

PART III

BACKGROUND



The background component of this volume consists of three parts. The first part of the background provides a brief description of the terms of reference and various activities of the International Commission on Intervention and State Sovereignty (ICISS) itself, as well as how it was organized and functioned. The second part of the background contains short biographical information about the 12 Commissioners. The third features a list of participants and summary reports for each regional roundtable and national consultation that was organized on behalf of the ICISS.

1. ABOUT THE COMMISSION

Mandate

At the United Nations (UN) Millennium Assembly in September 2000, Canadian Prime Minister Jean Chrétien announced that an independent International Commission on Intervention and State Sovereignty (ICISS) would be established as a response to Secretary-General Kofi Annan's challenge to the international community to endeavour to build a new international consensus on how to respond in the face of massive violations of human rights and humanitarian law.

Launching ICISS on September 14, 2000, then Foreign Minister Lloyd Axworthy said that the mandate of ICISS would be to promote a comprehensive debate on the issues and to foster global political consensus on how to move from polemics, and often paralysis, toward action within the international system, particularly through the UN. Much as the Brundtland Commission on Environment and Development in the 1980s took the apparently irreconcilable issues of development and environmental protection and, through the process of an intense intellectual and political debate, emerged with the notion of "sustainable development," it was hoped that ICISS would be able to find new ways of reconciling the seemingly irreconcilable notions of intervention and state sovereignty.

It was proposed that ICISS complete its work within a year, enabling the Canadian Government to take the opportunity of the 56th session of the UN General Assembly to inform the international community of ICISS's findings and recommendations for action.

Commissioners

The Canadian Government invited to head ICISS the Honourable Gareth Evans, AO QC, President of the International Crisis Group and former Australian Foreign Minister, and His Excellency Mohamed Sahnoun of Algeria, Special Advisor to the UN Secretary-General and formerly his Special Representative (SRSG) for Somalia and the Great Lakes Region of Africa. In consultation with the Co-Chairs, 10 other distinguished Commissioners were appointed, spanning between them an enormously diverse range of regional backgrounds, views and perspectives, and experiences and eminently able to address the complex array of legal, moral, political, and operational issues ICISS had to confront. A full list of the members of ICISS, with biographical summaries, is contained in the second part of the background component of this volume.

Advisory Board

Canada's Minister of Foreign Affairs, the Honourable John Manley, appointed an international Advisory Board of serving and former foreign ministers and other eminent individuals to act as a political reference point for the ICISS. The Advisory Board was designed to help Commissioners ground their report in current political realities and assist in building the political momentum and public engagement required to follow up on its recommendations.

Members of the Advisory Board are the Honourable Lloyd Axworthy (Chair), Director and CEO of the Liu Centre for the Study of Global Issues at the University of British Columbia and former Canadian Minister of Foreign Affairs; Her Excellency María Soledad Alvear Valenzuela, Minister of Foreign Affairs of the Republic of Chile; Dr. Hanan Ashrawi, former Cabinet Minister of the Palestinian National Authority; Right Honourable Robin Cook,

President of the Council and Leader of the House of Commons, United Kingdom of Great Britain and Northern Ireland, and former British Foreign Secretary; Mr. Jonathan F. Fanton, President of the John D. and Catherine T. MacArthur Foundation; Professor Bronisław Geremek, Chair of the European Law Committee of the Sejm of the Republic of Poland; Her Excellency Rosario Green Macías, former Secretary of Foreign Relations, United Mexican States; Dr. Vartan Gregorian, President of the Carnegie Corporation of New York; Dr. Ivan Head, Founding Director of the Liu Centre for the Study of Global Issues, University of British Columbia; Honorable Patrick Leahy, United States (US) Senator; His Excellency Amre Moussa, Secretary-General of the League of Arab States and former Minister of Foreign Affairs of the Arab Republic of Egypt; His Excellency George Papandreou, Minister of Foreign Affairs of the Hellenic Republic; His Excellency Dr. Surin Pitsuwan, former Minister of Foreign Affairs of the Kingdom of Thailand; Dr. Mamphela Ramphele, Managing Director of The World Bank Group and former Vice-Chancellor of the University of Cape Town; and His Excellency Adalberto Rodríguez Giavarini, Minister of Foreign Relations, International Trade and Worship of the Argentine Republic.

The Advisory Board met with Commissioners in London on June 22, 2001, with the following members participating in what proved to be a highly lively and productive debate: former Canadian Foreign Minister, Lloyd Axworthy; Secretary-General of the Arab League, Amre Moussa; former British Foreign Secretary, Robin Cook; former Mexican Foreign Minister, Rosario Green; former Chilean Foreign Minister Juan Gabriel Valdés (also representing the current Chilean Foreign Minister); representatives of the foreign ministers of Argentina and Greece; President of the MacArthur Foundation, Jonathan Fanton; and Founding Director of the Liu Centre at the University of British Columbia, Ivan Head.

Commission Meetings

Five full meetings of ICISS were held: in Ottawa on November 5–6, 2000; Maputo, March 11–12, 2001; New Delhi, June 11–12, 2001; Wakefield, Canada, August 5–9, 2001; and Brussels, September 30, 2001. There was also an informal Commission meeting in Geneva on February 1, 2001, involving a number of Commissioners in person and others by conference call, and multiple further meetings of small groups of Commissioners in the roundtables and consultations described below.

At their first meeting, Commissioners considered a series of central questions, identified the key issues and decided on a general approach. An early draft outline of the report was then developed and circulated. This outline was considered at the Geneva meeting in early February and expanded further at the Maputo meeting in March. A fuller draft was then produced in May, circulated to Commissioners for consideration and initial comment and considered in more detail at the New Delhi meeting in June. Significant changes to the substance and structure of the report were agreed on at that meeting. On this basis, a further draft was produced and circulated in early July, with Commissioners making specific written comments.

The final stage of the process involved the Co-Chairs themselves – meeting in Brussels over several days in July – producing a further full-length draft, with substantial written input from a number of other Commissioners. The Co-Chairs' draft, distributed to Commissioners a week in advance of the final Commission meeting in Wakefield, was then considered in exhaustive detail over four days. The final terms of the report were agreed on unanimously. A further meeting of the Commission was held in Brussels at the end of September to consider the implications for the report of the horrifying terrorist attacks on New York and Washington DC earlier that month: this resulted in a number of adjustments to the final text as published.

Consultation

In order to stimulate debate and ensure that ICISS heard the broadest possible range of views during the course of its mandate, 11 regional roundtables and national consultations were held around the world between January and July 2001. In date order, they were held in Ottawa on January 15, Geneva on January 31, London on February 3, Maputo on March 10, Washington DC, on May 2, Santiago on May 4, Cairo on May 21, Paris on May 23, New Delhi on June 10, Beijing on June 14, and St Petersburg on July 16. Summaries of the issues discussed in these meetings, and lists of those participating in them, may be found in what follows.

At least one, and usually both, of the Co-Chairs attended each of these consultations, for the most part with some other Commissioners as well. A variety of national and regional officials, and representatives of civil society, nongovernmental organizations (NGOs), academic institutions and think-tanks were invited to each of the meetings. A paper setting out the main issues from ICISS's perspective was circulated to participants in advance of the meetings to stimulate discussion, and specific participants were invited in advance to prepare papers and make special presentations on various aspects of the issues. These papers formed an additional and extremely useful source of research material on which ICISS could draw. A further participant at each roundtable was selected to produce a summary report of the proceedings and outcomes of each of the roundtables. These various contributions are more fully acknowledged elsewhere in this volume.

Regular briefings were also given to interested governments in capitals, as well as to diplomatic missions in Ottawa and Geneva and most recently in New York on June 26–27, where the Commission met with representatives from a number of Permanent Missions as well as with Secretary-General Annan and key members of the UN Secretariat. Consultations were also held in Geneva on January 31 with the heads or senior representatives of major international organizations and UN agencies (UN Office Geneva, UN High Commissioner for Refugees, Commission on Human Rights, World Health Organization, International Organization for Migration [IOM], International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies, and Office for the Coordination of Humanitarian Affairs).

Research

An extensive programme of research was organized in support of ICISS's work. Aiming to build upon and complement the many efforts previously undertaken on these issues, Commissioners drew upon the record of debate and discussion generated at the UN and in regional and other forums; the vast body of already published scholarly and policy research on this topic, including a number of important independent and nationally sponsored studies; and a series of papers and studies specially commissioned for the ICISS.

To supplement and consolidate the intellectual dimension of ICISS's work, an international research team was created. This was led jointly by Thomas G. Weiss of the United States, Presidential Professor at The CUNY Graduate Center, where he is also director of the Ralph Bunche Institute for International Studies, and Stanlake J.T.M. Samkange, of Zimbabwe, a lawyer and former speechwriter to UN Secretary-General Boutros Boutros-Ghali. Tom Weiss, with research consultant Don Hubert of Canada, assumed primary responsibility for producing the research papers contained in this supplementary volume, while Stanlake Samkange's primary role was as rapporteur, assisting ICISS in the drafting of its report.

Other members of the research team played important roles. Kevin Ozgercin and Peter Hoffman of the Research Directorate, located at The CUNY Graduate Center, provided essential research and support in the writing of this volume. Carolin Thielking at Oxford University, with supervision from Professor S. Neil MacFarlane, had a principal role in the preparation of the bibliography contained in this volume.

It is hoped that the research material prepared for ICISS and contained in this supplementary volume, together with the report itself, will constitute an enduring legacy for scholars, specialists and policy makers in the field. This volume, as well as the report, have accordingly been produced and made available in CD-ROM form, with the Bibliography cross-referenced with key-words to enhance its utility as a research tool. These and other documents also appear on the special ICISS website – www.iciss-ciise.gc.ca – which will be maintained for at least the next five years.

Administrative Support

The workplan of ICISS was administered by a small Secretariat, provided as part of the Canadian Government support for ICISS. Housed within the Department of Foreign Affairs and International Trade in Ottawa, the Secretariat undertook necessary fund-raising, organized the roundtable consultations and Commissioners' meetings, managed the publication and distribution of ICISS's report and background research, and spearheaded diplomatic efforts to engage governments and build political support for the debate. The Secretariat was led by Jill Sinclair, Executive Director, and Heidi Hulan, Deputy Director, and comprised Susan Finch, Manager of the Outreach Strategy; Tony Advokaat, Policy Advisor; Joseph Moffatt, Policy Advisor; Tudor Hera, Policy Analyst; Harriet Roos, Manager of Communications; and Carole Dupuis-Têtu, Administrative Assistant. Former Australian diplomat Ken Berry acted as Executive Assistant to the Co-Chairs, and staff at Canadian Embassies round the world and the International Development Research Centre in Ottawa provided additional support to the Secretariat.

Funding

ICISS was funded by the Canadian Government, together with major international foundations, including the Carnegie Corporation of New York, the William and Flora Hewlett Foundation, the John D. and Catherine T. MacArthur Foundation, the Rockefeller Foundation, and the Simons Foundation. ICISS is also indebted to the governments of Switzerland and the United Kingdom for their generous financial and in-kind support to the work of ICISS.

2. ABOUT THE COMMISSIONERS

Gareth Evans (*Australia*), *Co-Chair*, has been President and Chief Executive of the Brussels-based International Crisis Group since January 2000. He was an Australian Senator and Member of Parliament from 1978 to 1999 and a Cabinet Minister for 13 years (1983–1996). As Foreign Minister (1988–1996), he played prominent roles in developing the UN peace plan for Cambodia, concluding the Chemical Weapons Convention, founding the Asia Pacific Economic Cooperation forum and initiating the Canberra Commission on the Elimination of Nuclear Weapons. He is a Queen's Counsel (1983) and Officer of the Order of Australia (2001). His many publications include *Cooperating for Peace* (1993) and the article "Cooperative Security and Intrastate Conflict" (*Foreign Policy*, 1994), for which he won the 1995 Grawemeyer Prize for Ideas Improving World Order.

Mohamed Sahnoun (*Algeria*), *Co-Chair*, is a Special Advisor to the UN Secretary-General and has previously served as Special Envoy of the Secretary-General on the Ethiopian–Eritrean conflict (1999); Joint UN–Organization of African Unity (OAU) Special Representative for the Great Lakes Region of Africa (1997); and SRSG for Somalia (March–October 1992). He was also a member of the World Commission on Environment and Development (the Brundtland Commission). A senior Algerian diplomat, he served as Ambassador to Germany, France, the US, and Morocco and as Permanent Representative to the UN in New York. He also served as Deputy Secretary-General of both the OAU and the Arab League.

Gisèle Côté-Harper (*Canada*) is a barrister and Professor of Law at Laval University, Quebec. She has been a member of, among numerous other bodies, the UN Human Rights Committee, the Inter-American Institute of Human Rights, and the Quebec Human Rights Commission. She was Chair of the Board of the International Centre for Human Rights and Democratic Development (Montreal) (1990–1996) and a member of the official Canadian delegation to the Fourth World Conference on Women, Beijing (1995). She was awarded the Lester B. Pearson Peace Medal in 1995 and in 1997 became an Officer of the Order of Canada, as well as receiving the Quebec Bar Medal. Among her published works is *Traité de droit pénal canadien* (4th ed., 1998).

Lee Hamilton (*US*) is Director of the Woodrow Wilson International Center for Scholars, Washington, DC, and Director of the Center on Congress at Indiana University. A member of the US Congress from 1965 to 1999, his distinguished record includes the chairships of the Committee on International Relations, the Permanent Select Committee on Intelligence, and the Joint Economic Committee. He has served on a number of commissions dealing with international issues, including the Task Force on Strengthening Palestinian Public Institutions, the Task Force on the Future of International Financial Architecture, and the Council of Foreign Relations Independent Task Force on US–Cuban Relations in the 21st Century, as well as numerous other panels, committees, and boards.

Michael Ignatieff (*Canada*) is currently Director of the Carr Center for Human Rights Policy at the Kennedy School of Government, Harvard University. He is also a Senior Fellow of the 21st Century Trust and served as a member of the Independent International Commission on Kosovo. Since 1984 he has worked as a freelance writer, broadcaster, historian, moral philosopher, and cultural analyst. He has written extensively on ethnic conflict

and most recently on the various conflicts in the Balkans, including *Virtual War: Kosovo and Beyond*. He has also authored numerous other works, including a biography of the liberal philosopher Isaiah Berlin. *The Russian Album*, a family memoir, won Canada's Governor General's Literary Award and the Heinemann Prize of Britain's Royal Society of Literature in 1988. His second novel, *Scar Tissue*, was short-listed for the Booker Prize in 1993.

Vladimir Lukin (*Russia*) is currently Deputy Speaker of the Russian State Duma. He worked at the Institute of World Economics and International Relations, Moscow (1961–1965) and the Institute of US and Canadian Studies of the Soviet Academy of Sciences (1968–1987). He also served from 1965 to 1968 as an editor of the international journal *Problems of the World and Socialism*, in Prague, but was expelled for opposing the Soviet invasion of Czechoslovakia in 1968. He joined the Soviet Foreign Ministry in 1987 and served as Russian Ambassador to the US (1992–1993). He was elected a Deputy to the Supreme Soviet of the Russian Soviet Federated Socialist Republic in 1990 and to the State Duma of the Russian Federation in 1993. In that year, he helped found the Yabloko Faction, a party that he still represents. He served as Chair of the International Affairs Committee of the Duma (1995–1999).

Klaus Naumann (*Germany*) served as Chair of the North Atlantic Military Committee of the North Atlantic Treaty Organization (NATO) (1996–1999) and played a central role in managing the Kosovo crisis and in developing NATO's new integrated military command structure. He joined the German Bundeswehr in 1958. As a Colonel, he served on the staff of the German Military Representative to the NATO Military Committee in Brussels in 1981–1982. He was promoted to Brigadier General in 1986, followed by a two-star assignment as Assistant Chief of Staff of the Federal Armed Forces. He was promoted to Four Star General in 1991 and appointed, at the same time, Chief of Staff, a position he held until becoming Chair of the NATO Military Committee. After retirement, he served as a member of the Panel on UN Peace Operations.

