

Canadian Non-Paper on *The Responsibility to Protect* and the Evolution of the United Nations' Peace and Security Mandate:

Submission to the UN High Level Panel on Threats, Challenges and Change

This paper outlines considerations pertaining to intervention¹ for human protection purposes which Canada believes should be addressed by the High Level Panel on Threats, Challenges and Change. Where appropriate, it refers to specific recommendations made by the International Commission on Intervention and State Sovereignty (ICISS) in its report, entitled The Responsibility to Protect².

1. Context

1.1 The current debate regarding intervention for human protection purposes takes place in the context of geopolitical shifts which have fundamentally altered the global security environment since the United Nations Charter was drafted in 1945. Chief among these are:

- i. the process of decolonization in the 1950s and 1960s, and the resulting emergence of a large number of new states in Africa and Asia;
- ii. the end of the Cold War in the early 1990s and with it the emergence, or re-emergence, of new state actors, and;
- iii. the trend towards global interdependence, which has made borders more permeable, increased contacts at the sub-national level, and broadened the transnational impact of internal conflict.

1.2 Globally, violent conflict has continued to trend downwards in the post-Cold War period, both in magnitude and in terms of absolute numbers, and is now at its lowest level since the 1960's.³ At the same time, the rapid emergence of new states with varying degrees of internal stability and/or legitimacy has brought to the fore new and often fundamentally different security challenges. Of particular significance to this submission is the rise in internal war *as a proportion of* the total number of ongoing conflicts. These wars are characterized by the predominance of small arms/light weapons and the participation of irregular forces, a combination which makes them both less centralized and more brutal. In them, civilian casualties and displacement are not merely unintended by-products of the fighting, but are often deliberate war aims of combatants.

1.3 Concurrent advances in human rights and humanitarian law have raised minimum standards of state conduct, both in inter-state relations and in the treatment of civilians. The intersection of these two trends (rising standards of state behaviour and the proportional increase in internal conflict) has created new expectations regarding enforcement of humanitarian and human rights norms and has led to increased calls for robust international action in cases of extreme abuse, including in certain circumstances, abuse by non-state actors. However, while the need to protect basic standards is widely acknowledged, the international community's enforcement record has been chequered, and the specific responsibilities of the Security Council when prevention fails remain both vague and politically sensitive. As a result, "humanitarian interventions" have been controversial in both their commission and omission, and questions regarding the legitimacy and/or legality of the use of force to protect civilians continue to be raised.

2. The Expectations-Rules Gap

2.1 Against this complex backdrop (characterized by a strategic environment in transition; rising standards of state conduct; and persistent lack of clarity regarding international protection responsibilities) the performance of the Security Council in the 1990's has come to be widely regarded as a legacy of failure. The ineffectiveness of missions in Somalia, Bosnia, Rwanda and elsewhere has raised serious questions regarding the UN's capacity to deliver real solutions to contemporary security problems. Increased public criticism of the Council along these lines suggests that the concept of security is increasingly understood to extend to people as well as states, and that the Security Council has failed to deliver on this understanding in practice.

2.2 In Canada's view, ongoing controversy regarding intervention for human protection purposes also demonstrates the emergence of a critical gap between contemporary security challenges/expectations, and the rules currently in place for managing peace and security.

2.3 The suggestion has been made that the Security Council's discretionary ability to apply a broad interpretation of what constitutes a "threat to international peace and security" mitigates the need for new standards. While the consequences of this approach can be debated, what is far more damaging in Canada's view is the legitimacy and credibility lost when Chapter VII powers are invoked selectively or inconsistently. For these reasons, **we urge the Panel to examine the specific institutional and legal implications of internal conflict with a view to establishing a more consistent response by the Security Council to situations where civilians are under direct and systematic attack or threat of attack. In this regard, we reiterate our strong support for the International Commission on Intervention and State Sovereignty (ICISS) and recommend that the Panel consider its findings and recommendations as outlined in *The Responsibility to Protect*.**

3. The Need for a New Consensus

3.1 Bringing the system of collective security in line with contemporary challenges/expectations in a way that ensures effective protection for civilians requires a new consensus regarding the circumstances that warrant intervention on human protection grounds. While the changing nature of conflict makes rigid rules/criteria for intervention impractical, Canada believes it is both possible and desirable to establish a set of *principles* to guide both the decision to intervene and the structure of such interventions.

