
5. THE RESPONSIBILITY TO REBUILD

POST-INTERVENTION OBLIGATIONS

Peace Building

5.1 The responsibility to protect implies the responsibility not just to prevent and react, but to follow through and rebuild. This means that if military intervention action is taken – because of a breakdown or abdication of a state’s own capacity and authority in discharging its “responsibility to protect” – there should be a genuine commitment to helping to build a durable peace, and promoting good governance and sustainable development. Conditions of public safety and order have to be reconstituted by international agents acting in partnership with local authorities, with the goal of progressively transferring to them authority and responsibility to rebuild.

5.2 Ensuring sustainable reconstruction and rehabilitation will involve the commitment of sufficient funds and resources and close cooperation with local people, and may mean staying in the country for some period of time after the initial purposes of the intervention have been accomplished. Too often in the past the responsibility to rebuild has been insufficiently recognized, the exit of the interveners has been poorly managed, the commitment to help with reconstruction has been inadequate, and countries have found themselves at the end of the day still wrestling with the underlying problems that produced the original intervention action.

5.3 If military intervention is to be contemplated, the need for a post-intervention strategy is also of paramount importance. Military intervention is one instrument in a broader spectrum of tools designed to prevent conflicts and humanitarian emergencies from arising, intensifying, spreading, persisting or recurring. The objective of such a strategy must be to help ensure that the conditions that prompted the military intervention do not repeat themselves or simply resurface.

5.4 The most successful reconciliation processes do not necessarily occur at high level political dialogue tables, or in judicial-style processes (though we well understand the positive role that truth and reconciliation commissions can play in certain post-conflict environments). True reconciliation is best generated by ground level reconstruction efforts, when former armed adversaries join hands in rebuilding their community or creating reasonable living and job conditions at new settlements. True and lasting reconciliation occurs with sustained daily efforts at repairing infrastructure, at rebuilding housing, at planting and harvesting, and cooperating in other productive activities. External support for reconciliation efforts must be conscious of the need to encourage this cooperation, and dynamically linked to joint development efforts between former adversaries.

5.5 The Secretary-General described very clearly the nature of and rationale for post-conflict peace building in his 1998 report on *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa*:

By post-conflict peace-building, I mean actions undertaken at the end of a conflict to consolidate peace and prevent a recurrence of armed confrontation. Experience has shown that the consolidation of peace in the aftermath of conflict requires more than purely diplomatic and military action, and that an integrated peace building effort is needed to address the various factors which have caused or are threatening a conflict. Peace building may involve the creation or strengthening of national institutions, monitoring elections, promoting human rights, providing for reintegration and rehabilitation programmes, as well as creating conditions for resumed development. Peace building does not replace ongoing humanitarian and development activities in countries emerging from crises. Rather it aims to build on, add to, or reorient such activities in ways that are designed to reduce the risk of a resumption of conflict and contribute to creating conditions most conducive to reconciliation, reconstruction and recovery.

5.6 The Secretary-General's report goes on to describe in more detail what is needed in the aftermath of conflict, or in this case intervention:

Societies which have emerged from conflict have special needs. To avoid a return to conflict while laying a solid foundation for development, emphasis must be placed on critical priorities such as encouraging reconciliation and demonstrating respect for human rights; fostering political inclusiveness and promoting national unity; ensuring the safe, smooth and early repatriation and resettlement of refugees and displaced persons; reintegrating ex-combatants and others into productive society; curtailing the availability of small arms; and mobilizing the domestic and international resources for reconstruction and economic recovery. Each priority is linked to every other, and success will require a concerted and coordinated effort on all fronts.

The message is clear. There is no substitute for a clear and effective post-intervention strategy.

5.7 In what follows, we briefly review some of the main issues that confront policy makers in exercising the responsibility to rebuild in the three most immediately crucial areas of security, justice and economic development. In Chapter 7, dealing with operational issues, we revisit a number of these matters from the perspective of the military forces on the ground in post-intervention environments.

Security

5.8 One of the essential functions of an intervention force is to provide basic security and protection for all members of a population, regardless of ethnic origin or relation to the previous source of power in the territory. In post-conflict situations, revenge killings and even "reverse ethnic cleansing" frequently occur as groups who were victimized attack groups associated with their former oppressors. It is essential that post-intervention operations plan for this contingency before entry and provide effective security for all

populations, regardless of origin, once entry occurs. There can be no such thing as “guilty minorities” in the post-intervention phase. Everyone is entitled to basic protection for their lives and property.

5.9 One of the most difficult and important issues to be regularly confronted in the post-intervention phase relates to the *disarmament, demobilization and reintegration* of local security forces. Reintegration will usually take the longest time to achieve, but the whole process cannot be judged to have been successful until it is complete. It is also a necessary element of returning a country to law and order since a demobilized soldier, unless properly reintegrated into society, with sustainable income, will probably turn to armed crime or armed political opposition. Successful disarmament of personnel from military and security forces, and other efforts to collect small arms and curb the entry of new ones, will be an important element of this effort.

5.10 Another element of the same problem is the rebuilding of new national armed forces and police, integrating as far as possible elements of the formerly competing armed factions or military forces. This process will be vital to national reconciliation and protection of the re-established state once the intervening forces leave. However, all too often in the past, in Cambodia and elsewhere, it has proved to be too long-term for the intervening authorities, and too expensive and sensitive for international donors who wish to avoid later accusations of re-arming former enemies.

5.11 Complaints are regularly heard from military officers around the world that in interventions and their aftermath they are all too often given functions for which they are not trained and which are more appropriate to police. The simple answer is that civilian police are really only able to operate in countries where functioning systems of law and courts exist. Although the presence of some police in any military operation may be necessary from the start, including for the purpose of training local police, there is probably little alternative to the current practice of deploying largely military forces at the start, but as conditions improve and governmental institutions are rebuilt, phasing in a civilian police presence.

5.12 An essential part of pre-intervention planning has been identified by both political and military personnel as being an *exit strategy* (not the same thing as an exit timetable) for intervening troops. There is force in the argument that without such a strategy there are serious risks in mounting any military intervention at all, as an unplanned, let alone precipitate, exit could have disastrous, or at best unsettling, implications for the country, and could also serve to discredit even the positive aspects of the intervention itself.

Justice and Reconciliation

5.13 In many cases the country in which a military intervention takes place may never have enjoyed a non-corrupt or properly functioning *judicial system*, including both the courts and police, or this may have deteriorated or disappeared as the state itself began to fail. Increasingly, and particularly from the time of the UN Transitional Authority in Cambodia (UNTAC) in the early 1990s, there has been a realization in UN circles and elsewhere about the importance of making transitional arrangements for justice during an operation, and restoring judicial systems as soon as possible thereafter. The point is simply that if an intervening force has a mandate to guard against further human rights violations, but there is no functioning system to bring violators to justice, then not only is the force’s mandate to that extent unachievable, but its whole operation is likely to have diminished credibility both locally and internationally.

5.14 A number of non-governmental bodies have developed “justice packages,” which can be adapted to the specific conditions of a wide variety of operations, and these should be considered an integral part of any post-intervention peace building strategy, pending the re-establishment of local institutions. Such measures should include a standard model penal code, able to be used in any situation where there is no appropriate existing body of law to apply, and applied immediately the intervention begins to ensure protection of minorities and allow intervening forces to detain persons committing crimes.

5.15 A related issue is that of the return of refugees and the *legal rights of returnees* from ethnic or other minorities. Unequal treatment in the provision of basic services, repatriation assistance and employment, and property laws, are often designed to send a powerful signal that returnees are not welcome. Discrimination in the provision of reconstruction assistance has been a major problem in Croatia, for instance, where it was enshrined in law. In many cases around the world, attempts by returnees to use the courts to evict temporary occupants (often themselves refugees) from their homes and regain rightful property have ended in frustration rather than re-possession. Laws either provide inadequate protection of property rights or were framed to deter potential returnees and disadvantage those who do return.

5.16 Barriers include difficulties in establishing tenancy rights over formerly socially-owned property, the main form of property holding in former Yugoslavia, for example; the absence of legal documentation; and continued obstructionism by local authorities. The problem of refugees and internally displaced persons (IDPs) seeking to reclaim their property has been particularly acute in urban areas. Political pressure to relocate other families in vacated premises has often obstructed returns and little progress has been made in revising the legal rights of urban tenants.

5.17 Facilitating returns requires the removal of the administrative and bureaucratic obstacles to return, ending the culture of impunity vis-à-vis known or suspected war criminals and the adoption of non-discriminatory property laws. However, evictions alone will not solve all the returns issues. A sizeable amount of new housing stock will usually need to be built throughout the country and donor funded projects are critical in meeting these needs.

5.18 Additionally, the question of return sustainability – pivotal to ensuring the long-term success of repatriation – will need to be properly treated. Return sustainability is about creating the right social and economic conditions for returnees. It also includes access to health, education and basic services, and is linked to reform in other areas – eradicating corruption, promoting good governance, and long-term economic regeneration of the country.

Development

5.19 A final peace building responsibility of any military intervention should be as far as possible to encourage economic growth, the recreation of markets and sustainable development. The issues are extremely important, as economic growth not only has law and order implications but is vital to the overall recovery of the country concerned. A consistent corollary of this objective must be for the intervening authorities to find a basis as soon as possible to end any coercive economic measures they may have applied to the country before or during the intervention, and not prolong comprehensive or punitive sanctions.

5.20 Intervening authorities have a particular responsibility to manage as swiftly and smoothly as possible the transfer of development responsibility and project implementation to local leadership, and local actors working with the assistance of national and international development agencies.

5.21 This is not only of importance for long-term development purposes, but also represents a positive reinforcement for short run security measures of the kind discussed above: a positive contribution is provided by a simultaneous effort at training the demobilized for new income generating activities as well as the implementation of social and economic reintegration projects. The sooner the demobilized combatants are aware of their future options and opportunities, and the sooner the community has concrete and tangible demonstrations that civilian life can in fact return to normality under secure conditions, the more positive will be their response in relation to disarmament and related issues.