Cyril Ramaphosa (*South Africa*) is currently Executive Chair of Rebserve, a major South African service and facilities management company. He was elected Secretary-General of the African National Congress in June 1991, but he left politics for business in 1996. He played a major role in building the biggest and most powerful trade union in South Africa, the National Union of Mineworkers, from 1982 onwards. A lawyer by training, his university years were interrupted by periods in jail for political activities. He played a crucial role in negotiations with the former South African regime to bring about a peaceful end to apartheid and steer the country toward its first democratic elections in April 1994, after which he was elected Chair of the new Constitutional Assembly. He received the Olaf Palme prize in October 1987 and was invited to participate in the Northern Ireland peace process in May 2000.

Fidel V. Ramos (*Philippines*) served as President of the Republic of the Philippines from 1992 to 1998 and has since 1999 been Chair of the Ramos Peace and Development Foundation, which deals with Asia-Pacific security, sustainable development, democratic governance, and economic diplomacy. Prior to becoming President, he had a long and distinguished military and police career, including service in both the Korean and Vietnam wars. He became Deputy Chief of Staff of the armed forces of the Philippines in 1981 and Chief of Staff in 1986 and subsequently served as Secretary of National Defence from 1988 to 1991. He played a central role in peace negotiations with Muslim rebels in the southern Philippines and wrote *Break Not the Peace*, a book about that peace process.

Cornelio Sommaruga (*Switzerland*) is currently President of the Caux Foundation for Moral Re-Armament, as well as President of the Geneva International Centre for Humanitarian Demining. He is, in addition, a member of the Board of the Open Society Institute, Budapest, and served as a member of the Panel on UN Peace Operations. Prior to that, he was President of the International Committee of the Red Cross (ICRC) (1987–1999). From 1984 to 1986, he served as Switzerland's State Secretary for External Economic Affairs. From 1960, he had had a long and distinguished career as a Swiss diplomat, including a period from 1973 as Deputy Secretary-General of the European Free Trade Association in Geneva. In 1977–1978, he served as President of the UN Economic Commission for Europe.

Eduardo Stein Barillas (*Guatemala*) is currently working with United Nations Development Programme in Panama and served as Head of the Organization of American States (OAS) Observer Mission to Peru's May 2000 general elections. He was Guatemalan Foreign Minister (1996–2000), a position in which he played a key role in overseeing the Guatemalan peace negotiations, particularly in marshalling international support. He lectured in universities in Guatemala and Panama from 1971 to 1980 and 1985 to 1987; and from 1982 to 1993, he was based in Panama and worked on various regional development projects within the Latin American Economic System and the Contadora Group. This involved cooperation with various Latin American countries, the European Community, and the Nordic countries. From December 1993 to 1995, he was Resident Representative in Panama of the Organization for Migration (IOM).

Ramesh Thakur (*India*) has been Vice-Rector of the United Nations University, Tokyo, since 1998, in charge of the university's Peace and Governance Program. Educated in India and Canada, he was a lecturer, then Professor of International Relations at the University of Otago (New Zealand) from 1980 to 1995. He was then appointed Professor and Head of the Peace Research Centre at the Australian National University in Canberra, where he was involved in the Non-Proliferation Treaty Review and Extension Conference, drafting of the Comprehensive Test Ban Treaty and the International Campaign to Ban Landmines. He was also a consultant to the Canberra Commission on the Elimination of Nuclear Weapons. He is the author of numerous books and articles, including *Past Imperfect, Future Uncertain: The United Nations at Fifty*, and in 2000 he co-edited *Kosovo and the Challenge of Humanitarian Intervention*.

3. REGIONAL ROUNDTABLES AND NATIONAL CONSULTATIONS

An integral part of the deliberations by the ICISS consisted of 11 regional roundtables and national consultations. The summaries of those deliberations along with participants who were invited by ICISS and attended the sessions are listed below.

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OTTAWA

ROUNDTABLE CONSULTATION WITH NONGOVERNMENTAL AND OTHER INTERESTED ORGANIZATIONS

JANUARY 15, 2001

PARTICIPANTS

John English, University of Waterloo (Co-Chair)
Steven Lee, Canadian Centre for Foreign Policy Development (Co-Chair)

Charlie Avendano, Mines Action Canada
Gerry Barr, Canadian Council for International Cooperation
Gerald Caplan, author
Jocelyn Coulon, Pearson Peacekeeping Centre
Jean Daudelin, North-South Institute

Pierre Duplessis, Canadian Red Cross
 John Hay, Consultant
 Roman Jakubow, Department of National Defence
 Will Kymlicka, Queen's University at Kingston
 Hunter McGill, Canadian International Development Agency
 Errol Mendes, Human Rights Research and Education Centre, University of Ottawa
 Mohammed Qazilbash, Oxfam Canada
 Ernie Regehr, Project Ploughshares
 Jean-François Rioux, Université du Québec à Montréal
 Penelope Simons, Simons Foundation
 Denis Stairs, Dalhousie University
 Nečla Tschirgi, International Development Research Centre
 A. John Watson, CARE Canada
 Fergus Watt, Canadian Peacebuilding Coordinating Committee
 Paul Wharram, Canadian Red Cross
 James Wright, Department of Foreign Affairs and International Trade, Canada

SUMMARY

Terminology

There was broad support, particularly from the NGO community, for dissociating the term "humanitarian" from the concept of military intervention. It was noted that a change in terminology could also help to move the debate away from how it had traditionally been developed, though one participant argued that basing it on protection has a neocolonial ring to it. On the other hand, one member of the NGO community argued that the term "humanitarian" has a specific technical and legal meaning in the context of the intervention debate. The term "humanitarian intervention" refers to a very limited military emergency-response mechanism carried out according to humanitarian principles, such as universality, independence, impartiality, and humanity. Hence, there is value in retaining that term and distinguishing it from other types of collective military action.

National Interest

The question was raised of how there could be serious nonselective intervention when it is the five permanent members of the Security Council (P-5) who determine whether there would be an intervention and who would participate. One participant argued that the major powers would support dictatorships abusive of their civilian population when it suits their interest. It was also noted that the Bush Administration would not favour intervention unless it is clearly in the national interest of the US.

National interest, rather than sovereignty, was identified as the most serious constraint on intervention, playing a key role in whether and where an intervention takes place. Thus, the real debate is not about the right of the international community to intervene and the target state's right of sovereignty, but about humanitarian imperatives and national interest. The need to reconceive the concept of national interest was emphasized. It is about economics and security, but it is also about reputation. There is a benefit in its own right in being, and being seen to be, a good international citizen. This may be a rationale that the Bush administration could understand.

It was suggested that we should assume that national interest is always present and that we should thus seek to harness it, instead of trying to distance it from the issue of intervention. This would mean focusing on states with an interest in the target state and working with

those states for effective intervention. On this argument, intervention should be undertaken by the states of the region, which would more likely than not be in the South, with an interest in the target state. In this way, the responsibility for the intervention would move to the states with something at stake. The current investment of the Northern states in intervention could be used instead to monitor and follow up on the missions.

Threshold Principles – Triggering Events and Measurement

Many of the participants suggested that the development of threshold principles – which, when met, would trigger international intervention – is important, particularly in making interventions more credible and helping to reassure states that the intervention is indeed legitimate and not abusive. However, it was also noted that some level of international consensus on threshold criteria for military intervention already exists and that the real challenge is finding an effective and timely way to *measure* when the criteria are met. It was suggested that there is a need for a disinterested but authoritative agency on the ground, with the resources and capacity to monitor and assess a humanitarian situation and determine whether the criteria for military intervention have been met. In addition, having criteria and a measurement mechanism would hopefully create a certain automaticity of action, so that when a crisis arises that has been determined as meeting the criteria, intervention of some kind would take place. One participant argued that the international community is not ready to codify the principles and criteria that would trigger intervention. Another pointed out that even if institutional mechanisms for intervention are established, the main challenge would be enabling such mechanisms to work effectively.

With respect to measurement, it was noted that the media, in particular CNN and the BBC, play a powerful role in determining whether or not a crisis situation exists, and the ensuing media and public pressure then helps to decide whether an intervention would take place.

Institutional Reform – Middle Powers

One participant argued for a sustained commitment to the reform of the UN Charter (and of the Security Council) to make the human rights provisions operational, rather than aspirational. Another pointed out that it is important to remain broad-minded about the question of institutional reform. The development of new institutions may be the path of least resistance.

One suggestion, which was broadly discussed, was that middle-power states that have developed a level of expertise in humanitarian aid and protection should carry out the interventions, and that major powers should support the initiative from behind the scenes. It was noted, from a military perspective, that it is preferable to have the major-power support but not necessarily to have its presence in the field. One problem with middle-power intervention, however, is that these states did not always have the resources to carry out interventions. Canada, for example, often relies on US resources for such operations, thus constraining independent Canadian action.

The discussion of institutional reform included reform of the military. A military participant argued that the military requires a new set of skills to effectively carry out a humanitarian mandate and be effective in conflict resolution. This also means that the contract between the military and the nation needs to be revised. There must be a change in policy, so that troops are trained and prepared to die in missions aimed at restoring peace and stopping or preventing violations of fundamental rights in a state or region where the conflict may have nothing to do with the intervening nation's direct military security.

Civil Society

There was a brief discussion of the role of civil society. It was suggested that a case needs to be made within civil societies, especially those of the P-5, that it is in the national interest to undertake both military intervention and missions for long-term conflict prevention and resolution. The question was raised whether it would be possible to gain the support of US civil society for such interventions.

Preventive Measures – Conflict Resolution

The need to use forms of intervention other than Chapter VII was emphasized. There was broad support for intervention consisting of preventive measures, so human rights situations would not reach the critical point that, for example, the Rwandan crisis reached. At the same time, participants were challenged to think about International Monetary Fund-administered economic austerity packages as interventions in their own right. The West has to accept responsibility for the impact it has on social and economic structures.

The question of timing was deemed critical. It was argued that the earlier an intervention takes place, the greater chance it would have of being effective and the greater the possibility of rebuilding an inclusive society after the conflict. One participant stated that once people are being murdered and there is a need for military forces, the situation is already lost.

It was suggested that since the genocidal process usually begins within civil society, ICISS should look at some of the early symptoms of genocide and consider preventive measures, such as

- ❑ tracking the transfer of property and the traffic of conflict commodities;
- ❑ tracking the development of prejudice in the local language;
- ❑ taking steps to stop or prevent the dissemination of hate propaganda;
- ❑ educating the local population;
- ❑ promoting discussion of the protection of civilians and humanitarian workers in forums such as the Economic and Social Council;
- ❑ creating a stable environment within which civilians can live their lives and humanitarian workers can provide necessary assistance;
- ❑ promoting the humanitarian values of democratic principles, tolerance, and respect; and
- ❑ providing a security envelope for moderates from the perpetrators' side.

It was noted that there is a role for middle powers in conflict prevention and resolution, depending on their expertise. However, one NGO representative also made the point that the absence of a public perception of crisis is the primary impediment to effective preventive action. Another participant stated that it is necessary to employ small strategies, limited in scope, so that states would not shrink from undertaking legitimate interventions.

Use of Force

On the question of whether it is appropriate to use force for humanitarian purposes, an NGO participant stated that it would be necessary to measure the true consequences of a military intervention. On the ground, military force can be as damaging as nonintervention and have long-term consequences. However, another NGO participant argued that there would be utility in identifying a category of intervention using military force that could be

true to a humanitarian mandate. Such a use of force would be very heavily circumscribed and designed to address humanitarian issues and not to advance the interest of the intervenors. Moreover, building international support for constrained humanitarian action would be possible only if it is genuinely different from warfighting.

A member of the military made the point that use of force in this context needs to be multidisciplinary. Thus, a mission must incorporate political, humanitarian, economic, military, and nation-building elements in one plan, and it must be designed for the long term. It was also noted that the kinds of problems that intervention seeks to deal with require a long-term commitment, substantial commitment of financial and personnel resources, and highly intrusive participation in governmental processes, if the issues are to be addressed in a responsible way. On the other hand, some participants argued that it is easier to sell the idea of short-term intervention to politicians. Another participant noted that states often pledge large resources for post-conflict–post-disaster reconstruction but rarely pay what they have pledged.

The question was raised whether intervention should also include operations aimed at reinstating a democratically elected government – a type of mission that has support among some African nations. However, there were no comments made in favour of this. One participant argued in favour of keeping the goal posts on the issue narrow, because of the difficulty in achieving international consensus on intervention for humanitarian purposes. Widening the possible rationales would open the door further to the possibility of abusive intervention.

Nonmilitary Measures

Some participants raised the issue of nonmilitary measures to entice governments to change their behaviour or cease committing violations of fundamental human rights. Economic sanctions often adversely affect the civilian population, rather than the ruling elite. “Smart sanctions” should be examined that could effectively put a stranglehold on the resources of such ruling elites.

Another participant argued for enlarging the general view of what human suffering is, so as to include poverty, hunger, etc., and to be more creative in thinking about what measures would entice governments to change. Debt forgiveness may have more leverage than the use of force with governments that are perpetrating human rights abuses, and such measures may ultimately be more constructive than military intervention.

UN Rapid-Reaction Force – Mercenary Forces

Several participants mentioned the need for a UN rapid-reaction force, which would give the UN greater capacity to act. The problem of who would command such a force and who would decide when and where it would be deployed was raised. A member of the military noted that it is unlikely that the P-5 would allow such a force to be effective.

The use of mercenary forces was discussed and deemed an important issue to consider. A member of the military noted that, from a soldier’s perspective, it was not clear who would pay the troops, what their credibility would be after their first failure, and what loyalty they would have. Another participant pointed out that some UN missions already used mercenary forces. While some states donated their forces, for others it was a form of revenue. It was the mandate and the conduct of the force that was important, rather than the motive.

GENEVA I

ROUNDTABLE CONSULTATION WITH UNITED NATIONS AND INTERNATIONAL ORGANIZATIONS

JANUARY 31, 2001

PARTICIPANTS

Gareth Evans, ICISS (Co-Chair)

Mohamed Sahnoun, ICISS (Co-Chair)

Gro Harlem Brundtland, World Health Organization

Annar Cassam, UN Educational, Scientific and Cultural Organization (Geneva)

Stephen Davey, International Federation of Red Cross and Red Crescent Societies

Jacques Forster, ICRC

Ruud Lubbers, UN High Commissioner for Refugees (UNHCR)

Brunson McKinley, International Organization for Migration

Ross Mountain, Office for the Coordination of Humanitarian Affairs

Vladimir Petrovsky, UN Office at Geneva

Mary Robinson, UN High Commissioner for Human Rights

Christopher Westdal, Canadian Mission to the UN, Geneva

GENEVA II

ROUNDTABLE CONSULTATION WITH NONGOVERNMENTAL AND OTHER INTERESTED ORGANIZATIONS

JANUARY 31, 2001

PARTICIPANTS

Jovan Patnogić, International Institute of Humanitarian Law (Chair)

Justice Georges Abi-Saab, Graduate Institute of International Studies, Geneva

Adrien Arena, International Commission of Jurists

Kofi Asomani, Centre for Humanitarian Dialogue

David Atwood, Quaker UN Office

Anatoli Ayissi, UN Institute for Disarmament Research

Rachel Brett, Quaker UN Office

William Canny, International Catholic Migration Commission

Andrew Clapham, Graduate Institute of International Studies, Geneva

Luigi Condorelli, Université de Genève

Marie-Anne Coninx, European Union (EU)

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SUMMARY

To help frame discussion, a discussion paper was presented that highlighted the following four issues.

