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.

2. A NEW APPROACH: "THE RESPONSIBILITY TO PROTECT"

2.1 Millions of human beings remain at the mercy of civil wars, insurgencies, state repression and state collapse. This is a stark and undeniable reality, and it is at the heart of all the issues with which this Commission has been wrestling. What is at stake here is not making the world safe for big powers, or trampling over the sovereign rights of small ones, but delivering practical protection for ordinary people, at risk of their lives, because their states are unwilling or unable to protect them.

2.2 But all this is easier said than done. There have been as many failures as successes, perhaps more, in the international protective record in recent years. There are continuing fears about a "right to intervene" being formally acknowledged. If intervention for human protection purposes is to be accepted, including the possibility of military action, it remains imperative that the international community develop consistent, credible and enforceable standards to guide state and intergovernmental practice. The experience and aftermath of Somalia, Rwanda, Srebrenica and Kosovo, as well as interventions and non-interventions in a number of other places, have provided a clear indication that the tools, devices and thinking of international relations need now to be comprehensively reassessed, in order to meet the foreseeable needs of the 21st century.

2.3 Any new approach to intervention on human protection grounds needs to meet at least four basic objectives:

- ❏ to establish clearer rules, procedures and criteria for determining whether, when and how to intervene;
- ❏ to establish the legitimacy of military intervention when necessary and after all other approaches have failed;
- ❏ to ensure that military intervention, when it occurs, is carried out only for the purposes proposed, is effective, and is undertaken with proper concern to minimize the human costs and institutional damage that will result; and
- ❏ to help eliminate, where possible, the causes of conflict while enhancing the prospects for durable and sustainable peace.

2.4 In the later chapters of this report we spell out in detail how these objectives might be met. But there is a significant preliminary issue which must first be addressed. It is important that language – and the concepts which lie behind particular choices of words – do not become a barrier to dealing with the real issues involved. Just as the Commission found that the expression "humanitarian intervention" did not help to carry the debate forward, so too do we believe that the language of past debates arguing for or against a "right to intervene" by one state on the territory of another state is outdated and unhelpful. We prefer to talk not of a "right to intervene" but of a "responsibility to protect."

2.5 Changing the language of the debate, while it can remove a barrier to effective action, does not, of course, change the substantive issues which have to be addressed. There still remain to be argued all the moral, legal, political and operational questions – about need, authority, will and capacity respectively – which have themselves been so difficult and divisive. But if people are prepared to look at all these issues from the new perspective that we propose, it may just make finding agreed answers that much easier.

2.6 In the remainder of this chapter we seek to make a principled, as well as a practical and political, case for conceptualizing the intervention issue in terms of a responsibility to protect. The building blocks of the argument are first, the principles inherent in the concept of sovereignty; and secondly, the impact of emerging principles of human rights and human security, and changing state and intergovernmental practice.

THE MEANING OF SOVEREIGNTY

The Norm of Non-Intervention

2.7 Sovereignty has come to signify, in the Westphalian concept, the legal identity of a state in international law. It is a concept which provides order, stability and predictability in international relations since sovereign states are regarded as equal, regardless of comparative size or wealth. The principle of sovereign equality of states is enshrined in Article 2.1 of the UN Charter. Internally, sovereignty signifies the capacity to make authoritative decisions with regard to the people and resources within the territory of the state. Generally, however, the authority of the state is not regarded as absolute, but constrained and regulated internally by constitutional power sharing arrangements.

2.8 A condition of any one state's sovereignty is a corresponding obligation to respect every other state's sovereignty: the norm of non-intervention is enshrined in Article 2.7 of the UN Charter. A sovereign state is empowered in international law to exercise exclusive and total jurisdiction within its territorial borders. Other states have the corresponding duty not to intervene in the internal affairs of a sovereign state. If that duty is violated, the victim state has the further right to defend its territorial integrity and political independence. In the era of decolonization, the sovereign equality of states and the correlative norm of non-intervention received its most emphatic affirmation from the newly independent states.

2.9 At the same time, while intervention for human protection purposes was extremely rare, during the Cold War years state practice reflected the unwillingness of many countries to give up the use of intervention for political or other purposes as an instrument of policy. Leaders on both sides of the ideological divide intervened in support of friendly leaders against local populations, while also supporting rebel movements and other opposition causes in states to which they were ideologically opposed. None were prepared to rule out *a priori* the use of force in another country in order to rescue nationals who were trapped and threatened there.

2.10 The established and universally acknowledged right to self-defence, embodied in Article 51 of the UN Charter, was sometimes extended to include the right to launch punitive raids into neighbouring countries that had shown themselves unwilling or unable to stop their territory from being used as a launching pad for cross-border armed raids or terrorist attacks. But all that said, the many examples of intervention in actual state practice throughout the 20th century did not lead to an abandonment of the norm of non-intervention.

