



"and they shall beat
their swords into
ploughshares, and
spears into pruning
hooks; nation shall not
lift up sword against
nation; neither shall
they learn war any
more." (Isaiah 2:4)

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Norms and *The Responsibility to Protect* Meeting Report

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In December 2001, the International Commission on Intervention and State Sovereignty (ICISS) released its report entitled, *The Responsibility to Protect*, in response to UN Secretary-General Kofi Annan's call to "forge unity" about the issue of international intervention to protect civilians caught in situations of violent conflict. Since its release, the report has generated mixed reactions. Some applaud its emphasis on "sovereignty as responsibility," which implies that sovereignty is earned in the sense that if a state upholds its obligation to protect its citizens from harm, it also enjoys the right of non-intervention by other states. When a state fails to meet its responsibility to protect, it is up to the international community to intervene to protect the vulnerable. Others point to its lack of clear and concrete guidelines on the threshold conditions for such intervention as a weakness, or denounce its unwillingness to call for UN reform. Critics claim the document provides a legitimating platform upon which stronger states can intervene in the affairs of smaller, weaker states, while proponents argue it provides a rules-based framework to limit the situations in which strong states can intervene.

It is obvious that the issue of intervention is not amenable to a broad consensus or to quick and binding solutions. Rather, to advance the idea of intervention for protection purposes, it is necessary to examine our values and assumptions about state sovereignty, and to promote changes in attitude and behaviour related to protection. Toward this end, Project Ploughshares organized a session to explore the idea of norms and norm development, and their relationship to *The Responsibility to Protect*.

Norm Development and the Responsibility to Protect

On April 7, 2003, 28 individuals gathered to discuss norm development and the ICISS report.¹ Project Ploughshares' director, Ernie Regehr, introduced the topic, reminding us that the ICISS report emerged as a response to the challenge of protecting vulnerable populations. He presented the agenda for the day, indicating that we would begin with some broader conceptual thinking about norms and norm development before concretizing the discussion with lessons learned from other issue campaigns.

The purpose of the first session was to establish a conceptual framework for thinking about norms, focusing on lessons and insights from the existing academic literature. The key questions of the session addressed how norms develop and defined some of the conditions for success, using the Mine Ban Treaty/Ottawa Convention and other campaigns as illustrative examples. The second session highlighted an alternative, meaning non-treaty based, model for developing norms, using the example of *The Guiding Principles on Internal Displacement*. The afternoon session brought together a group of individuals from various organizations to share some of their reflections and insights from their work on similar issue campaigns.

The following three sections summarize the presentations of the resource people and the primary issues and themes that participants raised during the seminar. They do not, however, capture the range of the discussion or represent the responses or conclusions of the sponsors or

¹ This and a related seminar took place over a two-day period. Project Ploughshares hosted the first day, on norm development and the ICISS report, and the World Federalist Movement hosted the second day's discussion on NGO roles in promoting *The Responsibility to Protect*.

participants, either individually or collectively. The final section of this report suggests several ideas/points for further discussion and reflection.

A Conceptual Framework for Thinking about Norm Development² – Richard Price and Bob Lawson

Academic literature suggests norms generally evolve in one of three ways: they are imposed, obeyed out of choice or interest, or internalized. States are crucial in the norm building process, but civil society actors also play an important role. Civil society, because it typically does not have the ability to force or coerce states to act in a certain way, must rely upon persuasive power and seek to promote change with ideas, education, and advocacy. This opens the door for more subtle means of persuasion, which may take the form of information sharing, socializing populations, arm-twisting, shaming, consumer boycotts, mass protests, or civil disobedience. States or corporations that buy into particular norms can then, in turn, impose them in their jurisdiction and promote them beyond their immediate constituencies. In general, the penultimate goal is a change in policy and/or a signed treaty.

