



International Peace Academy



Secretary-General Kofi Annan (l) and Canadian Foreign Minister William Graham (r), flank David Malone, President of the International Peace Academy, at the opening of a seminar on "The Responsibility to Protect." The seminar focused on the final report of the International Commission on Intervention and State Sovereignty established by Canada.

"Responsibility to Protect" Discussed at New York Seminar

by Simon Chesterman

Canadian Foreign Minister William Graham and United Nations Secretary-General Kofi Annan were keynote speakers at a seminar in New York on 15 February to discuss the final report of the *International Commission on Intervention and State Sovereignty (ICISS)*. Entitled *The Responsibility to Protect*, the report was released at UN Headquarters last December. The seminar was organized by the International Peace Academy with the support of the Canadian Department of Foreign Affairs and International Trade to allow a frank discussion of the Commission's findings and recommendations. Although journalists were invited to the event, all statements except the keynote speeches were off the record.

The ICISS was established in September 2000 by then-Canadian Foreign Minister Lloyd Axworthy. It was a response to a controversial 1999 speech in the General Assembly by Secretary-General Kofi Annan in which he reflected on the international community's uneven track record in dealing with man-made humanitarian disasters and urged a new international consensus on responding to massive violations of human rights and humanitarian law.

Humanitarian intervention was one of the defining issues of international relations in the 1990s, brought to the fore most prominently during NATO's Kosovo intervention. Diplomats, lawyers and commentators disagreed strongly over whether it could be legitimate for one State to intervene militarily in another State to protect people at risk. Although the focus has now shifted to the war on terrorism, the failure of State institutions in a number of countries continues to raise the issue of humanitarian intervention. As is now evident in Afghanistan, such operations present hard questions about the ongoing obligations of the international com-

munity to the population of a targeted country.

The Commission

The 12-member *Commission*, co-chaired by former Australian Foreign Minister Gareth Evans and senior Algerian diplomat Mohamed Sahnoun, brought a diverse range of backgrounds, views and perspectives to the issue. It approached its task with three basic objectives. First, it should produce something intellectually satisfying that would be taken seriously by the policy and academic community. Secondly, its recommendations had to be acceptable in principle by governments and not easily rejected out of hand. Thirdly, these recommendations should be capable of actually motivating action. In its efforts to capture as many views as possible, the Commission held consultations in

About IPA

The International Peace Academy (IPA) is an independent, international institution dedicated to promoting the prevention and settlement of armed conflicts between and within States through policy research and development.

For more information: IPA, 777 UN Plaza, 4th Floor, New York, NY 10017. Web site: <http://www.ipacademy.org>

Simon Chesterman is an Associate at the International Peace Academy and directs the project on Transitional Administrations.

TIMELINE

Humanitarian Intervention

Source: Simon Chesterman, *Just War or Just Peace?* (Oxford University Press)

- 1646 Hugo Grotius publishes *De jure belli ac pacis* (On the law of war and Peace).
- 1648 Treaty of Westphalia marks the introduction of the modern State.
- 1651 Thomas Hobbes publishes *Leviathan*.
- 1827 Joint intervention of Great Britain, France and Russia against Turkish rule in aid of Greek insurgents.
- 1860 French occupation of Syria in defence of Maronite Christians.
- 1898 United States intervention in Cuba, partly on behalf of Cubans being held in Spanish concentration camps.
- 1928 Kellogg-Briand Pact condemns resort to war.
- 1945 United Nations Charter adopted, prohibiting the threat or use of force.
- 1960 Belgian intervention in the Congo (Leopoldville).
- 1964 Belgian and US intervention in the Congo (Stanleyville).
- 1965 US intervention in the Dominican Republic.

see *TIMELINE* next page

Commission Report

The *International Commission on Intervention and State Sovereignty* produced a 75-page report and a second volume of background research. Primary authors of the background research were Thomas G. Weiss and Don Hubert, who drew on substantial contributions from over fifty other scholars and specialists. The second volume also includes an extensive bibliography of over 2,000 works on humanitarian intervention. These materials are available in book form (published by the *International Development Research Centre*) and in CD-rom format. They are also available at the Commission's website: <http://www.iciss.gc.ca/>

Ottawa, Geneva, London, Maputo, Washington, DC, Santiago, Cairo, Paris, New Delhi, Beijing and St. Petersburg.