The Organizing Principle of the UN System

2.11 Membership of the United Nations was the final symbol of independent sovereign statehood and thus the seal of acceptance into the community of nations. The UN also became the principal international forum for collaborative action in the shared pursuit of the three goals of state building, nation building and economic development. The UN was therefore the main arena for the jealous protection, not the casual abrogation, of state sovereignty.

2.12 The UN is an organization dedicated to the maintenance of international peace and security on the basis of protecting the territorial integrity, political independence and national sovereignty of its member states. But the overwhelming majority of today's armed conflicts are internal, not inter-state. Moreover, the proportion of civilians killed in them increased from about one in ten at the start of the 20th century to around nine in ten by its close. This has presented the organization with a major difficulty: how to reconcile its foundational principles of member states' sovereignty and the accompanying primary mandate to maintain international peace and security ("to save succeeding generations from the scourge of war") – with the equally compelling mission to promote the interests and welfare of people within those states ("We the peoples of the United Nations").

2.13 The Secretary-General has discussed the dilemma in the conceptual language of two notions of sovereignty, one vesting in the state, the second in the people and in individuals. His approach reflects the ever-increasing commitment around the world to democratic government (of, by and for the people) and greater popular freedoms. The second notion of sovereignty to which he refers should not be seen as any kind of challenge to the traditional notion of state sovereignty. Rather it is a way of saying that the more traditional notion of state sovereignty should be able comfortably to embrace the goal of greater self-empowerment and freedom for people, both individually and collectively.

Sovereignty as Responsibility

2.14 The Charter of the UN is itself an example of an international obligation voluntarily accepted by member states. On the one hand, in granting membership of the UN, the international community welcomes the signatory state as a responsible member of the community of nations. On the other hand, the state itself, in signing the Charter, accepts the responsibilities of membership flowing from that signature. There is no transfer or dilution of state sovereignty. But there is a necessary re-characterization involved: from *sovereignty as control* to *sovereignty as responsibility* in both internal functions and external duties.

2.15 Thinking of sovereignty as responsibility, in a way that is being increasingly recognized in state practice, has a threefold significance. First, it implies that the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare. Secondly, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the UN. And thirdly, it means that the agents of state are responsible for their actions; that is to say, they are accountable for their acts of commission and omission. The case for thinking of sovereignty in these terms is strengthened by the ever-increasing impact of international human rights norms, and the increasing impact in international discourse of the concept of human security.

HUMAN RIGHTS, HUMAN SECURITY AND EMERGING PRACTICE

Human Rights

2.16 The adoption of new standards of conduct for states in the protection and advancement of international human rights has been one of the great achievements of the post-World War II era. Article 1.3 of its founding 1945 Charter committed the UN to "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." The Universal Declaration of Human Rights (1948) embodies the moral code, political consensus and legal synthesis of human rights. The simplicity of the Declaration's language belies the passion of conviction underpinning it. Its elegance has been the font of inspiration down the decades; its provisions comprise the vocabulary of complaint. The two Covenants of 1966, on civil–political and social–economic–cultural rights, affirm and proclaim the human rights norm as a fundamental principle of international relations and add force and specificity to the Universal Declaration.

2.17 Together the Universal Declaration and the two Covenants mapped out the international human rights agenda, established the benchmark for state conduct, inspired provisions in many national laws and international conventions, and led to the creation of long-term national infrastructures for the protection and promotion of human rights. They are important milestones in the transition from a culture of violence to a more enlightened culture of peace.

2.18 What has been gradually emerging is a parallel transition from a culture of sovereign impunity to a culture of national and international accountability. International organizations, civil society activists and NGOs use the international human rights norms and instruments as the concrete point of reference against which to judge state conduct. Between them, the UN and NGOs have achieved many successes. National laws and international instruments have been improved, a number of political prisoners have been freed and some victims of abuse have been compensated. The most recent advances in international human rights have been in the further development of international humanitarian law, for example in the Ottawa Convention on landmines which subordinated military calculations to humanitarian concerns about a weapon that cannot distinguish a soldier from a child, and in the Rome Statute establishing the International Criminal Court.

2.19 Just as the substance of human rights law is coming increasingly closer to realizing the notion of universal justice – justice without borders – so too is the process. Not only have new international criminal tribunals been specially created to deal with crimes against humanity committed in the Balkans, Rwanda and Sierra Leone; and not only is an International Criminal Court about to be established to try such crimes wherever and whenever committed in the future; but, as already noted in Chapter 1, the universal jurisdiction which now exists under a number of treaties, like the Geneva Conventions, and which enables any state party to try anyone accused of the crimes in question, is now beginning to be seriously applied.