There are several steps to developing norms. The first step is issue generation, or identifying a problem. Second, it is important to generate solutions and a variety of options for achieving these solutions. Both of these together address the question of “what is to be done.” Deciding who plays various roles is the third step, the “who” question. This involves decisions about who plays a lead role in mobilizing or creating a network or coalition, building the network, or engaging other actors. The Internet is often a very effective mechanism for rapidly mobilizing both international and domestic actors in a transnational campaign. Additionally, celebrities are often used to raise general public awareness (e.g., Lady Diana and the landmines issue), but their ability to impact state or corporate behaviour is sometimes exaggerated. Fourth is the “how” question. Seeking to implement solutions may involve international treaties, a persuasive media campaign, or shaming techniques, all of which make it costly for states or corporations not to comply or change their behaviour. A norm that is entrenched in international law is more enduring, since public opinion can be transitory.

As these tactics are implemented, it is possible to see different degrees of change, from a change in rhetoric to a change in behaviour. On the one hand, shifting the debate about an issue may be crucial in moving the norm forward. For example, in the case of landmines, the campaign shifted from a broad focus on disarmament to a more specific argument based on international humanitarian law (i.e., that the use of landmines violates the principle of proportionality and discrimination). This shift opened up new avenues and approaches to deal with landmines. The literature essentially concludes that changes in rhetoric are not insignificant, as they are an important step in capturing states in their own rhetorical commitments in order to effect a change in behaviour. On the other hand, these changes can be manifested in treaty law, where

² Richard Price, Associate Professor at the University of British Columbia, prepared a presentation for the seminar on this topic. Regrettably, he was unable to attend, but generously provided a copy of his notes to the organizers. Fortunately, Robert Lawson, Senior Policy Advisor, Non-proliferation, Arms Control, and Disarmament (IDA), DFAIT was willing and able to deliver a presentation on the topic using Price’s notes. As a result, this summary draws extensively from Price’s notes as well as Lawson’s presentation.

they become institutionalised. The International Criminal Court (ICC), for example, has done this to some degree. However, institutionalisation by itself is not an adequate indicator of the efficacy of a norm. Relatively informal norms (e.g., taboos against using nuclear or chemical weapons) can be very powerful, while some institutionalised norms can be violated in widespread fashion (e.g., the norm against using torture) or can fade over time (e.g., colonization). Despite its weaknesses, institutionalisation gives additional leverage to those who wish to promote particular norms.

Finally, it is crucial to monitor compliance and work to change state behaviour. Norms are only as effective as their implementation, and thus universalization and compliance are crucial. This may entail a focus on affected countries. In some cases, states may try to emulate the behaviour of opinion leaders, causing a cascade effect or creating a “tipping point” whereby the norm develops a life of its own.

It is possible to identify several markers or factors related to the conditions for success in developing a norm. Success depends on the characteristics of the activists, targets, and issue. In terms of activist networks, the strong conclusion of the literature is that the existence of well-organized domestic groups linking up with transnational activists is indispensable to the success of a campaign. Second, the key asset of civil society is its moral authority and claims to legitimacy. This authority is derived from moral principle, objective expertise, or representation. Involving multiple faith communities increases the moral authority of those advocating for a particular norm. Other organizations, like Amnesty International, take a principled stance on an issue. Organizations like Human Rights Watch, UNICEF and others have authority that derives from their field experience, or objective expertise. Documenting the impact of small arms or landmines through personal stories and/or field research increases the legitimacy of a campaign on these issues. The choice between a “pragmatic insider” and a “principled outsider” strategy, the first two sources of moral authority and legitimacy, is a difficult one. Both can work, but both can fail. The danger of the former is cooptation or dilution, whereas the danger of the latter is exclusion or marginalization. Finally, representation is a further source of authority. Representation may occur either via internal accountability or transparency, or via external representativeness (e.g., North-South collaboration), and increases the authority and legitimacy of activist networks. Although the strategies of campaigning related to one issue may translate to another issue, the moral arguments do not necessarily translate.

