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## 2 Sovereignty and the politics of responsibility

Philip Cunliffe

### Introduction

The traditional idea of sovereignty as autonomy, or freedom from external interference, faces a serious challenge in the idea of 'sovereignty as responsibility'. This new doctrine holds that state sovereignty cannot be restricted to inviolable legal authority. Rather, sovereignty must be extended to embrace not only authority, but also a two-fold 'responsibility to protect', as it is called in the official literature.<sup>1</sup> The first responsibility of the state is to protect the welfare of the citizens that fall within its jurisdiction. The second responsibility is to the wider society of states. The state is also responsible for preventing human suffering within its borders from spilling over into threatening 'international peace and security', in the words of the United Nations (UN) Charter. This framework of overlapping obligations is held to derive from the UN Charter itself. David Chandler summarizes the new doctrine thus: 'In brief, the three traditional characteristics of a state... (territory, authority, and population) have been supplemented by a fourth, respect for human rights.'<sup>2</sup> If a sovereign state is unwilling to uphold these obligations to either its internal or external constituency, or even if a state is merely unable to do so, then its authority is forfeit. In such a scenario, the doctrine of sovereignty as responsibility holds that the UN, and even states acting outside the UN's authority, have the duty to alleviate human suffering however they can.

The purpose of this chapter is to advance some criticisms of this new doctrine of sovereignty, which has won such widespread support throughout the world. The key criticism that I want to make is that the new doctrine is incompatible with a proper politics of responsibility. For power to be truly responsible, it needs to be at least potentially accountable. Sovereignty as responsibility, however, makes the exercise of power unaccountable, and therefore ultimately irresponsible. One of the virtues of the traditional understanding of sovereignty is that, through its claim to supremacy, it clarifies the exercise of power. Obviously, no state ever possesses 'total' power over every event that occurs under its jurisdiction. But the fundamental point is that by *claiming* supremacy, the sovereign cannot defer responsibility for its actions elsewhere. Mohammed Ayoob writes that sovereignty 'acts as a "no trespassing" sign protecting the exclusive territorial domain of states'.<sup>3</sup> This is true (or should be true) from the external perspective of all

other states. But from the *internal* perspective, the supreme power of sovereignty also means 'the buck stops here'. Regardless of whether its government is liberal or authoritarian, almost every state in the world today is based on the *idea* of popular sovereignty, the idea that the state exists to enforce the will of the people.<sup>4</sup> As the people are formally sovereign, this means that everyone within a state is ultimately responsible for what happens in their own societies. The state thus gives societies a stable, recognized source of power that makes it possible to hold to account someone, an individual or group of individuals, as responsible for particular political decisions. As we shall see, these two facets of sovereignty are integrally related. The demarcation of authority between sovereigns is crucial to understand how far power extends, and thus how far it can be held accountable.

I emphasize the aspect of supremacy inherent in sovereignty because that is what the 'responsibility to protect' denies. It claims that the power of the sovereign state can be legitimately revoked if the international community decides that the state is not protecting its citizens. I would like to focus on two problems with this idea. First, the supremacy and inviolability of the state is necessary to guarantee the sovereignty of the people. That means that violating the autonomy of the state violates popular sovereignty. Second, if popular sovereignty seems like a remote ideal in the context of atrocity and tyranny, the international community is even more remote and abstract. While it is not asking too much to admit the existence of an international community of some description, it would nonetheless be 'a dangerous illusion', as E.H. Carr puts it, 'to suppose that this hypothetical world community possesses the unity and coherence of communities of more limited size up to and including the state'.<sup>5</sup> In short, the international community is not an entity sufficiently stable or coherent that it can replace the sovereign state. The international community cannot provide a standing institution through which a polity can exercise its collective agency. It is the abstraction of the international community, I argue, that makes the exercise of power remote and unaccountable to a much greater degree than the sovereign state.

My argument proceeds as follows. First, I demonstrate how widely and rapidly this new doctrine of sovereignty of responsibility has been absorbed into international politics. I trace the origins of this doctrine to the failures of the 'new interventionism' of the 1990s.<sup>6</sup> While many suggest that the 'responsibility to protect' emerged in response to Southern resistance to the new interventionism, I examine and reject this thesis. I argue instead that the 'responsibility to protect' arose out of the incoherence of humanitarian intervention itself. I then discuss how the new doctrine sought to compensate for the weakness of humanitarian intervention by consolidating the newly elevated status of human rights. It did this by shifting the definition of sovereignty from autonomy to responsibility. Here, my argument shifts gears, moving from a historical argument about the doctrine's evolution to a logical examination of its implications. I conclude by explaining how subordinating the supremacy of state sovereignty to the higher authority of the international community undermines the project of making power more accountable, and restrains the exercise of political agency in international politics.

### The responsibility to protect

Though it was not the first document to suggest the concept of 'sovereignty as responsibility', the Report of the International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (2001), is most closely associated with this new doctrine. The Commission itself was the initiative of Canadian Foreign Minister Lloyd Axworthy, and included such luminaries as Michael Ignatieff, Ramesh Thakur (Senior Vice Rector of the UN University) and the former Australian Foreign Minister Gareth Evans.<sup>7</sup> Given the composition of the Commission, it is no surprise that the ICISS Report is an eloquent and nuanced document. The document has gained quick acceptance as a promising solution to the bitter 'clash of rights' of the 1990s. This clash pitted the rights of sovereign states against those claiming a 'right of intervention' to defend the human rights of individuals within states. The dust has settled on this battle, and the doctrine of sovereignty of responsibility securely holds the terrain. For example, its tenets have been seamlessly integrated into the report on UN reform by former UN Secretary-General Kofi Annan's High-level Panel on Threats, Challenges and Change.<sup>8</sup> It has also been welcomed by leading International Relations (IR) scholars, who were glad to have moved beyond what they saw as an increasingly sterile debate between the 'pluralists' who championed the rights of states, and 'solidarists' who elevated the human rights of individuals.<sup>9</sup>

On one level, the speed with which the doctrine has been accepted reflects its plain, commonsensical appeal. 'It is acknowledged', states the Report, 'that sovereignty implies a dual responsibility: externally – to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state.'<sup>10</sup> Of course, states should be responsible to their people. Why else are they there, if not to serve their people? It is on this incontrovertible proposition that the remaining structure of the doctrine is built up. But if the reasonableness and innocuousness of the doctrine is its strength, it also begs the question of why the doctrine needs articulating with all the pomp of an international commission in the first place. Indeed, if the idea of responsible sovereigns was merely commonplace, the findings of the ICISS Report would belie the ambitions of the Commission, who have explicitly modelled their aims on the 1987 Brundtland Report. Published by the World Commission on Environment and Development in 1983, the Brundtland Report is renowned for the way in which it reconciled the previously opposed ideas of development and conservation. But if a conceptual tectonic shift on the scale of the Brundtland Report is needed, then it is reasonable to suppose that sovereignty and responsibility are not so compatible after all.<sup>11</sup> We shall return later in the chapter to this ambivalence towards the idea of sovereignty within the ICISS Report. But first let us examine how the Report emerged from the experiences of the post-Cold War era.