2.20 The significance of these developments in establishing new standards of behaviour, and new means of enforcing those standards, is unquestionable. But the key to the effective observance of human rights remains, as it always has been, national law and practice: the frontline defence of the rule of law is best conducted by the judicial systems of sovereign states, which should be independent, professional and properly resourced. It is only when national systems of justice either cannot or will not act to judge crimes against humanity that universal jurisdiction and other international options should come into play.

Human Security

2.21 The meaning and scope of security have become much broader since the UN Charter was signed in 1945. Human security means the security of people – their physical safety, their economic and social well-being, respect for their dignity and worth as human beings, and the protection of their human rights and fundamental freedoms. The growing recognition world-wide that concepts of security must include people as well as states has marked an important shift in international thinking during the past decade. Secretary-General Kofi Annan himself put the issue of human security at the centre of the current debate, when in his statement to the 54th session of the General Assembly he made clear his intention to "address the prospects for human security and intervention in the next century."

2.22 This Commission certainly accepts that issues of sovereignty and intervention are not just matters affecting the rights or prerogatives of states, but that they deeply affect and involve individual human beings in fundamental ways. One of the virtues of expressing the key issue in this debate as "the responsibility to protect" is that it focuses attention where it should be most concentrated, on the human needs of those seeking protection or assistance. The emphasis in the security debate shifts, with this focus, from territorial security, and security through armaments, to security through human development with access to food and employment, and to environmental security. The fundamental components of human security – the security of *people* against threats to life, health, livelihood, personal safety and human dignity – can be put at risk by external aggression, but also by factors within a country, including "security" forces. Being wedded still to too narrow a concept of "national security" may be one reason why many governments spend more to protect their citizens against undefined external military attack than to guard them against the omnipresent enemies of good health and other real threats to human security on a daily basis.

2.23 The traditional, narrow perception of security leaves out the most elementary and legitimate concerns of ordinary people regarding security in their daily lives. It also diverts enormous amounts of national wealth and human resources into armaments and armed forces, while countries fail to protect their citizens from chronic insecurities of hunger, disease, inadequate shelter, crime, unemployment, social conflict and environmental hazard. When rape is used as an instrument of war and ethnic cleansing, when thousands are killed by floods resulting from a ravaged countryside and when citizens are killed by their own security forces, then it is just insufficient to think of security in terms of national or territorial security alone. The concept of human security can and does embrace such diverse circumstances.

Emerging Practice

2.24 The debate on military intervention for human protection purposes was ignited in the international community essentially because of the critical gap between, on the one hand, the needs and distress being felt, and seen to be felt, in the real world, and on the other hand the codified instruments and modalities for managing world order. There has been a parallel gap, no less critical, between the codified best practice of international behaviour as articulated in the UN Charter and actual state practice as it has evolved in the 56 years since the Charter was signed. While there is not yet a sufficiently strong basis to claim the emergence of a new principle of customary international law, growing state and regional organization practice as well as Security Council precedent suggest an emerging guiding principle – which in the Commission's view could properly be termed "the responsibility to protect."

2.25 The emerging principle in question is that intervention for human protection purposes, including military intervention in extreme cases, is supportable when major harm to civilians is occurring or imminently apprehended, and the state in question is unable or unwilling to end the harm, or is itself the perpetrator. The Security Council itself has been increasingly prepared in recent years to act on this basis, most obviously in Somalia, defining what was essentially an internal situation as constituting a threat to international peace and security such as to justify enforcement action under Chapter VII of the UN Charter. This is also the basis on which the interventions by the Economic Community of West African States (ECOWAS) in Liberia and Sierra Leone were essentially justified by the interveners, as was the intervention mounted without Security Council authorization by NATO allies in Kosovo.

2.26 The notion that there is an emerging guiding principle in favour of military intervention for human protection purposes is also supported by a wide variety of legal sources – including sources that exist independently of any duties, responsibilities or authority that may be derived from Chapter VII of the UN Charter. These legal foundations include fundamental natural law principles; the human rights provisions of the UN Charter; the Universal Declaration of Human Rights together with the Genocide Convention; the Geneva Conventions and Additional Protocols on international humanitarian law; the statute of the International Criminal Court; and a number of other international human rights and human protection agreements and covenants. Some of the ramifications and consequences of these developments will be addressed again in Chapter 6 of this report as part of the examination of the question of authority.

2.27 Based on our reading of state practice, Security Council precedent, established norms, emerging guiding principles, and evolving customary international law, the Commission believes that the Charter's strong bias against military intervention is not to be regarded as absolute when decisive action is required on human protection grounds. The degree of legitimacy accorded to intervention will usually turn on the answers to such questions as the purpose, the means, the exhaustion of other avenues of redress against grievances, the proportionality of the riposte to the initiating provocation, and the agency of authorization. These are all questions that will recur: for present purposes the point is simply that there is a large and accumulating body of law and practice which supports the notion that, whatever form the exercise of that responsibility may properly take, members of the broad community of states do have a responsibility to protect both their own citizens and those of other states as well.

