilians are threatened with massacre, genocide or ethnic cleansing on a large scale. The Commission found in its consultations that even in states where there was the strongest opposition to infringements on sovereignty, there was general acceptance that there must be limited exceptions to the non-intervention rule for certain kinds of emergencies. Generally expressed, the view was that these exceptional circumstances must be cases of violence which so genuinely “shock the conscience of mankind,” or which present such a clear and present danger to international security, that they require coercive military intervention.

4.14 Given this broad international agreement on the need, in exceptional cases of human risk, for coercive military action across borders, the task is to define, with as much precision as possible, what these exceptional circumstances are, so as to maximize the chances of consensus being reached in any given case. What is the precise threshold of violence and

abuse or other violation that must be crossed before coercive military force across a national border can begin to be justified? Are there any other criteria which should or must be satisfied before the decision to intervene is made?

### Six Criteria for Military Intervention

4.15 It is perhaps not as difficult as it appears at first sight to identify criteria for military intervention for human protection purposes about which people should be able to agree. It is true that there are presently almost as many different lists of such criteria as there are contributions to the literature and political debate on this subject. But the differing length of these lists, and the different terminology involved, should not obscure the reality that there is an enormous amount of common ground to be found when one focuses on the core issues.

4.16 While there is no universally accepted single list, in the Commission's judgement all the relevant decision making criteria can be succinctly summarized under the following six headings: *right authority, just cause, right intention, last resort, proportional means and reasonable prospects.*

4.17 The element of *right authority* – who can authorize a military intervention – is a critical one, and deserves a full discussion to itself: it gets this in Chapter 6. The content of the *just cause* principle – what kind of harm is sufficient to trigger a military intervention overriding the non-intervention principle – is the other question requiring most discussion, and is the subject of the next section of this chapter. The remaining four criteria, each adding a different element of prudence or precaution to the decision making equation, are discussed together in the last section of this chapter.

## THRESHOLD CRITERIA: JUST CAUSE

4.18 Calls for intervention for human protection purposes have in the past been made on a wide range and variety of grounds, involving and in response to a wide range of circumstances and conditions, and many different criteria for intervention were suggested during the course of our consultations. The Commission's view is that exceptions to the principle of non-intervention should be limited. Military intervention for human protection purposes must be regarded as an exceptional and extraordinary measure, and for it to be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur.

4.19 In the Commission's view, military intervention for human protection purposes is justified in two broad sets of circumstances, namely in order to halt or avert:

- ❑ *large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or*
- ❑ *large scale "ethnic cleansing," actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.*

If either or both of these conditions are satisfied, it is our view that the "just cause" component of the decision to intervene is amply satisfied.

4.20 It is important to make clear both what these two conditions include and what they exclude. In the Commission's view, these conditions would typically *include* the following types of conscience-shocking situation:

- ❑ those actions defined by the framework of the 1948 Genocide Convention that involve large scale threatened or actual loss of life;
- ❑ the threat or occurrence of large scale loss of life, whether the product of genocidal intent or not, and whether or not involving state action;
- ❑ different manifestations of "ethnic cleansing," including the systematic killing of members of a particular group in order to diminish or eliminate their presence in a particular area; the systematic physical removal of members of a particular group from a particular geographical area; acts of terror designed to force people to flee; and the systematic rape for political purposes of women of a particular group (either as another form of terrorism, or as a means of changing the ethnic composition of that group);
- ❑ those crimes against humanity and violations of the laws of war, as defined in the Geneva Conventions and Additional Protocols and elsewhere, which involve large scale killing or ethnic cleansing;
- ❑ situations of state collapse and the resultant exposure of the population to mass starvation and/or civil war; and
- ❑ overwhelming natural or environmental catastrophes, where the state concerned is either unwilling or unable to cope, or call for assistance, and significant loss of life is occurring or threatened.

4.21 In both the broad conditions we identified – loss of life and ethnic cleansing – we have described the action in question as needing to be “large scale” in order to justify military intervention. We make no attempt to quantify “large scale”: opinions may differ in some marginal cases (for example, where a number of small scale incidents may build cumulatively into large scale atrocity), but most will not in practice generate major disagreement. What we do make clear, however, is that military action can be legitimate as an anticipatory measure in response to clear evidence of likely large scale killing. Without this possibility of anticipatory action, the international community would be placed in the morally untenable position of being required to wait until genocide begins, before being able to take action to stop it.

4.22 The principles we have specified do not attempt to draw a distinction between situations where the killing or ethnic cleansing is caused by the action – or deliberate inaction – of a state, and those where the state in question has failed or collapsed. In a failed or collapsed state situation, with no government effectively able to exercise the sovereign responsibility of protecting its people, the principle of non-intervention might seem to have less force. But when it comes to the threshold “just cause” issue of determining whether the circumstances are grave enough to justify intervention, it makes no basic moral difference whether it is state or non-state actors who are putting people at risk.