The problematic focus on military intervention if the issue is to strengthen international means of protecting human rights. It could undermine the hard-won legitimacy of less coercive and intrusive actions to address human rights abuses (for example, economic and diplomatic sanctions, international criminal prosecutions) by making these seem the “slippery slope” to military intervention, as well as feeding the scepticism of many countries about the human rights agenda. Intervention has also been reserved for exceptional cases of human rights abuses – genocide, war crimes, and crimes against humanity – wherein political will to act exists.

Countries’ resistance to new interventionary norms is historically grounded in the way that colonial conquests are justified by moral arguments about “doing good” for the “natives” and, more narrowly, the way that “humanitarian intervention” means selective and not universal protection (for example, intervention on behalf of coreligionists or ethnic kin).

New institutions for military intervention are as important as new rules of international law. Resistance to intervention on human rights grounds also arises because people rightly contest the legitimacy of the UN Security Council, an unrepresentative body that can include as members governments responsible for committing crimes against humanity, as well as those that have refused to ratify key international human rights treaties. Issues such as reform of the Security Council or creation of a UN standby military force to act as an impartial “police force” are very difficult ones, but they need to be part of the debate that ICISS is undertaking.

The roles and responsibilities of the various actors needed to be rethought. Along with the roles and responsibilities of intervening governments and leading NGOs, the role of affected populations (victims) is one that it would be crucial to rethink, not just when military intervention is being considered but also in the aftermath when a state is to be rebuilt. Only through actively involving an affected population in rebuilding institutions can legitimate and sustainable institutions emerge.

In the discussion that followed, participants broadly endorsed ICISS’s possible approach of thinking of intervention in terms of a “responsibility to protect,” as opposed to a “right to intervene.” But doubts were still raised about ICISS’s continued emphasis on military intervention. There was strong endorsement of the point made in the discussion paper about consulting the victims.

It was pointed out that the responsibility to protect extends to the Security Council and that in a case such as Rwanda, involving grave violations of international law, a failure of the Council to act represents a further violation of international law by the Council itself. Such violations need greater publicity.

The Case for Military Intervention

A further paper was presented, making the case for military intervention. The main points were as follows:

Intervention, rather than nonintervention, has been the norm during the Cold War era, although the interventions have often been limited in scale, usually invited by the government of the target state, and rarely directed toward stopping violations of human rights or crimes against humanity.

Given this, the abstract case for intervention on grounds of massive violations of human rights or genocide is easy to make. The case for intervention would rest on sovereignty being treated as a conditional right acquired by states, granted by the international community on the basis of an acceptance that all individuals possess at least some inalienable human rights.

Circumstances that make intervention on human rights grounds appropriate:

- massive violations of human rights, and the government of the state in question is unable or unwilling to act to ameliorate the situation;
- after all nonmilitary means have been tried and found wanting, or when the urgency of the situation is such that nonmilitary means will not have time to take effect;
- when the use of military force has a high chance of stopping the massive violations of rights that are occurring;
- when the military means used is proportionate to the situation it faces; and
- when the military means does not cause a harm greater than it is intended to stop.

In these circumstances, intervention needs to be decided upon multilaterally. However, this does not mean that only the Security Council can authorize military intervention on human rights grounds generally, nor can it be presented as an absolute obstacle to intervention.

Military intervention is only justified if accompanied by a serious commitment to foster political, social, and economic arrangements that would reduce the risk of future massive violations of human rights. Intervention rarely "solves" the underlying problems that give rise to a massive violation of rights. A commitment to post-conflict state-building is also required.

The rule of nonintervention has never prevented the strong from violating the rights of the weak. A generalized right of intervention would not somehow create chaos in international relations, and it might actually save some lives and do some good.

In the ensuing discussion, it was noted that the difficulty remains of ensuring that the multilateral authorization of intervention is not dominated by developed countries. From a Western viewpoint, NATO is a democratic security community, but to others, it appears to be an ex-colonial club. Similarly, most international NGOs are from developed countries. Given this and the history of military intervention, people in developing countries might well say that intervention is never worth it.

Constraints on Military Intervention

A further paper was presented on constraints on intervention that made the following points:

- Customary international law concerning military intervention has not changed just because there have been cases of humanitarian intervention in recent years. To make new legal rules, state agreement is required. This agreement clearly has been withheld, and opposition exists to changing existing law.

- ❑ International law allows for cases of necessity based on moral reasons. But the intervention should not make the humanitarian situation worse. If Security Council authorization is not forthcoming, some other institutional means for debate is still required. The General Assembly would appear to be the most appropriate forum.
- ❑ In cases such as Rwanda, the constraints on intervention appeared to have been more practical than legal. The UN should have a multilateral force for overcoming the practical constraints.
- ❑ In considering operational constraints, people give too much attention to constituencies within an intervening state. Conversely, they give too little attention to affected populations within the target state.
- ❑ The “humanitarian intervention” label is worrying from the standpoint of bodies working on human rights and makes it harder to talk to states about human rights abuses.

In the ensuing discussion, a participant emphasized that intervention is proscribed in international law, except for Article 42 of the Charter, and this could only be changed through Charter reform. The Non-Aligned Movement has three times since Kosovo stated that it does not recognize humanitarian intervention, so such change is unlikely to occur any time soon. Moreover, reform of the Security Council would still not guarantee authorization for future interventions. There is, however, a way around the Security Council blockage, which is the “Uniting for Peace” resolution.

When other possible grounds for intervention were discussed, such as intervention to protect or restore democracy, it was pointed out that the dilemmas of determining when intervention might be justifiable would only become greater. The essential constituency should be the victims, but while those in the outside world might have some clarity about their views if a democracy is overturned through a military coup, in other cases it is going to be much more difficult to determine.

A participant questioned whether the issue is really whether or not the UN could take on a full-fledged army. Humanitarian protection usually means helping people in immediate danger from what are quite lightly armed forces. However, as someone else pointed out, the size of the intervening force sometimes does matter, as has been clearly demonstrated in Rwanda.

It was noted that the international community has been doing little in the area of prevention. In this context, a participant drew attention to the Médecins sans Frontières (Doctors Without Borders) proposal to create a Humanitarian Commission in the UN – composed of independent experts appointed by the Secretary-General – to serve as an information-gathering site, a source of analysis of the vulnerability of civilian populations, and a body to create clear guidelines and recommendations for action.

To Act or Not to Act

Another paper was then presented that differentiated between prevention, nonmilitary intervention, and military intervention. It was based on the target population’s perspective and dealt with the impact of intervention, especially from a long-term perspective. The main points were the following:

- ❑ Rebuilding must be part of intervention.
- ❑ Solutions cannot be imported from the outside. External actors may at first play a major role, but if they must support, empower, moderate, or exert pressure then they should do so in a capacity made secondary to that of local actors.

- ❑ There are no quick fixes. It takes a generation or more after intervention to “fix” a society.
- ❑ Prevention should be brought to the fore, and greater attention should be paid to post-conflict peace building.
- ❑ Military intervention is the worst-case scenario: it means that all other solutions have failed, and it brings as many problems as it solves. In the long term, military intervention inevitably disempowers local actors.

In the discussion that followed, a participant agreed that consideration of an intervention should always take up issues of long-term state-rebuilding, particularly since a long-term intervention often amounts in practice to a neocolonial trusteeship. Others, however, noted that it would not be thus if local actors are made central. It was also noted that the issue of disempowerment is also emerging in humanitarian relief and development debates and that all solutions – short or long term, interventionary or less coercive – need to take this into account.

Another participant noted that the vast majority of Cold War interventions have been part of state-supporting practices and have included military aid and economic development assistance. Those state-supporting practices have failed, and the work of ICISS should be seen as part of the ongoing search for something to replace them. In this respect, it makes sense for ICISS to reflect on whether “state-rebuilding” is connected to intervention.

Continuing this theme, a participant observed that given the number of interventions that have occurred in recent years, ICISS should examine what has worked in order to draw a better picture of how interventions should be mounted. Another participant observed that there is increasing interest in regional interventionary forces (for example, the EU’s rapid-reaction force), but there has been no strategic concept to guide its use – perhaps ICISS’s work could help in this regard. Someone also suggested that when ICISS “has the solution,” it should circulate its draft and allow comments in order to better develop the international consensus that ICISS hopes to create. Moreover, prevention has not been given much of a chance, and one role of ICISS could be to emphasize this. Reflecting on how to translate ICISS’s work into lasting results, a participant suggested that it should focus on the victims and seek to change attitudes and build an awareness of what has been happening to victims and in this way start a dialogue.

LONDON

REGIONAL ROUNDTABLE CONSULTATION WITH NONGOVERNMENTAL AND OTHER INTERESTED ORGANIZATIONS

FEBRUARY 3, 2001

PARTICIPANTS

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Martin Wollacott, *The Guardian*

SUMMARY

A Right or Duty of Humanitarian Intervention

It was generally agreed that the “Charter is a mess,” because both supporters and opponents of humanitarian intervention make appeals to its norms. The question is whether humanitarian intervention should be recognized as an exception to the *jus cogens* rules governing the use of force under the Charter. This led to a discussion of whether the Charter is a static or dynamic instrument. There was broad support for the latter interpretation, and it was pointed out that in the 1990s the Security Council was prepared to define humanitarian crises and human rights emergencies as constituting a threat to international peace and security under Article 39 of the Charter. This represents a major change when compared with the expansive interpretation given to the concept of “domestic jurisdiction” in Article 2 (7) during the Cold War.

Rather than working toward an explicit recognition of a right of humanitarian intervention, the participants gave some support for the view that ICISS’s final report should reinforce the value of the nonintervention rule. This position criticizes the Secretary-General’s attempt to counterpoise sovereignty and intervention, the argument being that it would be more productive to view humanitarian intervention as an extraordinary exception to the principle of nonintervention. It was suggested that there is merit in thinking of humanitarian intervention as a “tolerated practice,” rather than explicitly recognizing a right under international law. Two examples cited by participants were the international response to India’s intervention in East Pakistan and Tanzania’s intervention in Uganda. In the case of the latter, it was argued that whatever President Nyerere’s stated reasons had been, it was obvious that humanitarian considerations had motivated the action. It was pointed out by one participant that it is possible for the international community to simultaneously applaud and criticize an action.

There was agreement in the group that there is no chance of getting states to accept a general legal right of humanitarian intervention. Indeed, one participant argued that to think in terms of the language of a right is unhelpful. Discussion then turned to the question of what might be gained by shifting the language from one of rights to one of duties. In reflecting on whether there is a duty to act, it was agreed by some that there is advantage in limiting a duty

to the requirement that actors give consideration to what ought to be done. However, a minority felt that a “duty to consider” does not leave enough substance and would create too many loopholes for states to slip through. Nevertheless, it was broadly agreed that there is no prospect of securing international agreement on a duty to intervene.

Instead of thinking in terms of a right or duty of intervention, it was suggested from the ICISS side that it might be helpful to think in terms of a “responsibility to protect.” This is a more holistic concept than a right and has the merit of emphasizing that international intervention should encompass preventive aspects and the responsibility to participate in the mending of war-torn societies. There was some support for this idea, but one speaker felt that this reformulation still does not avoid the fundamental difficulties with the language of rights and duties.

Motives and Political Will

A central question debated throughout the day concerns the place of humanitarian motives in judging the legitimacy of particular interventions. There was no support for the view, held by many international lawyers, that intervening states should be motivated by primarily humanitarian reasons. The majority viewpoint was that mixed motives would be an inevitable feature of interventions, and what matters is the character of these interests: the international community should not worry too much about the purity of motives if an armed intervention rescues the victims of oppression and does not threaten wider order. A number of participants cited Vietnam’s intervention in Cambodia in December 1978 as a good example of this. How to judge the reasonableness of another state’s professed interests and decide whether its humanitarian justifications are bona fide were questions raised but not discussed.

It was suggested that motives should not be focused on to the exclusion of questions of political will. The obstacle to intervention in Rwanda had not been doctrinal concerns about sovereignty, but a question of the lack of political will on the part of UN member states. This led to an exchange about the willingness of Western societies to accept casualties in defence of strangers. It was agreed that the claim that the US has a “body-bag” culture is probably overstated and certainly does not apply to the United Kingdom (UK) and France. However, it was also agreed that there is a clear limit to the casualties that political authorities would be willing to incur in wars other than those fought for national survival. A few participants suggested that NATO’s reluctance to risk casualties in Kosovo undermined the humanitarian claims of NATO’s action. But it was pointed out by others that flying at 15,000 ft is not necessarily any less accurate than flying low where there is greater risk to the safety of pilots. In discussing the casualties issue, one proposal that met with some approval was to rely on private military force. A suggestion viewed as a political nonstarter was to resurrect the idea of a UN rapid-reaction force.

Hard versus Soft Codification

The idea of ICISS developing guidelines was raised, and this led to a lengthy discussion of the difference between hard and soft codification. The latter was defined by one participant as rules that serve as guidance devices – an “internal ethical checklist” – for policy makers. By contrast, hard codification involves drafting a convention or the highly controversial idea of amending the Charter to permit a right or duty of humanitarian intervention. There was general agreement that such a change of the Charter is not feasible in the foreseeable future and that any attempt to initiate such reform would meet with considerable opposition at the UN. Some participants were opposed to any form of codification – it is unwise to put

too much weight on criteria, because every case would have to be treated on its political and legal merits, and, at best, criteria would only be one consideration. Against this, others argued that criteria are important in reducing the risk that states would employ humanitarian justifications as a pretext for the use of force. One speaker suggested that the political costs of codification could be overcome by conducting any debate over criteria through private diplomatic channels. However, another speaker considered that to raise this issue at all would be "poisonous" and "divisive."

Those who were opposed to any form of codification argued for reliance on what one participant called the "common-law" approach to developing a new norm. It was suggested that this approach of building up precedents might be accelerated by greater recourse to the International Court of Justice (ICJ), and reference was made to the case before the ICJ concerning the legality of "Operation Allied Force" in Kosovo. However, this position received little support in the general discussion.

Southern Perspectives on Intervention

A key purpose of ICISS, stated several times during the day, is to create a new North-South consensus on intervention. It was noted that Southern states generally view the Northern agenda of humanitarian intervention with great suspicion, pointing to the selective character of Northern interventions. Consequently, they are mistrustful of the humanitarian claims made by the North, which they see as a smoke screen for the pursuit of selfish interests. The example of French intervention in Rwanda was cited in this context.

One participant pointed out that there is support among African states for a norm of collective intervention in cases where a democratically elected government has been overthrown. ECOWAS, for example, recognized that intervention was permissible to restore democratic government, an example being the favourable regional response that greeted Nigeria's intervention in Sierra Leone.

One participant argued that while the Security Council did not authorize the Nigerian intervention, it was possible to read into subsequent Council resolutions approval of this action. In legitimating future humanitarian interventions, the Security Council, it was suggested, might only authorize intervention with the consent of the relevant regional organization. This would address the concern among Southern states that intervention not take place without the consent of the affected parties. In discussing the prospects for regional intervention, one participant pointed to concerns about ulterior motives on the part of regional powers.

More broadly there was a consensus in the group that any progress on legitimating humanitarian intervention has to be located within the wider context of what one participant called a "duty of care" on the part of the North towards the South.

MAPUTO

REGIONAL ROUNDTABLE CONSULTATION WITH NONGOVERNMENTAL AND OTHER INTERESTED ORGANIZATIONS

MARCH 10, 2001

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SUMMARY

Definitions and Conditions

The first item to be discussed was the need for a coherent framework to capture the dynamics and complexity of intervention and state sovereignty. It was also suggested that a consensus was needed for some terminological reconceptualizations, such as a shift from a term like "humanitarian intervention." Many NGOs are sensitive to, and uncomfortable with, the association of "humanitarian" with military mandates. Furthermore, the application of the terminology restricts the debate on intervention in the sense that it creates the impression that if it is humanitarian, then it is automatically good. Similarly, a "right of

intervention” conjures a diversity of images, especially since it does not reflect the views of the needy.