### The failure of humanitarian intervention

The idea of 'sovereignty as responsibility' was first put forward by the Sudanese scholar and Special Representative of the UN Secretary-General for Internally

Displaced Persons, Francis M. Deng, principally in a publication by the Brookings Institute, *Sovereignty as Responsibility: Conflict Management in Africa* (1996). This document came after the exhaustion of the first burst of humanitarian intervention and peacekeeping that inaugurated the post-Cold War era.<sup>12</sup> Africa in particular was the site of two major 'defeats' for the new interventionism, following the ignominious withdrawal of UN forces from Somalia in 1993, and the failure to halt atrocities in Rwanda in 1994. Almost as rapidly as it had expanded, the new interventionism began to retreat. Whereas in 1993 over this number 70,000 UN peacekeepers were deployed globally, dropped precipitously to 20,000 in 1996.<sup>13</sup> The idea of 'sovereignty as responsibility' was thus explicitly designed as an antidote to what Deng and his co-authors identified as 'the isolationist tendency emerging within the major powers'.<sup>14</sup> The idea that the sovereign state had a key role to play in upholding human rights could be seen as a way of asking African states to pull themselves up by their own bootstraps, as it were, to compensate for the retrenchment of the major powers. Indeed, Deng *et al.* linked their new idea of sovereignty to the failure of the United States' Operation Restore Hope in Somalia:

If militia leaders claim to be... custodians [of sovereignty], as happened in Somalia, then the responsibilities of state sovereignty logically fall upon them. The withdrawal of the international community from Somalia was a way of telling the people and their militia leaders that they were responsible for the sovereignty that they were so sensitive about.<sup>15</sup>

Deng envisioned the sovereign state as the primary guarantor of human rights and human security, whose authority and responsibilities were embedded within overlapping support structures composed of regional and continental organizations, which were then further interlinked with wider international structures.<sup>16</sup>

The doctrine got its second, more successful outing, with the publication of the ICISS Report in 2001. Superficially, the context seemed very different. The intervention preceding the Report was widely perceived to have been a dramatic success. The North Atlantic Treaty Organization's (NATO) 1999 bombing of Yugoslavia was seen as having halted an avalanche of atrocities in Kosovo. For the first time since the founding of the UN, a group of states had explicitly justified war in the name of protecting a minority within another state. But even this apparently successful humanitarian intervention was more ambivalent than initially appeared. It was controversial because NATO had acted without the authorization of the UN Security Council under Chapter VII of the UN Charter, required by international law for all use of force beyond self-defence.

Whatever moral legitimacy the NATO powers could claim, the war was significantly undermined by its illegality, which the then UN Secretary-General and the Independent International Commission on Kosovo both openly acknowledged. The latter especially focused on the need to close the gap between legality and legitimacy by clarifying the 'grey zone' of moral consensus.<sup>17</sup> More than this, there was a widespread discomfort about the potentially destabilizing

consequences of eroding legal barriers to the use of force. The world's most powerful military alliance had launched a devastating campaign against a Third World state outside the framework of the UN Charter. This could not fail to stir unease among developing countries, who already felt constrained in a post-Cold War environment in which Western power was no longer balanced by Soviet power.<sup>18</sup> The Permanent Representative of India to the UN, Nirupam Sen, captured this pervasive sense of powerlessness when he said

in recent years... the developmental activities of the UN have diminished while the regulatory and punitive aspects have acquired prominence. The developing countries are the target of many of these actions which has led to a sense of alienation among the majority of UN Member States [...]. The Security Council's legislative decisions and those on the use of force... appear as an arbitrary and alien power: this is an alienation not of the individual or class but of countries.<sup>19</sup>

Indian diplomacy still bears the imprint of Third Worldist politics, with a principled attention to issues of self-determination, development and non-intervention – a politics that does not resonate as widely today as it once did. But the basic sentiment was affirmed shortly after the NATO war, when the foreign ministers of the Non-Aligned countries reaffirmed their long-standing opposition to humanitarian intervention at their April 2000 meeting, proclaiming: 'We reject this so-called "right" of humanitarian intervention, which has no legal basis in the UN Charter or in the general principles of international law.'<sup>20</sup>

This opposition did not go unnoticed. The ICISS Report identified the clash of rights thus: 'For some, the new interventions herald a new world in which human rights trumps state sovereignty; for others it ushers in a world in which big powers ride roughshod over the smaller ones, manipulating the rhetoric of... human rights.'<sup>21</sup> Deng's solution, to 'contract out' responsibility for human rights beyond the major powers, seemed to square the circle. If all states were acknowledged to be the primary guarantors of human rights, this would allay fears of humanitarian imperialism. The grounds for this extension of responsibility could already be found in the provisions of the UN Charter and subsequent UN covenants. It could not be denied, after all, that since the end of empire, it was sovereign states that bore the responsibility to serve their peoples. The ICISS Report worked hard to meet Southern concerns, organizing roundtable discussions in Beijing, Cairo, Maputo, New Delhi, St Petersburg and Santiago. The Report appeared to provide a resounding affirmation of state sovereignty. First, states were explicitly charged with being 'the frontline defence of the rule of law'.<sup>22</sup> Second, the Report recognized that it is the citizens of a particular state who have the greatest interest in building peace, and who provide the best, ready-made means of ensuring state accountability.<sup>23</sup> Third, the Report affirmed a liberal defence of 'non-interference' because it guarantees diversity and autonomy, 'enabling societies to maintain the religious, ethnic, and civilizational differences that they cherish'.<sup>24</sup> Finally, the Report acknowledged that elevating interventionism in world politics can be

gravely destabilizing, by encouraging oppositional forces within states deliberately to stoke conflict and goad the international community into intervening in their favour.<sup>25</sup>