Sovereignty as Responsibility

In a key innovation, the report turns on its head the policy dilemma that had long paralysed debate on humanitarian

intervention. Rather than examining the right to intervene, it focuses on the responsibility of States to protect vulnerable populations at risk from civil wars, insurgencies, State repression and State collapse. In his remarks to the seminar,

see *SEMINAR* next page



Secretary-General Kofi Annan with Ambassador Mohamed Sahnoun (left) and Gareth Evans (right), Co-chairs of the International Commission on Intervention and State Sovereignty (ICISS).

SEMINAR

continued from previous page

Secretary-General Kofi Annan noted that switch, saying: "I admire your diplomatic skill in redirecting the debate ... I wish I had thought of this myself. It would have saved me quite a few explanations of just what I was proposing in my speech. I say this because your title really describes what I was talking about: the fact that sovereignty implies responsibilities as well as powers; and that among those responsibilities, none is more important than protecting citizens from violence and war."

However, the focus on sovereignty as responsibility does not mean that sovereignty is obsolete. As Canadian Foreign Minister William Graham observed, "On the contrary, it is an effective, functioning State that can best protect its own citizens. Indeed, it is in the State that the international community has vested primary responsibility for the protection of humanitarian standards. It is the community of nations that adopted the Charter and the Universal Declara-



Mr. Annan with IPA personnel (l to r): Ambassador John Hirsch (Senior Fellow), Augustine Toure (Ruth Forbes Young Civil Society Fellow) and Program Officer Marlye Gélin-Adams.

tion of Human Rights. It is States who signed the Covenant on Economic, Social and Cultural Rights and its sister Covenant on Civil and Political Rights. And I think it is fair to say that governments which acquit themselves of their responsibilities under these conventions have little to fear for their sovereignty. States where the rule of law predominates and where democratic, tolerant institutions flourish are best able to bring their citizens the protections and the progress they need."

Where governments make good faith efforts to fulfill that responsibility, their sovereign rights remain inviolate, even when the circumstances of their countries condemn their citizens to poverty. Where governments are unwilling or unable to protect their citizens from avoidable catastrophe, the Commission argues that the broader community of States must shoulder that responsibility.

When to Intervene

Because countries should be discouraged from intervening forcibly in the affairs of others, the bar that needs to be cleared before intervention can be seen as legitimate is set high. The report states that military intervention for human protection purposes is an exceptional and extraordinary measure. "To be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind:

"(a) large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate State action, or State neglect or

inability to act, or a failed State situation; or

"(b) large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape."

This threshold excludes circumstances in which some have argued that intervention might be warranted. The report makes clear, for example, that systematic racial discrimination, or the systematic imprisonment or other repression of political opponents would not satisfy the standard if it fell short of outright killing or ethnic cleansing: "These may be eminently appropriate cases for considering the application of political, economic or military sanctions, but they do not in the Commission's view justify military action for human protection purposes." Similarly, the overthrow of a democratic regime on its own would not justify military intervention.

The report also distinguishes intervention for human protection purposes from other types of intervention, such as that being undertaken in Afghanistan or being contemplated against Iraq,



Ambassador Teniola Olusegun Apata, Nigeria's Deputy Permanent Representative

which seek to rely on other bases for legitimacy, including self-defence and Security Council authorization.

An important qualification is that the killing or ethnic cleansing may be "actual or apprehended". The report notes that such evidence will often be extremely controversial, and some desire was expressed for a respected and impartial source. The International Committee of the Red Cross (ICRC) was frequently suggested in its consultations, but was absolutely unwilling to take on a role that might compromise its political neutrality. Instead of advocating a novel institutional solution to the problem of evidence, the report recommends utilizing existing institutions, reports prepared by or for UN organs and agencies, other international organizations and non-governmental organizations, and on occasion the media. If warranted, the Security Council or the Secretary-General could establish a fact-finding mission, with the Secretary-General in particular drawing upon his authority under the Charter to "bring to the attention of the Security Council any matter