There was general consensus that discussions of intervention and sovereignty should also include the role of the Bretton Woods institutions. Participants considered the criteria to be applied to determine when intervention should take place. Reference was made to the OAU’s conditions for intervention, which include 1) a breakdown of law and order; 2) circumstances where human suffering is intense; 3) preemptive involvement to control or contain complex political emergencies; 4) intervention to consolidate democracy and election monitoring; and 5) warlordism, or the criminalization of post-intervention states. In relation to point 5, participants seemed to agree on certain general factors that contribute to the rise of warlordism: mercenaries and the privatization of security, diverse agendas under the guise of humanitarianism, and the role of globalization and the undermining of state structures. All participants agreed that military interventions should only ever be made as a last resort.

Such guidelines, notwithstanding, participants discussed possible benchmarks for interventions. Some of the points agreed upon were 1) adequate and thorough discussions with involved parties; 2) interventions should have permanent and sustainable impact; 3) proactive prevention and early-warning and response mechanisms are needed; and 4) post facto interventions are normally not comprehensive, but usually a case of “too little, too late.”

As a result, participants considered the applicability of, or the need for, a terminological shift, such as that being considered by ICISS from a “right to intervene” to a “responsibility to protect.” The latter was seen to have broader implications. It implies a requirement to prevent crises a good deal in advance. It also implies notions of follow-through of issues dealing with reconciliation, rehabilitation, and post-conflict reconstruction of societies. Therefore, when one talks about the responsibility to protect, it does not imply only military entry and exit strategies but a consistent and sustainable responsibility. Furthermore, a responsibility to protect also connotes reciprocal responsibility between North and South. Questions were raised concerning whose responsibility it is to protect, since intervention by outsiders increasingly encompasses territorial, economic, and security interests of the intervenors.

Interventions in the African Context

Participants believed Africa has been marginalized by the Security Council, as indicated by an unwillingness to provide adequate resources for intervention in the continent. A frequent example given was the contrast between the UN response in the Balkans, where the international community expended billions of dollars, while in Liberia it had not been possible to obtain pledges totalling \$150 million to support subregional efforts.

Part of the discussion centred on the need to tackle the root causes of conflict in Africa, where there is a strong nexus between poverty and conflict. There was general consensus that the seeds of both current and future conflicts are deeply embedded and that all of them have the characteristics of humanitarian tragedies. Nevertheless, the nature and scope of international responses have been inconsistent, and sometimes totally absent. While welcoming recent international rhetoric about trade and not aid, participants complained about the increasing deterioration of the terms of trade and the sharp reduction in the disbursement of bilateral aid, estimated to be as high as 20 percent.

The best response by the international community was proactive prevention through appropriate strategies. While preventive strategies should not be excessively intrusive, the discussion dealt with the circumstances under which intrusiveness is justified. There is a consensus that intervention should be internally generated and externally assisted and supported.

The discussion also centred on the reality of sovereignty to African states. There was some consensus on the view that sovereignty has been elusive for most African states and that therefore one can talk of a crisis of legitimacy. This arises from the tensions and polarization between state and society, as well as being a result of globalization. As such, the concept of sovereignty that deals with state-building processes has become increasingly alien and has increasingly been replaced by a notion of sovereignty arising from an international regime external to, and minimizing of, state borders. As a result, the sovereignty of most African states has become superficial, and not deeply rooted in society. It was also recognized that sovereign states can and do mishandle their responsibilities as governing authorities and are therefore not immune from intervention.

There is also a need to redefine the concept to involve issues of citizen participation in decision making processes that affect their lives, human security, economic justice, and governance. Most African states that lack empirical sovereignty are characterized by one or more of the following: 1) classical political tensions; 2) robber barons; 3) gun runners; 4) drug barons; 5) weak states; 6) warlords seeking political power; and 7) "Lords of Poverty" profiting from the misery of their compatriots. Debate about sovereignty of the people must, as a result, be seen more as a paradigm shift. Two concluding points came out of this discussion. First, state and popular sovereignty are not mutually exclusive. Second, weak states and weak societies are mutually reinforcing.

While the above debate gave the impression of a dichotomy between the rhetoric and reality of the African state, participants were of the view that Africa must begin to define solutions to her problems. There was a strong feeling that in Africa people have been perceived as objects, and not actors. There has to be an awareness that people matter, and foreign actors could assist in this by facilitating issues defined by local actors. They should also practice what they preach – that is, good governance, transparency, and accountability – and should avoid imposing only their views on the management of conflicts.

Participants were also of the view that Africa should not always be seen as a problem to be solved. Rather, there is a need to understand some of the new dynamics arising in Africa, namely, the recent decision to transform the OAU into the "African Union," the Millennium African Recovery Programme, the presentation of the *Constitutive Act of the African Union* (Article 4), and the African Union Protocol's "Principle G," all of which permit the right of the Union to intervene under grave circumstances. Despite these potentially positive sea changes in African perceptions about intervention and sovereignty, participants were concerned that these new developments are not rooted within society.

Modalities and Conditions for Intervention

Participants considered intervention to be a fact of life in the African context but sought to navigate between the politics surrounding the decision to intervene and its implementation. They also considered whether it should be undertaken at subregional or continental levels, or by a global body, that is, the UN. There was an awareness of, and consensus on, the nature of the international system that marginalizes African issues. There was also agreement that since the UN Charter permitted subregional organizations to intervene such institutions should be used as far as possible, but would need to be strengthened.

Participants then considered the post-intervention phase, which involves rehabilitation and reconstruction. There was concern that in cases where African states have shown a proactive willingness and initiative to resolve crises through a coalition of the willing, not of the weak, the responses from, and support of, the international community have been, at best, lukewarm. Citing the struggle between the the Economic Community of West African States' Cease-fire Monitoring Group (ECOMOG) and the international community, the participants generally agreed that while the UN Mission in Sierra Leone has been a dismal failure, there was nevertheless an unwillingness to support ECOMOG, because Africa should not succeed where the international community has failed. Concern was also voiced about the role and motives of agencies that provide assistance to victims of conflict, and particularly about the necessity to negotiate with warring factions and thus cross lines of confrontation. While this may be necessary at times, the consequences of such actions should be understood within the context of the incentives and disincentives thus created for war-profiteering.

Despite the implicit acceptance that intervention has become a fixture of international relations, there were differing views on the rationales for intervention and the reasons why nonmilitary options tend not to be pursued. It was suggested that a decision to intervene militarily signifies an unwillingness to understand the structural causes of conflicts. As an alternative to intervention, suggestions were made about measures to prevent the outbreak of conflicts and thereby avoid the intervention option. These included an examination of development processes as a mechanism for peace building; the establishment of early-warning mechanisms; capacity building of social institutions; the implementation of proactive measures, such as giving sovereignty to citizens, building societies, and creating a healthy relationship between states and societies; the need for restorative justice processes; and the need to draw on traditional practices.

While accepting the fact that post-conflict reconstruction and rehabilitation are important, participants were of the view that if structural disparities within states are not addressed, then the causes of conflict would continue. The structural deficiencies in the UN system, participants argued, may result from the inability of existing UN mechanisms to deal with newer sorts of conflict. However, the responsibility deficit that currently characterizes the UN also arose from factors such as complicity, policy paralysis, and illegality. Unwillingness to deal with symptoms of deeper crisis was seen as a possible manifestation of the power dynamics in the UN system. These can only be addressed by implementing proposals for the democratization of the decision making processes of the UN system by widening and revisiting the veto mechanism within the Security Council and reviving the General Assembly.

There followed a discussion of operational and practical matters related to intervention. Some of the more pertinent issues raised dealt with the clarification of mandates, access and security for intervenors, acceptance of the complementarity of roles among diverse actors during conflicts, a need for the establishment of peacekeeping academies, a code of conduct for combatants (necessary, since most combatants are not conversant with the rules of warfare) and for identifying and punishing misconduct by peacekeepers, and the recognition that private security armies would defend their own economic agendas.

In addition to the political costs of intervention, participants were of the view that Africans must begin to consider the social and economic costs. Among the social costs noted were an increase in prostitution and HIV-AIDS, a negative impact on the socioeconomic status of women and children, and a destruction of the family structure. A major economic impact noted was the weakening of local economies resulting from an influx of unregulated foreign currency with intervening troops.

WASHINGTON, DC

ROUNDTABLE CONSULTATION

MAY 2, 2001

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SUMMARY

The Role of the United States

A central assertion was made that the debate in the US is not so much over whether there is a responsibility to intervene, but whether there is an obligation to do so. It was suggested that the US, as the world's preeminent power, should not be indifferent to genocide or major human rights abuses: there is a role, in other words, for good international citizenship as a

central national interest of the US. If it cannot develop or sustain a system to deal with major abuses, there is not much hope for the future. What is needed is more consistent application of values.

An opposite argument was made that for the US policy community, the rules of sovereignty are for others, not the US. In effect, the US reserves the right to do what it wants, including intervening in the affairs of others. That same community regards the mere discussion of this subject as dangerous because it can, on the one hand, serve to emphasize the central role of the Security Council and thus limit US action or, on the other hand, make others think that they too can reserve the right to intervene when they want.

It was argued that the US could not be expected to do everything, especially on the military front. It had been involved in multiple military operations internationally between 1990 and 1999, and there was a growing feeling internationally that US involvement is necessary to an intervention if it is to be successful. There was thus a growing feeling in official and defence circles in the US that the country should be much more selective about the interventions in which it becomes involved. More emphasis should now be put on nonmilitary prevention and as far as possible on supporting victims in ways that would have them defending themselves.

Another participant argued that the US should only become involved in interventions when its presence is needed, welcomed, or otherwise irresistible. However, the US should do more listening and less preaching and be more willing to share credit, so as to encourage other countries to join a coalition of the willing.

US public opinion was identified as a central factor in US decisions to intervene. However, it is also ambivalent about the value of interventions and can be easily swayed, positively or negatively, by the CNN effect. There is no ingrained or historical tendency for the US public to want to protect non-Americans. Sustaining public interest in any one situation for long is also difficult. However, while a decision to intervene is probably one of the most difficult a US President could make, once made it would be rare that it would not be supported by the public.

Role of the Security Council

One participant queried the methodology used by the Security Council in authorizing interventions. Essentially, the Council has had an unfettered power to declare any situation a threat to international peace and security, and after that can do what it likes. The lack of accountability is unacceptable. Somalia was cited as an example of where an internal situation was probably not in fact a real threat to international peace and security, yet the Security Council nevertheless declared it to be so, and an inappropriate and ultimately disastrous intervention followed.

It was argued that interpretation of the UN Charter has evolved over time and that this has affected not only the rights of the Security Council but also those of states, particularly in situations where the Council has been unable or unwilling to act. One participant argued that in fact the Security Council is not the sole source of authority for interventions. The *Citizen's Guide to US Foreign Policy* (produced by the US State Department) noted – albeit controversially – that Council authorization is preferable but not always necessary. The trick was to get the Council to fulfill its functions better and not allow it to abdicate responsibility. Another participant suggested that the goal of ICISS should be to establish guidelines for Security Council action, but make it clear that if the Council fails to act, despite the guidelines being met, then any subsequent intervention by others would have increased legitimacy. It was also suggested that if authorization by the Council is blocked by one veto while all or most other members favour action, this too would confer a large degree of legitimacy on the intervention.

There is a place for double standards in all this. There are clearly places where the international community cannot and should not intervene, as the costs would be too high (for example, Chechnya). But this does not mean that interventions that could achieve positive results should not be undertaken elsewhere.

Conditions for Intervention

While there was general agreement about interventions only being undertaken in response to the most serious abuses, it was noted that ICISS should not only be thinking in terms of such abuses being sudden and cataclysmic. In Indonesia, Sudan, and many other places the abuses are systematic and massive, but they are “slow burners.”

Once a military intervention becomes necessary, however, then a certain number of basic conditions should be met: 1) the objective must be achievable and should not be transformed drastically (as occurred in Somalia); 2) the intervenors should prevail rapidly, using the level of force necessary to achieve this; 3) the US should preferably be part of a coalition; 4) there should be prior agreement on command structures, goals, criteria for withdrawal – more than a withdrawal date is needed, since otherwise parties to a conflict or abusers would only try to sit out the intervention; and 5) the armed forces should not be used for essentially police duties or other functions that they are not well equipped to perform. In the latter regard, more effort should be made to build up a capacity in the local population to take over those duties. However, to date this had been done badly.

It was also suggested that there should be timely sharing of intelligence among interested states to ensure that any action is based on common understandings. Another participant noted that a related problem is that in the hasty preparation that precedes most interventions, there is usually insufficient analysis of the situation. The result of this often is that greater importance is assigned to superficial problems, while the deeper seated causes are underestimated or ignored.

Responsibility to Protect

Changing the terms of the debate to a “responsibility to protect,” as suggested by ICISS, was greeted positively. It widens the scope of discussion, since local actors, including the government of the country that is the subject of possible intervention, also have a responsibility to protect. In some cases, moreover, these actors also have greater authority than international ones. Defining the success of an action or intervention is also easier if protection is the central focus.

One participant said that ICISS should stress the point about local actors having primary responsibility to protect. Otherwise, there is the risk that people would automatically start looking outside their own borders for others to protect them.

Prevention

While there was agreement around the table that prevention is preferable to intervention, it was noted that prevention is not politically easy, because there is usually little happening on the ground that could grab international attention. Equally, from a political viewpoint, an intervention often only becomes practicable once a situation has deteriorated to the point that the chances of a successful intervention have become minimal (as occurred in Rwanda). The central question that people should thus be considering is how to generate positive public opinion well enough in advance of an atrocity to prevent it from occurring or worsening.

Another factor cited as undermining preventive strategies to an extent is the feeling in many Western capitals that more successful interventions are needed in order to build credibility and demonstrate a deterrent effect for future situations.

One participant argued that the material costs of intervention mean that countries would only intervene if there is strong public support for it. This, however, means that in effect there is a bias that favours interventions by countries with the strongest interest in the issues in dispute, thus undermining any notion of impartiality.

A note of caution was sounded about global interests – which is where the notion of protection fits – usually taking a back seat to national interests in any decision to act or not. This applies equally to prevention as to intervention.

SANTIAGO

REGIONAL ROUNDTABLE CONSULTATION WITH NONGOVERNMENTAL AND OTHER INTERESTED ORGANIZATIONS

MAY 4, 2001

PARTICIPANTS

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 Juan Gabriel Valdes, Permanent Mission of Chile to the UN
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 Luís Winter, Ministry of Foreign Affairs, Chile

SUMMARY

In an opening address, Soledad Alvear, Chile's Minister of Foreign Affairs referred to intervention as a subject closely related "to life and death" and one that international organizations, despite all their technological progress, have been unable to address effectively. Indeed, massacres and other major aggressions against humankind continue to occur, to the dismay of the international community. All this urgently requires international organizations and UN state members to compromise on a common approach. On the other hand, the history of Latin American and the Caribbean countries gives them an important doctrinal framework that opposes unilateral interventions and favours respect for the sovereignty of states. When the issue is intervention, the region's policy makers trust the UN Charter. Yet, Security Council decisions can be blocked by the conflicting positions of its members, and it has sometimes been unable to respond quickly enough to situations demanding international intervention. The Minister concluded by suggesting that since saving lives should always be the superior interest, we should be able to find ways to create new and original mechanisms.

Intervention, Sovereignty, and Security in Latin America and the Caribbean

An introductory paper proposed the idea of "cooperative multilateralism" as a basis for building consensus and decision making on the international system's key issues, including humanitarian intervention. Unlike the current approach, this system would be positive and practical and based on ideals such as peace and prosperity. In addition, it is necessary to adopt a more holistic approach to the concept of security.