Beyond a putative reaffirmation of state sovereignty, the Report also provided criticisms of humanitarian intervention. It noted that speaking about 'rights of intervention' elevates the stature of intervening states in inverse proportion to the true beneficiaries of intervention, namely, the victims of human rights abuses. The Report also observed that the focus on humanitarian intervention collapses the idea of 'human protection' into a single moment, ignoring preventive efforts before a military intervention, and the crucial tasks of post-conflict reconstruction. The Report conceded that even to speak of military intervention as humanitarian is problematic, because 'it loads the dice in favour of intervention before the argument has even begun, by tending to label and delegitimize dissent as anti-humanitarian'.<sup>26</sup> Thakur took this latter argument further, when he drew attention to the ethical repugnance of claiming that the NATO intervention was humanitarian, as this would mean that 'it must necessarily also have been humanitarian bombing'.<sup>27</sup> The Report also warned of the dangers of creating political dependence in post-conflict zones, eloquently arguing that 'international authorities must take care not to confiscate or monopolize political responsibility on the ground', and that 'local political competence' must be preserved and cultivated (for a critique of this 'bottom up approach' to conflict resolution, see Christopher Bickerton's chapter in this volume).<sup>28</sup>

It is incontrovertible, then, that the ICISS Report was alive to criticisms of humanitarian intervention. As Thakur, one of the Report's prime authors, notes, the language of altruism in humanitarianism simply cannot be taken at face value:

'Humanitarian intervention' conveys to most Western minds the idea that the principle underlying the intervention is not self-interested power politics but the disinterested one of protecting human life. It conjures up in many non-Western minds historical memories of the strong imposing their will on the weak in the name of spreading Christianity to the cultivation and promotion of human rights.<sup>29</sup>

### Third World resistance?

On the face of it, the Report is trying to integrate Southern concerns in order to ensure that the consent of the majority of states can be harnessed to the project of 'human protection'. Jennifer Welsh argues that humanitarian intervention remained 'a controversial norm largely because of continued opposition from certain members of international society'.<sup>30</sup> The implication then, is that the Southern resistance halted the forward march of human rights. But how realistic is this assumption of Southern resistance to a new imperialism?

However vociferous the Southern opposition to so-called rights of intervention, the fact remains that Southern states' political strength is severely diminished in the post-Cold War era. The end of rivalry between the Soviet and capitalist blocs

undermines much of the rationale for Southern political solidarity in a 'Third World' bloc. Nicholas Wheeler points out this lack of solidarity when seven non-NATO developing countries – Argentina, Brazil, Bahrain, Malaysia, Gabon and Gambia – voted down a Russian-sponsored UN resolution on 26 March 1999 that condemned NATO's illegal bombing of Yugoslavia.<sup>31</sup> The South's limited power is exemplified by the case of Yemen during the 1990–91 Gulf War. During the UN debates over how to respond to the Iraqi invasion of Kuwait, Yemen was the only country to voice concern about the 'extraordinary breadth' of Resolution 678, which authorized the US-led coalition to unleash its might against Iraq in the name of restoring 'international peace and security *in the area*' (emphasis added).<sup>32</sup> For daring to vote against this highly permissive resolution, the US punished Yemen by cutting \$70 million in annual aid. A senior US diplomat reportedly told the Yemeni representative at the time, 'that was the most expensive no vote you ever cast'.<sup>33</sup> The only other country to vote against the resolution, Cuba, had already been besieged by US sanctions for many years.

If Yemen and Cuba are unrepresentative of the global South given their exceptional isolation, consider the global South's contribution to peacekeeping.<sup>34</sup> The common view in academia and among the Western public is that the majority of peacekeeping and intervention is carried out by Western powers. But the critical role that developing countries have played in trendsetting interventions of the post-Cold War era, which pushed against traditional understandings of sovereignty, is often overlooked (e.g. the roles played by Pakistani peacekeepers in the UN operation Somalia, and the role of Indian forces in Sierra Leone).<sup>35</sup> With a vast expansion of peacekeeping since the turn of the twenty-first century, it is largely Southern troops that have met the UN's appetite for manpower.<sup>36</sup> At the time of writing, South Asian peacekeepers are fighting a counter-insurgency campaign in the eastern Democratic Republic of Congo, armed with Chapter VII powers.<sup>37</sup> All of this suggests that developing countries' response to the 'new interventionism' is far more ambivalent and complex than the common misperception of 'resistance', as suggested in the ICISS Report.

### The tug of war over the UN Charter

However ambivalent the Southern response to the 'new interventionism', some critical scholars have championed the sovereign rights of states by arguing that humanitarian intervention and 'sovereignty as responsibility' undermines both the spirit and the letter of the UN Charter.<sup>38</sup> Article 2 of the Charter defends the 'principle of the sovereign equality of all its Members', discourages 'the threat or use of force' against 'the territorial integrity or political independence of any state', and solidly affirms that 'Nothing contained in the present Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state' (the 'peace enforcement provisions' of Chapter VII notwithstanding). Simon Chesterman, for example, has argued that the increasingly flexible invocation of Chapter VII powers to meet ever-expanding 'threats to

international peace and security' has substantially reduced the barriers to the use of force, thereby eroding the normative framework of the UN's collective security system.<sup>39</sup>

This is not a debate that I will rehearse here, partly for reasons of space, but more importantly because I believe this line of argument is ultimately futile. However well-intentioned the scholars are who defend the sovereign equality of states on the basis of the UN Charter, they cripple themselves by arguing through the Charter framework. Nicholas Wheeler, a key proponent of humanitarian intervention, argues that the

[Security] Council's extension of its enforcement role to encompass the protection of human rights, far from subverting... 'The very purpose for which the Charter was written', is a long-awaited development that integrates the security and human rights dimensions of the UN Charter.<sup>40</sup>