ADMINISTRATION UNDER UN AUTHORITY

5.22 Useful guidelines for the behaviour of intervening authorities during a military intervention in failed states, and in the follow-up period, might be found in a constructive adaptation of Chapter XII of the UN Charter. This would enable reconstruction and rehabilitation to take place in an orderly way across the full spectrum, with the support and assistance of the international community. The most relevant provision in this regard is Article 76 which notes that the aim of the system is to promote the political, economic, social and educational advancement of the people of the territory in question; to encourage respect for human rights; to ensure the equal treatment of all peoples in the UN in social, economic and commercial matters; and also to ensure equal treatment in the administration of justice.

5.23 A further element of Chapter XII which would often be of relevance to the populations of countries in which an intervention takes place relates to self-determination (Article 76.b). Protective enforcement usually indicates sustaining or restoring forms of territorial self-government and autonomy, and this in turn will usually mean elections being facilitated and possibly supervised, or at least monitored, by the intervening authorities. That said, the responsibility to protect is fundamentally a principle designed to respond to threats to human life, and not a tool for achieving political goals such as greater political autonomy, self-determination, or independence for particular groups within the country (though these underlying issues may well be related to the humanitarian concerns that prompted the military intervention). The intervention itself should not become the basis for further separatist claims.

5.24 There is always likely in the UN to be a generalized resistance to any resurrection of the “trusteeship” concept, on the ground that it represents just another kind of intrusion into internal affairs. But “failed states” are quite likely to generate situations which the international community simply cannot ignore, as happened – although there the intervention was less than successful – in Somalia. The strongest argument against the proposal is probably practical: the cost of such an operation for the necessarily long time it would take to recreate civil society and rehabilitate the infrastructure in such a state. There must be real doubts about the willingness of governments to provide those kinds of resources, other than on a very infrequent and ad hoc basis.

LOCAL OWNERSHIP AND THE LIMITS TO OCCUPATION

5.25 The requirement to stay on in the country in which intervention takes place long enough to ensure sustainable reconstruction and rehabilitation has both positive and negative implications. Apart from, hopefully, removing or at least greatly ameliorating, the root causes of the original conflict and restoring a measure of good governance and economic stability, such a period may also better accustom the population to democratic institutions and processes if these had been previously missing from their country. However, staying on could obviously have some negative aspects, and they are worth spelling out.

Sovereignty

5.26 Sovereignty issues necessarily arise with any continued presence by the intervener in the target country in the follow-up period. Intervention suspends sovereignty claims to the extent that good governance – as well as peace and stability – cannot be promoted or restored unless the intervener has authority over a territory. But the suspension of the exercise of sovereignty is only *de facto* for the period of the intervention and follow-up, and not *de jure*. This was, for example, the objective of the Paris Accords of 1991 on Cambodia, where the device of a "Supreme National Council" with representatives of the four competing factions, transferred effective authority to the UN to run the country until elections could be held. Similarly, Yugoslavia could be said to have temporarily had its sovereignty over Kosovo suspended, though it has not lost it *de jure*. The objective overall is not to change constitutional arrangements, but to protect them. As was noted in the discussion above of trusteeship, military intervention means endeavouring to sustain forms of government compatible with the sovereignty of the state in which the enforcement has occurred – not undermining that sovereignty.

Dependency and Distortion

5.27 A poorly administered occupation which overtly treats the people, or causes them to believe they are being treated, as an "enemy" will obviously be inimical to the success of any long-term rehabilitation efforts. Equally, a reconstruction and rehabilitation programme which does not take sufficient account of local priorities and excludes local personnel could create an unhealthy dependency on the intervening authority, stultify the regrowth of local institutions and the economy, and infinitely delay the population's desire or ability to resume responsibility for its own government.

5.28 Although largely unavoidable, the sudden influx of large sums of foreign currencies that usually accompany an intervening military force (and subsequent police and administration personnel) can have highly distorting economic effects on often fragile economies, and create unrealistic expectations in at least parts of the population. In some cases, local elites may seek to profit from this situation and set up corrupt networks and practices. They are then likely to oppose early withdrawal of the intervening authority, while at the same time undermining any hopes for a successful economic and political rehabilitation of the country.

5.29 A further negative feature relates to the intervening authorities themselves. The longer a follow-up period continues, the greater the financial and material drain it may prove to be on the intervening states, unless they are among the richer developed countries. Even then, follow-up with no light at the end of the tunnel may prove to be a major disincentive for such countries to become involved in future exercises of the responsibility to protect,

regardless of how worthy they might be. The balance to be struck between the long-term interests of the people and country where the intervention takes place and those of the interveners themselves can end up being a fine one.

Achieving Local Ownership

5.30 As the case of Kosovo demonstrates, it is essential to strike a balance between the responsibilities of international and local actors. International actors have the resources to help provide a secure environment and to begin the reconstruction process. But international authorities must take care not to confiscate or monopolize political responsibility on the ground. They must take steps to set up a political process between the conflicting parties and ethnic groups in a post-conflict society that develops local political competence within a framework that encourages cooperation between former antagonists. Without such a political process, and the transfer of responsibility from international to local agents, there is a substantial risk, first, that ethnic hostility within the territory will settle back into old patterns of hatred, and second, that local actors will sit back and let the international actors take all the responsibility for mediating local tensions.

5.31 The long-term aim of international actors in a post-conflict situation is “to do themselves out of a job.” They can do this by creating political processes which require local actors to take over responsibility both for rebuilding their society and for creating patterns of cooperation between antagonistic groups. This process of devolving responsibility back to the local community is essential to maintaining the legitimacy of intervention itself. Intervening to protect human beings must not be tainted by any suspicion that is a form of neo-colonial imperialism. On the contrary, the responsibility to rebuild, which derives from the obligation to react, must be directed towards returning the society in question to those who live in it, and who, in the last instance, must take responsibility together for its future destiny.

6. THE QUESTION OF AUTHORITY

6.1 There is an international responsibility to protect populations at risk, and this Commission has argued that it extends to a responsibility to *react* by appropriate means if catastrophe is occurring, or seems imminent. In extreme cases, that responsibility to react includes military intervention within a state, to carry out that human protection. We have spelled out in Chapter 4 the tough threshold and precautionary criteria that must be satisfied in these cases: just cause, right intention, last resort, proportional means and reasonable prospects. The criteria have to be tough, because the action proposed is itself extreme: military intervention means not only an intrusion into a sovereign state, but an intrusion involving the use of deadly force, on a potentially massive scale. But whose right is it to determine, in any particular case, whether a military intervention for human protection purposes should go ahead?

SOURCES OF AUTHORITY UNDER THE UN CHARTER

6.2 The bedrock non-intervention principle is spelt out in Article 2.4 of the Charter, which provides that “All Members shall refrain ... from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations,” and in Article 2.7 which prohibits the United Nations from intervening “in matters which are essentially within the domestic jurisdiction of any state.” What lies “essentially within the domestic jurisdiction” is not further defined and is indeed much contested, especially in the context of human rights issues.

6.3 A crucial qualification to the bedrock principle is Article 24 of the Charter, which “to ensure prompt and effective action by the United Nations” confers upon the Security Council the “primary responsibility for the maintenance of international peace and security.” There are important provisions relating to the pacific settlement of disputes in Chapter VI of the Charter, but the cutting edge of that responsibility is set out in Chapter VII, which describes the action the Security Council may take when it “determine[s] the existence of any threat to the peace, breach of the peace, or act of aggression” (Article 39). Such action may fall short of the use of force, and consist of such measures as embargoes, sanctions and the severance of diplomatic relations (Article 41). However, should the Council consider that such measures are likely to be inadequate, “it may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security” – in other words, it may resort to or permit the use of military force (Article 42).

6.4 There is one other provision in the Charter expressly permitting the application of cross-border military force, Article 51, which acknowledges “the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the UN” (it being also provided that the measures taken be immediately reported to the Security Council). This is unlikely to have application to the military intervention situations with which this report is concerned, other than for regional organizations acting with respect to one of their member states. This provision, and the Security Council authorization of coercion under the general provisions of Chapter VII, but nothing else in the Charter, expressly trump the domestic jurisdiction restriction.

6.5 Chapter VIII acknowledges the existence and security role of regional and sub-regional organizations, but expressly states that “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.” It is interesting to note, however, that in some cases that authorization has been after the event, as with the approval of the interventions by ECOWAS’s Monitoring Group (ECOMOG) in Liberia in 1992 and Sierra Leone in 1997.

6.6 The general provisions of Chapter VII, the specific authorization of self-defence action in Article 51, and the provisions of Chapter VIII, together constitute a formidable source of authority to deal with security threats of all types. After the terrorist attacks of 11 September 2001, for example, the Security Council (calling in aid both Article 51 and Chapter VII generally), was quick to call for action in response – as was the General Assembly. The world already has in place a standing military and diplomatic organization with the capacity (if not always the will) to deal with the whole spectrum of peace, security and human protection issues: we call it the United Nations.

6.7 The Security Council has the “primary” but not the sole or exclusive responsibility under the Charter for peace and security matters. Article 10 gives a general responsibility to the UN General Assembly with regard to any matter within the scope of UN authority, and Article 11 gives the General Assembly a fallback responsibility with regard specifically to the maintenance of international peace and security – albeit only to make recommendations, not binding decisions. The only caveat, meant to prevent a split between the UN’s two major organs, is that the Security Council must not be discussing that issue at the same time (Article 12). To these Charter bases for General Assembly action must be added the “Uniting for Peace” resolution of 1950, creating an Emergency Special Session procedure that was used as the basis for operations in Korea that year and subsequently in Egypt in 1956 and the Congo in 1960. It is evident that, even in the absence of Security Council endorsement and with the General Assembly’s power only recommendatory, an intervention which took place with the backing of a two-thirds vote in the General Assembly would clearly have powerful moral and political support.

6.8 The UN, whatever arguments may persist about the meaning and scope of various Charter provisions, is unquestionably the principal institution for building, consolidating and using the authority of the international community. It was set up to be the linchpin of order and stability, the framework within which members of the international system negotiated agreements on the rules of behaviour and the legal norms of proper conduct in order to preserve the society of states. Thus simultaneously the UN was to be the forum for mediating power relationships; for accomplishing political change that is held to be just and desirable by the international community; for promulgating new norms; and for conferring the stamp of collective legitimacy.