Several participants endorsed this viewpoint. Since the end of the Cold War demands have frequently been made to revise the international-security concept that dominated Western strategic thinking in earlier decades. This desire has a direct connection with the intervention issues being discussed. Although there is consensus on the need for a new conceptual paradigm, no consensus exists on the concept itself. Two main possibilities have been considered. Because of a lack of comprehensive theoretical tools to explain the most recent phenomena within the international arena, new tag names, such as “environmental security,” “citizen security,” and “human security,” have appeared. Others have preferred to broaden the traditional concept of international security to include new threats, actors, and power relationships.

Many suggested that globalization has made the concept of sovereignty obsolete. Others thought that current threats – new or old – have a transnational nature that ignores territorial borders. Consequently, transnational relations, including economic and cultural aspects, are increasingly taking place well beyond state control. Although some thought that sovereignty has become less important for nation-states, others thought that the opposite is true: because of lessened control over what happens inside their borders, governments have become more sensitive to, and interested in, preserving their sovereignty.

When External Military Intervention Should Be Considered and Why: Intervention Priorities and Thresholds

A further discussion paper was presented on why and when military intervention is necessary and justifiable. This paper also covered the priorities and thresholds for a decision on intervention. It cited the case of violence in East Timor following the independence ballot. The Secretary-General could only have exerted the intense pressure he did on the Indonesian Government to end the violence or allow for international intervention because the international community had achieved a notable consensus on the need to intervene with military force to stop the violence. When such conditions are not present, a decision might still be taken if, for instance, it is a situation that would motivate global concern and criticism, such as a case of genocide. Even so, military intervention should still only be a last resort, and it should do more good than harm. A basic criterion should also be that the victims are non-fighting civilians. Other factors may militate against a decision to intervene, such as if the aggressor is a nuclear power or there is a risk of partiality in the use of force – which may arise particularly in cases of a decision of only one state to intervene. Similarly, hidden agendas, as opposed to altruistic or humanitarian concerns, should be a further reason not to intervene.

During the ensuing debate, consensus was reached on the basic conditions that legitimate the decision to intervene: the existence of multilateral support for the action, the use of intervention as a last resort, and the assurance that intervention would not worsen the problem. In addition, participants agreed that past situations that had been used to justify unilateral interventions in Latin America and the Caribbean no longer exist.

It became clear that intervention had a particular connotation in the Latin America and Caribbean region. An ever-present concern was the role of the US, either as an intervening state or as the most influential actor in multilateral organizations. Military interventions were thus seen as sharpening the contrast between the real power – but sometimes questionable legality – of an effective military power (the US), and the smaller power – but legitimacy of – multilateral organizations (the UN).

One participant noted the need to consider unarmed interventions. In addition, suggestions were made for changing the general attitude toward intervention. It should not be seen as a decision between the right to intervene or not, but as part of a duty or responsibility to

protect. Finally, it was clear that issues requiring intervention are largely interdependent. It would also be helpful to increase the monitoring and early-warning capacity of the UN and to emphasize actions that could prevent situations from escalating. In this regard, three possible levels of intervention should be considered for adoption in a gradually escalating sequence: diplomatic measures, sanctions and incentives, and military force.

The UN nevertheless can only do what its member states decide and is thus dependent on the political interests of those states. However, it is not organized in ways that facilitate making quick decisions. It clearly needs a system to allow for global oversight. Therefore, in order to speed up decisions in situations where a regime is committing atrocities, suggestions were made for modification of the UN Security Council and creation of a tribunal or other body within the General Assembly to make pronouncements upon the gravity of human rights abuses and the related necessity or otherwise of an intervention. It was also suggested that the UN should sponsor analysis of case studies to assess both the effectiveness and the influence of interventions on the political climate of the states in which they take place.

When Not to Intervene and Why: Alternatives to External Military Intervention

A further two papers were delivered and discussed together. The first related to when intervention is not advisable and alternatives to external military interventions. It noted that interventions involve many risks and perplexities. Because of the difficulty of distinguishing circumstances that require intervention and those that do not, the paper suggested the adoption of a new conceptual context, based on the "globalization" paradigm, rather than on the outdated one of the Cold War. It suggested that the protection of fundamental human rights should be the essential motivation for decisions to intervene. "Sustainability," the assurance that intervention will solve or at least stop the problem, was argued to be the essential operational factor. "If there is doubt about the sustainability of an intervention, it is better not to intervene," though "sovereignty cannot be a barrier when the protection of fundamental rights is at stake." The paper also suggested that fear of intervention may help to prevent abuses of human rights. However, there are two main circumstances when intervention should not take place: 1) when the state concerned is exercising full and complete sovereignty; and 2) when a fundamental value is not at stake. The problem is that situations that may suggest the need for intervention are usually complex. For example, civil war is often a situation that creates objective circumstances requiring intervention, but it is also a complex situation in which right and wrong cannot be easily distinguished.

The Impact of External Military Intervention: Political, Economic, and Social

The second paper analyzed the political, economic, and social impacts of military intervention. The following variables are relevant: the situation of the country, the size of the intervention force, the necessity of rebuilding the country after intervention, and the level of economic deterioration following the intervention. To evaluate the local impact of military intervention within the context of the Americas, it is important to take into account the history and the role of the OAS, which is currently developing a wide range of instruments to cope with post-intervention situations and the necessity to use force. An example was Haiti. Although the intervention there had been successful in solving the immediate crisis, it was less successful afterward. Moreover, the situation was, at the time of the discussion, quickly deteriorating. From a purely economic standpoint, the intervention in Haiti is excessively expensive and not cost-effective. However, it is difficult to objectively assess the value of military intervention. Military interventions are designed to control a crisis, not address the roots of the problems. Preventive action is extremely important.

During the ensuing discussion, some of the most sensitive factors relating to the decision to intervene were identified as including the time when intervention is necessary and advisable, what is necessary to legitimize interventions, and who can make decisions to intervene. Participants agreed that the most accepted institution to take decisions on multilateral interventions is the UN Security Council. However, there was no consensus on what should happen when there is a widespread sentiment for intervention, but the Security Council chooses not to act.

Wider Impacts – Although participants agreed that decisions to intervene often give scant consideration to the intervention's impacts on a wider regional system, they agreed that this variable should be considered during a decision to intervene. Positions were divided between those who considered that sovereignty should not be an obstacle to intervention when human rights are at stake and those who were concerned about negative regional impacts. Examples discussed included the intervention in Nicaragua and the prospects for the Colombian crisis.

Concerned with post-intervention impacts on the population, one participant suggested the assessment of the psychological impacts of intervention, in addition to economic, political, social, and military impacts.

Intervention “for Democracy”

A heated debate developed on this issue, with no real consensus emerging. There was a feeling that while international consensus might build rapidly in cases of intervention for humanitarian reasons, it does not do so when the intervention is politically motivated, as is the case with preservation of democracy. Although democracy has become a norm and almost a moral value in the region, the overthrow of democracy does not seem a valid motivation for military intervention. Nevertheless, agreement formed around the idea that measures short of military ones, such as diplomatic warnings and sanctions, would be useful tools for the protection of democracy. On the other hand, since democracy has become a cherished value, threats to democratic rule might be followed by major violations of humanitarian values and thus justify intervention. Nevertheless, it was clear that most of those present saw “intervention to protect or promote democracy” as a sensitive and potentially dangerous issue, since the concept of democracy itself is relative and subject to distinct interpretations. The region's direct experience with past US military interventions that claimed to have been aimed at protecting democracy was also relevant here. In this region, therefore, the initial reaction to military intervention would always be cautious.

One participant concerned with the idea of protecting democracy suggested the creation of a supranational institution to oversee and evaluate democracies and their shortcomings in the region. This idea, however, was also criticized on the basis of the relativity of the concept of democracy.

The conclusion was thus reached that in this region, any decision to intervene militarily could only be legitimate if based on severe abuse of fundamental human rights. However, even if the Security Council could not decide to intervene, despite the existence of objective grounds, it would be very difficult to classify as legitimate a “unilateral” military intervention (that is, one taking place without Security Council mandate.) Despite its shortcomings, the UN Charter should be kept as the key paradigm for the analysis of cases eventually requiring military intervention.

CAIRO

REGIONAL ROUNDTABLE CONSULTATION WITH NONGOVERNMENTAL AND OTHER INTERESTED ORGANIZATIONS

MAY 21, 2001

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Abdelaziz Bennani, Euro-Mediterranean Network for Human Rights, Morocco

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SUMMARY

During opening remarks and in other comments, a number of participants from all backgrounds expressed regret that no Palestinian participant was present, especially in light of the massive violations of human rights committed in the occupied territories and the passivity of the international community. It was stressed that the current situation in the occupied territories could not reasonably be divorced from the issues being discussed at the roundtable.

A discussion paper was presented that recalled past and contemporary experience of military intervention in the region and beyond, noting that it is a sensitive and complex issue. At the regional level, the sanctity of borders has been enshrined in the charters of both the Arab League and the OAU. All diplomatic means have to be exhausted before a military intervention could be contemplated; and, moreover, the intervention has to have a good chance of success. It should also be proportionate to the situation. The rules of international humanitarian law (IHL) should be respected.

Commissioners then referred to some of their current considerations, which included the need to develop working mechanisms for intervention; the responsibility to protect; the need for transparency; the need to avoid double standards; the need to strike a balance between action and inaction; the need for preventive strategies; and the responsibility to assist developing countries in order to tackle the root causes of humanitarian crises. They stressed that they were seeking innovative solutions.

Some participants argued that innovation should not be confined to the question of terminology. The post-war international order that produced the UN is suffering from increasing incoherence. In light of the ongoing changes in the international situation, conventional perceptions in the age of globalization can be viewed as obstacles. The UN does not any longer reflect the contemporary international situation. There is an urgent need to reform the UN system in order for it to be more responsive to the needs of the international community.

When External Intervention Should Be Considered

A participant made a presentation on the question of when and why external military intervention should be considered, and on intervention priorities and thresholds. It was pointed out that the issue of humanitarian intervention includes a number of normative and moral factors, though the decision making and the undertaking of intervention are to be carried out by politicians. The Middle East has witnessed a number of humanitarian crises that are, or could be, subject to international intervention. The flagrant examples are Palestine and Iraq, but other possibilities are Libya and Sudan. Despite the fact that the intervention that took place in Iraq was justifiable, this intervention has become a source of ongoing humanitarian suffering for innocent Iraqi civilians. The case of Palestine represents the opposite extreme. It involves a number of severe factors (disproportionate use of force, severe abuses of human rights, denial of the right to self-determination), yet no international intervention is envisaged, despite appeals to the international community.

Objectively, there are a number of problematic thresholds to intervention, including the extent of atrocities, war crimes, crimes against humanity, genocide, and threats to fundamental human rights. The problem lies in the definition and identification of these abuses, as this can be a subjective and politicized process. There is a real need to develop an impartial political mechanism for this purpose. At the same time, independent states should be more amenable to the idea of devolution of sovereignty to a supranational body for crisis prevention, monitoring, and management.

The majority of participants agreed that there are thresholds and limitations on intervention that must always be observed. Furthermore, the mechanisms and procedures of the intervention process must be subject to objective international regulation. In this context, it is mentioned that the UN Charter contains apparently contradictory provisions concerning noninterference in internal affairs and the prohibition on the use of force, on one hand, and the provision for collective intervention, on the other. Two important reservations were mentioned in this regard. First, a decision by a state to become party to any international treaty (including the UN Charter) means that it is relinquishing part of its sovereignty to a supranational entity (ideally the UN). Second, the action taken by the Security Council in exercising its responsibility for peacekeeping or peace making is referred to in the UN Charter as legal enforcement measures and not "intervention."

Reservations were expressed about use of the term "humanitarian intervention." One point of view was that "humanitarian" should not be associated with war. Another point of view stressed that the concept of "humanitarian intervention" itself is regarded sceptically in most Third World countries. It has brought back bad memories from the colonial era, when Western colonialism was portrayed as a sort of humanitarian effort to help civilize and free the peoples of the South.

Reasons for intervention include genocide, crimes against humanity, war crimes, major atrocities, self-determination, mass violations of human rights – including, importantly in the Third World, economic, social, and cultural rights. One participant mentioned the concept of human security. Emphasis was put on the urgent need to narrow these concepts, since the more diffuse they are, the more problematic they could become.

On the question of when to intervene, the need to determine the extent of atrocities was noted. This is of particular relevance, since there are cases when intervention is more advisable earlier rather than later. On the other hand, some Western countries argue that having an ongoing, political (peace) process constitutes an impediment to intervention.

On the issue of procedures and how to intervene, reference was made to a wide variety of existing UN mechanisms and tools, ranging from treaty-based mechanisms and bodies, to special rapporteurs, to the Security Council. The majority of participants agreed that any form of use of force should be conducted strictly in conformity with the UN Charter. However, this raises problems, since giving the Security Council exclusive responsibility would simply mean leaving it in the hands of a "not really democratic organ" to decide when and how to intervene. Furthermore, Arab public opinion does not give full credence to the Security Council, because of its double-standard approach to the issues in this region.

The issue of "legality versus legitimacy" was also raised. In some cases, legal governments that lack legitimacy would object to humanitarian intervention on the grounds that it infringes on their sovereignty. In other cases, there might be a legitimate need for intervention, but the Security Council fails to provide the legal framework in which an intervention could take place.

Finally, participants agreed that while there is no substitute for the existing framework on the use of force (that is, mandated by the Security Council under Chapter VII), this must be coupled with the Council's reform, if the object is to secure an intervention that is objective, nonselective, and free from double standards.

The Impact of Military Intervention and Alternatives

The second working session tackled the question of alternatives to external military intervention and the impacts of external military intervention: political, economic, and social. The paper presented on the first subject drew attention to the fact that in some cases authoritarian regimes in the South are fuelling civil wars in order to maintain their own power. Some Western powers back these regimes, though the regimes lack the support of their own people. In other cases, Western countries are sometimes invited to intervene in situations of internal chaos, but instead of helping ease tensions they add to them in pursuit of their own interests. This evoked the fear of many Third World countries that the West would misuse the concept of human rights to intervene in their internal affairs. A proposal was made for the creation of an international monitoring body to observe the situation in various areas of tension in the world in order to prevent the eruption of violence.

The presentation on the political, economic, and social impacts of external military intervention used Somalia as an example. The point was made that there existed three levels of problems in Somalia, namely the existence of various political entities, a deteriorating economic situation, and a social disaster consisting of a flood of refugees. International "humanitarian" intervention helped to solve none of them. Instead, one could say that as some of the problems worsened, international interest faded. In such circumstances, there is a graduated series of responses that should be considered concerning the phases of intervention. It should be initiated by neighbouring countries, then move up to regional organizations, then to the Security Council, and if the Council fails to take action, the General Assembly should act under the "Uniting for Peace" formula.

Reform of the UN was discussed at length. One participant claimed that what is needed is a totally new organization to reflect the ongoing changes in the international situation. Some participants responded that the lack of balanced representation of the international

community in the UN does not necessarily mean abandoning the system. Instead, the Security Council should be reformed, or the "Uniting for Peace" mechanism should be revived.

The role and scope of power in the Security Council were also discussed. It was stated that while the responsibility and authority to maintain peace and security are vested in the Security Council, it is not clear to whom the Security Council is accountable. It was suggested that there is a need to have judicial supervision of the Council and that the ICJ is – theoretically – the best placed body to do so.