4.23 Again, the principles as we have defined them make no distinction between those abuses occurring wholly within state borders, with no immediate cross-border consequences, and those with wider repercussions. This reflects our confidence that, in extreme conscience-shocking cases of the kind with which we are concerned, the element of threat

to international peace and security, required under Chapter VII of the Charter as a precondition for Security Council authorization of military intervention, will be usually found to exist. Security Council practice in the 1990s indicates that the Council is already prepared to authorize coercive deployments in cases where the crisis in question is, for all practical purposes, confined within the borders of a particular state.

4.24 While our “just cause” conditions are broadly framed, the Commission also makes clear that they exclude some situations which have been claimed from time to time to justify the coercive use of military force for human protection purposes.

4.25 First, the Commission has resisted any temptation to identify as a ground for military intervention human rights violations falling short of outright killing or ethnic cleansing, for example systematic racial discrimination, or the systematic imprisonment or other repression of political opponents. These may be eminently appropriate cases for considering the application of political, economic or military sanctions, but they do not in the Commission’s view justify military action for human protection purposes.

4.26 Secondly, the Commission has taken a similar view in relation to cases where a population, having clearly expressed its desire for a democratic regime, is denied its democratic rights by a military take-over. The overthrow of a democratic government is a grave matter, requiring concerted international action such as sanctions and suspension or withdrawal of credits, international membership and recognition – and there might well be wider regional security implications such that the Security Council is prepared to authorize military intervention (including by a regional organization) on traditional “international peace and security” grounds. There may also be situations where the overthrown government expressly requests military support, and that could clearly be given within the scope of the self-defence provisions in Article 51 of the UN Charter. But the Commission’s view is that military intervention for human protection purposes should be restricted exclusively, here as elsewhere, to those situations where large scale loss of civilian life or ethnic cleansing is threatened or taking place.

4.27 Thirdly, as to the use of military force by a state to rescue its own nationals on foreign territory, sometimes claimed as another justification for “humanitarian intervention,” we regard that as being again a matter appropriately covered under existing international law, and in particular Article 51 of the UN Charter. The same goes for the use of force in response to a terrorist attack on a state’s territory and citizens: to the extent that military action is justified, it would be supported by a combination of Article 51 and the general provisions of Chapter VII, as the Security Council has now made clear with its resolutions in the aftermath of 11 September 2001.

### The Question of Evidence

4.28 Even where consensus has been reached on the types of situations which might warrant a military intervention, it will still be necessary in each case to determine whether events on the ground do in fact meet the criteria presented – actual or threatened large scale loss of human life or ethnic cleansing. In many cases, competing “facts” and versions of events will be produced – often for the specific purpose of leading or misleading external opinion. Obtaining fair and accurate information is difficult but essential.

4.29 Ideally there would be a report as to the gravity of the situation, and the inability or unwillingness of the state in question to manage it satisfactorily, from a universally respected and impartial non-government source. The International Committee for the Red

Cross (ICRC) is an obvious candidate for this role, often mentioned to us, but for understandable reasons – based on the necessity for it to remain, and be seen to remain, absolutely removed from political decision making, and able to operate anywhere on the ground – it is absolutely unwilling to take on any such role.

4.30 It is difficult to conceive of any institutional solution to the problem of evidence, of a kind that would put the satisfaction of the “just cause” criterion absolutely beyond doubt or argument in every case. But there are other ways in which credible information and assessments can be obtained, and the evidence allowed to speak for itself. Reports prepared in the normal course of their operations by or for UN organs and agencies – such as the High Commissioners for Human Rights and for Refugees – are important, as can be assessments made for their own purposes by other credible international organizations and non-governmental organizations, and on occasion the media.

4.31 Moreover, where existence of the conditions that might warrant an intervention for human protection purposes is in question, and time allows, an independent special fact-finding mission could be sent by the Security Council or the Secretary-General for the purpose of obtaining accurate information and a fair assessment of a particular situation. The Commission believes there is particular utility in the Secretary-General seeking the advice of well-placed objective witnesses and others highly knowledgeable about the situation in question. The Secretary-General of the UN has formidable, but hitherto much underutilized, authority under Article 99 of the Charter to “bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security”: it is a power that could be utilized to extremely influential effect in the present context.

## OTHER PRECAUTIONARY CRITERIA

4.32 For a military intervention decision to be, and be seen to be, justified, there are four other substantial conditions that have to be met at the outset: right intention, last resort, proportional means and reasonable prospects. When both these and the threshold “just cause” principle are taken together, to jointly shape the policy decisions of both the Security Council and member states, the Commission believes that they will strictly limit the use of coercive military force for human protection purposes. Our purpose is not to license aggression with fine words, or to provide strong states with new rationales for doubtful strategic designs, but to strengthen the order of states by providing for clear guidelines to guide concerted international action in those exceptional circumstances when violence within a state menaces all peoples.

### Right Intention

4.33 The primary purpose of the intervention must be to halt or avert human suffering. Any use of military force that aims from the outset, for example, for the alteration of borders or the advancement of a particular combatant group’s claim to self-determination, cannot be justified. Overthrow of regimes is not, as such, a legitimate objective, although disabling that regime’s capacity to harm its own people may be essential to discharging the mandate of protection – and what is necessary to achieve that disabling will vary from case to case. Occupation of territory may not be able to be avoided, but it should not be an objective as such, and there should be a clear commitment from the outset to returning the territory to its sovereign owner at the conclusion of hostilities or, if that is not possible, administering it on an interim basis under UN auspices.