Whereas waging war was once considered the prerogative of any sovereign, the Charter's limitation of the use of force did not eliminate the right to wage war as much as restrict it to the permanent members of the Security Council, the victors of the Second World War. Bardo Fassbender has argued that the restriction of the use of force does not impinge sovereignty, but in fact *constitutes* it. It is the restricted use of force, argues Fassbender, that allows so many sovereign states to survive as formal equals, despite substantive inequalities of power. What the sovereign equality of the UN Charter really means then, according to Fassbender, is equality before the law; that is, equality of law-taking rather than law-making.<sup>41</sup> In Fassbender's view, the Charter is effectively an international constitution that already established the parameters of sovereignty long before the era of the 'new interventionism'. Thus it is reasonable to shift the parameters of sovereignty to accommodate greater respect for human rights. The international community also has sufficient legal personality and purpose that 'it can set against the opinion and action of a recalcitrant state'.<sup>42</sup> The ICISS Report seems to affirm Fassbender's, not Chesterman's, view: 'the state *itself*, in signing the Charter, *accepts* the responsibilities of membership flowing from that signature' (emphasis added).<sup>43</sup>

Instead of playing this tug of war over the UN Charter, a more powerful line of attack is to analyse the internal incoherence of humanitarian intervention, and to take sovereignty as responsibility on its terms. This means interrogating its claims to be strengthening sovereignty and promulgating humanistic political responsibilities. Indeed, if sovereignty, self-determination and equality are of any value, they should be able to stand alone without the scaffolding provided by the victors of the Second World War.

### The incoherence of humanitarian intervention

If we cannot explain the ICISS as a response to Third World power, then how are we to do so? The ICISS grows, I argue, out of the internal incoherence of the

principles of humanitarian intervention, more than the strength of any external forces pushing back against it. This incoherence becomes apparent in those suggestions that try to give a substantive institutional form to humanitarian intervention. Ayoob, for example, has suggested that the clashes over humanitarian intervention could be ironed out by establishing a 'Humanitarian Council':

A new more broadly based body... with adequate representation from all regions with rotating membership reflecting the diverse composition of the United Nations... Decisions to intervene... must require at least a three-quarters majority of the membership of the proposed Council.<sup>44</sup>

Sympathetically analyzing Ayoob's work, Welsh argues that the problems raised by human rights include questions such as who 'is it that decides when a state has not fulfilled its responsibilities and determines that only force can bring about its compliance... [W]ho should play the role of judge and enforcer in international society?'<sup>45</sup> The real problem is that, if your standard is a moral one, this question answers itself. In the context of gross and massive human rights violations, the question of *who* is authorized to act rapidly becomes secondary to the moral imperative to act. In practice, of course, this means that the powerful have the final word on whether intervention will occur or not because, by definition, they are the best placed to act. Indeed, it is this that troubles Chesterman about the new interventionism. Its logic, if not its explicit purpose, is to ratify war-making by the powerful.

The imperative of action during moral emergencies constantly strives to liberate itself from the letter of the law and the time-consuming fetters of forging a diplomatic consensus. As Wheeler points out in criticizing Ayoob's 'Humanitarian Council': 'changing the decision-making mechanism will not eliminate the challenge of balancing the moral imperative to use force to rescue imperilled humanity against the pragmatic question of whether force will succeed and do more good than harm'.<sup>46</sup> There is an urgency, a sharpened sense of immediacy, involved in responding to moral outrages that is lacking in the more prudential calculations of national interest and *realpolitik*. The national interest by definition requires a detached, long-term perspective (for a discussion of the national interest, see Alexander Gourevitch's chapter). As Zaki Laïdi says in relation to the conflict in former Yugoslavia, '[Western] societies claim that the urgency of problems forbids them from reflecting on a project, while in fact it is their total absence of perspective that makes them slaves of emergencies'.<sup>47</sup> The ICISS Report is cognizant of this, noting that 'human protection' requires the anticipation of human suffering if it is to be morally justifiable. If it did not include this anticipatory element, then moral action would be illegitimate by default, as it could only ever occur *post hoc*, after the crimes had already been committed.<sup>48</sup> But this element of anticipation introduces a further element of subjectivism and uncertainty to the entire apparatus of intervention – how are we to judge at which point humanitarian crisis should precipitate military intervention?

There is no source of objective, independent authority in international affairs that could allow us to know when a conflict has reached proportions that would render null and void the authority of the incumbent sovereign state (the International Committee of the Red Cross adamantly refused such a role when solicited by the ICISS).<sup>49</sup> But this leaves us with the same uncertain array of authorities (international organizations, non-governmental organizations, UN officials, etc.)<sup>50</sup> whose eclectic judgements were relied upon to justify humanitarian intervention throughout the 1990s – authorities whose claims often proved partial and unfounded, to say the least.<sup>51</sup> For these reasons, it is intrinsically difficult to construct an institution like the Humanitarian Council, or some other form of long-term alliance united around the principle of humanitarian intervention. This difficulty has little to do with Third World solidarity. Rather, it is this internal incoherence of humanitarian intervention that has made it so difficult to sustain its momentum. While humanitarian intervention can gnaw away at state sovereignty by claiming a higher ethical legitimacy, it cannot aspire to the role of political creation. The ‘rights of intervention’ cannot create viable institutions that draw their legitimacy from the universal consent of international society. The internal weakness of this fissiparous doctrine of intervention is given an external form in the ‘resistance’ of the South.

### The suppression of sovereign supremacy

Faced with the difficulties of cementing humanitarian intervention in a positive, stabilized institutional form, the ICISS Report effectively sought to square the circle by borrowing Deng’s idea of diffusing responsibility to sovereign states themselves. However, this still leaves the problem of how to ensure that there is no question of illegitimacy or illegality when an external agent pierces the sovereign state in defence of human rights. The only way to do this is to revoke the sovereign’s claim to freedom from external interference. Humanitarian intervention is clearly not problematic if freedom from external interference is no longer considered a foundational right. As they cannot exist in the form of a Humanitarian Council, the rights of intervention can only sink roots by becoming legal. The legal barrier is removed by denying supremacy to the sovereign state. This denial means that there is no longer any clash of the rights of autonomy against the rights of intervention.