The majority of the participants expressed frustration over the current performance and legitimacy of the Security Council when it comes to the Middle East. The Palestinian problem, Iraq, Sudan, and the *Lockerbie* case were mentioned as flagrant examples of unfairness and double standards. Moreover, the credibility, as well as the legitimacy, of the Security Council is being eroded because of its ineffectiveness in certain cases. It is also unrepresentative and undemocratic. Some participants suggested that as a result of these defects, the world cannot depend on the Security Council as the only vehicle to maintain international peace and security. If the Security Council remains the starting point when it comes to international military intervention, it should not necessarily be the finishing point. There is a serious need for institutional change and reform, including revision of the veto power. Some participants suggested that true reform of the Council would be lacking as long as the veto power remains.

There was general agreement that prevention should always be preferable to intervention but that international protection through military intervention might be needed in cases of flagrant humanitarian violations. However, the right system for its implementation does not as yet exist. Unequivocal and agreed criteria and safeguards have to be established. Intervention should be the responsibility of a collective body that reflects the will of the majority of the international community.

One Commissioner pointed out that the enlargement of the Security Council would not by itself help improve the situation. The problem lies more in the Council's working methods, rather than its membership. Resorting to the General Assembly is no better and can even make the situation more chaotic. It was suggested that an international board of eminent persons be created to make recommendations to the president of the Security Council or to the Secretary-General as to when collective intervention might be required in specific cases. The recommendations, moreover, should be made public. Participants expressed reservations. They noted that for the majority of the Third World, the General Assembly, while flawed, is still the most democratic of the existing international bodies, and it is, at the very least, a better reflection of world public opinion. As for the proposed international board of eminent persons, it would inevitably become just one more bureaucratic body.

It was argued that regional organizations, authorized by the Security Council under Chapter VIII of the UN Charter, may well be in a better position to contribute to conflict resolution because of their proximity and their probably greater acceptability to parties in conflict in that region. Regional organizations could also monitor humanitarian crises, which could be particularly helpful for early warning and conflict prevention. A number of participants argued, to the contrary, that in some cases a regional organization could not play an effective role, because of sensitivities over the motives of major regional states.

The role of civil society and NGOs was raised. NGOs can play a very constructive role in forming international consensus as the basis for an intervention. This can be achieved through a coalition of the more important and influential human rights NGOs at the international level, as part of the global civil society initiative of the Secretary-General.

Conclusions

The ICISS side said that at least four threads were evident in the discussion. The first was that ICISS needs to seriously consider Arab experience in relation to double standards and selectivity, with Palestine a good example. Secondly, there was a feeling that the existing structures of the UN Charter are no longer helpful in all situations and that new structures and processes (pursuant to the Geneva Conventions, the International Criminal Court (ICC), or other treaty-based mechanisms) should have a role, as well as the Security Council. Thirdly, there was a strong need felt for an objective process and concrete safeguards: it is important to ensure both that intervention happens in the right cases and that it does not happen in the wrong ones. The Security Council, as presently constituted, lacks some credibility in making the decision. Fourthly, there is a need to focus on prevention as very important and integral to the notion of the responsibility to protect.

In his concluding remarks, the Chair of the roundtable said that the international community needs to work out norms, criteria, rules, and guidelines to authorize and regulate interventions. At the same time, the existing legal framework enshrined in the UN must not be undermined. The Charter allows for a liberal and flexible interpretation of Article 2 (7) in order to cope with the evolution and expansion of issues that are increasingly considered to be of international concern. So, many forms of intervention short of the use of force are envisaged in the Charter. The use of force, however, is strictly regulated in Article 2 (4). Moreover, the prohibition of the use of force is universally considered as the greatest achievement of the contemporary international legal order in the 20th century. It is a cardinal rule from which no derogation is permitted. He concluded by stressing the importance of prevention and the need to always work by evolution and not revolution, making sure that striving to attain a lofty objective does not occur at the expense of undermining the existing international legal order.

PARIS I

ROUNDTABLE CONSULTATION WITH FRENCH GOVERNMENT OFFICIALS AND PARLIAMENTARIANS

MAY 23, 2001

PARTICIPANTS

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SUMMARY

This consultation was part of ICISS's efforts to engage the P-5. The session took place at the Canadian Cultural Centre in Paris on the morning of May 23 and was opened by Hubert Védrine, the French Minister for Foreign Affairs. Representatives from the French Department of Foreign Affairs, Department of Defence, think-tanks, and opposition parties in the National Assembly attended the session.

Minister Védrine detailed the French position on intervention and efforts to reform the UN Security Council. He said sovereignty is not an absolute. States, by actions such as negotiating treaties, recognize the inherent limits of their sovereignty, which have been further eroded by the increasing role of civil society. However, it is simply not possible, morally or politically, to establish a world order on a "right to interfere" (*droit d'ingérence*), regardless of how noble the goal might be.

In Kosovo, all political and diplomatic measures had failed; the Rambouillet conference had proved as much. Although he personally thought NATO's intervention had been justifiable juridically, others had argued it did not meet all the traditional legal requirements. The two preceding UN Security Council resolutions on the situation had, nevertheless, declared it to be a threat to international peace and security, even if they had not specifically authorized the use of force. In other words, there was three-quarters of a Chapter VII mandate, and the NATO action was at the very least legitimate.

However, interventions such as Kosovo must not become the norm or be considered the basis for a new system of international law, which would undoubtedly lead to rule by the strongest nations. It was an *exception* to the usual rules. The solution lies in a new system, which must answer the question: Who can intervene, where, and to do what? A new way of thinking must be brought about and that change must take place at the core of the UN Security Council.

Minister Védrine proposed a "Code of Conduct" for the use of the veto by the P-5. The hope was that this would allow the Security Council as a whole to react more quickly to crises, even when one of the P-5 is involved. This in turn would create greater reliability, predictability and credibility for the Security Council. The criteria need to be practical, rather than only "intellectual," and fairly specific, given the gravity and urgency of the situations necessitating action. He said that he did not think that more "radical" solutions are very realistic, especially since 120 or 130 of the UN's members still place overwhelming priority on their sovereignty.

Although participants could be said to have expressed a generally "Northern" view of these issues, more global concerns were voiced, such as the discrepancy between rhetoric and action and the usual lack of consideration for the sociopolitical repercussions of an intervention. Discussions generally centred on military intervention, with some references made to prevention and the importance of development issues.

Sovereignty

A number of participants made the point that sovereignty is no longer an absolute rampart, behind which perpetrators of atrocities can hide; most states have in any case voluntarily reduced their sovereignty by becoming party to all sorts of treaties. In other words, the protection of human rights is, today, seen as some justification for the violation of state sovereignty. This leads to the misconception that state sovereignty and human rights are incompatible concepts. Although sovereignty might no longer be seen as the sole basis on which international society is organized, it is nonetheless a prerequisite for the development of democracy and human rights, without which the international order would be seriously compromised.

Intervention

The debate on the means to intervene stemmed from the acknowledgement that not to act has become unacceptable. Situations of overwhelming humanitarian necessity challenge the traditional framework where the UN Security Council has to authorize the intervention.

Two participants noted that the French public traditionally supports intervention. This has led to France intervening more than 60 times since the end of the Cold War, a reorganization of its military forces toward peacekeeping-making operations, and the participation in development of a European rapid-reaction force. The ideas and values motivating these interventions were regarded as universal, and intervention was seen as contributing to the birth of an "international conscience." Nevertheless, participants recognized the potential for humanitarian fatigue and disinterest, as could be observed in the French public's relative lack of interest in the Algerian crisis.

The Question of Legitimacy and Means

Three elements have substantially changed the debate on the issues of intervention and state sovereignty since the end of the Cold War:

- ❑ the increased number of intrastate armed conflicts have shifted the debate to the re-responsibility of states for their own nationals;
- ❑ the end of the Cold War paralysis of the Security Council has seen an increased capacity and will to act; and
- ❑ the international community's inadequate, insufficient, or late action and its lack of consistency have directly affected the credibility of the UN and its Security Council.

These factors culminated in the Kosovo intervention, which shifted discourse to the protection of individuals and discussions about a new international political order, in which the notions of legitimacy of intervention and the means to intervene had to be reevaluated.

It was suggested by several participants that although the criteria for legality are clear, those for legitimacy are not, and the ICISS could make a mark in this regard. *Opération Turquoise* was an example cited. Although highly contested by the local population and the international community, it was regarded as a legitimate action by the French military and public opinion, since ultimately it saved lives. (Some participants were nevertheless critical of the operation.) One participant noted that even though an intervention may have been authorized by the Security Council (and its legality would thus not be in question), the intervention might itself still not take place, for example, because of lack of troop contributions, such as occurred in the Congo in 1996 despite severe crimes against humanity. In other words, we should also be taking account of interventions that do not occur, as well as those that do.

Some participants argued that a consensus on what is legitimate is impossible, since by nature each actor interprets the concept according to his or her own perspective. Similarly, legality alone does not make an intervention legitimate. This is especially true of a "rubber stamp" by the Security Council set in a climate of inconsistency and double standards. Law is nothing without the support and commitment of public opinion.

Another view put was that a true measure of the legitimacy of an intervention should lie in the perspective of the local population. An intervening force must be seen by the local population as a partner, especially in cases where reconstruction is needed. The principles guiding the mission must be explained and accepted by the population. In the case of a military intervention, great care must be taken as to the behaviour of the intervening

soldiers. An intervention might be legitimate at first, but quickly become illegitimate if the rights and freedoms of the local population are disregarded, as had happened in Somalia.

Several official participants noted that the French government believed the answer to these dilemmas lies within the UN Charter. The Charter establishes a clear link between human rights and international peace and security, but it is necessary to put more focus on the relevant provisions. The Security Council also needs to be restored to a central position in the intervention equation, but to do this it also needs to be fully reformed. Since this would be some time off, we have to go on expecting interventions that might occur outside the authority of the Security Council. One senior official noted that the search for new mechanisms, such as greater use of the UN General Assembly's "Uniting for Peace" procedures, is not part of French policy.

Criteria for Military Intervention

The official criteria for French military intervention were stated to include

- the presence of a clear mandate pursuant to Chapter VII of the UN Charter;
- strong rules of engagement;
- a clear chain of command;
- a predefined exit strategy; and
- an acceptable risk of casualties (the French threshold being higher than that of other countries, such as the US).

Nevertheless, in practice, future interventions would likely take place in three situations that do not necessarily respect these criteria:

- cases where public opinion dictates intervention;
- easy interventions, where operations would not be dangerous or onerous (for example, the Ethiopia–Eritrea mission, where the states in question consented to the intervention); and
- regional interventions, usually in Africa, where ground troops are supplied by African countries.

Within the P-5, France, England, and the US accept the idea of intervention, in general, but are very restrictive about becoming involved in specific cases. In contrast, China prefers a case-by-case approach. In reality, however, there could never be an intervention if the P-5 are either too interested or not interested enough in a crisis as a result of the influence of their own national politics in the international decision making process. Moreover, the threat of the P-5 veto is usually apparent well before any formal vote is taken, and this has led to the high number of inconsistencies in the application of UN policy, even within an intervention itself.

This led some participants to suggest that the pertinence of elaborating a set of criteria for when to intervene could be highly questionable. Even if criteria are clearly set up, their interpretation would be different from state to state (for example, how to define an international crisis). In some cases, the existence of criteria might even lead to a calculated escalation of hostilities to bring about an international intervention (for example, arguably, East Timor). Similarly, some regimes would feel confident they might never be the subject of intervention, because of, for instance, their low strategic importance.

Why Interventions Fail

The mentality guiding today's interventions is responsible for the dismal record of the UN in recent years. Proposed solutions, such as those contained in the Brahimi report, try to simplify a situation where "us and them" is a continuing, though evolving, concept. Not enough importance is given to the local impact of a foreign intervention, and this is exacerbated by the growing divide between those who decide on the intervention, those who pay for it, and those who provide the ground troops. This is particularly the case in Africa.

Efforts have been made to depoliticize peace building and make mandates technical. Trying to depoliticize an intervention is usually wrong and ineffective, because it inevitably results in the imposition of an outside political framework on the internal situation of a state. Intervening forces rarely have an clear idea about how to impose such new policies effectively, as has been illustrated in Haiti. Peace is a highly political endeavour; and peace, rule of law, and a stable environment are notions not only defined differently among states but within the intervened state itself. Rhetoric about the impartial nature of interventions is similarly deceptive and counterproductive. A military intervention can never be neutral and impartial, as it fundamentally affects and changes the sociopolitical structure of the country in which the intervention has taken place. The local population only relates in terms of "ally or enemy" and would interpret the actions of the intervening forces through that framework. The historical presence of certain wealthy countries, be it through arms sales, companies exploiting natural resources, or mercenaries in countries later intervened in similarly taints their actions.

The Brahimi report recommended that the mandate of an intervention should always be clear. This is unrealistic, as the mandate of a mission is the result of a political compromise that often includes contradicting positions. Long-term objectives end up contradicting short-term ones (for example, Kosovo, where the task now is to rebuild the infrastructure destroyed by the intervention). Interventions whose aim is to start a dynamic evolution of the society are usually organized to achieve their goal by stabilizing the situation or maintaining the status quo. Likewise, predefined exit strategies make it easy for local extremists to simply wait until the storm passes.

Although a political crisis cannot be solved by military means, there is an increased dependence on military personnel. The roles are becoming blurred, as politicians play at being generals, and soldiers are asked to play political roles or undertake tasks they are unsuited for. This in turn leads to fatigue by the military but also distrust of its political leaders. At the same time, the judiciary is seen as being highly ineffective and often as contributing to additional confusion and destabilization of the situation, as it never effectively attains its main goal, dissuasion. Its credibility is further diminished, as usually no provisions are made to engage the collective and individual responsibility of foreign intervenors, both military and NGO, for misdeeds.

Prevention

Most participants agreed that prevention is a preferred alternative to intervention, but again there is inconsistency between rhetoric and action. As one participant noted, although governments officially endorse prevention, there has been a sharp reduction in development assistance in recent years. Similarly, states are rarely unaware of emerging crises. The decision to ignore early warnings is motivated by calculations of profit for armament industries, for instance, and the conviction that war is more profitable than peace. For one participant, the real challenge was to drive home to people that peace is really more valuable than war and costs far less.

More effective preventive mechanisms are needed. Suggestions included

- ❑ the revival of a proposal made in 1974 by President Valérie Giscard d'Estaing and later supported by President François Mitterand to establish a major new international prevention agency, which would include an early-warning mechanism;
- ❑ increase the role and competence of the ICC; and
- ❑ increase the regional capacity to respond to crises (for example, the European rapid-reaction force).

PARIS II

ROUNDTABLE CONSULTATION WITH NONGOVERNMENTAL AND OTHER INTERESTED ORGANIZATIONS

MAY 23, 2001

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SUMMARY

Defining Sovereignty

Sovereignty was defined by one participant as the power to govern territory, independence from other states, and respect for international law. It follows particularly from the latter that the exercise of sovereignty is not a tool to rule arbitrarily, for example by murdering one's own people. In absolute terms, sovereignty has always had strict limits.

Some participants rejected the notion that the proliferation of internal armed conflicts is associated with a new post-Cold War order that equates lessening of conflict with attacking state sovereignty. According to this view, conflicts have changed little throughout the last century; and although today's world is based on interdependence, Third World – and indeed some First World – countries are still very sensitive about their recently acquired independence. Internal conflicts are in a sense mechanisms to reinforce nationalism. Globalization is an important factor in state-building in modern times but could become negative when it

clashes with sovereignty. War in such circumstances is a means used, for example, by some sub-Saharan states to reassert their sovereignty over international forces that they see as trying to diminish the importance of their national borders through financial restructuring and foreign-aid programmes.

Defining Intervention and the Right of Interference

Intervention was defined as action by a state or an international organization in the affairs of another state. The intervention could, moreover, be civilian or military and could in general terms be aimed at saving or protecting human life.

