

The Use of Force and the Responsibility to Protect. A Human Rights Organization's Perspective

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This comment expresses the view of a human rights organization on the use of force and the responsibility to protect. It holds that the imperative of stopping or preventing genocide or other systematic human rights violations can, sometimes, justify the use of military force.

For decades, the prevailing view regarding the role of the international community in the face of atrocities had been grounded in the issue of state sovereignty. In September 1999, Kofi Annan, in his now famous speech at the opening of the General Assembly insisted that sovereignty must give way to the imperative of stopping crimes against humanity. Annan's speech came just several days after the decision by the Security Council to deploy an international force in violence ravaged East Timor, a few months after the Kosovo intervention that lacked the mandate from the Security Council, and at the time when the massive humanitarian disasters of Somalia, the Balkans and Rwanda were still painfully fresh in memory. A long and heated debate followed out of which the concept of "responsibility to protect" came into sight.

Human Rights Watch has followed this debate with great interest and expectation. Over the past few years, several important documents have been published and moved the issue forward. The December 2004 report "A more secure world: our shared responsibility" by the Secretary General's High Level Panel on Threats, Challenges and Change (HLP) in particular offered a number of important points. It called the responsibility to protect an "emerging norm" and it moved the discussion from whether force *can* legally be used to whether it *should* be used as a matter of good conscience and good sense. It also put forward some important recommendations.

The High Level Panel's report pointed out that the Charter is actually "not as clear as it could be when it comes to saving lives within countries in situations of mass atrocity" because its prominently stated reaffirmation of the "faith in fundamental human rights"¹ appears to be restricted by article 2.7.²

The report also highlights the fact that in the past decade or so the debate has shifted from questioning the "right to intervene" to the issue of the "'responsibility to protect' of every State when it comes to people suffering from avoidable catastrophe – mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease." The report endorsed the emerging norm that there is a collective

¹ United Nations Charter, The Preamble.

² United Nations Charter, Article 2.7: Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

international responsibility to protect in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign governments have been powerless or unwilling to prevent. This responsibility, the report said, should be exercised by the Security Council, with the military intervention being the last resort. It also outlined five criteria for the use of military force. The report also called on the permanent members of the Security Council to "refrain from the use of the veto in cases of genocide and large scale human rights abuses."

The March 21, 2004 report by the Secretary General "In larger Freedom" reinforced the notion of the responsibility to protect and recommended that the Security Council adopt a resolution setting out the principles for the use of force in situations where military force is needed to exercise the responsibility to protect and expressing its intention to be guided by them.

Human Rights Watch found of particular importance the two reports' recommendations regarding the responsibility of the United Nations to protect civilians from atrocities and mass killings committed by their governments. We also supported the five criteria of legitimate protective action laid out in the Panel's report, though we insisted that in any document regarding criteria for the use of force, there should be a strong reference to international humanitarian law as the indispensable guiding principle of any military action. Furthermore, Human Rights Watch strongly supported the HLP's recommendation regarding the refraining of the use of veto at the Security Council in cases involving massive human rights violations in the belief that adoption of that practice is essential if the Council is to live up to its responsibilities to protect.

Human Rights Watch is fairly unusual among human rights groups because it has a longstanding policy on the use of military force for protective purposes. War often carries enormous human costs, but we recognize that the imperative of stopping or preventing genocide or other systematic slaughter can sometimes justify the use of military force. For that reason, Human Rights Watch has on rare occasion advocated use of force—for example, to stop ongoing genocide in Rwanda and Bosnia.

Yet military action should never be taken lightly, even for humanitarian purposes and, for that reason, Human Rights Watch's internal policy will allow us to consider advocating the use of military force by the international community in non-consensual situations only under the following circumstances:

- (a) When, in the considered view of HRW, it is the only reasonable measure that can prevent or stop the crime of genocide or the comparable mass killing of non-combatants and
- (b) When other measures of a political, diplomatic, economic or other nature have been tried without success or they cannot be reasonably expected to put a stop to the genocide under the circumstances.

This policy therefore requires rigorous analysis of the human rights abuses to determine whether they amount to genocide or "comparable mass killing of non-combatants;" and a determination of whether the non-consensual use of force is the "only reasonable measure" to end the crimes.

The recommendations of the HLP report and of the Secretary-General are currently being discussed, both are the General Assembly and in capitals. In September, heads of states will gather in New York and adopt a document that will reflect areas of broad agreement from among the full spectrum of recommendations presented by the reports. It is unclear at the moment to what extent the responsibility to protect and the criteria for the use of force will be included in this area of broad agreement.

An analysis of statements made by member states in late April during the General Assembly's consultations in preparation for the summit, show a few interesting trends. Whereas there has been a considerable discussion regarding the interpretation of the UN Charter, there are relatively few countries willing to be on the record as opposed to the concept of the responsibility to protect emerging as a binding concept. What is also interesting and telling is that most of those states that did go on record as opposed, have either a long history of trying to weaken United Nations' effectiveness in human rights or have been plagued by severe human rights violations, or both. The majority of states that did make statements on the subject of responsibility to protect, have gone on record as supportive.

A lot more work will need to be done between now and the September summit, but there could be some cautious optimism cautiously optimistic that the international community will make another step toward realizing its responsibility to protect.

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