4.34 One way of helping ensure that the “right intention” criterion is satisfied is to have military intervention always take place on a collective or multilateral rather than single-country basis. Another is to look to whether, and to what extent, the intervention is actually supported by the people for whose benefit the intervention is intended. Another is to look to whether, and to what extent, the opinion of other countries in the region has been taken into account and is supportive. In some discussions these considerations are identified as separate criteria in their own right, but the Commission’s view is that they should be regarded as sub-components of the larger element of right intention.

4.35 It may not always be the case that the humanitarian motive is the *only* one moving the intervening state or states, even within the framework of Security Council-authorized intervention. Complete disinterestedness – the absence of any narrow self-interest at all – may be an ideal, but it is not likely always to be a reality: mixed motives, in international relations as everywhere else, are a fact of life. Moreover, the budgetary cost and risk to personnel involved in any military action may in fact make it politically imperative for the intervening state to be able to claim some degree of self-interest in the intervention, however altruistic its primary motive might actually be. Apart from economic or strategic interests, that self-interest could, for example, take the understandable form of a concern to avoid refugee outflows, or a haven for drug producers or terrorists, developing in one’s neighbourhood.

4.36 To those domestic constituencies who may actually demand of their governments, when it comes to intervention for human protection purposes, that they *not* be altruistic, or moved by what we have called “right intention,” and that they should have regard only to their own country’s national interests, the best short answer may be that, these days, good international citizenship is a matter of national self-interest. With the world as close and interdependent as it now is, and with crises in “faraway countries of which we know little” as capable as they now are of generating major problems elsewhere (with refugee outflows, health pandemics, terrorism, narcotics trafficking, organized crime and the like), it is strongly arguable that it is in every country’s interest to contribute cooperatively to the resolution of such problems, quite apart from the humanitarian imperative to do so. This is a theme to which we will return in our concluding chapter.

#### Last Resort

4.37 Every diplomatic and non-military avenue for the prevention or peaceful resolution of the humanitarian crisis must have been explored. The responsibility to react – with military coercion – can only be justified when the responsibility to prevent has been fully discharged. This does not necessarily mean that every such option must literally have been tried and failed: often there will simply not be the time for that process to work itself out. But it does mean that there must be reasonable grounds for believing that, in all the circumstances, if the measure had been attempted it would not have succeeded.

4.38 If the crisis in question involves a conflict between a state party and an insurgent minority, the parties must be induced to negotiate. Ceasefires, followed, if necessary, by the deployment of international peacekeepers and observers are always a better option, if possible, than coercive military responses. The long-term solution for ethnic minority conflict or secessionist pressures within a state will often be some kind of devolutionist compromise that guarantees the minority its linguistic, political and cultural autonomy, while preserving the integrity of the state in question. Only when good faith attempts to

find such compromises, monitored or brokered by the international community, founder on the intransigence of one or both parties, and full-scale violence is in prospect or in occurrence, can a military option by outside powers be considered.

### Proportional Means

4.39 The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the humanitarian objective in question. The means have to be commensurate with the ends, and in line with the magnitude of the original provocation. The effect on the political system of the country targeted should be limited, again, to what is strictly necessary to accomplish the purpose of the intervention. While it may be a matter for argument in each case what are the precise practical implications of these strictures, the principles involved are clear enough.

4.40 It should go without saying that all the rules of international humanitarian law should be strictly observed in these situations. Indeed, since military intervention involves a form of military action significantly more narrowly focused and targeted than all out warfighting, an argument can be made that even higher standards should apply in these cases.

### Reasonable Prospects

4.41 Military action can only be justified if it stands a reasonable chance of success, that is, halting or averting the atrocities or suffering that triggered the intervention in the first place. Military intervention is not justified if actual protection cannot be achieved, or if the consequences of embarking upon the intervention are likely to be worse than if there is no action at all. In particular, a military action for limited human protection purposes cannot be justified if in the process it triggers a larger conflict. It will be the case that some human beings simply cannot be rescued except at unacceptable cost – perhaps of a larger regional conflagration, involving major military powers. In such cases, however painful the reality, coercive military action is no longer justified.

4.42 Application of this precautionary principle would on purely utilitarian grounds be likely to preclude military action against any one of the five permanent members of the Security Council even if all the other conditions for intervention described here were met. It is difficult to imagine a major conflict being avoided, or success in the original objective being achieved, if such action were mounted against any of them. The same is true of other major powers who are not permanent members of Security Council. This raises again the question of double standards – but the Commission's position here, as elsewhere, is simply this: the reality that interventions may not be able to be mounted in every case where there is justification for doing so, is no reason for them not to be mounted in any case.

4.43 In relation to the major powers, there are still other types of pressure that can be applied, as happened, for example, in the case of Indonesia and East Timor. And other types of collective action – including sanctions – could and should still be considered in such cases as part of the responsibility to protect.