Secondly, it is crucial to strategize about the target audience(s). Who is in a position to effect change and how does the larger context influence the targets or actors? A critical factor in a campaign’s success is often the existence of decision-making elites who are concerned about their country’s international reputation. Another contextual factor is related to the nature of the political institution. Changing behaviour on the part of strong centralized states is unlikely, but if a campaign is able to capture influential and sympathetic elites, the effect may be profound, as was the case of Mikhail Gorbachev and the end of the Cold War. Changing the behaviour of democratic governments poses different problems. Although lobbyists have more and better access to decision-makers, they have to compete with other issues and campaigns. A third factor is to make the issue too costly to ignore, either in terms of material or reputational costs. This has worked in the case of domestic and international consumer boycotts and advocacy to end apartheid in South Africa, but similar international diplomatic isolation has also failed in

the cases of Burma, Cuba, and North Korea. In other cases, it may be necessary to reframe an issue to make it more acceptable to target audiences. For example, in the case of the landmines it was important to broaden the coalition of actors by making landmines a humanitarian (vs. a political) issue.

And finally, the characteristics of an issue itself are important. One conclusion regarding the acceptance and universalization of new international norms is the finding that such efforts are more likely to be successful the more they can be “grafted” or piggy-backed upon previously accepted international norms. For example, the fact that the chemical weapons taboo was grafted onto the previously existing poison taboo was crucial to its evolution into a treaty. Many states did not see it as terribly controversial. The Mine Ban Treaty was in turn made possible by its connection to the long-standing norm against indiscriminate weapons or attacks and by the previously accepted chemical weapons taboo that showed the international community that weapons bans were possible and could be robust. These norms resonated with widely accepted existing norms to which few object. In addition, issues related to bodily harm (e.g., torture, landmines, or harm to innocents) often retain more currency and are thus easier to accept. Nevertheless, not all issues are ripe for norm development. It is important to beware of unintended consequences. For example, the case of the campaign against torture initially had the result of regimes “disappearing” (i.e., killing) political opponents.

In response to the presentation, participants posed a number of questions, primarily focused on defining which norm to promote as part of “a responsibility to protect.” Participants pointed out that the responsibility to protect encompasses multiple meanings and norms, making it difficult to identify one particular issue as a focal point. One participant suggested this is an issue of targets and scale, cautioning that many already work on related issues and a campaign on this topic could further stretch scarce human and financial resources. Lawson responded that unless a campaign is clear about what it intends to achieve and strategizes accordingly, it is possible to lose clarity by compromising at the beginning of a campaign in order to broaden the scope of support.

Others asked about the criteria for decision-making and who has the authority to make decisions, questioning whether it is possible to pursue this type of norm without working to reform the UN system. And finally, another individual mentioned the caveat that the *Responsibility to Protect* is seen as a western concept, with little support in the South. The discussion clearly raised more questions than answers, and provided a rich beginning for the next session.

The Guiding Principles for Internally Displaced Persons as a non-Treaty based Model of Norm Development – Roberta Cohen

Roberta Cohen, Senior Fellow at The Brookings Institution and Co-Director of the Brookings-SAIS Project on Internal Displacement, presented *The Guiding Principles on Internal Displacement* as an alternative model of norm development that draws upon hard law but does not in itself constitute a binding treaty; its development, moreover, was based on the input of experts rather than being drafted by governments. The *Guiding Principles* are rooted in one of the core ideas within the ICISS report: that the sovereignty of states implies a responsibility for its citizens. In

the case of internally displaced persons (IDPs), the responsibility to protect and assist IDPs rests with the state, but if the state is unwilling or unable to offer protection and assistance, then the international community has a right to become involved.

To begin with, Cohen pointed out that IDPs are among the most vulnerable populations in the world, as they are forcibly displaced from their homes usually because of armed conflict, human rights violations, or natural or human-made disasters. Estimates of the number of IDPs worldwide are in the range of 25 million people. They suffer from extremely high mortality rates and, in addition, because they have not crossed an international border, IDPs do not have the same legal status as refugees. Whereas the Refugee Convention offers protection for refugees, in particular from refoulement or being forcibly returned to the country in which their lives or freedom are threatened, and the UN High Commissioner for Refugees (UNHCR) assures their rights and well-being, in the case of IDPs there is no comparable legal or institutional system.