TIMELINE

continued from previous page

- 1971 Indian intervention in East Pakistan/Bangladesh.
- 1976 Israeli intervention in Uganda (Entebbe Operation).
- 1978 Belgian and French intervention in Zaire.
- 1978 Tanzanian intervention in Uganda.
- 1978 Vietnamese intervention in Kampuchea (Cambodia).
- 1979 French intervention in the Central African Empire/Republic.
- 1983 US intervention in Grenada.
- 1989 US intervention in Panama.
- 1990 ECOMOG intervention in Liberia.
- 1991 Operation Desert Storm in Iraq/Kuwait.
- 1991 United States declares no-fly zones in Iraq.
- 1992 UNPROFOR in Yugoslavia, followed by IFOR and SFOR
- 1992 US Operation Restore Hope in Somalia.
- 1994 French Operation Turquoise in Rwanda.
- 1994 US-led Operation Uphold Democracy in Haiti.
- 1997 ECOMOG intervention in Sierra Leone, followed by UNAMSIL with additional British troops from 2000.
- 1999 NATO intervention in Kosovo.
- 1999 Australian-led INTERFET intervention in East Timor.

L to R: Professor Thomas Weiss, one of the two primary authors of the volume of research that accompanies the report, Commission Co-chair Gareth Evans, and IPA President David Malone.



Professor Michael Ignatieff (l) of Canada, a member of the Commission, with Ambassador Ahmed Aboul Gheit of Egypt.



Professor Ramesh Thakur of India (l), with Eduardo Stein Barillas of Guatemala, both members of the Commission.

which in his opinion may threaten the maintenance of international peace and security”.

Security Council

This pragmatic view of the limits of institutional reform is reflected also in discussions of the role of the Security Council. It was widely acknowledged that the Security Council, flawed as it may be, remains the only body with the authority to mandate an enforcement action, and that attempts to make significant reform to its structure and basic procedures are unlikely to succeed.

That being said, three key questions formed the basis of significant discussion. First, should the Council operate on a principled basis rather than in an *ad hoc* manner? Second, is there some way of limiting the chilling effect of the



Ambassador Jeremy Greenstock of Britain

Security Council Vetoes

1990–2001

YEAR	CAST BY	TOPIC
2001	United States (2)	Israel/Palestine
1999	China (1)	Macedonia
1997	United States (2) China (1)	Israel/Palestine Guatemala
1995	United States (1)	Israel/Palestine
1994	Russian Federation (1)	Bosnia
1993	Russian Federation (1)	Cyprus
1990	United States (2)	Israel/Palestine Panama

veto? And, third, how can member States be encouraged to see human protection crises as falling within their national interest?

The report recommends that members of the Security Council agree on a set of guidelines to govern their responses to claims for military intervention for human protection purposes. This has been the subject of significant discussion over the past two years and little headway has been made; as one Council representative observed, “We’ve gone through much of this and rejected it.” This was not intended to reject the work of the Commission entirely, however. Rather, it was intended as a warning not to put principle above practice. In reality the Council has made great advances in taking action for human protection purposes. If the cost of Security Council resolutions authorizing inter-

vention in Somalia, Rwanda and Haiti was reference to the “exceptional”, “unique” and “extraordinary” nature of each situation, it was argued, this was a small price to pay.

In discussion, it was suggested that endorsing this *ad hoc* approach amounted to trusting the Council to follow its own instincts. Even if it were not possible to adopt formal principles, there was concern that Council members were making decisions on the

basis of factors other than the merits of the individual situation.

This was particularly acute when it came to consideration of the veto. Here, building upon a proposal by a senior representative of one of the veto-wielding Permanent Five members, the Commission recommended that the Permanent Five agree “not to apply their veto power, in matters where their vital State interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support”. Again, there was a division of views between those who saw any attempt to constrain the powers of the Council in

general or the Permanent Five in particular as unrealistic, and those who expressed frustration at the refusal even to contemplate such change.

One point on which there was agreement was that the veto power of the five Permanent Members of the Security Council is a lesser problem than the general reluctance to commit troops for human protection purposes. See box

National Interest

In his opening speech, the Secretary-General noted that sovereignty was not the only barrier to the protection of human life: “Lack of political will, national interest narrowly defined, and simple indifference too often combine to ensure that nothing is done, or too little and too late.”