6.9 The authority of the UN is underpinned not by coercive power, but by its role as the applicator of legitimacy. The concept of legitimacy acts as the connecting link between the exercise of authority and the recourse to power. Attempts to enforce authority can only be made by the legitimate agents of that authority. Collective intervention blessed by the UN is regarded as legitimate because it is duly authorized by a representative international body; unilateral intervention is seen as illegitimate because self-interested. Those who challenge or evade the authority of the UN as the sole legitimate guardian of international peace and security in specific instances run the risk of eroding its authority in general and also undermining the principle of a world order based on international law and universal norms.

6.10 The UN is also the symbol of what member states must *not* do. In the field of state–citizen relations, the totality of Charter clauses and instruments like the Universal Declaration of Human Rights restrict the authority of states to cause harm to their own people within territorial borders. In the sphere of military action across territorial borders, UN membership imposes the obligation on the major powers to refrain from unilateral intervention in favour of collectively authorized international intervention.

6.11 The responsibility for protecting the lives and promoting the welfare of citizens lies first and foremost with the sovereign state, secondly with domestic authorities acting in partnership with external actors, and only thirdly with international organizations. As we suggested in Chapter 2, in addressing the concept of sovereignty as responsibility, a crucial justification for vesting sovereignty in the state derives from this principle. There is a gap – a responsibility deficit – if the state proves unable or unwilling to protect citizens, or itself becomes the perpetrator of violence against its own citizens.

6.12 The community-sanctioning authority to settle issues of international peace and security has been transferred from the great powers in concert to the UN. The UN, with the Security Council at the heart of the international law-enforcement system, is the only organization with universally accepted authority to validate such operations. But it does not by itself have any operational capacity. For the UN to function effectively as a law-enforcing collective security organization, states must renounce the unilateral use of force for national purposes. But the corollary, not always as readily accepted, is that states should be willing to use force on behalf of, as directed by, and for the goals of the UN.

THE SECURITY COUNCIL'S ROLE – AND RESPONSIBILITY

6.13 Because the prohibitions and presumptions against intervention are so explicitly spelled out in the Charter, and since no “humanitarian exception” to these prohibitions is explicitly provided for, the role of the Security Council becomes of paramount importance. There are a number of questions that can reasonably be asked about its authority and credibility, and we address them below: its legal capacity to authorize military intervention operations; its political will to do so, and generally uneven performance; its unrepresentative membership; and its inherent institutional double standards with the Permanent Five veto power. There are many reasons for being dissatisfied with the role that the Security Council has played so far.

6.14 But all that said, the Commission is in absolutely no doubt that there is no better or more appropriate body than the Security Council to deal with military intervention issues for human protection purposes. It is the Security Council which should be making the hard decisions in the hard cases about overriding state sovereignty. And it is the Security Council which should be making the often even harder decisions to mobilize effective resources, including military resources, to rescue populations at risk when there is no serious opposition on sovereignty grounds. That was the overwhelming consensus we found in all our consultations around the world. If international consensus is ever to be reached about when, where, how and by whom military intervention should happen, it is very clear that the central role of the Security Council will have to be at the heart of that consensus. The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work much better than it has.

6.15 It is a necessary corollary of this perception of the Security Council's role that it be established as a matter of practice that all proposals for military intervention be formally brought before it. The Commission accordingly is agreed that:

- ❑ Security Council authorization must in all cases be sought prior to any military intervention action being carried out. Those calling for an intervention must formally request such authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter; and
- ❑ The Security Council should deal promptly with any request for authority to intervene where there are allegations of large scale loss of human life or ethnic cleansing; it should in this context seek adequate verification of facts or conditions on the ground that might support a military intervention.

Legal Capacity

6.16 Article 42 authorizes the Security Council, in the event that non-military measures prove "inadequate," to decide upon military measures "as may be necessary" "to maintain or restore international peace and security." Although these powers were interpreted narrowly during the Cold War, since then the Security Council has taken a very expansive view as to what constitutes "international peace and security" for this purpose, and in practice an authorization by the Security Council has almost invariably been universally accepted as conferring international legality on an action. The cross-border implications of a number of the interventions authorized in the post-Cold War years have not been in doubt. But there is equally no doubt that in other cases – Somalia most prominent among them – the cross-border implications were less evident.

6.17 It is arguable that what the Security Council has really been doing in these cases is giving credence to what we described in Chapter 2 as the emerging guiding principle of the "responsibility to protect," a principle grounded in a miscellany of legal foundations (human rights treaty provisions, the Genocide Convention, Geneva Conventions, International Criminal Court statute and the like), growing state practice – and the Security Council's own practice. If such a reliance continues in the future, it may eventually be that a new rule of customary international law to this effect comes to be recognized, but as we have already acknowledged it would be quite premature to make any claim about the existence now of such a rule.

6.18 An important unresolved theoretical question is whether the Security Council can in fact exceed its own authority by violating the constitutional restraints embedded in the Charter, particularly the inhibition in Article 2.7. This issue has only been tangentially considered by the International Court of Justice (ICJ) in the *Lockerbie* case, with the 1998 decision on preliminary objections affirming that the Security Council is bound by the Charter. But the issue seems destined to remain a theoretical one, since there is no provision for judicial review of Security Council decisions, and therefore no way that a dispute over Charter interpretation can be resolved. It appears that the Council will continue to have considerable latitude to define the scope of what constitutes a threat to international peace and security.

Legitimacy and the Veto

6.19 A common theme in a great many of the Commission's consultations was the democratic legitimacy of the fifteen-member Security Council, which can hardly claim to be representative of the realities of the modern era so long as it excludes from permanent membership countries of major size and influence, in particular from Africa, Asia and Latin America. The Security Council was also variously claimed to be neither answerable to the peoples of the world, nor accountable to the plenary General Assembly nor subject to juridical supervision and scrutiny. There is no doubt that reform of the Security Council, in particular to broaden and make more genuinely representative its composition, would help in building its credibility and authority – though not necessarily making the decision making process any easier. But this is not a debate into which this Commission need enter for the purposes of this report.

6.20 An issue which we cannot avoid addressing, however, is that of the veto power enjoyed by the present Permanent Five. Many of our interlocutors regarded capricious use of the veto, or threat of its use, as likely to be the principal obstacle to effective international action in cases where quick and decisive action is needed to stop or avert a significant humanitarian crisis. As has been said, it is unconscionable that one veto can override the rest of humanity on matters of grave humanitarian concern. Of particular concern is the possibility that needed action will be held hostage to unrelated concerns of one or more of the permanent members – a situation that has too frequently occurred in the past. There is another political problem. Those states who insist on the right to retaining permanent membership of the UN Security Council and the resulting veto power, are in a difficult position when they claim to be entitled to act outside the UN framework as a result of the Council being paralyzed by a veto cast by another permanent member. That is, those who insist on keeping the existing rules of the game unchanged have a correspondingly less compelling claim to rejecting any specific outcome when the game is played by those very rules.

6.21 For all these reasons, the Commission supports the proposal put to us in an exploratory way by a senior representative of one of the Permanent Five countries, that there be agreed by the Permanent Five a “code of conduct” for the use of the veto with respect to actions that are needed to stop or avert a significant humanitarian crisis. The idea essentially is that a permanent member, in matters where its vital national interests were not claimed to be involved, would not use its veto to obstruct the passage of what would otherwise be a majority resolution. The expression “constructive abstention” has been used in this context in the past. It is unrealistic to imagine any amendment of the Charter happening any time soon so far as the veto power and its distribution are concerned. But the adoption by the permanent members of a more formal, mutually agreed practice to govern these situations in the future would be a very healthy development.

Political Will and Performance

6.22 The Commission recalls the Secretary-General's warning that “If the collective conscience of humanity ... cannot find in the United Nations its greatest tribune, there is a grave danger that it will look elsewhere for peace and for justice.” If the Council – and the five permanent members in particular – fail to make the Council relevant to the critical issues of the day then they can only expect that the Council will diminish in significance, stature and authority.

6.23 While the Council has from time to time demonstrated a commitment and a capacity to fulfill this responsibility, too often it has fallen short of its responsibilities, or failed to live up to expectations. Sometimes this has been the result of a sheer lack of interest on the part of the five permanent members. Sometimes it has been because of anxiety about how a particular commitment would play in domestic politics. Often in the past, it has been the result of disagreements among the five permanent members on what if any action should be taken. Increasingly, it has resulted from a reluctance on the part of some key members to bear the burdens – especially the financial and personnel burdens – of international action.

6.24 It is especially important that every effort be made to encourage the Security Council to exercise – and not abdicate – its responsibility to protect. This means, as Article 24 of the Charter requires, prompt and effective engagement by the Council when matters of international peace and security are directly at issue. And it means clear and responsible leadership by the Council especially when significant loss of human life is occurring or is threatened, even though there may be no direct or imminent threat to international peace and security in the strict sense.

6.25 The UN exists in a world of sovereign states, and its operations must be based in political realism. But the organization is also the repository of international idealism, and that sense is fundamental to its identity. It is still the main focus of the hopes and aspirations for a future where men and women live at peace with each other and in harmony with nature. The reality of human insecurity cannot simply be wished away. Yet the idea of a universal organization dedicated to protecting peace and promoting welfare – of achieving a better life in a safer world, for all – survived the death, destruction and disillusionment of armed conflicts, genocide, persistent poverty, environmental degradation and the many assaults on human dignity of the 20th century.

6.26 For the UN to succeed, the world community must match the demands made on the organization by the resources given to it. The UN has the moral legitimacy, political credibility and administrative impartiality to mediate, moderate and reconcile the competing pulls and tensions that still plague international relations. People continue to look to the UN to guide and protect them when the tasks are too big and complex for nations and regions to handle by themselves. The comparative advantages of the UN are its universal membership, political legitimacy, administrative impartiality, technical expertise, convening and mobilizing power, and dedication of its staff.

6.27 The UN represents the idea that unbridled nationalism and the raw interplay of power must be mediated and moderated in an international framework. It is the centre for harmonizing national interests and forging the international interest. Only the UN can authorize military action on behalf of the entire international community, instead of a select few. But the UN does not have its own military and police forces, and a multinational coalition of allies can offer a more credible and efficient military force when robust action is needed and warranted. What will be increasingly needed in the future are partnerships of the able, the willing and the well-intended – and the duly authorized.