In recognition of this gap and as a first step, in 1992, at the request of the Commission on Human Rights, the UN Secretary-General appointed Dr. Francis Deng as his Representative on IDPs. Deng soon became an international advocate for IDPs, and as part of his mandate was asked to examine the extent to which IDPs are protected under existing international law. Together with a team of international legal experts, he examined existing international human rights law, humanitarian law, and refugee law, and conducted field studies to document the needs and unique situation of IDPs. He and the legal team then developed the first international standards for IDPs – the *Guiding Principles on Internal Displacement*.

The *Guiding Principles* bring together into one compact document all the relevant provisions of human rights law, humanitarian law, and analogous refugee law, and tailor the law to the specific needs of the displaced. In cases where there are gaps and gray areas in the law, the *Principles* restate the law to make it relevant to the needs of IDPs. In such cases, the *Principles* make explicit what is already implicit in the law.

International humanitarian law (IHL) is particularly important for IDPs, since it applies to both state and non-state actors in war situations. Many IDPs live in areas controlled by non-state actors, so IHL provides a way to hold the non-state actors accountable. Human rights law, which is applicable mainly to states, is also important because it establishes state responsibility to protect IDPs. Refugee law, although not directly applicable to IDPs, contains provisions that proved quite useful in formulating the *Principles*, like, for example, the nonrefoulement clause.

Despite the protection these bodies of law offer, none specifically mention IDPs. The *Guiding Principles* therefore adapt the relevant provisions in these bodies of law to the unique needs of IDPs. Cohen highlighted a number of the key principles:

- ❑ Principle 3 provides that national authorities have primary responsibility for IDPs. Nevertheless, the Introduction and other subsequent principles also reveal and elucidate a role for the international community. Consequently, the document reconciles national responsibility with the international humanitarian imperative.
- ❑ Principles 5-9 articulate an individual's right not to be displaced.

- ❑ Principles 10 to 23 set forth the full range of civil, political, economic, and social rights to which IDPs are entitled.
- ❑ Principles 24-27 relate to humanitarian assistance and cover some of the potentially contentious issues in the document because they seek to balance state sovereignty with the international responsibility to protect. More specifically, Principle 25 asserts national authorities have the primary duty and responsibility to provide humanitarian assistance, but states that humanitarian organizations should have “rapid and unimpeded access” and that states should not withhold consent for outside help if they are unwilling or unable to provide this assistance. Principle 26 relates to protection for aid workers, while Principle 27 specifies that international humanitarian actors should give “due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard.”

Cohen articulated several reasons why the experts group decided not to promote a treaty to deal with IDP issues. First, the need to generate a framework for addressing IDP issues in a relatively short time span precluded drafting a treaty, which could take years or even decades. Second, a body of law already existed. It was more important to use and restate current applicable law in an accessible document. And third, the subject matter was sensitive to many states, so that a legally binding instrument did not seem likely on how a government should treat the IDPs within its territory.

Although the *Guiding Principles* are not binding on states, they are based on hard law and for that reason, Cohen asserted, the document has achieved a broad measure of support. For example, an increasing number of governments (e.g., Angola, Colombia, Georgia, Sri Lanka and Uganda) are using the principles as the basis for their laws and policies. International organizations also are regularly using the principles in their work in the field with IDPs. Indeed, the Inter-Agency Standing Committee (IASC), composed of the major international humanitarian and development organizations and NGO umbrella groups, has formally endorsed the *Guiding Principles*. Resolutions of the UN Security Council, General Assembly, and Commission on Human Rights regularly reference the principles. In addition, regional organizations have been disseminating and applying the principles. For example, the Inter-American Commission on Human Rights of the Organization of American States (OAS) has endorsed and uses the principles to measure and evaluate IDP conditions in the countries it visits. International and local non-governmental organizations (NGOs), as well as civil society groups around the world have also begun to use the *Guiding Principles* in their advocacy and monitoring work for IDPs.

