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Redefining Sovereignty and Intervention

Joelle Tanguy

The Responsibility to Protect, International Commission on Intervention and State Sovereignty, 2 vols. (Ottawa: International Development Research Centre, 2001), 110 pp. (vol. 1), 426 pp. (vol. 2), free; available at www.idrc.ca.

In his millennium report to the United Nations, Secretary-General Kofi Annan asked, “If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity? . . . We confront a real dilemma. Few would disagree that both the defence of humanity and the defence of sovereignty are principles that must be supported. Alas, that does not tell us which principle should prevail when they are in conflict.”¹ Annan’s remarks force us to confront some uncomfortable facts: The fiftieth anniversary of the Genocide Convention was haunted by the shameful neglect of Rwanda. The Mogadishu fiasco, the cruel ambiguities of Srebrenica, the silence over Chechnya, and the confusions of the Kosovo intervention fed a contentious debate on the circumstances, authority, and means to intervene. Nonetheless, human rights and humanitarian discourses asserted themselves in international affairs throughout the 1990s: “Once synonymous with the defence of territory from external attack, the requirements of security today have come to embrace the protection of communities and individuals from internal violence.”²

After the Kosovo intervention, the UN legal counsel admitted that “there are those who

declare that the legal framework involving the right of self-determination and respect for territorial sovereignty is now in disarray.”³ The traditional Westphalian concept of sovereignty could no longer provide guidance for such interventions, and the UN Charter itself is ambiguous, affirming both the primacy of human rights and the essentiality of state sovereignty. Annan commented, “It is not the deficiencies of the Charter which have brought us to this juncture, but our difficulties in applying its principles to a new era; an era when strictly traditional notions of sovereignty can no longer do justice to the aspirations of peoples everywhere to attain their fundamental freedoms.”⁴ The secretary-general stressed the need for a conceptual leap forward.

In September 2000, the International Commission on Intervention and State Sov-

¹ Kofi A. Annan, *We the Peoples: The Role of the United Nations in the 21st Century* (New York: United Nations, 2000), p. 48; available at www.un.org/millennium/sg/report.

² *Ibid.*, p. 43.

³ Hans Corell, “Address” (speech given at the Canadian Council of International Law 1999 Annual Conference, “From Territorial Sovereignty to Human Security,” Ottawa, Canada, October 29, 1999); available at www.un.org/law/counsel/ottawa.htm.

⁴ Kofi A. Annan, “Address” (annual report to the opening meeting of the United Nations General Assembly, September 9, 1999); available at www.un.org/News/Press/docs/1999/19990920.sgsm7136.html.

reignty took on the challenge to build a conceptual bridge between matters of intervention and state sovereignty. The twelve-member independent commission sought to conceive an alternative framework that would articulate dilemmas of interventions and forge some sort of consensus on when and how to intervene. Cochairs Gareth Evans and Mohamed Sahnoun orchestrated an extensive, worldwide consultation of scholars, policy-makers, and civic leaders that fueled the development of the final report, *The Responsibility to Protect*, which was published in December 2001. They also called on Thomas Weiss and Don Hubert to advise them and produce a companion volume of background research and bibliography, dealing with a broad range of conceptual, ethical, legal, political, and operational issues related to interventions.

Steering clear of the paths that had paralyzed the debate on humanitarian intervention in the 1990s, the commission reframed its terms in an ingenious way. Rather than revisiting the “right to intervene,” it reconceptualized sovereignty as the responsibility of a state to protect its vulnerable populations. If—but only if—it fails, the broader community of states must shoulder that responsibility.⁵ In other words, rather than establishing the rights of the intervener, the commission tries to shift the discourse to focus on the rights of populations in need, while still affirming sovereignty as the primary principle, since the chief responsibility for protection still must lie with the state. Only when the state is unable or unwilling to exercise this sovereignty defined as a responsibility to protect does an international duty to save civilians in danger trump the rights of the sovereign state and does the principle of nonintervention yield to an international responsibility to protect.

Some of the commission’s findings may appear to be dead on arrival, as they came

in the context of the current war on terrorism. Although the timing of the publication of *The Responsibility to Protect* has clouded its reception, much of the commission’s reflections on the need to limit and codify the use of the costliest and thorniest tool in international relations—forcible action against a sovereign state—should have perennial value. And its concomitant stress on the responsibilities of prevention and rebuilding, as well as its recommendations inherited from the just war tradition, make it must-reading for those engaged in the debate on the ethics of the new war.