WHEN THE SECURITY COUNCIL FAILS TO ACT

6.28 We have made abundantly clear our view that the Security Council should be the first port of call on any matter relating to military intervention for human protection purposes. But the question remains whether it should be the last. In view of the Council's past inability or unwillingness to fulfill the role expected of it, if the Security Council expressly rejects a proposal for intervention where humanitarian or human rights issues are significantly at stake, or the Council fails to deal with such a proposal within a reasonable time, it is difficult to argue that alternative means of discharging the responsibility to protect can be entirely discounted. What are the options in this respect?

The General Assembly

6.29 One possible alternative, for which we found significant support in a number of our consultations, would be to seek support for military action from the General Assembly meeting in an Emergency Special Session under the established "Uniting for Peace" procedures. These were developed in 1950 specifically to address the situation where the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security. Since speed will often be of the essence, it is provided that an Emergency Special Session must not only be convened within 24 hours of the request being made, but must also, under Rule of Procedure 65 of the General Assembly, "convene in plenary session only and proceed directly to consider the item proposed for consideration in the request for the holding of the session, without previous reference to the General Committee or to any other Committee."

6.30 Although the General Assembly lacks the power to direct that action be taken, a decision by the General Assembly in favour of action, if supported by an overwhelming majority of member states, would provide a high degree of legitimacy for an intervention which subsequently took place, and encourage the Security Council to rethink its position. The practical difficulty in all of this is to contemplate the unlikelihood, in any but very exceptional case, of a two-thirds majority, as required under the Uniting for Peace procedure, being able to be put together in a political environment in which there has been either no majority on the Security Council, or a veto imposed or threatened by one or more permanent members – although Kosovo and Rwanda might just conceivably have been such cases. The Commission believes, nonetheless, that the mere possibility that this action might be taken will be an important additional form of leverage on the Security Council to encourage it to act decisively and appropriately.

Regional Organizations

6.31 A further possibility would be for collective intervention to be pursued by a regional or sub-regional organization acting within its defining boundaries. Many human catastrophes will have significant direct effects on neighbouring countries through spill-over across national borders taking such forms as refugee flows or use of territory as a base by rebel groups. Such neighbouring states will thus usually have a strong collective interest, only part of which will be motivated by humanitarian concerns, for dealing swiftly and effectively with the catastrophe. It has long been acknowledged that neighbouring states acting within the framework of regional or sub-regional organizations are often (but not always) better placed to act than the UN, and Article 52 of the Charter has been interpreted as giving them considerable flexibility in this respect.

6.32 It is generally the case that countries within the region are more sensitive to the issues and context behind the conflict headlines, more familiar with the actors and personalities involved in the conflict, and have a greater stake in overseeing a return to peace and prosperity. All this should facilitate mobilizing the necessary will for fulfilling the responsibility to protect and for ensuring sustainability and follow-up.

6.33 All that said, organizations with a comprehensive regional membership have generally not displayed a notable zeal for intervening in the affairs of member states. An inhibiting consideration always is the fear that the tiger of intervention, once let loose, may turn on the rider: today's intervener could become the object of tomorrow's intervention. The numerical majority of any collective organization, almost by definition, will be the smaller, less powerful states, suspicious of the motives of the most powerful in their midst, and reluctant to sanction interference by the powerful against fellow-weaklings. In Africa and, to a lesser extent, the Americas, however, there has been acceptance of the right of regional and sub-regional organizations to take action, including military action, against members in certain circumstances. The OAU has set up a mechanism for the prevention, management and resolution of conflict, extending thereby its ability to deal with such situations.

6.34 It is much more controversial when a regional organization acts, not against a member or within its area of membership, but against a non-member. This was a large factor in the criticism of NATO's action in Kosovo since it was outside NATO's area. NATO argues, nevertheless, that the conflict in Kosovo had the potential to spill over NATO borders and cause severe disruption, and was thus a matter of direct concern to it. Other regional and sub-regional organizations which have mounted military operations have acted strictly within their geographical boundaries against member states.

6.35 The UN Charter recognizes legitimate roles for regional organizations and regional arrangements in Chapter VIII. In strict terms, as we have already noted, the letter of the Charter requires action by regional organizations always to be subject to prior authorization from the Security Council. But as we have also noted, there are recent cases when approval has been sought *ex post facto*, or after the event (Liberia and Sierra Leone), and there may be certain leeway for future action in this regard.

The Implications of Inaction

6.36 Interventions by ad hoc coalitions (or, even more, individual states) acting without the approval of the Security Council, or the General Assembly, or a regional or sub-regional grouping of which the target state is a member, do not – it would be an understatement to say – find wide favour. Even those countries involved in the Kosovo intervention, and prepared to passionately defend its legitimacy by reference to all the threshold and precautionary criteria we have identified in this report, for the most part acknowledge its highly exceptional character, and express the view that it would have been much preferable to have secured the Security Council's – or failing that the General Assembly's – endorsement. One view that has some currency is that an *ex post facto* authorization, of the kind that has occurred for the African regional instances mentioned above, might conceivably have been obtained in the Kosovo and Rwanda cases, and may offer a way out of the dilemma should any such case occur again in the future.

6.37 As a matter of political reality, it would be impossible to find consensus, in the Commission's view, around any set of proposals for military intervention which acknowledged the validity of any intervention not authorized by the Security Council or General

Assembly. But that may still leave circumstances when the Security Council fails to discharge what this Commission would regard as its responsibility to protect, in a conscience-shocking situation crying out for action. It is a real question in these circumstances where lies the most harm: in the damage to international order if the Security Council is bypassed or in the damage to that order if human beings are slaughtered while the Security Council stands by.

6.38 In the view of the Commission, there are two important messages for the Security Council in all of this.

6.39 The first message is that if the Security Council fails to discharge its responsibility in conscience-shocking situations crying out for action, then it is unrealistic to expect that concerned states will rule out other means and forms of action to meet the gravity and urgency of these situations. If collective organizations will not authorize collective intervention against regimes that flout the most elementary norms of legitimate governmental behaviour, then the pressures for intervention by ad hoc coalitions or individual states will surely intensify. And there is a risk then that such interventions, without the discipline and constraints of UN authorization, will not be conducted for the right reasons or with the right commitment to the necessary precautionary principles.

6.40 The second message is that if, following the failure of the Council to act, a military intervention is undertaken by an ad hoc coalition or individual state which *does* fully observe and respect all the criteria we have identified, and if that intervention is carried through successfully – and is seen by world public opinion to have been carried through successfully – then this may have enduringly serious consequences for the stature and credibility of the UN itself.

7. THE OPERATIONAL DIMENSION

7.1 Military interventions for human protection purposes have different objectives than both traditional warfighting and traditional peacekeeping operations. Such interventions therefore raise a number of new, different and unique operational challenges. Because the objective of military intervention is to protect populations and not to defeat or destroy an enemy militarily, it differs from traditional warfighting. While military intervention operations require the use of as much force as is necessary, which may on occasion be a great deal, to protect the population at risk, their basic objective is always to achieve quick success with as little cost as possible in civilian lives and inflicting as little damage as possible so as to enhance recovery prospects in the post-conflict phase. In warfighting, by contrast, the neutralization of an opponent's military or industrial capabilities is often the instrument to force surrender.

7.2 On the other hand, military intervention operations – which have to do whatever it takes to meet their responsibility to protect – will have to be able and willing to engage in much more robust action than is permitted by traditional peacekeeping, where the core task is the monitoring, supervision and verification of ceasefires and peace agreements, and where the emphasis has always been on consent, neutrality and the non-use of force. The *Panel on United Nations Peace Operations* compiled in 2000 a thorough review of the operational challenges facing United Nations military missions, but for the most part that panel focused on traditional peacekeeping and its variations, not the more robust use of military force – not least because there is not within UN headquarters the kind of logistic planning and support, and command and control capacity, that would make possible either warfighting or military interventions of any significant size. Their report confirmed that “the United Nations does not wage war. Where enforcement action is required, it has consistently been entrusted to coalitions of willing states.”

7.3 The context in which intervention operations take place also has important operational significance. Military intervention to protect endangered human lives should and will occur only as a last resort, after the failure of other measures to achieve satisfactory results. Inevitably, it will be part of a broader political strategy directed towards persuading the targeted state to cooperate with international efforts. The consequences for such operations suggest that the specific nature of the task to protect may over time lead to the evolution of a new type of military operation, carried out in new ways.

PREVENTIVE OPERATIONS

7.4 There are two distinct categories of preventive military operations, with quite distinct characteristics. The first is “preventive deployment,” which involves the positioning of troops where there is an emerging threat of conflict, with the consent of the government or governments concerned, for the primary purpose of deterring the escalation of that situation into armed conflict. The deterrent lies not in the military capability of the force but in the interest the Security Council has shown by authorizing the deployment, the placing of relevant parties under close international scrutiny, and the implication of willingness by the international community to take further action if there is a resort to violence.

7.5 The main example of such a deployment was UNPREDEP in Macedonia, from 1992 until its untimely withdrawal in 1999. While the essential purpose of this deployment was to deter any possible hostility from Yugoslavia, it has been argued – perhaps with too much benefit of hindsight – that the presence of the force also had a stabilizing influence on the fragile internal situation. The operational problems confronting any such deployment are essentially the same as those involved for a traditional UN peacekeeping operation.

7.6 The second category of preventive operation is where military resources are deployed without an actual intervention on the territory of the targeted state, and accordingly the question of consent does not arise. Such operations may be intended as a show of force to give added weight to diplomatic initiatives, or perhaps serve as instruments to monitor or implement non-military enforcement actions such as sanctions and embargoes, including in humanitarian crisis situations. The rules of engagement for such operations will primarily be of a defensive nature, and only to a very limited degree, if at all, allow forcing an opponent to comply. Preventive military action in this sense can be important in providing a firewall to try to help keep a conflict in a neighbouring country from spreading. A robust and decisive deployment may help to deter trouble, but can also provide a rapid response capacity should trouble arise.

7.7 If prevention in either of these categories fails altogether, the preventive operation may need to be turned into an intervention tool. Such forces should therefore be deployed and equipped for preventive operations in such a way that they could easily be designated as part of an intervention force.