At the same time, several governments in the Group of 77 (G-77) have raised concerns about the process by which the *Guiding Principles* were developed, that is that governments did not draft the document. To discuss such matters, a dialogue has been initiated between the Representative of the Secretary-General and these governments, chaired by the Government of Switzerland and inclusive of governments that support the principles. The dialogue has already served to narrow some of the differences.

The example of the *Guiding Principles* stimulated much discussion on the pros and cons of a treaty-based approach to norm development. One participant pointed out that the non-treaty

approach seemed instrumental to the success of the *Guiding Principles*, and asked about the possibility of a treaty in the longer-term. Cohen replied that it was too early for a convention on IDPs, and that a convention might inadvertently weaken the law upon which the principles are based. In addition, she pointed out that although treaties are binding, not all states ratify them and some make extensive reservations, thus exempting themselves from upholding the laws and making such instruments imperfect. One participant suggested the principles were articulations of norms as opposed to obligations enshrined in the law, while another participant argued customary law is weak and that the goal should be to enshrine IDP rights within hard law, such as in an optional protocol to the Convention on Refugees. Cohen responded by indicating the importance of timing (the *Guiding Principles* are just beginning to gain widespread support) and questioned the need for a new instrument when the *Guiding Principles* themselves are based upon existing law. She pointed out that enforcement mechanisms are often absent with treaties, leaving them without “teeth.” The problem with attaching an optional protocol to the Refugee Convention, according to Cohen, is that the Convention applies to host governments whereas IDPs remain within their country of origin. Moreover, IDPs are displaced not only because of political persecution but also because of environmental disasters, development projects, and other reasons.

Other participants asked about responses to the *Guiding Principles* and about issues of monitoring and compliance. Cohen indicated that humanitarian organizations had largely welcomed the document, and that many national and international human rights organizations were using the principles as an advocacy and monitoring tool. In addition, she reiterated that an increasing number of governments are using the *Guiding Principles* as the basis for law and policy. Most recently, she reported that USAID is developing a policy on IDPs using the principles as a framework, and that the USAID DART (Disaster Assistance Response Team) sent to Iraq was asked to address protection issues, including those for IDPs. On the issue of monitoring and compliance, participants inquired about who monitors compliance with the principles and what monitoring mechanisms are enshrined in treaties. Cohen responded that a variety of groups, including national and international NGOs, lawyers, associations, and other groups in civil society, regional intergovernmental bodies, and international organizations, do ad-hoc and informal monitoring of IDP treatment in terms of the *Guiding Principles*. The Office for the Coordination of Humanitarian AFFAIRS (OCHA), a UN department, recently established an IDP unit specifically mandated with promoting the *Guiding Principles*.

From Architects to Carpenters: Practical Ideas and Lessons Learned from other Campaigns

Using building metaphors, Ernie Regehr introduced the afternoon session, which moved from the conceptual (“architects”) to focus on more practical, hands-on experiences (“carpenters”) of building norms via campaigns. Three participants offered their reflections and insights from working on similar campaigns: Alex Neve of Amnesty International (AI) provided some observations on AI’s work to promote human rights and eradicate a culture of impunity; Susan Johnson of the Canadian Red Cross spoke about the humanitarian diplomacy approach of the Red Cross in terms of sexual violence; and Bob Lawson commented on his experience as a Canadian government negotiator for the Mine Ban Treaty/Ottawa Convention.

Alex Neve offered eight reflections from his own and Amnesty's experience. During an AI mission to Guinea in 2001, he observed that the refugees they interviewed almost always gave the same reasons for fleeing their homes. For him, one refugee's remark captured the disturbing essence of impunity: "it was them, again." This story served as a starting point for his eight lessons.