Two types of interventions were identified:

- ❑ “interventions for humanity”: unilateral, nonauthorized interventions motivated by the protection of national interests externally, such as rescue of nationals, self-defence; and
- ❑ multilateral, Chapter VII-authorized interventions aimed at protecting the citizens of another state.

The intervention in Bosnia was humanitarian, since its only aim was to separate the belligerents and protect the population impartially. The one in Kosovo was not. Its aim has been to protect human rights and therefore oblige intervening states to take sides against the perpetrators of the violations.

Countries such as the US do not distinguish between these two types. They, moreover, use the term “humanitarian” in a blanket way, which leads to confusion. Several participants opposed altogether the idea of using the term “humanitarian” for any type of intervention where force, military or otherwise, is used. They insisted the term should only apply to purely relief operations, since its use otherwise leads to a skewed perception by the local population of the true nature of an intervention.

Several French interventions in the past based their legitimacy on the doctrine of a “right to interfere” (*droit d'ingérence*). Confusion exists over this term. Some believe an intervention that respects international law is not interference, since all states have implicitly bound themselves to the precepts of the law. Similarly, “interventions” by bodies such as the ICC do not amount to judicial interference, as they apply the statutes agreed upon by states. The claimed legal basis for a “right to interfere” lies in international instruments, such as the Geneva Conventions (Article 3) and UN General Assembly resolutions. Even the strongest proponents of a right to intervene, such as Bernard Kouchner, have never argued that sovereignty should not be respected as far as possible. The Geneva Conventions also make it clear that nothing in them should challenge the basic rules of sovereignty.

The Responsibility to Act

There was some agreement that the international community is less and less accepting of violations of humanitarian principles. These days, states are not only regarded as responsible for their own territory or the actions of their nationals abroad, but also being asked to remedy abuses committed by other states against their own populations and within their own territories. The framework provided by the UN was not seen as the only means to achieve this goal. There are other instruments, such as the Geneva Conventions, that provide such extraterritorial jurisdiction. The criteria elaborated by Antonio Cassese for state intervention without UN mandate were mentioned by one participant:

- ❑ massive and systematic violations of human rights;
- ❑ absence of political will by the state to stop such violations;

- ❑ paralysis of the UN Security Council pursuant to a veto;
- ❑ all peaceful means of settling the situation have failed;
- ❑ the intervention should best be conducted by a coalition of states; and
- ❑ force should be used only to end the abuses – there should be no hidden agenda.

A number of participants indicated that the problem does not lie with the law but with its implementation. Resources allocated for responding to crises have been steadily reduced. The influence of multinational companies, sometimes more powerful than some states, has negatively impacted on foreign policy making. Although states that oppose interventions are usually seen as having something to hide, military intervention is seldom the best way to deal with humanitarian crises. Similarly, states that usually recommend intervention are frequently the largest providers of arms fuelling the conflict.

Most participants agreed that states cannot intervene everywhere but criticized the apparently arbitrary selectivity of where interventions actually do take place, and blatant double standards. There was also criticism of the method of implementing interventions, which often leads to a perpetuation of the conflict (with ECOMOG in Liberia and the British intervention in Sierra Leone as claimed examples). Other points made were that states often commit to intervention half-heartedly and inconsistently, with little will to engage in long-term operations. Moreover, the political component is often lacking, and no long-term strategy is put in place to consider the political and economic repercussions of the intervention.

This led to the question of the responsibility of nonstate actors: armed rebel groups, mercenaries–private security companies, multinational companies, international organizations, NGOs, think-tanks, and, above all, individuals. The last three UN Secretaries-General insisted that the Charter provides for the protection of human rights and that interventions for that purpose, especially military, signify the emergence of the individual as a distinct subject of international law. New bodies, such as the ICC, in fact give the power to individuals to not only influence the policy of their governments but also intervene at a judicial level, on such issues as the starvation of the population (considered a war crime by the ICC).

It was suggested that even in military interventions, nonmilitary actors should also be brought in as soon as possible. Relief operations and assistance to the victims of war should be left to organizations such as the ICRC, and states should only intervene in the politico-military process. During the Kosovo intervention, NATO was the coordinating body for humanitarian affairs, which led to a confusion between military and humanitarian goals.

Some participants nevertheless expressed concern lest the shift in focus to non-state actors becomes an excuse for states not to assume the responsibility that is properly theirs. For example, in Angola the criminalization of the Union for the Total Independence of Angola might not have been wholly positive, as it ignored the role of neighbouring countries in rekindling the hostilities; similarly in Sierra Leone, the demonization of the Revolutionary United Front might have facilitated a political solution, but it did not address the original problems that led the group to rebel in the first place. This is particularly counterproductive, since other actors are usually only subject to nonbinding codes of conduct. Moreover, some nonstate actors simply do not have the capacity for effective political action.

Prevention

The definition of peace has evolved from the old negative approach, namely, the absence of war, to a new positivistic view, viz. a permanent end to war attainable by affecting the root causes of conflict. A number of participants were pleased with ICISS's focus on a "responsi-

bility to protect," as this emphasizes the victims and clearly encompasses prevention. Some other participants nevertheless warned that once you pass the wrapping, the essential questions remain the same and still have to be addressed.

Although participants diverged on the roles of the main actors during a crisis, all agreed on the importance of cooperation in elaborating effective, new preventive strategies through dialogue, fighting against racism and similar ideologies that lead to war, repressing international crimes, and instituting clear measures, such as the suspension of all international aid to countries taking part in a conflict. Most participants agreed that the use of military force should always be the last resort, but some considered that the targeted use of force early in a crisis could be construed as a preventive strategy, used to avoid the escalation of hostilities.

Reforming the United Nations

Recent events, such as the intervention in Kosovo, have highlighted an apparent gap between legality and legitimacy. This discrepancy is further complicated within the UN, where structures are often ill-adapted to the objectives of the organization. A number of participants proposed reforms aimed at changing the composition of the Security Council to include new permanent members. Others noted that this is not a realistic goal in the short term. Moreover, although such reform might increase the Council's legitimacy, it would not necessarily improve its effectiveness. Similarly, reforms aimed at eliminating the veto tend to see the veto as a block to needed and legitimate interventions, rather than as a regulatory mechanism that, if ignored, could lead to greater crisis.

One solution suggested was to put human rights more firmly at the centre of policy making in the UN. Human rights are a universal criterion for legitimacy, recognized both in the UN Charter and in instruments of customary international law, such as the Universal Declaration of Human Rights. Concrete steps could include reinforcing human rights programmes and the Office of the UN High Commissioner for Human Rights to give them the means to implement policy effectively. Institutionalizing civil society within the UN system would also contribute, although a distinction must be made between NGOs with a global and wide-ranging agenda and those whose aim is to lobby for a specific, narrow goal.

This view based on the UN Charter was criticized by some participants. The Charter is not seen as all-unifying, but rather as a conglomerate of contradictory and antiquated principles, such as the concept of just war. The UN claims to be a democracy on a world scale, but does not recognize the diverse ideals of its members. Not all regimes have accepted or implemented the human rights principles contained in the Charter. The sheer diversity of the cultural values of its members makes a consensus on fundamental values and legitimacy difficult, if not impossible. This consensus cannot be imposed, since the organization itself is not really an effective supranational state with the means to enforce the application of those principles. The proponents of this perspective believed the answer lies in working toward a greater autonomy of action for states, individually or in unison, but not necessarily within the framework of the UN.

One participant warned, moreover, that it also has to be borne in mind that the people who were most interested in obtaining greater individual rights these days also tend to be those who are also interested in the creation of more states (though states that behave in a better way, both internally and internationally). In other words, such people are also strong supporters of sovereignty in the traditional sense.

NEW DELHI

REGIONAL ROUNDTABLE CONSULTATION WITH NONGOVERNMENTAL AND OTHER INTERESTED ORGANIZATIONS

JUNE 10, 2001

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SUMMARY

The extent to which humanitarian intervention can become a legitimate practice in international society was the central issue of discussion. The concept of sovereignty, lessons learned from past interventions in various regions, the context and circumstances in which intervention can take place, the principles and criteria for intervention, the role of the media, and the limits and challenges of humanitarian intervention were all discussed.

Intervention and state sovereignty were stated to be incompatible concepts. However, with globalization, interdependence, and the new international order, the normative principle of state sovereignty has been undermined. While states no longer enjoy absolute sovereignty, the legitimacy of intervention remains a controversial issue.

Article 2 (4) of the UN Charter restricts the right to use force unilaterally, except in cases of self-defence. It has been widely accepted, especially during the Cold War, that military intervention to save the victims of even gross human rights abuses is a violation of the Charter. As strong adherents to this provision and the principle of nonintervention, countries in Asia – such as China, India, and many ASEAN members – are key opponents of intervention. Nevertheless, there is room to manoeuvre. Chapter VII of the UN Charter allows the use of force to maintain “international peace and security.” The controversy lies in how international peace and security should be interpreted and how far this permits the Security Council to authorize interventions to stop intrastate humanitarian emergencies. Problems stemming from crises, such as the influx of refugees, must also be dealt with in the context of an intervention.

The gap between international commitments and the instruments for enforcing them allow some governments to abuse their citizens with impunity. Outside interventions to rescue these people provoke charges of interference in the internal affairs of another state. On the other hand, failing to act can lead to accusations of moral indifference and an abrogation of international responsibility.

Lessons Learned

The Indian experiences of intervention in Bangladesh, Sri Lanka, and the Maldives, the NATO intervention in Kosovo, and UN interventions in Cambodia, East Timor, and other cases were raised for discussion. While these cases are diverse in nature (unilateral in the case of the Indian interventions, multilateral but outside the framework of the UN in the case of Kosovo, and multilateral, under the aegis of the UN, in the remaining cases), there are similarities among them, particularly in the ad hoc nature of those operations.

Nevertheless, participants generally agreed that the nature of each conflict differs markedly, according to varying political contexts and cultural settings, among other factors. Conflicts are rampant across the globe, but international law does not provide satisfactory principles or guidelines for intervention, and armed forces are not trained or intended for humanitarian operations. Faced with these difficulties, interventions have at times resulted in failure.

Very often, the morality and claimed legitimacy of interventions have in reality only been those of dominant nations or groups of nations. Although in some cases the effect of military intervention has been to rescue the victims of mass murder or grave violations of human rights, the use of force has been strongly condemned by the international community. Too often, intervention for humanitarian purposes has been criticized for inconsistency, selectivity, and hypocrisy.

Past experience suggests the following as the sorts of conditions that have to be met in carrying out an intervention:

- an intervention and its mandate have to flow from a global conscience;
- strategies and available resources have to be assessed carefully;
- operations must be well-planned, with clear and accepted, impartial, transparent policies and must be implemented by trained (armed) forces;
- political and international-relations perspectives must be taken into consideration;
- territorial integrity must be respected;
- the objective must be to increase democratization, good governance, and economic development and strengthen the process of nation-building;
- discrimination in the ways or means of implementing an intervention must be avoided;
- safe areas and demilitarized zones must be redefined; and
- attempts must be made to predict and prevent undesirable consequences.

Participants noted that international society still lacks an international framework of laws and an authoritative, objective decision maker to adjudicate the applicability of intervention.

Principles and Guidelines for Military Intervention

Participants discussed ways to mitigate the perverse effects of intervention by focusing on principles and guidelines for intervention that might be acceptable to the international community. Broad consensus was reached on the following criteria:

- ❑ Humanitarian intervention must be restricted to the most heinous crimes, such as genocide, imminent or ongoing gross human rights violations and mass murder.
- ❑ Military intervention must be seen as a last resort and must have a high likelihood of success. The use of force must be considered in conjunction with Chapter VI, Article 33 of the UN Charter.
- ❑ Intervention should be premised and based on existing internationally recognized and accepted norms. It should also be consistent with international laws and principles, including IHL.
- ❑ A multilateral intervention by the UN, or authorized by the UN, is preferable to a direct intervention by a regional organization, but the latter is preferable to one undertaken by a group of states or an individual state.
- ❑ Intervention must be implemented in a timely way and must be swift and decisive.
- ❑ The use of force must be proportionate to the desired ends and must be impartial.
- ❑ Policies for intervention must be developed by means of a democratic process, and decision making must be transparent.
- ❑ Intervening powers would have to withdraw as soon as the mandate has been achieved, and the sovereignty of the state must be immediately reinstated.
- ❑ Humanitarian intervention is justified not only on moral grounds, but also on grounds relating to the maintenance of peace and security, as well as economic development and the protection of cultural heritage.
- ❑ Intervention must address the root causes of violations and must be well intended, and not in the pursuit of state self-interest.
- ❑ The primary goal of intervention must be to remedy humanitarian crises and restore the rule of law, and not the pursuit of self-interest by intervening states.
- ❑ If at all possible, intervention should occur on the basis of the invitation of the government of the state in which the intervention is to occur.

Intervention must be considered on a case-by-case basis. It was agreed that the proposed criteria are incomplete and leave much open to interpretation, such as the definition of what constitutes gross violations of human rights, mass murder, etc. The question of who should decide to enforce standards and how and what the process of scrutiny should be were also discussed. Although in general participants tended to favour entrusting the authority to intervene to the Security Council, many called for a review of its structure and composition, citing problems of coherence, effectiveness, representation, democratic practice, and legitimacy. For many participants, the Security Council is in crisis, and there is uncertainty as to whether it could properly fulfill its mandate. One participant suggested that an international independent body be established outside the UN system in order to make sure that standards and conditions are met by intervenors.

Impacts of External Military Intervention

It was argued that if military intervention is the only way to put an end to human crises and barbarism, it would be rather difficult to avoid their perverse effects. In this regard, one participant put forward a number of principles on the potential impacts of military intervention:

- ❑ Rather than addressing the deep-rooted problems of disrupted states, which requires a long-term strategy, intervention more readily and rapidly addresses the short-term symptoms of disorder.
- ❑ Intervention is likely to have significant impact on particular individuals or groups influenced by the access to, and distribution of, goods.
- ❑ Intervention brings a range of new actors to the local and international landscape.
- ❑ Intervention is merely the starting point in a complex process of political change. It is not designed to end conflict altogether but can at least be expected to “civilize” political conflict.
- ❑ Intervening forces will find it difficult to confront the problems of political culture, the elite structure, and institutional structure and design in the intervened country.
- ❑ Post-intervention peace processes might be hindered by the agendas of local authorities (“limited, greedy, or total spoilers”), whose principal targets are vulnerable populations;
- ❑ Intervention might have significant potential impacts on trust, social capital, and the character of a society (a lack of trust could spoil all good intentions);
- ❑ Intervention and (or) international assistance can produce negative effects on the reconstruction of a civilian economy if the presence of intervening powers causes distortions in local incentive structures, creates an unacceptably dependent state, or inadvertently provides space for criminal elements to flourish; and
- ❑ Any of the aforementioned issues can result in the fragmentation of a coalition of intervening powers.

Role of the Media

It was noted that the legitimacy of intervention is based on public support. Without the media, military intervention would not win public support. The problem lies in the fact that

- ❑ in general, the need for instantaneous information precludes the transmission of confirmed information;
- ❑ the media’s interest in comprehensive information can hinder operational, and, particularly, military strategies;
- ❑ the media is not adequately sensitized to the importance of political control over interventions; and
- ❑ information (and intelligence) is not adequately shared, but the media appears to be the main actor involved in gathering and disseminating information.

Participants concluded that it is important to win the support of the media in order to win public support over an intervention. From the perspective of the media, it is important that intervening parties understand international media norms; from the perspective of intervening parties, the media need to practice “preventive journalism.”

Conclusions

Seen from various dimensions, it was agreed that intervention is a complex question and needs to be addressed with caution. Cooperation is an essential element. International responsibility must be felt by all if intervention or cooperation is to succeed.

There are now too many conflicts crying out for an international response. The society of states has a duty to act. However, if principles and guidelines are necessary, there is also a need to consider the modalities for any particular action. Participants called for recharacterizing preventive responsibilities.