PLANNING FOR MILITARY INTERVENTION

7.8 If a military intervention is to be contemplated, careful advance planning is a prerequisite for success. There are many challenges to be surmounted, including the need to build an effective political coalition, work out agreed objectives, provide a clear mandate, devise a common plan of operations, and marshal the necessary resources. Especially important to bear in mind is that the intervention phase is only one element in a broader political effort, and it must operate in harmony with these broader objectives. The military intervention phase will necessarily be preceded by preventive actions which may themselves include military measures such as sanctions or embargo enforcement, preventive deployments, or no-fly zones. The military intervention phase will likely be followed by post-conflict operations – discussed further below – which in most cases will include the deployment of peacekeeping forces for often substantial periods of time. The operational concept for an operation to protect needs therefore to provide a smooth transition from pre-intervention efforts to post-intervention activities.

Coalition Building

7.9 Most interventions have involved in the past, and are likely to in the future, multinational coalition operations. The cohesion of an intervening coalition – politically and militarily – is critical to the prospects for success, and the fragility of the intervening coalition has thus been one of the most vulnerable aspects of past interventions. It has been observed that coalition operations will necessarily be characterized by gradualism and possibly delays in striking sensitive targets, and that these are lasting military disadvantages of coalition operations that are only partly compensated by the stronger political impact of such operations in comparison with those of a single country. Spoilers have been ready to target the unity of the coalition directly in order to neutralize the international presence or cause its withdrawal.

7.10 At times, the weakness of the coalition and the failure to establish authority and to provide a secure environment have also led to the institution of parallel enforcement missions in the middle of a process – such as the arrival of the Unified Task Force (UNITAF) amidst the first UN Operation in Somalia (UNOSOM I), NATO's insertion of a rapid-reaction and bombing capacity amidst the UN Protection Force in the Former Yugoslavia (UNPROFOR), and more recently the British Army in Sierra Leone.

7.11 Effective coalition building means creating and maintaining a common political resolve, and working out a common military approach. Enforcement actions conducted by coalitions of the willing have to take into account the politics of member states and the impact of the media. Politics always intrudes on military efforts, and this situation is intensified when the military operation is not a classic war making effort. The intervention by NATO in Kosovo demonstrated that the pace and intensity of military operations may be seriously affected by the lowest common political denominator among member states. Moreover, coalition warfare entails other restrictions on military conduct and political decision making that results from differing national legislation.

7.12 Even where there is a common political resolve among coalition partners, it is still necessary for there to be a common military approach. A situation in which different militaries acted independently and without coordination would be one extreme, and the result would likely be failure. But even among well disciplined coalitions, important differences may arise that can have significant operational consequences. Differences have emerged in the past, for example, on whether some military options (for instance, the use of ground troops, to take but one well known example) should publicly be ruled out or not. Ruling in or out particular military options can have important political ramifications as well, and in some cases may even strengthen the resolve of the targeted state to resist.

Objectives

7.13 The effort to build broad support for an intervention action often confronts the problem that coalition partners may well have different ideas about the objectives to be achieved through the intervention action. Ideally, the process of making a decision to intervene, the formulation of the mandate for the intervening agent (or combination of agents), and the allocation of structures and means for implementation should be related. But harmonizing the views and interests of differing states in each regard is often a protracted and complex undertaking. Moreover, multilateral decision making bodies require consensus to succeed, and vagueness and incrementalism, rather than specificity, are inevitable outcomes of multilateral deliberations: the limits and boundaries of intervention may become significantly obscured in order to secure agreement about an authorization.

7.14 Differences in objectives often emerge in discussions over the “exit strategy,” with some partners emphasizing the need to address the underlying problems, and others focusing on the earliest possible withdrawal. How an intervention will ultimately play out is always hard to determine. Unexpected challenges are almost certain to arise, and the results are almost always different from what was envisaged at the outset. In addition, many military operations begin with fairly simple and straightforward goals, only to have them expanded to the pursuit of military, political, and developmental objectives as operational circumstances change or as new peace agreements and deals are struck. Yet, mission creep has been the rule, not the exception. This uncertainty is what drives some intervening countries and their militaries to define an exit strategy in terms of an arbitrary withdrawal date.

Mandate

7.15 A clear and unambiguous mandate is one of the first and most important requirements of an operation to protect. However well or ill-defined the end state of intervention, political vision should encompass what it will take to get there – conceptually, as well as in terms of resources. Without such calculations from the outset, a problem of mustering sufficient “political will” to see the intervention through to a successful conclusion exists. All too often, this vision has been limited to a commitment to verify, monitor, and report on circumstances in the mission area. Comprehensive and multidimensional peace processes militate against a stricter focus on the art of the possible during cease-fire and peace negotiations. Considerable issues of prestige are at stake in an intervention, which translates into reluctance among potential contributors to support a coalition that is tasked with a challenging mandate, especially where vital interests are not regarded as being engaged.

7.16 The objective of the mandate should be to allow the executing military commander to identify his mission and his tasks properly and to propose an operational concept which promises quick success, paramount for an operation which aims at the protection of humans under attack. This will allow the commander to propose the size and composition of the necessary forces and to draft appropriate rules of engagement (ROEs) and to ask for political authorization and the allocation of the resources necessary to mount and to sustain the operation.

7.17 Mandates are often adjusted incrementally in reaction to new demands during the course of an intervention, and this may well be inevitable given the special nature of interventions for human protection purposes where much depends upon the attitude and level of cooperation received from the targeted state. While the initial mandate may reflect a preoccupation with human protection, political and security concerns sooner or later predominate. The more limited the initial vision in relation to the real problem at hand, the more likely that mission creep will take place. Somalia is a clear example where the initial response to insecurity and famine was not also accompanied by sufficient support to achieve long-term solutions. The follow-on UN operation (UNOSOM II) included ambitious security and political tasks but without commensurate means to realize them. However, the mandate should define in clear language what the aims of the intervention in the various phases of it would be and it should spell out that the desired end state is the restoration of good governance and the rule of law.

Resources and Commitment

7.18 Any operation to protect in response to large scale humanitarian threat or emergency requires that the countries, as well as the relevant international organizations involved, be prepared to sustain the operation with the resources required. The allocation of sufficient resources is indispensable for success, and failure to do so has been a major problem in the past.

7.19 The level of resources committed sends a clear signal of resolve and intent to all concerned. In the case of operations mounted by developing countries and their regional organizations especially, the sustainability of such operations may well be a significant and ongoing concern. Without broader international support, few developing countries are likely to be in a position to make a long-term military commitment to an intervention – a circumstance that could lead to the premature withdrawal of such forces before all important human protection objectives have been secured.

CARRYING OUT MILITARY INTERVENTION

Command Structure

7.20 Military decision making is based on clear and unequivocal communications and chains of command, and unity of command is essential for the successful conduct of operations. It is achieved best if there is a single chain of integrated command and if nations are prepared to transfer the authority over the forces they contribute to the fullest extent possible to the force commander they appointed to execute the intervention. The differing national interests of the intervening nations and the legal differences which exist due to different national laws will likely result in some limitations with respect to the degree to which forces will be placed under the command of the officer charged to conduct the intervention operation, and with respect to the use of deadly force. However, the fewer the national reservations on the employment of the national contingents in such an operation are, the greater is the capacity of the force commander to act decisively and flexibly.

7.21 Tight political control of such operations is mandatory, but political control does not mean micro-management of military operations by political authorities. Political leaders need to set clear objectives for each phase, within defined operational parameters. Military commanders should carry out these objectives, seeking further guidance when the objectives have been completed, or significant new challenges arise.

Civil–Military Relations

7.22 Where military intervention is required, the intervening military forces, civilian authorities (local and external), and humanitarian organizations are likely to be working side-by-side to bring assistance and protection to populations at risk. The coming together of the more hierarchical and disciplined military and the more diffuse humanitarian cultures in particular has sometimes been a source of significant tension. Improved coordination and collaboration between military forces, political civilian authorities, and humanitarian agencies will likely continue to be an issue of particular significance.

7.23 When enforcement begins, there are humanitarian consequences and tough choices about short- and long-term trade-offs. Even in the most insecure and unstable of circumstances, dedicated humanitarian organizations remain as long as possible. That the staff of the ICRC remained in Kigali as UN soldiers departed, or that numerous NGOs remained in Sarajevo despite snipers and rocket attacks, suggests the commitment by civilians to providing assistance and protection to affected local populations.

7.24 Yet, in seeking to apply deadly force, militaries may make it impossible for humanitarian workers to remain. Less humanitarian assistance in the short-run may be required in order to improve security and, ultimately, humanitarian action in the longer-run. For instance, Bosnia demonstrated that “lift and strike” was incompatible with continued humanitarian operations. The same would have been true had it actually been possible to undertake disarming the massive refugee camps controlled by *génocidaires* in Eastern Zaire. Outside humanitarians would have been forced to abandon the camps while the mopping-up occurred. Aid workers (as is the case with journalists) can become pawns and hostages.

7.25 Coordination is a topic that is a perpetual concern but which is extremely difficult to achieve satisfactorily, since coordination implies independent authorities attempting to cooperate with each other. Often, coordination does not translate into integrated decision making on a regular basis, nor to genuine unity of effort. While coordination efforts have markedly improved effectiveness in some cases, in others they have amounted to little more than trying to minimize turf wars.

Rules of Engagement

7.26 ROEs are critical to responding and protecting populations at risk. They are the directions guiding the application of the use of force by soldiers in the theatre of operations. The ROEs must fit the operational concept and be appropriate for the type of military action that is anticipated. The use of only minimal force in self-defence that characterizes traditional peacekeeping would clearly be inappropriate and inadequate for a peace enforcement action, including a military intervention. Activities such as arresting criminals (in the streets or indicted war criminals), halting abuse, and deterring would-be killers and thugs require clear and robust rules of engagement. Precise ROEs can help to diminish the need for individual countries to issue additional clarifications – something that can be a significant impediment to the conduct of multinational operations.

7.27 The rules of engagement should also reflect the principle of proportionality. Proportionality in this context ought not to exclude the option to escalate as appropriate, but should lead to restraint in the use of destructive power of modern weaponry. Proportionality should also not have the effect of paralyzing the military forces on the ground, or trap them into a purely reactive mode denying them the opportunity to seize the initiative when this may be needed.