The ICISS Report claims that avoiding talk of the rights of intervention places the focus on the victim and not the intervener. But as David Chandler has argued, moving away from a clash of rights, in the interests of elevating the rights of the victim, is far more insidious than it looks. A clash of rights at least makes it clear that there is a political confrontation. When there are competing principles of legitimacy and political order at stake it is easier to clarify the coercion and resistance involved. Claiming a right to intervention places the onus of justification on the intervener to defend his violation of state sovereignty. But, under the cover of elevating the victim, the ICISS Report effectively shifts the onus of justification away from the intervening state to the state being intervened in. This is analogous

to shifting from the presumption of innocence to the presumption of guilt. Any potential target of an intervention has to substantiate why it should remain free from external interference.<sup>52</sup> For all its talk of not extending the rights of war, the ICISS Report shifts the presumption in favour of military intervention.

Peter Gowan denounces the ‘oleaginous jargon’ of global governance, claiming that a new framework of global disciplinary regimes has recast sovereignty ‘as a partial and conditional licence, granted by the “international community,” which can be withdrawn should any state fail to meet the ... standards laid down ... by liberal governance’.<sup>53</sup> Gowan’s polemic is stirring, but the supporters of ‘liberal governance’ are not embarrassed about using the same language. Paul Taylor for example, demands that sovereignty be viewed ‘as a license from the international community to practice as an independent government in a particular territory’.<sup>54</sup> As Ignatieff makes clear, this is how things really are at the moment: ‘in practice the exercise of state sovereignty is conditional, to some degree, on observance of proper human rights behaviour’.<sup>55</sup>

So what then does sovereignty as responsibility really mean? As I observed earlier in the chapter, the ICISS Report ricochets between two conceptions of sovereignty. Recall the words of the Report: ‘state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare [and] the national political authorities are responsible to the citizens internally and to the international community through the UN’.<sup>56</sup> Does this mean that under sovereignty as autonomy, state authorities are *not* responsible for protecting their citizens’ welfare? Not according to the Report:

The defence of state sovereignty, by even its strongest supporters, does not include any claim of the unlimited power of a state to do what it wants to its own people. The Commission heard no such claim at any stage during our worldwide consultations.<sup>57</sup>

But if sovereignty as autonomy does not mean totalitarianism, then what is it precisely that the doctrine of ‘sovereignty as responsibility’ is counterposing itself to? The research essay on state sovereignty in the supplementary volume to the Report invokes a widely cited article that former UN Secretary-General Kofi Annan wrote for the *Economist*. In this article, Annan articulated ‘two concepts of sovereignty’. For Annan, sovereignty remained the ordering principle of international affairs, but he stressed that it was ‘the peoples’ sovereignty rather than the sovereign’s sovereignty’.<sup>58</sup>

Here Annan was promulgating a widely held misconception of sovereignty – that the claim to supremacy, the ‘sovereign’s sovereignty’, is totalitarian. The problem with Annan’s idea is that even with popular sovereignty the state has to take the form of an institution that is over and above society. Collective political interests can only be pursued among modern individuals if these individuals abstract themselves from their differing circumstances to become citizens in a common political process. It is the state that enshrines this common political process as a distinct, institutionalized sphere external to everyday life. The separation of the state from

society provides the sovereign people with a barometer by which to observe whether their collective, general will is being carried out. Though the state is necessary to make possible the exercise of the general will, it is still the people, not the state, that is sovereign, *regardless of how despotic any individual state might be*. Popular sovereignty, therefore, is a mediated relationship between people and state; it *cannot* belong to the body of the people separate from the state. Without a state, modern society cannot conceive of itself as a polity.<sup>59</sup>

The idea of supremacy means that the sovereign is subject to no higher law, not because it is arbitrary and despotic, but because it has final authority. In popular sovereignty, this means that the people are supreme. The idea that finality lies with all members of society implies agency and responsibility for everyone in society even if the people's supremacy is indirect, by virtue of being mediated through the state. The institutionalization of public power over and above society means, of course, that the apparatus of the state can be used to tyrannize the society from which it springs. But, as Martin Loughlin notes, 'general will, although absolute, has nothing in common with the exercise of an arbitrary power'.<sup>60</sup> A *sovereign* state can *never* rule by pure coercion alone. For if a state cannot engage the subjectivity of its citizens, it will find it impossible to mobilize their collective power to meet internal and external challenges. James Heartfield, alluding to the USSR, writes:

Those...regimes that have sought to crush freedom and supplant the democratic will have been marked not just by violent repression, but, perhaps more appallingly, by a slow degeneration, as the population withdraws consent, turns inward, refuses to engage and ceases to produce.<sup>61</sup>

In other words, pure tyranny is not sovereignty because, by definition, tyranny cannot draw upon the willed consent of its members. When consent dries up entirely, the result is not an impregnable, monolithic state sovereignty, as Kofi Annan and the ICISS seem to imagine. Rather, what you get is the USSR: a rotting state that eventually folds in on itself. The element of rationality in sovereignty has been stressed, quite consistently and coherently, by all social contract theorists. Rousseau, for instance, argues that the sovereign cannot act against the public interest 'because it is impossible for a body to wish to hurt all of its members'.<sup>62</sup> This also means that if the state acts irrationally, if it tyrannizes its own people, then it no longer expresses the general will. This does not mean, however, that the international community can legitimately sever the relationship between the state and the people. It must be up to the people to restore their own supremacy by recapturing the state. A despotic state does not completely nullify popular sovereignty. The moment that popular sovereignty truly becomes null and void is when the people do not assert their sovereignty by disciplining their state. This is what Michael Walzer means when he writes that:

Self-determination and political freedom are not equivalent terms. The first is the more inclusive idea; it describes not only a particular institutional arrangement but also the process by which a community arrives at that

arrangement... A state is self-determining even if its citizens struggle and fail to establish free institutions, but it has been deprived of self-determination if such institutions are established by an intrusive neighbour.<sup>63</sup>

It is important not to confuse the external and the internal perspective here, as Kofi Annan does. From the external perspective of all other states, it is the state that embodies sovereignty, that sets up the 'no trespassing' sign around its jurisdiction. But it is the people behind the state who are substantively sovereign. The ICISS Report accepts that the state should be the instrument of the people; it certainly pays lip service to 'popular sovereignty'. But the deeper point is that a people without a state are not sovereign. There is no 'people's sovereignty', as Annan puts it, without a state, because then the people have no way of gauging and instantiating their collective will. The sovereign people cannot measure the extent of their rule if the 'no trespassing' sign is uprooted. It is in this sense that sovereignty not only implies but *guarantees* responsibility. That the sovereign is supreme, by virtue of drawing on the consent of all of society, is what ensures responsibility; the responsibility of every member of society, for society.