MISGIVINGS ABOUT THE RIGHT TO INTERVENE

The goal of the commission’s report is to shift the terms of the debate on humanitarian intervention, primarily by supplanting already existing principles such as the right to intervene, or *droit d’ingérence*. Coined in the late 1980s by French scholar Mario Bettati and humanitarian and politician Bernard Kouchner, the right and duty for states to intervene was conceived as a new departure concerning both the right, inscribed in humanitarian law, of victims in all conflicts to receive assistance and the moral duty of independent humanitarian agents to give that assistance.⁶

After the Persian Gulf War, the idea of military intervention in the name of human rights and humanitarianism caught on quickly. Having inspired the terms of two pioneering General Assembly resolutions

⁵ Francis Deng developed the concept in Francis Deng, et al., *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, D.C.: Brookings Institution Press, 1996).

⁶ Mario Bettati and Bernard Kouchner, *Le devoir d’ingérence: peut-on les laisser mourir?* (Paris: Denoël, 1987).

promoting humanitarian access,⁷ the right to intervene went on to blend with the practice of military intervention with Security Council resolutions 688 of April 5, 1991, on Iraqi Kurdistan, and 794 of December 3, 1992, on Somalia, and became the most controversial foreign policy issue of the decade. Though the right to intervene appeared as a conceptual breakthrough and did guide international policy during the 1990s, in the end it failed to rally consensual support.

As the Security Council increasingly interpreted mass violations of human rights stemming from civil conflict as threats to peace and security warranting intervention, humanitarian actors became ambivalent about the interventions made in their name, sometimes triggered by their calls for action, yet decided and carried out in ways that raised more concerns than they addressed.⁸ Member states of the United Nations also became increasingly wary. Annan's call for revisiting principles of intervention and sovereignty in his opening speech to the General Assembly in 1999 ignited a debate that exposed sharp divisions—including a North-South split—and intense conceptual quandaries.

In particular, critics saw the right to intervene as the instrument of inconsistent, cruelly selective intervention policies, hijacked by the national interests and ethnocentrism of the more powerful states, in blatant contradiction to the principles of equality and sovereignty, and in dubious relation to the principle of self-determination. Illustrating these misgivings, President Bouteflika of Algeria commented that sovereignty is “our last defense in an unequal world.”⁹ His statement was a healthy reminder that the principles of sovereignty and nonintervention were actually designed as dams against the historical flood of imperial interventions by the more powerful states, and that the threat of these is perceived as real.

Critics also argued that since “the ultimate aim of the *droit d'ingérence* is to overthrow a government responsible for massive breaches of human rights,” the concept might be used to justify secessionist movements' attempts to trigger external interventions to aid their causes in internal conflicts.¹⁰

In the discussions that followed his speech at the United Nations, the consensually agreed upon, legitimate, and universal principles for intervention that Annan had called for were nowhere in sight.

A RESPONSIBILITY TO PROTECT

The new conceptual framework that this book represents has been hailed by some as the major leap forward Annan was calling for, even though the commission does not claim for itself a consensus view: “We did not argue in our report that there is now a sufficiently strong basis in principle and practice to claim the existence of a formal new principle of customary international law. But we did argue that the ‘responsibility to protect’ is an emerging international norm, or guiding principle of behaviour for the international community of states, which may well

⁷ Reference to Resolution 43/131 of December 8, 1988, regulating delivery of humanitarian assistance to victims of natural disasters and similar emergency situations and insisting on a principle of free access to the victims; and Resolution 45/100 of December 14, 1990, furthering the previous resolution and introducing the concept of emergency humanitarian corridors.

⁸ For a brilliant account of these issues, see William Shawcross, *Deliver Us from Evil: Peacekeepers, Warlords and a World of Endless Conflict* (New York: Simon & Schuster, 2000).

⁹ Quoted by Shashi Tharoor, “Humanitarian Intervention: Principles, Problems, and Prospects” (speech given at the Wilton Park Conference “Humanitarian Intervention? How Can We Do It Better?” Wilton Park, U.K., February 19–23, 2001); available at web.gc.cuny.edu/icissresearch/Wilton.Park.Tharoor.htm.