3.2 In Canada's view, any new approach to military intervention for human protection purposes must be based on a number of interrelated objectives, including:

- the consolidation of evolving norms and practices to equip the international community to respond quickly and effectively without undermining the legal framework of sovereign states;
- the establishment of principles to guide Security Council decision making, particularly with respect to the identification of clear thresholds for action, and;
- the establishment of operational guidelines to ensure that the character of the intervention is in keeping with its humanitarian purpose.

3.3 Above all, a new approach to intervention must be rooted in a renewed commitment to conflict prevention and post conflict reconstruction, as reflected in General Assembly Resolution 57/337 (entitled *Prevention of Armed Conflict*) and Security Council Resolution 1366 (response to the Secretary General's Report on the Prevention of Armed Conflict).

4. Sovereignty, Intervention, and Norm Consolidation

4.1 Sovereignty and non-intervention remain defining principles of interstate relations and the foundation of world order under the UN Charter. As such, Canada takes the view that international action to stem human protection crises, while vital, cannot be undertaken at the cost of undermining the stability of the state-based international order.

4.2 At the same time, it is important to recognize that the concept of sovereignty has never been absolutely inviolable. As the Charter makes clear, state sovereignty yields to the demands of international peace and security.⁴ Beyond this basic limitation, there has been a discernable shift in the interpretation of sovereignty in recent years, away from the notion of sovereign impunity (for regimes) in favour of sovereign responsibility (towards people). The traditional norm of sovereignty has also become more porous in practice through the expansion of human rights, humanitarian law and the precedents of action by the UN and regional organizations.

4.3 Unfortunately, normative shifts related to sovereignty remain inadequately articulated in international instruments and many member states remain deeply wedded to a highly restrictive definition, a combination of factors which inhibits international efforts to address grave humanitarian crises. **As such, the Panel may wish to recommend that the General Assembly revise its interpretation of sovereignty⁵ to reflect accumulated**

practice as well as the core concepts inherent in *The Responsibility to Protect*. Such an undertaking could take the form of a new declaration or resolution highlighting that, while the primary responsibility to protect rests with individual states, there is a corollary responsibility on the part of the international community to act in extreme cases when prevention fails and the state is unable or unwilling to acquit itself of its protective responsibilities (or indeed where the state is itself the perpetrator of abuse).

5. Principles to Guide Intervention

5.1 Given the dangers inherent in the use of military force, Canada concurs with *The Responsibility to Protect* that the threshold for intervention has to be set high. In exceptional circumstances where violent conflict, repression or state collapse are so severe that international action is required, we also agree that modalities and prospects must be carefully weighed before intervention is authorized.

5.2 When authorized, it is essential that the mission mandate place clear priority on the physical protection of civilians, and that deployed forces be properly trained/equipped to undertake protective tasks, including: the deterrence of paramilitary actors and other perpetrators of violence against civilians, including through the use of force, arrest, the establishment and maintenance of humanitarian corridors, safe havens, and other protected areas; securing access to vulnerable populations by humanitarian aid organizations, and; facilitating the security of Internally Displaced Persons and refugee camps.

5.3 In this regard, Canada recommends the Panel examine the specific threshold considerations and precautionary principles outlined in Annex A, with a view to incorporating these in its final report.

6. Prevention and Rebuilding

6.1 Clearly, intervention must remain the rare exception in international relations - prevention and diplomacy must remain the rule. Indeed, the failure to prevent deadly conflict can have far reaching international security consequences and costs. As such, Canada believes that a genuine commitment to prevention is not only critical to the legitimacy and credibility of more robust forms of intervention when required, but is also indispensable from the perspective of national interest.

6.2 The full continuum of conflict prevention tools includes positive inducements, such as development assistance to promote good governance, human rights, and the rule of law, mediation, and the use of good offices and diplomatic envoys, but also encompasses more robust forms of diplomacy, including enforcement measures such as sanctions. In extreme cases, prevention can also involve the preventive deployment of military assets/troops to mitigate or stanch an ongoing crisis.