So where does all this leave us with regards to the 'responsibility to protect'? The fact that military intervention in the South meets with less resistance reflects the ebb of Third World nationalism, and the expansion of Western power in the absence of any countervailing Soviet power. The fact that the claim to supremacy embodied in sovereignty is mistaken for totalitarianism reflects less a simple logical error, so much as a disenchantment with the mass politics of the twentieth century. (These historical developments are covered in greater detail in James Heartfield's, Alexander Gourevitch's and Christopher Bickerton's chapters.) The fact that panels of eminent persons can set about redefining sovereignty in the space of under 100 pages, on the back of a series of elite consultations, indicates just how far sovereignty has been taken beyond the mass politics that once inspired it. The problem today, however, is that what is on offer in the 'responsibility to protect' is much less than the doctrine of sovereignty as autonomy that I have sketched out here.

In so far as sovereignty is the exercise of the general will, the idea of sovereigns being responsible to their citizens is merely tautologous. Insofar as sovereignty is accountable to external power, it means that the sovereign is evidently not supreme, and therefore, logically speaking, not sovereign. As David Chandler points out, the idea of a qualified or limited sovereignty is sophistry: 'a power which is "accountable" to another, external body clearly lacks sovereign authority'.<sup>64</sup> In the doctrine of sovereignty as autonomy, responsibility can only be grounded on the prior assumption of supremacy. It is obvious that if a person or agent does not hold supreme power, then they cannot be held ultimately responsible. Let us illustrate what we mean by this. It is considered perfectly legitimate if a group of citizens holds an elected minister to account for an error committed by his ministry, even if it is not the minister but a civil servant that is directly responsible for the mistake. It is in this sense that supremacy means not omniscient power, but responsibility. If it happens under the minister's watch, the

minister is politically responsible. What is more, with the citizens treating him *as if he were* ultimately responsible, the minister is pressured to modify his behaviour to act more responsibly, in the expectation that his constituents will hold him to account once again in future.<sup>65</sup> People in a dictatorship obviously have little chance of holding ministers or civil servants to account. But the point I am making here is that the assumption of supremacy clarifies the exercise of political power. It means that people can be held responsible. As we have seen, the doctrine of sovereignty as responsibility believes itself to be suppressing totalitarian sovereignty in favour of popular sovereignty. But this is because it mistakes the claim to supremacy as totalitarian. In fact, the suppression of supremacy is the suppression of sovereignty itself. The idea of sovereignty being qualified by accountability to an external power means that it is not supreme, and therefore, *not accountable*.

If we pursue the example of the responsible minister further, what happens when the minister is not accountable just to the citizens, but to the international community as well? How is the minister to resolve such a clash of responsibilities? What happens when the democratic will of the people demands that the state oppose the international community? Ostensibly, the 'responsibility to protect' wins out, because its human rights content is presented as a set of absolute moral standards, rising above politics, and that no state can justifiably violate. Indeed, this is the only way the ICISS Report really deals with the possibility of conflicting priorities – by transforming a political conflict into a question of morality versus politics. For a state to side decisively with its domestic responsibilities would require it to make reference to a conception of sovereignty as autonomy, demanding independence from external interference. Yet on the terms of the ICISS, this can only be seen as a move towards tyranny rather than greater accountability. In the name of human rights, the doctrine of 'sovereignty as responsibility' pulls the state into orbit around the international community, away from its own populace. Perversely, the 'responsibility to protect' permits the state to regard its relationship with its own people as less central to its political legitimacy. Under the terms of 'sovereignty as responsibility', a state can downplay domestic demands in the interests of living up to its international duties. In other words, the 'responsibility to protect' easily translates into states becoming less responsible to their citizens.

But does this mean that the international community, or its representatives, are supreme in place of the sovereign? Hobbes famously characterized the sovereign as an 'artificial man', by which he meant the sovereign had to be a clearly identifiable agent to whom power was delegated, in order that society could clearly observe the exercise of its own will. The institutionalization of the general will in the form of public power means that it is recognizable, and therefore (potentially) accountable. Can this be said of the international community? The various military interventions since the end of the Cold War have been carried out by a plethora of agencies: UN peacekeeping forces cobbled together from disparate national armies, various regional organizations (NATO, the Economic Community of West African States, the Commonwealth of Independent States),

and most notoriously of all, coalitions of the willing. Coalitions of the willing are the most extreme example of this instability of international agency, for coalitions of the willing are not stable organizations, but rather exhaust themselves in the process of acting.

None of these organizations, not even the UN, can establish itself as the stable representative of the international community, as a clear source of relatively autonomous power that could claim to represent the general will of humanity. Even the ICISS Report admits that human suffering might necessitate that 'concerned states' act outside the remit of the UN, as the NATO powers did over Kosovo.<sup>66</sup> Speculating in 1984 on the prospect of an era concerned with human rights, Hedley Bull reasoned, 'If unilateralism could be avoided and intervention was seen as expressing the collective will of the society of states, the harmony and stability of international society could be maintained.'<sup>67</sup> Clearly, by this measure, the military defence of human rights has failed to instantiate the collective will of international society. It has spectacularly failed to bind the society of states together. We need look no farther than the schism between France and the US over the invasion of Iraq in 2003 for evidence of this. If anything, 'sovereignty as responsibility' enables a more temperamental and arbitrary exercise of power, that is less easily identified as political, and less accountable.

For all these reasons, it is difficult to discern in the new interventionism the 'transition' that the ICISS Report hopes for, 'from a culture of sovereign impunity to a culture of national and international accountability'.<sup>68</sup> We have diffuse and overlapping moral duties, but little sense of clear political responsibility. Sovereign states are no longer supreme, but then neither is there an evident power that can claim to embody or represent the international community in the way the sovereign can claim to represent the general will. Welsh speculates that, '[p]erhaps, by taking on the viewpoint of the victim, those with the power and capability to intervene can finally balance the desire to resist evil against the dangers of succumbing to righteousness.'<sup>69</sup> But what is particularly appealing about victims is that they are weak and powerless by their very nature. Victims offer moral appeal to the righteous, as well as the bonus that, by definition, they cannot hold the righteous to account. Victims are, in short, a perfect license for the exercise of power.