1. Issues have a human face and voice, which must be at the centre of any campaign. The demand for justice is the central message of the AI campaign, which involves initiatives at the national level (e.g., establishing universal jurisdiction and bringing cases to court), and at the international level (e.g., supporting the International Tribunals for the former Yugoslavia and Rwanda, the UN-backed Special Court for Sierra Leone, and lobbying for the International Criminal Court, ICC). But the human face of each of these initiatives must not be forgotten.
2. Be clear, precise, and concrete. Pick specific and doable objectives, and broadcast these widely.
3. Maintain consistency and commitment, and adopt a long-term view.
4. Engage in comprehensive and simultaneous activities. According to Neve, it was crucial for AI to work in both the political (e.g., public advocacy and education) and legal (e.g., case work, establishing jurisprudence) arenas.
5. The campaign must be global, which occurs when a campaign is inclusive and resonates across cultures. For example, AI's impunity work has been global, resting on the idea that power, when abused, should be limited.
6. The campaign must be coordinated and involve partnerships between members of civil society and governments. AI has used the Internet in its campaigns to disseminate information, educate the public, and to stimulate and encourage action.
7. Look for progress anywhere and everywhere, and be vigilant for openings to increase the scope and effectiveness of any campaign. This helps to maintain enthusiasm for the issue. Neve indicated this is a challenge, given the current government in the US that has withdrawn from several treaties and has negotiated separate treaties with numerous governments that exempt US citizens from prosecution under the ICC.
8. Finally, setbacks are setbacks and do not indicate defeat. Neve encouraged those involved in other campaigns to be realistic and not defeatist.

Next, Susan Johnson offered some reflections from the Red Cross' humanitarian diplomacy approach to the issue of sexual violence. Women and girls are subject to sexual violence on a regular basis. In conflict situations, Johnson said, this may take the form of torture, ethnic cleansing, or rape as a strategy of war. The 1949 Geneva Conventions mention rape, but not as a war crime. Despite this, human rights organizations have maintained this issue on their advocacy agendas. In 1992, the International Committee for the Red Cross (ICRC) released a statement that rape and sexual assault constituted grave breaches of international law. A 1995 conference produced a resolution on this issue, and called for a study on the impact of war on women. This study dealt with the issues of women as combatants and women-headed households. It also reviewed international humanitarian law, international human rights law, and refugee law. The authors concluded that existing law afforded adequate protection for women and that their suffering was not a result of insufficient rules. Instead, it was due to inadequate implementation. As a result, the ICRC began a campaign of humanitarian diplomacy to increase pressure on governments and the parties in conflict to comply with

existing law. According to Johnson, the challenge is not so much how to gain ground, but instead how to avoid losing ground.

The humanitarian diplomacy approach of the Red Cross involves several elements, including regular and privileged dialogue with various governments as well as advocacy efforts on the part of national societies (e.g., the Canadian Red Cross society) and the international federation of national societies (i.e., the International Federation of Red Cross Societies, IFRC). The Red Cross has used this approach for HIV/AIDS, the humanitarian impact of international sanctions, and to establish common ground on missing/disappeared persons.

Johnson elucidated four factors related to the success of the humanitarian diplomacy approach. The first is to “know of what you speak.” This may involve fieldwork, on-the-ground experience and/or research to support proposals or recommendations. Second, Johnson suggested sticking to key issues related to a particular agenda or mandate based on a long-term view. Third, she suggested thinking practically about the short-term and strategically about the long-term. For example, writing codes for treatment of survivors of sexual violence is a short-term measure but relates to a long-term vision. And finally, using multiple channels and mechanisms to get the message across makes it possible to appreciate the various capacities and strengths of a diverse group of organizations or actors.