¹⁰ Mario Bettati, “Une occasion manquée,” *Le Monde*, November 22, 2001, supplement, p. III.

become customary international law if further consolidated in state and intergovernmental organisation practice.”¹¹

While it does rephrase the concept of sovereignty innovatively, the commission still frames it within what Joseph Camilleri and Jim Falk call the “sovereignty discourse”—“a way of describing and thinking about the world in which nation-states are the principal actors, the principal centers of power, and the principal objects of interest”—carefully avoiding a challenge to the state as the core of the international system and a discussion of new interpretations of the self-determination principle.¹² The principle of state sovereignty is no longer absolute, but, paradoxically, it remains sacrosanct. The commission’s work was, after all, driven and limited by the pragmatic goal to guarantee consensual support among members of the United Nations. The commission depicts protection as a “responsibility continuum” that is broader than the responsibility to react, that is, intervention. It embraces two other supporting responsibilities, namely “the responsibility to prevent” and “the responsibility to rebuild,” which encompass such wide-ranging and daunting notions as early warning and prevention efforts, peace building, security and demobilization, justice and reconciliation, and, last but not least, economic development.

While calling on the international community to commit effectively to all of the above amounts to little more than wishful thinking, there can be some value to restating the obvious: military intervention is a blunt, costly, dangerous, and limited instrument for the protection of basic human rights and security. Much more can and should be achieved through other means. One can only agree with the commission’s conclusion that “prevention is the single most important dimension of the responsi-

bility to protect: prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it.”¹³

The commission provides a set of guidelines with regard to the “responsibility to react”—that is, to intervene with military means where diplomatic initiatives, sanctions, and arms embargoes will not suffice. Framing military intervention as a last resort used only in extreme cases, the commission identifies six criteria for legitimate military intervention for protection: right authority, just cause, right intention, last resort, proportional means, and reasonable prospects. The commission discusses the “just cause” threshold—the criterion that must be satisfied to trigger military action—in depth in an attempt to define what would constitute “conscience-shocking situations” that would warrant intervention, namely, large-scale killing or large-scale ethnic cleansing. It seeks to be narrow enough to ensure that the responsibility to protect is not interpreted as permission for an endless stream of wars and to elicit effective exercise of this responsibility.

The report also presents some helpful doctrinal elements for the operational aspects of “human protection operations,” including the requirement that forces adhere to international humanitarian law and for force protection not to have priority

¹¹ Gareth Evans, “The Responsibility to Protect and September 11” (speech given at the UNU/Canadian Government Seminar on *The Responsibility to Protect*, Ottawa, Canada, December 16, 2002); available at www.intl-crisis-group.org/projects/showreport.cfm?reportid=860.

¹² Joseph Camilleri and Jim Falk, *End of Sovereignty? The Politics of a Shrinking and Fragmenting World* (London: Edward Elgar, 1992), p. 2.

¹³ International Commission on Intervention and State Sovereignty, synopsis in *The Responsibility to Protect* (Ottawa: IDRC, 2001), vol. 1, p. xi.

over the resolve to accomplish the mission. These are laudable recommendations given the discredit past operations have fallen under, due to impunity and blatant breaches of the laws of war and the Geneva Conventions by intervening forces.¹⁴

One is left, though, with a sense that this attempt at codifying conscience and defining emerging norms will likely remain hostage to the thorny issues of authority and political will, the very points that derailed or confused the response to crises in Rwanda, Bosnia, Kosovo, Chechnya, and other places. Who has the authority to initiate and legitimate interventions? And how do we develop the political will to protect despite narrowly defined concepts of national and collective interest?

The Authority to Intervene

Article 53 of the UN Charter mandates that “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council,” making the latter the first port of call to authorize intervention. Gareth Evans aptly remarks, “The difficult question—starkly raised by Kosovo—is whether it should be the last.”¹⁵

Squarely backing the current international order and the United Nations as the sole legitimate guardian of international peace and security, the commission reaffirms the primacy of the Security Council. It recommends, however, that the permanent members consider not using their veto power (where their vital interests are not involved) when considering military interventions for human protection. It further proposes that when the council is unable or unwilling to act, intervention could be decided either by the General Assembly in Emergency Special Session under the “Uniting for Peace” procedure¹⁶ or by regional organizations under Chapter VIII of the

Charter, subject to their seeking subsequent authorization from the Security Council.¹⁷

These are helpful recommendations, but they fall short of a long-overdue proposal to restructure democratically the makeup of the Security Council. They also fail to take into account some important shortcomings of the status quo. Both Russia and China have been unable or unwilling to exercise effectively their sovereignty defined as a responsibility to protect over the years. How might the international community exercise its responsibility to protect Chechens or Tibetans, should the threshold criterion be met? In the cases of Russia and China, their military might precludes “reasonable prospects” for any intervention, thus disqualifying them from consideration—leaving smaller countries with the legitimate sense that these are not matters of right but rather matters of might.