Thus the question of agency is critical to this elevation of victim-centred foreign policy 'because', as Ayoob argues, 'those who define human rights and decree that they have been violated also decide when and where intervention to protect such rights should and must take place'.<sup>70</sup> In other words, since the *content* of human rights is decided independently of the *capacity* of the subjects of rights, this contradiction is resolved by yoking in the agency of external power. In Chandler's words, 'because the human subject is defined as being without autonomy [i.e., a victim], some external source has, of necessity, to be looked to.'<sup>71</sup> The inner logic of human rights tends to prise apart the subject and agent of rights. Power is exercised in the name of the victims of human rights abuses, but



that power itself is so immeasurably distant and arbitrary that it cannot be held to account. It is here that the politics of 'sovereignty as responsibility' finally come out in the open. It is less an attempt to prise open weak states to imperialist influence as much a diffuse and halting attempt to limit open conflict between rights and interests. It takes the incomplete and incoherent exercise of power by shifting coalitions of states, and recasts it as a new international principle of ethical action. In all, it presents us with a constrained form of international politics in which the unaccountable exercise of power is coupled with the suppression of political conflict in the name of ethical responsibility.

## Conclusion

In many ways, the doctrine of 'sovereignty as responsibility' exemplifies the state of affairs identified in the Introduction of this volume; namely, a world where we endure all the worst aspects of sovereignty and yet are denied most of its benefits. On the one hand, the doctrine reaffirms a world of (nominally) sovereign states, with all the political parochialism and uneven development that accompanies it. Yet on the other hand, the autonomy of these states is denied, as they are ultimately behest to a shimmering, remote international community. When a supreme power cannot be identified, political responsibility is diluted; the claims of the doctrine of responsibility are itself belied. In this, the doctrine of 'sovereignty as responsibility' is a mockery of a properly responsible politics. Of course, the autonomy of politics enshrined in state sovereignty is always buffeted by other forces – the wills of other powers, and not least the international economy. The content of sovereign supremacy shifts over time. But this does not make it meaningless. Nor can it be defined out of existence with no political or legal consequences. As Chris Brown argues, it is less 'the fact of autonomy which makes a difference' as much as 'the claim to autonomy symbolized by the terms "sovereign" and "sovereignty"', because 'a world in which such claims are made has a different politics from a world in which such claims are not made'.<sup>72</sup>

In place of a proper ethics of responsibility, the 'responsibility to protect' offers odious ethical compromises. The ICISS notes that *realpolitik* would dictate that the permanent five members of the Security Council and other major powers are safe from intervention, as any attempt to coerce them may backfire into a wider conflagration.<sup>73</sup> But what all this means is that the strong have no responsibilities, except to police the weak. Both supporters and opponents of humanitarian intervention are quick to point to the hypocrisy of intervention happening in weak states, when there is not even a slender chance of intervention in Chechnya and Tibet, despite the gravity of human rights abuses there. On this 'question of double standards', the ICISS Report offers a lacklustre compromise: 'the reality that interventions may not be able to be mounted in every case... is no reason for them not to be mounted in any case'.<sup>74</sup>

No such ethical contortions would afflict a politics based on self-determination. Any oppressed group that organized itself sufficiently to fight for its own ends would be able to force recognition of its demands. In other words, political

movements that successfully claim supreme power over a particular territory and population are, by definition, not dependent on the moral gaze of an outside power to decide who is fit to be rescued and who has to be consigned to oblivion. True responsibility involves claiming authorship for one's own position and status. The principle of the 'responsibility to protect' nullifies the political responsibility of individuals for their own societies, and masks power in the garb of morality. Arbitrary power cannot be held to account; and power that cannot be held to account is ultimately irresponsible power. In the words of J.S. Mill:

Politics cannot be learned once and for all, from a textbook, or the instructions of a master. What we require to be taught... is to be our own teachers. It is a subject on which we have no masters; each must explore for himself, and exercise an independent judgement.<sup>75</sup>

It is precisely this responsibility for our own autonomy that the ICISS would deny us.

## Notes

- 1 International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect*, Ottawa: International Development Research Centre, 2001.
- 2 D. Chandler, 'The Responsibility to Protect? Imposing the "Liberal Peace"', *International Peacekeeping* 11:1, 2004, p.65.
- 3 M. Ayoob, 'Humanitarian Intervention and State Sovereignty', *The International Journal of Human Rights* 6:1, 2002, p.83.
- 4 Contrast this with the 'Constitutional Framework for Provisional Self-Government in Kosovo', discussed in Christopher Bickerton's chapter in this volume.
- 5 E.H. Carr, *The Twenty Years' Crisis 1919–1939: An Introduction to the Study of International Relations*, Basingstoke: Palgrave, 2001, p.147.
- 6 See chapter 4 of S. Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law*, New York: Oxford University Press, 2003.
- 7 For a full list of participants see ICISS, *Responsibility to Protect*, p.iii.
- 8 United Nations, *A More Secure World: Our Shared Responsibility*, New York: UN, 2004, pp.66–67.
- 9 See D. Chandler, *Constructing Global Civil Society: Morality and Power in International Relations*, Basingstoke: Palgrave, 2004, p.91.
- 10 ICISS, *Responsibility to Protect*, p.8.
- 11 R. Thakur, *The United Nations, Peace and Security*, Cambridge: Cambridge University Press, 2006, p.249.
- 12 Humanitarian intervention is generally defined as coercive interference within states in defence of human rights. But this is too restrictive, as it ignores a wide range of post-1988 peacekeeping operations that pushed against traditional ideas of sovereignty, even though they may have had the consent of the host state, for example, the UNTAC mission in Cambodia. For my purposes here I will define 'humanitarian intervention' as intervention with a humanitarian justification, with or without host state consent, in what would have previously been considered the internal affairs of a state. By the 'new interventionism', I mean the wider proclivity to intervene within states, including, but not restricted to, humanitarian interventions. While the debates around these definitional issues are not unimportant, we can bracket them for the sake of the analysis in this chapter. See further Chesterman, *Just War or Just Peace?*