7.28 In the context of interventions undertaken for human protection purposes, the ROEs for a military intervention must reflect a stringent observance of international law, and international humanitarian law in particular. They should include an acknowledgement that certain types of arms, and particularly those which are banned under international agreements, may not be used.

7.29 There is no common disciplinary procedure for international troops that violate international norms. It is largely left to contributing nations to prosecute their own soldiers, including with regard to their behaviour in respect of the civilian population in the place of operations. Particular care must be taken by intervening nations to establish codes of conduct and to ensure justice and accountability in the exercise of these responsibilities, so as not to discredit an intervening force in the eyes of a local population and undermine civilian attempts to establish a rule of law. The standards set by such codes should be high, and those who do not live up to them should be removed.

Applying Force

7.30 Quick success in military operations can best be achieved by surprise, by applying overwhelming force and through the concentration of all military efforts. However, it has been observed that in the context of an intervention for human protection purposes, it will be virtually impossible to rely on secrecy and surprise or to make maximum use of the full and devastating power of modern weapons. Achieving surprise at the strategic level must be balanced against the value and need to try to persuade the target state to comply before the resort to force is required. Moreover, democratic societies that are sensitive to human rights and the rule of law will not long tolerate the pervasive use of overwhelming military power.

7.31 Military planners will wish to compensate for the lost option of strategic surprise by resorting to a concentrated use of the military power at their disposal. Political circumstances and the conditions on the ground may or may not permit this. A critical factor which will impact on the intensity of operations, is the need for cooperation from the civilian population once the immediate objective of stopping the killing or ethnic cleansing has been achieved. This means first and foremost not to conduct military actions which will result in widespread hatred against the intervening nations. To win the hearts and minds of the people under attack is presumably impossible during the attack but planning has to be done in such a way that not all doors will be closed when the armed conflict comes to an end. This means accepting limitations and demonstrating through the use of restraint that the operation is not a war to defeat a state but an operation to protect populations in that state from being harassed, persecuted or killed. Taking these considerations into account means accepting some incrementalism as far as the intensity of operations is concerned, and some gradualism with regard to the phases of an operation and the selection of targets. Such an approach may also be the only way to keep the military coalition together. While this is a clear violation of the principles which govern war operations, one has to keep in mind that operations to protect are operations other than war.

7.32 To compensate to some extent for these disadvantages, the planning stages of an intervention – to reinforce the point we made at the outset of this chapter – must be especially focused. Means should be carefully tailored to objectives, and the key military and political pressure points identified and targeted. The roles of non-military components should be planned for and taken into account. Possible contingencies should be studied and contingency plans drawn up.

Casualties

7.33 Often, modalities for the proactive use of force have been determined more by military expediency than by any sense of responsibility to protect humanitarian interests. In Bosnia, for example, those advocating military intervention typically used its feasibility – meaning air strikes without casualties – as their prime argument, not moral or legal or operational obligations. They rarely admitted the considerable risks to the intervening force associated with effective intervention. The real question, ultimately, was whether the West was willing to risk the lives of its soldiers in order to stop war crimes, human rights abuse, and forced migration.

7.34 Force protection of the intervening force is important, but should never be allowed to become the principal objective. Where force protection becomes the prime concern, withdrawal – perhaps followed by a new and more robust initiative – may be the best course.

Media Relations

7.35 The omnipresent media and the worldwide near real time coverage of military operations will expose everyone who uses overwhelming military power too excessively to worldwide criticism. In operations other than self-defence such use of military power will reduce the degree of public support for military operations which is the more needed the less the average person on the street understands why his or her country had to intervene.

7.36 Modern communications and media coverage also have an impact on enforcement in that there is a new capacity for the public to monitor the impact of military action on civilians. Enforcement is likely to receive widespread public support if deadly force is applied in a way that can, if not approved, at least be tolerated by the majority of the

populations in the countries of a coalition. The media coverage of civilian suffering as a result of sanctions in Iraq or of airstrikes in Serbia is a new element in determining military as well as political strategies.

7.37 Therefore, operational planning for an operation to protect should contain a fairly detailed sub-concept for public information. Proper conduct of an appropriate public information campaign is not only critical to maintaining public support for an intervention but also to maintaining the cohesion of the coalition. The difficulty in designing this concept will be to reconcile the requirements of accurate, comprehensive and fast information with the necessities of operational security. The cohesion of the intervening coalition and the desirability of eroding to the extent possible the support the opposing leader may enjoy with his or her own people or with allies, are of crucial importance. In these circumstances, there should be no doubt that in contrast to war or enforcement operations information will have priority over operational security, although the chances to achieve surprises will thus be further reduced.

FOLLOWING UP MILITARY INTERVENTION

Transfer of Authority

7.38 The main mission of military forces in post-intervention operations is to provide the safe environment necessary for the restoration of good governance and the rule of law. Additionally military forces may have to assist in reconstruction in areas which are too dangerous for non-military personnel to enter. The conduct of such operations means often that the forces will increasingly have to do what under normal circumstances police would do, at least initially. In addition, the forces have to be prepared to enforce compliance and, if necessary, to defend the country.

7.39 These tasks are more complex and cover a wider range than combat operations normally do. The chain of command will be increasingly blurred since civilian authorities will often take the lead on the ground. There is a need for clear-cut responsibilities and a transition of responsibility from the military authorities to the civilian authorities, as soon as possible after hostilities have ceased. While it may be necessary for a short period immediately after hostilities have ceased for the military commander to assume complete administrative authority, the transition to civilian authority should take place with minimum delay. The usual process will be the appointment by the UN of a Special Representative of the Secretary-General, and the transfer of military authority to that Special Representative, with full local authority restored following elections and the withdrawal of foreign military forces.

Peacekeeping and Peace Building

7.40 To see an intervention through means as well that the intervening side has to be prepared to remain engaged during the post-intervention phase as long as necessary in order to achieve self-sustained stability. Coalitions or nations act irresponsibly if they intervene without the will to restore peace and stability, and to sustain a post-intervention operation for as long as necessary to do so.

7.41 Past experience demonstrates that, if the internal security challenge is not handled early, "old" habits and structures will prevail and undermine other efforts to enhance post-conflict peace building. The immediate aftermath of any civil war spawns organized crime, revenge attacks, arms proliferation, looting and theft. UN civilian police officers deployed

alongside peacekeepers, in order to assist in the resuscitation of national law enforcement agencies, have not been equipped to address the issue of law enforcement in a “not crime–not war” environment. The military has remained the only viable instrument although this reality has been obscured by the notion of peace as the antithesis of war.

Five Protection Tasks

7.42 Five analytically distinct kinds of protection tasks that emerge from these post-enforcement experiences are worth highlighting here. The first is the protection of minorities. This operational challenge is particularly important when civilians return to territories where another ethnic group is in the majority. The Balkans have provided numerous examples of the difficulties, and the relatively low number of refugees and IDPs who have returned is telling.

7.43 The second major protection task is security sector reform. The focus of such tasks has been to assist local authorities in their own process of security sector transformation. Bilateral and multilateral donors alike have sought to influence the direction of change, establish good practices, and transfer knowledge and insights to the new authorities. The importance as well as the difficulty of such efforts to recruit and train local police and reform the penal and judiciary systems have been evident in countries as diverse as Haiti, Rwanda and East Timor. The problems are especially difficult in situations where trained personnel have been killed or fled in large numbers to avoid violence.

7.44 In this respect, an interim challenge concerns the use of civilian police. In fact, civilian police now number second only to soldiers in UN operations. In light of the post-war conflicts and need for impartiality, the need for civilian police operations dealing with intra-state conflict is likely to remain a high priority in helping war-torn societies restore conditions for social, economic and political stability. The difficulty of recruiting international police is a central and crucial constraint, particularly in light of the need to reform and restructure local police forces in addition to advising, training, and monitoring new recruits.

7.45 The third main task is disarmament, demobilization, and reintegration. Although reintegration is key to longer-term peace building, and ultimately the resumption of the path to economic and social development, the focus here is on the security and protection of civilians. As reflected in Security Council resolutions and mission mandates, the key to stabilization has always been the demobilization of former combatants. The unstated purpose of stabilization measures has been to wrest power and the means of violence from local militias and warlords and to re-centralize it at a much higher level. In other words, the success of the whole intervention process has hinged on the degree to which warring factions can be effectively disarmed. However, disarmament has been one of the most difficult tasks to implement. It has been extremely hard to collect all weapons, even at the end of an armed struggle, when the remaining conditions of insecurity create high incentives for the maintenance and acquisition of light weapons and small arms by the community at large. Physical security and economic needs fuel a trade in small arms long after the withdrawal of intervention forces.

7.46 All disarmament commitments in peace processes have tended, at least at the outset, to be based on consent – regardless of whether the external forces deploy under a Chapter VI or VII mandate. However, the idea of voluntary disarmament is soon challenged by issues such as the security and economic livelihood of combatants thinking about turning in their weapons, along with the normally insufficient number of peace support forces. Faced with

non-compliance with the disarmament provisions of the mandate, intervention forces have exhibited two basic reactions. The first is international acquiescence in the face of local recalcitrance, combined with a shift in the mandate that allows the “peace process” to proceed regardless. The second approach has been to apply limited coercion to recalcitrant parties, while attempting to preserve the consensual nature of the intervention at the strategic level.

7.47 Cambodia and Angola provide classic examples of the acquiescent approach, while Somalia and, to an extent, Bosnia are examples of attempted coercion. Regional and UN operations in West Africa have been characterized by a perplexing admixture of coercion and acquiescence, while the approach to disarmament and security challenges in Rwanda defies logic. None of these examples, however, can provide positive conclusions about the ability of intervening military forces to improve the protection of civilians at risk by reducing arms available to local soldiers, militias, and gangs. In fact, the cases of Somalia and Srebrenica have shown that, if this is not possible, it may be better not to pursue disarmament at all. Intervention forces with a disarmament mandate have not been provided with the doctrinal, political and military discretion to pursue a coercive strategy.