The UN Charter includes mecha-



Ambassador Adolfo Aguilar Zinser of Mexico (l) with Ambassador Jean-David Levitte of France

Principles for Military Intervention

Just Cause Threshold

Military intervention for human protection purposes is an exceptional and extraordinary measure. To be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind:

A. Large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate State action, or State neglect or inability to act, or a failed State situation; or

B. Large scale ‘ethnic cleansing’, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.

Precautionary Principles

A. Right intention: The primary purpose of the intervention, whatever other motives intervening States may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned.

B. Last resort: Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for

believing lesser measures would not have succeeded.

C. Proportional means: The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.

D. Reasonable prospects: There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.

Right Authority

A. There is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes. The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has.

B. Security Council authorization should in all cases be sought prior to any military intervention action being carried out. Those calling for an intervention should formally request such authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter.

C. The Security Council should deal promptly with any request for authority to intervene where there are allegations of large scale loss of human life or ethnic cleansing. It should in this context seek adequate verification of facts or conditions on the ground that might support a military intervention. The Responsibility to Protect XIII

D. The Permanent Five members of the Security Council should agree not to apply their veto power, in matters where their vital State interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.

E. If the Security Council rejects a proposal or fails to deal with it in a reasonable time, alternative options are:

I. Consideration of the matter by the General Assembly in Emergency Special Session under the “Uniting for Peace” procedure; and

II. Action within area of jurisdiction by regional or sub-regional organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorization from the Security Council.

F. The Security Council should take into account in all its deliberations that,

if it fails to discharge its responsibility to protect in conscience-shocking situations crying out for action, concerned States may not rule out other means to meet the gravity and urgency of that situation – and that the stature and credibility of the United Nations may suffer thereby.

Operational Principles

A. Clear objectives; clear and unambiguous mandate at all times; and resources to match.

B. Common military approach among involved partners; unity of command; clear and unequivocal communications and chain of command.

C. Acceptance of limitations, incrementalism and gradualism in the application of force, the objective being protection of a population, not defeat of a State.

D. Rules of engagement which fit the operational concept; are precise; reflect the principle of proportionality; and involve total adherence to international humanitarian law.

E. Acceptance that force protection cannot become the principal objective.

F. Maximum possible coordination with humanitarian organizations.



Ambassador Dumisani Shadrack Kumalo of South Africa



Ambassador Claudia Fritsche of Liechtenstein and Ambassador Kamalesh Sharma of India



Catherine Dumait-Harper of Médecins Sans Frontières and Ambassador Kishore Mahbubani of Singapore.

nisms for an international security architecture not dependent upon the interests of States, providing for military forces to be placed at the disposal of the Security Council. In the fifty-seven years of the UN, no such agreements have been concluded, however, and the Military Staff Committee, which was to advise and assist the Council on the employment and command of forces placed at its disposal, remains little more than a curiosity.

In the past decade of increased activism on the part of the Council, authorization to undertake enforcement action in its name has generally followed an independent offer from a member State to lead such an action. This arrangement binds Security Council action not merely to the national interest of those States voting on the Council to acquiesce, but makes action dependent on the positive willingness of a lead State or States to put their soldiers in harm's way. The result is that when no State with the capacity to act considers its national interest affected by a question such as Burundi, when it arose on the Council's agenda, or the Democratic Republic of Congo, the Council may decide to take no action, or to take only half measures.

No report can make States redefine their national interest, but it was hoped that *The Responsibility to Protect* might provide a structure for dealing with incidents where large scale killing or ethnic cleansing was taking place. This was variously described as encouraging the reinterpretation of self-interest and providing a tool with which to shame States into action. In the Secretary-General's words: "You are taking away the last excuses of the international community for doing nothing when doing something can save lives. I can offer no higher praise."

Next Steps

Where does the report go from here? As one Commissioner observed, good reports don't simply gather dust. They should change the way people think and talk about an issue. And, hopefully, they can change the way people act.

One concrete proposal advanced was the possibility of a Security Council retreat to discuss a code of conduct on the use of the veto and principles that might

govern military intervention. There was some reluctance to consider this approach on the part of at least one Security Council representative, though it was not ruled out completely.