While military intervention might be the only means to enforce humanitarian norms, it should not be considered a right. Rather, it must be seen as a responsibility. As such, coercive intervention needs to be properly justified. While protective and preventive intervention is preferable to military intervention at all times, military intervention will, at times, be a "necessary evil," and though it should only ever be attempted "with a trembling hand," it should in some cases be attempted nonetheless.

BEIJING

ROUNDTABLE CONSULTATION WITH NONGOVERNMENTAL AND OTHER INTERESTED ORGANIZATIONS

JUNE 14, 2001

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SUMMARY

At the request of the ICISS (which was established by Canadian Prime Minister Jean Chrétien's announcement at the Millennium Assembly of the UN, in September 2000), a meeting with the China Institute of International Studies and ICISS was held on June 14, 2001, in Beijing. The purpose of the meeting was to discuss the following three questions, put forward by ICISS: 1) when should external military intervention be considered and why: intervention priorities and thresholds; 2) when not to intervene and why; and 3) alternatives to external military intervention and the impact of external military intervention: political, economic, and social.

The participants realized that the day was significant and that it would be useful for both sides to move this discussion forward. No doubt such productive discussion and frank exchanges would improve our understanding and friendship. At the same time, we had to deepen the study of these issues that the international community is facing today.

The views from the Chinese side were summarized as follows:

❑ Theoretically, the conceptualization of humanitarian intervention is a total fallacy.

Practically, actions of humanitarian intervention posed grave problems for international laws and international relations.

The theorization of the doctrine of humanitarian intervention is flawed in several respects. First of all, it lacks a legal basis. Nowhere in the UN Charter can one find a clause that permits using force, except for national defence under Article 51 and for restoring international peace, as specified in Chapter VII. Using force for moral or conceptual reasons is questionable and dangerous, because such reasons are often controversial. In practice, legalization of humanitarian intervention is counterproductive to halting massive killings in targeted countries, for it can facilitate interventionists exploiting the legality for their own purposes and encourage warring parties inside a country to take an irresponsible stand in mediation processes.

Secondly, the assertion of "human rights transcending sovereignty" has serious fallacies in theory and lends no help to the legalization of humanitarian intervention. This assertion maintains that the rights of the people transcend the rights of states. It is allegedly based on Western human rights theory; however, it is misleading to see this claim as a logical derivative of Western values. Western human rights theory is based on the rights of individual persons who are born with some indefinite rights, and traditional Western philosophy tends to play down, if not deny, collective rights. Nonetheless, in the thesis of "human rights transcending sovereignty," rights of individuals are suddenly turned into rights of the people or collective rights. This deviation indicates that "human rights transcending sovereignty" is neither a coherent development of Western values nor a reflection of the views of most non-Western nations. It is highly politicized thinking with ulterior political motives.

Thirdly, the sporadic, unpredictable, and incoherent words and actions of the Western powers regarding humanitarian intervention suggest that they have not seriously pursued a policy of protecting human rights and safeguarding world peace. On the contrary, Western powers often approach international human rights issues with dual standards. Evidence of this can be found in the policy of the US toward racist rule in South Africa and Southern Rhodesia, Washington's grudging attitude in carrying out a solution by the Security Council of the UN to stop civil war in Rwanda in 1994, NATO's military intervention in Kosovo, NATO's double standards in averting ethnic cleansing in the Balkans, and so on. It is clear that certain Western powers have played with noble principles to serve their own hegemonic interests.

❑ A clear distinction must be drawn between humanitarian assistance and humanitarian intervention.

Humanitarian intervention is a fallacious concept, tantamount to marrying evil to good. Humanitarianism is an admirable virtue, but interventionism is a red herring and widely condemned by the world; grafting humanitarian considerations onto intervention adds no lustre to the idea of meddling but will, contrarily, smear the lofty cause with dirt.

To appreciate and support efforts undertaken both within and outside the UN to provide humanitarian assistance, international society should draw a clear distinction between humanitarian assistance and humanitarian intervention. Humanitarian assistance is not an alternative means of politics, nor should it be an instrument for the pursuit of political and military goals of individual states. It must be free of ulterior political motives.

In practice, one can differentiate humanitarian actions from humanitarian intervention according to some key principles, the core one being respect for sovereignty. Sovereignty is enshrined in the UN and remains the most important pillar in today's international order; humanitarian actions must conform to this basic principle. Derived directly from the principle of respecting sovereignty are several other guiding norms that are concerned with the legitimacy of humanitarian actions. Consent of conflicting parties concerned to a third party's involvement is a precondition for taking humanitarian actions. This principle is a logical reflection of respecting sovereignty. The third principle is concerned with mandate. Humanitarian actions involving military personnel should have the authorization of the UN Security Council in accordance with the UN Charter. Without the authorization of the UN, military coercion by any single state or a group of states, even with the target of protecting human rights, constitutes a breach of the UN Charter and is not legitimate. Impartiality is also essential for the legitimacy of the third party's involvement in an internal conflict. And the principle of nonuse of force except for self-defence is the trademark of a peacekeeping operation whose central objective is to ensure a cessation of violence.

Though the complex reality of the causes and backgrounds of regional conflicts will sometimes make it difficult to conform to the above principles, without the guidance of these principles humanitarian actions would lose their innocence.

❑ Proposals for humanitarian assistance in regional conflicts.

Considering the misleading effects of humanitarian intervention and the complexity of protecting human rights, it is imperative to establish a framework for humanitarian assistance that reflects the interests of most countries in the world. Seven proposals are as follows:

First, international society should reaffirm Article 3 (4) of the UN Charter and the principles of nonencroachment upon state sovereignty and noninterference in internal affairs by any means specified in the Declaration of Principles of International Law and the Declaration of Non-Interference in Internal Affairs.

Secondly, if peace is threatened and undermined, the UN Security Council should take necessary air, sea, and land actions to maintain or restore peace and security. Before taking action, with the consent of relevant states, a fact-finding mission should be sent as quickly as possible to conduct an investigation. The investigation's report should be submitted immediately, and after the verification of the facts, the UN Security Council would send in a peacekeeping force according to Article 37 of the UN Charter.

Thirdly, if there is no agreement on the issue within the UN Security Council, the UN General Assembly should discuss it immediately according to Article 11 of Chapter IV of the UN Charter and put forward its proposals for peacekeeping actions.

Fourthly, in the course of conducting peacekeeping actions in a state, UN peacekeeping forces and personnel should remain strictly neutral. They should not support or oppose either side.

Fifthly, by the end of peacekeeping actions, personnel concerned should withdraw immediately. They should conduct no actions that may undermine the national sovereignty of the state concerned. They should submit an impartial and objective report on the peacekeeping actions.

Sixthly, peacekeeping actions can only be taken in the case of especially severe situations that endanger regional stability and world peace.

Finally, peacekeeping actions should always be authorized by the UN Security Council. Otherwise, the UN reserves the right to impose punishment according to Article 6 of Chapter 2 of the UN Charter.

ST PETERSBURG

ROUNDTABLE CONSULTATION WITH NONGOVERNMENTAL AND OTHER INTERESTED ORGANIZATIONS

JULY 16, 2001

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SUMMARY

Russian Perspectives

A discussion paper was presented that gave an objective analysis of Russia's generally negative position on interventions of all kinds. This was for reasons of historical baggage, which came with interventions into Russia at the time of the 1917 Revolution and subsequently from the Cold War Soviet opposition to Western interventions within the Soviet sphere of influence. More recently, concern has arisen over Western unilateralism, which has characterized some interventions in the past decade and has seen the Security Council sidelined and double standards involved. Moreover, most of these interventions have been poorly conceived and have not achieved their objectives. Nevertheless, in the past few years, there have been signs that the Russian Government might be more prepared to reconsider the

issues involved in the ultimate resort to force by the international community to resolve conflicts within states – a recent poll of 200 academic specialists in the subject showed that only 16 percent support the classical Russian position, with the rest taking a variety of more progressive views. There is also a slow realization that traditional rules of sovereignty are eroding and that increased intervention is inevitable. Moreover, Russia is coming to accept that the whole international community is responsible for conflict resolution. Globalization is important in this regard; and though its final effects are not yet clear, common human security is likely to emerge as a central theme.

One participant argued that the Russian public is not really interested in foreign conflicts, even those in neighbouring Slavic countries. The ethnocultural ties are too ephemeral, and people are too busy just surviving. It is thus meaningless to talk about public reaction to interventions as being an influence on governmental decision making in this regard.

Russian Military Operations

Another discussion paper was presented that proceeded from the position that NATO and the Western European Union tend to concentrate more on military operations, whereas Russia is more inclined to the Organization for Security and Co-operation in Europe focus on conflict prevention. Traditionally, Russia has not voted for UN military or peacekeeping operations and has provided no troops or finance. This has now changed, and around 13,000 Russian troops were involved in UN operations in Bosnia, Kosovo, and Sierra Leone, as well as in conflicts within the old Soviet borders in Moldova, Abkhazia, Ossetia, and Tadjikistan. In Moldova, Russia was trying the innovative idea of involving troops from the opposing sides in peacekeeping deployments. The UN might usefully follow this example. In operations within the Commonwealth of Independent States (CIS), however, Russia has shown no preference for impartiality. In the Abkhazia operation, for example, Russia began by supporting one side; but as the situation evolved, it ended by supporting the other. It also tends to work only with the six CIS members who signed the military cooperation protocol. On the other hand, Russia is now tending to apply UN peacekeeping operation standards, including using some enforcement methods in what they continue to describe in classic peacekeeping operation terms.

It was noted that Russian field commanders often complain about being given inappropriate functions, more suited to police forces, and also about having to assume political functions because the decision making process in Moscow is too slow. A Commissioner argued in reply that police forces need a functioning judicial system in which to operate, and this often does not exist in intervened countries. It is thus probably better to start an intervention off as a full military operation and then gradually bring in police as judicial structures are built or resurrected.

Consent

One participant argued that Russian operations within the CIS could not be described as “humanitarian interventions” as the decision making process was quite different: there was no reference to the UN, or any international consensus as such. Moreover, CIS national parliaments were rarely if ever consulted. It was argued separately that Russia usually obtains a form of consent for an intervention from – often puppet – authorities in the territory concerned, whereas a “humanitarian intervention” is generally understood not to have such consent. East Timor was a similar case, where Indonesian consent for the International Force in East Timor had in effect been coerced. While some saw the subsequent military operation in East Timor as a model intervention, it could not properly be called a “humanitarian intervention” because consent existed, however coerced.

Sovereignty

A further discussion paper was presented that canvassed sovereignty issues. The central point was that while understandings of sovereignty might have changed, the basic rules are still there and are still the organizing principle for international relations. Talk about new developments relating to democracy and human rights also has to be seen against the background that in reality they occur in fits and starts. A new international system could not be based on something so sporadic and uncertain.

It was noted, however, that the Russian Constitution seems to give priority to human rights over sovereignty, as it stipulates that international law should prevail when there is a conflict with national law.

In answer to a question why Luxembourg, say, should have the right to sovereign status, but not Chechnya or Kosovo, it was noted that Luxembourg independence has been the result of a historical process. Kosovo and Chechnya are not regarded as having similar rights, because their independence would challenge borders established in that same historical process.

International Law

It was noted that attitudes toward intervention and sovereignty are conditioned according to the prevailing legal system in states: the common law tends to favour the rights of the individual, while the Napoleonic systems place more importance on the force of written law.

It was also argued that recent interventions are based largely on imaginative interpretations of vague and poorly defined provisions of the UN Charter. If new guidelines are being sought, attention should instead be paid to recent practice, regardless of whether specific cases are described at the time as not being precedents. Russia places too much importance on double standards, since these are inevitable, although in a sense the standards should at least be objective. A participant suggested that if a country or group of countries carrying out an intervention is clearly biased, then perhaps the intervention should be implemented by another, more objective group. Another participant suggested that double standards should not always be seen as black or white. The Soviet judge in the Nuremberg trials was notoriously biased, but the end result of those trials was to establish at least a more accountable form of international law.

A more legalistic view was presented that suggested that the rules of international law are binding and that the unilateral action of a group of countries outside its context risks undermining the whole international system. The Milosevic government probably would have collapsed of its own corruption without the NATO action in Kosovo, which actually strengthened internal support for Milosevic. Another participant argued that international law is really only the law of whoever the winners happen to be in specific circumstances.

Kosovo

One interesting suggestion made was that the threatened Russian veto in the lead-up to the NATO action in Kosovo was not undertaken for capricious reasons. Russia genuinely believed that other measures falling short of military intervention had not been fully explored over a sufficient period and that conditions within Kosovo at that time were not of sufficient gravity in any case to warrant immediate military intervention. Another view, however, was that the threat of veto was only an indication of Russian irritation over insufficient involvement in Western decision making circles in the post-Cold War world generally.

Guidelines

Apart from the thresholds identified by ICISS (massive loss of life, whether genocidal or not, or the threat thereof, and ethnic cleansing), one participant wondered whether intervention against major drug trafficking (as had happened in the case of Noriega) would be justifiable grounds.

The thresholds for involvement in conflicts within the CIS were identified as being 1) preventing the spread of conflict; 2) massive exodus of refugees; and 3) preventing major violations of human rights.

It was suggested that prudential considerations examined by ICISS should include “constructive abstentions,” as practised by China, in lieu of imposing the veto. If more time and effort had been spent talking to Russia at the time, this might even have been the result over Kosovo.

If general guidelines were to be developed by ICISS, it was argued that it would be impossible to amend the UN Charter to incorporate them.

When Not to Intervene

Situations where intervention should not occur were identified as 1) when intervention is opposed by the local population – treating the population of an intervened country as “defeated” would quickly alienate these people; 2) where there are large numbers of warring factions (as in Somalia); and 3) when the intervening powers base their decisions on factors that are not reflective of human rights values. One participant noted that it is strange that Western concepts of human rights could see the use of force as being necessary to maintain them. Another participant noted that early termination of an intervention often causes more harm than good, although overly long interventions are also to be avoided. If they do not address the root causes of the conflict, they should not take place.

Interventions were identified as promoting corruption among local elites, although the same participant acknowledged that when the basic issue is crimes against humanity, inaction would make the international community complicit in the crimes.

Regional Bodies

It was noted that it has taken some time for the CIS to realize that it is a regional organization within the meaning of Chapter VIII of the Charter. In a sense, this explains why the CIS has never sought Security Council approval for any of its actions. One other view was that the actions carried out in the name of the CIS might not in fact be those of such a “regional organization,” since only six members of the CIS are party to the CIS security arrangement. The operations are usually also carried out without status-of-forces agreements, although one participant asked rhetorically between whom such an agreement could be reached in those cases.

Humanitarian Descriptor

There was some endorsement of ICISS’s decision to drop the word “humanitarian” when talking about intervention. Some took the former Soviet position of characterizing all interventions as aggression and in no way humanitarian. Others took a more temperate position and argued that interventions are almost always against a certain class of states, hence they are discriminatory and thus cannot be called humanitarian. Yet others noted that regardless

of the outcomes, most interventions are conducted in the national interests of the intervening states and thus cannot properly be called humanitarian. The current international system is not based on morality – this might be a “nice goal,” but it does not reflect current realities.

Responsibility to Protect

Despite promptings by Commissioners, there was no discussion of the “responsibility to protect” theme being considered by ICISS. One participant did, however, note that interventions have to empower the local population to rehabilitate itself. Otherwise, dependency would result, and the intervention would have to be judged a failure.

Role of the Security Council

Similarly, there was no substantive discussion of the role of the Security Council, apart from those references noted above – and, again, despite urgings by Commissioners. One participant did, however, note that the “Uniting for Peace” procedure might not be liked by the P-5, including Russia, but that it would certainly be preferred by most of the remaining 184 members of the UN.