

NATO Defense College

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HUMANITARIAN INTERVENTION

AND THE RESPONSIBILITY TO

PROTECT

I thank you for the invitation to the NATO Defense College, that I consider addressed to a member of the ICISS – the International Commission on Intervention and State Sovereignty – that presented to the then Secretary General of the United Nations, Kofi Annan, the 18th December 2001, the Report *the Responsibility to Protect*.

In order to understand the birth of the concept of responsibility to Protect, it is – I believe – important to take stock of the results of the Panel on UN Peace Operations (the so called *Brahimi Report*) that was terminated in August 2000. I had been a member also of this Panel and in both study groups I had a precious colleague, the German Four Star General Klaus Naumann, who had been the Chairman of the NATO Military Committee at the End of the Nineties. Good friend does not mean necessarily of the same opinion!

I shall talk of the results of the two Commissions, and then dwell on the pursuit of the discussions and particularly on the implementation of the Responsibility to Protect. Even if the two Reports may seem old, their recommendations haven't lost their actuality, despite many events that have severely affected the international community and the UN since, as the tragic attack of nine/11. The fact that the NATO Defense College wanted to include this topic in its NATO Regional Cooperation Course confirms the actuality of the concepts and the interest in its origins.

The work **on the Panel on UN Peace Operations** was a fascinating experience, but also an heavy burden for the ten members (from the South and from the North, among them two generals, two diplomats, two lawyers and a Red-cross men [myself], almost all with a number of experiences in the field). The calendar was very tight: we had four meetings (three in New York and one in Geneva) in less then four month, always in presence of the Deputy Secretary General. An intensive Email consultation procedure brought us to a satisfactory solution in time.

The report – that is generally referred to as “**Brahimi Report**” (he was our Chairman) – deals a lot with conflict prevention and requests Governments and the UN to be much more active and effective in the needed conflict mitigation approach. We had in particular to respond to the political, military and organizational difficulties encountered by the UN in conducting peace operations in the 90's, especially in Rwanda, Somalia and former Yugoslavia. This was indeed the firm wish of Secretary General Kofi Annan.

We finally presented **57 recommendations** that addressed themselves to different organs of the UN and to Governments. Very useful was the consultation of all the Heads of UN Missions in the field as well the contact with number of high officials in the Secretariat. Let me just notice here how differentiated was the quality of the numerous reports we received and also how different was the sense of urgency felt by Heads of Mission.

Our report contains **several critical points** directed to member States and the Security Council and also to the Secretary General. We underlined the fundamental responsibility of States for peace and security – as foreseen in **art. XXIV of the UN Charter** -, in other words the needed support in political, military and human resources to the UN as whole.

As to peacekeeping issues one of the key recommendations was the absolute necessity to get **clear and achievable mandates** for UN operations. Member **countries should be giving sufficient** and appropriate means so to allow the UN to conduct robust peacekeeping: **the UN military operations should be able to defend their mandate! But we also said that the UN does not wage war**, but once deployed they should be able to defeat the lingering forces of war and violence. UN operations have to be backed politically by states in order to enhance the chances of success and their credibility. It is important to participate in the elaboration of the mandate, but essential not to interfere directly in the operations, simply because the staffing belongs to a given nation.

We advocated for a **restructuring and strengthening of the UN Secretariat**, in particular in the DPKO Department. **The UN should be capable to deploy operations rapidly and effectively and the headquarter resources for planning and supporting peace keeping operations should be developed.** We also advanced the needed authorization to be given to the Secretary General to commit funds prior to the Security Council resolution establishing a mission.

We insisted on the need to create **Strategic Deployments Stocks** and establish groups of pre-identified personnel which should be deployed rapidly to support an operation in its first 90 days. They should be trained *à froid*. We also said that the UN should be able to deploy a complex operation in 90 days and a preparatory mission not later than 30 days after the Security Council decision. .

As to the organization in the Secretariat we advanced the concept of an **Integrated Mission Task Force** (by the way I had personally some reservations to this effect), as well as an Information and Strategic Analysis Secretariat, in order to overcome the problem of the retention of information by the P 5 military representatives in DPKO.

We very much insisted on the need of a good preparation **and separate deployment of civil police forces**. The blurring of police and military forces was the reason of a number of failed operations at the time.