But the United Nations is, of course, more than simply the Security Council. Already, as one diplomat observed, the Security Council is forced to deal with issues well beyond its normal mandate when a party regards an issue as important, there is a tendency to try to put that issue before the Security Council. A useful analogy might be to regard the Security Council as the Emergency Room at a hospital; at present the lack of other facilities means that every headache gets brought to the E.R. clogging up the system. Other forums in which this issue could be dealt with include the General Assembly and the Economic and Social Council (ECOSOC).

The General Assembly might, for example, consider a resolution elaborating the Commission's theme of the responsibility of States, without making it a charter for intervention. It could elaborate the obligations of sovereignty and outline the conditions in which the responsibility to protect might be invoked. Such a resolution, comparable perhaps to the *Declaration on Friendly Relations* adopted in 1970, would be useful in developing a normative basis for the increased activism of the United Nations. An obvious caveat about such an initiative is that it could open up a Pandora's box in terms of Israel and Palestine.

Another key fo-

rum that could be better used is ECOSOC. There was little dissent to the proposition that ECOSOC should play a more active role in conflict prevention; and there was substantial support

for linking development with prevention of conflict. The ICISS report notes the differences between development efforts undertaken in the normal course of affairs, those that are part of humanitarian assistance programs, and

those implemented with a view to conflict-prevention or peace-building. Care would have to be taken not to prejudice existing development and humanitarian programs by tying development too closely to the threat of conflict.

Outside the United Nations, it was suggested that debate might be advanced independently among groups of parliamentarians and in civil society. Here, as the Secretary-General stressed, it is important to emphasize that the debate is not simply about the question of military intervention. Indeed, the report lays significant emphasis on two areas where words have too often taken the place of action: the responsibility to prevent and the responsibility to rebuild. "We are confronting these questions right now in Afghanistan," Mr. Annan said, "where we are desperately trying to ensure that the international commu-

nity stays engaged. Prevention, in the case of Afghanistan today, means ensuring that security is provided throughout the country, and not just in Kabul. Otherwise we risk a return to violence and conflict."

Commission Members

Co-Chair: **Gareth Evans** (Australia)
 Co-Chair: **Mohamed Sahnoun** (Algeria)
Gisèle Côté-Harper (Canada)
Lee Hamilton (United States)
Michael Ignatieff (Canada)
Vladimir Lukin (Russia)
Klaus Naumann (Germany)
Cyril Ramaphosa (South Africa)
Fidel V. Ramos (Philippines)
Cornelio Sommaruga (Switzerland)
Eduardo Stein Barillas (Guatemala)
Ramesh Thakur (India)

Commission Funding

ICISS was funded by the Canadian Government and 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. Generous financial and in-kind support was also provided by the Governments of Switzerland and the United Kingdom.

Humanitarian Intervention After 9/11

In view of the priorities that have emerged in the aftermath of 9/11, military action to prevent humanitarian crises may seem a remote consideration, but it is worth remembering that in Afghanistan misrule by the Taliban and the harboring of terrorist organizations long coincided with a humanitarian crisis. As the focus now shifts to reconstructing that shattered country, it is likely that the broadening war on terrorism will require the international community to address situations that allow violent groups to operate and grow in strength within other States. That could include situations created by repressive governments.

The report notes that action to protect a civilian population in another State is distinct from action in response to terror attacks against one's own. But the move from a right of intervention to a responsibility to protect applies to both situations. If more had been done to induce or compel the Taliban regime to protect the Afghan population, Afghanistan might have proved a less inviting haven for al Qaeda. And, now that the United States has successfully removed that regime from power, it imposes a special responsibility (with the assistance of the United Nations and other countries) to leave Afghanistan a better place than they found it.

Secretary-General Annan emphasized in 1999, and again in a speech at the International Peace Academy in November 2000, that discussion of "intervention" for humanitarian purposes should be defined as broadly as possible. Focusing solely on military action both distracts attention from the real issue helping people in need and risks compromising the work of the real humanitarians, whose relief works will be essential to see millions of Afghans through the coming winter. As the ICISS report makes clear, any military action should be regarded primarily as a failure of the State that bears primary responsibility to protect the people under its care, and of the international community for failing to help it or to help them. ❖