7.48 There is a fourth protection task which, with the growing universalization of the Ottawa Convention, is becoming a more common element of post-intervention, mandates: mine action. This means a range of activities from the effective marking of known or suspected anti-personnel minefields, to humanitarian mine clearance and victim assistance. The establishment of the United Nations Mine Action Service, the Geneva International Centre for Humanitarian Demining and the growing network of national Mine Action Centres is proving to be a successful model for coordinated mine action from donors to mine-affected countries. Recent experiences in operations such as Ethiopia/Eritrea, Cambodia and Kosovo have shown that early coordination of mine awareness training (often offered by military personnel) – with marking, mapping and clearance efforts (also often offered by those forces) – and the carefully planned, sequential return of refugees and IDPs, have resulted in far fewer mine casualties and victims than originally feared. Mine action integrated into post-conflict peace operations is recognized as an essential element in effective, sustainable economic and social reconstruction and rehabilitation efforts.

7.49 The fifth security task during the transition relates to the pursuit of war criminals. The details of the on-going criminal proceedings for the former Yugoslavia and for Rwanda have been analyzed earlier. What is worth mentioning here is the possible new demand on military and police forces during and following enforcement actions, especially once the International Criminal Court is established. NATO commanders and politicians have been hesitant to pursue and arrest indicted war criminals because of the possible hostility and violent reactions by local populations. Although some indicted criminals in the Balkans remain in hiding or are even allowed to live openly, this new operational challenge is likely to grow.

A DOCTRINE FOR HUMAN PROTECTION OPERATIONS

7.50 In summary, the responsibility to protect means that human protection operations will be different from both the traditional operational concepts for waging war and for UN peacekeeping operations. It would be advisable, accordingly, to embody the principles laid out in this Chapter, together with the guidance contained in Chapter 4, in a “Doctrine for Human Protection Operations.” The Commission recommends to the UN Secretary-General that he take steps to initiate the development of such a doctrine. It would proceed

from the fundamental thesis of this report that any coercive intervention for human protection purposes is but one element in a continuum of intervention, which begins with preventive efforts and ends with the responsibility to rebuild, so that respect for human life and the rule of law will be restored.

7.51 The doctrine should clearly be based on the following principles:

- ❑ the operation must be based on a precisely defined political objective expressed in a clear and unambiguous mandate, with matching resources and rules of engagement;
- ❑ the intervention must be politically controlled, but be conducted by a military commander with authority to command to the fullest extent possible, who disposes of adequate resources to execute his mission and with a single chain of command which reflects unity of command and purpose;
- ❑ the aim of the human protection operation is to enforce compliance with human rights and the rule of law as quickly and as comprehensively as possible, but it is not the defeat of a state; this must properly be reflected in the application of force, with limitations on the application of force having to be accepted, together with some incrementalism and gradualism tailored to the objective to protect;
- ❑ the conduct of the operation must guarantee maximum protection of all elements of the civilian population;
- ❑ strict adherence to international humanitarian law must be ensured;
- ❑ force protection for the intervening force must never have priority over the resolve to accomplish the mission; and
- ❑ there must be maximum coordination between military and civilian authorities and organizations.

8. THE RESPONSIBILITY TO PROTECT: THE WAY FORWARD

FROM ANALYSIS TO ACTION

8.1 This report has been about compelling human need, about populations at risk of slaughter, ethnic cleansing and starvation. It has been about the responsibility of sovereign states to protect their own people from such harm – and about the need for the larger international community to exercise that responsibility if states are unwilling or unable to do so themselves.

8.2 Past debates on intervention have tended to proceed as if intervention and state sovereignty were inherently contradictory and irreconcilable concepts – with support for one necessarily coming at the expense of the other. But in the course of our consultations this Commission has found less tension between these principles than we expected. We found broad willingness to accept the idea that the responsibility to protect its people from killing and other grave harm was the most basic and fundamental of all the responsibilities that sovereignty imposes – and that if a state cannot or will not protect its people from such harm, then coercive intervention for human protection purposes, including ultimately military intervention, by others in the international community may be warranted in extreme cases. We found broad support, in other words, for the core principle identified in this report, the idea of the responsibility to protect.

8.3 The most strongly expressed concerns that the Commission did hear in the course of our year-long consultations around the world went essentially to the political and operational consequences of reconciling the principle of shared responsibility with that of non-intervention. These concerns were of three different kinds. They might be described, respectively, as concerns about process, about priorities, and about delivery, with a cross-cutting concern about competent assessment of the need to act.

8.4 As to *process*, the main concern was to ensure that when protective action is taken, and in particular when there is military intervention for human protection purposes, it is undertaken in a way that reinforces the collective responsibility of the international community to address such issues, rather than allowing opportunities and excuses for unilateral action. The Commission has sought to address these concerns by focusing, above all, on the central role and responsibility of the United Nations Security Council to take whatever action is needed. We have made some suggestions as to what should happen if the Security Council will not act but the task, as we have seen it, has been not to find alternatives to the Security Council as a source of authority, but to make it work much better than it has.

8.5 As to *priorities*, the main concern was that attention in past debates and policy making had focused overwhelmingly on reaction to catastrophe – and in particular reaction by military intervention – rather than trying to ensure that the catastrophe did not happen in the first place. The Commission has tried to redress this imbalance by emphasizing over and again the integral importance of prevention in the intervention debate, and also by pointing out the need for a major focus on post-conflict peace building issues whenever

military intervention is undertaken. We have argued that the responsibility to protect embraces not only the responsibility to react, but the responsibility to prevent, and the responsibility to rebuild.

8.6 As to *delivery*, we found the most widespread concern of all. There were too many occasions during the last decade when the Security Council, faced with conscience-shocking situations, failed to respond as it should have with timely authorization and support. And events during the 1990s demonstrated on too many occasions that even a decision by the Security Council to authorize international action to address situations of grave humanitarian concern was no guarantee that any action would be taken, or taken effectively. The Commission has been conscious of the need to get operational responses right, and part of our report has been devoted to identifying the principles and rules that should govern military interventions for human protection purposes.

8.7 But it is even more important to get the necessary political commitment right, and this is the issue on which we focus in this chapter. It remains the case that unless the political will can be mustered to act when action is called for, the debate about intervention for human protection purposes will largely be academic. The most compelling task now is to work to ensure that when the call goes out to the community of states for action, that call will be answered. There must never again be mass killing or ethnic cleansing. There must be no more Rwandas.

MOBILIZING DOMESTIC POLITICAL WILL

8.8 The key to mobilizing international support is to mobilize domestic support, or at least neutralize domestic opposition. How an issue will play at home – what support or opposition there will be for a particular intervention decision, given the significant human costs and financial costs that may be involved, and the domestic resources that may need to be reallocated – is always a factor in international decision making, although the extent to which the domestic factor comes into play does, however, vary considerably, country by country and case by case.

8.9 Contextual factors like size and power, geography, and the nature of the political institutions and culture of the country concerned are all important in this respect. Some countries are just more instinctively internationalist, and more reflexively inclined to respond to pleas for multilateral cooperation, than others: really major powers tend never to be as interested in multilateralism as middle powers and small powers, because they don't think they have to be. Geographic proximity comes into play, simply because what happens nearby is more likely to endanger nationals, to raise significant security concerns, and to result in refugees, economic disruptions and unwanted political spillovers – and to capture media attention and generate demands for action accordingly. By contrast, cultural affinity can mean particular concern for the plight of co-religionists, or fellow language speakers, even in small countries far away. Again, an extremely inward-looking political culture, by contrast, can find it hard to accommodate any external supporting role; many political systems disproportionately reward political actors whose focus and commitments are wholly domestic in character, leaving quite isolated those willing to stand up for international engagement.

8.10 Particular caution is also routinely to be expected from those countries in possession of the military, police, economic and other assets that are most in demand in implementing intervention mandates. Given the magnitude of continuing operations in the Balkans (more than 50,000 troops), as well as the shrinking military budgets of most countries in

the post-Cold War era, there are real constraints on how much spare capacity exists to take on additional burdens. UN peacekeeping may have peaked in 1993 at 78,000 troops. But today, if both NATO and UN missions are included, the number of soldiers in international peace operations has soared by about 40 per cent to 108,000. Even states willing in principle to look at new foreign military commitments are being compelled to make choices about how to use limited and strained military capabilities.

8.11 In mobilizing political support for intervention for human protection purposes, as for anything else, a great deal comes down to the leadership of key individuals and organizations. Someone, somewhere has to pick up the case and run with it. Political leaders are crucial in this respect, but they are not the only actors: they are, for the most part, acutely responsive to the demands and pressures placed upon them by their various political constituencies, and the domestic media, and they are much influenced by what is put to them by their own bureaucracies. NGOs have a crucial and ever increasing role, in turn, in contributing information, arguments and energy to influencing the decision-making process, addressing themselves both directly to policy makers and indirectly to those who, in turn, influence them. The institutional processes through which decisions are made will vary enormously from country to country, but there are always those who are more responsible than others and they have to be identified, informed, stimulated, challenged, and held to account: if everyone is responsible, then no one is actually responsible.

8.12 The trouble with most discussions of “political will” is that more time is spent lamenting its absence than on analyzing its ingredients, and working out how to use them in different contexts. To reduce the issue to its bare essentials, what is necessary is a good understanding of the relevant institutional processes, as just mentioned, and good arguments. What constitutes a good argument will obviously depend on the particular context. But it is not too much of an oversimplification to say that, in most political systems around the world, pleas for international action of the kind we are dealing with in this report need to be supported by arguments having four different kinds of appeal: moral, financial, national interest and partisan.

8.13 As to *moral* appeal, preventing, averting and halting human suffering – all the catastrophic loss and misery that go with slaughter and ethnic cleansing and mass starvation – are inspiring and legitimizing motives in almost any political environment. Political leaders often underestimate the sheer sense of decency and compassion that prevails in their electorates, at least when people’s attention is engaged (just as they also underestimate the public willingness, when well informed, to accept the risk of casualties in well designed military interventions aimed at alleviating that suffering). Getting a moral motive to bite means, however, being able to convey a sense of urgency and reality about the threat to human life in a particular situation. Unfortunately, this is always harder to convey at the crucial stage of prevention than it is after some actual horror has occurred.

8.14 The best *financial* argument is that earlier action is always cheaper than later action. If prevention is possible, it is likely to be cheaper by many orders of magnitude than responding after the event through military action, humanitarian relief assistance, postconflict reconstruction, or all three. In Kosovo, almost any kind of preventive activity – whether it involved more effective preventive diplomacy, or the earlier and sharper application of coercive preventive measures like the credible threat of ground-level military action – would have had to be cheaper than the \$46 billion the international community is estimated to have committed at the time of writing in fighting the war and following up with peacekeeping and reconstruction.