As to **Peace consolidation measures**, we developed recommendations in the field of economic and social development, but also asking a rapid collection of weapons, a social integration of former combatants in the civil society, the reinforcement of the rule of law, education and justice, the fight against all forms of corruption and developing programs of humanitarian demining, as well as more engagement in the training and curing of pandemic diseases.

Finally we felt that the IT utilization at the time was very limited and deficient in the UN. Also we proposed to the UN Secretary General to institute in the UN **a policy of meritocracy!**

We were aware that reform is easier to talk about, than it is to implement. This is where a committed Secretary General, strongly backed by the leading powers, comes in. **I think that the Panel on Peace Operations has presented a blueprint that is reasonable and doable.** My colleagues and myself would not have volunteered for this hard and delicate work, if we had not believed that the Secretary General would act rapidly and straightforward. We have been rewarded by the excellent contacts we had with Kofi Annan and Louise Fréchette during and after our Panel deliberations.

After having listened to all that, you may understand why I had proposed at the end of our deliberations to call the Report “Pour donner une chance à la Paix, il faut avoir la volonté de changer vite et bien”. My suggestion was rejected – as the ones of colleagues -, because the UN does not accept - it seems - titles of reports that would not be related directly to the mandate!

What can one say **after nine years of implementation of our recommendations?** I think that you may know much more than me, because of my distance from the happenings in New York and in the field. I have however the feeling that some **progress** has been made in two main set of recommendations: the rapid deployment capacity and the support structure. Also the DPKO has been gradually and significantly strengthened and reorganized, while communication between headquarters and the field has indeed been improved. Perhaps also some progress can be noticed in the approach of the Security Council in the field of Peace Keeping operations.

As to member countries, the “commitment gap” of OECD countries in the deployment of blue helmets has in my view not really improved.

This is regrettable because if in 2000 the main operations were in Kosovo, East Timor, Sierra Leone and DR Congo, there has since been an important increase of PKO in countries as Afghanistan, Liberia, Ivory Coast, Haiti, Burundi and several more including (with a rather special mandate) Darfur.

At any rate, let me conclude that in my many contacts with Kofi Annan and Jean-Marie Guehenno – the former head of DPKO -, I was told that our Report has been for them crucial to implement a number of reforms and also to put Member States under pressure.

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Coming now to the **Responsibility to Protect** Report of the ICISS, let me underline that this Canadian initiative, in agreement with the UN Secretary General, was in a certain sense the follow up of the sentence of the “Brahimi Report” where we had said that **the “UN does not wage war”**. Therefore the need to approach the Peace Enforcement problematic.

But “*humanitarian intervention*” and even worst “*droit d’ingérence humanitaire*” was unacceptable – particularly for me, but also for some other member of the 12 in the Commission – because of **the ambiguity of the adjective humanitarian**, that could be used as alibi for quite other purposes as of the protection of the civil population.

But we also had inside the Commission a controversy over the term *intervention* derived from the political width of activities this term can cover, **including indeed military intervention**. The kind of intervention to be dealt with in our Report was the action taken against a state or its leaders without their consent, for purposes which are claimed to be humanitarian or protective. It is clear that the most controversial form of such intervention is military and an important part of the Report would have to focus on that, while we wanted to underline alternatives to military action, namely all forms of **preventive measures**, as well as coercive intervention measures as sanctions and criminal prosecutions.

We in the Commission recognized the long history and continuing use of the terms *humanitarian intervention* and also the doubtful usefulness of the word *humanitarian*. This is why we avoided in the Report *humanitarian intervention*, speaking sometimes of ***intervention for human protecting purposes***. We wanted to respond in the Report to the very **strong opposition** expressed – not only by me personally but – by humanitarian agencies, humanitarian organizations and individual humanitarian workers towards any militarization of the word *humanitarian*. **To often the word *humanitarian* had been used to describe any kind of military action**, what was absolutely unacceptable for the humanitarian protection and relieve sector.

We were very much aware of the sentence of **Kofi Annan** in the Millennium Report “*if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?*” and had indeed in front of us the actions undertaken in Rwanda, Kosovo, Bosnia and Somalia – very different from each other, in legal justification and in form and size of operations – but all raising a number of questions including the effectiveness of the interventions. **Kosovo was for me personally a major problem**, because I considered it an illegal and illegitimate military operation against Serbia, despite the largely unacceptable behavior of their army and militias. How could I have accepted the terms of the well known NATO spokesman saying in television “that this is a humanitarian war” or even worst “... our humanitarian bombing”.