Bob Lawson spoke about his experience working as a Canadian government negotiator on the Mine Ban Treaty, focusing on five points. To begin, he emphasized the necessity of research that captures the “on-the-ground reality,” something the other two presenters also articulated. Second, he spoke about coalition building. In the case of landmines, Lawson said, the groups involved agreed on one thing (to ban landmines), and then did their own thing. This enabled groups to find their comparative advantage and allowed the movement to reach out to a diverse audience and develop a broad coalition. Third, he underlined the importance of process norms (e.g., a consensus-based or a voting approach) in a campaign, and their often-neglected role in changing the tenor of the debate. For example, active participation by all groups, governmental and non-governmental, was crucial to the success of the landmines movement, and the process norms evolved to allow this to happen. The result was very different than the traditional process norms of diplomacy. Fourth, Lawson cautioned it is important to be realistic about the possible achievements of a campaign. The Ottawa Convention depends upon civil society-based monitoring, requiring grassroots implementation, and state cooperation and compliance. It is crucial to clarify these roles before the treaty is finalized. And lastly, he stressed the importance of remaining optimistic despite the many challenges that plague any campaign.

In response, one participant offered some insights from the campaign to establish the International Criminal Court (ICC). First, it is often important to keep it simple, and not to try to agree on everything. Second, the ICC coalition found it useful to appeal to like-minded governments, who are usually more moderate, to generate support for the campaign. Clarifying roles is also important. For example, governments vote and NGOs usually play more of a consultative as opposed to a negotiating role. Fourth, it is crucial to have a common position as NGOs. This may mean that it is necessary to limit the numbers of NGO speakers, because a large number increases the probability of NGOs disagreeing with each other. This, in turn, may dilute the strength of the campaign.

These various presentations generated animated discussion among participants on two issues: the defining basis for a campaign and strategies for building norms. First, participants acknowledged the lack of consensus around military intervention as a starting point for a campaign built upon the concept of a responsibility to protect. This led to renewed discussion, picked up from the morning session, about the essence of such a campaign. What would the campaign look like, and what would be its defining issue? Although most agreed that violent conflict prevention, an essential element of the *Responsibility to Protect* framework, elicits less controversy than the issue of military intervention, others pointed out that this too is a broad theme. They proposed protection as opposed to prevention, arguing that the responsibility to protect is about more than preventing violent conflict. One individual suggested distinguishing general prevention (e.g., development assistance, striving for economic justice) from the more specific elements (e.g., a focus on the imminent peril of civilians), which are often easier to identify. Another participant pointed out that prevention necessitates early action, and that the political will for early action is often missing, except for cases in which a clear threat is present. Another individual indicated that the challenge is prompting action well before crises emerge, and in compelling decisive action in a short time span to respond to crises. Several highlighted the importance of strengthening the UN or international community's capacity for rapid deployment, such as with the SHRBRIG (Standing High Readiness Brigade).

The second cluster of comments related to possible strategies for norm development. One participant proposed two different tracks of action: working through the UN General Assembly and other governmental institutions to build a norm, and working to operationalize recommendations, through bodies like the UN Security Council, that make use of country-specific approaches to stimulate earlier and more effective responses. Another participant cautioned that norm development may not be the right response at this point in time; if states are not ready, it may be too early, too controversial, and the norm possibly too general to really effect a change in behaviour. Others pointed out that even a small coalition of like-minded states have the ability to create a "tipping point" and may generate enough momentum to create a cascade in favour of the norm.

Another participant offered the analogy of criminal law and civil/tort law in terms of the responsibility to protect. These two categories of law indicate two types of "offenses." In the first type - large-scale criminal cases - the "big guns" respond (e.g., police intervention). Yet this is not appropriate in all cases. In civil or tort law cases, which are more minor offences, the offence takes place and the offender is held accountable after the fact. Civil law specifies a series of responses based upon the nature of the offence. If harm happens, it is incumbent upon the person to make it right or to improve the situation, but the type of offence does not require the urgency or scale of military intervention. In applying this analogy to human rights violations, the smaller violations would not require intervention with military force but would instead use the legal process to hold people accountable after the violations have taken place. For large-scale human rights violations, due to the egregious nature of the violations, military intervention would be necessary and appropriate. This could form the basis of a two-pronged strategy for the responsibility to protect.