- 13 A.J. Bellamy, P. Williams and S. Griffin, *Understanding Peacekeeping*, Cambridge: Polity Press, 2004, p.84.
- 14 F.M. Deng *et al.*, *Sovereignty as Responsibility: Conflict Management in Africa*, Washington, DC: the Brookings Institution, p.xv.
- 15 *Ibid.*, p.xvi.
- 16 See Chapters 5 and 6 in *ibid.*
- 17 D. Chandler, *Constructing*, p.103.
- 18 See further T. Weiss, D.P. Forsythe and R.A. Coate, *The United Nations and Changing World Politics*, Boulder, CO: Westview Press, 2004, pp.337–339.
- 19 N. Sen, 'Statement by Mr Nirupam Sen on the Report of IGH Level Panel on Threats, Challenges and Change at the Informal Meeting of the Plenary of the 59 session of the General Assembly', 27 January 2005. Online. Available at HTTP: <www.un.int/india/2005/ind1059.pdf> (accessed 30 May 2006).
- 20 Cited in N. Wheeler, 2004, 'The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society', in J. Welsh (ed.), *Humanitarian Intervention and International Relations*, New York: Oxford University Press, 2004, p.46.
- 21 ICISS, *Responsibility to Protect*, p.2.
- 22 *Ibid.*, p.14.
- 23 *Ibid.*, p.17.
- 24 *Ibid.*, p.31.
- 25 *Ibid.*
- 26 *Ibid.*, p.16.
- 27 Thakur, *United Nations*, p.250.
- 28 ICISS, *Responsibility to Protect*, pp.44–45.
- 29 Thakur, *United Nations*, pp.250–251.
- 30 J. Welsh, 2004, 'Introduction', in Welsh, *Humanitarian Intervention*, p.2.
- 31 Wheeler, 'Humanitarian Responsibilities', p.44.
- 32 Chesterman, *Just War or Just Peace?*, p.164.
- 33 Cited in Chesterman, *Just War or Just Peace?*, p.181
- 34 See P. Cunliffe, 'Understanding Peacekeeping Contribution from the Developing World', paper presented at British International Studies Association annual convention, December 2006.
- 35 These operations were UNOSOM I and II (1992–95) and UNAMSIL (1999–2005), respectively.
- 36 M. Berdal, 'The UN After Iraq', *Survival* 46:3, 2004, pp.83–102.
- 37 See M. Lacey, 'U.N. Forces Using Tougher Tactics to Secure Peace', *New York Times*, 23 May 2005.
- 38 For example, Ayoob, 'Humanitarian Intervention' and Chesterman, *Just War or Just Peace?*
- 39 Chesterman, *Just War or Just Peace?*, p.128.
- 40 N. Wheeler, 'Decision Making and Procedures for Humanitarian Intervention', *The International Journal of Human Rights* 6:1, 2002, p.130.
- 41 B. Fassbender, 2003, 'Sovereignty and Constitutionalism in International Law', in N. Hart (ed.), *Sovereignty in Transition*, Hart Publishing, 2003, pp.124–131.
- 42 *Ibid.*, p.130.
- 43 ICISS, *Responsibility to Protect*, p.13.
- 44 Ayoob, 'Humanitarian Intervention', pp.95–96.
- 45 J. Welsh, 2004, 'Taking Consequences Seriously: Objections to Humanitarian Intervention', in Welsh, *Humanitarian Intervention*, pp.66–67.
- 46 Wheeler, 'Decision Making', p.134.
- 47 Z. Laïdi, *A World Without Meaning: The Crisis of Meaning in International Politics*, trans. June Burnham and Jenny Coulon, London, New York: Routledge, 1998, p.11.
- 48 ICISS, *Responsibility to Protect*, p.33.

- 49 *Ibid.*, pp.34–35.
- 50 *Ibid.*, p.33.
- 51 See for example, J. Pilger, 'John Pilger Doesn't Buy the Sales Pitch', *New Statesman*, 27 March 2006.
- 52 D. Chandler, *Constructing*, p.90.
- 53 P. Gowan, 2003, 'The New Liberal Cosmopolitanism', in D. Archibugi (ed.), *Cosmopolitanism*, London: Verso, 2003, p.52.
- 54 P.G. Taylor, *International Organization in the Age of Globalization*, London: Continuum, 2003, p.33.
- 55 M. Ignatieff, 2001, 'Human Rights as Politics and Idolatry', in A. Dworkin (ed.), *Human Rights as Politics and Idolatry*, Princeton, NJ: Princeton University Press, 2001, p.17.
- 56 ICISS, *Responsibility to Protect*, p.8.
- 57 *Ibid.*
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- 59 I. Hont, 'The Permanent Crisis of a Divided Mankind: "Contemporary Nation State" in Historical Perspective', *Political Studies* 42:SI, 1999, p.1.
- 60 M. Loughlin, 'Ten Tenets of Sovereignty', in Hart, *Sovereignty in Transition*, p.1.
- 61 J. Heartfield, *The 'Death of the Subject' Explained*, Sheffield: Sheffield Hallam University Press, 2002, p.7.
- 62 J.J. Rousseau, *The Social Contract*, London: Penguin, 1968[1762], p.117.
- 63 M. Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, New York: Basic Books, 2000, p.87.
- 64 D. Chandler, *Constructing*, p.65.
- 65 I owe this example to Michael Savage.
- 66 ICISS, *Responsibility to Protect*, p.xiii.
- 67 Cited in A. Roberts, 2004, 'The United Nations and Humanitarian Intervention', in J. Welsh (ed.), *Humanitarian Intervention*, p.80.
- 68 ICISS, *Responsibility to Protect*, p.14.
- 69 Welsh, 'Consequences', p.183.
- 70 Ayoob, 'Humanitarian Intervention', p.81.
- 71 D. Chandler, *From Kosovo to Kabul: Human Rights and International Law*, London: Pluto Press, 2002, p.109.
- 72 C. Brown, *Sovereignty, Rights and Justice: International Politics and the Law*, Cambridge: Polity, 2003, p.5.
- 73 ICISS, *Responsibility to Protect*, p.37.
- 74 *Ibid.*
- 75 Cited in R. Jackson, *Classical and Modern Thought on International Law: From Anarchy to Cosmopolis*, New York: Palgrave, 2005, p.157.