8.15 *National interest* appeals can be made at many different levels. Avoiding the disintegration of a neighbour, with the refugee outflows and general regional security destabilization associated with it can be a compelling motive in many contexts. National economic interests often can be equally well served by keeping resource supply lines, trade routes and markets undisturbed. And whatever may have been the case in the past, these days peace is generally regarded as much better for business than war.

8.16 There is another dimension of the national interest which is highly relevant to intervention for human protection purposes: every country's national interest in being, and being seen to be, a good international citizen. There is much direct reciprocal benefit to be gained in an interdependent, globalized world where nobody can solve all their own problems: my country's assistance for you today in solving your neighbourhood refugee and terrorism problem, might reasonably lead you to be more willing to help solve my environmental or drugs problem tomorrow. The interest in being seen to be a good international citizen is simply the reputational benefit that a country can win for itself, over time, by being regularly willing to pitch into international tasks for motives that appear to be relatively selfless.

8.17 Making an argument with a *partisan* appeal for a government concerned about its political support at the ballot box or elsewhere is a more delicate matter. The point is simply that in any particular country, arguments which may not have a strong or sufficient appeal to the community at large may still have that appeal to a key section of the government's own particular support base, and be extremely influential for that reason. Governments often have to do things without knowing what is the majority view, and even when they know that the majority sentiment might be against the proposed action. What often matters more is that they have arguments that will appeal to, or at least not alienate, their immediate support base; and that they have arguments that they can use to deflate, or at least defend against, the attacks of their political opponents.

MOBILIZING INTERNATIONAL POLITICAL WILL

8.18 What happens in capitals is a crucial ingredient in international decision making. But it is only part of the story. International political will is more than just the sum of attitudes and policies of individual countries. What happens between states and their representatives in bilateral and multilateral contacts, and within intergovernmental organizations, is obviously also crucial. To get the right words uttered, and to turn them into deeds, requires – at international as at domestic level – the same kind of commitment and leadership, and the same kind of constant campaigning. Mobilizing support for specific instances of intervention is always a challenge, because there will always be a compelling rationale for inaction. The same strictures apply internationally as domestically about understanding where in the various processes responsibility for decision making actually lies, and how to pin it down. And it is just as important in the international arena as it is in the domestic to be able to produce arguments appealing to morality, resource concerns, institutional interests and political interests. This whole report is, in a sense, an expression of just such arguments in the context of intervention for human protection purposes.

8.19 An obvious starting point when looking for multilateral leadership on questions relating to intervention is the UN Secretary-General and senior officials in the Secretariat. Although the Secretary-General's formal role under Article 99 of the UN Charter could, as we have suggested, be further developed, his routine activities and interaction with the Security Council, and his international profile with governments and the media, give him a

unique opportunity to mobilize international support; an important further part of his multilateral leadership role lies in constructing and maintaining the multinational coalitions which are an essential element in the contemporary implementation of UN-authorized peace operations. The Secretariat, particularly through its reports and recommendations to the Security Council, makes a major contribution to shaping the deliberations and determining the range of options considered. That contribution, it must be said again, can be negative as well as positive: Rwanda in 1994 involved a failure, not only by key member states, but in the leadership of the UN and in the effective functioning of the Secretariat as well.

8.20 Beyond the UN itself, including all the organs and agencies in the system beyond the Secretariat, there are multiple other international actors whose roles are immensely relevant to the intervention issue, in particular regional and sub-regional organizations, and international NGOs, and the media. We have mentioned the key institutional players throughout this report, and need not here do so again.

8.21 As to the media, there is no question that good reporting, well-argued opinion pieces and in particular real time transmission of images of suffering do generate both domestic and international pressure to act. The “CNN effect” can be almost irresistible, unbalanced in its impact though it may be, with similarly troubling crises not always receiving similar attention. On the other hand, by focusing attention on human suffering, media attention sometimes tends to divert policy makers from hard diplomatic and military decisions, with time pressures sometimes pushing them to become involved before serious analysis and planning can occur. That is perhaps a lesser sin than those of total inertia or excessive delay, but it can create problems nonetheless.

8.22 International NGOs have been significant advocates of cross-border human protection action, extending in some cases to military intervention, and their positive influence in stirring response – especially in the West – has been great. Yet they too, from the perspective of the decision makers they seek to influence, can have their limitations as advocates: they are seen often as lacking in policy making experience, frequently as unhelpfully divided over which precise policy course is optimal, and sometimes as reluctant publicly (as distinct from privately) to endorse coercive measures which may be necessary, but which are not easy for governments or intergovernmental institutions to deliver without overt support.

8.23 The goals of policy makers and humanitarian advocates are not so different from each other. Given that the application of deadly force should remain an option of last resort, there is still a range of choices between doing nothing and sending in the troops. There are always options to be considered before, during, and after lethal conflicts. Both policy makers and humanitarian advocates would like to see public policy succeed in tackling the most crucial issues of the day. One of the most pressing such issues is how to make good the responsibility to protect those facing the worst sort of horrors the contemporary world has to provide.

NEXT STEPS

8.24 The Commission’s objective from the outset has been for our report to have a practical and concrete political impact, rather than simply provide additional stimulation to scholars and other commentators – though we hope to have done that as well. Consistent with our practical focus we have been mindful, throughout our work and consultations, of the need to ensure a solid foundation for the discussions that will take place at the United Nations and in other international forums after the presentation of the report, as well as within governments and among those who seek to influence them.

8.25 Our immediate hope is that by helping to clarify and focus the terms of the debate – not as a contest between sovereignty and intervention, but as involving “the responsibility to protect” as a common theme – a way forward will be found through the current polemics and present impasse in that debate. We want, above all, to strengthen the prospects for obtaining action, on a collective and principled basis, with a minimum of double standards, in response to conscience-shocking situations of great humanitarian need crying out for that action. If our report can help to stimulate support for such action by reminding states of their common responsibilities, then it will have made a very significant contribution indeed.

8.26 The principles of action around which we would like to see consensus develop are summarized in the Synopsis set out in the first pages of this report. What should happen next to advance them? There has been much discussion, at national, regional and international levels, on how best to approach the practical task of trying to embody any new consensus among states on the question of intervention for human protection purposes. Some suggest that the focus should be on drafting guidelines for the internal use of the Security Council; some support the passing of a more formal resolution by the General Assembly; and others have gone so far as to suggest that work should begin on the drafting of a new international convention, or even an amendment to the UN Charter itself.

8.27 The Commission believes that it would be premature to make a judgement now as to what will ultimately prove possible if consensus around the idea of “the responsibility to protect” builds to the extent that we hope it will. The important thing now is to make a start, with member states working with the Secretary-General to give substantive and procedural content to the ideas we advance. There are major roles to be played by the Secretary-General himself, by the Security Council and by the General Assembly, and we make some suggestions in this respect in the following recommendations. The Commission makes no judgement as to the most appropriate sequence in which these steps should be taken.

8.28 The Commission recommends to the General Assembly:

That the General Assembly adopt a draft declaratory resolution embodying the basic principles of the responsibility to protect, and containing four basic elements:

- an affirmation of the idea of sovereignty as responsibility;*
- an assertion of the threefold responsibility of the international community of states – to prevent, to react and to rebuild – when faced with human protection claims in states that are either unable or unwilling to discharge their responsibility to protect;*
- a definition of the threshold (large scale loss of life or ethnic cleansing, actual or apprehended) which human protection claims must meet if they are to justify military intervention; and*
- an articulation of the precautionary principles (right intention, last resort, proportional means and reasonable prospects) that must be observed when military force is used for human protection purposes.*

8.29 The Commission recommends to the Security Council:

- (1) *That the members of the Security Council should consider and seek to reach agreement on a set of guidelines, embracing the “Principles for Military Intervention” summarized in the Synopsis, to govern their responses to claims for military intervention for human protection purposes.*

- (2) *That the Permanent Five members of the Security Council should consider and seek to reach agreement not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.*

8.30 The Commission recommends to the Secretary-General:

That the Secretary-General give consideration, and consult as appropriate with the President of the Security Council and the President of the General Assembly, as to how the substance and action recommendations of this report can best be advanced in those two bodies, and by his own further action.

MEETING THE CHALLENGE

8.31 Throughout its deliberations, the Commission has sought to reconcile two objectives: to strengthen, not weaken, the sovereignty of states, and to improve the capacity of the international community to react decisively when states are either unable or unwilling to protect their own people. Reconciling these two objectives is essential. There is no prospect of genuine equality among peoples unless the sovereignty of states is respected and their capacity to protect their own citizens is enhanced. Equally, the very term “international community” will become a travesty unless the community of states can act decisively when large groups of human beings are being massacred or subjected to ethnic cleansing.

8.32 The Commission is optimistic that these dual objectives – enhancing the sovereign capacity of states and improving the ability of the international community to protect people in mortal danger – can be reconciled in practice. Our work reflects the remarkable, even historic, change that has occurred in the practice of states and the Security Council in the past generation. Thanks to this change, no one is prepared to defend the claim that states can do what they wish to their own people, and hide behind the principle of sovereignty in so doing. In the international community, just as there can be no impunity for unwarranted unilateral uses of force, nor can there be impunity for massacre and ethnic cleansing. No one who has perpetrated such horrors should ever be allowed to sleep easily.

8.33 This basic consensus implies that the international community has a responsibility to act decisively when states are unwilling or unable to fulfill these basic responsibilities. The Commission has sought to give clear articulation to this consensus, and calls on all members of the community of nations, together with non-governmental actors and citizens of states, to embrace the idea of the responsibility to protect as a basic element in the code of global citizenship, for states and peoples, in the 21st century.

8.34 Meeting this challenge is more than a matter of aspiration. It is a vital necessity. Nothing has done more harm to our shared ideal that we are all equal in worth and dignity, and that the earth is our common home, than the inability of the community of states to prevent genocide, massacre and ethnic cleansing. If we believe that all human beings are equally entitled to be protected from acts that shock the conscience of us all, then we must match rhetoric with reality, principle with practice. We cannot be content with reports and declarations. We must be prepared to act. We won't be able to live with ourselves if we do not.

