

From *THE RESPONSIBILITY TO PROTECT*

REPORT OF THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY

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THE SECURITY COUNCIL'S ROLE - AND RESPONSIBILITY

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

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

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

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

The Implications of Inaction

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

6.37 As a matter of political reality, it would be impossible to find consensus, in the Commission's view, around any set of proposals for military intervention which acknowledged the validity of any intervention not authorized by the Security Council or General Assembly. But that may still leave circumstances when the Security Council fails to discharge what this Commission would regard as its responsibility to protect, in a conscience-shocking situation crying out for action. It is a real question in these circumstances where lies the most harm: in the damage to international order if the Security Council is bypassed or in the damage to that order if human beings are slaughtered while the Security Council stands by.

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

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

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