After a long time of discussion in the Commission we came to the **conclusion** that the terms of *protection* and *responsibility* combined would best serve our purpose. Finally it is the responsibility of each sovereign State to protect its population. **The Responsibility to Protect brought us also much closer to the victims and potential victims**. The *responsibility to protect* implies, indeed, 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 did refocus the international searching back where it should always be: **on the duty to protect communities from mass killings, women from systematic rape and children from starvation**. In addition we considered that a signatory state of the UN Charter did become a responsible member of the community of nations. This means a recharacterization involved from sovereignty as responsibility in internal functions and external duties. For me in the search of the

appropriated title for the Report, the term *protection* was very much inspired by the ICRC mandate and the one of *responsibility* by art. XXIV of the UN Charter.

Our **Commission was co chaired by two outstanding Diplomats**, Mohamed Sahnoun of Algeria and Gareth Evans of Australia. There were personalities from North and South, scholars, lawyers, journalists, politicians, businessmen, military's and even a former Head of State. Important was in our ten month work, with great support of the Canadian and Swiss Foreign Ministries and some foundations, to visit several Continents to meet civil society and in the capitals of the P5 to discuss with government representatives.

We dealt a lot with the **responsibility to prevent and the responsibility to rebuild**. Although I consider these two Chapters of fundamental importance, I shall limit my self to dwell on the chapter on **the responsibility to react** and particularly to the principles for military intervention.

Military intervention for human protection purposes is – do we say – 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 two following kinds

- **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 in a failed State situation.

- **large scale ethnic cleansing**, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.

The primary purpose of the intervention must be to halt human suffering. The right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned. In other words we wanted to avoid unilateral interventions and as far as possible coalitions of the willing, but referred to Regional Organizations (and Subregionals – what had been a clear hint to NATO).

Another precautionary principle is – still according to our Commission - that military intervention **can only be justified when every non military option for the prevention or peaceful resolution of the crisis has been explored**.

In addition to this last resort, we did insist on the **proportional means** (scale, duration and intensity) that is to say to limit to the minimum necessary to secure success, and also that there should indeed be reasonable chances of success and that the consequences of the action should not be worse than the consequences of inaction.

A long discussion was held as to the **right authority to trigger the military operation**. We finally felt that no better body would be available than the **Security Council**, recalling art. XXIV of the Charta. The authorization should always be sought prior to any military action being carried out. And the Security Council should deal rapidly; the **veto** should not be used in authorization procedures for military interventions for human protection purposes, where a vital interest of a P5 is not involved. We even suggested that

the P5 would negotiate *à froid* a code of conduct in this respect, what was indeed rejected by several of these powers!

Should the Security Council reject the demand or fail to decide, the way should be free to address a request to the General Assembly under the so-called procedure “**Uniting for peace**”. This would imply action by regional or sub regional organizations, under Chapter VIII of the UN Charter; but subsequent authorization by the Council would be needed.

Among the **operational principles** underlined by the Commission, let me mention the need for

- **Clear and unambiguous mandate** and resources to match it;
- Common military approach and **unity of command** as well as clear chain of command;
- Acceptance of limitations, **the objective being protection of a population;**
- **Precise rules of engagement**, reflecting the principle of proportionality and involving total adherence to international humanitarian law;
- Maximum coordination – while maintaining reciprocal autonomy – with **humanitarian organizations**.

The Report, handed over to Kofi Annan in December 2001, came at a very bad moment, because of the concentration of international deliberations as to the response to the 9/11 events. We had convened a last time after this date, to include some new paragraphs in the report, excluding its utilization in such circumstances. Despite this, **some top politicians of major powers, tried sometimes to invoke it to justify their operations**. We unanimously rejected such attempts in cases such as Iraq, Myanmar, South Ossetia/Georgia, Darfur and Afghanistan. This was, indeed, threatening the whole concept of the Responsibility to Protect.

Scholars and many other groups studying the Report were full of compliments for its presentation and its content. The Canadian government and the members of the Commission had indeed put much energy in disseminating the text worldwide, with a particular accent to **Parliamentarians**, think-tanks and Universities. The General Assembly discussed the Report in 2002 and the Secretary General – that was generous in congratulating the Panel – even organized a **retreat of the Security Council** with the presence of the co-chairs.

But the real revival of the principle of the Responsibility to Protect came in **the UN Summit of September 2005**, where it was stated by consensus in the final declaration “**Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity... We accept that responsibility and will act in accordance with it**”.