6.3 Whatever specific measures are employed, effective prevention depends upon the adequacy of early warning data and analysis, and the timely presentation of such data before the appropriate bodies of the UN, including the Security Council. **In this regard Canada welcomes the Secretary General’s establishment of the Special Representative on the Prevention of Genocide and urges the Panel to recommend specific measures designed to further strengthen vital links between international human rights machinery and the decision-making processes of the Security Council. This could include for example a recommendation that the Council be publicly updated on situations of concern on a more regular basis, both orally and in writing, using the offices of the Emergency Relief Coordinator as well as country-specific Rapporteurs (either directly or via the office of the SG). Linked to this, the Panel may also wish to recommend that the Security Council establish watching briefs on countries it is not currently “seized of” but where developments indicate a potential for deterioration that could seriously undermine civilian protection.**

6.4 Where fragile states demonstrate commitment to conflict-prevention or to fulfilling the expectations of the international community post-conflict, such behaviour ought to be recognized and demonstrably supported by the international community. **In this regard, the Panel may wish to adopt the recommendation outlined in *The Responsibility to Protect* regarding the establishment of an integrated task force that would draw together relevant UN bodies, Bretton Woods Institutions, and the appropriate regional organizations to provide rapid, targeted assistance designed to build sustainability into governance, reconciliation and reconstruction efforts.**⁶

7. Conclusion

7.1 The establishment of the High Level Panel by the Secretary General represents an excellent opportunity to bring clarity to the international community’s responsibility to protect civilians from the worst threats to their physical security. Certainly questions regarding when to intervene on humanitarian grounds remain highly controversial, perhaps more so today than when *The Responsibility to Protect* was first published two years ago. However, given the persistent threat to civilians exposed to internal conflict, repression and/or state collapse, it is critical that the international community forge a new consensus regarding its specific responsibilities in the face of such crises.

7.2 Canada remains sensitive to legitimate concerns that have been voiced regarding the potential for intervention to be abused – that the “humanitarian” label will be used to justify interventions that are, in reality, politically or strategically motivated. However, we are of the view that establishing principles to guide the use of force to protect civilians under severe physical threat will make it more difficult, not less, to apply the humanitarian label to non-humanitarian interventions, while simultaneously making the Security Council more responsive to the security needs of civilians.

7.3 Ultimately, developing a clear understanding of when the use of force is warranted on humanitarian grounds goes to the heart of UN reform and the Security Council’s credibility in the maintenance of peace and security. Although the Council’s functioning

has improved considerably in recent years, the manner in which it deals with internal conflict and its impact on civilians remains highly ad hoc. In the absence of greater clarity on the international protection responsibilities, we remain concerned that the Security Council's performance will continue to be measured against contradictory standards, leaving it vulnerable to charges of ineffectiveness from all sides, increasing the likelihood that intervention will be undertaken without Security Council authorization, and calling into question its primacy in the realm of peace and security. Taken together, such developments would, in Canada's view, do irreparable harm to the system of collective security under the Charter of the United Nations. For these reasons we believe it is vital that the Panel use its report to establish a clear framework for responding to the worst threats to the physical security of civilians, including in situations of internal armed conflict.

¹ Throughout the text of this submission, the term "intervention" refers to military intervention undertaken without the consent of the intervenee.

² A synopsis of the findings and recommendations of the International Commission on Intervention and State Sovereignty is attached as ANNEX A to this submission.

³ For a statistical analysis of global trends in violent conflict, see *Peace and Conflict 2003* by the Centre for International Development and Conflict Management.

⁴ Ref. Charter of the United Nations: Chpt VII, Art.39

⁵ Taken together, UNGA Resolution 2625 (*Declaration on Friendly Relations between States*, passed in 1970) and UNGA Resolution 46/182 (*Strengthening Coordination of Humanitarian Emergency Assistance*, passed in 1991) constitute the basis of the General Assembly's understanding of the principle of sovereignty, particularly in the context of humanitarian crises. In Canada's view, elements of both would need to be revisited in a new Declaration or Resolution.

⁶ See *The Responsibility to Protect*, pp 39

SYNOPSIS

THE RESPONSIBILITY TO PROTECT: CORE PRINCIPLES

(1) Basic Principles

- A. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.

- B. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.

(2) Foundations

The foundations of the responsibility to protect, as a guiding principle for the international community of states, lie in:

- A. obligations inherent in the concept of sovereignty;
- B. the responsibility of the Security Council, under Article 24 of the UN Charter, for the maintenance of international peace and security;
- C. specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law;
- D. the developing practice of states, regional organizations and the Security Council itself.

(3) Elements

The responsibility to protect embraces three specific responsibilities:

- A. The responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.
- B. The responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.
- C. The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.

(4) Priorities

- A. Prevention is the single most important dimension of the responsibility to protect: prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it.
- B. The exercise of the responsibility to both prevent and react should always involve less intrusive and coercive measures being considered before more coercive and intrusive ones are applied.

The Responsibility to Protect: Principles for Military Intervention

(1) The 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.

(2) The 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.

(3) 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.
- 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.

(4) 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.