Yet again, the commission has been guided by the necessity to protect the status quo in order to guarantee a political buy-in. Most likely for the same reason, very little mention is made of the need for a standing military force. The limited scope of practical recommendations for change in the architecture and means of the United Nations is unfortunate. Beyond the discretionary use of the veto, it is also the composition of the Security Council and the lack of a military force that paralyze the United Nations. Addressing these concerns would lay the foundation for a true capacity to intervene

¹⁴ For a look at breaches of humanitarian law by intervening forces in Somalia, see Rony Brauman, *Le crime humanitaire: Somalie* (Paris: Arléa, 1993).

¹⁵ See Evans, “The Responsibility to Protect and September 11.”

¹⁶ This procedure was the basis for operations in Korea in 1950, Egypt in 1956, and the Congo in 1960.

¹⁷ This was the case with the interventions of the Economic Community of West African States in Liberia in the early 1990s and in Sierra Leone in 1997.

and protect.

Elusive Political Will

While sovereignty concerns—or rather the fear of the law of the mightiest—may be the major challenge to building consensus among most nations, political will is the Achilles' heel of the powerful states on the Security Council and therefore of the entire system. “Lack of political will, national interest narrowly defined, and simple indifference too often combine to ensure that nothing is done, or too little and too late,” admits Annan.¹⁸

One of the most passionate moral arguments in support of interventions for protection ever written by a policy-maker comes from former U.S. national security advisor Anthony Lake:

There is a moral imperative that is all the deeper with our superpower status. How can America sit on the sidelines when innocent civilians are being slaughtered? We lose credibility on other issues if we turn our back on humanitarian tragedies. More important, it is wrong to do so. With our great power comes great responsibility and leadership in human as well as geopolitical terms. Not acting when you can is as much a decision as becoming involved. This does not mean that we must always act. But there are consequences when we do not.¹⁹

Yet, as Lake's story tells us, political will is not always congruent with the personal moral visions of our policy-makers. Known since Vietnam for his sensitivity to the “human reality of realpolitik”²⁰ and clearly articulate on the moral demands of interventions, Lake was, perhaps ironically, a critical player in the administration that stood by and did nothing during the 1994 Rwandan genocide, ignoring its clear obligations under the Genocide Convention.²¹ Furthermore, at the height of the genocide, on May 3, Lake announced a new U.S. peacekeeping

doctrine that defined restrictive criteria for U.S. intervention and its support for UN interventions. Even the genocide in Rwanda did not pass the test of the new “rigorous standards of review,” illustrating not only the lack of political will and leadership on the matter but also the willingness to ignore commitments under international law.²²

The commission discusses the challenges of building international and domestic political will—arguably a vital component of rendering such interventions coherent and consistent—and it has no magic bullet. Significantly, even Bill Clinton's administration, which included people of good will and an outspoken sense of duty like Lake, was unable to rally the necessary political will to protect the victims of genocide in Rwanda. Nonetheless, the commission hopes that these new concepts and the accompanying guidelines will clarify, redirect, and thus

¹⁸ Kofi A. Annan, “Address” (speech given at the International Peace Academy seminar, “Responsibility to Protect,” New York, N.Y., February 15, 2002); available at www.un.org/News/Press/docs/2002/sgsm8125.doc.htm.

¹⁹ Anthony Lake, “Peacekeeping as Permanent Band-Aid,” in his *6 Nightmares: Real Threats in a Dangerous World and How America Can Meet Them* (New York: Little, Brown, and Co., 2000), pp. 107–74.

²⁰ Anthony Lake and Roger Morris, “The Human Reality of Realpolitik,” *Foreign Policy* 4 (Fall 1971), pp. 157–62, analyzed the process whereby American policy-makers with moral sensibilities could wage a war with such immoral consequences as the one in Vietnam. Cited by Samantha Power, “Bystanders to Genocide: Why the United States Let the Rwandan Tragedy Happen,” *Atlantic Monthly*, September 2001, pp. 84–108; available at www.theatlantic.com/issues/2001/09/power.htm.

²¹ William Ferroggiaro, ed., *The US and the Genocide in Rwanda 1994: Evidence of Inaction* (National Security Archives, George Washington University, August 20, 2001); available at www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB53/index.html.

²² For further discussion of U.S. policy development with regard to Rwanda, see Power, “Bystanders to Genocide”; and Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2002).

reinvigorate the policy debate, and that the responsibility to protect will become an overarching norm in international affairs, engineered by policy-makers and supported by civil society groups into a solid foundation of customary law.