Closing Commentary

While the meeting itself did not generate any firm conclusions, several themes emerged from the seminar. First, the day's discussion highlighted the difficulty in distinguishing between laws and norms. A number of the speakers focused on campaigns as mechanisms of building norms by working toward a treaty/law, while others highlighted the existence of current laws as crucial to norm development. While this appears to be a "chicken and egg" question in terms of inquiring whether legal precedent is necessary to build a norm or norms are necessary to create a body of law, it is important to recognize that campaigns geared toward an international treaty are not the only way to build norms, nor does an existing body of law guarantee that a norm will develop. Several of the case examples presented during the day attested to this point. For example, with the cases of IDPs and sexual violence, the problem was not a lack of legal precedent. In both of these cases, the legal instruments already existed. The *Guiding Principles for IDPs* gathered and adapted existing law into one document, and the ICRC study on the impact of war on women concluded that the problem was widespread disregard and violation of existing law prohibiting sexual violence, and not a gap in the law itself. In other words, the ideas within the law had not yet evolved into norms in the sense of widespread acceptance of and respect for these laws. As Johnson put it, the challenge is not how to gain ground, but how to avoid losing ground.

In what ways is it possible to develop a norm without referring to a campaign? Another approach to developing a norm is to change public expectations of the UN Security Council with regards to situations in which civilians are in grave peril. Human rights and advocacy NGOs like Human Rights Watch (HRW), the International Crisis Group (ICG), FEWER (Forum on Early Warning and Response), and others already produce regular reports that chronicle a situation and recommend particular policies, and relief and development NGOs are taking on advocacy roles as part of their mandate. By establishing an NGO mechanism or coalition to monitor Security Council activities, NGOs could multiply the effect of their advocacy efforts to routinely bring situations that meet the *Responsibility to Protect* threshold conditions.

Second, framing a norm related to the responsibility to protect is absolutely crucial in securing support from national and international actors, broad-based and more narrowly focused civil society organizations, and governments. The morning speaker referred to the multiplier effect of "norm-grafting," where a new norm gains acceptance by virtue of its association with an already accepted and established norm. Nevertheless, to garner support it is crucial to identify a theme or topic, a "soundbite" that elicits support and cooperation as opposed to controversy and apathy. While the idea of sovereignty as responsibility bridges the values of self-determination/sovereignty and human security/the safety of people, it is not yet a well-established norm. Furthermore, what was clear from the discussion is that it is extremely difficult to encapsulate *The Responsibility to Protect* into a soundbite issue. The Report itself is broad and comprehensive in its coverage of issues, addressing prevention, reaction, and rebuilding. In addition, the uniqueness of particular cases and the vagaries of political will make it even more difficult to identify generalizable principles to apply across cases.

Finally, international recognition for the idea of a responsibility to protect is growing, raising the question of whether the time is "ripe" for promoting such a norm. Working with, and not against, this momentum decreases the amount of friction. Nevertheless, it is worth evaluating

whether it is more expedient to work aggressively at ensuring implementation of existing obligations under international law related to the responsibility to protect, as opposed to expending energy and effort on developing a new campaign. In the absence of “ripeness,” what are the techniques and activities that make it possible to articulate values? One avenue is to look to the UN General Assembly to articulate widespread support for ideas or norms instead of to UN Security Council resolutions to provide legal weight within international law. For example, the General Assembly recently (July 2003) adopted a “landmark” resolution (A/57/L.79) on the prevention of armed conflict, specifying the role of the United Nations in creating a culture of prevention as opposed to reaction.

These issues do not minimize the importance of the ICISS Report or of working to build a norm based on the responsibility to protect. Indeed, the discussion of the possibilities and precedents of norm building in this regard is a significant step forward in the evolution of sovereignty as responsibility and the obligation to protect the vulnerable.

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