There were since several discussions in the Security Council and the General Assembly as well in many statements of world leaders.

Our concern remains that the international community, when considering the consensus on the Responsibility to Protect concept, would **forget the many precautions contained**

in our Report, in the important phase of implementation. And particularly I would like to recall that it is not a right for the UN to intervene, that we developed, but the objective had been and should remain of avoiding massacres, as well of discouraging unilateralism and military adventurism. But, indeed, **the credibility of the UN is at stake when and if a P5 is casting in the Security Council a veto** in serious cases of genocide, war crimes and ethnical cleansing.

The new Secretary General furthermore appointed Edward Luck **as Special Adviser for enhancing the implementation of this principle**. You will have noticed that even Pope Benedict XVI in his speech at the UN referred with emphasis to this principle. A strong call for the elaboration without further delay of the implementation rules also came from the High Commissioner for Human Rights, Navy Pillay.

Coming to the recent events in New York, you will have noticed that the Secretary General presented a **Report entitled “Implementing the Responsibility to Protect”**, where he stressed the need to turn the promise into practice and advanced a three pillar strategy:

- The basic principle of State sovereignty remains; State sovereignty implies rights as well as obligations.
- International assistance and capacity building are important tools of prevention.
- Timely and decisive response has to be given when a state is manifestly failing to protect its population in four situations, namely genocide, war crimes, crimes against humanity, ethnic cleansing.

The Secretary General noted that **sovereignty and responsibility can be mutually reinforcing principles**. He called on States to resist trying to change the subject into a struggle of ideology, geography or economics. He also stated that armed groups and non-state actors should be held at the same standards for the Responsibility to Protect as States. Prevention was highlighted – as had been done by the ICISS – as priority and when prevention fails, the UN needs an early and flexible response.

According to several sources the Secretary General Report was well received, but it was clear that there remains a lack of clarity over the definition and the legal basis of this concept.

On initiative of its President – Manuel d’Escoto-Brockman of Nicaragua, who was very critical to the Secretary General Report – the **General Assembly held plenary discussions on the Responsibility to Protect on 24th to 28th of July**. Overall member states recognized the fundamental premise of the Responsibility to Protect, agreeing that future “Rwandas” and “Srebrenicas” should be prevented. Furthermore, States concurred that the scope of the concept should not be expanded beyond the current definition, i.e. genocide; war crimes; crimes against humanity and ethnic cleansing.

As to the three pillars of the Responsibility to Protect concept, being integral part thereof, the main points raised and thoroughly discussed were:

- the first pillar is based on the notion that primary responsibility for the implementation of the concept rests with each and every individual State. In that

sense sovereignty is a responsibility and numerous States spoke *of responsible sovereignty*.

- The second pillar addresses the international community's commitment to assist states to meet these obligations either bilaterally or through regional or sub regional organizations. Several references were made to the African Union Constitutive Act and the so-called principle of *non indifference*. This assistance should include capacity building and development assistance with regard, notably, to conflict prevention.
- The third pillar addresses the response of the international community when a State is manifestly failing to protect its citizen's from the four situations of crime. There were several controversial debates on this third pillar particularly on two points: the veto power of the P5 should not be applicable in the event of one of the four crimes foreseen **and doubts as to the willingness of States or military alliances (as NATO) to submit themselves to the authority of the Security Council and refrain from unilateral action.**

I believe that the debate showed that the main challenge ahead lies in the effective translation of the moral commitment into a political and operational reality. Indeed if one should advance in this important concept, clear parameters will have to be defined by the General Assembly – I hope taking into account the text of the ICISS Report - as to

- when a situation is or is not a case of Responsibility to Protect,
- whose judgment is to determine whether a government has failed in its responsibility to protect.

We, the authors of the Report on the Responsibility to Protect are proud of our work and its results. It was not easy to come to a consensus, especially because some members did “wake up” in last minute with new and contradictory ideas. but finally the diplomatic skill of our co-chairs brought the brilliant positive result. We will certainly continue to disseminate the report because – as it is said in its **last sentence** - :

If we believe that all human beings are equally entitled to be protected from acts that shock the conscience of us all, then we must match rhetoric with reality, principle with practice. We cannot be content with reports and declarations. We must be prepared to act. We won't be able to live with ourselves if we do not.

02.11.09 CSO