Unfortunately, one is left with very little to forge the required political momentum to ensure there are prompt, principled, and effective interventions “based on just cause and right intentions” independently of the national interests of the five permanent members of the Security Council. This leaves one wondering whether the intellectual, legal, and political developments of the last decade—including the proposals in *The Responsibility to Protect*—with regard to the fate of people caught in violence will have any relevance in the new environment dominated by the war against terrorism.

A TRICKY PANDORA'S BOX

“Since the end of the Cold War, human rights have become the dominant moral vocabulary in foreign affairs,” observes political and human rights analyst Michael Ignatieff, adding pertinently that “the question after Sept. 11 is whether the era of human rights has come and gone.”²³ Today, after further ambiguities in Afghanistan, the international community braces for a new war in Iraq. The expansive new policy of preemptive military action announced by Washington has eclipsed humanitarian intervention as the international policy issue of the moment.

The 1990s were a time of experimentation in international affairs, with the reemergence of a humanitarian rationale for military interventions reminiscent of the colonial civilizing mission. September 11 may be a point of rupture. In his speech to the annual Labour Party conference, Prime

Minister Tony Blair noted, “In retrospect, the Millennium marked only a moment in time. It was the events of September 11, 2001, that marked a turning point in history, where we confront the dangers of the future and assess the choices facing humankind.”²⁴

Among these choices facing humankind, states may have recently opted for sidestepping human rights priorities and humanitarian concerns in international affairs, belying Blair’s notion of a new global community. But, most likely, human rights discourse and the concept of a responsibility to protect will not be abandoned altogether. During the era of colonialism, the European powers claimed to be acting for humanitarian reasons. During the Cold War, the superpowers placed human rights at the discursive core of their policies. And in the 1990s, humanitarianism was used as a fig leaf for political neglect or for self-interested intervention. In the coming era, the rights discourse is likely to be further instrumentalized.

For example, the Bush administration has announced that humanitarian action is one of the fields of operation to win the war on terrorism.²⁵ It has yet to be seen, however, what this will mean concretely, particularly for people in Afghanistan or Iraq. Perhaps part of the problem is, as the commission points out, the ambiguity of the term “humanitarian action” itself. The commission favors the terms “protection interven-

²³ Michael Ignatieff, “Is the Human Rights Era Ending?” *New York Times*, February 5, 2002, p. A25.

²⁴ Tony Blair, “Address” (speech given at the annual Labour Party conference, October 2, 2001); available at politics.guardian.co.uk/labour2001/story/0,1414,562006,00.html.

²⁵ White House, “Frequently Asked Questions about the War on Terrorism at Home and Abroad”; available at www.whitehouse.gov/response/faq-what.html.

tions” or “human protection operations,” since international humanitarian law cannot be invoked to justify armed intervention as it has nothing to do with the right of states to use force. Its role is strictly limited to setting limits to armed force irrespective of the legitimacy of its use. Meanwhile, humanitarian action is designed not to resolve conflicts but to protect human dignity and save lives.

The commission’s effort to revisit the Pandora’s box of intervention and thereby learn the lessons of the erratic experimentations of the 1990s has resulted in a “principled, as well as a practical and political, case for conceptualizing the intervention issue in terms of a responsibility to protect.”²⁶ By evaluating interventions from the perspective of the victims rather than the interveners, it carves a new path for redefining the legitimacy and legality of interventions made in the name of human rights and humanitarianism. Its effort to ensure that the failures of the 1990s are not repeated may go unfulfilled. Indeed, the issues of political will and authority to intervene have not been resolved, and the ambient discourse on the war on terrorism is likely to further divide rather than rally the international community on matters of intervention versus sovereignty. Some are convinced that the experimentations of

the 1990s are over, especially in the Washington looking glass. Ignatieff, for one, believes that the last decade of “backing human rights principles with political will and military steel” was a hiatus, “an interregnum, made possible because Western militaries had spare capacity and time to do human rights work,” and foresees a whole new era in which human rights are likely to be irrelevant.²⁷

The appearance of *The Responsibility to Protect* will hearten supporters of an alternative view. Lloyd Axworthy, former foreign affairs minister of Canada and instigator of the commission, argues that we have nevertheless learned useful lessons. On this account, *The Responsibility to Protect* provides helpful benchmarks by which to judge interventions in this new era, an exercise Axworthy believes to be required to preserve an international system based on a rule of law from “a highly regressive move in the search for international security and sanity.”²⁸ Many, including this author, would agree.

²⁶ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, vol. 1, p. 12.

²⁷ Ignatieff, “Is the Human Rights Era Ending?”

²⁸ Lloyd Axworthy, “Beware the Fever of War,” *Toronto Globe and Mail*, October 8, 2002, p. A23.