SHIFTING THE TERMS OF THE DEBATE

2.28 The traditional language of the sovereignty–intervention debate – in terms of "the right of humanitarian intervention" or the "right to intervene" – is unhelpful in at least three key respects. First, it necessarily focuses attention on the claims, rights and prerogatives of the potentially intervening states much more so than on the urgent needs of the potential beneficiaries of the action. Secondly, by focusing narrowly on the act of intervention, the traditional language does not adequately take into account the need for either prior reventive effort or subsequent follow-up assistance, both of which have been too often neglected in practice. And thirdly, although this point should not be overstated, the familiar language does effectively operate to trump sovereignty with intervention at the outset of the debate: it loads the dice in favour of intervention before the argument has even begun, by tending to label and delegitimize dissent as anti-humanitarian.

2.29 The Commission is of the view that the debate about intervention for human protection purposes should focus not on "the right to intervene" but on "the responsibility to protect." The proposed change in terminology is also a change in perspective, reversing the perceptions inherent in the traditional language, and adding some additional ones:

- First, the responsibility to protect implies an evaluation of the issues from the point of view of those seeking or needing support, rather than those who may be considering intervention. Our preferred terminology refocuses the international searchlight back where it should always be: on the duty to protect communities from mass killing, women from systematic rape and children from starvation.

- Secondly, the responsibility to protect acknowledges that the primary responsibility in this regard rests with the state concerned, and that it is only if the state is unable or unwilling to fulfill this responsibility, or is itself the perpetrator, that it becomes the responsibility of the international community to act in its place. In many cases, the state will seek to acquit its responsibility in full and active partnership with representatives of the international community. Thus the "responsibility to protect" is more of a linking concept that bridges the divide between intervention and sovereignty; the language of the "right or duty to intervene" is intrinsically more confrontational.

- Thirdly, the responsibility to protect means not just the "responsibility to react," but the "responsibility to prevent" and the "responsibility to rebuild" as well. It directs our attention to the costs and results of action versus no action, and provides conceptual, normative and operational linkages between assistance, intervention and reconstruction.

2.30 The Commission believes that responsibility to protect resides first and foremost with the state whose people are directly affected. This fact reflects not only international law and the modern state system, but also the practical realities of who is best placed to make a positive difference. The domestic authority is best placed to take action to prevent problems from turning into potential conflicts. When problems arise the domestic authority is also best placed to understand them and to deal with them. When solutions are needed, it is the citizens of a particular state who have the greatest interest and the largest stake in the success of those solutions, in ensuring that the domestic authorities are fully accountable for their actions or inactions in addressing these problems, and in helping to ensure that past problems are not allowed to recur.

2.31 While the state whose people are directly affected has the default responsibility to protect, a residual responsibility also lies with the broader community of states. This fallback responsibility is activated when a particular state is clearly either unwilling or unable to fulfill its responsibility to protect or is itself the actual perpetrator of crimes or atrocities; or where people living outside a particular state are directly threatened by actions taking place there. This responsibility also requires that in some circumstances action must be taken by the broader community of states to support populations that are in jeopardy or under serious threat.

2.32 The substance of the responsibility to protect is the provision of life-supporting protection and assistance to populations at risk. This responsibility has three integral and essential components: not just the responsibility to *react* to an actual or apprehended human catastrophe, but the responsibility to *prevent* it, and the responsibility to *rebuild* after the event. Each of these will be dealt with in detail in chapters of this report. But it is

important to emphasize from the start that action in support of the responsibility to protect necessarily involves and calls for a broad range and wide variety of assistance actions and responses. These actions may include both long and short-term measures to help prevent human security-threatening situations from occurring, intensifying, spreading, or persisting; and rebuilding support to help prevent them from recurring; as well as, at least in extreme cases, military intervention to protect at-risk civilians from harm.

2.33 Changing the terms of the debate from "right to intervene" to "responsibility to protect" helps to shift the focus of discussion where it belongs – on the requirements of those who need or seek assistance. But while this is an important and necessary step, it does not by itself, as we have already acknowledged, resolve the difficult questions relating to the circumstances in which the responsibility to protect should be exercised – questions of legitimacy, authority, operational effectiveness and political will. These issues are fully addressed in subsequent chapters. While the Commission does not purport to try to resolve all of these difficult issues now and forever, our approach will hopefully generate innovative thinking on ways of achieving and sustaining effective and appropriate action.